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Eighty-first session
5 - 30 July 2004

VIEWS

Communication No. 1160/2003

<u>Submitted by:</u>	Mr. and Mrs. Godfried and Ingrid Pohl; Mr. Wolfgang Mayer; Mr. Franz Wallmann (represented by counsel, Mr. Alexander H.E. Morawa)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Austria
<u>Date of communication:</u>	23 September 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 6 February 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	9 July 2004

On 9 July 2004 the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1160/2003. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-first session

concerning

Communication No. 1160/2003**

Submitted by: Mr. and Mrs. Godfried and Ingrid Pohl; Mr. Wolfgang
Mayer; Mr. Franz Wallmann (represented by counsel,
Mr. Alexander H.E. Morawa)

Alleged victim: The authors

State party: Austria

Date of communication: 23 September 2002 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant
on Civil and Political Rights,

Meeting on 9 July 2004,

Having concluded its consideration of communication No. 1160/2003, submitted to the
Human Rights Committee on behalf of, Mr. and Mrs. Godfried and Ingrid Pohl; Mr. Wolfgang
Mayer; Mr. Franz Wallmann, under the Optional Protocol to the International Covenant on Civil
and Political Rights,

Having taken into account all written information made available to it by the author of
the communication, and the State party,

Adopts the following:

** The following members of the Committee participated in the examination of the present
communication: Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo,
Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada,
Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms.
Ruth Wedgwood and Mr. Roman Wieruszewski.

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Godfried Pohl (first author), his wife, Ingrid Pohl (second author), Wolfgang Mayer (third author) and Franz Wallmann (fourth author), all Austrian citizens. They claim to be victims of a violation by Austria¹ of article 26 and, insofar as the fourth author is concerned, also of article 14, paragraph 1, of the International Covenant on Civil and Political Rights (the Covenant). They are represented by counsel.

The facts as submitted by the authors

2.1 The first and second authors jointly own, and reside on, property measuring some 1600 square meters located in the community of Aigen (part of the Municipality of Salzburg). The third author formerly owned a plot of land of some 2300 square meters, also located in Aigen, adjacent to the plot owned by the first and second authors. On 15 June 1998, the fourth author purchased the plot formerly owned by the third author from a company, which had acquired it at a public auction. As the current owner of the plot, on which he also resides, the fourth author is contractually obliged to reimburse the third author for any expenses associated with that plot.

2.2 Both plots of land are designated as “rural areas”, in accordance with the 1998 Salzburg Provincial Zoning Law, which divides real estate located in the Province of Salzburg into “building land”, “traffic/transportation areas” and “rural areas”.

2.3 On 1 December 1998, the Municipality of Salzburg informed the first, second and third authors of a preliminary assessment of the financial implications of the construction, in 1997, of a residential sewerage adjacent to their plots and gave them an opportunity to comment on the assessment.

2.4 According to Section 11 of the Salzburg Provincial Landowners’ Contributions Act (1976), which regulates financial contributions of landowners to certain public services in the Municipality of Salzburg, owners of plots of land located adjacent to a newly constructed sewerage must contribute to the construction costs; the contribution is calculated pursuant to a formula based on the square measure of a plot, from which an abstract “length” is deducted. Contributions of landowners in all other municipalities of the Province of Salzburg are regulated by the Provincial Act on Landowners’ Contributions to the Construction of Municipal Sewerages in all Municipalities of the Province of Salzburg with the Exception of the City of Salzburg (1962), which provides that owners of land, from which wastewater is dumped into the sewerage, are required to pay contributions for newly constructed sewerages, calculated on the basis of a formula that links the construction costs to the living space of the dwellings built on the plots. The number of “points”, calculated on the basis of living space (in square meters), are multiplied by the amount to be paid per point to arrive at an individual landowner’s contribution.

