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The Secretariat of the United Nations (Office of the High Commissioner for Human Rights) presents its compliments to the Permanent Mission of Sweden to the United Nations office in Geneva and has the honour to transmit herewith the decision (Advance unedited version), adopted by the Committee against Torture on 22 May 2012, concerning communication No. 424/2010, which was presented to the Committee for consideration under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on behalf of Mr. .

In accordance with the Committee's established practice, this decision will be made public.

(62)

7 June 2012





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

Advance unedited version

Distr.: General
7 June 2012

Original: English

Committee against Torture

Communication No. 424/2010

**Decision adopted by the Committee at its forty-eight session, 7 May to 1
June 2012**

Submitted by:

Alleged victim:

The complainant

State party:

Sweden

Date of complaint:

3 June 2010 (initial submission)

Date of decision:

22 May 2012

Subject matter:

Deportation of the complainant to Azerbaijan

Procedural issues:

Non-exhaustion of domestic remedies

Substantive issues:

Prohibition of refoulement

Articles of the Convention:

3

[Annex]

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-eighth session)

concerning

Communication No. 424/2010

Submitted by:

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 3 June 2010

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 May 2012,

Having concluded its consideration of complaint No. 424/2010, submitted to the Committee against Torture by Mr. 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 Mr. He claims that his deportation to Azerbaijan would constitute a breach by Sweden of article 3 of the Convention against Torture. The complainant is represented by counsel Mrs.

1.2 On 14 June 2010, the State party was requested, pursuant to rule 115, paragraph 1 (formerly rule 108, paragraph 1), of the Committee's rules of procedure, not to expel the complainant, while his complaint is under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant studied to become a in Baku. While living in Azerbaijan the complainant claims he and his family had economic problems because he struggled to get a job due to his political beliefs and membership in the Azerbaijan National Party (AMIP). The complainant claims that he was an active member responsible for the party program and recruiting new members. He contends that as a result of his commitment to the party he was monitored by the authorities.

2.2 The complainant submits that he participated in a number of political demonstrations from 1998 until 2003. Some of the demonstrations were in connection with the holding of elections and were held on the so-called "Freedom Square" in the central part of Baku. During one of these demonstrations, in response to the elections of 15 October 2003, authorities attempted to repress the protesters and the complainant claims that he managed to escape and not get arrested only because his father-in-law worked as a prosecutor in Baku. He then went into hiding at his friends' and acquaintances' homes. He claims that his wife told him that the police had searched for him in January 2004 and that they had threatened to arrest her if they did not locate him. These circumstances and his fear of persecution and other abuses caused him to leave Azerbaijan. The complainant submits that he left Azerbaijan with his wife and children on 8 January 2004 and travelled to Dagestan. The complainant submits that his wife and his children stayed in Dagestan.¹

2.3 The complainant travelled to Moscow where he has a brother, and then he continued to Poland where he got help from smugglers to continue to Hamburg. From Hamburg he got help to buy a train ticket to Copenhagen and then to Stockholm. The complainant applied for asylum on 19 January 2004, three days after he entered Sweden.

2.4 On 13 May 2004 the Migration Board rejected the complainant's application for asylum. The refusal was based on the conclusion that the complainant had not engaged in much political activity and did not have a high enough position within the opposition party to be of particular interest to the Azerbaijani authorities. The Migration Board concluded that the complainant did not persuasively show how his return to Azerbaijan would endanger his life. There were, according to the Board, no grounds to allow the complainant to settle in Sweden for humanitarian reasons. The complainant appealed the decision. The Aliens Appeals Board on 18 April 2004 rejected the appeal.

2.5 On 22 May 2006 the complainant submitted a new letter to the Migration Board stating again that he could not return to Azerbaijan and submitting that his fears about returning to Azerbaijan had increased since the decision of the Migration Board and Aliens Appeals Board in 2004. The complainant also added that he had been in Sweden for 2 years and five months and that he had adapted well to Sweden. On 13 June 2006 the Board rejected the complainant's application and refused him a residence permit. The complainant wrote yet another letter to the Migration Board, repeating his claim that he could not return to Azerbaijan since there he faced persecution and other forms of abuse, and even death. For the fourth time, on 27 August 2006 the Migration Board rejected his request and referred to its earlier findings.

2.6 On 20 April 2009, four years after the Aliens Appeals Boards decision became final, the complainant applied for asylum again. During these new proceedings the complainant stated that in addition to his previously stated grounds for asylum he also had become active in politics in Sweden. To prove this, the complainant submitted his membership card in the Azerbaijani opposition party, Musavat. The complainant became a member on 25 June 2007 and became president of a local branch in Stockholm. On 20 April 2009, after assessing the new circumstances described by the complainant, the Migration Board again rejected his request, finding insufficient evidence of a threat to the complainant that would call for asylum or protection.

