



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

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COMMITTEE AGAINST TORTURE

Thirty-ninth session
(5 – 23 November 2007)

DECISION

Communication No. 303/2006

<u>Submitted by:</u>	T. A. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	15 September 2006 (initial submission)
<u>Date of present decision:</u>	22 November 2007

Subject matter: deportation with alleged risk of torture and cruel, inhuman or degrading treatment or punishment

Procedural issue: none

Substantive issue: risk of torture, cruel, inhuman or degrading treatment or punishment upon return

Article of the Convention: 3

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT**

Thirty-ninth session

Concerning

Communication No. 303/2006

<u>Submitted by:</u>	T. A. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	15 September 2006 (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 22 November 2007,

Having concluded its consideration of complaint No. 303/2006, submitted to the Committee against Torture on behalf of T. 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 under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is T. A., an Azeri national awaiting deportation from Sweden to Azerbaijan. He claims that his deportation to Azerbaijan would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 9 October 2006, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainant to Azerbaijan while his case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 24 April 2007, the State party acceded to the Committee's request.

The facts as presented by the complainant

2.1 The complainant is an engineer and became a member of the AXCP (Azerbaijan

National Front Party) at age 19. He became head of the young politicians. He is the nephew of S. M., who became the Minister of Internal Affairs of Azerbaijan in 1992. In 1993, a new party came to power and S. M. was arrested and sentenced to 8 years' imprisonment because of his AXCP membership. S. M. managed to escape from Azerbaijan and currently resides in Russia.

2.2 The complainant was arrested and tortured on several occasions since the new government came to power, including during a demonstration. He claims that, although he was told that the reason for his arrest was his criticism of the ruling party, the real reason was his relationship with S. M. On 15 October 2003, he was sent to Baku to observe the presidential elections. Following the elections, riots broke out in the town. The complainant was arrested, together with some other participants, and tortured. He was beaten, insulted and kept in water for over a day. He was released after several days. He claims that the torture inflicted upon him resulted in a kidney condition, which worsened at the beginning of 2004. He submits medical reports issued from a hospital in Sweden, which support his claim that his kidney condition has become chronic and that kidneys could stop functioning at any time, with possible lethal consequences.¹

2.3 After the incident in Baku, the complainant was constantly persecuted. On one occasion, he was taken to a police station by police officers and was forced to leave his bag outside. He claims that some other police officers subsequently planted a gun in his bag, on which basis he was charged with murder and imprisoned. He escaped from prison on the way to court, having been helped by some friends. With the help of his uncle, he left Azerbaijan for Russia. On 31 March 2005, the Swedish Migration Board rejected his application for asylum. This decision was confirmed by the Aliens Appeals Board on 20 January 2006.

The complaint

3. The complainant claims that his deportation from Sweden to Azerbaijan would constitute a violation of article 3 of the Convention against Torture, as he fears that he will be arrested and exposed to torture as a result of his own political activities, past torture and relationship with his uncle, the ex-Minister of Internal Affairs.

State party's observations on the admissibility and merits

4.1 On 24 April 2007, the State party provided its submissions on the admissibility and the merits. It sets out the relevant provisions of the 1989 Aliens Act (which has since been repealed) pointing out that several provisions reflect the same principle as that set out in article 3, paragraph 1, of the Convention. Thus, the national authority conducting the asylum interview is naturally in a good position to assess the information submitted by asylum seekers. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until the entry into force of a new Aliens Act on 31 March 2006. The temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal of entry or expulsion order was issued.

4.2 According to the new Chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its

¹ See footnote 2 below.

own initiative, may grant a residence permit, *inter alia*, if there is reason to believe that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order. Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. The 2005 Act establishes a new order for examination and determination of asylum applications and residence permits. These cases are now normally dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal.

4.3 According to the State party, the Migration Board rejected the complainant's application for asylum on five grounds: firstly, the general situation in Azerbaijan did not in itself constitute grounds for asylum; secondly, the complainant had spent four months after his departure from Azerbaijan in Moscow and Berlin but had failed to apply for asylum at the first safe country he arrived in; thirdly, the AXCP party is an opposition party in Azerbaijan and the Board was not convinced by his assertion that he was a leading party member at age 19; fourthly, the Board did not find it credible that, as claimed by the complainant, his trial for murder was to be held only ten days after his arrest, that he did not know the name of the alleged victim and that he had managed to escape from police custody; fifthly, the Board found that the applicant's health was not such as to grant him a residence permit on humanitarian grounds. The complainant's appeal to the Aliens Appeal Board was rejected on 20 January 2006. The Appeal Board questioned the veracity of his statements concerning his escape from the police and the fact that despite being wanted by the authorities he had managed to leave Azerbaijan. It also referred to the improved human rights situation in Azerbaijan, since its membership of the Council of Europe (CoE) in January 2001 and the view that membership of opposition political parties do not generally involve a threat of reprisals from the authorities unless the individuals concerned are in leading positions. Lastly, the author's health condition was not considered severe enough to constitute grounds for a residence permit on humanitarian grounds.²

