

# The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) - – Articles 22 and 20\*

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## Article 22: Persons' right to complain

Article 22 gives a person the right to complain to the Committee Against Torture<sup>1</sup> (hereinafter the Committee) if he presumes that a country which has ratified the CAT is in breach of one or more of the CAT provisions.

The main conditions to be fulfilled in order to launch a complaint are found in the following paragraphs of Article 22:

### Par. 1:

- Independent ratification
- (56 out of 142 states have ratified as of January 2006)<sup>2</sup>

### Par. 2:

- Minus anonymous
- Minus abuse

### Par. 5 (a):

- Minus other international procedures

### Par. 5 (b):

- + exhausted domestic remedies
- Dialogue with state party and complainant

### Par. 8:

- Possibility to withdraw from Article 22

The CAT secretariat registers the complaint. If it fulfills the mentioned conditions, the Committee will start an investigation. The duties of the Committee regarding Article 22 are the following:

- All proceedings in private meetings (confidential)
- Receiving communications from individuals and considering:
  - i. Admissibility
  - ii. Substance

Until now all proceedings are in private.

The outcome:

- Decisions (on i and ii) are published in the Annual Report
  - Name of author anonymous (if he so wishes)
  - Name of country public

Only 56 State Parties of the 142 states that have ratified CAT, thus declared themselves in favour of Article 22.<sup>2</sup> The geographical distribution of the ratifications is remarkable (Table 1).

It might have been expected that most of the cases would consider breaches of Articles 2 and 1, where claimants accuse the state

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Table 1.

	Western states, incl. the former Eastern Euro- pean states	Africa	Latin America & the Caribbean	Asia	Total
No. of state parties	36	10	10	0	56

parties of having carried out torture. However, less than five cases deal with this. A possible explanation can be that the claimants prefer to turn to the regional courts (the European Court in Strasbourg or the Inter-American in Costa Rica). If they win the cases in the regional courts, the state will be sentenced to pay quite substantial amounts of money to the claimants, while the Committee can “only” blame the state and make suggestions.

In the area regarding the problem of sending persons back to countries where they risk being subjected to torture, the articles of CAT prevail over the provisions of all other conventions. That is Article 3, par. 1 of the CAT reads:

“No state party shall expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for be-

lieving that he would be in danger of being subjected to torture.”

As of 20 May 2005<sup>3</sup>, the experience is that:

269 complaints have been registered, derived from 24 countries:

- 69 discontinued
- 47 declared inadmissible
- 111 final decision on merits, of these:
  - 32 were found as violations of the Convention
  - 42 still pending

Out of these 269 complaints, not less than 126 case decisions are regarding Article 3.1: (Table 2).

The CAT overrules other conventions, e.g. *Paez versus Sweden (Case 39/1996)*:<sup>4</sup>

Table 2.

Country	+ Violation	- Violation	Inadmissible	Total
Sweden	11	22	8	41
Switzerland	3	22	4	29
Canada	2	7	11	20
Netherlands	1	8	4	13
France	2	0	4	6
Australia	2	2	1	5
Denmark	0	5	1	6
Norway	0	0	2	2
Hungary	0	1	0	1
Greece	0	0	1	1
Finland	0	1	0	1
Germany	0	1	0	1
<b>Total</b>	<b>21</b>	<b>69</b>	<b>36</b>	<b>126</b>

All, i.e. Mr. Paez, the Committee, and the authorities of Sweden agreed that Mr. Paez was a terrorist. Sweden claimed that according to international law it was not allowed to give asylum to a terrorist. The Committee answered that under no circumstances should Mr. Paez be sent back to Peru where he would risk being tortured. How Sweden would solve this problem was up to Sweden. It was neither for the Committee nor for Mr. Paez to solve this problem. Finally, Sweden did not extradite Mr. Paez, but accepted his presence in the country.

Frequently, the involved state parties asked the members of the Committee: ‘How can the Committee, based only on the case papers, come to another decision than the state, who has interviewed the person several times, often for years?’ Our answer was that the Committee knows a great deal about the behaviour of a torture victim and we refer to the conclusions in case 41/1996 – *Ksoki versus Sweden - Communication No. 41/1996*:<sup>4</sup> “Par. 9.3.” The state party has pointed to contradictions and inconsistencies in the author’s story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author’s presentation of the facts are not material and do not raise doubts about the general veracity of the author’s claims.”

