

SPAIN

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR A/51/40, vol. I (1996)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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429. A country-by-country breakdown of follow-up replies received or requested and outstanding as at 26 July 1996 provides the following picture:

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Spain: One decision finding violations; the State party's follow-up reply, dated 30 June 1995, challenged the findings of the Committee.

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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524. A country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997 provides the following picture (Views in which the deadline for receipt of follow-up information had not yet expired have not been included):

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Spain: One decision finding violations: 493/1992 -G. J. Griffin (1995 Report);^{16/} State party's follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings.

^{16/} [Official Records of the General Assembly], Fiftieth Session, Supplement No. 40 (A/50/40).

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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486. The Committee's previous report (A/52/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the previous report. This is because the resources available for the Committee's work were considerably reduced in the current year, preventing it from undertaking a comprehensive systematic follow-up programme.

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Spain: Two Views finding violations: 493/1992 -G. J. Griffin (1995 Report (A/50/40)); State party's follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings; 526/1993 (Hill) (1997 Report (A/52/40)); State party's follow-up reply, dated 9 October 1997 (see para. 499 below).

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Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

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499. Spain. By submission of 9 October 1997, Spain provided information in relation to the Committee's Views in case No. 526/1993 (Hill). The State party clarifies that the applicants have the right to initiate an effective remedy, either through an administrative, judicial, constitutional (amparo) or even international (under the European Convention) recourse. In this connection, the State party refers to articles 24(1), 106(2) and 121 of the Constitution concerning compensation for damages caused by violation of rights of individuals.

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507. The Committee decided that in view of the replies received, further follow-up consultations are required in respect of ... Spain ...

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VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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461. The Committee's previous report (A/53/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1998. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the resources available for the Committee's work have been considerably reduced preventing it from undertaking a comprehensive systematic follow-up programme.

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Spain: Two Views finding violations: 493/1992 - Griffin (A/50/40); State party's follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings; 526/1993 - Hill (A/52/40); for State party's follow-up reply, see A/53/40, para. 499.

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VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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596. The Committee's previous report (A/54/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1999. The list that follows shows the additional cases in respect of which follow-up information has been requested from States. (Views in which the deadline for receipt of follow-up information had not yet expired have not been included.) It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the limited resources available for the Committee's work prevent it from undertaking a comprehensive or systematic follow-up programme.

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Spain: Two Views finding violations: 493/1992 - Griffin (A/50/40); the State party's follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings; 526/1993 - Hill (A/52/40); for the State party's follow-up reply, see A/53/40, para. 499.

Chapter IV. Follow-up Activities under the Optional Protocol

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180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Spain: Three Views finding violations: 493/1992 - Griffin (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings; 526/1993 - Hill (A/52/40); for follow-up reply, see A/53/40, paragraph 499, and below. 701/1996 - Gómez (A/55/40); for follow-up reply see below.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

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196. Spain: With regard to case No. 526/1993 - Hill (A/52/40), the authors informed the Committee by letter dated 12 September 2000 that they were still awaiting decision with regard to their administrative claim for compensation, 27 months after it had first been initiated. They allege that this is a procedure which should not take more than eight months. It would appear from a press release of 22 January 2001 that the Spanish Constitutional Court has ruled that the Committee's Views must be regarded as new facts (hecho nuevo) and consequently the Supreme Court could review the case under the "Recurso extraordinario de revisión". Thus the authors could be granted an effective remedy, including compensation.

197. With regard to case No. 701/1996 - Gómez Vásquez (A/55/40), the State party submitted a note verbale dated 16 November 2000 contesting the Committee's Views by reference to the European Convention and to the interpretation that the European Court has made with regard to the French cassation. The submission refers to the use of article 121 of the Spanish Constitution as an effective remedy in cases where a violation has been established by an international body. In this respect, the State party refers to the effective remedy that the victims of communication No. 526/1993 (Hill brothers) have allegedly received. Furthermore, consideration will be given

to the Committee's Views in any future procedural reforms that might be undertaken.

198. By letter dated 2 February 2001, counsel responded to the State party's information by questioning the good faith of the response. He alleges that information has been withheld from the Committee with regard to the implementation of its Views. In this respect, counsel refers to a decision of the Spanish Supreme Court (Pleno de la Sala de lo Penal de Tribunal Supremo) where the Court ordered that: (a) in order to comply with the Committee's decision, the decision should be remitted to the Court that decided on appeal, for it to review the case; (b) that since Spanish cassation now complies with the requirements of article 14.5, all current cassation appeals need not be suspended; (c) and to avoid further possible misunderstanding before international bodies, it has remitted a report recommending the advisability of establishing an appeal prior to cassation. Counsel also provides the Committee with various press cuttings with regard to the echo that the decision had in the Spanish media, as well as the statements made by the Minister of Justice to the effect that due consideration would be given to the Committee's Views when new legislation was drafted on this issue.

CCPR A/57/40, vol. I (2002)

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Spain: Views in three cases with findings of violations:

493/1992 - Griffin (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings;

526/1993 - Hill (A/52/40); for follow-up reply, see A/53/40, paragraph 499, and A/56/40, paragraph 196;

701/1996 - Gómez Vásquez (A/55/40); for follow-up reply see A/56/40, paragraphs 197 and 198, and paragraph 28 below. During the seventy-fifth session, the Special Rapporteur met with a representative of the State party who undertook to inform the capital and report in writing.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other

developments are summarized below.

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250. Spain: With regard to case No. 701/1996 - Gómez Vásquez (A/55/40), the author's counsel stated by letter of 25 August 2001 that while the Sala General de Magistrados del Tribunal Supremo had decided to give effect to the Committee's Views, his petitions to the Sala de lo Penal del Tribunal Supremo had been unsuccessful. The State party, by its note verbale of 27 September 2001, informed the Committee as to the train of legislative steps under way to adjust its law of criminal procedure. For reasons of judicial independence, the State party did not wish to comment on the author's application currently before the Tribunal Supremo.

