



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
Thirty-eighth session
(30 April-18 May 2007)

DECISION

Communication No. 268/2005

Submitted by: A.A. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 2 February 2005 (initial complaint)

Date of the present decision: 1 May 2007

Subject matter: Deportation of complainant to a country where he is in danger of being subjected to torture

Substantive issues: Risk of torture if deported

Procedural issues: None

Article of the Convention: 3

[ANNEX]

* Made public by decision of the Committee against Torture.

Annex

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

Thirty-eighth session

concerning

Communication No. 268/2005

Submitted by: A.A. (represented by counsel)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 2 February 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2007,

Having concluded its consideration of complaint No. 268/2005, submitted to the Committee against Torture by A.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following:

**Decision of the Committee against Torture under article 22, paragraph 7,
of the Convention against Torture**

1.1 The complainant, A.A., a Pakistani citizen, resides in Switzerland and is the subject of an order for deportation to his country of origin. He does not invoke any particular provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but his complaint seems to raise issues under article 3. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party in a note verbale dated 20 April 2005. At the same time, the Committee, acting in accordance with rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Pakistan pending the Committee's consideration of his complaint.

The facts as submitted by the complainant

2.1 The complainant is the local head of the Muslim League/Youth Organization (PML-N), a political opposition party, in Sialkot, Pakistan. He has held this post since 5 March 2004. On 3 May 2004, he took part in a demonstration against the construction of a road in Sialkot and was arrested by the police. He was released the next day.

2.2 On 6 August 2004, he organized a protest march from Sialkot to the town of Attock. Some 3,000 militants took part in the march. When they arrived at Attock, the police used tear gas and firearms to disperse the demonstration. One person was killed. The police held the complainant responsible for this death.

2.3 Shortly afterwards, one of the complainant's uncles, a well-known lawyer, asked him to leave Pakistan because a criminal investigation had been instituted and the police had issued a warrant for his arrest. The complainant left Pakistan on 12 August 2004 and arrived in Switzerland on 27 August 2004.

2.4 The complainant filed a request for asylum in Switzerland on 28 August 2004; the request was rejected by the Federal Office for Refugees on 8 September 2004. He appealed the decision on 8 October 2004. The Swiss Asylum Review Board (ARK) rejected the appeal on 2 December 2004. On 21 January 2005, the complainant requested a review of the decision. On 26 January 2005, the Review Board rejected the request and the complainant was instructed to leave Switzerland.

The complaint

3.1 The complainant maintains that, if he were sent back to Pakistan, he would be exposed to a serious risk of torture and ill-treatment in Pakistani prisons because of the criminal proceedings currently under way for a murder that he did not commit.

3.2 The Swiss authorities have not challenged the facts as described above, or the allegation that lower levels of prison and judicial authorities in Pakistan are corrupt. In view of the heavy workload of the Pakistani courts, the complainant would remain in detention for years and would be subjected to torture and ill-treatment by prison guards and investigators. The Swiss authorities have also not taken issue with the allegation that, if the complainant returned to Pakistan, he would have to undergo a very long period (several years) of pretrial detention, and that detention conditions would be difficult and cruel (frequent acts of torture, lack of medical care, inadequate sanitary conditions, violence without any protection from the prison authorities, overcrowded cells, abuse by prison guards). The complainant belongs to a minority political party that has no influence with the police and the courts, the lower levels of which are corrupt.

3.3 According to the complainant, the Swiss authorities expect that he will be acquitted by the higher courts in Pakistan. Even if that were the case, the complainant would not be able to avoid the risk of being subjected to torture or inhuman treatment in the local prisons during the (long) years of criminal proceedings before the case was brought before a "higher and more independent court" that would acquit him.

3.4 The complainant has submitted copies of two letters to prove his allegation that the Pakistani authorities are still looking for him. The first letter, dated 4 April 2005, is signed by Mr. N.A. Butt, a lawyer of the Sialkot High Court. He states that he is personally acquainted with the complainant and affirms that the complainant “is implicated in a case of murder trumped up by the police because of the influence of the current regime”. He adds that the local police is “everywhere to arrest him wherever he may be in Pakistan”. He concludes that the complainant’s life is in danger and advises him to remain abroad. The second letter, dated 11 April 2005, is signed by Mr. Khawaja Mohammad Asif, a member of the National Assembly of Pakistan. He claims that the complainant “is a senior official of the young people’s branch of the Pakistani Muslim League”. He maintains that, since his party was in power at the time of the 1999 military coup, all its members have become the target of persecution by the State. For this reason, the leaders of the party have gone into self-imposed exile in Saudi Arabia, and many party members have fled abroad. Mr. Asif himself was arrested for five months (October 1999-February 2000) and was never brought before a judge. According to him, the complainant’s life and liberty are in grave danger if the complainant returns to Pakistan, particularly because the trumped-up case against him is still pending and he risks imprisonment and torture.

