



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

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COMMITTEE AGAINST TORTURE
Forty - first session
(3 - 21 November 2008)

DECISION

Communication No. 306/2006

<u>Submitted by:</u>	E. J. et al. (represented by counsel)
<u>Alleged victim:</u>	The complainants
<u>State party:</u>	Sweden
<u>Date of complaint:</u>	24 October 2006 (initial submission)
<u>Date of the present decision:</u>	14 November 2008

Subject matter: Threat of deportation of complainants to Azerbaijan

Substantive issues: Risk of torture of complainants upon return to country of origin

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**

Forty - first session

Concerning

Communication No. 306/2006

<i>Submitted by:</i>	E. J. et al. (represented by counsel)
<i>Alleged victim:</i>	The complainants
<i>State party:</i>	Sweden
<i>Date of the complaint:</i>	24 October 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 14 November 2008,

Having concluded its consideration of complaint No. 306/2006 submitted to the Committee against Torture on behalf of E. J. et al., 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 complainants, his counsel and the State party,

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

1.1 The complainants are E. J. et al., all Azerbaijani citizens and currently awaiting deportation from Sweden to Azerbaijan. They claim that their deportation would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel.

1.2 On 26 October 2006, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainants to Azerbaijan while their case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedure. On 27 September 2007, the State party acceded to this request.

The facts as presented by the complainants:

2.1 On 14 January 2001, E. J, who was a student in Baku, joined the Azerbaijan Democratic Party (ADP), an opposition party aiming at establishing democracy in Azerbaijan and defending human rights. E. J. occupied several posts in the party, including party secretary in the Nerimov District between 18 March and 21 October 2001. Subsequently, he became an “instructor” and was responsible for “strategic questions and education”. According to the complainants, as a consequence of his active participation in the ADP, E. J. was expelled from his university and from the professional basketball team in which he was playing.

2.2 On 21 June 2003, E. J. was arrested while demonstrating in Baku. He was brought to the police station where he was detained with other ADP members for ten days. He claims to have been exposed to physical abuse by two policemen. In particular, he claims that he was kicked and hit repeatedly with a truncheon over his body every day for periods of 30 minutes, until he was released on 1 July 2003.

2.3 On 16 October 2003, E. J. was arrested a second time while demonstrating against the alleged irregularities of the presidential elections. He was found guilty for having hit a policeman, which he denies. He was then sentenced to fifteen days and detained for this period. He claims that he was subjected to repeated severe physical abuse, as a result of which he once lost consciousness. He does not describe the type of treatment received but says that it was carried out in the same way as during his first arrest but was more severe. He contends that, while in detention, he was put under pressure by the authorities to end his political activities within the ADP.

2.4 The complainants argue that E. J.’s arrests, the humiliation and the severe physical abuse he was exposed to were not only the results of his involvement in the demonstrations, but were related to his active participation in the ADP. He is convinced that the authorities wanted to set an example to dissuade others from engaging in political activities.

2.5 In the beginning of 2004, E. J. and his wife claim to have been constantly threatened by the authorities. Following such threats, A. J. who was pregnant at the time became very stressed and had to undergo a Caesarean section during which their son was born with disabilities. On 20 May 2004, E. J. took part in yet another demonstration, during which the police arrived and beat demonstrators with truncheons. Some demonstrators were arrested but E. J. managed to escape¹. Subsequently, he and his family fled to the Russian Federation and then to Sweden where they applied for asylum on 12 August 2004.

2.6 On 31 May 2005, the complainant’s application for asylum was rejected by the Migration Board. The Board noted that Azerbaijan was a member of the Council of Europe (CoE) and has undertaken legal reforms to ensure the respect for human rights. It did not contest the facts presented

¹ During his first interview, E.J produced the following documents: an identity card, ADP membership, three political party documents and two what he refers to as “arrest warrants”. He provides no explanation of these documents.

by the complainants but found it unlikely that E. J. would face a risk of persecution if he returned to Azerbaijan, where several political opponents had recently been released. The complainants appeal to the Aliens Appeals Board was rejected on 1 November 2005. The complainants' application for permanent residence permits on humanitarian grounds was also denied on 25 July 2006 and a request for review of this decision was rejected on 17 August 2006.

2.7 As to the general human rights situation in Azerbaijan, the complainants provide copies of reports from Human Rights Watch, dated January 2006, Amnesty International, dated 2005 and the International Helsinki Federation for Human Rights, dated 2006. All reports denounce a consistent pattern of gross, flagrant and mass violations of human rights particularly towards political opponents.

The complaint:

3. The complainants claim that Sweden would violate article 3 of the Convention in deporting them to Azerbaijan, as there is a real risk that E. J. will be subjected to torture, on account of his membership and activities on behalf of the ADP.