By letter of 28 December 2001, the author's counsel provided a copy of the judgement of the Tribunal Supremo of 14 December 2001, wherein the author's application based upon a contended direct effect in domestic law of the Committee's Views was rejected. The author's counsel criticized the terms and tone of the judgement, and indicated he had lodged an application before the Constitutional Court against this decision. He again sought the Committee's action to provide the author with an effective remedy. By a note verbale of 4 January 2002, the State party also provided the Committee with a copy of the judgement of the Tribunal Supremo, and further described the progress of the legislative amendments to its law of criminal procedure. The State party notes that, although the Supreme Court has rejected the author's motion for annulment of conviction, a section in the Codification Commission was created on October 2001 by the Ministry of Justice in order to elaborate a new law that will seek to apply the criminal double-instance principle to all cases.

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CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Spain: Views in three cases with findings of violations:

493/1992 - *Griffin* (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings;

526/1993 - *Hill* (A/52/40); for follow-up reply, see A/53/40, paragraph 499, A/56/40, paragraph 196 and paragraph 249 below;

701/1996 - *Gómez Vásquez* (A/55/40); for follow-up reply see A/56/40, paragraphs 197 and 198 and A/57/40, paragraph 250. During the seventy-fifth session, the Special Rapporteur met with a representative of the State party who undertook to inform the capital and report in writing; see also paragraph 250 below.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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249. **Spain:** case No. 526/1993 - *Hill* (A/52/40): on 10 October 2002, the authors provided a copy of an article from *El País* newspaper stating that the Supreme Court had implemented the

Committee's Views.

250. Case No. 701/1996 - *Gómez Vásquez* (A/55/40): by letter of 13 May 2002, the author's counsel provided a copy of the judgement of the Constitutional Court dated 3 April 2002, which denied direct effect to the Committee's Views in the case. According to counsel, the Supreme Court had requested the Government to consider amending the law. By letters of 26 April 2002 and 5 September 2002, he informed the Committee that the Views had still not been implemented; he provided a copy of the Criminal Procedure Law, as amended following the Committee's Views, stating that the right to a judicial review of sentences was not included. By letter of 4 March 2003, he informed the Committee that on 8 January 2002, he had filed an *amparo* proceeding with the Constitutional Court.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40(A/57/40)*, vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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SPAIN:

Hill v. Spain, Case no. 526/1993, Views adopted on 2 April 1997

Violations found: Articles 9, paragraph 3, 10 and 14, paragraph 3 (c) and (5) for both authors, plus article 14, paragraph 3 (d) in respect of M. Hill only.

Issues of case: Prolonged pre-trial detention and impossibility of the accused to defend themselves in person before the Spanish Courts

Remedy recommended: Compensation

Deadline for State party follow-up information: 29 October 1997

Follow-up information received from State party: See previous Follow-Up report

Follow-up information received from author: On 10 October 2002, the authors provided a copy of an article from "EL PAÍS", where it is, wrongly, stated that the Supreme Court had implemented the Committee's Views. The authors informed the Committee that B. Hill's administrative claim for compensation was rejected by the State Council on 21 March 2002 as his judicial matters are still pending. M. Hill's was similarly notified on 28 May 2003 that his claim was also rejected, with no reasons provided. It appears, that M. Hill has the option of appealing this decision to the Administrative Court in Madrid but that this could take four to seven years. The authors intend to provide further information to the Committee on receipt of two further decisions of the Spanish courts on 9 and 19 of September.

Special Rapporteur's recommendations: A request for clarification should be sent to the State party.

Gómez Vásquez v. Spain, Case no. 701/1996, Views adopted on 20 July 2000

Violations found: Article 14, paragraph 5

Issues of case: Denial of an effective appeal against conviction and sentence for the most serious crimes (incomplete judicial review)

Remedy recommended: Author's conviction must be set aside unless it is subjected to review in accordance with article 14, paragraph 5.

Deadline for State party follow-up information: 14 November 2000

Follow-up information received from State party: See previous follow-up report (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol. 1, para. 250). By note verbale of 27 September 2001, the State party informed the Committee of the legislative steps initiated to amend the law on criminal procedure. By note verbale of 4 January 2002, it provided the Committee with a copy of the judgment of the Tribunal Supremo, and further described the progress of the legislative amendments to its law of criminal procedure.

Follow-up information received from author: See previous follow-up report (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol. 1, para. 250). By letter of 25 August 2001, author's counsel stated that while the Sala General de Magistrados del Tribunal Supremo had decided to give effect to the Committee's Views, his petitions to the Sala de lo Penal del Tribunal Supremo had been unsuccessful. By letter of 28 December 2001, the author's counsel provided a copy of the judgment of the Tribunal Supremo of 14 December 2001, rejecting his application. Author's counsel criticized the terms and tone of the judgment, and indicated that he had lodged an application before the Constitutional Court against this decision. By letter of 13 May 2002, author's counsel provided a copy of the Judgment of the Constitutional Court dated 3 April 2002, rejecting his application. According to counsel, the Supreme Court had requested the Government to amend the law. In the same letter, counsel requested a meeting between the Committee and the State party. By letters of 26 April and 5 September 2002, he informed the Committee that its Views had still not been implemented. By letter of 4 March 2003, he reported that on 8 January 2002 he filed amparo proceedings in the Constitutional Court. No reply has been received.

Consultations with State party: On 25 July 2002, the Special Rapporteur on Follow-up met with the Permanent Representative. He was asked for information on the latest developments in the case and if the legal system had been reformed in accordance with the Committee's Views. The State's representative replied that she would convey this message to the Spanish Government and

answer as soon as possible

Special Rapporteur's recommendations: On 26 December 2003, the Committee received information that the Spanish Gazette had published a notification of the reform of the legal system in accordance with the Committee's Views (see El Mundo of 4 January 2004). The State party should be requested to provide clarification as to the extent and impact of the legislation.

