

## **Third Party Intervention of the International Commission of Jurists**

### **Case no. 2007/677, Norwegian Supreme Court**

The International Commission of Jurists (ICJ) is a non-governmental organisation working to advance understanding and respect for the Rule of Law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva (Switzerland). It is made up of 45 eminent jurists representing different justice systems throughout the world and has 90 national sections and affiliated justice organisations. The International Commission of Jurists has consultative status at the United Nations Economic and Social Council, the United Nations Organisation for Education, Science and Culture (UNESCO), the Council of Europe and the Organisation of African Unity. The organisation also cooperates with various bodies of the Organisation of American States and the Inter-Parliamentary Union. It regularly provides *amicus* briefs to courts and tribunals at both national and international levels.

#### **I. INTRODUCTION**

The ICJ considers that, if individual communications procedures such as that under the Convention Against Torture (CAT) are to retain their efficacy and integrity as mechanisms to protect human rights, interim measures requests made in the course of these procedures must be regarded as binding in international law, on all institutions of the State. Without binding interim measures, in cases such as that of Mr. Dar, the rights of the parties to the communication cannot be preserved pending the outcome of the process, and the object and purpose of the communications process is fatally undermined. The individual communications procedure under Article 22 of CAT is an optional one, but where a State Party to CAT undertakes in good faith to accept individual communications, this implies a commitment to a process capable of providing real and effective human rights protection, including where necessary through binding interim measures.

In particular, in this submission, the ICJ wishes to make the following points:

- The Committee Against Torture's clear and consistent position that its requests for interim measures are binding on States that have accepted the right of individual communication under Article 22 CAT, is a sound and authoritative interpretation of the international law status of such requests.
- The Committee's position as to the binding nature of interim measures is supported by law and practice of other similar international and regional tribunals, and account should be taken of jurisprudence of such tribunals, in the interpretation of Article 22 CAT.
- Article 22 should be interpreted purposively, in accordance with Article 31 of the Vienna Convention on the Law of Treaties. The primary purpose of the individual complaints procedure under Article 22 is to provide a means for individuals to protect their rights and for States to meet their obligations under the Convention. Article 22 aims to allow a full and meaningful consideration of individual cases by the Committee Against Torture, and it should be interpreted accordingly.

- Interim measures are essential to the integrity of the individual communications process since they preserve the rights of the parties pending the adoption of the Committee's views. Where a State has in good faith accepted the Article 22 process, the rules of procedure necessary to the process, including regarding interim measures, should be regarded as binding on the State under Article 22.

Part II of this submission considers interim measures as part of the individual communications process under the Convention Against Torture. Part III considers the relevant jurisprudence of other international courts and tribunals. Part IV analyses the status of the Committee Against Torture's requests for interim measures in light of relevant international law, and Part V sets out conclusions on the status of such measures.

## II. INTERIM MEASURES UNDER THE CONVENTION AGAINST TORTURE

Under Article 22 of the Convention Against Torture (CAT), states may by declaration accept the competence of the Committee Against Torture (the Committee) to hear individual communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by the State of the provisions of the Convention. Interim measures, not provided for in the text of the Convention itself, have their basis in Rule 108 of the Rules of Court, which states in paragraph 1 that:

“At any time after the receipt of a complaint, the Committee, a working group, or the Rapporteur(s) for new complaints and interim measures may transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of alleged violations.”

