



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

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COMMITTEE AGAINST TORTURE  
Thirty-fifth session  
7-25 November 2005

**DECISION**

**Communication No. 254/2004**

*Submitted by:* S.S.H. (represented by counsel, Mr. Werner Spirig)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 7 September 2004

*Date of present decision:* 15 November 2005

*Subject matter:* Expulsion of complainant to Pakistan

*Procedural issues:* None

*Substantive issues:* Non-return (non-refoulement)

*Articles of the Convention:* 3

[ANNEX]

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\* 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-fifth session**

**concerning**

**Communication No. 254/2004**

*Submitted by:* S.S.H. (represented by counsel, Mr. Werner Spirig)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 7 September 2004

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

*Meeting on 15 November 2005,*

*Having concluded* its consideration of complaint No. 254/2004, submitted to the Committee against Torture by Mr. S.S.H. 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 of the Convention**

1.1 The complainant, S.S.H., a Pakistani national, born on 2 March 1969, is now in Switzerland, where he filed an application for asylum on 22 May 2000. The application was rejected on 20 June 2002. The complainant asserts that his return to Pakistan would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 16 September 2004. At the same time the Committee, acting under article 108, paragraph 1, of its rules of procedure, decided that interim measures of protection, as sought by the complainant, were not justified in the circumstances.

### **The facts as submitted by the complainant**

2.1 The complainant was an official in the Pakistani Ministry of Culture, Sport and Tourism from 1989 on. He obtained the post as a result of the contacts maintained by his father with the Minister, Mushahid Hussain Sayyed. The Government of Prime Minister Nawaz Sharif was dismissed on 12 October 1999. The new Government of General Pervez Musharraf then opened an investigation into the activities of the former Minister, who was suspected of corruption and placed under house arrest. In December 1999 a colleague of the complainant, Mr. Mirani, disappeared. The complainant subsequently learned through a friend who at the time worked for the National Accountability Bureau (NAB) that Mr. Mirani had been arrested and tortured by the Bureau, and that before his death in detention he had told them that the complainant was close to the Minister.

2.2 Fearing that he might suffer the same fate as his colleague, the complainant left the country on 22 February 2000 on his official passport. He did so illegally, since the new Government had introduced a new law requiring all officials to obtain official authorization, the "no-objection certificate", from the secret service before leaving the country. The complainant obtained authorization to leave the country from his superiors but not the required authorization from the secret service. After he had left the country, on several occasions men asked his father where he was. His mother thought that the authorities wanted to arrest their son.<sup>1</sup>

2.3 The complainant arrived in Europe on 21 May 2000 and filed an application for asylum in Switzerland on 22 May 2000. In a decision of 20 June 2002 the application was rejected by the Federal Office for Refugees (ODR), which ordered his expulsion from Swiss territory. On 7 April 2004 the Asylum Appeal Commission (CRA) rejected the complainant's appeal. The Commission considered that the complainant had no further reason to fear political persecution since the Minister with whom he had maintained close relations was no longer under house arrest. The Commission thus upheld the decision by the Federal Office for Refugees ordering his expulsion. In a letter dated 16 April 2004 the Federal Office for Refugees set 11 June 2004 as the date on which he must leave Switzerland. On 14 June 2004 the complainant filed an application for review with suspensory effect with the Asylum Appeal Commission. The application was rejected on 23 June 2004. On 15 July 2004 the complainant had sought a deferral of the departure date, on the ground that he was required to give two months' notice to leave his job. On 30 July 2004 the Federal Office for Refugees held that this ground was not such as to justify deferral. The complainant is no longer authorized to stay in Switzerland and may thus be expelled to Pakistan at any time.

### **The complaint**

3.1 The complainant asserts that there are substantial grounds for believing that he would be subjected to torture if returned to Pakistan and that his expulsion to that country would constitute a violation by Switzerland of article 3 of the Convention.

3.2 He fears being subjected to torture since he was a close collaborator of the former Minister, Mr. Mushahid Hussain Sayyed. In addition, he is afraid that the authorities will initiate proceedings against him since he left the country illegally in that he did not obtain the required

authorization, the “no-objection certificate”, from the secret service. He would thus be liable to five years’ imprisonment, and would also be liable to seven years’ imprisonment for having made use of his official passport.