2.5 In their observations on the preliminary assessment, the authors argued that the envisaged calculation of their contributions based on the length of the plot was discriminatory, if compared

¹ The Covenant and the Optional Protocol to the Covenant entered into force for the State party respectively on 10 December 1978 and 10 March 1988.

to the calculation of contributions of owners of plots in areas designated as “building land”, as it disregarded the special situation of plots in rural areas, which were significantly larger than average parcels in areas designated as “building land”. The calculation method in all other municipalities in the Province of Salzburg was therefore based on available living space instead of the abstract length criterion so as to take such special circumstances into account. The authors also stated that the existing wastewater disposal facilities were adequate.

2.6 On 22 February 1999, the Municipality of the City of Salzburg issued two administrative acts, requiring the first and second authors to pay ATS 193,494.20 (€ 14,061.77) and the third author to contribute ATS 262,838.70 (€ 19,101.23), pursuant to Section 11 of the Landowners’ Contribution Act. It rejected the third author’s objection to his treatment as a party to the proceedings despite the fact that he was no longer the registered owner of the plot, stating that the owner registered at the time of the construction of the sewerage was to be considered the obligated party.

2.7 On 11 March 1999, the first, second and third authors appealed the decisions to the Appeals Commission in Building Matters of the Municipality of Salzburg. They reiterated that the length criterion for calculating their contributions was disproportionate and incorrect, given that, pursuant to the 1998 Zoning Law, no new buildings could be built on plots in “rural areas”. While owners of plots designated as “building land” were free to demolish existing buildings and construct new and larger ones, the authors, if they decided to demolish their current dwellings, could only use their parcels as pastures.

2.8 On 28 May and 2 July 1999, the Appeals Commission dismissed the appeals, observing that plots designated as “building land” and plots designated “rural” for which a special building permit had been granted, under previous versions of the Zoning Law, had to be treated alike to ensure equal treatment.

2.9 On 29 June and 13 July 1999, the first, second and third authors filed complaints with the Constitutional Court, claiming that the failure, in the Landowners’ Contributions Act, to differentiate between “rural” and “building” lots violated their right to equality before the law and the principle of the rule of law, i.e. the right to be subjected only to sufficiently precise laws. In particular, they argued that maintenance of the length criterion failed to take into account the change in the Zoning Law, which absolutely prohibited the construction of dwellings and other buildings on parcels designated “rural” since 1 January 1993, while exceptions to the zoning restrictions were readily granted before that date. On 10 June 2002, the Constitutional Court dismissed the authors’ complaints for lack of reasonable prospect of success.

2.10 On 14 August 2002, the authors submitted a further complaint to the Administrative Court, asking it to set aside the impugned administrative acts of 22 February 1999 and to give their complaint suspensive effect. On 9 October 2002, the Court rejected the motion for suspensive effect. The main proceedings were still pending before the Administrative Court at the time of the initial submission of the communication.

The complaint

3.1 The authors allege a violation of their rights under article 26 of the Covenant, claiming that the differentiation between landowners in the Municipality of Salzburg and elsewhere in the Province of Salzburg, as well as the lack of differentiation between owners of parcels zoned “rural” and owners of parcels zoned “building land” within the Municipality of the City of Salzburg, with respect to the payment of landowners’ contributions is discriminatory.

3.2 The authors argue that the differentiation between landowners in the City of Salzburg and those residing elsewhere in the Salzburg Province is neither based on *prima facie* objective and reasonable criteria nor proportionate. Thus, the municipalities surrounding Salzburg are equally and, in some cases, even more residential than the city itself, whereas some areas of the city, including the authors’ plots, are more “rural” than those of other municipalities and other cities in the vicinity. It was therefore unjustified to treat landowners in the City of Salzburg less favourably than landowners elsewhere², to whom the more beneficial 1962 Act applied. The latter required contributions only from landowners dumping wastewater into the sewerage and calculated their contributions on the basis of the reasonable criterion of living space of their dwellings. This differentiation had far-reaching adverse effects, as the authors’ contributions to the construction of the sewerage were three to four times higher than, for instance, the contributions charged from residents of the municipality of Koppl, without there being any indication that the construction of sewerages in the City of Salzburg was three or four times more expensive than elsewhere in the Province of Salzburg.

