



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

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COMMITTEE AGAINST TORTURE
Thirty-fourth session
2-20 May 2005

DECISION

Communication No. 222/2002

Submitted by: Z. E. (represented by counsel,
Mr. Marcel Zingast)

On behalf of: Complainant

State party: Switzerland

Date of complaint: 28 November 2002

Date of present decision: 3 May 2005

[ANNEX]

* Made public by decision of the Committee against Torture.

** Reissued for technical reasons.

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-fourth session

on

Communication No. 222/2002

Submitted by: Z. E. (represented by counsel,
Mr. Marcel Zingast)

On behalf of: Complainant

State party: Switzerland

Date of complaint: 28 November 2002

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

Meeting on 3 May 2005,

Having concluded its consideration of complaint No. 222/2002, submitted by Mr. Z. E. 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:

Draft Views under article 22, paragraph 7, of the Convention

1.1 The complainant, Mr. Z. E., a Pakistani national, is currently in Switzerland, where he applied for asylum on 27 September 1999. His application was rejected, and he maintains that sending him back to Pakistan would constitute a violation by Switzerland of article 3 of the Convention against Torture. He asks the Committee to apply interim measures of protection since, on the date he lodged his complaint, he faced imminent deportation. He 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 on 3 December 2002. At the same time, acting pursuant to article 108, paragraph 1, of its rules of procedure, it asked the State party not to deport the complainant to Pakistan while his complaint was under consideration. The State party agreed to that request on 3 February 2003.

The facts as submitted by the complainant

2.1 The complainant, baptised a Roman Catholic, converted to Islam in 1990 while at university under the influence of his fellow students and in order to improve his career prospects. His conversion was not based on genuine conviction and, conscience-riven, he reverted openly to Christianity in 1996 and had himself rebaptised by a Catholic priest.

2.2 At the University of Lahore, however, the complainant was still regarded as a Muslim and was appointed President of the Muslim Students Federation in 1997. At the same time he was visiting Christian prisoners as a member of the Christian "Prison Fellowship" prisoner aid association. Discovering this in December 1998, Muslim Students Federation officials threatened to kill him and the complainant had to leave the University. Federation officials also pressed the police to bring criminal proceedings against the complainant under article 295c of the Pakistani Criminal Code.

2.3 In early January 1999 the complainant was detained at a police station, where he was ill-treated and threatened with death. He was lucky enough to be able to escape through the lavatory window. He then went into hiding and arranged to flee to Switzerland.

2.4 The complainant submitted an application for asylum in Switzerland on 27 September 1999. The application was rejected by the Federal Office for Refugees by decision dated 10 January 2002. An appeal by the complainant was also rejected, by the Swiss Asylum Review Commission, in a ruling dated 5 August 2002. In a letter dated 9 August 2002, the Federal Office for Refugees set 4 October 2002 as the date on which he should leave Switzerland. On 26 September 2002, the applicant lodged an application for review with suspensive effect with the Swiss Asylum Review Commission. The Commission found the application manifestly groundless in a decision dated 10 October 2002. It rejected the application in a ruling dated 13 November 2002. The complainant is no longer authorized to live in Switzerland and may be expelled to Pakistan at any time.

The complaint

3.1 The complainant asserts that he is in danger of being immediately arrested by the police, tortured or ill-treated or even condemned to death or summarily executed if he is deported to Pakistan.

3.2 In justification of his fear, the complainant points out that the Muslim Students Federation has brought proceedings for blasphemy against him. He supports this assertion with a letter from the President of the Christian Lawyers Association (CLA) dated 17 August 2002, stating that proceedings under article 295c of the Pakistani Criminal Code have been instituted

against Z. E. and suspended for the time being owing to the absence of the individual concerned, but that they will be immediately resumed upon his return to Pakistan. The President of CLA also refers to three death sentences passed on Christians under article 295c of the Pakistani Criminal Code. The complainant draws attention, with particular reference to reports by Amnesty International and the Asian Human Rights Commission, to the risks that declared apostates face when they come before the Pakistani justice system.

3.3 The complainant also submits a letter from his father dated 20 June 2002, explaining that under pressure from the Muslim Students Federation the police have been going to his home every month to try and arrest his son pursuant to article 295c of the Criminal Code. The letter makes it plain that the complainant is accused of having insulted the Prophet, cast the Koran into disrepute and spurned Islam, and can therefore expect the death penalty.

3.4 The complainant explains that, even if he were not to be arrested, his life and physical safety would be in danger because the police would afford him no protection against threats from his former fellow students and supporters of the Muslim Students Federation.

Comments by the State party on admissibility and the merits

4.1 By letter dated 3 February 2003, the State party indicated that it did not challenge the admissibility of the complaint. It added that the deportation order against the complainant would not be enforced until the Committee lifted its precautionary measure.

