



**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. 249/2004

<u>Submitted by:</u>	Mr. Nadeem Ahmad Dar (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Norway
<u>Date of complaint:</u>	29 March 2004 (initial submission)
<u>Date of the present decision:</u>	11 May 2007

Subject matter: Deportation of complainant from Norway to Pakistan; charge of blasphemy in Pakistan and risk of death penalty

Procedural issue: request for interim measures

Substantive issues: Present and personal risk of death penalty

Articles of the Convention: 3 and 22

[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. 249/2004

<u>Submitted by:</u>	Mr. Nadeem Ahmad Dar (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Norway
<u>Date of complaint:</u>	29 March 2004 (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 11 May 2007,

Having concluded its consideration of complaint No. 249/2004, submitted to the Committee against Torture by Mr. Nadeem Ahmad Dar, 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 under article 22, paragraph 7, of the Committee against Torture.

1.1 The complainant is Nadeem Ahmad Dar, a Pakistani citizen born on 2 January 1961, residing in Norway. He initially claimed that his deportation to Pakistan would constitute a violation by Norway of article 3 of the Convention. He now claims that his deportation to Pakistan despite the Committee's request for interim measures constituted a violation by Norway of its obligation to cooperate in good faith with the Committee, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 By Note Verbale of 2 April 2004, the Committee transmitted the complaint to the State party, together with a request under rule 108, paragraph 1, of the Committee's Rules of Procedure, not to expel the complainant to Pakistan pending the Committee's consideration of his complaint. The Note Verbale indicated that this request was made on the basis of the information contained in the complainant's submission and that it could be reviewed, at the

request of the State party, in light of information and comments received from the State party and any further comments, if any, from the complainant. On 1 June 2004, the State party informed the Committee that it would not comply with the Committee's request. However, on 29 June 2004, the State party added that it had decided to refrain from proceeding with the expulsion of the complainant and his family to Pakistan until the court of first instance had reviewed the case.

1.3 On 16 January 2006, the complainant's newly appointed counsel informed the Committee that he had been deported to Pakistan on 22 September 2005¹. On 15 February 2006, the State party acknowledged the deportation.

1.4 On 5 April 2006 the State party informed the Committee that the complainant had been granted a residence permit for three years. On 21 April 2006, counsel added that he had returned to Norway on 31 March 2006.

1.5 On 30 May 2006, the Special Rapporteur for Interim Measures denied a renewed request for interim measures to prevent the complainant's deportation to Pakistan.

The facts as submitted by the complainant

2.1 The complainant, a retired major from the Pakistani army, is Ahmadi-Muslim. According to a US Department of State report submitted by the complainant, Ahmadis consider themselves Muslims but do not accept that Muhammad was necessarily the last Prophet. The complainant claims that because of his religion, he had difficulties with his superiors in the army. Attempts on his life allegedly were made on several occasions. The complainant suspects his superiors to have set fire to his house in 1994. During his military service, he was sent to a conflict area, without receiving the backup of any other units, which had been promised. He further claims that he runs the risk of acts of vengeance by terrorist organizations such as Jaish Muhammed (JM) and the Mohajir Qomi Movement (MQM) because of his previous position and activities in the army operating against these organizations. The son of his cousins was allegedly mistakenly kidnapped instead of his son in 2001 by JM, but the complainant and some friends managed to rescue him. He further states that he was discriminated against and forced to retire from the army due to his religion.

2.2 The complainant arrived in Norway on 23 April 2002, using his own passport and a visa issued by the Norwegian embassy in Islamabad. He traveled with his wife and four children and applied for asylum on 29 April 2002. His case was heard by the Directorate of Immigration (UDI), which denied his application for asylum on 22 January 2003. The complainant appealed to the Immigration Appeals Board (UNE), which rejected this appeal on 8 January 2004.

2.3 On 31 January 2004, the complainant was informed by his lawyer in Pakistan that he had been accused of blasphemy on 2 January 2002. He submits a translation of a document entitled "Action against Nadeem Ahmad Dar" addressed to the Station House Officer at the Chong Police station in the Lahore District. Upon hearing this, he filed a new appeal with the Norwegian immigration authorities, which was rejected by the UNE on 1 March 2004, on the grounds that the letter from the lawyer and the accusation, which were non-official private

¹ The departure from Norway took place on 21 September and the complainant arrived in Islamabad on 22 September after a night-long stop-over in Bangkok.

documents, did not give the proof that he would be persecuted in Pakistan, and that the late submission of the document cast doubt on its veracity. In a further submission to the Committee, dated 10 March 2005, the complainant submits a copy of an “application for registration of criminal case against the respondent”, dated 8 March 2005 and signed by Tahir Yaqoob, accusing him of “preaching against the spirit of Islam”. He further asserts that the police have been looking for him at his house to arrest him. He claims that if he were returned and convicted, he would risk the death penalty, in accordance with article 295c of the Pakistani Penal Code.