Semey v. Spain, Case no. 986/2001, Views adopted on 30 July 2003

Violations found: Article 14, paragraph 5

Issues of case: Right to have criminal trial reviewed

Remedy recommended: Conviction should be reviewed in conformity with the requirements of article 14, paragraph 5, of the Covenant.

Deadline for State party follow-up information: 20 November 2003

Follow-up information received from State party: None

Follow-up information received from author: By letter of 16 November 2003, the author complained about the State party's failure to implement the Committee's Views. According to the author, although legislation has been proposed to institute an appeal remedy against sentences delivered by the Audiencia, this would not constitute a proper remedy in his case. In his opinion, the appropriate remedy would be either the annulment of his sentence or his release from prison.

Special Rapporteur's recommendation : Reminder to be sent to the State party.

Sineiro Fernández v. Spain, Case no. 1007/2001, Views adopted on 7 August 2003

Violations found: Article 14, paragraph 5

Issues of case: Arbitrary detention; unfair trial; and right to review

Remedy recommended: An effective remedy. The author's conviction must be reviewed in accordance with article 14, paragraph 5, of the Covenant.

Deadline for State party follow-up information: 10 November 2003

Follow-up information received from State party: None

Follow-up information received from author: On 23 September 2003, Counsel informed the

Committee that the author requested the National Audience to suspension his sentence. He also requested an effective remedy under article 2.3 a) of the Covenant before the Supreme Court and subsequently by appeal to the Constitutional Court. He also requested a pardon from the Ministry of Justice. Counsel also provides articles from the "EL PAÍS" and "El mundo" newspaper, which refer to the Committee's Views.

Special Rapporteur's recommendations: A reminder should be sent to the State party.

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CCPR, CCPR/C/SR.2194 (2004)

Human Rights Committee
Eightieth session

Summary record of the second part (public) of the 2194th meeting
Held at Headquarters, New York,
on Friday, 2 April 2004, at 10 a.m.

...

Follow-up on Views under the Optional Protocol

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3. *Mr. Scheinin* said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

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6. *Mr. Solari Yrigoyen* said that the principle should be made clear that there was no procedure for reconsideration of the Committee's Views except in case of obvious error. In case No.

701/1996 (*Gómez Vázquez v. Spain*), the Committee's firmness had ultimately led the State party to change its legislation...

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Spain: Views in seven cases with findings of violations:

493/1992 - *Griffin* (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges the Committee's findings;

526/1993 - *Hill* (A/52/40); for follow-up reply, see A/53/40, paragraph 499, A/56/40, paragraph 196 and A/58/40, paragraph 249; in the follow-up report (CCPR/C/80/FUI), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a request for clarification on information provided by the authors that the State party had reformed its legal system be sent to the State party;

701/1996 - *Gómez Vásquez* (A/55/40); for follow-up reply, see A/56/40, paragraphs 197 and 198 and A/57/40, paragraph 250;

During the seventy-fifth session, the Special Rapporteur met with a representative of the State party who undertook to inform the capital and report in writing; see also A/58/40, paragraph 250.

864/1999 - *Ruiz Agudo* (A/58/40); follow-up reply not yet received;

986/2001 - *Semey* (A/58/40); see paragraph 249 below for author's and State party's reply; in the follow-up report (CCPR/C/80/FUI), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder be sent to the State party;

1006/2001 - *Muñoz* (annex IX); follow-up reply not yet received;

1007/2001 - *Sineiro Fernandez* (A/58/40); see paragraph 250 below for author's reply; in the follow-up report (CCPR/C/80/FUI), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder be sent to the State party.

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OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD, SPECIAL RAPPORTEUR'S FOLLOW-UP CONSULTATIONS AND OTHER DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

252. Spain: as to case No. 986/2001 - *Semey* (A/58/40): on 16 November 2003, the author complained about the State party's failure to implement the Committee's Views. According to the author, although legislation has been proposed to institute an appeal remedy against sentences delivered by the Audiencia Nacional, this would not constitute a proper remedy in his case. In his opinion, the appropriate remedy would be either the annulment of his sentence or his release from prison. On 5 March 2004, the State party forwarded its follow-up reply in which it stated that the legislative amendment is not retrospective and, consequently, persons already convicted and whose sentences have become final prior to the entry into force of the amendment will not benefit from it. In the State party's view, the Committee's Views cannot be deemed to oblige it to modify *ex officio* a final judgement. Otherwise, all persons who submit cases to the Committee in the future alleging a violation of article 14, paragraph 5, would have to have their sentences reviewed, a result that the State party finds unacceptable and contrary to the principle of *res judicata*. Accordingly, the State party submits that it is up to the author to seek the judicial avenues he may consider suitable to challenge his conviction.

253. Case No. 1007/2001 - *Sineiro Fernández* (A/58/40): on 23 September 2003, Counsel informed the Committee that the author requested the Audiencia Nacional to suspend his sentence. He also requested an effective remedy under article 2, paragraph 3 (a), of the Covenant before the Supreme Court and subsequently by appeal to the Constitutional Court.

He also requested a pardon from the Ministry of Justice. Counsel also provides articles from the *El País* and *El Mundo* newspapers, which refer to the Committee's Views.

Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

CCPR, CCPR/C/SR.2280 (2005)

Human Rights Committee
Eighty-third session

Summary record of the 2280th meeting
Held at Headquarters, New York, on
Friday, 1 April 2005, at 10 a.m.

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Follow-up on views under the Optional Protocol

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2. *Mr. Ando*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, presented the Follow-up Progress Report (CCPR/C/83/FU1 and FU2), which updated the Committee's previous annual report (CCPR/C/81/CRP.1/Add.6) on follow-up activities and included information received between the eighty-first and eighty-third sessions. It dealt with 20 different States parties and covered 18 cases...