4.2 By letter dated 28 May 2003, the State party submitted its comments on the merits of the complaint. It began by setting out the reasons why, following a detailed review of the complainant's allegations, the Swiss Asylum Review Commission, like the Federal Office for Refugees, was not convinced that Z. E. was seriously at risk of prosecution if deported to Pakistan.

4.3 In its decision dated 5 August 2002, the Asylum Review Commission found it surprising that the complainant, Christian by background and religion, had been able to practice his religion, visit Christian prisoners every week and attend Christian congresses abroad, sometimes for several months each year, while on the other hand being the President of the faculty Muslim Students Federation without his fellow students noticing that he was not a Muslim. Such a situation, if true, at the very least indicated that there was a modicum of tolerance in Pakistan, even assuming that the complainant had concealed his religion on being appointed President of the Federation. Indeed, the State party argues, the fact that the complainant had been prepared to serve as President of the Muslim Students Federation at his faculty showed beyond any doubt that he was not all worried about being disturbed or threatened.

4.4 Other evidence also challenged the notion that the complainant had been persecuted by the authorities or was wanted for blasphemy: between January and July 1999, according to the State party, the complainant lived undisturbed at his family's second home in Johannabad, some 20 kilometres from Lahore. Although he claims to have been at his uncle's home in Karachi in August and September 1999, where again he encountered no problems, the complainant had a new passport issued in Lahore on 12 August 1999. The State party argues that the complainant must plainly have stated his religion in order to obtain the passport.

4.5 Presented with a request to review its decision, in which the complainant mentioned for the first time that he had renounced Islam in 1996, the Swiss Asylum Review Commission turned down the request in a fresh decision on 13 November 2002, referring in the main to an interim decision of 10 October 2002 by the reporting magistrate who pointed out that the complainant could not satisfactorily explain why he had not mentioned his apostasy before the review proceedings. The reporting judge also observed that the evidence supplied by the complainant would not alter the Commission's conclusions regarding the blasphemy proceedings. In the course of those proceedings the complainant had produced two reports from the Lahore police (dated 16 June 1994 and 9 February 1998), the first relating to an alleged kidnapping, the second, to allegations that the complainant had had intimate relations with, or even raped, a Muslim woman. In the view of both the reporting judge and the Commission, the two reports proved that the complainant had no longer been having problems with the authorities by the time he left Karachi.

4.6 The State party then proceeds to discuss the grounds for the Commission's decisions in the light of article 3 of the Convention and the Committee's case law. It considers that the complainant has done no more than remind the Committee of the arguments raised before the national authorities, producing no new evidence that might challenge the Commission's decisions of 5 August and 13 November 2002. Among other things, the State party considers, the complainant fails to explain the inconsistencies and contradictions in his allegations to the Committee: quite the contrary, he confirms them.

4.7 As regards the complainant's fears of being immediately arrested by the police if sent back to Pakistan and of his life and physical safety being threatened by his former fellow students and supporters of the Muslim Students Federation, and the letter from the complainant's father stating that, under pressure from the Muslim Students Federation, the police were going to his home every month to try and arrest his son, the State party finds it surprising that, according to an e-mail message dated 28 October 2002 from the President of the Christian Lawyers Association, no complaint has been lodged against him. The State party draws attention, furthermore, to the blatant contradiction between that e-mail and the letter dated 17 August 2002 (see paragraph 3.2 above), both signed by the same individual.

4.8 In the course of his appeal before the Swiss Asylum Review Commission, the complainant produced his passport, issued in Lahore on 12 August 1999 when, according to him, the local security forces were looking for him in connection with a criminal charge of blasphemy. Moreover, the complainant had apparently not encountered the slightest problem when, leaving Pakistan, he departed from Karachi airport on 5 September 1999. The State party finds it highly improbable that a person wanted by the police for a capital offence could have a new passport issued and take off from Karachi airport without incident.

4.9 Citing the Committee's case law to the effect that article 3 affords no protection to complainants who simply claim they are afraid of being arrested on returning to their home countries¹ and in view of the foregoing, the State party argues it may reasonably be concluded that the complainant would not be in danger of arrest if sent home to Pakistan. Even if he were, that "would not constitute substantial grounds for believing that he would be in danger of being subjected to torture".²

4.10 The State party finds the importance which the complainant attaches to apostasy surprising, particularly since he did not make the claim until 26 September 2002 when he requested a review of the initial decision by the Swiss Asylum Review Commission. Given that the complainant finds the point crucial, the State party feels that he might reasonably have been expected to mention it earlier in the asylum proceedings. The complainant explains the omission in his application for review partly by saying that he was ashamed, partly by saying that he feared the consequences of his apostasy, and lastly by saying that he did not realize the importance of the point until after the Commission handed down its decision on 5 August 2002. The State party finds this explanation unconvincing.

