



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

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COMMITTEE AGAINST TORTURE
Thirty-eighth session
(30 April – 18 May 2007)

DECISION

Communication No. 296/2006

<u>Submitted by:</u>	E. V. I. (not represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	2 June 2006 (initial submission)
<u>Date of present decision:</u>	1 May 2007

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

Procedural issues: None

Substantive issues: risk of torture and cruel, inhuman or degrading treatment or punishment on deportation

Articles 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-eighth session

Concerning

Communication No. 296/2006

Submitted by: E. V. I. (not represented by counsel)
Alleged victim: The complainant
State party: Sweden
Date of the complaint: 2 June 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 1 May 2007,

Having concluded its consideration of complaint No. 296/2006, submitted to the Committee against Torture by E. V. I. 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 and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is E. V. I., an Azerbaijani national born in 1979, currently awaiting deportation from Sweden. He claims that his forced return to Azerbaijan would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. He is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 13 June 2006, and requested it, under rule 108, paragraph 1 of the Committee's rules of procedure, not to expel the complainant to Azerbaijan while his complaint is under consideration by the Committee. The State party subsequently informed the Committee that the complainant had not been deported.

The facts as presented by the complainant

2.1 The complainant graduated from a university in Azerbaijan with a degree in law and then pursued a masters degree in the Netherlands. As a university student in Azerbaijan, he became actively involved in politics and joined the "Musavat" opposition party, where he

worked as a legal consultant. He also worked as assistant to the chief editor in the “Yeni Musavat” newspaper.¹

2.2 Shortly after his return to Azerbaijan from the Netherlands, the complainant was called to appear at the offices of the Ministry of National Security, where he was kept in custody for two days, accused of “high treason and espionage against the Azerbaijani government”. In particular, he was accused of spreading information in Europe about serious human rights violations in Azerbaijan. During the two days that he was in custody, he was allegedly beaten by officials, as a result of which he developed kidney problems, from which he has continued to suffer after his arrival in Sweden, and “black tumours”. He was released due to lack of evidence. He attempted to file a complaint about the incident with the city prosecution office but the officers there refused to register the complaint and told him to keep silent about the incident and not to make any further trouble. The complainant states that he was expelled from the Bar association in Azerbaijan on 24 December 2002 due to persecution by the Ministry of National Security.

2.3 In the run-up to presidential elections which were held on 15 October 2003, the complainant was actively involved in the election campaign on behalf of the leader of the “Musavat” opposition party. On 2 July 2003, he was detained by three officers and led to a police station, where the officers referred to the fact that his future wife was half Armenian, and accused him of being a spy working for the Armenian government. The allegations raised during his first period of detention were raised again. He was kept in custody from 2 to 4 July 2003. The mother of the complainant, who had witnessed his arrest, contacted the complainant’s friends and colleagues, who called the ANS TV channel. As a result, several journalists went to the police station and the incident was broadcast in local news. The complainant was released from custody on the same evening of the said broadcast.

2.4 On 18 July 2003, the complainant celebrated his wedding. The same officers from the Ministry of National Security disrupted the wedding celebrations, shouting through the microphones, and one of them physically assaulted the complainant’s wife. That same day, the complainant and his wife escaped Azerbaijan to the Dagestan autonomous republic of the Russian Federation. His wife suffered trauma and internal bleeding as a result of the assault and was operated on at Derbend city hospital in Dagestan. From Derbend city, the complainant and his wife travelled to Moscow. On 9 August 2003, they left Russia and arrived in Sweden three days later. Upon arrival in Sweden, on 12 August 2003, they applied for asylum.

2.5 On 22 December 2004, their application for asylum was dismissed by the Migration Board, which ordered that the complainant and his wife be expelled to their country of origin. The decision of the Migration Board was appealed to the Aliens Appeals Board but the appeal, which included a petition on behalf of the newborn child of the complainant and his wife, was rejected on 28 November 2005. The Migration Board re-examined the case on its own initiative under a new temporary law introduced on 15 November 2005 and concluded, by decision dated 19 May 2006, that no resident visa should be granted on humanitarian grounds.

