

## FRANCE

### Follow-up - Jurisprudence Action by Treaty Bodies

CAT, A/60/44 (2005)

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

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#### D. Follow-up activities

150. 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.

151. The Rapporteur on follow-up submitted an oral report to the Committee at its thirty-third session. The report contained information received since the thirty-second session from either the complainants or the States parties on the issue of follow-up to a number of decisions in which the Committee had found violations of the Convention. During the consideration of this report, the Committee requested the Special Rapporteur to provide information on follow-up to all decisions in which the Committee had found violations of the Convention, including decisions in which the Committee found violations, prior to the commencement of the Rapporteur's mandate.

152. During the thirty-fourth session, the Special Rapporteur presented a report on follow-up to all the Committee's decisions, including new information received from both the complainants and States parties since the thirty-third session. This report is provided below.

## Report on follow-up to individual complaints to the<sup>1</sup> Committee against Torture

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

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
No. 63/1997 <i>Arana v. France</i>	5 June 2000	Spanish to Spain	Complainant's expulsion to Spain constituted a violation of article 3	Requested not acceded to by the State party, which claimed to have received Committee's request after the expulsion of the complainant. <sup>3</sup>	Measures to be taken	<p>On 8 January 2001, the State party provided follow-up information, in which it stated that, although the Administrative Court of Pau had found the informal decision to directly hand over the complainant from the French to the Spanish police to be unlawful, the decision to deport him was lawful. The State party added that the ruling, which was currently being appealed, was not typical of the jurisprudence on the subject.</p> <p>It also submitted that since 30 June 2000, a new administrative procedure allowing for a summary judgement suspending a decision, including a deportation decision, had been</p>	

						instituted. The conditions that need to be proven to exist for a deportation decision to be suspended are more flexible than previously: that the urgency of the situation justifies such a suspension and that there is a serious doubt as to the legality of the decision. Thus, there is no longer any necessity of proving that the consequences of the decision would be difficult to repair.	
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No. 195/2002 <i>Brada v. France</i>	17 May 2005	Algerian to Algeria	3 and 22	Granted but not acceded to by the State party <sup>7</sup>	Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps the State party has taken in response to the Committee's observations, including measures of compensation for the breach of article 3 of the Convention and the determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.	90 days has not expired	No action required
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<sup>1</sup> The present report reflects information up to the end of the thirty-fourth session

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<sup>3</sup> No comment by Committee.

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<sup>7</sup> “The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee’s competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party’s action in expelling the complainant in the face of the Committee’s request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee’s final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention.”

**CAT/C/SR.717 (2006)**

COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE 717th MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 16 May 2006, at 10 a.m.

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE  
CONVENTION (agenda item 9) (continued)

50. The CHAIRPERSON invited the Special Rapporteur to introduce the report on follow-up activities (document without a symbol) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

51. Mr. MARIÑO MENÉNDEZ, Special Rapporteur on Follow-up, summarized the comprehensive report on replies received with regard to all cases in which the Committee had found violations of the Convention and one case in which it had not found a violation but had made a recommendation.

52 It was proposed to send reminders requesting information or updates to the following States parties with regard to the specified communications: Austria (Halimi-Nedibi Quani, 8/1991); Canada (Tahir Hussain Khan, 15/1994; Falcon Ríos, 133/1999); France (Brada, 195/2003); Netherlands (A, 91/1997); Serbia and Montenegro (Ristic, 113/1998; Hajrizi Dzemajl et al., 161/2000; Nikolic, 174/2000; Dimitrijevic, Dragan, 207/2002); Spain (Ecarriación Blanco Abad, 59/1996; Urra Guridi, 212/2002); Sweden (Tharina, 226/2003; Agiza, 233/2003); Venezuela (Chipana, 110/1998).

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61. Mr. MARIÑO MENÉNDEZ, summarizing the information provided to the Committee on cases 63/1997 and 195/2003 involving France, drew attention to the State party's expression of surprise at the follow-up measures decided by the Committee, which it characterized as having been "put in place by a mere change in the rules of procedure".

