

THE NETHERLANDS

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 the¹ 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. 91/1997 A. v. The Netherlands	13 Nov. 1998	Tunisian to Tunisia	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia	No information provided	Request information
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¹ The present report reflects information up to the end of the thirty-fourth session

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 (Ecaración Blanco Abad, 59/1996; Urra Guridi, 212/2002); Sweden (Tharina, 226/2003; Agiza, 233/2003); Venezuela (Chipana, 110/1998).

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68. Mr. MARIÑO MENÉNDEZ said that, in the absence of information from either the State party or the complainant, he would like the secretariat to ascertain the status of case 91/1997 involving the Netherlands. In case 113/1998 involving Serbia and Montenegro, updated information was required from the State party to confirm that it had effectively acknowledged a violation of the Convention through the payment of compensation to the complainant's parents.

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CAT, A/61/44 (2006)

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

...

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).

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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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State party	THE NETHERLANDS
Case	A/91/1997
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	None
State party response	No information provided
Author's response	N/A

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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	THE NETHERLANDS
Case	Ali Jeljeli, 91/1997
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	None
State party response	No information provided
Complainant's response	N/A

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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. To date, the following countries have not yet responded to these requests:... the Netherlands (with respect to *Ali Jeljeli*, No. 91/1997);...

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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	THE NETHERLANDS
Case	Ali Jeljeli, 91/1997
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	None
State party response	No information provided
Complainant's response	None

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CAT, CAT/C/SR.855 (2008)

COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 855th MEETING

Held at the Palais Wilson, Geneva,

on Friday, 14 November 2008, at 3 p.m.

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

Follow-up progress report of the Committee against Torture on individual communications (CAT/C/41/R.1)

1. The CHAIRPERSON invited the Special Rapporteur to introduce the follow-up progress report (CAT/C/41/R.1) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

2. Mr. MARIÑO MENÉNDEZ (Special Rapporteur on Follow-up), introducing the report, said that it contained follow-up information submitted since the Committee's fortieth session...

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8. Mr. WANG Xuexian (Vice-Chairperson) took the Chair.

Communication No. 91/1997: A. (name withheld) v. the Netherlands

9. Mr. MARIÑO MENÉNDEZ, summarizing the replies received from the Netherlands, proposed that, in the light of the State party's decision to grant the complainant a residence permit, the Committee should decide to close the matter under the follow-up procedure.

10. The CHAIRPERSON said he took it that the Committee agreed to the course of action proposed by the Special Rapporteur.

11. It was so decided.

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The public part of the meeting rose at 4.35 p.m.

*/ The summary record of the second part (closed) of the meeting appears as document CAT/C/SR. 855/Add.1.

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. ...

91. 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: ... *the Netherlands* (with respect to A.J., No. 91/1997); ...

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94. During the forty-first and forty-second 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: ... *A. v. the Netherlands* (No. 91/1997); ...

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	THE NETHERLANDS
Case	A.J., 91/1997
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	7 July 2008
State party response	The State party informed the Committee that following the Committee's decision the Government refrained from expelling the complainant to Tunisia and in response to his request for asylum provided him with a residence permit valid from 2 January 2001 to be renewed on 2 January 2011.
Complainant's response	Awaiting response
Committee's decision	In light of the State party's decision to grant the complainant a residence permit, the Committee decides to close the dialogue with the State party under the follow-up procedure.

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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); *Urra 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); *Urra 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	Netherlands
Case	<i>A.J., 91/1997</i>
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - Article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	7 July 2008
State party response	The State party informed the Committee that following the Committee's decision the Government refrained from expelling the complainant to Tunisia and in response to his request for asylum provided him with a residence permit valid from 2 January 2001 to be

renewed on 2 January 2011.

**Complainant's
response**

Awaiting response

**Committee's
decision**

In the light of the State party's decision to grant the complainant a residence permit, the Committee decides to close the dialogue with the State party under the follow-up procedure.

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