3.3 The authors submit that article 26 of the Covenant requires that objectively unequal situations be treated differently. The lack of differentiation, whether intentional or not³, between owners of plots designated as “rural” and owners of those designated as “building land”, within the Municipality of the City of Salzburg, was discriminatory, as it failed to take into account the changes introduced by the 1992 Zoning Law, which absolutely prohibits any construction on plots designated as “rural”, while owners of plots on “building land” remain free to construct new or replace old homes, to develop and subdivide their land, and to build a range of residential or even commercial structures. By basing the assessment of contributions solely on the criterion of the size of the lot, the Landowners’ Contributions Act (1976) favoured owners of “building” lots, which can be occupied by a large number of residents using the newly constructed sewerage, over owners of “rural” lots, usually occupied by only a few residents living in single-family homes, who must pay the same or even larger contributions to the construction of sewerages, depending on the size of the lot. In the absence of an objective and reasonable

² The authors submit that the overwhelming majority of Provinces and municipalities in Austria utilize “living Space” or related criteria as a basis for calculating landowners’ contributions, and cite several examples.

³ The authors refer to Communication No. 516/1992, *Alina Simunek v. The Czech Republic*, Views of 19 July 1995, at para. 11.7.

justification, the failure to differentiate in the 1976 Act must be considered a “convenient omission”⁴ to adjust its provisions to the 1992 Zoning Law.

3.4 The authors state that the same matter is not being examined under another procedure of international investigation or settlement. They claim to have exhausted domestic remedies, despite the proceedings pending before the Administrative Court, since that Court was not in a position to rectify the alleged breaches of article 26 of the Covenant, as it was bound to apply the laws in force, without being competent to review their constitutionality and legal validity. Even if the Administrative Court was to grant the authors’ motion to initiate a formal procedure before the Constitutional Court in order to examine the constitutionality of the Landowner’s Contributions Act, the unlikelihood that the Constitutional Court would overrule its previous decision in the same matter rendered this remedy ineffective.

State party’s observations on the admissibility and authors’ comments thereon

4.1 On 23 May 2003, the State party challenged the admissibility of the communication, arguing that it is inadmissible under articles 1 and 5, paragraph 2 (b) of the Optional Protocol insofar as the fourth author is concerned.

4.2 The State party submits that the fourth author failed to exhaust domestic remedies and that he cannot claim to be a directly affected victim of a violation of any of the rights in the Covenant, since he was never required to pay a contribution to the construction of the sewerage and was only contractually liable to reimburse the third author. An author who essentially asserts the rights of another is not entitled to submit a communication, in accordance with the Committee’s jurisprudence.⁵ In the absence of *locus standi*, the fourth author’s communication constitutes an *actio popularis* directed against the Austrian legal system as such.

4.3 As for the other three authors, the State party informs the Committee that the Administrative Court dismissed their complaint on 28 April 2003.

5.1 In his comments dated 11 June 2003 the fourth author rejects the State party’s admissibility observations and amends his communication to the effect that he also claims a violation of his rights under article 14, paragraph 1, of the Covenant.

5.2 The fourth author submits that he is directly affected by the imposition of landowner’s contributions, as property tax liabilities and related fees and contributions are “attached” to any given plot of land. Thus, if the third author fails to pay the contributions for the construction of the sewerage, the public authorities would begin enforcement measures against the plot of land itself, which was currently owned by the fourth author.

⁴ Counsel refers to the judgment of the European Court of Human Rights in Larkos v. Cyprus of 18 February 1999.

⁵ The State party refers to Communication No. 737/1997, *Michelle Lamagna v. Australia*, Decision on admissibility of 7 April 1999.

