

AZERBAIJAN

Follow-up - Jurisprudence Action by Treaty Bodies

CAT, CAT/C/SR.801/Add.1 (2007)

COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 801st MEETING

Held at the Palais Wilson, Geneva,

on Monday, 19 November 2007, at 12.35 p.m.

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE
CONVENTION (continued)

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Follow-up on decisions adopted under article 22 of the Convention (CAT/C/39/R.1)

1. The CHAIRPERSON invited the Special Rapporteur on Follow-up to introduce the report on follow-up activities (CAT/C/39/R.1) relating to the Committee's decisions on individual complaints submitted under article 22 of the Convention.

2. Mr. MARIÑO MENÉNDEZ, Special Rapporteur on Follow-up, summarized the comprehensive report on replies received in cases in which the Committee had found violations of the Convention.

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4. In the case of *Elif Pelit v. Azerbaijan* (281/2005) he suggested that new information be requested from Azerbaijan concerning the situation of the complainant, who had been sentenced to a further six years' imprisonment. In its letter, the Committee should recall that the State party's violation of articles 3 and 22 and non-compliance with the request to grant interim measures obliged it to monitor the complainant's situation, ensure compliance with the diplomatic assurances received from Turkey and inform the Committee on the matter. A copy of the letter should also be sent to the complainant so that she could continue to keep the Committee abreast of developments.

5. Mr. CAMARA asked why the complainant had been imprisoned again.

6. Mr. MARIÑO MENÉNDEZ said that the complainant had been convicted of terrorism. She was in fact of Kurdish origin, which should be borne in mind by the Committee when deciding what follow-up action to take.

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The meeting rose at 1 p.m.

CAT, A/62/44 (2007)

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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Complaints in which the Committee has found violations of the Convention up to the thirty-eighth session

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State party	AZERBAIJAN
Case	Pelit, 281/2005
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted). ⁷
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	Not yet due (not yet implemented).

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7/ The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

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CAT, A/63/44 (2008)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow up activities

93. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions...

...

97. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing:... *Pelit v. Azerbaijan* (No. 281/2005);...

98. During the thirty ninth and fortieth sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases:... *Elif Pelit v. Azerbaijan* (No. 281/2005);...

99. Represented below is a comprehensive report of replies received with regard to all 45 cases in which the Committee has found violations of the Convention to date and in one case in which although the Committee did not find a violation of the Convention it did make a recommendation.

**Complaints in which the Committee has found violations of the
Convention up to the fortieth session**

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State party	AZERBAIJAN
Case	Pelit, 281/2005
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted). ⁶
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	29 August 2007
Date of reply	4 September 2007
State party response	The Azeri authorities obtained diplomatic assurances that the complainant would not be ill-treated or tortured after her return. Several mechanisms were put in place for a post extradition monitoring. Thus, she was visited in prison by the First Secretary of the Azeri Embassy and the visit took place in private. During the meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.

Complainant's response

On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to 6 years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.

Committee's decision

The Committee considers the dialogue ongoing. It decided that the State party should continue monitoring the situation of the author in Turkey and keep the Committee informed.

...

6/ The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

89. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

90. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. ...

...

93. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: ... *Pelit v. Azerbaijan* (No. 281/2005); ...

...

95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

Complaints in which the Committee has found violations of the Convention up to the forty-second session

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State party

AZERBAIJAN

Case	Pelit, 281/2005
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted). ⁵
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	29 August 2007
Date of reply	4 September 2007
State party response	The Azerbaijani authorities obtained diplomatic assurances that the complainant would not be ill-treated or tortured after her return. Several mechanisms were put in place for a post extradition monitoring. Thus, she was visited in prison by the First Secretary of the Azerbaijani Embassy and the visit took place in private. During the meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.
Complainant's response	On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to six years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.
Committee's decision	The Committee considers the dialogue ongoing. It decided that the State party should continue monitoring the situation of the author in Turkey

and keep the Committee informed.

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5/ The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

CAT, A/65/44 (2010)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

108. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

109. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up of decisions on complaints, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia¹ and Montenegro (with respect to *Dimitrov*, No. 171/2000,² *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000, *Dragan Dimitrijevic*, No. 207/2002 and *Besim Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

110. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);³ *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to A.J., No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakflaki v.*

Sweden (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No. 101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*⁴ (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

111. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004). In one case, given the author's voluntary return to his country of origin, the Committee decided not to consider the case any further under the follow-up procedure: *Falcon Rios v. Canada* (No. 133/1999).

112. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Guengueng et al. v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Blanco Abad v. Spain* (No. 59/1996); *Urta Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005).

113. During the forty-third and forty-fourth sessions, the Rapporteur for follow-up of decisions on complaints presented new follow-up information that had been received since the last annual report with respect to the following cases: *Guengueng et al. v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Falcon Rios v. Canada* (No. 133/1999); *Blanco Abad v. Spain* (No. 59/1996); *Urta Guridi v. Spain* (No. 212/2002); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

114. Represented below is a comprehensive report of replies received with regard to all 49 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

¹ On 11 June 2008, following requests by the Committee to Serbia and Montenegro to confirm which State would be following up on Decisions adopted by the Committee and registered against the State party "Serbia and Montenegro", the Secretariat received a response from Montenegro only which stated that all the cases were within the remit of the Republic of Serbia.

² In December 2009, the Secretariat learned verbally from the State party that this case had been subsequently reopened but nothing has been received in writing to this effect.

³ Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

⁴ The State had already remedied the breach prior to consideration of the case.

Complaints in which the Committee has found violations of the Convention up to the forty-fourth session

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State party	Azerbaijan
Case	<i>Pelit, 281/2005</i>
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted). ¹
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	29 August 2007
Date of reply	4 September 2007
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meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.

**Complainant's
response**

On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to six years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.

**Committee's
decision**

The Committee considers the dialogue ongoing. It decided that the State party should continue monitoring the situation of the author in Turkey and keep the Committee informed.

...

¹ The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.