4.4 The Migration Board decided on its own initiative to examine whether he qualified for a residence permit under the temporary wording of Chapter 2, Section 5, b of the Aliens Act and appointed counsel to represent him before the Board. On 8 September 2006, it found that there were no new circumstances or arguments made by the complainant and that the arguments submitted mostly concerned the general situation in Azerbaijan. The medical reports demonstrated that he suffered from a chronic disease, but that it was not possible to conclude that this condition was life threatening. It stated that adequate medical care was available in Azerbaijan and that financial problems in obtaining medical care or a lower standard of medical care provided in Azerbaijan than in Sweden does not in itself constitute grounds for a residence permit.

4.5 On 4 December 2006, the complainant filed an application for a stay of the enforcement of the expulsion order, residence permit and re-examination under chapter 12, Section 19 of the 2005 Aliens Act. On 27 March 2007, the Migration Board rejected his application,

² The Migration Board assessed in this regard the medical certificates provided by the complainant. He submitted that a medical certificate dated 20 January 2005, stated that he had been subjected to blows with blunt and sharp instruments against the back of his hands, trunk, sternum, neck and head. He also presented a medical report, dated 10 March 2005, stating that he suffered from a kidney disorder called "nephrotic syndrome", which is a condition involving too low levels of albumin. It states that his condition may deteriorate if he does not get adequate treatment and that there is a certain long term risk that he might require chronic dialysis treatment.

concluding that no new circumstances were invoked by him, that the allegation concerning torture had been addressed and that the situation in Azerbaijan had not deteriorated since the last decision in any decisive way.

4.6 On admissibility, despite the State party's acknowledgment that the complainant has exhausted domestic remedies, it submits that the complaint is inadmissible as manifestly ill-founded, and inadmissible *ratione materiae*, as falling outside the scope of the provisions of the Convention. On the latter argument, it specifically states that the claims relating to the complainant's health condition fall outside the scope of article 3, as according to article 1 of the Convention the definition of torture relates to severe pain and suffering "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

4.7 On the merits, the State party refers to the findings of the domestic authorities and adds the following. As to the general human rights situation in Azerbaijan, it submits that Azerbaijan has been a party to the Convention against Torture since 1996, has made a declaration under article 22 to deal with communications and has ratified several other human rights instruments including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. It has also been a party to the CoE since January 2001 and is a State party to the European Convention on Human Rights. The CoE has been monitoring the human rights situation and it appears that some progress has been made. An example of such has been that a number of persons defined by the CoE as political prisoners have been released by Azerbaijan in recent years. However, the State party admits that although positive results have been achieved, Azerbaijan is still reported as committing numerous human rights abuses, including beatings and torture of persons in custody by members of the security forces. It also submits that, while it does not wish to underestimate these concerns, they do not in themselves suffice to establish that the return of the complainant would entail a violation of article 3. The State party also highlights a recent decision by the Committee,³ in which it took note of the State party's argument that although human rights abuses are still being reported in Azerbaijan, the country has made some progress towards improving its human rights record. In light of this, *inter alia*, the Committee concluded that the removal of the complainant to Azerbaijan in that case would not constitute a breach of article 3 of the Convention.

4.8 In December 2006, the State party requested the assistance of the Swedish Embassy in Ankara about some of the issues raised in the case. The Embassy had most of the documents submitted to the Committee and also some other documents submitted by the complainant to the national authorities. It hired a lawyer, specializing in human rights, who it had previously engaged. It confirmed that the information concerning the complainant's family and studies was correct, that his identity card and birth certificate were genuine, but that it was not possible to verify the authenticity of his passport or obtain information on whether he left Azerbaijan legally. It affirms that, although he was a member of the AXCP, his status was of a regular member and he was never an assistant to the chairman, Q. H., as alleged by the complainant. However, for a short period, he served as an unofficial body guard to Q. H. It affirms that his uncle was chief of police and later became Minister of the Interior. It also affirms that he spent eight years in prison, but after his release moved of his own free will to Russia. He presently works as a businessman and regularly travels between Azerbaijan and Russia.