2.4 The complainant also claims that a case is pending against him under a “Haddood ordinance”, with a potential punishment of “14 years rigorous imprisonment” and “30 stripes”.

2.5 The complainant invokes the US State department report for 2003, which refers to the discriminatory treatment of religious minorities in Pakistan, including the use of “Hudood” ordinances, which apply different standards of evidence to Muslims and non-Muslims for alleged violations of Islamic law. There are specific legal prohibitions against Ahmadis practicing their religion. It mentions that blasphemy laws are most often used against reformist Muslims and Ahmadis. According to the report, no person has been executed by Pakistan under provision 295c of the Penal Code, but some individuals were sentenced to death, and others accused under this provision have been killed by religious extremists.

2.6 On 10 May 2004, the complainant was informed that the UNE had rejected the Committee against Torture’s request for interim measures on the ground of non-exhaustion of domestic remedies, and he was requested to leave the country.

The complaint

3. The complainant initially claimed that his deportation to Pakistan would violate article 3 of the Convention, as there were substantial reasons for believing that he would be subjected to torture or other inhuman treatment if returned to Pakistan. He submitted that he may be killed by terrorist organizations and that he faced death penalty because of the pending blasphemy charge against him. He also claimed that if returned to Pakistan, the Police would arrest him and torture him in the context of investigation on his pending cases.

State party’s observations on admissibility

4.1 On 1 June 2004, the State party submitted its observations on the admissibility of the communication and contended that the communication was inadmissible because the complainant has failed to exhaust domestic remedies. It claimed that an application for judicial review was available to the complainant after his application had been turned down by the immigration authorities. He also had the possibility to file an application for an injunction, asking the court to order the administration to suspend his deportation. The State party submitted that under paragraphs 15-2 and 15-6 of the Legal Enforcement Act 1992, an order for an injunction may be granted if the plaintiff:

- (a) demonstrates that the impugned decision will probably be annulled by the court when the main case is to be adjudicated, and

- (b) shows a sufficient *reason* for requesting an injunction, i.e. that an injunction is necessary to avoid serious damage or harm if the decision were enforced without the court having had the opportunity to adjudicate the main case.

At the time of the State party's submission, the complainant had not addressed the Norwegian tribunals.

4.2 The State party added that its immigration laws give at least the same protection against being sent to areas where one may be at risk of persecution as the provisions governing those issues in the Convention or in other international instruments.

4.3 The State party also informed the Committee that, after careful consideration, it had decided to refuse the Special Rapporteur on New Complaints' request to refrain from expelling the complainant while his case was under consideration by the Committee. The State party explained that the UNE, who had taken the decision, had considered the communication inadmissible on two grounds: the complainant's failure to exhaust domestic remedies, as well as the manifestly ill-founded nature of the communication. It argued that this request was based on the complainant's statement that he had exhausted all domestic remedies, which was contested by the State party. The State party further argued that the complaint was manifestly ill-founded, for lack of credibility of the complainant, and of proves supporting his allegations.

4.4 By further submission of 29 June 2004, the State party informed the Committee that the complainant had filed his case to the courts on 21 June 2004, and that it had decided to refrain from proceeding with the expulsion of the complainant and his family to Pakistan until the court of first instance had reviewed the case.

Complainant's comments on the State party's observations

5.1 On 14 July 2004, the complainant informed the Committee that on 17 June 2004, he and his family were arrested and brought to a detention center, awaiting expulsion the next day. However, they were informed that they would be released if they confirmed that they would bring the case to court. The complainant complied and they were released.

5.2 The complainant claimed that the State party presented his case in a selective and biased manner. He argued that he had exhausted domestic remedies as he had received a final decision from the UNE, which is a quasi-judicial Appeals Board. In this context, he submitted a diagram explaining the Norwegian court system open to asylum seekers. According to him, after exhausting the two-tiered administrative remedies, he would have to go through four more judicial stages. He argued that such remedies would be unreasonably prolonged.