¹ The complainant notes that the chief editor was arrested and sentenced to 5 years imprisonment in 2003.

The complaint

3. The complainant alleges that if forcibly returned to Azerbaijan, he would suffer a risk of torture, in violation of article 3 of the Convention. He fears being tortured because of his prior treatment at the hands of the Azerbaijani authorities because of his membership of, and activities on behalf of, an opposition political party. He refers to a criminal investigation against him, which commenced since his departure from Azerbaijan. He contends that the Swedish authorities disregarded his personal circumstances and that their decisions refer to general arguments concerning the situation in Azerbaijan only and not his particular case.

State party's observations on the admissibility and the merits

4.1 On 11 December 2006, the State party commented on the admissibility and merits of the communication. On the facts, the State party indicates that the complainant applied for asylum on 13 August 2003.

4.2 On claiming asylum, the complainant and his wife were not able to produce identity papers. An official at the Swedish Migration Board recorded that the complainant's wife had had to undergo emergency surgery on her stomach after having been beaten in Azerbaijan. Later on during the proceedings, the complainant submitted an identity card from a young lawyers' association and a copy birth certificate, together with some documentation in respect of his wife.

4.3 An initial interview was conducted with the complainant and his wife on 7 November 2003. During the interview, the complainant set out the facts of his case largely as set out above. He stated that shortly after his arrival in Sweden, his father, who was well known due to his high position in the oil industry in Azerbaijan, was assaulted by the Security Police. His father was taken to hospital where he died on 25 August 2003. According to the death certificate, his father died of a heart condition, although he had never suffered from heart problems before. The complainant stated that his mother had been dismissed from her work. The complainant's wife also stated that after they had left Azerbaijan, her mother, who had been in hiding in Azerbaijan for quite a long time, was arrested and subjected to physical abuse. Her mother died in prison as a result of the beatings.

4.4 A second interview, which took nearly 3 hours, was conducted with the complainant on 26 March 2004 in the presence of counsel. The complainant gave further details concerning his treatment at the hands of the authorities, including having been made to stand for 35-36 hours during the period of detention immediately following his return from the Netherlands. He stated that he was hit when he tried to sit down and that the Security Police use a kind of boxing glove to prevent leaving traces of the abuse. He stated that he had also been abused during his second period of detention but that he had not suffered any serious injuries. He stated that he had first come to the attention of the authorities in the winter of 2000 when he took part in organizing a demonstration. He received phonecalls but was not arrested. He recounted two instances where the Security Police had searched his office. He noted that his mother had received notice a month previously that the Ministry of the Interior had issued a warrant for his arrest for being a traitor to his country. A second interview was conducted with the complainant's wife on 18 May 2004 in the presence of counsel. The complainant's wife submitted the complainant's Musavat party membership card and a warrant for his arrest dated 15 January 2004.

4.5 On 22 December 2004, the Migration Board dismissed the applications of the complainant and his wife and ordered that they be expelled to their country of origin. The Migration Board considered Azerbaijan's status as a member of the Council of Europe and the fact that international and domestic NGOs are allowed to work in the country. It concluded that while there remain some deficiencies with regard to respect for human rights in Azerbaijan, including with regard to the treatment of opposition political parties by the police, the general situation in Azerbaijan did not *per se* constitute a ground to grant asylum to the complainant and his wife. With regard to the particular circumstances alleged by the complainant, the Migration Board found that he did not hold such a prominent position within the Musavat Party to warrant particular attention from the authorities. The authenticity of the arrest warrant dated 15 January 2004 was questioned.

4.6 On 3 June 2005, the complainant and his wife appealed the decision of the Migration Board to the Aliens Appeals Board. They submitted further supporting documentation, including a protocol from the Security Police dated 2 July 2003, (which stated that the complainant, who was referred to as the vice chief editor of the Yeni Musavat newspaper, had been placed in detention due to suspicions of having spread secret information detrimental to State security), together with certificates concerning the complainant from various human rights organisations in Azerbaijan.

4.7 On 1 July 2005, the complainant and his wife lodged an application for asylum on behalf of their newborn child. The Aliens Appeals Board considered this application along with the appeal of the complainant and his wife.

