

AUSTRIA

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. 8/1991 <i>Halimi-Nedibi Quani v. Austria</i>	18 Nov. 1993	Yugoslav	12		None	The State party is requested to ensure that similar violations do not occur in the future.	No information provided
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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 Qani, 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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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

State party	AUSTRIA
Case	Halimi-Nedibi Quani, 8/1991
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	None
State party response	None
Author's response	N/A

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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

State party	AUSTRIA
Case	Halimi-Nedibi Quani, 8/1991
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12.
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	None
State party response	None
Complainant's response	N/A

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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...

95. 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);...

...

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: *Quani Halimi-Nedzibi v. Austria* (No. 8/1991);...

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**

State party	AUSTRIA
Case	Halimi-Nedibi Quani, 8/1991
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	12 January 2007
State party response	The decision of the Committee was communicated to the heads of all public prosecutors' offices. The prosecution authorities were asked to follow the general principles contained in the Committee's relevant Views. The Decree of the Federal Ministry for Justice dated 30 September 1999 reaffirmed the standing instruction to the prosecutors' offices to follow up on every case of an allegation of mistreatment by law enforcement authorities by launching preliminary investigations or by means of judicial pretrial inquiries. Concurrently, the Federal Ministry of the Interior requested the law enforcement authorities to give notice to the competent prosecutors' offices of allegations of mistreatment raised against their own officials and of other indications pointing to a relevant case without any delay. Furthermore, Decree of the Ministry of

Interior of 10 November 2000 set forth that law enforcement authorities are bound to transmit a description of the facts or the complaint without delay to the prosecution, if one of their officials is the object of allegations of mistreatment. By Decree of the Federal Ministry of Justice of 21 December 2000, the heads of penal institutions were requested to follow the same proceedings in case of allegations against officials entrusted with the enforcement of sentences.

Complainant's response

None

Committee's decision

The Committee considered the response satisfactory, in view of the time lapsed since it adopted its Views and the vagueness of the remedy recommended. It decided to discontinue consideration of the case under the follow-up procedure.

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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....

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: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); ...

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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

State party

AUSTRIA

Case

Halimi-Nedibi Quani, 8/1991

Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	12 January 2007
State party response	<p>The decision of the Committee was communicated to the heads of all public prosecutors' offices. The prosecution authorities were asked to follow the general principles contained in the Committee's relevant Views. The Decree of the Federal Ministry for Justice dated 30 September 1999 reaffirmed the standing instruction to the prosecutors' offices to follow up on every case of an allegation of mistreatment by law enforcement authorities by launching preliminary investigations or by means of judicial pretrial inquiries. Concurrently, the Federal Ministry of the Interior requested the law enforcement authorities to give notice to the competent prosecutors' offices of allegations of mistreatment raised against their own officials and of other indications pointing to a relevant case without any delay. Furthermore, Decree of the Ministry of Interior of 10 November 2000 set forth that law enforcement authorities are bound to transmit a description of the facts or the complaint without delay to the prosecution, if one of their officials is the object of allegations of mistreatment. By Decree of the Federal Ministry of Justice of 21 December 2000, the heads of penal institutions were requested to follow the same proceedings in case of allegations against officials entrusted with the enforcement of sentences.</p>

Complainant's response

None

Committee's decision

The Committee considered the response satisfactory, in view of the time lapsed since it adopted its Views and the vagueness of the remedy recommended. It decided to discontinue consideration of the case 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

State party	Austria
Case	<i>Halimi-Nedibi Quani, 8/1991</i>
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	12 January 2007
State party response	The decision of the Committee was communicated to the heads of all public prosecutors' offices. The prosecution authorities were asked to follow the general principles contained in the Committee's relevant Views. The Decree of the Federal Ministry for Justice dated 30 September 1999 reaffirmed the standing instruction to the prosecutors' offices to follow up on every case of an allegation of mistreatment by law enforcement authorities by launching preliminary investigations or by means of judicial pretrial inquiries. Concurrently, the Federal

Ministry of the Interior requested the law enforcement authorities to give notice to the competent prosecutors' offices of allegations of mistreatment raised against their own officials and of other indications pointing to a relevant case without any delay. Furthermore, Decree of the Ministry of Interior of 10 November 2000 set forth that law enforcement authorities are bound to transmit a description of the facts or the complaint without delay to the prosecution, if one of their officials is the object of allegations of mistreatment. By Decree of the Federal Ministry of Justice of 21 December 2000, the heads of penal institutions were requested to follow the same proceedings in case of allegations against officials entrusted with the enforcement of sentences.

**Complainant's
comments**

None

**Committee's
decision**

The Committee considered the response satisfactory, in view of the time lapsed since it adopted its Views and the vagueness of the remedy recommended. It decided to discontinue consideration of the case under the follow-up procedure.

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