3. ... In case No. 1007/2001 (*Sineiro Fernández v. Spain*), a violation had been found owing to the lack of review by a higher court of the sentences. Yet another reminder would be sent to the State party.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. 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 the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. 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. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. 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 has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, 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 complying 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.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

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 ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Spain (10)	493/1992, <i>Griffin</i> A/50/40	X A/59/40,* A/58/40				X
	*Note: According to this report, information was provided in 1995, but was unpublished. It appears from the Follow-up file that in this response, dated 30 June 1995, the State party challenged the Committee's Views.					
	526/1993, <i>Hill</i> A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40 (annex VII)	X			
	701/1996, <i>Gómez Vásquez</i> A/55/40	X A/56/40, A/57/40, A/58/40, A/60/40 (annex VII)				X
	864/1999, <i>Ruiz Agudo</i> A/58/40				X	X
	986/2001, <i>Semey</i> A/58/40	X A/59/40, A/60/40 (annex VII)				X
	1006/2001, <i>Muñoz</i> A/59/40				X	
	1007/2001, <i>Sineiro Fernando</i> A/58/40	X A/59/40, A/60/40 (annex VII)				X
	1073/2002, <i>Terón Jesús</i> A/60/40				X	X
	1101/2002, <i>Alba Cabriada</i> A/60/40				X	X
	1104/2002, <i>Martínez Fernández</i> A/60/40				X	X

^a The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

...

Annex VII

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/59/40).

...

State party

SPAIN - GENERAL INFORMATION ON CASES RELATING TO ARTICLE 14, PARAGRAPH 5 VIOLATIONS

On 16 November 2004, the State party informs the Committee that Law 19/2003, of 23 December 2003, came into force on 16 January 2004. This law introduces the remedy of appeal against the judgements of the National Court (Audiencia Nacional) and those of the Provincial Courts (Audiencias Provinciales). It is intended to reduce the backlog of cases of the Supreme Court and to comply with the Committee's Views in Gómez Vásquez's case. Although the law was passed and has come into effect, the State party insists that: (i) the previous system of appeal (cassation) was very similar to other European systems and even broader than some of its European counterparts, as it allowed for a review when there was a factual mistake in the weighing of evidence, bypassing the scope of traditional remedy of cassation, which was limited to points of law; (ii) the European Court of Human Rights had found that the Spanish cassation complied entirely with the right to have the sentence reviewed by a higher tribunal; and (iii) that cassation was broad enough to encompass situations in which the presumption of innocence is involved.

According to the State party, no provision of the Covenant could oblige the State party to modify sentences already executed because this would violate the principle of *res judicata*. This conclusion is applicable to all communications already examined by the Committee as well as new communications, related to sentences and convictions

passed before the entry into force of Law 19/2003, which raise the issue of the compatibility of Spanish cassation with article 14, paragraph 5, of the Covenant. Law 19/2003 is procedural in nature and does not have any retroactive effect.

Author In March 2005 the lawyer in some of the cases where the Committee found violations of article 14, paragraph 5, informed the Committee that the State party had not taken legislative measures aiming at the implementation of the Committee's recommendations. There is no procedure in Spain, in general, to implement the decisions/judgements on individual complaints of the international human rights bodies, a situation that has been denounced by the Ombudsman, bar associations and NGOs. A bill introduced in October 2002 to that effect was rejected by the Parliament.

State party **SPAIN**

Case 526/1993, Hill et al.

Views adopted on 35521

Issues and violations found Prolonged pretrial detention and impossibility of the accused to defend themselves in person before the Spanish Courts - articles 9, paragraph 3, 10, 14, paragraph 3 (c), and 5 for both authors, plus 14, paragraph 3 (d) in respect of M. Hill only.

Remedy recommended Pursuant to article 2, paragraph 3 (a), of the Covenant, the authors are entitled to an effective remedy, entailing compensation.

Due date for State party response On 9 October 1997, the State party had provided information on the possibility of seeking compensation.

Date of reply 38306

State party response The State party submits that the author filed an application to have his conviction and sentence quashed. The Constitutional Court dismissed the application, but indicated that the author should file an appeal (revision). The author filed an appeal (revision) with the Second Chamber of the Supreme Court, which on 25 July 2002 decided to set aside the decision of the appellate court (Supreme Court) and again rejected the author's original appeal (cassation). This second judgement of the Supreme Court, unlike the previous judgement duly analysed the evidence, prior to rejecting the appeal (cassation). The author filed an appeal (*amparo*) with the

Constitutional Court which is still pending. He also filed a suit in law against the Ministry of Justice for wrongful administration of justice. This claim was dismissed and an appeal with the National Court is still pending.

State party **SPAIN**

Case 701/1996, Gómez Vásquez

Views adopted on 36726

Issues and violations found Denial of an effective appeal against conviction and sentence for the most serious crimes (incomplete judicial review) - article 14, paragraph 5.

Remedy recommended Effective remedy, author's conviction must be set aside unless it is subjected to review in accordance with article 14, paragraph 5.

Due date for State party response 14 November 2000 - The State party has previously responded on.

State party response On 16 November 2004, the State party submits that on 14 December 2001, the Plenary of the Supreme Court decided to dismiss the application to have the author's conviction quashed. This is a landmark decision of the Supreme Court on the compatibility of the Spanish cassation with the requirements of article 14, paragraph 5, of the Covenant.

State party **SPAIN**

Case 1007/2001, Sineiro

Views adopted on 37839

Issues and violations found Denial of an effective appeal against conviction and sentence for the most serious crimes (incomplete judicial review) - article 14, paragraph 5.

Remedy recommended Effective remedy, author's conviction must be set aside unless it is subjected to review in accordance with article 14, paragraph 5.

Due date for State party 37944

response

Date of reply 38306

State party response The State party submits that on 16 February 2004, the Second Chamber of the Supreme Court dismissed an application for the annulment of the sentence and conviction.

State party **SPAIN**

Case 986/2001, Semey

Views adopted on 37831

Issues and violations found Denial of an effective appeal against conviction and sentence for the most serious crimes (incomplete judicial review) - article 14, paragraph 5.

Remedy recommended The author should be entitled to have his conviction reviewed in conformity with the requirements of article 14, paragraph 5, of the Covenant.