5.3 He added that these remedies were not available remedies to an asylum seeker, as the remedies and the service of a lawyer included high costs, which he could not afford, and which were borne by charitable donations collected on the initiative of the Mayor of his community. He also pointed out that his right to free legal assistance was exhausted, as it only covered three hours of the services of the first attorney appointed or chosen.

5.4 The complainant noted that he was not initially informed that he could take his case to the courts, after exhausting the administrative procedures. Upon receipt of the letter of 10 May 2004, he informed the UNE that he would bring his case to court as soon as possible.

5.5 On 21 June 2004, the complainant filed his case in the Oslo City Court (Tingrett) and on 25 June, a court injunction was delivered, preventing the complainant from being expelled before his case would be heard by this court. On 7 December 2004, the Oslo City Court confirmed the UNE's decision and rejected the application for a court injunction.

5.6 In further submissions dated 11 and 13 February, and 13 March 2005, the complainant informed the Committee that the police had been ordered to carry out the deportation of the family despite his pending appeal before the High Court. The hearing before this court was scheduled for March 2006. He argued that his appeal before the High Court could not be considered an effective remedy, as the remedy did not have suspensive effect, and as it did not prevent him from being expelled. In particular, he argued that if he returned to Pakistan, he would not be able to return to Norway, as he would either be persecuted or imprisoned.

Committee's admissibility decision

6.1 The Committee considered the admissibility of the complaint at its thirty-fifth session and declared the complaint admissible on 14 November 2005. It ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter had not been and was not being considered under another procedure of international investigation or settlement.

6.2 The Committee noted that the State party had challenged the admissibility of the communication on the grounds that all available and effective domestic remedies had not been exhausted. It further noted that the legality of an administrative act could be challenged in Norwegian courts, and that asylum seekers whose applications for political asylum had been turned down by the UDI and, on appeal by the UNE, could seek judicial review before Norwegian courts.

6.3 The Committee noted that after being informed of the possibility to seek judicial review, the complainant initiated proceedings before the courts, and that his case was pending in the High Court at the time of consideration of the admissibility of his complaint by the Committee.

6.4 The Committee observed, however, that these proceedings did not have any suspensive effect, and that the complainant might face irreparable harm if returned to Pakistan before judicial review of his case had been completed.

6.5 In these circumstances, the Committee concluded that the appeal pending in the High Court and possible subsequent appeals did not constitute an effective remedy with regard to the expulsion of the complainant. Consequently, the Committee considered that it was not precluded by article 22, paragraph 5 (a) and (b), of the Convention, from proceeding with the examination of the communication.

6.6 The Committee considered that the complainant had sufficiently substantiated his claim for the purpose of admissibility.

6.7 The Committee considered that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. The Committee noted that compliance with the interim measures called for by the Committee was essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee. The State party was invited to comply with the Committee's request for interim measures of protection.²

Update of factual background and issues in relation to the request for interim measures

Interim measures and deportation of the complainant

7.1 On 16 January 2006, counsel informed the Committee that the complainant had been deported to Pakistan. She claims that the State party refuses to cooperate with the Committee and that it did not comply with the Committee's request for interim measures of 2 April 2004. She adds that newspapers in Pakistan have published the registration of a case against the complainant for preaching "Qadianiat"³, and provides copy of these articles and a translation. She informs that the complainant lives in hiding and fear for his life.

7.2 On 3 February 2006, counsel submitted copies of several documents, including an application for registration of a criminal case against the complainant in Pakistan, by Mr. Tahir Yaqoob, dated 9 March 2005, and a "Contempt Petition" dated 20 October 2005, referring to the above document, requesting the Court to initiate proceedings against the complainant.

State party's comments on issues related to interim measures

8.1 On 15 February 2006, the State party provided an update of the facts. It recalls that the Oslo City Court considered the complainant's case on 7 December 2004. After a two-day hearing with extensive oral statements by the complainant, his wife, and witnesses, including an expert witness from the Immigration Appeals Board (UNE) with personal and up-to-date knowledge of the human rights situation in Pakistan, the Court concluded that the complainant's (and his family's) return to Pakistan would not constitute a breach of section 15 of the Immigration Act, which has the same substantive content as article 3 of the Convention. On the basis of this decision, the Court also held that UNE's expulsion order may be executed. The appeal of the former decision was scheduled to be heard on 3 and 4 April 2006. The latter decision was confirmed by the Borgarting Lagmannsrett (Court of Appeal) on 24 February 2005.