5.3 The fourth author argues that he was legally prevented from exhausting domestic remedies, as his attempt to be heard, instead of the third author, in the landowners' contributions assessment proceedings was rejected by the Municipality of Salzburg, on the basis that it was "impossible to issue decisions requiring payment of landowners' contributions directly to the current owner," given that "the date on which a duty to pay contributions becomes established (in the present case the construction of the main sewerage line) is decisive for the duty to pay contributions."⁶

5.4 The fourth author claims that his exclusion from the landowners' contributions assessment proceedings had the effect of depriving him of the right to challenge the duty to pay landowners' contributions, as well as the amount due, in violation of article 14, paragraph 1. Private law proceedings against the third author would not enable him directly and independently to object to the existence and/or the extent of such dues. Article 14, paragraph 1, applied to his monetary claim, involving the obligation to pay landowner's contributions.

State party's additional observations on admissibility and on the merits

6.1 On 6 August 2003, the State party made an additional submission on the admissibility and also commented on the merits of the communication. It challenges the admissibility on the lack of substantiation and absence of *locus standi* (third and fourth authors), as well as *ratione materiae* (fourth author). Subsidiarily, it denies violations of articles 14, paragraph 1, and 26.

6.2 On admissibility, the State party submits that no request by the fourth author to join the landowners' contributions assessment proceedings can be traced in the administrative files. The fourth author failed to specify, in his submission of 11 June 2003, when and whether he had paid any contributions and whether he had been ordered to do so by the authorities.

6.3 The State party argues that the payment order addressed to the third author did not *ex lege* pass to the fourth author after the change of ownership of the plot of land, as no universal succession took place. Although initially a lien was placed on the third author's plot of land, pursuant to section 1, paragraph 6, of the Landowners' Contributions Act, this lien had passed to the highest bid [the proceeds of the execution] during the compulsory sale of the property, so that the fourth author purchased the property free from any lien. The mere fact that the fourth author felt obliged, as a result of the sales contract, to remit the contribution payments for the construction of the sewer, as well as the compensation of costs awarded to the City of Salzburg by the Administrative Court in its decision of 28 April 2003, does not imply that he was legally obliged to do so, in the absence of an express stipulation to that effect in the sales contract or in the decision of 12 June 1998 on the distribution of the amount constituting the highest bid.

6.4 The State party contends that, in the alternative, if the Committee considers the communication admissible with regard to the fourth author, it must necessarily declare it inadmissible in relation to the third author, since his obligations would have been assumed contractually by the fourth author. In any event, the third author lacked *locus standi* because the

⁶ Decision of the Municipality of Salzburg of 22 February 1999, addressed to the third author, at p. 3.

payment obligation had been fulfilled through the remittance of the charged amount by the fourth author on 28 October 2002.

6.5 The State party submits that the fourth author's claim under article 14, paragraph 1, is inadmissible *ratione materiae*, since proceedings for the determination of taxes and duties are not as such covered by the scope of that article.

6.6 On the merits, the State party submits that the "dual system", subjecting landowners in the City of Salzburg to a different legal regime than landowners elsewhere in the Province of Salzburg, goes back to the 19th century, when the sewage system merely consisted of main sewers constructed in the densely built area of the City of Salzburg through which effluents were discharged into the river. The construction and management of sewage disposal plants falls within the competence of the municipalities. In the municipalities outside the City of Salzburg, the first sewage treatment plants were constructed in the early 1960s. Under the 1962 Act, such infrastructural measures had to be paid by the landowners, unlike in the City of Salzburg, where landowners are not required to contribute in advance to the costs of water treatment plants, which are rather added to their obligatory periodical fees for usage of the sewer system, but only to the construction and extension of the sewerage system for plots of land.

6.7 The State party argues that the provisions of the 1962 Act, applicable to rural areas, cannot be applied to the City of Salzburg. In particular, the requirement that a new sewerage system consisting of a network and a water treatment plant is constructed as a project with a certain capacity and absorption power, that the catchment area of the respective network is known, and that all plots of land with or without dwellings are evaluated in accordance with technical sewage conditions, would not be suitable for the rapidly developing City of Salzburg, where annexes to existing buildings and additional constructions are built more frequently than in other parts of the province, thus requiring a sewerage network that meets these dynamic developments, which invariably results in higher construction costs.