³ *A.H. v. Sweden*, Communication No. 265/2005, Views adopted on 16 November 2006.

4.9 On the authenticity of the documents provided by the complainant, the Embassy reported the following: firstly, regarding a card allegedly certifying his status as an election observer during the election in 2000, G. A., Chairman of the AXCP's General Assembly stated that he cannot recall that any such document had been issued to the complainant. According to the person that takes care of election matters at the party's office, the kind of election observer document presented by the complainant was not issued for the election in 2000. In view of this information, the Embassy concluded that the information was false. Secondly, regarding three documents submitted during the national proceedings (two of which were submitted to the Committee), allegedly signed by G. A., Chairman of the AXCP, the Chairman confirmed that he did sign these documents but cannot verify the information therein, as he only signed these documents having been asked by the complainant's family to do so and because of his close relationship with the complainant's uncle. Thirdly, the Embassy notes that a newspaper article published in "Azaddliq" on 17 February 2005, although confirmed to be genuine, states that the complainant left Azerbaijan because of his health. Fourthly, regarding a statement allegedly signed by F. U. of the World Azerbaijani Congress, F. U. himself stated that it was false. Fifthly, regarding two documents alleged issued by the organization Human Rights in the XXI Century the Embassy reported that both documents are false. Lastly, as to two documents issued by the Azerbaijan Foundation of the Democracy Development and Human Rights Protection, these were also reported to be false.

4.10 According to the State party, the Embassy has been unable to find any information to support the complainant's allegations either that he was summoned by the police in 2003 and 2004, or that his brother was arrested in August 2005 as he claimed to the domestic authorities. The Embassy concludes that the human rights situation in Azerbaijan deteriorated during the autumn of 2006, in particular regarding the freedom of the press. However, it has not affected the opposition's activities in the country. The opposition remains divided in fractions and is not very powerful. There is no reason for the authorities to be interested in the activities of a member of the opposition at a low level. As to his relationship with S. M., the latter himself travels regularly to and from Azerbaijan without any difficulties. According to information obtained from individuals close to the complainant, his sole reason for leaving Azerbaijan was to seek treatment for his kidney problem. The State party's submits that this is confirmed in an article submitted by the complainant, in which the author's own brother confirms that this was the reason for his departure.

4.11 The State party submits that the fact that the complainant has submitted a number of false documents to the Swedish authorities and the Committee raises serious doubts as to his credibility, as well as raising issues regarding the accuracy of the statements he has made in support of his claims of a violation of article 3. Such doubts are also relevant in respect of his allegation that he was tortured previously in Azerbaijan. Even if medical evidence concludes that he has suffered from violence with blunt and sharp instruments, the State party submits that there is no evidence to suggest that this violence was caused by the Azerbaijani authorities or to support the allegation that his kidney problems arose as a result of the torture he was allegedly subjected to while detained in 2003. There is, the State party submits, in fact a medical report from 10 March 2005, which suggests the contrary when stating that there "is no connection between imprisonment or physical abuse and the illness of nephrotic syndrome". The Embassy's investigation also reported that it is highly unlikely that when the complainant tried to leave the country in March 2004 he was arrested on suspicion of murder and illegal possession of drugs and that ten days later while being transported to trial he managed to escape. The State party submits that the author is not wanted by the authorities nor is he under indictment in Azerbaijan.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 The author submits that he stayed in Moscow only until arrangements had been made for his trip to Sweden, and that he only passed through Germany. He was active in the youth section of the political party, which accounts for the responsibility given to him at such a young age. He and his brother preferred to have the police think that the former had left the country due to medical problems, so as not to draw the attention of the authorities to the real reason he fled, i.e. to seek asylum. According to the medical opinions from the Crisis and Trauma Centre, Danderyd Hospital, the complainant's clinical condition is consistent with the circumstances he described, and that his post-traumatic stress disorder and physical illness was caused as a direct result of torture in his home country.