8.2 Further to this decision, the complainant requested UNE to review his case and to stay the expulsion on the basis of new information. On 19 September 2005, UNE confirmed its earlier decision.

8.3 On 21-22 September 2005, the complainant was deported to Islamabad with police escort, and accepted by the Pakistani authorities. He was questioned concerning the expiry of

² See T.P.S. v. Canada, Communication No. 099/1997, paragraph 15.6, and Cecilia Rosana Núñez Chipana v. Venezuela, Communication No. 110/1998, paragraph 8.

³ The complainant explains that religious fundamentalists name the Ahmadi community "Qadiani".

his passport, but was released the same day. While the complainant was being deported, his wife and children took refuge in the local church (church asylum) in Nesodden, and have since remained in Norway.

8.4 On 16 December 2005, the complainant's new counsel filed a request in the Court of Appeal to reverse its decision of 24 February 2005, on the basis of the admissibility decision of the Committee and new documentation allegedly supporting the claim that the complainant is now facing a real and current risk of being subjected to torture on the basis of blasphemy charges against him. She requested the Court to stay the expulsion order against the complainant's family and to order the Government to arrange for the complainant's safe return to Norway. At the time of the submission of the State party, the case was still pending.

8.5 On the issue of the Committee's request for interim measures, the State party explains that the complainant was not expelled until the courts had conducted a thorough review of his case, including direct contact with the complainant himself. He did not establish, before his expulsion took place, that he ran a foreseeable, real and personal risk of being tortured, within the meaning of article 3 of the Convention, if returned to Pakistan.

8.6 The State party concludes that given the extensive judicial and administrative review of the case for 18 months from the date he lodged his complaint to the Committee until the date of expulsion, the fact that he was expelled before the Committee's admissibility decision does not constitute non-compliance with this decision. The State party recalls that at the time the Committee made its request for interim measures under rule 108 in April 2004, the complainant had not availed himself of all available domestic judicial remedies, and that when he eventually did, the State party agreed to stay his expulsion.

Counsel's comments on issues related to interim measures

9.1 On 9 March 2006, counsel commented on the State party's submission on the issue of interim measures and provided a further factual update. She maintains that the State party did not comply with the Committee's request for interim measures of 2 April 2004 when it expelled the complainant on 21-22 September 2005. The complainant and his family have experienced sufferings further to his expulsion. The State party also failed to bring effective relief within the meaning of article 22, paragraph 5 (b), by engaging in speculation on the facts in violation of due process, and by refusing to grant him legal aid.

9.2 She gives a detailed account of the facts surrounding the deportation on 21-22 September 2005, and the following proceedings. She notes that the complainant was forced to travel with a passport which had expired and which contained a photograph of him in uniform. Upon arrival, he was detained by the Pakistani immigration authorities due to the irregularities of his travel documents⁴, but was later released.

9.3 She also refers to pleadings of the Attorney General and of the complainant, on the interpretation of the obligation to cooperate in good faith with the Committee in the case of a request for interim measures. Counsel quotes a written pleading of the Attorney General of 20 January 2006, which contends that it is not the Convention itself, but merely the

⁴ The complainant explains that in Pakistan, the immigration authorities and the Police department are different entities, which are not coordinated. Therefore, the immigration authorities did not have any knowledge of the pending criminal case against him.

Committee's internal procedure regulations (rule 108), which authorizes stay of execution requests, and that such requests are not binding under international law. On the State's obligation to cooperate in good faith with the Committee's request, the Attorney General referred to the Committee's allegedly frequent use of rule 108 and argued that the State's obligation consists in undertaking a thorough and conscientious assessment of the Committee's request and in complying with it as far as possible.

9.4 On the proceedings, counsel informed the Committee that on 27 February 2006, the Court of Appeal, when considering the request for reversal of its decision of 24 February 2005⁵, had decided not to rule on the issue of interim measures until the main hearing. This hearing had not yet taken place at the time of submission of these comments by counsel.

9.5 Counsel claims that the State party violated its obligation to cooperate in good faith with the views of the Committee, when it deported the complainant to Pakistan, despite the standing request of the Committee of 2 April 2004 not to do so. The State party's refusal to admit re-entry of the complainant after the Committee's decision on admissibility and its invitation to comply with its request for interim measures further violated the State party's obligation to cooperate in good faith with the Committee.