6.8 Regarding the lack of differentiation between owners of plots designated as "rural" and owners of plots designated as "building land" within the City of Salzburg, the State party submits that contributions to the construction costs for the sewerage network are linked to a plot defined as "building site", irrespective of whether the building site is situated on "building land" or "green land". To what extent a plot of land is defined as "building site" depended on the landowner's request in the proceedings on the declaration as a building site. The authors would have been free to file a request that only part of their property be designated as "building site", which would have resulted in more favourable contributions.

6.9 The State party denies that any construction on "green land" is absolutely prohibited. Thus, the extension of existing dwellings was permissible to the extent provided for in the 1998 Regional Planning Act. It would therefore amount to unjustifiable preferential treatment of owners of building sites on plots designated as "rural" if they were to be charged no or a significantly lower contribution for the construction of sewerages than owners of building sites situated on "building land". Apart from this, dwellings had already been constructed on the author's plots.

6.10 Lastly, the State party submits that the matter had been examined by the Constitutional Court on various occasions, without the Court ever having found a violation of the equality principle. It concludes that, in the present case, the decisions and judgments based on the Landowners' Contributions Act were justified by reasonable and objective criteria and that neither article 26 nor article 14, paragraph 1, were violated.

Author's comments on State party's observations on the merits

7.1 On 13 October 2003, the authors commented on the State party's submission of 6 August 2003, arguing that the third and fourth authors should also be considered as victims, and that the imposition of the payment orders violated their rights under article 26 and, with respect to the fourth author, under article 14, paragraph 1, of the Covenant.

7.2 The authors reiterate that the State party's contention that either the third or the fourth author should be rejected as a victim implies that both authors could *per se* be accepted as victims. Thus, the third author was a party to the proceedings and listed as one of the petitioners in the decision of the Constitutional Court of 10 June 2002. Whether or not the fourth author ultimately refunded to him the landowners' contributions and legal fees was immaterial for his *locus standi*. It was apparent from the files that the fourth author had requested, and been refused, to join the assessment proceedings as a party, since the impugned administrative act addressed the issue of his standing. He also had a procedural and monetary interest in their outcome, as the deed of sale of the plot of land signed and executed on 15 June 1998, in conformity with Austrian legal practice, explicitly stipulated that "taxes and contributions" are transferred to the buyer. In the absence of any applicable exception, the lien on the property acquired would have required the fourth author to pay the contribution irrespective of whether the acquisition amounted to universal succession. Both authors therefore had *locus standi*, considering that admissibility requirements should be applied with a certain degree of flexibility.⁷

7.3 The authors argue that, although different exigencies justifying a "dual system" of landowners' contributions applied to the modernization of wastewater treatment in the City and in the rest of the Province of Salzburg in the 1960s, such differences had ceased to exist by the end of the 1990s, when 90 percent of households and businesses in both the City and in the Province of Salzburg were connected to municipal sewer systems. Relevant statistics⁸ showed that population growth and increase of construction in residential areas are in fact more dynamic in other municipalities in the Province of Salzburg, especially in the rapidly developing areas in the vicinity of the City. The State party should have reviewed its legislation in the light of these factual changes.⁹ Its argument that, outside the City, sewerage systems could be constructed

⁷ The authors refer to the jurisprudence of the European Court of Human Rights, *inter alia*, in *Stögmüller v. Austria*, judgment of 10 November 1969, Series A, No. 9, at para. 11, and *Ringeisen v. Austria*, judgment of 16 July 1971, Series A, No. 13, at paras. 89 and 92.

⁸ Detailed statistics are included in the communication.

⁹ By way of analogy, the authors refer to the Committee's jurisprudence that the Covenant must be interpreted in the light of changing social standards and perceptions. See Communication No. 172/1984, *S.W.M. Broeks v. The Netherlands*, Views adopted on 9 April 1987, at para. 14;

based on more stable data no longer applied and was not supported by statistics, surveys, maps, or zoning plans in the State party's merits submission.