3.3 The complainant claims that his personal fears of being tortured were consistently substantiated during the review of his application for asylum. He also asserts that the Federal Office for Refugees at no time cast doubt on the details he supplied to the Office of his treatment in Pakistan.

### **State party’s observations on admissibility and merits**

4.1 By a note verbale of 1 November 2004 the State party indicated that it would not contest admissibility, and on 9 March 2005 formulated observations on the merits. Firstly, it recalled the reasons why, following thorough consideration of the complainant’s allegations, the Asylum Appeal Commission, like the Federal Office for Refugees, was unconvinced that the complainant ran a serious risk of being persecuted if returned to Pakistan.

4.2 The State party recalled that the Appeal Commission, in its decision of 7 April 2004, noted that the complainant had apparently not encountered even the slightest difficulty in leaving Pakistan through Karachi airport with his official government passport. According to the Commission, that showed that at the time of his departure the complainant ran no risk of being subjected to ill-treatment. The Commission then considered whether such a risk had materialized in the intervening period and concluded that this was not the case since the house arrest imposed on the former Minister had been lifted in December 2000.

4.3 According to the Asylum Appeal Commission, there were other factors casting doubt on the assertion that the complainant ran a risk of ill-treatment in the event of return to Pakistan. The Commission considered that the family links between the persons cited by the complainant before the Commission meant that their statements could not be relied on with any degree of confidence. Furthermore the complainant never demonstrated that he had been politically active.

4.4 The Asylum Appeal Commission, on reviewing an appeal by the complainant in which he asserted that he was in peril of criminal prosecution owing to his illegal emigration and his improper use of his official passport, in a decision of 23 June 2004 again rejected the appeal, on the ground that the risk was already known to the complainant at the time of the ordinary proceedings and that the new documents produced could have been submitted during those proceedings.

4.5 Secondly, the State party considered the merits of the decision by the Asylum Appeal Commission in the light of article 3 of the Convention and the Committee’s jurisprudence. The State party notes that the complainant merely recalled before the Committee the grounds cited before the national authorities and cited no new evidence for reconsideration of the Appeal Commission’s decisions of 7 April and 23 June 2004.

4.6 Having recalled the Committee’s jurisprudence and its general comment No. 1 on the implementation of article 3 of the Convention, the State party fully endorses the grounds cited by the Asylum Appeal Commission substantiating its rejection of the complainant’s application for asylum and upholding his expulsion. It recalls the Committee’s jurisprudence whereby the

existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, “foreseeable, real and personal”.<sup>2</sup> The State party notes that the specific instances of torture in Pakistan cited by the complainant concerned political activists, whereas the complainant himself had never engaged in political activity.

4.7 As for the risk of torture incurred owing to the complainant’s links with his former employer, the State party notes that officials who did not discharge particularly sensitive functions within the former Government were not at risk of reprisals from the Pakistani army. As a stenotypist, the complainant did not discharge such duties. In any event, had that been the case, the State party considers that the complainant would certainly have been arrested immediately after the October 1999 coup d’état and placed under house arrest. Furthermore the complainant’s name did not appear on the so-called “Exit Control List” drawn up by the Pakistani army, and which was tantamount to a prohibition on leaving the country for persons whose names appeared on the list. Lastly, the State party notes that the house arrest of the former Minister was lifted after 14 months; he seems not to have suffered ill-treatment and is on good terms with the current Government.

4.8 From the standpoint of article 3 of the Convention, the State party indicates that, according to the Committee’s consistent jurisprudence, this provision offers no protection to a complainant who merely alleges a fear of being arrested on return to his or her country.<sup>3</sup> This conclusion is all the more valid where there is simply a possibility of being detained.<sup>4</sup> The State party considers that the complainant has not demonstrated that he is likely to be subjected to torture in the event of arrest. Should criminal proceedings be initiated against the complainant, he could, in any event, be represented by counsel and undoubtedly benefit from the support of the former Minister.

