



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

Distr.
RESTRICTED*

CAT/C/35/D/247/2004
8 December 2005

Original: ENGLISH

Committee Against Torture
Thirty-fifth session
7 – 25 November 2005

DECISION

Communication No. 247/2004

Submitted by: A. A. (represented by counsel,
Mr. Eldar Zeynalov, NGO « Human Rights
Center of Azerbaijan »)

Alleged victim: The complainant

State party: Azerbaijan

Date of complaint: 28 February 2004 (initial submission)

Date of the present decision: 25 November 2005

[ANNEX]

*Made public by decision of the Committee against torture.

Subject matter: Ill-treatment on death row

Procedural issues: Examination by another procedure of international investigation or settlement; admissibility *ratione temporis*; exceptions to the rule of exhaustion of domestic remedies

Substantive issues: continuing effect of violations that occurred before entry into force of procedure for State party

Articles of the Convention: 1, 2, 12, 13

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. 247/2004

Submitted by: A. A. (represented by counsel, Mr.
Eldar Zeynalov, NGO «Human Rights Center
of Azerbaijan »)

Alleged victim: The complainant

State party: Azerbaijan

Date of complaint: 28 February 2004 (initial submission)

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

Meeting on 25 November 2005,

Having concluded its consideration of complaint No. 247/2004, submitted to
the Committee against Torture by Mr. A. A., 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
complainant, his counsel and the State party,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The complainant is Mr. A. A.^{**}, an Azeri national sentenced to death on 24 August 1994 by the Supreme Court of Azerbaijan. On 10 February 1998, all death sentences handed down in Azerbaijan, including the complainant's, were commuted to life imprisonment, following the abolition of the death penalty by Parliament. The complainant claims to be a victim of violation by Azerbaijan of his rights under articles 1, 2, 12 and 13, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (the Convention). He is represented by counsel.

1.2 Azerbaijan became a State party to the Convention on 16 August 1996 (date of accession), and made the declaration under article 22 on 4 February 2002.

The facts as submitted:

2.1 The complainant was a police inspector. On 24 August 1994, he was found guilty of murder, illegal storage of and port of fire arms, voluntary destruction of public property, murder with aggravating circumstances, and attempted murder. He was sentenced to death by the Supreme Court of Azerbaijan, allegedly without having been given the right to appeal against this judgment. The complainant claims that his trial did not meet the requirements of due process and was tainted by the authorities' desire to avenge the murder of a policeman. He also explains that two of the three individuals composing the court (so called "people's assessors") had refused to countersign his death sentence.

2.2 After his conviction, the complainant was placed on death row in Baylovskaya prison (Baku), where, he allegedly shared a 6 square meters cell with "5-6" other prisoners also under sentence of death. The cell was equipped with only one bunk bed for all of them, and the prisoners had to sleep in turns. The window of the cell was obstructed by metal plates and no light could penetrate; there was only a dim lamp in the cell, which was constantly lit.

2.3 According to the complainant, on 1 October 1994, a group of prisoners escaped from Baylovskaya prison¹. The same day, the prosecutor in charge of prisons allegedly informed the prison authorities that they were allowed to beat (to death) all prisoners "under his responsibility". After this, conditions of detention worsened. No recreation walks were authorized between 1994 and 1998. From 1994 to 1996, prisoners were obliged to take showers directly in the cells, while no bathroom existed; a collective bathroom was set up only in the summer of 1996; showers were then allowed at 20-30 days intervals, for 10-15 minutes per cell. The complainant states that more than 70 prisoners under sentences of death passed away while he was on death row from 1994 to 1998, due to the worsening conditions of detention.

2.4 The complainant explains that despite the fact that prison regulations allowed him to receive the visit of his family every month, as well as to receive a 5 kg parcel, in reality, and especially after the escaping of prisoners in October 1994, visits and parcels were "irregular".

^{**} Initials changed at request of the complainant.

¹ Throughout the text, the complainant refers to the events of October 1994 as to "escape" and "attempt to escape", without differentiation. It transpires however, that 10 prisoners had escaped.

2.5 According to the complainant, during the morning calls, all prisoners had to leave their cells, and to stand in front of the door leading to the fire squad basement. In addition, during his detention on death row, the execution chambers were cleaned on 7-8 occasions; every time thereafter, the administration threatened that a series of executions was expected.

2.6 The complainant claims that although the law stipulated that former policemen had to be held separately, he was held together with ordinary criminals. There was allegedly an attempt to kill him while he slept, and he was severely beaten by his cell mates twice.

2.7 The complainant explains that after the “escape” in 1994, and until March 1995, no medical doctor visited the death section. Ill prisoners allegedly were held together with other prisoners, surgery was made in inadequate conditions and several prisoners died because of bad medical care.

2.8 It is further stated that immediately after the 1994 “escape”, no food or water was supplied to the prisoners; when the supply was restored, rations were reduced by half. Temperatures at night were below 16 Celsius, but no covers were distributed to the prisoner between October 1994 and January 1995; covers were allowed only after an intervention by the International Committee of the Red Cross.