7.4 The authors deny that the Landowners' Contributions Act is applied to their benefit, insofar as landowners are not required to contribute to the construction costs for new sewage disposal plants, which are rather financed through periodical usages fees. The City regulations still required them to pay three to four times higher contributions compared to the rest of the Province, if the calculation was based on the size of living space of the dwelling currently existing or under construction on the plot, the only reasonable and objective criterion, indicative of the number of persons residing on the property and using the water disposal system.

7.5 Concerning the absence of differentiation between landowners within the City of Salzburg, the authors submit that the question is not whether they could have limited their property rights by asking for only a fraction of their plots of land to be declared a "building site", in order to reduce their landowners' contributions, but whether the calculation method applied reasonably or unreasonably differentiated between owners of plots designated as "rural" and owners of plots designated as "building land". While such a declaration would have reduced the amount of their contributions, it would not have changed the way they were calculated, which was at the basis of the alleged breach of article 26 of the Covenant.

7.6 Lastly, the authors submit that section 24 of the Zoning Law places exceptionally strict restrictions on the construction of extensions and additions in "rural" zones, as such additions may not alter the size and appearance of the existing buildings. Moreover the limitation of the living space to 250 square meters per floor would render any extension of their buildings virtually impossible. While subscribing to the legislative aim of conservation of nature, the authors note that the Landowners' Contributions Act does not make adequate provision for cases like theirs, where the property is particularly large, yet subject to restrictions which prevent further construction and thereby an increased use of the sewerage lines and installations.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes the State party's uncontested submission that the fourth author remitted the amount charged to the third author in the decision of the Municipality of Salzburg of 22 February 1999, as well as the legal costs awarded to the City of Salzburg in the Administrative Court's decision of 28 April 2003. It observes that the third author's claim under article 26 of the Covenant has become moot with the fulfillment of his payment obligations. The

communication is therefore inadmissible, under article 1 of the Optional Protocol, insofar as the third author is concerned.

8.3 The Committee notes the State party's argument that the fourth author has no victim status, as he was not legally obliged to pay the landowners' contributions charged to the third author, in the absence of an explicit clause to that effect in the sales contract or in the decision on the distribution of the amount constituting the highest bid, dated 12 June 1998. It also notes the State party's contention that he failed to exhaust domestic remedies, since no request to join the landowners' contributions assessment proceedings can be traced in the files. It finally notes the fourth author's objection that he was legally obliged to reimburse the third author and was prevented from exhausting domestic remedies, because the Municipality of Salzburg, by decision of 22 February 1999, rejected him as a party to the assessment proceedings.

8.4 Concerning the fourth author's *locus standi* under article 1 of the Optional Protocol, the Committee notes that the deed of the sale of the plot of land, executed on 16 June 1998 by a notary public, states that, along with the possession, usufruct and benefits, any risk, taxes and contributions are passed on to the buyer, the fourth author.¹⁰ Irrespective of the existence of a lien on the acquired property, the Committee is therefore satisfied that the fourth author has substantiated, for purposes of admissibility, that he was directly affected by the imposition of the landowners' contributions originally charged to the third author and remitted by the fourth author, in fulfillment of his contractual obligations under the sales contract.

8.5 Regarding domestic remedies, the Committee recalls that article 5, paragraph 2 (b), of the Optional Protocol only requires authors to exhaust all *available* domestic remedies and observes that the State party has failed to describe which legal remedies would have been available to the fourth author, after the Municipality of Salzburg rejected his request to join the assessment proceedings as a party.

8.6 However, the Committee considers that the fourth author has failed to substantiate his claim that this rejection amounted to a denial of his right to equal access to the courts, in violation of article 14, paragraph 1, of the Covenant.

8.7 As to the alleged violation of article 26 of the Covenant, the Committee considers that the authors have sufficiently substantiated their claim, for purposes of admissibility. It follows that the communication is admissible to the extent that it appears to raise issues under article 26 of the Covenant, insofar as the first, second and fourth authors are concerned.