4.8 On 28 November 2005, the Aliens Appeals Board rejected the appeal on similar grounds to those advanced by the Migration Board. The Aliens Appeals Board also questioned the complainant's credibility. It concluded that the complainant's Musavat membership card was not authentic and that two of the certificates presented by the complainant from Azerbaijani organisations were not genuine. The Aliens Appeals Board based its conclusions on its prior general knowledge of Musavat membership cards, a signature submitted to it in person by an alleged signatory of one of the certificates, together with direct telephone and email contact with an alleged signatory of another of the certificates. Further, the Board had received confirmation that the chief editor of the Musavat newspaper denied that the complainant "had worked as a vice chief editor or as a writer for the newspaper". It was not satisfied by the complainant's explanations, which tended to question the veracity of the persons who had allegedly provided the certificates in the first place, when confronted by the information gathered by the Board.

4.9 The Migration Board re-examined the case in respect of the complainant and his family on its own initiative under a new temporary law introduced on 15 November 2005 and concluded, by decision dated 19 May 2006, that no resident visa should be granted on humanitarian grounds.

4.10 On the admissibility, and with regard to whether domestic remedies have been exhausted in this case, the State party notes that on 7 June 2006 the complainant's wife lodged a further application with the Migration Board for residence permits for herself and her family. The State party notes that such application has not yet been considered and that a decision by the Migration Board can be appealed to a migration court. The State party leaves it up to the Committee to decide whether all domestic remedies have been exhausted in this regard. Finally, it argues that the communication is inadmissible under article 22, paragraph

2, of the Convention, on the basis that it is manifestly unfounded and so does not rise to the basic level of substantiation required for purposes of admissibility for an alleged breach of article 3. The State party refers, for this conclusion, to its arguments on the merits, set out below.

4.11 On the merits, the State party contests that the communication reveals a violation of the Convention. It refers to the Committee's jurisprudence² that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk.

4.12 With regard to the general situation concerning human rights in Azerbaijan today, the State party points to Azerbaijan's membership of the Council of Europe and that Azerbaijan has ratified several major human rights instruments, including the Convention. While noting reports of human rights abuses, including arbitrary detentions and incidents of beating and torture of persons in custody by the security forces, particularly of prominent activists, the State party shares the view of the Migration Board that the situation in Azerbaijan at present does not warrant a general need for protection for asylum seekers from Azerbaijan.

4.13 As to the personal risk of torture, the State party refers to the Committee's jurisprudence³ that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In addition, it is for the complainant to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable⁴. It draws the Committee's attention to the fact that several provisions of both the 1989 Aliens Act and the new Aliens Act, which came into force in March 2006, reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The State party points out that the Swedish authorities therefore have to apply the same kinds of test as the Committee will apply when examining a subsequent complaint under the Convention.

4.14 The State party claims that the complainant's return to Azerbaijan would not entail a violation of article 3 of the Convention. It submits that great weight must be attached to the decisions of the Swedish migration authorities, as they are in a very good position to assess the information submitted in support of an asylum application and to assess the credibility of an applicant's claims. The State party notes that the Migration Board conducted two interviews with the complainant and had ample time to assess the facts and documentation concerning the application.

² *Communication No.150/1999, S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3 and *Communication No.213/2002, E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3

³ *Communication No.103/1998, S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

⁴ General Comment No. 1 concerning implementation of article 3 of the Convention, A/53/44, Annex XI, adopted on 21 November 1997; *Communication No.150/1999, S.L. v. Sweden*, Views adopted on 11 May 2001, para.6.4 and *Communication No.265/2005, A.H. v. Sweden*, Views adopted on 16 November 2006, para. 11.6

4.15 In addition, the State party submits that there are serious doubts about the complainant's general credibility and the reliability of the information submitted. The State party submits a report, dated October 2006, obtained through the Swedish embassy in Ankara, Turkey, from an international organization working in Azerbaijan with, it is reported, an excellent local network. The report states that the complainant has never been a member of the Musavat party and that the documents submitted by the complainant in support of his asylum applications are false. The report examines each of the complainant's Musavat party membership card, certain of the certificates relating to the complainants' membership of the Musavat party and his position within the Musavat party newspaper, the arrest warrant dated 15 January 2004 and the protocol concerning his detention dated 2 July 2003 in turn and concludes that they are each false. The report states that the complainant has never been wanted in relation to the commission of a crime in Azerbaijan as there is no information concerning him in the state registration organization. The report further states that the complainant has never been a member of the Lawyers Association of the Azerbaijan Republic and that the father of the complainant died in 1996, rather than on 25 August 2003, as was claimed in his initial interview before the Migration Board.