Due date for State party response 20 November 2003 - State party had responded on 5 March 2004 (see A/59/40)

Date of reply 38306

State party response The State party submits that other than having sent letters to the Committee, the President of the Republic and the Ministry of Justice, there is no indication that the author has filed any appeal before the domestic courts.

CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2392nd MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 26 July 2006, at 11 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

...

40. Mr. ANDO, turning to Gómez Vásquez v. Spain (communication No. 701/1996), said that although Spain had changed its law, the Government refused to apply the new law retroactively.

41. Mr. SOLARI YRIGOYEN expressed his concern about the lack of progress in that case. The author could have been released in 2000, but was still being held six years later. The Committee should be more vigorous in informing the State party that measures needed to be taken to address the situation.

...

...

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
...						
Spain (12)	493/1992, <i>Griffin</i> A/50/40	X A/59/40,* A/58/40				X
*Note: According to this report, information was provided in 1995, but was unpublished. It appears from the Follow-up file that in this response, dated 30 June 1995, the State party challenged the Committee's Views.						
	526/1993, <i>Hill</i> A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40, A/61/40	X			
	701/1996, <i>Gómez Vázquez</i> A/55/40	X A/56/40, A/57/40, A/58/40, A/60/40, A/61/40				X
	864/1999, <i>Ruiz Agudo</i> A/58/40				X A/61/40	X
	986/2001, <i>Semey</i> A/58/40	X A/59/40, A/60/40, A/61/40				X
	1006/2001, <i>Muñoz</i> A/59/40				X A/61/40	
	1007/2001, <i>Sineiro</i>	X				X

	<i>Fernando</i> A/58/40	A/59/40, A/60/40, A/61/40				
	1073/2002, <i>Teron Jess</i> A/60/40				X A/61/40	X
	1095/2002, <i>Gomariz</i> A/60/40				X A/61/40	
	1101/2002, <i>Alba Cabriada</i> A/60/40				X A/61/40	X
	1104/2002, <i>Martínez</i> <i>Fernández</i> A/60/40				X A/61/40	X
	1211/2003, <i>Olivero</i> A/61/40					
...						

...

Annex VII

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/60/40).

...

State party	SPAIN - GENERAL INFORMATION ON CASES RELATING TO ARTICLE 14, PARAGRAPH 5, VIOLATIONS
Date of State party's response	28 February 2006 (Response to a letter from the Secretariat on the implementation of law 19/2003 dated 7 December 2005)
State party response	<p>The State party submits that:</p> <ul style="list-style-type: none">• Law 19/2003 was approved on 23 December 2003;• It generalizes the second instance in Spain;• Its purposes were: (1) to reduce the caseload of the Second Chamber of the Supreme Court, and (2) to resolve the dispute which arose as a result of the Committee's Views adopted on 20 July 2000, in which the Committee asserted that the system of cassation was in violation of the Covenant;• To become operative, the amendments of Law 19/2003 require the passing of implementing legislation, i.e., the approval of the "Comprehensive Law by which: Procedural Law is put in conformity with the Comprehensive Law 6/1985, of 1 July, on the Judicial Branch; the remedy of cassation is reformed and the second instance is generalized". This draft law is currently at the Chamber of Deputies, and its discussion by the Commission on Justice will take place next February (sic);• Once approved, the new law will bring about the generalization of second instance in Spain. The system of appeal will be as follows: (a) Judgements handed down by Criminal judges and Provincial Courts (<i>Audiencias Provinciales</i>): appeal to the Provincial

Courts and the Criminal and Civil Chamber of the Superior Tribunal in each autonomous community, respectively;

(b) Judgements handed down by Criminal judges and Provincial Courts, within the framework of simplified proceedings (*procedimiento abreviado*): appeal to the Criminal Chamber of the National Court (*Sala de lo Penal de la Audiencia Nacional*) and to the Chamber of Appeals of the National Court (*Sala de Apelación de la Audiencia Nacional*);

(c) Judgements of the Provincial Courts concerning ordinary proceedings: appeal to the Criminal and Civil Chamber of the Superior Tribunal in each autonomous community;

(d) Judgements of the Second Chamber of the National Court: appeal to the Chamber of Appeals of the National Court;

(e) Judgements of the Second Chamber of the Supreme Court: appeal to the Chamber of Appeals of the Supreme Court;

(f) Judgements of the Criminal and Civil Chambers of the Superior Tribunal in each autonomous community: appeal to the Chamber envisaged in future article 846 bis 3 of the new law;

(g) Judgements of the President of Provincial Courts, when the latter act as Courts of Jury (Tribunal de Jurado): appeal to the Criminal and Civil Chambers of the Superior Tribunal in each autonomous community;

- To sum up, the entry into force of the amendments envisaged in Law 19/2003, will take place with the approval of the “Comprehensive Law by which: Procedural Law is put in conformity with the Comprehensive Law 6/1985, of 1 July, on the Judicial Branch; the remedy of cassation is reformed and the second instance is generalized.”

Case	Gómez Vázquez, 701/1996
Views adopted on	20 July 2000
Issues and violations found	Denial of an effective appeal against conviction and sentence for the most serious crimes (incomplete judicial review) - Article 14, paragraph 5.
Remedy	Effective remedy, author's conviction must be set aside unless it is

recommended	subjected to review in accordance with article 14, paragraph 5.
Due date for State party response	14 November 2000 - The State party has previously responded.
State party response	On 16 November 2004, the State party submits that on 14 December 2001, the Plenary of the Supreme Court decided to dismiss the application to have the author's conviction quashed. This is a landmark decision of the Supreme Court on the compatibility of the Spanish cassation with the requirements of article 14, paragraph 5, of the Covenant.
Author's response	<p>By letter of 5 April 2006, counsel informs the Committee that a draft amendment act is under way, which will tackle "the issue of the second instance" for persons sentenced by the "Audiencia Provincial" or "Audiencia Nacional". Counsel claims that, since this amendment shall only apply to decisions adopted after its entry into force, cases like Gómez Vázquez and Sineiro will not get the benefit of it.</p> <p>By letter of 17 April 2006, counsel insists that the State party has not complied with the Committees Views and as a proof thereof, he notes that the victim has been refused pardon and is still serving his sentence.</p>
Case	Ruiz Agudo, 864/1999
Views adopted on	31 October 2002
Issues and violations found	A delay of 11 years in the judicial process at first instance and of more than 13 years until the rejection of the appeal violates the author's right under article 14, paragraph 3 (c), of the Covenant, to be tried without undue delay.
Remedy recommended	An effective remedy, including compensation for the excessive length of the trial. The State party should adopt effective measures to prevent proceedings from being unduly prolonged and to ensure that individuals are not obliged to initiate a new judicial action to claim compensation.
Due date for State party response	9 February 2003
Date of State party's response	
State party response	None