62. Ms. GAER said that the surprise expressed by France carried with it the implication that States parties recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction were not obligated to comply with interim measures decided by the Committee under article 22 of the Convention. The issue, which had been implicit in responses from other States parties, was sufficiently important to merit a letter or comment setting out a consolidated position on the status of interim measures and the corresponding obligations of States parties.

63. The CHAIRPERSON suggested that the secretariat should ascertain whether the same problem had arisen in relation to other human rights treaty bodies, with a view to working out a

common stance on the question.

64. Mr. MARIÑO MENÉNDEZ, noting that France had so far simply expressed surprise and had not refused to provide information, suggested that future requests to the State party for updated information should include a general reminder, without specific reference to France, that the Committee was exercising legitimate powers under article 22 of the Convention.

65. Ms. BELMIR wondered whether the State party's attitude might reflect the fact that France identified more closely with the European Convention on Human Rights, whose provisions were binding and tended to be followed to the letter.

66. Mr. MARIÑO MENÉNDEZ noted that the European Convention was underpinned by the mandatory judgements of the European Court of Human Rights and by the Committee of Ministers of the Council of Europe. While the Committee's decisions were not strictly mandatory, States parties had an obligation to comply with them in good faith. The Committee should resist attempts to challenge the practice of following up decisions, which was well established in customary law.

67. The CHAIRPERSON, endorsing the views of Mr. Mariño Menéndez, said that the Committee must assert its follow-up powers, failing which it would become a mere forum for the informal exchange of opinions.

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**CAT, CAT/C/SR.749 (2006)**

COMMITTEE AGAINST TORTURE

Thirty seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 749th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 22 November 2006, at 3 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Follow up procedures (CAT/C/37/R.2)

1. Mr. MARIÑO MENÉNDEZ, Rapporteur on follow up to communications, reporting on follow up to communications during the thirty sixth and thirty seventh sessions, drew attention to document CAT/C/37/R.2. It explained the status of communications on which the Committee had requested additional information or further action. Five States parties had not responded to the Committee's requests for information. The document contained detailed information on six communications.

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3. The Committee needed to take no further action on the Arana v. France case, which involved the expulsion of a Spanish citizen of Basque origin to Spain. The complainant had been expelled almost 10 years previously. Moreover, since the Committee's decision of 1999, the entry into force of European Union (EU) legislation meant that it was no longer possible for the French authorities to hand over persons of Basque origin suspected of terrorist activities to the Spanish authorities without applying extradition procedures. That was borne out by the statement of the French Ministry of the Interior of 18 January 2001.

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**CAT, A/61/44 (2006)**

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

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**D. Follow-up activities**

75. 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 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 to the Committee on his/her activities.

76. 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 Decisions.

77. In a follow-up report presented to the Committee during the thirty-fifth session, the Special Rapporteur on follow-up to decisions provided information received from four States parties pursuant to this request: France; Serbia and Montenegro (in relation to 113/1998, Ristic); Switzerland; and Sweden. The following countries did not respond to the request: Austria; Canada (with respect to Tahir Hussain Khan, 15/1994); the Netherlands; Spain; and Serbia and Montenegro (in relation to 161/2000, Hajrizi Dzemajl, 171/2000, Dimitrov, and 207/2002, Dragan Dimitrijevic).

78. 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: *Mutombo v. Switzerland* (13/1993); *Alan v. Switzerland* (21/1995); *Aemei v. Switzerland* (34/1995); *Tapia Paez v. Sweden* (39/1996); *Kisoki v. Sweden* (41/1996); *Tala v. Sweden* (43/1996); *Avedes Hamayak Korban v. Sweden* (88/1997); *Ali Falakaflaki v. Sweden* (89/1997); *Orhan Ayas v. Sweden* (97/1997); *Halil Haydin v. Sweden* (101/1997). In the following cases, the States parties either responded partially to the request, are in the process of taking further measures and further updates will be requested or comments on the action taken by the State are



awaited from the complainant: *Arana v. France* (63/1997); *Brada v. France* (195/2003); *Ristic v. Serbia and Montenegro* (113/1998); and *Agiza v. Sweden* (233/2003).