9.6 Counsel supports these claims with four arguments. Firstly, the request for interim measures was formally correct, as it was demonstrated that local remedies would not afford the complainant effective relief, and because the expulsion decision was enforceable. Secondly, she argues that the Committee has exclusive powers to interpret and act on its own rules, and that rule 108 requests are particularly important to protect the object and purpose of the individual complaint procedure. Thirdly she claims that the failure to comply with or communicate with the Committee about the request, before the expulsion of the complainant, constituted acts of bad faith. Counsel recalls the State party's refusal to comply with the request, and the fact that the stay of expulsion was ordered after the complainant had filed a suit and not because of the Committee's request. She further contends that rule 108 invites States parties to communicate with the Committee about the follow-up of requests, and that the State party did not take any steps to report back to the Committee. Fourthly, counsel claims that the above facts and the manner in which the complainant was deported show a pattern of abuse of rights by the State party, in particular because he was forced to travel without a valid passport, which showed a photograph of the complainant in military uniform. She contends that these facts were in contradiction to an agreement between the Norwegian police and the Pakistani embassy, and resulted in an offence under Pakistani immigration law.

9.7 Counsel suggests that the State party may have a duty to restore the situation as far as practically possible without violating Pakistan's sovereignty, and that the duty to restore is a recognized principle of international law.

9.8 Finally counsel claims that the complainant should be awarded compensation for the State party's non-compliance with the request for interim measures, the hardship suffered by the complainant and his family during the deportation process, and for the State party's failure to grant legal aid.

⁵ See para. 8.4

State party's observations on the merits

10.1 On 28 March 2006, the State party commented on the merits of the communication. It recalls the facts and points out that the Court of Appeal, before which proceedings were still pending when the State party's made its observations, was attentive to the fact that the case was pending before the Committee. The State party provides a copy of the pleadings of 20 January 2006 concerning the obligations the Convention imposes on Norwegian authorities⁶. It refers to the documents submitted by counsel concerning the registration of a blasphemy case against the complainant in Pakistan, and informs that the State party has accordingly initiated an investigation through the Norwegian embassy in Islamabad, to be completed before the hearing by the Court of Appeal.

10.2 The State party recalls that the complainant's request for asylum has been assessed pursuant to section 15 of the Norwegian Immigration Act, which offers at least the same protection against being sent to areas where one may be at risk of persecution as the provisions governing the same issue in the Convention against Torture, the European Convention on Human Rights and the UN Convention on Refugees. The State party argues that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured upon return to Pakistan. There have been numerous changes in the reasons advanced by the complainant for his claim of protection, as well as inconsistencies in his statements to the authorities. It therefore questions his credibility.

10.3 The State party notes that as of the date of its observations, the complainant's most important argument is that he is wanted by Pakistani authorities, because he is accused of blasphemy. This fact was not mentioned during the application for asylum, and the information later presented on this issue was contradictory and unreliable. In particular, the State party points out that this issue was not brought up until *after* UNE had made its final decision on 8 January 2004, and that it was contrary to information given by the complainant in his asylum interview. In addition, the State party was not able to deduce from the documents presented by the complainant that a criminal investigation had been initiated against him. In addition, and as a general observation, there is a widespread use of false or purchased documentation in connection with applications for asylum lodged by Pakistani applicants.

10.4 The State party refers, however, to recent documents⁷ submitted by the complainant, which are specific about details of the alleged blasphemy case, and concedes that it cannot rule out that such a case is presently pending against him.

10.5 Regarding the complainant's fear of reprisals by the MQM, the State party argues that the MQM has been involved in little violent activity since 1998/99 and that the present situation is very different from the early 1990's. Although the State party is aware that MQM extremists have to some degree participated in acts of political violence, it considers that the complainant is not at risk of being tortured by MQM. It argues that there is no reason to believe that retired military officers are particularly at risk with respect to reactions from the MQM extremists, and that the complainant in particular is presently at risk with regard to reactions by the MQM. It refers to the fact that the complainant's military activities against

⁶ See para. 9.3

⁷ See para. 7.2

the MQM date back several years (1990-1994) and that he does not seem to have had any problems with the MQM for several years. With regard the fire of his house and his forced retirement in 1999, the State party does not consider that these incidents imply that the complainant has reason to fear persecution or torture from MQM.

10.6 With regard to the complainant's fear of reprisals by the JEM, the State party questions the role played by him in the banning of the organization, and points out that he has not submitted any documentation to support this claim, even though he was requested to. In addition, he has not submitted any documentation to support his claim regarding the attack of his house or the kidnapping of his nephew. Finally the State party considers that the complainant is free to establish himself in any part of Pakistan, including areas where MQM and JEM do not have their primary scene of activity.