State party’s observations on admissibility

4. In a note verbale dated 1 June 2005, the State party declares that it does not challenge the admissibility of the request.

Additional information from the complainant

5. On 5 July 2005, the complainant transmitted to the Committee an official summons dated 26 April 2005, inviting him to appear before the judge for the crime that he allegedly committed.

State party’s observations on the merits

6.1 In a note verbale dated 12 October 2005, the State party maintains that the complainant confines himself to reiterating the reasons that he invoked before the Swiss authorities. He does not adduce any new and relevant information that would allow it to question the Swiss Asylum Review Board’s decision of 2 December 2004.

6.2 The State party recalls that the complainant must prove that there is for him a personal, actual and serious risk of being subjected to torture if he is deported to his country of origin. It also recalls that, even if there exists a consistent pattern of gross, flagrant or mass violations of human rights in the State of origin, it must nevertheless be established whether the complainant would “personally” be in danger of being subjected to torture upon his return to his country. The mere fact that the complainant is likely to be arrested and tried would not constitute substantial grounds for believing that he would be in danger of being subjected to torture.¹ Likewise, the

¹ See communication No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5; and communication No. 65/1997, *I.A.O. v. Sweden*, Views adopted on 6 May 1998, para. 14.5.

existence of torture in detention as such does not justify a finding of a violation of article 3, given that the complainant has not demonstrated how he personally would be at risk of being tortured.² In the present case, the State party notes that the PML-N is a legal political party. It cannot therefore be assumed that criminal proceedings against the complainant or his arrest would be used as a pretext for persecuting him for his political beliefs. Moreover, the higher posts in State institutions are not held solely by supporters of the parties in power. Opposition parties are also represented, particularly in the courts. Even if, at the local level, police inquiries do not always meet the usual standards of a State based on the rule of law, it is undeniable that higher criminal prosecution bodies as well as the courts respect, in principle, the rules of procedure.

6.3 Consequently, the situation in Pakistan, as described by the complainant, does not in itself make it possible to conclude that he would be at risk of being tortured upon his return to that country.³ This finding is particularly valid since the criminal inquiry to which he could be subjected has a legitimate objective, namely to establish criminal responsibility for the unnatural death of a person. The complainant has at no time attempted to defend himself before the Pakistani authorities against the accusations made against him. Regardless of the dubious authenticity of the “official summons” of 26 April 2005, the summons appears to indicate that the arrest warrant against the complainant is a direct consequence of his flight.

6.4 The State party recalls that the torture or ill-treatment that the complainant may have suffered in the past constitutes one of the elements that must be taken into account in evaluating the complainant’s risk of being subjected to torture or ill-treatment if he returned to his country. In the present case, at no time in the procedure has the complainant claimed to have been tortured. This applies in particular to his only detention, from 4 p.m. on 3 May 2004 to 4 May 2004, following a demonstration against the opening of a road. He was promptly released because he protested against his arrest.

6.5 With regard to the complainant’s political activities within or outside his State of origin, the State party recalls that the Swiss authorities have not questioned the complainant’s membership of PML-N or his activities in that party. It is highly likely that the complainant engaged in political activities at the local level in Pakistan. The foregoing information demonstrates that the complainant does not risk being subjected to treatment contrary to article 3 of the Convention because of his political activities. The complainant has not adduced any argument based on political activities in which he may have engaged outside his State of origin.

6.6 The State party recalls, as the Swiss Asylum Review Board pointed out in its decision of 2 December 2004, that the credibility and authenticity of the documents of Pakistani origin should, in general, be described as highly dubious, since it is well known that such documents can be bought without difficulty. These doubts pertain, in particular, to the three letters that,

² See communication No. 221/2002, *M.M.K. v. Sweden*, decision adopted on 3 May 2005, para. 8.7.

³ See communication No. 106/1998, *N.P. v. Australia*, Views adopted on 6 May 1999, para. 6.5.

surprisingly, were produced only in the present procedure. Moreover, the State party notes with some surprise that the complainant attempted to prove the existence of criminal proceedings against him by producing an essentially internal document (the “First Information Report”, or FIR) whereas he has not provided other official documents that are easily accessible to an accused person, such as, for example, the indictment or the arrest warrant. It is also surprising to note that the First Information Report blames the complainant for having caused the death of a person during the events of 6 August 2004, whereas the “official summons” which, moreover, is the only official document that refers to the existence of an arrest warrant for the complainant is dated 26 April 2005, or eight and a half months later. Regardless of these inconsistencies relating to substantive points in the complainant’s claims, the State party is of the view that whether or not the complainant can be believed is not a determining factor in the present case. As the domestic authorities have pointed out, the documents submitted by the complainant only confirmed claims that were not useful in determining whether the complainant ran a real and personal risk of being subjected to torture if he returned to Pakistan.