4.16 The State party also claims that the complainant's account of the events in Azerbaijan contain a number of inconsistencies, primarily with regard to his position on the staff of the Musavat newspaper, and that the complainant's story concerning the beatings and the importance of his political activities have escalated both during the course of his asylum application and before the Committee. The State party notes that the complainant has not presented a medical certificate regarding the kidney problems he claims he continues to suffer from after his arrival in Sweden.

4.17 The State party submits that the complainant has not shown substantial grounds for believing that he will run a real and personal risk of being subjected to treatment contrary to article 3 of the Convention if deported to Azerbaijan. It contends that even if the complainant could be considered to have been a member of the Musavat party, he could not be considered to be a prominent person at risk from the authorities based on his activities and level of responsibility within the party, including the Musavat newspaper. The State party notes that the Musavat party is an officially registered and legal organization and that party membership is not a criminal offence. It emphasizes that almost four years have passed since the complainant's political activities are said to have taken place and that in that time a number of presidential pardons have been issued in favour of certain persons whom the Council of Europe considers to be political prisoners. It remarks that the Musavat party has lost much of its position as a major opposition party, having won only 5 of the 125 seats in the November 2005 parliamentary election.

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

5.1 By letter of 6 February 2007, the complainant reiterates that the admissibility criteria have been met. With regard to the merits, and specifically the State party's concerns about his veracity and its claim that the documentation submitted by the complainant is false, the complainant points out that many people in Azerbaijan are afraid to get involved in such cases as it would possibly lead to investigation by the police or the national security services. With regard to the complainant's position in the Musavat newspaper, he states that he was not allowed to explain his position at the newspaper during his initial interview on the basis that he would be afforded an opportunity to do so at his second interview.

5.2 The complainant criticizes the report obtained by the State party through its embassy in Ankara, stating that the investigation was not conducted discreetly and many people were aware that somebody was seeking information about him. He asserts that a report resulting from an investigation conducted in this way should not be relied upon. With regard to the State party's concerns about contradictions in his statements, the complainant states that the translators offered to them were mostly Azerbaijanis with Iranian origins who speak the old Azeri language mixed with Persian which is hard for asylum seekers to understand. He notes that, in consultation with his counsel, he made 17 corrections to the minutes of one of his interviews.

5.3 In addressing the fact that the complainant has not presented a medical certificate for consideration, he states that both he and his wife contacted Växjö hospital in Sweden several times to request documents concerning his medical condition but the documents were not forthcoming. He notes that, at his request, his former counsel had also attempted to get these documents without success.

5.4 With regard to the authenticity of the arrest warrant dated 15 January 2004, the complainant states that the police authorities in Azerbaijan work differently to their counterparts in Europe in that all cases are not registered, particularly those relating to persons involved in politics, and information concerning arrest warrants cannot necessarily be obtained in all cases. The complainant believes that the authorities probably did not register the case against him in order to create an image of respect for procedural rights.

Additional Comments by the State Party

6.1 On 22 March 2007, the State party submitted the following additional comments.

6.2 With regard to the interview process before the Swedish migration authorities, the State party notes that the complainant was interviewed twice. On the first occasion, the interview lasted 1 hour and 45 minutes and an interpreter translated into Russian. The investigator read out the minutes to the complainant and the complainant stated that everything was correct. On the second occasion, the interview lasted 2 hours and 55 minutes and an interpreter translated into Azeri. The complainant, through his counsel, submitted comments on what he considered to be errors in the minutes of this interview on 17 June 2004. On the second occasion, the interview was conducted in the presence of the complainant's counsel. The complainant also submitted comments on the translation of some official documents on 21 October 2005. The State party submits that the complainant therefore had ample time to explain and develop his reasons for seeking asylum in Sweden. The State party maintains that the asylum investigation was carried out properly and thoroughly, the complainant having had the opportunity to correct any possible misunderstanding of his statements.