Finally, I wish to make a comment about the problem of the thresholds for what is “substantial”. When the United States ratified the Convention it defined “substantial” as being at least 50 percent probability. However, the more one knows about torture and the horror of it, the lower one sets the threshold.

I have been deeply involved in many of the decisions about Article 3 of the Convention, during my work in the Committee from

its start in 1988 to 2000. I will confess that the decisions regarding sending back or not have been the most difficult to take in my whole life.

The Committee has to be accepted by the state parties for its impartiality, accountability, sense of justice and fairness. At the same time, it has a very big responsibility for the well-being and possibly of the life of the complainant. I still have nightmares now and then ... not due to the 21 cases where the Committee prevented an expulsion, but because of some of the 69 cases where the Committee found no violation of Article 3, resulting in an expulsion. Have any of these been tortured when they were returned? One is one too many.

#### **Article 20: The Committee against the state<sup>5</sup>**

Article 20, paragraph 1, reads as follows:

“If the Committee receives *reliable information* which appears to it to contain *well-founded indications* that torture is being *systematically practiced* in the territory of a state party, the Committee *shall* invite that state party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.” (Author’s emphasis)

Article 20 is a potentially forceful article – which no doubt explains the existence of Article 28 of the Convention<sup>1</sup>, which, quite unusually for a human rights convention, specifically raises the possibility that states may make a reservation in respect of Article 20 “at the time of ratification”. While reservations to Article 20 (or to any other provision of the Convention) may be subsequently withdrawn, the phrase “at the time of ratification” appears to exclude the possibility of state parties making a reserva-

tion to Article 20 post-ratification. Thus, it is possible to change a “no” to Article 20 to a “yes”, but it is impossible to change a “yes” to a “no”.

By January 2006, Article 20 was in force with respect to all states except the following: Afghanistan, China, Equatorial Guinea, Israel, Kuwait, Mauritania, Morocco, Saudi Arabia and Syria<sup>2</sup>.

Para. 5 of article 20 says that “all the proceedings of the Committee referred to in paras. 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the state party shall be sought”.

However, when all investigations have finished, the Committee can decide “after consultation with the state party concerned, to include a summary account of the results of the proceedings in its annual report made in accordance with article 24 of the Convention”.

The Committee’s rule of procedure no. 73<sup>5,6</sup> is in accordance herewith, but para. 2 reads “meetings during which the Committee considers general issues, such as procedures for the application of article 20 of the Convention, shall be public, unless the Committee decides otherwise”. It is obvious that the Committee has discussed the contents and definition of “reliable information”, “well-founded indications” and “systematically practiced” thoroughly because the Convention’s text is quite clear: If the three questions are answered in the affirmative, the Committee *shall* invite the state party.

Naturally, only incidents that have taken place after the Convention came into force in the country concerned are of interest.

Furthermore, the torture described must comply with the definition of torture as stated in the Convention’s Article 1:

- “severe pain or suffering, whether *physical or mental*”
- “inflicted *intentionally*”
- “for such *purposes as ...*”
- “by a *public official*”

It should be noted that article 20 only concerns torture. It does not concern “other cruel, inhuman or degrading treatment or punishment”, or any other form of organised violence which is not defined as torture (e.g. forced disappearances and extrajudicial executions), nor does it concern capital punishment.

The number of actions that have been taken under Article 20 is also very limited as only six reports have been published:

- Turkey (1993)<sup>7</sup>
- Egypt (1995)<sup>8</sup>
- Peru (2001)<sup>9,10</sup>
- Sri Lanka (2002)<sup>11</sup>
- Mexico (2003)<sup>12</sup>
- Serbia and Montenegro (2004)<sup>13</sup>

During its Article 20 investigations the Committee found systematic torture in Turkey, Egypt, Mexico and Peru. In Sri Lanka and in Serbia and Montenegro systematic torture belonged to the past, while sporadic torture still occurred. Of those countries only Egypt and Sri Lanka have *not* declared themselves in favour of Article 22.

Making a reservation to Article 20 prevents the Committee against Torture from exercising one of its potentially most effective powers in relation to the concerned State Party. Nevertheless, it should be noted that less than five per cent of state parties (7 out of 142) have chosen to do so.

#### References

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