10.7 On the claim in relation to the blasphemy case, the State party explains the content of the Pakistani blasphemy laws, in particular Sections 295, 296, 297 and 298 of the Penal Code, which address offences relating to religion⁸. According to the State party, no person has been executed by the Pakistani Government under any of these provisions. However, some persons have been sentenced to death, or have died while in official custody. The State party is aware that complaints under the blasphemy laws have been used to settle disputes. They have also been used to harass religious minorities or reform-minded Muslims. However, most blasphemy complaints are directed against the majority Sunni Muslim community (309 complaints between 1986 and 2004, as opposed to 236 complaints against Ahmadis during the same period), and most of the cases are ultimately dismissed at the appellate level. However, the accused often remain in jail for years awaiting a final verdict.

10.8 With regard to the complainant's statement that his problems in Pakistan are partially caused and enhanced by the fact that he is an Ahmadi, the State party acknowledges that Ahmadis in Pakistan suffer from various restrictions of religious freedom and may suffer discrimination in employment and in access to education. It points out that the complainant has nonetheless held a high position in the Pakistani army.

10.9 The State party further points out that it is aware that the Ahmadis are subject to specific restrictions of law, and refers to Section 298(c) of the Penal Code, prohibiting Ahmadis to call themselves Muslims, to refer to their faith as Islam, to preach and propagate their faith, to invite others to accept the Ahmadi faith and to insult the religious feelings of Muslims. The punishment of violation of this section is imprisonment for up to three years and a fine. The State party emphasizes that it has carefully considered the fact that the complainant is Ahmadi. Even though the Ahmadis in Pakistan face legal barriers to the practice of their faith, and relations between religious communities in some areas may be tense, the State party does not consider that the complainant has reason to fear persecution within the meaning of the Convention upon return to Pakistan.

⁸ Section 295(a) stipulates a maximum 10-year sentence for insulting the religion of any class of citizen. Section 295(b) stipulates a sentence of life imprisonment for "whoever willfully defiles, damages, or desecrates a copy of the holy Koran". Section 295(c) establishes the death penalty for directly or indirectly defiling the "sacred name of the Holy Prophet Mohammed". Section 298(a) forbids the use of derogatory remarks about holy personages.

10.10 With regard to the claim that the complainant did not receive legal aid, the State party notes that when he applied for asylum in Norway, he stated that he owned land in Pakistan and was entitled to receive a house in Lahore in 2005 through the military pension. Furthermore, he has been and is still represented, both in the case before the Committee and in the case pending at the national level, by an active and forceful lawyer.

10.11 To conclude, the State party invokes the Committee's jurisprudence according to which due weight must be given to findings of fact made by government authorities. It refers to General Comment No.1, paragraph 8, pursuant to which questions of credibility of a complainant, and the presence of factual inconsistencies in his claim are pertinent to the Committee's deliberations on the risk of torture upon return.

Complainant's return to the State party

11.1 On 5 April 2006, the State party submitted additional information on the merits. It refers to the initiation of an additional investigation by the Government further to new documentation submitted by the complainant⁹. It informs the Committee that the investigation was completed on 21 March and submits copy of the report. It resulted in the State party granting the complainant a residence permit, by decision of UNE of 30 March 2006, pursuant to section 8, second paragraph, of the Alien's Act with reference to section 15, first paragraph, first sentence, of the Act¹⁰. The decision is based on new information transpiring from the investigation in relation to the charges of blasphemy. UNE held that on the basis of the new information transpiring from the investigation, it could not be ruled out that the complainant may suffer unlawful criminal prosecution in Pakistan, and found that the requirements of section 15, first paragraph, first sentence were met. It granted him a residence permit for three years. However, UNE considered that the risk of persecution in Pakistan was too small for the complainant to fulfil the requirements necessary to be granted refugee status.

11.2 The State party considers that as a result of UNE's decision, article 3 of the Convention is no longer an issue before the Committee, and requests the Committee to dispose of the case accordingly.

12.1 On 21 April 2006, counsel submitted her comments on the State party's observations of 5 April. She informs the Committee that the complainant was given the opportunity safely to return to Norway on 31 March 2006. According to the report prepared by the Norwegian embassy in Islamabad as a result of a fact finding mission, the complainant is indeed accused

⁹ See para. 10.4

¹⁰Section 8, second paragraph: "Any foreign national has on application the right to a work permit or a residence permit in accordance with the following rules: (...). On the grounds of strong humanitarian considerations, or when a foreign national has a particular connection with Norway, a work or residence permit may be granted even if the requirements are not satisfied."

