



**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. 332/2007

<u>Submitted by:</u>	M. M. et al. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	22 October 2007 (initial submission)
<u>Date of present decision:</u>	11 November 2008

Subject matter: Deportation of the complainant from Sweden to Azerbaijan

Procedural issues: Request for interim measures of protection

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

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**

Forty-first session

Concerning

Communication No. 332/2007

<i>Submitted by:</i>	M. M. et al. (represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of the complaint:</i>	22 October 2007 (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 11 November 2008,

Having concluded its consideration of complaint No. 332/2007 submitted to the Committee against Torture by M.M. 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 M. M., born in 1978, currently awaiting deportation from Sweden to Azerbaijan, his country of origin. He was apprehended by Swedish police on 22 October 2007. The complainant is 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 26 October 2007 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 was under consideration by the Committee. On 10 June 2008, the State party was informed by note verbale that its request of 23 May 2008 for the lifting of the interim measures request had been denied.

The facts as presented by the complainant

2.1 In mid - December 1999, the complainant contacted one of the vice presidents of the Musavat party, Mr. Q. H. He remained in regular contact with him, without becoming an official member of the party. On 10 January 2003, the complainant formally became a member of the Musavat party and began working for it. The complainant's job, which was mainly to recruit new members and to sell the party's official magazine, continued until the presidential election in Azerbaijan on 15 October 2003.

2.2 The Musavat party did not win the election. A demonstration against the alleged rigging of the election was scheduled to take place the day after. On 16 October 2003, the complainant and some 4000 to 5000 Musavat supporters started a march from the party headquarters to the Freedom square. The authorities tried to disperse the demonstrators. The complainant and several other demonstrators were arrested and brought to remand prison. On 17 October, he was transferred to Bayel prison in Baku.

2.3 The complainant was not exposed to inhuman treatment during the first week, but the security guards regularly insulted prisoners. On 24 October 2003, the complainant was brought to the prison manager, Mr. M., and was asked to provide the names of other demonstrators. The complainant refused, and Mr. M. insulted him and his family.

2.4 During the night of 25 to 26 October security guards covered the complainant's head with a hood and carried him out of his cell. After being exposed to verbal abuse and threats, the complainant reconfirmed that he was unwilling to cooperate. His head still covered with the hood, he received punches and kicks all over his body. He was also beaten with a blunt object. After approximately 15 minutes, he lost consciousness.

2.5 The complainant was denied medical care. It took ten days before he was able to stand up again and walk. Then he was brought again to the interrogation room, where he again was subjected to inhuman treatment. The same as during the night of 25 to 26 October was repeated several times. The complainant reaffirmed that he remained unwilling to cooperate. During the following period the complainant was systematically tortured. He had no access to a lawyer and the authorities did not give any reason for his detention.

2.6 On 20 December 2003, the complainant decided to cooperate. He gave the names of five other demonstrators. On 15 March 2004, he was informed that if he wanted probationary release, he had to work undercover in the party so that he could inform the authorities about activities of the Musavat party. He refused to comply. On 25 March 2004, he was brought to a room with a hood over his head, his arms were chained while his legs were put into cold water. When the water reached a temperature considered to be too warm, the pool was refilled with cold water. The complainant does not remember how many times this procedure was repeated, but the treatment caused unbearable pain.

2.7 On 1 April 2004, the complainant stated that he was willing to cooperate with the authorities. He was trained in recovery of the type of information the authorities were interested in. On 1 July 2004, the complainant was temporarily released. His and his wife's passports were confiscated by the authorities.

2.8 The complainant continued to give information about the Musavat party to the authorities. On 28 September 2004, Mr. S. I., a member of Musavat party met with the complainant and threatened to kill the complainant and his family because of these spying activities.

2.9 On 4 January 2005, the complainant arrived in Sweden with his family, and asked for asylum. On 26 January 2005, a preliminary interview was conducted, during which the complainant described his political activity, how he was arrested, his treatment in prison and how he left Azerbaijan.

2.10 On 9 June 2005, a second interview was held. The complainant was asked to provide complementary details to the circumstances he had described in the first interview. He described his activities in the Musavat party, and argued that he had been imprisoned without being convicted. During the interview the complainant was represented by a lawyer.