Author's response On 1 August 2005, counsel transmitted to the Committee copy of the judgement, dated 24 June 2005, by which the *Audiencia Nacional* ordered the payment of 600 euros to the author as reparation for the malfunctioning of the judicial system of which he was a victim. Such judgement was the result of the administrative appeal filed by the author in order to obtain the implementation of the Committee's recommendations.

The author claims that the amount of the reparation ordered by the *Audiencia* is merely symbolic and cannot be considered sufficient.

Case Terón, 1073/2002

Views adopted on 5 November 2004

Issues and violations found Although the State party's legislation provides in certain circumstances for the trial of an individual, because of his position, by a higher court than would normally be the case, this circumstance alone cannot impair the defendant's right to review of his conviction and sentence by a court. Article 14, paragraph 5.

Remedy recommended An effective remedy, including adequate compensation.

Due date for State party response 9 February 2005

State party response None

Author's response By letters dated 7 March 2005 and 11 July 2005, counsel informed the Committee that no measures had been taken to implement the Committee's recommendations.

Case Hill, 526/1993

Views adopted on 2 April 1997

Issues and violations found The author's were not given any food during the first five days of police detention; they were not granted release on bail; their right to defend themselves was not respected; their right to have their conviction and sentence reviewed was denied to them - Articles 9, paragraph 3; 10; 14, paragraphs 3 (c) and 5.

Remedy recommended An effective remedy, entailing compensation.

Due date for State party response On 9 October 1997, the State party had provided information on the possibility of seeking compensation.

Date of State party reply 2 November 2005 (Latest information)

State party response The Committee will recall that, as set out in its 84th report, the State party submitted, on 16 November 2004, that the author filed an application to have his conviction and sentence quashed. The Constitutional Court dismissed the application, but indicated that the author should file an appeal. The author filed an appeal with the Second Chamber of the Supreme Court, which on 25 July 2002 decided to set aside the decision of the appellate court (Supreme Court) and again rejected the author's original appeal (cassation). This second judgement of the Supreme Court, unlike the previous judgement duly analyzed the evidence, prior to rejecting the appeal (cassation). The author filed an appeal (*amparo*) with the Constitutional Court which is still pending. He also filed a suit in law against the Ministry of Justice for wrongful administration of justice. This claim was dismissed and an appeal with the National Court is still pending.

On 2 November 2005, the State party submitted that Mr. Hill was re-tried by the Supreme Court, which upheld his conviction. Although there is an *amparo* before the Constitutional Court still pending, his extradition could take place at any time.

Author's response As the Committee will recall from its 85th report, on 10 October 2005, Mr. Michael Hill had informed the Committee that his brother Brian had been arrested on 8 October 2005 in Lisbon on an international arrest warrant issued by the court in Valencia which had tried the two brothers in the early 1990s. Allegedly, the arrest warrant was related to the facts at the basis of the concluded case. It stemmed from the contention that the authors absconded from Spain immediately upon their conditional release from custody. This information was transmitted to the State party, for comments.

...

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

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
Spain (15)	493/1992, <i>Griffin</i> A/50/40	X A/59/40,* A/58/40				X
*Note: According to this report, information was provided in 1995, but was unpublished. It appears from the follow-up file that in this response, dated 30 June 1995, the State party challenged the Committee's Views.						
	526/1993, <i>Hill</i> A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40, A/61/40	X			
	701/1996, <i>Gómez Vásquez</i> A/55/40	X A/56/40, A/57/40, A/58/40, A/60/40, A/61/40				X
	864/1999, <i>Ruiz Agudo</i> A/58/40				X A/61/40	X
	986/2001, <i>Semey</i> A/58/40	X A/59/40, A/60/40, A/61/40				X
	1006/2001, <i>Muñoz</i> A/59/40				X A/61/40	
	1007/2001, <i>Sineiro Fernando</i> A/58/40	X A/59/40, A/60/40, A/61/40				X
	1073/2002, <i>Teron Jesùs</i>				X	X

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	A/60/40				A/61/40	
	1095/2002, <i>Gomariz</i> A/60/40				X A/61/40	
	1101/2002, <i>Alba Cabriada</i> A/60/40				X A/61/40	X
	1104/2002, <i>Martínez Fernández</i> A/60/40				X A/61/40	X
	1211/2003, <i>Olivero</i> A/61/40				X	X
	1325/2004, <i>Conde</i> A/62/40				X	X
	1332/2004, <i>García and others</i> A/62/40				X	X
	1381/2005, <i>Hachuel</i> A/62/40	Not yet due				
...						

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. 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).

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.