2.9 The complainant gives details on the allegedly bad treatment in 1994-1996: during the morning calls, prisoners were moved out of their cells, one by one, and were beaten (with wooden sticks, police batons, and electric cables, inter alia), up to the point when they fell to the ground losing conscience. Accordingly, some 45 prisoners lost their lives in such circumstances.

2.10 In May 1996, the prison administration discovered hidden documents in the complainant’s cell, in which he recorded the acts of the prison authorities against him, and also listed persons who had died on death row as a consequence of ill-treatment and torture. He was severely beaten; his pens and paper were confiscated. In September 1996, a governmental delegation inspected the prison. Even though only few prisoners filed minor complaints, since they were afraid of retaliation, all those under sentence of death were severely beaten after the inspectors’ departure.

2.11 In October 1996, head of the prison guards allegedly beat all prisoners, thus “celebrating” the second anniversary of the 1994 escape. The complainant was allegedly beaten for an hour and a half.

2.12 In the autumn of 1996, a prisoner who had been released allegedly met with the complainant’s mother and explained to her the conditions in which her son was detained. The mother filed a complaint with the prison authorities. After this, the complainant was beaten, threatened with death, and forced to sign a disclaimer.

2.13 In early 1997, another list of deceased prisoners was discovered in the complainant’s cell; he was beaten again and was confined, together with his cell-mates, to 3 days of isolation.

2.14 After the commutation of his death sentence in 1998, the complainant was allegedly held “in isolation” for another 6 months and was unable to meet with his family during this period.

2.15 The complainant alleges that because of the above-mentioned reasons, he was unable to, and was indeed prevented from, exhausting all available domestic remedies:

- Since 1997, his counsel has published a series of articles in different newspapers, in relation to the complainant’s situation and the situation of other death row prisoners, using information provided by the complainant. However, no inquiry followed, nor was any prosecution instituted.
- In October and December 2002, several prisoners serving life sentences in Gobustan prison, including the complainant, filed complaints in the Gardaksy district court and in the Court of Appeal, denouncing the deplorable conditions of detention and the ill-treatment they had been subjected to. However, the tribunals referred to examine these complaints on the ground that the claimants’ signatures had not been certified by the prison authorities. Many prisoners, such as the complainant himself, never received a reply from the courts.
- It is stated that the Ombudsman visited the prison on several occasions, but in spite of the complainant’s request, he was unable to meet with her.

2.16 The complainant alleges that he believes that, in the light of the facts outlined above, any further communication with the judiciary authorities of Azerbaijan would be futile and would subject him to supplementary pressure and intimidation, or even his physical disappearance as an important witness.

2.17 According to the complainant, he had not been hospitalized during his detention. He was examined on 15 November 2003 by a Medical Commission. On 7 January 2004, he received the results and the diagnosis of the Medical Commission: “situational neurosis, elements character psychopathia”. The complainant claims that on 8 January 2004, when he examined his medical record sheet, he discovered that it had been changed with new type of medical form, and that the information from his previous medical records had not been recorded. Thus, according to him, no record was kept of his illnesses in 1994-2002 (hemorrhoids, rheumatism, neurosis, “attacks”, and a cerebral attack in 1999)². The complainant alleges that his record card was substituted to prevent any possibility for him to seek compensation for the diseases suffered.

2.18 The complainant applied to the European Court of Human Rights (application No. 34132/03 of 29 October 2003, declared inadmissible on 29 April 2005). However, according to him, the allegations before the European Court relate only to the period following the allegations of the present communication, i.e. after 10 February 1998³.

² According to the complainant, the medical card of his cellmate, G., who had suffered from different diseases, including tuberculosis, was completely blank.

³ The European Convention for Human Rights has entered into force for Azerbaijan on 15 April 2002.

The claim:

3.1 The complainant claims that the conditions of detention, and the manner the authorities treated him while he was on death row (1994-1998), amounted to a violation of articles 1 (1) and 2 of the Convention.

3.2 Article 2, paragraphs 1 and 3 are also said to have been violated, as the cells where he was held were allegedly overcrowded by a factor of 2 to 4 compared to the possible occupancy, and he – as a former policeman – was held together with ordinary criminals.

3.3 Allegedly, in violation of article 12 of the Convention, the authorities omitted to investigate promptly and impartially deaths of prisoners who awaited execution, “when there were reasonable grounds” that their death was the consequence of the torture and cruel treatment they were subjected to by the prison authorities.

3.4 Finally, the complainant claims a violation of article 13, because of the State party’s impossibility to secure an impartial examination of the claims of torture and cruel treatment.

State party’s observations on admissibility

4.1 The State party contested the admissibility of the communication on 19 July 2004. It recalls that it recognised the Committee’s competence to examine individual complaints on 4 February 2002, and that accordingly, the Committee is only competent to examine complaints submitted against Azerbaijan after that date. Accordingly, the State party considers the complainant’s communication to be inadmissible.

