

TT on 26 August 2008

**Response to JSCOT: How did Austria and Hungary respond to the Committee's views**

While the response of neither State party has been made public as far as the Attorney-General's Department is aware, how the States have responded can be assessed through how the Committee has responded to the State in its annual report.

In *AS v Hungary* (also known as *Szijjarto v Hungary*, CEDAW Communication 4/2004, Views of 14 August 2006) two Special Rapporteurs from the Committee were appointed to follow-up with Hungary as to how it was implementing the recommendations of the Committee. The recommendations of the Committee included:

- providing appropriate compensation to Ms AS
- taking measures to ensure that the articles of the Convention in relation to women's reproductive health and rights are known and adhered to by all relevant personnel in public and private health centres
- reviewing domestic legislation on the principle of informed consent in cases of sterilization and ensure its conformity with international human rights and medical standards
- monitoring public and private health centres, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.

When Hungary appeared before the Committee at its 38<sup>th</sup> session in relation to Hungary's 6<sup>th</sup> CEDAW Report, the Committee noted concern that Hungary had not

implemented the Committee's recommendations, and specifically the recommendation to provide appropriate compensation to Ms. A.S., to review its domestic legislation pertaining to the principle of informed consent and ensure its conformity with international human rights and medical standards, and monitor public and private health centres which perform sterilization procedures, as contained in its views under the Optional Protocol to the Convention.

It appears in this case that Hungary did not implement the Views of the Committee.

In *AT v Hungary* (CEDAW Communication 2/2003, Views adopted 26 January 2005) two Special Rapporteurs from the Committee were appointed to follow-up with Hungary as to how it was implementing the recommendations of the Committee. The recommendations of the Committee included:

- taking immediate and effective measures to guarantee the physical and mental integrity of AT and her family
- ensuring that AT is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights
- assuring victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women
- creating a national strategy for the protection of women from violence

- providing victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation.

At the Committee's 38<sup>th</sup> session, the two Special Rapporteurs recommended that follow-up should be finalised and that the Committee should request any further information on follow-up to the views on this case in the framework of the reporting procedure. When Hungary presented its 6<sup>th</sup> report at the Committee's 38<sup>th</sup> session, the Committee noted:

the development of the national strategy to prevent and effectively manage family violence and other measures that have been taken, including the creation of a free telephone service and the opening of some shelters for victims of domestic violence, [but] the Committee continues to be concerned about the prevalence of violence against women in Hungary, including domestic violence. The Committee is concerned that the initiative to introduce restraining orders has not been effective in providing protection to women victims of domestic violence. The Committee continues to be concerned about the lack of a specific law on domestic violence against women which provides for effective protection of victims, including restraining orders, and their access to legal aid.

It is apparent that in this instance, Hungary had accepted some of the Committee's recommendations in relation to domestic violence arising from the communication, but did not necessarily accept or implement the other recommendations.

In relation to both *Şahide Goekce (deceased) v. Austria* and *Fatma Yildirim (deceased) v. Austria* the Committee recommended that Austria:

- strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law
- act with due diligence to prevent and respond to such violence against women and adequately provide for sanctions for the failure to do so
- 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
- 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
- strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials.

There could be no recommendation in relation to the victims as they were deceased.

The Committee did not appoint Special Rapporteurs to follow up either of these cases. Although the Committee also considered Austria's 6<sup>th</sup> report in its 38<sup>th</sup> session, it did not refer specifically to either of these cases. However, it did state:

The Committee calls upon the State party to intensify its efforts to prevent and address all forms of violence against women, including domestic violence .... It also calls upon the State party to put in place expeditiously a comprehensive strategy or action plan and a campaign to prevent and eliminate all forms of violence against women and an effective institutional mechanism to coordinate, monitor and assess the effectiveness of measures taken. The Committee calls upon the State party to intensify its awareness-raising efforts with regard to violence against women, in particular domestic violence, and the unacceptability of all such violence. The Committee urges the State party to ensure that a sufficient number of safe crisis and intervention centres and shelters are available to women victims of violence, staffed by expert personnel and provided with adequate financial resources for their effective functioning. The Committee recommends that the State party enhance its cooperation with and support for non-governmental organizations working in the area of violence against women.

Therefore, it could be concluded that Austria accepted some of the recommendations in relation to violence against women made by the Committee in response to the communications, but did not fully implement the Committee's recommendations.