...						
Spain (17)	493/1992, <i>Griffin</i> A/50/40	X A/59/40,* A/58/40				X
	*Note: According to this report, information was provided in 1995, but was not published. It appears from the follow-up file that, in this response, dated 30 June 1995, the State party challenged the Committee's Views.					
	526/1993, <i>Hill</i> A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40, A/61/40	X			
	701/1996, <i>Gómez Vázquez</i> A/55/40	X A/56/40, A/57/40, A/58/40, A/60/40, A/61/40				X
	864/1999, <i>Ruiz Agudo</i> A/58/40				X A/61/40	X
	986/2001, <i>Semey</i> A/58/40	X A/59/40, A/60/40, A/61/40				X
Spain (<i>cont'd</i>)	1006/2001, <i>Muñoz</i> A/59/40				X A/61/40	
	1007/2001, <i>Sineiro Fernando</i> A/58/40	X A/59/40, A/60/40, A/61/40				X
	1073/2002, <i>Terón Jesús</i> A/60/40				X A/61/40	X

	1095/2002, <i>Gomariz</i> A/60/40				X A/61/40	
	1101/2002, <i>Alba Cabriada</i> A/60/40				X A/61/40	X
	1104/2002, <i>Martínez</i> <i>Fernández</i> A/60/40				X A/61/40	X
	1211/2003, <i>Oliveró</i> A/61/40				X	X
	1325/2004, <i>Conde</i> A/62/40				X	X
	1332/2004, <i>Garcia and</i> <i>others</i> A/62/40				X	X
	1351 and 1352/2005, <i>Hens and Corujo</i> A/63/40	Not due				
	1381/2005, <i>Hachuel</i> A/62/40				X	
...						

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party

and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Spain (21)	493/1992, <i>Griffin</i> A/50/40	X A/59/40,* A/58/40				X
	*Note: According to this report, information was provided in 1995, but was not published. It appears from the follow-up file that, in this response, dated 30 June 1995, the State party challenged the Committee's Views.					
	526/1993, <i>Michael and Brian Hill</i> A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40, A/61/40, A/64/40				X
Spain (<i>cont'd</i>)	701/1996, <i>Gómez Vázquez</i> A/55/40	X A/56/40, A/57/40, A/58/40, A/60/40, A/61/40				X
	864/1999, <i>Ruiz Agudo</i> A/58/40				X A/61/40	X

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986/2001, <i>Semey</i> A/58/40	XA/59/40, A/60/40, A/61/40				X
1006/2001, <i>Muñoz</i> A/59/40				X A/61/40	
1007/2001, <i>Sineiro</i> <i>Fernando</i> A/58/40	X A/59/40, A/60/40, A/61/40				X
1073/2002, <i>Terón Jesús</i> A/60/40				X A/61/40	X
1095/2002, <i>Gomariz</i> A/60/40				X A/61/40	
1101/2002, <i>Alba Cabriada</i> A/60/40				X A/61/40	X
1104/2002, <i>Martínez</i> <i>Fernández</i> A/60/40				X A/61/40	X

1122/2002, <i>Lagunas</i> <i>Castedo</i> A/64/40				X	
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	1211/2003, <i>Oliveró</i> A/61/40				X	X
Spain (<i>cont'd</i>)	1325/2004, <i>Conde</i> A/62/40				X	X
	1332/2004, <i>García and others</i> A/62/40				X	X
	1351 and 1352/2005, <i>Hens and Corujo</i> A/63/40	Not due				
	1364/2005, <i>Carpintero Uclés</i> A/64/40	Not yet due				X
	1381/2005, <i>Hachuel</i> A/62/40				X	
	1473/2006, <i>Morales Tornel</i> , A/64/40				X (not due)	
	1493/2006, <i>Williams Lecraft</i> , A/64/40	Not yet due				X
...						

A/64/40 vol. II (2009)

...

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/63/40).

...

<i>State party</i>	<i>Spain</i>
<i>Case</i>	<i>Michael and Brian Hill, 526/1993</i>
<i>Views adopted on</i>	2 April 1997
<i>Issues and violations found</i>	The authors were not given any food during the first five days of police detention; they were not granted release on bail; their right to defend themselves was not respected; their right to have their conviction and sentence reviewed was denied to them - Articles 9, paragraph 3; 10; 14, paragraphs 3 (c) and 5.
<i>Remedy recommended</i>	An effective remedy, entailing compensation.
<i>Due date for State party response</i>	August 2007
<i>Date of State party response</i>	16 November 2004, 2 November 2005, and 9 October 1997
<i>State party response</i>	The Committee will recall that on 9 October 1997, the State party had provided information on the possibility of seeking compensation. On 16 November 2004, it informed the Committee about the measures being pursued by the author to seek redress and in particular to the fact that some applications were pending. On 2 November 2005, the State party submitted

that Mr. Hill was

re-tried by the Supreme Court, which upheld his conviction. Although there was an *amparo* still pending before the Constitutional Court, it submitted that his extradition could take place at any time.

Author's comments

On 3 November 2008, the author informed the Committee that after 10 years of having pursued all domestic procedures available to him in the State party all have proven fruitless. He gives a detailed account of the procedures pursued in connection with two separate actions - an administrative claim for compensation against the Spanish Ministry of Justice and a Judicial appeal before the Provincial Court of Valencia to annul the legal process which had led to his sentence and conviction. He requests the Committee, inter alia, to pursue the follow-up of this case with the State party.

Committee's Decision

The follow-up dialogue is ongoing.

...

CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

...

Follow-up on views under the Optional Protocol

...

2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

...

9. Turning to case No. 1493/2006 (*Williams Lecraft v. Spain*), she noted that the State party's official apology to the author for the racial profiling incident and its efforts to disseminate the Committee's Views throughout all main judicial bodies and organs constituted the best outcome that could be hoped for, namely, a pledge in good faith to remedy harm done. The Committee might wish to contact the author to enquire whether she was satisfied with the measures taken by the State party.

10. **Mr. O'Flaherty** said that, while he agreed that the Spanish Government's response was encouraging and that the Committee should await the author's reply, it might interest members to know that the author had publicly expressed dissatisfaction with that response as recently as the previous week.

11. **The Chair** said that he took it that the Committee approved the proposed course of action and would consider the dialogue ongoing pending receipt of a reply from the author.

...

17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

The discussion covered in the summary record ended at 3.40 p.m.

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

Human Rights Committee
Ninety-ninth session

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

...

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

...

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

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

...

78. **Mr. Iwasawa** drew attention to case No. 1,101/2002 concerning Spain. The issue raised was the right to review.