State party's submissions on admissibility and merits:

4.1 On 27 September 2007, the State party challenged the admissibility and merits of the complaint. It confirms that the complainants have exhausted domestic remedies but argues that the complaint is inadmissible, as it is manifestly ill-founded, and is an abuse of the right of submission on account of the submission of documents which the State party claims are not authentic. If the Committee considers the complaint admissible, the State party denies that it would violate the Convention by deporting the complainants to Azerbaijan.

4.2 The State party 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. It also 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 complainants to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or

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.

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. It points out that the Swedish authorities therefore apply the same kinds of test as the Committee when examining complaints under the Convention.

4.3 The State party submits that great weight must be attached to the decisions of the Swedish migration authorities, as they are well placed to assess the information submitted in support of an asylum application and to assess the credibility of an applicant's claims. The State party therefore relies on the decisions of the Migration Board and the Aliens Appeals Board. In January 2007, it requested the assistance of the Swedish Embassy in Ankara regarding some of the issues raised in this case. The Embassy engaged the services of a human rights lawyer in Baku, who has many contacts among human rights organisations and opposition political parties in Azerbaijan. The results of this investigation were set out in a report dated 19 March 2007: according to Akif Shahbazov, the former chairman of the ADP, E. J. was never a member of the ADP; the claim that E. J. was expelled from university due to his membership of a political party is incorrect, as according to the director of the university he was expelled for having failed to pay his fees; and E. J. is not wanted by the Azerbaijani authorities; and finally there are no past or current proceedings registered against him.

4.4 As to the documents provided by the complainants, the report of 19 March 2007 states that: Akif Shahbazov denies having signed the document allegedly issued by the ADP, denies that E. J. is a member of the ADP, and states that the ADP has no record of this document; what are referred to as "arrest letters" dated 21 June 2003 and 16 October 2003, are translated as "judgements" by the lawyer in question, are not recorded in the court's register and the judges who are alleged to have signed them deny having done so; and finally the document issued by the police of Baku on 22 May 2004 is considered to be a forgery, as it contains several formal and stylistic errors, there is no record of such a summons at the police authority register, the name of the person on the summons never worked as an investigator in the department in question, and, in any event, such a summons could only have been issued by investigators of the Military Prosecutor's Office and not by the police of Baku.

4.5 On the basis of this report, the State party concludes that the documents invoked in support of E.J.'s membership, activities and positions in the ADP, his alleged arrests in 2003, and his claim to be wanted by the police for his involvement in the demonstration allegedly held in May 2004, are not authentic. This report also supports the conclusion that: there is no judgement against E. J.; he is not wanted by the authorities in Azerbaijan; he has never been active in the ADP; and his account of his alleged political activities, the two episodes of arrest/imprisonment and the claim that he is wanted by the police, are all fictitious. There is nothing to support the submission that E. J. would

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

risk arrest and torture upon return to Azerbaijan on account of his past political activities or for any other reason. Even if the State party were to assume that E.J's account of his past political activities are accurate, he has not shown substantial grounds for believing that he and his family would run a real and personal risk of being subjected to treatment contrary to article 3 if deported to Azerbaijan. The ADP is an officially registered and legal political organization, membership of which is not considered a criminal offence. He has not held a leading position in the party and his alleged activities are not of such significance that he would attract particular interest on the part of the Azerbaijani authorities upon return. In addition, his activities are alleged to have taken place between January 2001 and May 2004 – more than four years ago. Any claims of a risk of torture should also be viewed in light of the presidential pardons in 2005. On the issue of past abuse the State party draws the Committee's attention to the fact that the complainants have failed to adduce any evidence, medical or otherwise, in support of these claims.

4.6 With regard to the general human rights situation in Azerbaijan, the State party points to its membership of the Council of Europe (CoE), and its ratification of several major human rights instruments including the Convention against Torture. Azerbaijan has made progress in the field of human rights and around 100 police officers were punished for human rights abuses in 2006. The office of a national ombudsman has been established and a new action plan for the protection of human rights was announced by President Aliyev in December 2006. As the Swedish Migration Board noted in its decision of 31 May 2005, a number of persons defined by the CoE as political prisoners were released by Azerbaijan. This occurred following several presidential pardons in 2004 and 2005, including, in the spring of 2005, of the ADP leader Mr. S. Jalaloglu.