4.11 Even if the allegations of apostasy were credible, they would not necessarily mean that the complainant would be in danger of being tortured if sent home to Pakistan. The complainant says that his fellow students discovered his apostasy in December 1998 and made serious threats against him thereafter. The State party points out that if the police or the complainant's Muslim opponents had really wanted to arrest or disturb him, they could easily have found him at his family's second home while he was living there between January and July 1999. But they did not. On the contrary, the complainant was left untroubled both in his second home and in Karachi, where he lived from August 1999 until his departure in September 1999. It is also surprising, the State party finds, that the Lahore police report of 9 February 1998 explicitly mentions that the complainant is a Christian when the complainant claims to have presided over the branch of the Muslim Students Federation at his faculty from October-November 1997 onwards, his apostasy becoming common knowledge only in December 1998.

4.12 The State party alludes to the Committee's case law to the effect that 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 return to that country; additional grounds must be adduced for the risk of torture to qualify as "foreseeable, real and personal" for the purposes of article 3, paragraph 1, of the Convention.³ Last, the State party refers to general comment No. 1, on the application of article 3, in which the Committee specifies that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion".

4.13 Christians in Pakistan do not, generally speaking, appear to the State party to be persecuted. In principle they can live their own lives without really being harassed. The complainant's case proves it, the State party argues, as his curriculum vitae goes to show. The complainant has, for example, regularly been able to attend various Christian congresses abroad. He has been able to visit Christian prisoners every week. Besides, his family, which is also Christian, seems to be able to live without major difficulty in Pakistan.

4.14 As regards threats to the complainant's life or physical safety from supporters of the Muslim Students Federation or his former fellow students, the State party points out that article 3 of the Convention must be interpreted in the light of article 1. Article 1 of the Convention defines the perpetrators of torture, limiting the scope of the notion to public officials or other persons acting in an official capacity, or others acting at the instigation of or with the consent or acquiescence of such officials or other persons. The definition thus excludes any extension of

the article to cover cases in which torture is inflicted by a third party. The Committee has held that “the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention”.⁴

4.15 The State party explains that there have been instances of serious violence against churches and other Christian institutions in Pakistan, but they are certainly not tolerated by the authorities. President Musharraf publicly condemned the tragic attack in Islamabad in August 2002, following which the police arrested 27 Islamic extremists. The police arrested four suspects after an attack in Lahore in December 1992, one of them a Muslim clergyman. Furthermore, the Pakistani Government has arranged better protection for Christian places of worship against extremist acts. The Protestant International Church in Islamabad, for instance, is one of the best protected buildings in Pakistan. And in recent months, the Pakistani Government has outlawed seven Muslim fundamentalist organizations.⁵

4.16 Given the Pakistani Government’s reactions to serious violence against Christian churches, it can hardly be argued, in the State party’s view, that the Government condones the violence or is loath to protect Christians. A mere claim by the complainant that the police “will afford him no protection against attempts on his life [by his former fellow students and Muslim Students Federation supporters]” gives no grounds for concluding otherwise. In the current case, the condition *ratione personae* is not met.

4.17 Lastly, the State party wholeheartedly endorses the grounds on which the Swiss Asylum Review Commission found that the complainant’s allegations lacked credibility. It believes that the complainant’s statements emphatically do not suggest there are substantial grounds for believing, in keeping with article 3, paragraph 1, of the Convention, that the complainant would be in danger of being tortured if sent back to Pakistan.

Complainant’s comments on the State party’s observations

5.1 In a letter dated August 2002, the complainant stands by the points made in his initial complaint.

5.2 He also relates the difficulties he faced in living in Pakistan after escaping from the police station in Lahore in early January 1999. He explains that he had to go into hiding between January and July 1999 at his family’s second home in Johannabad, where he lived with the doors locked and windows darkened, being supplied with food in secret by his father while avoiding being spotted by the neighbours. His uncle had then hidden him for a month in Karachi.

5.3 On the subject of his passport, the complainant explains that it is customary in Pakistan to employ a go-between to deal with the formalities of obtaining a passport. That is what his father had done; it did not diminish the danger he had been in.

5.4 The complainant confirms that the police report of February 1998 refers to him as a Christian. He maintains, however, that his conversion to Islam was not known about outside the confines of the University of Lahore, which only discovered his apostasy in December 1998 and, thus, only informed the police sometime thereafter.

5.5 The complainant points out that, irrespective of the plausibility of the statements he made in the course of his application for asylum in Switzerland, the documents submitted testify to his conversion to Islam on 21 February 1990 and his second baptism in accordance with the Roman Catholic rite on 27 February 1996.