79. The author had informed the Committee in April 2010 that the State party had not reviewed his 10-year sentence. His submission had been sent to the State party with a reminder of the Committee's request for comments on its Views. The Special Rapporteur proposed that the Committee should consider that the dialogue was ongoing.

80. *It was so decided.*

81. **Mr. Iwasawa** said that case No. 1,493/2006 also concerned Spain and raised the issue of discrimination on the basis of racial profiling.

82. The State party had informed the Committee in its response of January 2010 that the Minister for Foreign Affairs and other senior Ministry officials had met the author in November 2009 and apologized for the acts of which she had been the victim. In December 2009, the Deputy Minister of Justice had written to her representatives explaining the Ministry's policy regarding human rights training of police officers. In January 2010, the Deputy Minister for Security Affairs had met the author and offered her oral and written apologies on behalf of the Minister.

83. Commenting in April 2010, the author had described the State party's actions as inadequate. The State party should, in her view, issue a public apology and take various steps to prevent a repetition of the acts. Her request for the payment of 30,000 euros in damages and 30,000 euros in respect of legal costs had been rejected by the State party since she had lost her case before the courts. The author was now urging the State party to consider alternative means of redress, such as a discretionary payment of compensation.

84. The author's comments had been sent to the State party in April 2010. As the Committee might wish to await comments from the State party, the Special Rapporteur proposed that it should consider that the dialogue was ongoing.

85. **Mr. O'Flaherty**, supported by **Mr. Thelin**, **Mr. Bhagwati** and **Mr. Iwasawa**, proposed that the case should be closed. The State party seemed to have acted on the Committee's recommendation to offer a public apology and to provide an effective remedy. Several apologies had been presented and a new police training policy had been introduced. It was unreasonable to ask the State party to take further action.

86. **Mr. Salvioli** also supported the proposal. There had been considerable media coverage of the case and, in particular, of the apology by the Ministry of Foreign Affairs.

87. **Mr. Rivas Posada** pointed out that the Committee had not recommended that the State party should pay compensation. He agreed that the case should be closed.

88. *It was so decided.*

...

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

The meeting rose at 1 p.m.

A/65/40 vol. I (2010)

...

Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

...

<i>State party</i>	<i>Spain</i>
<i>Case</i>	<i>Alba Cabriada, 1101/2002</i>
<i>Views adopted on</i>	1 November 2004
<i>Issues and violations found</i>	Right to review - article 14, paragraph 5.
<i>Remedy recommended</i>	An effective remedy. The author's conviction must be reviewed in accordance with article 14, paragraph 5, of the Covenant.
<i>Due date for State party response</i>	1 May 2005
<i>Date of State party response</i>	No response received.
<i>State party response</i>	None
<i>Author's submission</i>	On 2 April 2010, the author informed the Committee that the State party had not proceeded to review his sentence of 10 years in line with the Committee's recommendation. Neither has the State party amended its criminal law to comply with the requirements of article 14, paragraph 5. He requests the Committee to encourage the State party to fulfil its obligations under article 2 of the Covenant.
<i>Committee's Decision</i>	The Committee considers the dialogue ongoing.

<i>Case</i>	<i>Lecraft, 1493/2006</i>
<i>Views adopted on</i>	27 July 2009
<i>Issues and violations found</i>	Discrimination on the basis of racial profiling - article 26, read in conjunction with article 2, paragraph 3.
<i>Remedy recommended</i>	An effective remedy, including a public apology.
<i>Due date for State party response</i>	1 February 2010
<i>Date of State party response</i>	27 January 2010
<i>State party response</i>	<p>The Committee will recall the State party's submission in which it indicated that it had taken the following measures as a result of the Committee's Views.</p> <p>The text of the Views had been included in the Information Bulletin of the Ministry of Justice dated 15 September 2009. This is a public journal for general distribution that can be consulted by anybody.</p> <p>The Views were sent to all main judicial bodies and organs related to them, including the General Council of the Judicature, the Constitutional Court, the Supreme Court, the General Attorney's Office and the Ministry of Interior.</p> <p>On 11 November 2009, the Minister of Foreign Affairs and other high officials at his Ministry met Ms. Lecraft and offered her apologies for the acts of which she was a victim.</p> <p>On 27 December 2009, the Deputy Minister of Justice wrote to Ms. Lecraft's representatives and explained the Ministry's policy regarding human rights training of police officers.</p> <p>On 15 January 2010, the Deputy Interior Minister for Security Affairs met Ms. Lecraft and offered her oral and written apologies</p>

on behalf of the Minister. He also explained the measures taken by the Ministry in order to ensure that police officers do not commit acts of racial discrimination.

Author's comments

On 23 April 2010, the author commented upon the State party's submission. She commended the limited action taken by the State party in its attempts to implement its Views but expressed the view that its actions are insufficient. She submits that the State party should take the following steps:

(a) Issue the public apology that was specifically recommended by the Committee. She sets out the reasoning behind a public apology as opposed to one given behind closed doors, and suggests that this may be carried out by the posting of Minister Rubacalba's letter of apology on the website of the Ministry of the Interior, by making a public statement in an appropriate forum and by issuing a press release to newspapers and media outlets with a wide circulation;

(b) The author provides detailed suggestions on steps that may be implemented to prevent repetition, such as detailed instructions for stop-and-search, specific training of police, and non-discrimination standards for immigration checks. The author has communicated on several occasions on such issues and received responses from the Ministry of the Interior on training courses that are being undertaken but is of the view that they are too general in nature;

(c) The State party should properly consider the payment of damages as an appropriate remedy that demonstrates the vigorous reaction required where race discrimination has occurred. In a letter to the State party dated 6 November 29009, the author requested 30,000 euros for moral and psychological injury and a further 30,000 euros towards the legal costs she incurred in the proceedings before the national tribunals. Her request was subsequently rejected on the basis that she had lost her case before the Spanish courts. She now urges the State party to consider alternative ways of effecting redress such as a discretionary payment of compensation.

Committee's Decision

The Committee considers the dialogue ongoing.

...