Complainant’s comments

5.1 By letter of 6 November 2004, the complainant concedes that the events complained of occurred before the State party’s acceptance of the Committee’s competence to examine individual complaints against it. According to him, however, the *ratione temporis* rule does not apply if violations continue after the date of entry into force of the procedure for the State party. As example, he refers to the jurisprudence of the Human Rights Committee (case of *K. and K. v. Hungary*, Communication No. 520/1992, Inadmissibility decision adopted on 7 April 1994, paragraph 6.4).

5.2 On the issue of exhaustion of domestic remedies, he reiterates that he did not believe in the effectiveness of the procedures in the State party. In support of this statement, he names five former death row prisoners who were granted new trials in 2002-2004. Allegedly, all of them had complained of torture and ill-treatment in detention, but the courts allegedly ignored all of their claims and confirmed their life sentences⁴.

⁴ According to the complainant, only in one occasion a life sentence was commuted to 15 years of imprisonment, due to a decriminalization of an offence.

5.3 According to the complainant, in 2004, one prisoner serving a life sentence sought to obtain compensation for tuberculosis he had contracted while he was on death row from 1996 to 1998, detained in an overcrowded cell together with prisoners who suffered from tuberculosis. He lost his case and his cassation appeal⁵.

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.

6.2 The Committee has noted, first, that the complainant's allegations (see paragraph 3.3 above) that the State party's authorities have consistently failed to investigate reports of deaths of prisoners on death row. It recalls that it can only examine complaints if they are submitted by the alleged victims, close relatives, or by a representative duly authorised to act on the victim's behalf. In the present case, the complainant has not presented any authorisation to act on behalf of any other alleged victim. Accordingly, the Committee finds that this part of the communication is inadmissible under rule 98, paragraph 2 (c), of its rules of procedure⁶.

6.3 On the remaining parts of the complainant's claims, the Committee recalls that the State party had challenged the admissibility of the communication on the ground that the events complained of took place before its acceptance, on 4 February 2002, of the Committee's competence to deal with individual communications under article 22 of the Convention. The complainant has refuted this assertion by invoking the "continuing effect" doctrine.

6.4 The Committee recalls that a State party's obligations under the Convention apply from the date of its entry into force for that State party⁷. It considers, however, that it can examine alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence to receive and consider individual communications alleging violations of the Convention (i.e. before the declaration under article 22 became effective, i.e. 4 February 2002, in the present case), if the effects of these violations continued after the declaration under article 22 became effective, and if the effects constitute in themselves a violation of the Convention. A continuing violation must be interpreted as an affirmation, after the formulation of the declaration, by act or by clear implication, of the previous violations of the State party.

6.5 The Committee has noted that in the present case, the complainant's allegations under articles 1, 2, and 13, of the Convention (see paragraphs 3.1, 3.2 and 3.4 above) all relate to events which occurred before the State party's recognition of the Committee's competence to consider individual complaints. According to the complainant, however, these alleged violations had effects which continued after the State party's acceptance of the Committee's competence under article 22.

⁵ It is stated however, that the Supreme Court made no decision on the case, because the plaintiff was pardoned, released and left the country.

⁶ CAT/C/3/Rev.4

⁷ See O.R., M.M., and M.S. v. Argentina, Communications Nos 1, 2, and 3/1988, Inadmissibility decision adopted in November 1989.

6.6 The Committee has equally noted that the complainant filed an application in the European Court of Human Rights, regarding events which occurred after 10 February 1998, which, **according to him**, can be clearly distinguished from the issues submitted to the Committee. This application was declared inadmissible on 29 April 2005. The European Court held, *inter alia*, that the complainant's allegations of mistreatment on death row, which are identical to the claims in the present communication, were inadmissible⁸.

6.7 In this context, the Committee recalls that it shall not consider any communications from an individual under article 22, paragraph 5 (a), of the Convention, unless it has ascertained that the *same matter has not been, and is not being, examined* under another procedure of international investigation or settlement; the Committee is satisfied that examination by the European court of Human Rights constitutes an examination by such a procedure.

6.8 The Committee considers that a communication has been, and is being examined by another procedure of international investigation or settlement if the examination by the procedure relates/related to the "same matter" within the meaning of article 22, paragraph 5 (a), that must be understood as relating to the same parties, the same facts, and the same substantive rights. It observes that Application No. 34132/03 was submitted to the European Court by the same complainant, was based on the same facts, and related, at least in part, to the same substantive rights as those invoked in the present communication.

6.9 Having concluded that the "same matter" has been the object of the complainant's Application before the European Court and it was examined and declared inadmissible, the Committee considers that the requirements of article 22, para. 5 (a), have not been met in the present case. In the circumstances, the Committee decides that it is not necessary to examine the other two grounds of inadmissibility, namely on *ratione temporis* and non exhaustion of domestic remedies.

7. The Committee against Torture consequently decides:

- (a) That the communication is inadmissible;
- (b) That the present decision shall be communicated to the State party and to the complainant.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

⁸ The Committee has noted that the European Court, acting through a Committee of three judges, declared the application inadmissible on two grounds: partly on a) non-exhaustion of domestic remedies (articles 3, 8, 14, and 34, of the European Convention), and b) with regard to the applicant's remaining complaints, on the ground that the information before the Court does not reveal any violation of the applicant's rights and freedoms under the Convention.