2.11 On 8 July 2005, the Migration Board rejected the complainant's asylum application. Although the Migration Board acknowledged that police brutality and random arrests were common in Azerbaijan, it considered it unlikely that the complainant was of such interest to the authorities after only a short period of activity within the party, and that he did not have a prominent role.

2.12 His lawyer appealed the decision to the former Aliens Appeals Board, which, on 20 October 2005, rejected the complainant's application. The Aliens Appeals Board argued that the complainant had not made out that he was of such interest to the authorities that he would risk arrest if returned to Azerbaijan. It also concluded that the complainant's family should not be granted a permanent residence permit under Chapter 3 Section 3 of the 1989 Aliens Act.

2.13 In accordance with the interim legislation then applicable, the Migration Board considered the complainant's and his family's case according to Chapter 2, Section 5b of the 1989 Aliens Act. On 3 September 2006, it rejected the application, referring to the following facts:

- a) the family had not resided in Sweden for the period of time required to obtain a residence permit;
- b) the applicants had not submitted any new reasons about their need for protection.

2.14 After the Migration Board's decision, the complainant and his family claimed that there were impediments to the enforcement of the expulsion order. On 25 October 2006, the Migration Board concluded that no new circumstances had been advanced and that no obstacle existed against the execution of the expulsion order under Chapter 12, Section 18 of the 2005 Aliens Act.

The complaint

3.1 The complainant claims a violation of article 3 of the Convention against Torture by Sweden if he and his family are to be deported to Azerbaijan in the light of the treatment suffered by him during his detention in Azerbaijan and continuing interest in him by the authorities.

3.2 The complainant challenges the reasoning of the State party's migration authorities, related to the assessment of his position in the Musavat party. He submits that he had difficulties understanding the interpreter during both interviews before the Migration Board.

3.3 According to the complainant, the risk of him being persecuted and tortured in Azerbaijan is both personal and present. In his opinion, Swedish authorities never made a comprehensive investigation about his need for protection.

The State party's observations on the admissibility and the merits

4.1 On 23 May 2008 the State party commented on the admissibility and merits of the communication. On admissibility, it acknowledges that available domestic remedies have been exhausted. It maintains that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of the Convention if deported to Azerbaijan fails to rise to the basic level of substantiation required for purposes of admissibility. Accordingly, the communication should be declared inadmissible as manifestly ill-founded.

4.2 On the merits, the State party recalls that Azerbaijan became a party to the Convention against Torture in 1996 and has made a declaration under article 22. It has been a member of the Council of Europe (CoE) since January 2001 and is a State party to the European Convention on Human Rights and other major international human rights instruments. The CoE monitors the human rights situation in the country, and some progress has been made. Criminal proceedings have been initiated and disciplinary measures taken against policemen and other government officials found guilty of human rights violations, and torture has been defined as a crime in the new Criminal Code. However, the State party admits that numerous human rights abuses still occur in Azerbaijan, including arbitrary detentions, beatings and torture of individuals in custody.

4.3 For the State party, several circumstances give reason to question the complainant's allegations of ill-treatment. He told the Swedish migration authorities that he was released on bail, while he claims before the Committee that he was released on the condition that he would work for the Azerbaijani authorities. According to investigation initiated by the Swedish consulate in Baku, the complainant never was a member of the Musavat party and has never worked for it. He was not held in custody from 16 October 2003 to 1 July 2004. There is no information that the complainant committed any crime. According to information from Azerbaijani police authorities, the complainant is not wanted in Azerbaijan. The State party believes this information is correct. The complainant has provided no evidence that he was held in custody or mistreated and tortured by authorities in Azerbaijan.

4.4 The State party endorses the opinion of the Migration Board that the existence of any threats from party members is a matter for the law enforcement authorities to deal with. The applicant has not shown that it is probable that he cannot obtain protection from Azeri authorities.

4.5 The State party maintains 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 if deported to Azerbaijan. It recalls that in a previous case, the Committee took note of

the State party's argument that Azerbaijan had made progress in order to improve the human rights situation since it joined the Council of Europe.¹

4.6 The State party maintains that the complainant's state of health (alleged post- traumatic stress disorder) does not constitute sufficient grounds for being granted asylum in Sweden. In addition, it is not unlikely that the complainant's scars were at least partly caused by a car accident he was involved in as a child.