Requests for interim measures imply no determination of the admissibility or merits of the complaint.<sup>1</sup>

The text of Rule 108 states that interim measures are “requested” rather than imposed by the Committee. Nevertheless, the Committee Against Torture, in a series of cases where the authors of communications have been transferred from the territory despite requests under Rule 108, has stated unequivocally that it considers its requests for interim measures to be binding on States that have accepted the right of individual petition under Article 22.<sup>2</sup> Adopting a purposive interpretation of Article 22, the Committee has pointed to States' undertaking, in accepting Article 22, to co-operate with the Committee in good faith in its consideration of individual communications. It has also emphasised that, without respect for interim measures, the individual communications procedure becomes, in many cases, futile. A purposive interpretation of Article 22, therefore, implies an obligation to comply with a request for interim measures which is essential to protect against irreparable harm to the individual, pending the decision of the Committee, and to ensure that any eventual finding by

---

<sup>1</sup> Rule 108, para.2

<sup>2</sup> *Brada v France*, Comm No 195/2002; *Pelit v Azerbaijan*, Com No 281/2005, CAT/C/38/D/281/2005; *Dar v Norway* Comm No.249/2004, CAT/C/38/D/249/2004. See also *Rosana Nuñez Chipana v Venezuela*, Comm. No.110/1998, CAT/C/21/D/110/1998, para.8; *TPS v Canada*, Comm. No.999/1997, CAT/C/24/D/99/1997, para.15.6.

the Committee is not “nullified” or rendered purely academic because of action taken whilst the process is ongoing.<sup>3</sup>

Thus in *Brada v France*<sup>4</sup> the Committee concluded in clear terms that:

“The State Party’s action in expelling the complainant in the face of the Committee’s request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and this has rendered the Committee’s final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did, the State party breached its obligations under Article 22 of the Convention.”<sup>5</sup>

The Committee expressed itself in similar terms in *Pelit v Azerbaijan*,<sup>6</sup> where the State, having initially agreed to the request for interim measures, later disregarded it and removed the author of the complaint to Turkey. Expressing its deep concern, the Committee found a breach of the State’s obligations under Article 22.<sup>7</sup> In its Decision in the present case, *Dar v Norway*,<sup>8</sup> the Committee took the same position, recalling 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 thereunder.”<sup>9</sup>

The Committee has emphasised that the rules of procedure, in particular regarding interim measures, are integral to the Article 22 process and, to the extent that they are consistent with the Convention “become inseparable from the Convention.” In particular, “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”.<sup>10</sup>

The rules of procedure themselves also suggest a degree of expectation that the request will be complied with. Rule 108.5 provides that the Rapporteur for new complaints and interim measures shall “monitor compliance” with requests for interim measures. The rules specify a procedure for the request for interim measures to be lifted, at the request of the State.<sup>11</sup> This makes clear that the request for interim measures is to be lifted by the Committee, including on the basis of information drawn to its attention by the State Party, but not by unilateral action of the State Party.

---

<sup>3</sup> *TPS v Canada op cit*, para.15.6; *Cecilia Rosana Nunez Chipana v Venezuela, op cit*, para.8.

<sup>4</sup> Comm No 195/2002, para.13.4

<sup>5</sup> *Brada v France, op cit*, para.13.4

<sup>6</sup> Com No 281/2005, CAT/C/38/D/281/2005

<sup>7</sup> para.10.1

<sup>8</sup> Comm No.249/2004

<sup>9</sup> *Dar v Norway, op cit* para.16.3

<sup>10</sup> *ibid*

<sup>11</sup> Under Para.6 of Rule 108, the State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the request for interim measures should be lifted. Under para.7, the Rapporteur, the Committee or the Working Group may withdraw the request for interim measures.

### **III. INTERIM MEASURES UNDER OTHER INTERNATIONAL TREATIES, INCLUDING HUMAN RIGHTS TREATIES**

Interim measures requests by international tribunals have increasingly been interpreted as binding on States Parties. This has been the case in three categories of tribunals. First, tribunals which are empowered by treaty to issue binding judicial decisions, and where provision for interim measures is made in the relevant treaty, for example the Inter-American Court of Human Rights. Second, in tribunals which are empowered by treaty to issue binding judicial decisions, but where interim measures are either not addressed in the treaty (as with the European Court of Human Rights), or the treaty leaves their status unclear (as with the International Court of Justice). Third, in tribunals which, though provided for by treaty, have the power to issue only non-binding views or recommendations, and where the treaty does not address interim measures or their binding status. Within this category falls the individual communications before UN Human Rights Committee, the UN Committee Against Torture, and the Inter-American Commission on Human Rights. In all three of these categories, the relevant tribunals have affirmed the binding nature of their requests for interim measures, irrespective of their capacity to issue final decisions that are legally binding.