4.7 The State party does not underestimate any legitimate concerns that may be expressed with respect to Azerbaijan's human rights record and notes reports of human rights abuses, including arbitrary detentions and incidents of beatings and torture of persons in custody by the security forces, particularly of prominent activists, and concern for the freedom of the media and the freedom of expression. Members of the opposition have been arrested and sentenced to fines or detention in court proceedings that reportedly failed to meet the standards for due process. According to estimates by NGOs, the Azerbaijani government held approximately 50 political prisoners in 2006. Leaders of the opposition who have been released from prison have been prohibited from continuing their political activities and several members of the opposition have lost their jobs and have been prevented from obtaining employment. However, it 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 that country.

Complainants' comments on the State party's observations:

5.1 On 16 March 2008, the complainants commented on the State party's response. They reiterate their previous arguments, and reaffirm that E. J.'s account of the events in Azerbaijan was consistent throughout the asylum process and never questioned by the authorities. His credibility was neither contested by the Migration Board or the Aliens Appeal Board, both of which acknowledged the facts as presented by him but concluded that he was arrested due to his participation in the demonstrations and not because of his position in the ADP. They admit that due to errors of

translation the documents submitted by them to support their case were incorrectly defined as “arrest letters”/arrest warrants” and are in fact “judgements” as described by the State party.

5.2 The complainants submit that it is hard to contest the credentials of the lawyer engaged by the Swedish Embassy in Ankara, since no specific information is given about him. They question whether this lawyer is independent and, without any relation to the current regime, and highlight the widespread corruption which, they claim, must be taken into account when assessing the veracity of this lawyer’s findings⁵. They question how this lawyer obtained this information without connections to the current regime. As to the information from A. S., that E. J. was never a member of the ADP, the complainants argue that the State party has provided no written evidence to this effect, but that this information was only provided orally. They regret that they have been unable to contact Mr. Shabazov themselves to deny that he made such a statement but claim that since his son was imprisoned in Azerbaijan, it has been impossible to reach him. As to the information given by the director of E. J.’s ex-university, the complainants explain that it stands to reason that a director of a state-controlled organ would never admit that a politically active person was expelled, as such a confession would be an admission that persecution on the basis of political opinion exists. They also deny that E. J. ever had to pay university fees, due to his athletic achievements. The complainants reiterate that the judgements are genuine and cannot understand why the judges in question deny having signed them. They argue that they may have been threatened *inter alia* by the government to make such false statements. In short, the State party is only basing its decision on the findings of one person – the lawyer who drafted the report.

5.3 The complainants submit that the fact that the ADP is an officially registered and legal organization in Azerbaijan does not *de facto* constitute a guarantee that E. J. will not be arrested and tortured upon return. ADP members have been arrested and tortured before and a number of well known sources report that the government still persecutes political opponents, whether they are registered or not. E. J. held a leading position in the party, compared to ordinary members, in that he was party secretary for the Nerimov District, and subsequently appointed instructor during which time he also became responsible for “strategic questions and education”. However, the complainants also argue that being at a lower level within a party makes it easier for the authorities to persecute the individuals concerned as, unlike internationally well-known leaders, such individuals do not have the protection of the international community. In their view, the authorities will be even more suspicious if E. J. returns after four years and thus more likely to be arrested and tortured. As to the State party’s argument that the complainants have provided no evidence of past torture, the complainants contend that it is for the Committee to consider whether they will be subjected to torture upon return now and should thus be forward looking.

5.4 As to the State party’s view that there is no general need for protection of asylum seekers from Azerbaijan, the complainants submit that they never made this claim, but rely on their argument that E. J. is currently personally at risk. They question whether the Swedish migration authorities apply

⁵ The complainants refer to studies carried out by the OECD (Organisation for Economic Cooperation and Development) and GRECO (Group of States against Corruption of the Council of Europe) to demonstrate their argument on the level of corruption in Azerbaijan.

the same kind of test as the Committee when considering an application for asylum under the 1989 Aliens Act, as the test applied is one of a “well-founded fear” rather than “substantial grounds” for believing that an applicant would be subjected to torture, as in the Convention. According to the complainants, the decisions of the authorities should be regarded as “standard decisions” with regard to asylum seekers from Azerbaijan claiming persecution on grounds of political belief. On the general human rights situation in Azerbaijan, the complainants submit that the situation has deteriorated and refers to two reports from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Human Rights Council, in the basis of which the complainants’ consider that there is a consistent pattern of gross, flagrant and/or mass violations of human rights within the meaning of article 3 of the Convention, in Azerbaijan⁶. They also refer to the Ministry of Foreign Affairs’ report of 2006, which states that as a whole the human rights situation did not improve in 2006. It underlines the existence of torture and ill-treatment, restrictions on the freedom of speech, the oppression of civil society, police brutality and arbitrary arrests.

