

## GERMANY

### 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. 214/2002 <i>M.A.K. v. Germany</i>	12 May 2004	Turkish to Turkey	No Violation	Granted and acceded to by the State party. Request by the State party to withdraw interim measures requested refused by the Rapporteur on new communications	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.	On 20 December 2004, the State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter of 28 June 2004 his lawyer stated that he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone on 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at the moment.	No further action is required

<sup>1</sup> The present report reflects information up to the end of the thirty-fourth session

**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.

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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.

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**Complaints in which the Committee has found no violations of the Convention up to the thirty-sixth session but in which it requested follow-up information**

State party	GERMANY
Case	M.A.K., 214/2002
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.
Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.
Author's response	None
Committee's decision	No further action is required

**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 no violations of the Convention up to the thirty-eighth session but in which it requested follow-up information**

<b>State party</b>	<b>GERMANY</b>
Case	M.A.K., 214/2002
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.
Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer

stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.

Complainant's response

None

Committee's decision

No further action is required

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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...

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:... *M.A.K. v. Germany* (No. 214/2002);<sup>4</sup>...

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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.

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4/ 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).

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**Complaints in which the Committee has found no violations of the Convention up to the fortieth session but in which it requested follow-up information**

<b>State party</b>	<b>GERMANY</b>
<b>Case</b>	<b>M.A.K., 214/2002</b>
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.
Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.

Complainant's response

None

Committee's decision

No further action is required.

**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: ... *M.A.K. v. Germany* (No. 214/2002);<sup>3</sup> ...

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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.

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**Complaints in which the Committee has found no violations of the Convention up to the forty-second session but in which it requested follow-up information**

**State party**

**GERMANY**

**Case**

**M.A.K., 214/2002**

Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.
Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.
Complainant's response	None
Committee's decision	No further action is required.

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[GERMANY] 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).

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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); 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); *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.

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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.

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### **Complaints in which the Committee has found no violations of the Convention up to the forty-fourth session but in which it requested follow-up information**

<b>State party</b>	<b>Germany</b>
<b>Case</b>	<i>M.A.K., 214/2002</i>
<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	12 May 2004
<b>Issues and violations found</b>	No violation
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Rapporteur for new complaints and interim measures.
<b>Remedy recommended</b>	Although the Committee found no violation of the Convention, it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	20 December 2004
<b>State party response</b>	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that, in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by

telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.

**Complainant's  
comments**

None

**Committee's  
decision**

No further action is required.

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