The ICJ submits that account should be taken of the jurisprudence of these tribunals, in the interpretation of the legal force of CAT interim measures and of Article 22 CAT. Each is briefly considered below.

#### ***Interim Measures under the ICCPR***

A system of individual complaints is provided for in the Optional Protocol to the International Covenant on Civil and Political Rights, which States Parties to the Covenant may choose to accept. The Optional Protocol does not itself provide for interim measures, but Rule 86 HRC Rules of Procedure states:

The Committee may, prior to forwarding its views on the communication to the State Party concerned, inform that State of its views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State Party concerned that such expression of its views on interim measures does not imply a determination on the merits of the communication.

Despite the absence of an express treaty basis for interim measures, the Human Rights Committee considers that the obligation to comply with interim measures is implied in the obligations under the Optional Protocol to co-operate with the Committee and the petitions procedure in good faith, and to allow the Committee to consider the merits of the case and forward its views to the parties.<sup>12</sup> In *Piandiong v the Philippines*,<sup>13</sup> where the authors had

---

<sup>12</sup> *Piandiong v the Philippines*, Comm No 869/1999, CCPR/C/70/D/869/1999, para.5.1. *Validzhon Khalilov v Tajikistan* Comm No 973/2001, CCPR/C/83/D/973/2001 para.4.1; *Mansaraj and others v Sierra Leone* Comm No. 841/98, CCPR/C/77/D/1086/2002, para.5.1; *Glen Ashby v Trinidad and Tobago*, Com No 580/1994, CCPR/C/74/D/580/1994, para.4.11.

been executed in disregard of interim measures of the Committee, the Committee considered that in light of this obligation to co-operate in good faith:

“a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its views nugatory and futile.”<sup>14</sup>

Furthermore, the Committee considered that, since interim measures are essential to the Committee’s role under the Protocol, disregard of them undermined the substance of the Covenant rights themselves:

“flouting of the Rule, especially by irreversible measures such as execution or ... deportation from the country, undermines the protection of the Covenant rights through the Optional Protocol”.<sup>15</sup>

These points were reiterated by the Committee in *Validzhon Khalilov v Tajikistan*<sup>16</sup> and *Mansaraj and others v Sierra Leone*, both of which also concerned executions contrary to Committee requests for interim measures.<sup>17</sup>

In *Sholam Weiss v Austria*,<sup>18</sup> the Committee applied this analysis to a case of extradition, contrary to a request for interim measures staying the extradition, under Rule 86. In that case, the Committee’s request to suspend the author’s extradition to the United States had been turned down by the Austrian courts.<sup>19</sup> The Committee found that Austria had breached its obligations under the Protocol “by extraditing the author before the Committee could address the author’s allegation of irreparable harm to his Covenant rights.”<sup>20</sup>

The Human Rights Committee has also considered that the absence of direct applicability of the ICCPR by national courts could not be invoked to evade the obligation to observe interim measures. In *Roberts v Barbados* it held that, although the Covenant was not part of the domestic law of Barbados:

“the State Party has nevertheless accepted the legal obligation to make the provisions of the Covenant effective. To this extent, it is an obligation for the State party to adopt appropriate measures to give legal effect to the views of the Committee as to the interpretation and application of the Covenant in particular cases arising under the Optional Protocol. This includes the Committee’s views under rule 86 of the rules of

---

<sup>13</sup> *Piandiong v the Philippines, op cit.*

<sup>14</sup> *ibid*, para.5.2

<sup>15</sup> *ibid*, para.5.3

<sup>16</sup> *op cit*, para.4.1- 4.2.