5.6 Lastly, while he does not deny that the Pakistani authorities are opposed to public acts of violence against Christians and Christian facilities, the complainant avers that he, as an apostate, and given the more restrictive law and jurisprudence relating to blasphemy, is in danger. He adds that pro-Islamic and anti-Christian sentiment is on the rise in Pakistani State institutions, including the police and the justice system, and that the laws on blasphemy are interpreted restrictively. He also alludes to an article dated 10 July 2003 about an editor at the *Frontier Post* daily newspaper who was sentenced to life imprisonment for publishing a letter that was found to be critical of Islam. Lastly, the complainant concludes that it is entirely plausible that, on returning to Pakistan, he will be immediately denounced for blasphemy, arrested by the police, tortured and condemned to death.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, 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 also notes that the State party has not challenged the admissibility of the complaint, which it therefore finds admissible. As both the State party and the complainant have commented on the merits of the complaint, the Committee now proceeds to examine the case on its merits.

6.2 The Committee must determine whether sending the complainant back to Pakistan would violate the State party's obligation under article 3 of the Convention not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, as called for in article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if sent back to Pakistan. In doing so, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The purpose of the exercise, however, is to determine whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. Hence the existence of a consistent pattern of gross, flagrant or mass violations of human rights 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 return to that country; additional grounds must exist 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 is in no danger of being subjected to torture in the specific circumstances of his case.

6.4 The Committee recalls its general comment No. 1 on the application of article 3, which reads:

“Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, 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 notes that the State party has drawn attention to inconsistencies and serious contradictions in the complainant’s accounts and submissions which call into question the truthfulness of his claims. The Committee also takes note of the information furnished by the complainant on these points.

6.6 As regards the first part of the complaint, which concerns the risk of arrest by the police if the complainant returns to Pakistan, the complainant argues that there are criminal proceedings pending against him for blasphemy.⁶ Yet the Committee observes that the letters from the complainant’s father dated 20 June 2002 and the President of the Christian Lawyers Association dated 17 August 2002 which mention those proceedings are contradicted by the CLA President in the e-mail he sent on 28 October 2002; this has, incidentally, been remarked upon by the State party, but the complainant has made no comment. Similarly, the fact that the complainant spent seven months at his father’s second home, then two months at his uncle’s home, without being troubled by the police when the police were supposed to be searching for him for blasphemy, particularly after he had escaped from a police station, does not seem plausible. The same can be said of the complainant’s acquisition of a new passport and untroubled departure from Karachi airport. The complainant’s later comments on these points (see paragraphs 5.3 and 5.5 above) do not satisfactorily address these inconsistencies.

6.7 The second ground put forward by the complainant for his arrest has to do with his apostasy in 1996. The Committee observes that this argument was only put forward as a reaction to the Swiss authorities’ decisions to turn down the complainant’s application for asylum, and the complainant - who had a lawyer in attendance throughout the proceedings - has been unable to provide a consistent and convincing explanation for its tardy production. The complainant does not contest this point in his comments of 4 August 2002.

6.8 As regards the second part of the complaint, which concerns threats to the complainant’s physical safety, the Committee finds, first, that the complainant has not substantiated his allegation of ill-treatment while in detention in early January 1999. Similarly, the assertion by the complainant that he is in danger of being tortured by the police and condemned to death if sent back to Pakistan are contradicted by the Committee’s observations concerning the risks of arrest. This assertion, too, is supported by inadequately substantiated, not to say contradictory, arguments from the complainant in his comments of 4 August 2002.

6.9 In the light of the foregoing, the Committee concludes that the complainant has not demonstrated that there are substantial grounds for believing that sending him back to Pakistan would expose him to real, substantial and personal danger of being tortured within the meaning of article 3 of the Convention.

7. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the complainant's removal to Pakistan by the State party would not constitute a breach 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.]

Notes

¹ Communication No. 57/1996 (*P.Q.L. v. Canada*): "... even if it were certain that the author would be arrested on his return to China because of his prior convictions, the mere fact that he would be arrested and retried would not constitute substantial grounds for believing that he would be in danger of being subjected to torture". The same applies a fortiori to the mere risk of being detained (Communication No. 65/1997, *I.A.O. v. Sweden*).

² Ibid.

³ Communication No. 94/1997 (*K.N. v. Switzerland*).

⁴ Communications Nos. 83/1997 (*G.R.B. v. Sweden*), 130 and 131/1999 (*V.X.N. and H.N. v. Sweden*), and 94/1997 (*K.N. v. Switzerland*).

⁵ Reuters report dated 14 August 2002.

⁶ Following a complaint to the police from the Muslim Students Federation when it learned of the complainant's Christian activities while he was serving as President of the Federation.