4.9 Lastly, the State party explains that the complainant has never claimed to have suffered ill-treatment in the past, or to have been politically active in Pakistan or elsewhere.

4.10 The State party concludes that the complainant’s statements do not lead to the conclusion that there are substantial grounds for believing, as specified in article 3, paragraph 1, that he would be in danger of being subjected to torture if returned to Pakistan.

### **Complainant’s comments on the State party’s observations**

5.1 By a letter dated 26 May 2005 the complainant submitted comments on the State party’s observations.

5.2 Regarding his position within the Ministry, he explained that while his job title was “stenotypist”, that position in Pakistan corresponded to the post of the Minister’s personal secretary. As such, he was privy to all communications, directives and orders issued by the former Minister, both in the office and at home. He thus represented a major source of information in any investigation into Mr. Sayyed’s activities.

5.3 As for his lack of political involvement, the complainant states that he feared political persecution owing to his familiarity with the former Minister's affairs. Although Mr. Sayyed is now free to resume his political activities, the complainant asserts that, should he oppose the current Government, the old charges of corruption would resurface. In that eventuality the complainant would be compelled to provide the necessary information to the National Accountability Bureau.

5.4 With regard to his fear of being arrested and charged if returned to Pakistan owing to the fact that he left the country illegally, the complainant emphasizes that on his arrest the Pakistani police would present him with a long list of charges arising from his former position within the Ministry. The complainant considers that he would then not receive any support from Mr. Sayyed.

### **Issues and proceedings before the Committee**

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it 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 further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to consideration of the merits.

6.2 The first issue before the Committee is whether return of the complainant to Pakistan would constitute a violation of the obligation of the State party, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must determine, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Pakistan. In order to take such a decision, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on 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 flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 In the present case the Committee considers that the indication that the complainant's former colleague, Mr. Mirani, reportedly gave the complainant's name to the National Accountability Bureau under torture does not in any way mean that the complainant is himself likely to be arrested and tortured. The complainant merely asserts that on several occasions unidentified men sought to determine his whereabouts. It would appear, in any event, that these men ended their investigations around July 2001. Accordingly, the Committee considers that there is nothing to indicate that the complainant is now being sought by the Pakistani authorities.

6.6 Further, the Committee notes that the complainant, as a "stenotypist", did not discharge sensitive duties within the former Government. Further, his name did not appear on the Exit Control List prepared by the Pakistani army, and the complainant himself acknowledges that he was never an active political opposition figure. The Committee is thus unable to conclude that the complainant would be exposed to a substantial risk of being tortured owing to his former position within the Ministry.

6.7 The Committee also notes that the house arrest of the former Minister was lifted after 14 months and that he was not troubled further by the Pakistani authorities. The Committee thus considers it improbable that the complainant would be subjected to ill-treatment on his return to Pakistan.

6.8 With regard to the risk of being arrested and charged owing to the fact that the complainant left Pakistan illegally and made improper use of his official passport, the Committee recalls that the mere fact that the complainant might be arrested and tried would not constitute substantial grounds for believing that he would be in danger also of being subjected to torture.<sup>5</sup> The complainant has not submitted any proof that he is likely to be subjected to torture in the event of arrest.

6.9 In view of the foregoing, the Committee considers that the complainant has not 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, as required under article 3 of the Convention.

7. Accordingly, 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 does not reveal a breach of article 3 of the Convention.

[Done 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.]

**Notes**

<sup>1</sup> These men have not reappeared since July 2001.

<sup>2</sup> Communications Nos. 94/1997 (*K.N. v. Switzerland*), decision of 19 May 1998, para. 10.5, and 100/1997 (*J.U.A. v. Switzerland*), decision of 10 November 1998, para. 6.5.

<sup>3</sup> Communication No. 57/1996 (*P.Q.L. v. Canada*), decision of 17 November 1997, para. 10.5.

<sup>4</sup> Communication No. 65/1997 (*I.A.O. v. Sweden*), decision of 6 May 1998, para. 14.5.

<sup>5</sup> Communication No. 57/1996 (*P.Q.L. v. Canada*), decision of 17 November 1997, para. 10.5.

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