79. During the thirty-sixth session, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the thirty-fifth session with respect to the following cases: *Dadar v. Canada* (258/2004), *Thabti v. Tunisia* (187/2001), *Abdelli v. Tunisia* (188/2001) and *Ltaief v. Tunisia* (189/2001) and *Chipana v. Venezuela* (110/1998). Represented below is a comprehensive report of replies received with regard to all cases in which the Committee has found violations of the Convention to date and in one case in which it did not find a violation but made a recommendation. Where there is no field entitled "Committee's decision" at the end of the provision of information in a particular case, the follow-up to the case in question is ongoing and further information has or will be requested of the complainant or the State party.

### **Complaints in which the Committee has found violations of the Convention up to the thirty-fourth session**

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<b>State party</b>	<b>FRANCE</b>
Case	Arana, 63/1997
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3
Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion. <sup>4/</sup>
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	On 8 January 2001, the State party had provided follow-up information, in which it stated that, although the Administrative Court of Pau had found the informal decision to directly hand over the

complainant from the French to the Spanish police to be unlawful, the decision to deport him was lawful. The State party adds that this ruling, which is currently being appealed, is not typical of the jurisprudence on the subject.

It also submits that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, has been instituted. The conditions that need to be proven for a suspension of such a decision are more flexible than the previous conditions, and are proof that the urgency of the situation justifies such a suspension and that there is a serious doubt on the legality of the decision. Thus, there is no longer any necessity to prove that the consequences of the decision would be difficult to repair.

On 1 September 2005, and pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party reiterates the information previously provided on the changes in the law since 30 June 2000, and informs the Committee that in a decision of 23 July 2002, the Administrative Court of Bordeaux overturned the decision of the Administrative Tribunal of Pau of 4 February 1999.

Author's response	None
Case	Brada, 195/2003
Nationality and country of removal if applicable	Algerian to Algeria
Views adopted on	17 May 2005
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 <sup>5/</sup>
Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention)

to which the complainant was returned, of his current whereabouts and state of well-being.

Due date for State party response

None

Date of reply

21 September 2005

State party response

Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party, informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.

Author's response

None

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4/ No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

5/ "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

**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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<b>State party</b>	<b>FRANCE</b>
Case	Arana, 63/1997
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3.
Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion. <sup>8</sup>
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response see the annual report of the Committee (A/61/44).
Complainant's response	On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading

Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional".

In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain. Also on 18 January 2001, the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities.

However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.

Committee's decision

Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.

Case

Brada, 195/2003

Nationality and country of removal if applicable

Algerian to Algeria

Views adopted on

17 May 2005

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<sup>9</sup>

Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
Due date for State party response	None
Date of reply	21 September 2005
State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Complainant's response	None
Case	Tebourski, 300/2006
Nationality and country of removal if applicable	Tunisia
Views adopted on	1 May 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 <sup>10</sup>
Remedy recommended	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts

and state of well-being of the complainant.

Due date for State party response

13 August 2007 (not yet due)

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8/ No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty fifth session.

9/ "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

10/ The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a fait accompli, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

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

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### 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...

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96. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure:... *Arana v. France* (No. 63/1997);...

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:... *Brada v. France* (No. 195/2003);... and *Tebourski v. France* (No. 300/2006).

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:... *Tebourski v. France* (No. 300/2006).

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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<b>State party</b>	<b>FRANCE</b>
<b>Case</b>	<b>Arana, 63/1997</b>
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3.
Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion. <sup>8</sup>
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response, see the annual report of the Committee (A/61/44).
Complainant's response	On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional".

In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain.

Also on 18 January 2001, the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities.

However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.

Committee's decision

Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.

**Case**

**Brada, 195/2003**

Nationality and country of removal if applicable

Algerian to Algeria

Views adopted on

17 May 2005

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. <sup>9</sup>
Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
Due date for State party response	None
Date of reply	21 September 2005
State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Complainant's response	None
<b>Case</b>	<b>Tebourski, 300/2006</b>
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	1 May 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. <sup>10</sup>
Remedy recommended	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	13 August 2007
Date of reply	15 August 2007
State party response	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour, Beja Governorate. The State party monitors the situation of the complainant and is trying to verify the information provided by the Tunisian authorities.
Complainant's response	Not yet received
Committee's decision	The Committee considers the dialogue ongoing.