5.2 As to the general human rights situation in Azerbaijan, the complainant states that there are independent sources which describe the current human rights situation as worse than before, particularly with respect to freedom of speech, arbitrary and politically motivated arrests, poor conditions of detention, and torture in police custody.⁴ Bearing in mind the systematic oppression of political dissidents and journalists, it was not improbable to the complainant that the individuals referred to in paragraph 4.9 would not wish to be affiliated with documents expressing severe critic against the regime. Some of those individuals contacted had already served long prison sentences and thus have an even greater reason not to let the authorities know about their political activities. As to the lack of documentation of the police's interest in the complainant, the latter concludes that a regime with a notorious record of arbitrary detention and human rights abuses against detainees often purposely fails to register them, to avoid accountability for such violations. The author adds that according to Swedish government's report on the human rights situation in Azerbaijan, political dissidents have on several occasions been convicted to long prison sentences, on charges of fabricated drug crimes.

5.3 In his appeal of 5 June 2007 to the Migration Court, the complainant presented new information, including articles published in Turkish newspapers dated January 2007 where he is cited as the source for information from 2001 implicating a Turkish General in the military training of terrorist groups in Azerbaijan. The complainant stated that the article attracted much attention notably because of the allegation that the group was involved in the assassination of a Turkish journalist.

Further submissions by the State party

6. On 20 August 2007, the State party informed the Committee that on 6 July 2007, the Migration Court in Malmö rejected the author's appeal of 5 June 2007. Regarding the documents submitted by the complainant to the Migration Court (including, *inter alia*, articles from Turkish newspapers) the Migration Court held that these were not such new circumstances that could constitute grounds for impediments of enforcement. The State party also informed the Committee that the complainant had filed an appeal against the Migration Court's judgment with the Migration Court of Appeal. On 11 September 2007, the State party informed the Committee that on 31 August 2007, the Migration Court of Appeal rejected the complainant's request for leave to appeal, decision which is final.

⁴ Human Rights Watch Report, January 2007; Amnesty International Report, May 2007; and U.S. State Department Country Situations Reports, March 2007.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims 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. It notes the State party's confirmation in its submissions that domestic remedies have been exhausted.

7.2 The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the removal of the complainant to Azerbaijan would violate the State party's obligations under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows 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 or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its General Comment No.1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant 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. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

8.4 The complainant claims that he will be at risk of torture if returned to Azerbaijan, due to his political activities, previous torture, and the relationship with his uncle, the ex-Minister of Internal Affairs. Regarding his past political activities, while the State party does not contest that the complainant appears to have been a regular member of the AXCP, it does contest that he could be considered a prominent person at risk of torture upon his return to Azerbaijan. With respect to the articles appeared in the Turkish media in January 2007, which the complainant alleges have had the result of increasing interest in him, the Committee observes

that these articles refer to information the complainant made public in 2001, and that he has failed to show how this information may put him in danger if he is to return to Azerbaijan.

8.5 As to the possibility of the petitioner suffering torture at the hands of the State upon his return to Azerbaijan, the Committee has taken due note of his claim that he was previously detained and tortured by members of the Azeri police. It further observes that the petitioner provided medical reports attesting to injuries that were consistent with the circumstances described by him. However, the Committee observes that even if the complainant was detained and tortured in Azerbaijan in the past, it does not automatically follow that, four years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Azerbaijan in the near future. Additionally, while the Committee acknowledges that the complainant suffers from a kidney ailment, he has not clearly shown that this condition is the result of previous torture nor that appropriate medical care would be unavailable to him in Azerbaijan.

8.6 Concerning the fears about his relationship with his uncle, it would appear, and this is uncontested, that the later freely travels between the Russian Federation and Azerbaijan without any restriction. Thus, his relationship with S. M. would not appear to have any negative consequences affecting the complainant's return. The Committee notes the State party's statement that the author is neither charged with a crime in Azerbaijan nor subject to an arrest warrant by Azeri authorities. Consequently, it finds that the complainant has not provided evidence in support of his contention that he would run a real risk of arrest upon return.

8.7 The Committee notes that the complainant has provided a number of documents to the domestic authorities and to the Committee, which he claims corroborate his statement of the facts. The Committee recalls that the State party challenges the complainant's credibility and the authenticity of part of the documentation submitted by him, based on the investigations conducted by its embassy in Turkey. It observes that the State party has not challenged the authenticity of the medical certificates submitted by the author. The Committee recalls that according to its General Comment No. 1 the author has not satisfied his burden to present an arguable case. The Committee considers that the complainant has failed to validate the authenticity of the documents related to his political activities prior to leaving Azerbaijan.

9. For the abovementioned reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Azerbaijan.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Azerbaijan would not constitute a breach of article 3 of the Convention.

[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.]