Consideration of the merits

9.1 The Committee has considered the merits of the communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

¹⁰ See of the deed of sale of the plot of land, executed on 16 June 1998 by Mr. G. S., public notary, file no. 14526/98, at p. 4.

9.2 The Committee begins by noting that, pursuant to article 50 of the Covenant, the delegation of competence for the construction and management of sewage disposal plants to Austrian provinces and municipalities does not relieve the State party of its obligations under the Covenant.¹¹ Accordingly, the State party's responsibility may be engaged by virtue of the impugned decisions of the Municipality of Salzburg based on provincial legislation, which have, moreover, been confirmed by the Austrian courts.

9.3 The question before the Committee is whether the relevant legislation regarding the financial contributions of landowners in the Municipality of Salzburg to the construction of municipal sewerages violates article 26 of the Covenant by first not distinguishing between plots of an urban character designated as "building land" and "rural" plots of land with a building site, and second by using the size of plots of land (so called "length") as basis for the calculation of the contributions instead of linking them to the size of living space as is done in all other municipalities of the Province of Salzburg.

9.4. The Committee recalls that under article 26, discrimination in the equal protection of the law is prohibited on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹². It notes that an indirect discrimination may result from a failure to treat different situations differently, if the negative results of such failure exclusively or disproportionally affect persons of a particular race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹³. While the Committee does not exclude that "residence" may be a "status" that prohibits discrimination, it notes that the alleged failure to distinguish between "urban" and "rural" plots of land is not linked to a particular place of residence within the municipality of Salzburg but depends on their assignment to a particular zoning area. The Committee also takes note of the State party's explanation that the degree of contributions for "rural" parcels *does* depend on how much of the plot its owner sought to have designated as an area where a building may be constructed. The Committee concludes that the failure to distinguish between urban "building land" and "rural" plots of land with a building site is neither discriminatory by reference to any of the grounds mentioned in article 26 of the Covenant, nor arbitrary.

9.5 With regard to the claim that the different treatment of landowners in the City of Salzburg and landowners elsewhere in the Province of Salzburg, concerning the calculation of their landowners' contributions for the construction of new sewer systems for their plots of land, is not based on objective and reasonable criteria, as required by article 26 of the Covenant, the Committee considers that the authors' argument relating to the perceived more dynamic increases in population and incidence of construction in other parts of the Province of Salzburg does not exclude that the construction costs for the sewer network in the more densely populated

¹¹ See, e.g., Communications Nos. 298/1988 and 299/1988, *Lindgren et al. v. Sweden* and *Lindquist et al. v. Sweden*, Views adopted on 9 November 1990, at para. 10.4.

¹² Communication No. 196/1983, *Gueye v. France*, Views adopted on 3 April 1989, at para. 9.4.

¹³ See, e.g., Communication No. No. 998/2001 *Althammer v. Austria*, Views adopted on 8 August 2003, at para. 10.2.

Municipality of Salzburg may still be higher than in the rest of the Province, as claimed by the State party.

9.6 In this connection, the Committee notes that the authors admit that their landowners' contributions would still be three to four times higher, if compared to the rest of the Province, even if the calculation was based on the size of the living space of the dwelling situated on the+ plot of land. It cannot therefore be concluded that the different levels of contributions in- and outside the City of Salzburg result exclusively from the different calculation methods applied under the 1976 Salzburg Provincial Landowners' Contributions Act and the 1962 Act applicable to the other municipalities in the Province of Salzburg. The Committee therefore considers that the authors have failed to demonstrate that their different treatment was not based on objective and reasonable criteria.

9.7 The Committee, moreover, considers that nothing in the decisions of the Appeals Commission in Building Matters of the Municipality of the City of Salzburg, dated 28 May and 2 July 1999, or in the decision of the Administrative Court of 28 April 2003 indicates that the application by these tribunals of the relevant provisions of the Landowners' Contributions Act (1976) was based on manifestly arbitrary considerations.

9.8 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of article 26 of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