<sup>17</sup> *op cit*, para.5.1-5.2.

<sup>18</sup> Comm No. 1086/2002, CCPR/C/77/D/1086/2002, 3 April 2003

<sup>19</sup> *ibid*, para.5.2

<sup>20</sup> para.7.1.

procedure on the desirability of interim measures of protection, to avoid irreparable damage to the victim of the alleged violation.”<sup>21</sup>

### ***Interim measures of the European Court of Human Rights***

Article 34 of the European Convention on Human Rights (ECHR) sets out the right of individual petition to the European Court of Human Rights (ECtHR) and stipulates that “the High Contracting Parties undertake not to hinder in any way the effective exercise of this right.” Interim measures are provided for, not in the text of the Convention, but in Rule 39 of the Rules of Court.

In the leading case on the status of interim measures, *Mamatkulov and Askarov v Turkey*,<sup>22</sup> the Grand Chamber of the ECtHR affirmed the binding character of interim measures under Rule 39 and found a violation of Article 34 ECHR in the extradition of the applicants contrary to a request for interim measures by the Court. The Court rejected the government’s argument that interim measures could not be binding in the absence of an express treaty provision to that effect.<sup>23</sup> The Grand Chamber based its decision in the particular character of the Convention as a human rights treaty, so that in interpreting Article 34

“the Court must have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms. ... The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective, as part of the system of individual applications.”<sup>24</sup>

The Court noted that interim measures served two purposes. First, pending determination of the case, to preserve the subject matter of the application when that is judged to be at risk of irreparable damage.<sup>25</sup> This ultimately allowed the Court to give effect to any finding of responsibility,<sup>26</sup> and to give practical and effective protection to the Convention rights.<sup>27</sup> Second, interim measures, in particular those staying removal from the jurisdiction, enabled the Court to examine the case in accordance with its normal procedures, including by maintaining contact with the applicants through their lawyers and thereby assessing their claims.<sup>28</sup>

Interpreting the Convention in accordance with Article 31 of the Vienna Convention on the Law of Treaties,<sup>29</sup> the Court noted that, “in light of the general principles of international law,

---

<sup>21</sup> Comm No 498.92, CCPR/C/51/D/489/1992, 19 July 1994, para.5.3.

<sup>22</sup> *Mamatkulov and Askarov v Turkey*, App Nos. 46827/99 and 46951/99. Judgment of the Grand Chamber, 4 February 2005.

<sup>23</sup> This had previously been the position taken by the Court in *Cruz Varas v Sweden* and *Conka v Belgium*, Com No. 51564/99

<sup>24</sup> *Mamatkulov and Askarov v Turkey*, *op cit*, para.101

<sup>25</sup> *ibid*, para.108

<sup>26</sup> *ibid*, para.113

<sup>27</sup> *ibid*, para.125

<sup>28</sup> *ibid*, para.108

<sup>29</sup> *ibid*, para.109

the law of treaties and international case-law, the interpretation of the scope of interim measures cannot be dissociated from the proceedings to which they relate or the decision on the merits they seek to protect.”<sup>30</sup> Article 34 ECHR was also to be considered in light of the right to an effective remedy, protected by Article 13 ECHR.<sup>31</sup> The Court considered that interim measures

“play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in these conditions a failure by a respondent State to comply with interim measures will undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State’s formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention.”<sup>32</sup>

*Mamatkulov* has been subsequently applied to identify a violation of Article 34 ECHR in *Shamayev and Others v Georgia and Russia*,<sup>33</sup> which concerned Georgia’s extradition of the applicants to Russia contrary to requests for interim measures under Rule 39 of the Rules of Court. The Court noted that, following their extradition, the applicants were unable to maintain contact with their legal representatives, so as to seriously disrupt the effective exercise of the right of individual petition. Therefore, the failure to abide by the request for interim measures breached Georgia’s obligations under Article 34.<sup>34</sup>