6.3 With regard to the complainant's criticism of the report obtained by the State party through its embassy in Ankara, the State party stresses that there is nothing to indicate that there are any reasons for questioning the reporting organisation's working methods or the qualities of its inquiries or conclusions and so sees no reason not to rely on the result of the inquiry made in the present case. As regards the complainant's assertion that he could not obtain a medical certificate in Sweden, the State party responds that there is nothing to indicate that it would have been impossible for him to acquire such a document following a medical examination upon arrival in Sweden.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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.

7.3 With regard to the requirement, under article 22, paragraph 5 (b), of the Convention, that all available domestic remedies be exhausted, the Committee notes that the complainant's wife has lodged an additional application before a national body seeking residence permits on behalf of herself and her family. The Committee further notes that as the present communication was lodged by the complainant only, the State party has, as far as the circumstances permit, expressly limited itself to addressing the position concerning him only. It observes that the State party has not provided any further information concerning the particular basis of the additional national application made by the complainant's wife or whether it may be considered to be effective. The Committee further notes that the State party has not, placed any emphasis on this issue, or made any particular objection in this regard, preferring instead to leave it up to the Committee to determine whether all available domestic remedies have been exhausted. Accordingly, the Committee finds it appropriate to determine that the requirements of article 22, paragraph 5 (b), of the Convention have been met as regards the complainant.

7.4 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. The Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility alone.

7.5 Accordingly, the Committee finds the communication admissible and proceeds to consideration of the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the complainant's removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he 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 In assessing the risk of torture in the present case, the Committee notes that the complainant claims that he was arrested and detained for periods of two days on two occasions by Azerbaijani authorities, and that during this period he was tortured. It also notes his assertion that there is a foreseeable risk that he would be tortured if returned to Azerbaijan, on the basis of his political activities, his previous detentions and torture and the outstanding arrest warrant.

8.5 The Committee observes that the State party questions the complainant's credibility and the authenticity of the documentation submitted by him, based on the investigations of the Swedish Aliens Appeals Board and the expert report obtained through its embassy in Turkey. In particular, the State party has questioned the complainant's position within the Musavat party, and at the Musavat party newspaper, and the authenticity of the Musavat party membership card, the alleged decision of detention dated 2 July 2003, the arrest warrant dated 15 January 2004 and the certificates of various Azerbaijani organisations.

8.6 The Committee recalls that according to its General Comment No. 1, the burden to present an arguable case is on the complainant of a complaint (A/53/44, annex IX, para. 5). It recalls its jurisprudence that it is for the complainant to collect and present evidence in support of his account of events⁵. While the complainant has provided various copy documents to the State party and the Committee, the Committee considers that the complainant has failed to disprove the State party's findings and to validate the authenticity of the various documents in question. He has also failed to give any satisfactory response to submissions made by the State party concerning certain issues of fact, such as, for example, with regard to the death of his father, which he had stated was allegedly connected to his political activities. Further, he has not been able to provide any medical evidence to support his claims of mistreatment at the hands of the Azerbaijani authorities.

8.7 The Committee reiterates that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. On the basis of the above, the Committee has formed the opinion that the complainant has not submitted sufficient satisfactory details or corroborating evidence to substantiate the fact of his detentions by, and treatment at the hands of, the Azerbaijani authorities or the alleged criminal investigation against him and the related arrest warrant. The Committee considers therefore that the complainant has not substantiated that he would personally face such a foreseeable, real and personal risk of being subjected to torture upon his return to Azerbaijan.

⁵ *S.L. v Sweden, Communication No. 150/1999*, Views adopted on 11 May 2001, para.6.4 ; and *M.Z. v Sweden, Communication No. 256*, Views adopted on 17 May 2006, para. 9.5

9. The Committee Against Torture, acting under article 22, paragraph 7, of the Convention, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Azerbaijan and therefore concludes that his removal to that country 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.]