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8/ No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty fifth session.

9/ "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of

object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention.”

10/ The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a *fait accompli*, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

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CAT, A/64/44 (2009)

## 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. ...

...

92. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: ... *Arana v. France* (No. 63/1997); ...

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: ... *Brada v. France* (No. 195/2003);... *Tebourski v. France* (No. 300/2006); ...

...

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

...

<b>State party</b>	<b>FRANCE</b>
<b>Case</b>	<b>Arana, 63/1997</b>
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3.
Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion. <sup>7</sup>
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response, see the annual report of the Committee (A/61/44).
Complainant's response	On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional".
	In addition, he stated that since the Committee's

decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain.

Also on 18 January 2001, the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities.

However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.

Committee's decision

Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.

**Case**

**Brada, 195/2003**

Nationality and country of removal if applicable

Algerian to Algeria

Views adopted on

17 May 2005

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.<sup>8</sup>

Remedy recommended

Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.

Due date for State party response

None

Date of reply

21 September 2005



State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Complainant's response	None
Committee's decision	Follow-up dialogue ongoing
<b>Case</b>	<b>Tebourski, 300/2006</b>
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	1 May 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. <sup>9</sup>
Remedy recommended	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	13 August 2007
Date of reply	15 August 2007
State party response	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been

disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour, Beja Governorate. The State party monitors the situation of the complainant and is trying to verify the information provided by the Tunisian authorities.

Complainant's response

Not yet received

Committee's decision

The Committee considers the dialogue ongoing.

...

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...

7/ No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty fifth session.

8/ "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

9/ The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a *fait accompli*, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

...

CAT, A/65/44 (2010)

...

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

...

### 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); Serbia<sup>1</sup> and Montenegro (with respect to *Dimitrov*, No. 171/2000,<sup>2</sup> *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);<sup>3</sup> *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*<sup>4</sup> (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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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).

<sup>4</sup> 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**

...

<b>State party</b>	<b>France</b>
<b>Case</b>	<b>Arana, 63/1997</b>
<b>Nationality and country of removal if applicable</b>	Spanish to Spain
<b>Views adopted on</b>	9 November 1999
<b>Issues and violations found</b>	Complainant's expulsion to Spain constituted a violation of article 3.
<b>Interim measures granted and State party response</b>	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion <sup>8</sup>
<b>Remedy recommended</b>	Measures to be taken
<b>Due date for State party response</b>	5 March 2000
<b>Date of reply</b>	Latest reply on 1 September 2005
<b>State party response</b>	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response, see the annual report of the Committee (A/61/44).

**Complainant's  
comments**

On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional".

In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain.

Also on 18 January 2001, the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities.

However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.

**Committee's  
decision**

Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.

<sup>8</sup> No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

<b>Case</b>	<b>Brada, 195/2003</b>
<b>Nationality and country of removal if applicable</b>	Algerian to Algeria
<b>Views adopted on</b>	17 May 2005
<b>Issues and violations found</b>	Removal - Articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not acceded to by the State party <sup>9</sup>
<b>Remedy recommended</b>	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	21 September 2005
<b>State party response</b>	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
<b>Complainant's response</b>	None
<b>Committee's</b>	

**decision**

Follow-up dialogue is ongoing

<sup>9</sup> “The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee’s competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party’s action in expelling the complainant in the face of the Committee’s request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee’s final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention.”

<b>Case</b>	<i>Tebourski, 300/2006</i>
<b>Nationality and country of removal if applicable</b>	Tunisian to Tunisia
<b>Views adopted on</b>	1 May 2007
<b>Issues and violations found</b>	Removal - Articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not acceded to by the State party <sup>10</sup>
<b>Remedy recommended</b>	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
<b>Due date for State party response</b>	13 August 2007
<b>Date of reply</b>	15 August 2007
<b>State party response</b>	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour, Beja Governorate. The State party monitors the situation of



the complainant and is trying to verify the information provided by the Tunisian authorities.

**Complainant's  
response**

Not yet received

**Committee's  
decision**

The Committee considers the dialogue ongoing

...

<sup>10</sup> The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a *fait accompli*, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.