In *Aloumi v France*,<sup>35</sup> also following *Mamatkulov*, the Court found that the applicant’s expulsion to Algeria contrary to a request under Rule 39 prevented the Court from conducting a proper examination of his complaints and ultimately from protecting him, if need be, against potential violations of the Convention. As a result, the right of individual application had been hindered, and Article 34 breached. The Court noted:

“In cases such as the present one where there is plausibly asserted to be a risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention, the object of interim measures is to maintain the status quo pending the Court’s determination of the justification for the measure. As such, being intended to ensure the continued existence of the matter that is the subject of the application, the interim measure goes to the substance of the Convention complaint. The result that the applicant wishes to achieve through the application is the preservation of the asserted Convention right before irreparable damage is done to it.”<sup>36</sup>

---

<sup>30</sup> *ibid*, para.123

<sup>31</sup> *ibid*, para.124

<sup>32</sup> *ibid*, Para.125

<sup>33</sup> App no.36378/02

<sup>34</sup> *Shamayev and Others v Georgia and Russia*, *op cit*, para.478

<sup>35</sup> App no. 50278/99

<sup>36</sup> Para.103

### *Provisional measures in the Inter-American System*

Provisional measures of the Inter-American Court are provided for under Article 63.2 of the American Convention on Human Rights, which states:

“In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures, as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

Provisional measures are further elaborated on by rule 25 of the Rules of Procedure. The binding nature of these measures is undisputed and has been repeatedly affirmed in orders of the Inter-American Court.<sup>37</sup>

More controversial has been the status of precautionary measures requested by the Inter American Commission, which have no direct basis in the American Convention on Human Rights, though they are provided for under Rule 25 of the rules of procedure.<sup>38</sup> Although the final recommendations of the Commission are not binding,<sup>39</sup> states must make every effort to comply with them.<sup>40</sup> The Commission has similarly urged states to comply with its requests for precautionary measures.<sup>41</sup> In a 2005 resolution, the Commission affirmed that it considered its requests for precautionary measures to be binding in international law. The binding nature of such measures derived from the role of the Commission as set out in treaty, and the human rights obligations of states within the Inter-American system. The Commission stated that:

“Precautionary measures are issued in compliance with the Commission’s functions to promote and defend human rights, as set forth in Articles 106 of the OA Charter, 41 of the American Convention on Human Rights, and 18 of the Statute of the IACHR. The juridical basis for the precautionary measures is found in the obligation of States to respect and ensure the human rights of all persons subject to their jurisdiction, and the general practice of compliance with them on the part of the great majority of States is based on the existing understanding of their binding nature.”<sup>42</sup>

---

<sup>37</sup> *Chunimá v Peru* Order of the Court of 15 July 1991, Inter-Am Ct. HR (ser.E) (1991), *James v Trinidad and Tobago*, Order of the Court of 4 November 2000, Inter-Am. Ct. HR (ser.E) (2000) *Loayza Tamayo v Peru*, Order of the Court of 13 December 2000, Inter-Am Ct. HR (Ser.E) (2000); *Haitians and Dominican nationals of Haitian origin in the Dominican Republic v the Dominican Republic*, Order of the Court of September 4, 2000, Inter-Am. Ct. HR (Ser.E) (2000). See further the extrajudicial comments of Asdrúbal Aguiar, former judge of the Inter-American Court of Human Rights, in *Apuntes sobre las medidas cautelares en la Convención Americana sobre Derechos Humanos*, in *La Corte y el sistema Interamericano de Derechos Humanos*, Rafael Nieto Navia, Editor, 1994, p.19.

<sup>38</sup> Rule 25.1 states: “In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.”

<sup>39</sup> *Caballero Delgado and Santana v Columbia*, Judgment of 8 December 1995, para.67.

<sup>40</sup> *Loayza Tamayo v Peru*, judgment of 17 September 1997, para.80.