Author’s comments on the State party’s observations

7.1 On 22 December 2005, the complainant transmitted to the Committee an annual report of the Human Rights Commission of Pakistan on conditions in Pakistani prisons. On 3 November 2006, the complainant transmitted to the Committee a note from Mr. Khawaja Mohammad Asif, a member of the National Assembly of Pakistan, stating that, if the complainant returned to Pakistan he would be arrested and imprisoned for political reasons because of an offence that he had not committed, and that conditions of detention in Pakistani prisons are such that imprisonment constitutes torture or at least inhuman treatment.

7.2 In a letter dated 19 January 2007, the complainant reiterates that detention conditions in Pakistani prisons are inhuman. Acts of torture, brutality and ill-treatment, as well as periods of pretrial detention that can last up to five years are frequent, as indicated in the report of the Human Rights Commission of Pakistan. The State party does not submit any evidence to the contrary and has not taken into account the systematic human rights violations in Pakistani prisons. In cases of imminent arrest, the only way to avoid being tortured in a Pakistani prison is to leave the country. Persons who opt to defend themselves in the courts instead of fleeing abroad resign themselves to the fact that they will be tortured in prison.

7.3 Political activists, particularly PML-N activists like the complainant, are at risk of becoming victims of illegal detention. The State party recognized this fact in its observations of 12 October 2005. This is all the more probable since the authorities have the pretext of putting the complainant in prison because of the violent death of a person during the demonstration organized by the complainant. As the complainant was aware that he risked being tortured, he requested his uncle, who is an influential person, to arrange his release from prison and enable him to leave the country immediately.

7.4 The complainant considers that the State party’s attitude is contradictory. On the one hand, the State party does not challenge the fact that the complainant is a member of PML-N, that the activities in question did indeed take place and that the complainant played a major role in the organization of a political demonstration that resulted in a murder. On the other, the State party would like to believe that the complainant runs no risk of torture even though it is aware that

political activities in general involve an inherent risk of torture in Pakistan. None of the Swiss authorities ever tried to make a serious assessment of the complainant's credibility on the basis of forensic psychiatric criteria. Thus, the complainant's credibility is not seriously in question in the light of the fact that even the State party has explicitly accepted the facts put forward by the complainant.

7.5 The complainant noted that the State party admits that, in general, it does not attach much credibility to documents from Pakistan. It is therefore not only reasonable and not in any way surprising that such documents were not submitted during the asylum procedure.

Issues and proceedings before the Committee

8.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not challenged admissibility. It therefore considers that the communication is admissible and proceeds to an examination of the merits of the case.

8.2 In accordance with article 3, paragraph 1, of the Convention, the Committee must determine whether or not there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon his return to Pakistan. To do this, the Committee must take account of all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, it must be established whether or not the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general observation on the implementation of article 3, according to which the existence of a risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and that, in any case, "the risk does not have to meet the test of being highly probable".⁴

8.4 In the present case, the Committee notes that the complainant has never been subjected to torture or ill-treatment in Pakistan. He was detained for only one day, from 3 to 4 May 2004, at a police station, and he does not claim to have been a victim of ill-treatment.

⁴ A/53/44, annex IX, para. 6.

8.5 The Committee takes note of the information supplied by the complainant, according to which he could be subjected to torture if he were arrested and placed in pretrial detention. An English translation of a police report dated 6 August 2004 and of an official summons dated 26 April 2005 seem to confirm that the complainant is suspected of murder, that he fled the scene of the crime and that he is still being sought by the authorities. While acknowledging that these documents are authentic, the Committee nevertheless recalls that the mere risk of being arrested and tried is not sufficient to conclude that there is also a risk of being subjected to torture.⁵ With regard to the 2004 annual report of the Human Rights Commission of Pakistan on conditions in Pakistani prisons, the Committee notes that the information contained in the report is of a general nature and does not demonstrate that the complainant himself would be in danger of being subjected to ill-treatment if he were arrested and imprisoned. As for the note from Mr. Khawaja Mohammad Asif of 16 October 2006 (see paragraph 7.1 above), the Committee observes that this note mainly concerns Mr. Asif's detention between October 1999 and February 2000: it does not demonstrate that the complainant himself would be in danger of being arrested and tortured by the Pakistani authorities. The Committee also observes that the author of this note is a politician who holds a more important position than the complainant.

8.6 In the light of the foregoing, the Committee considers that the complainant has not sufficiently demonstrated the existence of substantial grounds for believing that his return to Pakistan would expose him to a real, specific and personal risk of torture, in the meaning of article 3 of the Convention.

9. Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Pakistan would not constitute a breach by the State party of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

⁵ Communication No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5.