State party’s supplementary submission:

6. On 22 September 2008, the State party submits that it has in several previous complaints before the Committee asked for the assistance of one of its embassies in order, inter alia, to verify information or documents submitted by the complainants concerned, in particular, in relation to asylum seekers from Azerbaijan. From the Views of the Committee in these cases⁷, it is evident that the reports from the Embassy in Ankara also include findings that verify information submitted by the concerned complainant as well as the authenticity of documents invoked. The State party submits that the Embassy in Ankara is well aware of the importance of the integrity and discretion of the person chosen, as well as the sensitivity of the issues involved. The Embassy normally uses external expertise for its reports in these cases, it exercises great caution in selecting suitable persons to assist it and the persons chosen are independent of the authorities and political parties in Azerbaijan. On this occasion, the Embassy used the services of a human rights lawyer in Baku who has a wide network of contacts among human rights organisations and opposition political parties in Azerbaijan. The State party is of the view that it is legitimate not to identify the lawyer engaged for security reasons and states that his services were previously used in relation to another case decided by the Committee: *Z.K. v. Sweden*, Communication no 301/2006, Views adopted on 9 May 2008, para. 4.5. In addition, the conclusions presented in the report are supported by verifiable facts.

⁶ It is not clear to which reports the complainants are referring. No information is provided by the complainants in this regard.

⁷ The State party refers to: *A.H. v. Sweden*, Communication No. 265/2005, Views adopted on 16 November 2006; *E.R.K. and Y.K. v Sweden*, Communications Nos. 270/2005 and 271/2005, Views adopted on 30 April 2007; and *E.V.I. v. Sweden*, Communication No. 296/2006, Views adopted on 1 May 2007; and *Z.K. v. Sweden*, Communication No. 301/2006, Views adopted on 9 May 2008.

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 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainants have complied with article 22, paragraph 5 (b).

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 and is an abuse of the right of submission given the non-authentic nature of the documents submitted by the complainants to support their claims. 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 considerations alone.

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

Consideration of the merits

8.1 The issue before the Committee is whether the complainants' 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 they 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, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable, 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 personal⁸. The Committee also recalls from General Comment No.1 that considerable weight will be given, to exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of fact that are made by organs of the State party concerned; but that the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.4 The Committee notes that in its arguments against the claims advanced, the State party makes reference to information presented in a report, dated 19 March 2007, provided to it by the Swedish Embassy in Ankara, following an investigation by a person whose name has not been revealed by the State party. It also notes that this investigation took place after the termination of domestic proceedings and that the author has not had an opportunity either to contest the information provided therein or to challenge the investigator whose name has not been revealed before the domestic authorities. For these reasons, the Committee considers that the State party should not have relied upon this information in considering whether there is a real and personal risk of torture for the complainants, and indeed the Committee itself does not intend to take the contents of this report into account in its consideration of this communication.

8.5 The Committee notes the claim that there is a risk that E. J. would be tortured or ill-treated if deported to Azerbaijan, because of his past political activities, and the claim that he was previously subjected to torture and ill-treatment. On the latter issue, the Committee notes that the complainants have failed to adduce any evidence that E. J. was subjected to torture or ill-treatment in Azerbaijan and also notes their sole response to the State party's argument on this point that the Committee should be forward looking in assessing whether there is a current risk of torture or ill-treatment.

8.6 As to E. J.'s alleged involvement in political activities, the Committee notes that although he was a member of the ADP, it does not appear that he was in a leading position, and thus would not attract the particular interest of the Azerbaijani authorities if returned. Nor is there any evidence that he has been involved, while in Sweden, in any activity which would attract the interest of the same authorities four years after he left Azerbaijan. In this regard, the Committee also notes that the activities in which he was alleged to have been involved took place between January 2001 and May 2004 – more than four years ago. It notes further that a number of persons defined by the CoE as

⁸ Communication No. 296/2006, *E. V. I. v. Sweden*, Views adopted on 1 May 2007; Communication No. 270 and 271/2005, *E. R. K. and Y. K. v. Sweden*, Views adopted on 30 April 2007.

political prisoners have been released by the Azerbaijani authorities, following presidential pardons, in particular of the ADP leader himself and that this has not been contested by the complainants.

8.7 In the Committee's view, the complainants have failed to adduce any other tangible evidence to demonstrate that E. J. would face a foreseeable, real and personal risk of being subjected to torture if returned to Azerbaijan. For these reasons, and in light of the fact that the other complainants' case is closely linked to, if not dependent on, that of E. J., the Committee concludes that the other complainants have also failed to substantiate their claim that they would also face a foreseeable, real and personal risk of being subjected to torture upon their return to Azerbaijan. The Committee therefore concludes that their removal to that country would not constitute a breach of article 3 of the Convention.

9. 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 complainants' removal to Azerbaijan by the State party 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.]