<sup>41</sup> Annual Report of the Inter-American Commission on Human Rights, 1998, OEA/Ser.L/V/II.102, Doc.6 of 16 April 1999, rev, Chapter VII, Rec. 15; Annual Report of the Inter-American Commission on Human Rights, 1997, OEA/Ser.L/V/II.98, Doc.6 of 17 February 1998, Chapter VII, recommendation 12.

<sup>42</sup> Inter-American Commission on Human Rights, Resolution No.1.05, March 8, 2005, para.9.



This approach is supported by the decision of the Inter-American Court in *James v Trinidad and Tobago*, where, in the context of interim measures, it stated that States parties to the American Convention on Human Rights.

must implement, in good faith ... all of the provisions of the Convention, including the provisions relating to the functioning of the two supervisory bodies ... and in accordance with the fundamental purpose of the Convention, which is that of guaranteeing the effective protection of human rights ... the State Parties must refrain from undertaking actions which run counter to the *restitutio in integrum* of the rights of the presumed victims.”<sup>43</sup>

### ***Interim measures of the International Court of Justice***

In its decision in the *LaGrand case (US v Germany)*,<sup>44</sup> the International Court of Justice ended a period of uncertainty and controversy as to the status of the Court’s provisional measures.<sup>45</sup> It found that such measures were of a binding character, despite the ambiguous language of Article 41, which refers to the “power to indicate” interim measures, and to “suggested” measures.<sup>46</sup>

In finding that interim measures under Article 41 of the ICJ statute were binding, the Court relied on the object and purpose of the statute: to enable the Court to fulfil the basic function of judicial settlement of international disputes by binding legal decisions. The Court also relied on the terms of Article 41, which, read in context, aimed to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court were not preserved. Furthermore, the Court also emphasised the principle that parties to a case must abstain from any measure capable of exercising a prejudicial effect on the execution of the decision to be given.<sup>47</sup> From these factors it followed that:

“the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined in by the final judgment of the Court. The contention that

---

<sup>43</sup> *James v Trinidad and Tobago*, *op cit*, Para.11.

<sup>44</sup> International Court of Justice, Judgment of 27 June 2001, *LaGrand case, Germany v USA*.

<sup>45</sup> See, for example, N. Quoc Dinh, P. Daillier and A. Pellet, *Droit International Public*, L.G.D.J. 7<sup>th</sup> edition, Paris 2002, pp.904-905; and J Sztucki, *Interim Measures in the Hague Court, An Attempt at a Scrutiny*, Devener-Kluwer, pp.35-60 and 270-280.

<sup>46</sup> Article 41 ICJ statute states:

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
2. Pending the final decision notice of the measures suggested shall forthwith be given to the parties and to the Security Council

<sup>47</sup> Permanent Court of International Justice, Order of 5 December 1939, *Electricity Company of Sophia and Bulgaria*, PCIJ series A/B No.79, p.199.

provisional measures indicated under Article 41 might not be binding would be contrary to the object and purpose of that Article.”<sup>48</sup>

#### **IV. INTERIM MEASURES OF THE COMMITTEE AGAINST TORTURE IN LIGHT OF THE OBJECT AND PURPOSE OF ARTICLE 22 CAT**

Drawing on the international jurisprudence considered above, including that of the Committee Against Torture, the International Commission of Jurists wishes to make the following submissions.