Complainant's comments on the State party's observations

5.1 On 15 September 2008, the complainant commented on the State party's observations. He emphasizes that he was not only a member of Musavat, but that he was employed by it and had close contacts with one of the party's vice presidents.

5.2 The complainant insists that he was not represented by counsel during the first interview before the Migration Board on 25 January 2005. He had considerable and significant difficulties in understanding the interpreters, and it is thus quite normal that misunderstandings occurred.

5.3 There is a high risk of torture in Azerbaijan, and his fear is well-founded, real and present, as the complainant reneged his assignment to work undercover for the authorities and left the country during an ongoing criminal investigation. The previous personal history of severe physical abuse and torture by the Azeri authorities establishes a situation of personal risk.

5.4 The report requested by the Swedish consulate in Baku contains several inaccuracies. It does not describe how the work was carried out, and it is extremely short. Low evidentiary value should be attached to this report.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 The Committee has 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.

6.3 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 complainant has complied with the requirements in article 22, paragraph 5 (b).

6.4 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

¹ A.H. v. Sweden, 265/2005, para 11.7 (30 November 2006).

for purposes of admissibility under article 22, paragraph 2, of the Convention. The Committee considers, however, that the complainant has made sufficient efforts to substantiate his claim of a violation of article 3 of the Convention, for purposes of admissibility. Accordingly, the Committee declares the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

7.1 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.

7.2 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.

7.3 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.² However, the risk does not have to meet the test of being 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. Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned. The complainant has not convinced the Committee that the authorities of the State party which considered the case did not conduct a proper investigation. In addition, the complainant did not present any ID and claimed before Swedish authorities that there was no contact or reference in Azerbaijan which the State party could contact to receive information about his activities and the current situation. Anyway, 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.³

² A/53/44, annex IX, CAT General Comment No 1, paragraph 6.

³ A/53/44, annex IX, CAT General Comment No 1, paragraph 9.

7.4 The Committee has noted the claim that the complainant would be tortured if deported to Azerbaijan on account of his past political activities. It also notes that he claims to have been tortured in the past and that, in support of his claims, he provides medical reports from a hospital in Stockholm. These reports are not definitive, nor completely coinciding in their diagnosis. The psychiatric report states that it is possible that M.M. has psychiatric problems consistent with a posttraumatic stress disorder, while the forensic report states that the findings of the examination can strengthen/verify that torture has taken place.

7.5 Even if the Committee were to accept the claim that the complainant was subjected to torture in the past, the question is whether he currently runs a risk of torture if returned to Azerbaijan. It does not necessarily follow that, several years after the alleged events occurred, he would still currently be at risk of being subjected to torture if returned to Azerbaijan in the near future.

7.6 As regards the complainant's past political activities, the Committee recalls that it is disputed that the complainant was a member and/or employee of the Musavat party. Furthermore, even if he was a confirmed member or employee of the party, it is not clear that his activities were of such significance as to currently attract the interest of the authorities if returned to Azerbaijan. In his first asylum interview in the State party, the complainant explained that his activities for the party consisted in the handing out of flyers and newspapers. In addition, there are contradictions in the complainant's statements at different stages of the proceedings concerning the regime of his probationary release (above, paragraph 4.3). Further, the evidence submitted by the complainant does not suggest that he is currently being subject to any charges in Azerbaijan. The Committee also notes that the State party affirms that the complainant was never a member of or worked for the Musavat party, he was not held in custody, and he is not wanted in Azerbaijan. The Committee recalls that in these circumstances and pursuant to its General Comment No. 1, the burden to present an arguable case is on the complainant⁴. In the Committee's opinion, the complainant has not discharged this burden of proof.

7.7 In light of all the above, the Committee is not persuaded that the complainant would face a foreseeable, real and personal risk of being subjected to torture if returned to Azerbaijan and therefore concludes that his removal to that country would not constitute a breach of article 3 of the Convention.

8. 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 complainant's 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.]

⁴ A/53/44, annex IX, CAT General Comment No 1, paragraph 5.