Section 15, first paragraph, first sentence: "Any foreign national must not pursuant to the Act be sent to any area where the foreign national may fear persecution of such a kind as may justify recognition as a refugee, or where the foreign national will not feel secure against being sent on to such an area."

of blasphemy, and the police has actively sought his arrest. The complainant states that he lived in hiding in a mud hut for the last months and that he has been very sick.

12.2 Counsel refers to UNEs decision of 30 March 2006 and points out that the decision insinuates that the complainant had himself initiated the blasphemy petition, and that the grant of stay was only made upon serious doubt. This assertion has no support in the Embassy report or in any other document, and the report states that there is no indication that the case is not genuine or that steps have been taken to influence the result of the verification process.

12.3 Counsel recalls that UNEs decision of reversal is based on the Embassy report, which concluded that the petitioner in the blasphemy case had tried to register a criminal case against the complainant since 2002. This corresponds to the information provided by the complainant to the Norwegian authorities. Counsel states that although the State party had knowledge of this fact, it disregarded it and refused to investigate, until a fact finding mission was established with the result of the Embassy report. This report confirms that the complainant's statements were correct.

12.4 To support her claims on the pattern of abuse of rights, counsel submits new documents, including a letter from the Embassy of Pakistan of 10 February 2006, confirming the existence of an understanding between the State party and Pakistan, to the effect that Pakistani citizens should only be transported with valid passports.

Amended complaint

13.1 As a result of UNEs decision of 30 March 2006, counsel agrees that the complainant no longer has a legal interest in a decision on the State party's obligation, under article 3 of the Convention, to grant him protection, as he has been given permission to stay. Counsel thus withdraws this part of the complaint.

13.2 However, counsel maintains that there is still an interest in determining whether the State party violated article 3 by expelling the complainant on 21-22 September 2005 and by refusing to comply with the request for interim measures under rule 108. She claims compensation for the hardship endured by the complainant.

13.3 Counsel refers to article 22 of the Convention and maintains her claims that the State party did not deal in good faith with the Committee's request under rule 108 when it expelled the complainant to Pakistan.

Additional comments by the State party and the complainant

14. On 10 May 2006, the State party provided new factual information transpiring from the results of an inquiry directed to the Ahmadiya Foreign Missions Office in Rabwah (Ahmadiya Office). In a correspondence dated 6 April 2006 to the Norwegian Embassy in Islamabad, that the Ahmadiya Office indicated that according to reports received from Islamabad and District Sheikhpura, the blasphemy case against the complainant was not genuine, and that it had in fact been engineered by the complainant himself. As a result of this, the complainant had been expelled from the Ahmadiya Community. As a consequence of this letter, UNE requested UDI to consider whether the residence permit granted in UNE's decision of 30 March 2006 should be revoked. The State party concludes by questioning the

admissibility of the communication under article 22, paragraph 2, relating to the abuse of the right of submission of communications.

15.1 On 11 and 18 May 2006, counsel commented on the State party's new submission and requested interim measures of protection. She claims that the letter referred to by the State party has no evidentiary value in Norwegian courts, because the Norwegian Embassy in Islamabad concluded, in its report, that the case was genuine. She further argues that there are no grounds to invoke article 22, paragraph 2, as the request to withdraw the complaint has no basis in Norwegian administrative law, which requires that only new information may motivate such a request. UNE's decision of 30 March 2006, which allowed the complainant to return to the State party, was based on the "high probability that the complaint was engineered by the complainant himself". She thus argues that any ground for believing that he has engineered his own blasphemy case does not amount to new information.

15.2 Counsel claims that the letter from the Ahmadiya Office does not reflect the reality in relation to the case against the complainant. She indicates that the complainant has been in conflict with the leader of the Sheikuphura mission and that the letter may have been written for other motives. She submits copy of a letter she sent to the Ahmadiya Office on 18 May 2006, requesting the evidence that made it reach the conclusion that the complainant had engineered the blasphemy case himself. She further recalls that an arrest order was issued against the complainant, and that the blasphemy case is only one among many indicators that his life would be in danger in Pakistan. She submits copy of an affidavit by Colonel (Retd.) Muhammad Akram according to which the complainant, who, while in the army, took part in many operations against terrorists in Karachi, is at danger of being killed by terrorists.