1. Article 22 of CAT should be interpreted in light of its object and purpose, in accordance with Article 31 of the Vienna Convention on the Law of Treaties which states in Article 31.1 that: “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”
2. The object and purpose of the individual communications process under Article 22 is to allow for an authoritative, though non-binding, application of CAT by the Committee Against Torture, which can provide a basis for effective protection of the author’s rights. There are two aspects to this purpose, substantive and procedural:
  - a. Article 22 aims to provide a means for individuals to protect their rights, and for States to meet their obligations under the Convention, by preventing violations of the treaty rights where possible and remedying existing violations. Where non-respect for interim measures causes, or risks causing, irreparable harm to those rights, then the capacity of Article 22 to protect rights and to allow for effective restitution for violations of rights, is undermined. Where the right to *non-refoulement* to face a risk of torture, under Article 3 CAT, is at stake, interim measures may be particularly crucial in preserving the rights of the parties and preventing irreparable harm. Furthermore, the absolute nature of the right to *non-refoulement* under Article 3 CAT, makes adherence to interim measures which guard against violation of that right, particularly important. Therefore, where a stay of extradition or deportation is requested as an interim measure, it is vital for the capacity of the Article 22 process to protect rights, that the request is respected.
  - b. Procedurally, Article 22 aims to allow for a full and thorough consideration by the Committee Against Torture of individual complaints of violations of the Convention, so that the Committee can provide its views to the State, to enable the State to fulfil its obligations under the treaty. This requires an effective and meaningful, rather than academic, consideration of the complaint. Although views of the Committee are not binding, acceptance of Article 22 by a State Party to CAT suggests that there will be serious consideration given to the views of the Committee on the case. Without this, acceptance of the communications process would be meaningless. Deportation pending the Committee’s final views on the

---

<sup>48</sup> *LaGrand case, op cit*, para.102.

case prejudices the Committee's decision, and renders the Article 22 process futile.

3. Interim measures are essential to the effective functioning of the individual communications process. The function of interim measures, under the Rules of Procedure, is to ensure real and effective consideration of individual communications under Article 22 by preserving the rights of the author pending the adoption of views by the Committee, and by preventing irreversible harm and potential violation of rights under the Convention. In cases where interim measures are judged by the Committee to be necessary for these purposes, compliance with them by all institutions of the State is an international law obligation under Article 22 CAT.

Even if an individual is not, in fact, subjected to torture following transfer, or if the Committee ultimately finds that no breach of Article 3 was or would be involved in the transfer (since interim measures imply no determination of admissibility or the merits of the case) respect for the interim measures is needed to preserve the *status quo* pending that finding. The finding of the Committee cannot, consistent with a real and fair process, be prejudged by one party to the communication (the State) on the basis of its own assessment of the facts.

4. Where a state has accepted a treaty or provision of a treaty establishing an international complaints process, it implicitly undertakes to co-operate in good faith with the process. This reflects the principle of *pacta sunt servanda*. The State's good faith commitment requires more than an empty adherence to a redundant process, but participation in a mechanism capable of providing real and effective human rights protection. Therefore, the rules of procedure applying to the complaints process should, to the extent that they are necessary for its operation, be considered as integral to the treaty, and binding in international law on States Parties.
5. It is clear from the international jurisprudence, that the binding nature of interim measures is not dependent on the procedure concerned leading to a binding determination of the case. Interim measures are essential to the proper functioning of the process, whether the final conclusions of the process have binding or persuasive force.
6. The binding nature in international law of interim measures of the Committee against Torture is an inherent and necessary part of the individual complaints procedure under Article 22 CAT, and the duty to comply with such measures arises as a treaty obligation under that provision, irrespective of national law understandings of the status of such interim measures, or of state practice in recognising interim measures as binding or in complying with such requests.

## V. CONCLUSIONS

In conclusion, it is the submission of the International Commission of Jurists that a purposive interpretation of Article 22, requires that requests for interim measures be interpreted as binding. This position is consistently reflected in the views of CAT, as well as the jurisprudence of other international tribunals. It is lent further force by the absolute nature

of the rights at stake in cases of *non-refoulement* to face torture under Article 3 CAT. Therefore, all States Parties to CAT that have accepted the right of individual communication under Article 22 CAT, when served with a request for interim measures, have the legal duty to respect those measures and to abstain from any act or omission which would be detrimental to the integrity and the effectiveness of the individual communications process. Such an interpretation is necessary in order to ensure the integrity and effectiveness of the individual communications procedure as a mechanism for the protection of the rights guaranteed by the Convention Against Torture.