15.3 Counsel indicates that the complainant's asylum case remains pending before the Borgarting Regional Court and that the complainant has still not been afforded legal aid. The pending proceedings relate to the author's appeal of the decision of 30 March 2006, on the grounds that he should be granted refugee status.

15.4 On 31 July 2006, the complainant filed additional comments on the State party's submission. He indicates that on 5 July 2006, UDI decided in his favour by ordering that he be issued an alien passport. In respect of the letter issued by the Ahmadiya Office, he claims that he did not engineer the blasphemy case himself and that it resulted from an order of 23 December 2005 by the Session Judge of the District Court of Sheikhupura, who had examined a complaint against the author. He further argues that the Ahmadiya Community cannot itself investigate such cases, and that they provided their opinion rather than an account of the facts. He submits copy of a letter sent by his counsel on 2 June 2006 to the Norwegian Ahmadiya community, from which it transpires that the letter sent on 18 May had remained without reply. That letter further complains that the complainant was not afforded an opportunity to refute the allegations against him, and that he had not been directly informed that he had been expelled from the community. She finally asked a number of questions relating to the investigation and letter from the Ahmadyia Office.

15.5 On 16 August 2006, counsel commented further on the State party's submission, indicating that she is not aware whether UDI has opened a withdrawal case further to UNE's request to do so. She also indicated that the Norwegian Ahmadiya community had no knowledge of how the Ahmadyia Office in Rabwah came to the conclusion that the

complainant had engineered his own blasphemy case, or of their decision to expel him from the community.

15.6 On 24 August 2006, the Secretariat asked the State party to inform the Committee of the outcome of UNE's request to UDI to consider reopening the case. No relevant information has been received from the State party.

15.7 On 7 November 2006 and 25 January 2007, the complainant and counsel submitted further information regarding their appeal of UNE's decision of 30 March 2006 in view of obtaining refugee status for the complainant. On 21 November 2006, the Borgarting Lagmannsrett confirmed UNE's decision not to grant the complainant refugee status.

Consideration of the merits

16.1 The Committee notes that the complainant has freely withdrawn that part of the complaint under article 3 relating to his protection by the State party, i.e. the issue whether his deportation to Pakistan in the future would constitute a violation of article 3 of the Convention. It further observes that the withdrawal of that claim relates to the grant of a residence permit and that the issue of the length of the permit is still pending in the domestic courts. Finally the Committee notes that there was no pressure on the complainant and accepts the withdrawal of that claim.

16.2 The issue before the Committee is thus whether the removal of the complainant to Pakistan despite the Committee's request for interim measures violated his rights under article 3 or 22 of the Convention. The Committee notes that on 2 April 2004, its Special Rapporteur on New Communications issued a request for interim measures of protection¹¹. On 1 June 2004, the State party informed the Committee that it refused the Committee's request. However, at no time did it ask the Committee to lift the request.

16.3 The complainant was expelled on 21-22 September 2005, while the Committee's request for interim measures was still standing. The Committee notes that no information regarding the deportation was sent to it before 16 January 2006, i.e. after the Committee had adopted its admissibility decision of 14 November 2005, by the complainant's new counsel. The Committee recalls¹² that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established there under. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a merely theoretical protection. By failing to respect the request for interim measures made to it, and to inform the Committee of the deportation of the complainant, the State party committed a breach of its obligations of cooperating in good faith with the Committee, under article 22 of the Convention.

¹¹ See para. 1.2

¹² See, inter alia, *Brada v. France*, Communication No. 195/2002, Views adopted on 17 May 2005, paragraph 13.4.

16.4 However, in the present case, the Committee observes that the State party facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee notes that the State party has granted the complainant a residence permit for 3 years. By doing so, it has remedied the breach of its obligations under article 22 of the Convention.

16.5 In view of the fact that the complainant, who was not tortured during his stay in Pakistan, has returned to the State party, where he has received a residence permit for three years, the Committee considers that the issue whether his deportation to Pakistan constituted a violation of article 3 is moot.

17. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the deportation of the complainant to Pakistan despite standing interim measures, constituted a breach of article 22 of the Convention, as long as the complainant was under the jurisdiction of Pakistan from 22 September 2005 to 31 March 2006.

18. In the light of the above, the State party has already remedied this breach.

[Adopted in English, French, Russian and Spanish, the English 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.]