2.7 On 7 January 2010 the complainant appealed the decision to the Migration Court. On 6 April 2010 the Court rejected the complainant's appeal. The Court agreed with the Migration Board and noted that the general situation in Azerbaijan does not constitute

¹ The complainant does not specify the whereabouts of his family now; nor does he explain how and when did he travel from Dagestan to Moscow. He states that he could not stay in Dagestan since there is an extradition treaty with Azerbaijan.

grounds for asylum or protection. The Court highlighted that the complainant's reasons for requesting asylum had in part been previously examined in connection with his first asylum application and that the new circumstances he presented were insufficient to grant him asylum in Sweden as a refugee. The Court decided to make the complainant subject to exclusion orders and as a result he was taken into custody on 18 January 2010. The complainant sought leave to appeal to the Migration Court of Appeal. On 29 April 2010 the Migration Court of Appeal denied leave to appeal.

The complaint

3 The complainant claims that his forcible deportation to Azerbaijan by Sweden would amount to a violation of article 3 of the Convention. He will be exposed to a real risk of arrest, detention and torture in case of return.

State party's observations on admissibility and merits

4.1 On 30 December 2010, the State party provided its observations on the admissibility and merits. It presented detailed information on the pertinent Swedish asylum legislation and further submitted the following information concerning the facts of the complainant's case, based primarily on the case files of the Swedish Migration Board and the migration courts. The complainant's application for asylum has been examined in several sets of proceedings, including under the 1989 Aliens Act, the temporary amendments to the 1989 Aliens Act, and the 2005 Aliens Act, as described in detail below.

4.2 The State party submits that Mr. [redacted] was interviewed on 21 January 2004 by the Migration Board. Mr. [redacted] stated that he had no identity documents because during his journey to Sweden, he lost his bag which contained his passport. Mr. [redacted] did have a birth certificate and a teacher's diploma. Mr. [redacted] claimed to be a member of the AMIP party. As a member of the party, Mr. [redacted] participated in demonstrations and meetings. He could not find employment due to his membership in AMIP. He had recently purchased a shop for USD 16,000, but did not get the shop, and did not get his money back. Mr. [redacted] and his family concluded he should travel to Europe, in order to "find a solution there". Mr. [redacted] decided to do just that, "in order to take his responsibility as a father".

4.3 The State party claims that on 2 April 2004, Mr. [redacted] submitted a statement through his legal aid counsel to the Migration Board. In that statement, Mr. [redacted] claimed that he left Azerbaijan because of his involvement with AMIP and his position as a party chairman in the area where he resided. Mr. [redacted] claimed to have participated in a number of demonstrations, including a large demonstration on 15 and 16 October 2003. Mr. [redacted] claimed that thanks to his mother-in-law, who worked as a prosecutor, and had some contacts with the police, he was taken away from the demonstration and avoided being battered and arrested. After this, Mr. [redacted] went into hiding. In January 2004, he learned from his wife and his mother-in-law that he was wanted by the police. Mr. [redacted] also claimed that the Azerbaijani mafia was involved in his case and supported the police's search efforts. Mr. [redacted] submitted a copy of his identity card and a membership card of the opposition party.

4.4 The State party submits that on 13 May 2004, the Migration Board rejected Mr. [redacted] application for the residence and work permit. The Migration Board rejected the complainant's application because, *inter alia*, he had not referred to any persecution before the October 2003 demonstration. The Board also decided that it was not likely that Mr. [redacted] would be of any interest to the police in Azerbaijan due to his insignificant political involvement.

4.5 The State party submits that on 23 May 2004, the complainant appealed the Migration Board's decision to the Aliens Appeals Board. The complainant added to his

previous claims that it was actually his father-in-law who worked as a prosecutor, and not his mother-in-law, as submitted previously. Mr. [redacted] also claimed that the Migration Board underestimated his involvement in the opposition party. Mr. [redacted] said that he was convinced that if he was sent back to Azerbaijan, he would be arrested and subjected to serious harassment and assaults. On 18 April 2005, the Aliens Appeals Board rejected Mr. [redacted] appeal, and instead, agreed with the earlier findings of the Migration Board.

4.6 The State party contends that Mr. [redacted] and his wife and daughter submitted another application for residence permit to the Aliens Appeals Board. On 23 April 2005, the Aliens Appeals Board rejected the application, stating that no new circumstances had been invoked by the complainant. Mr. [redacted] further submitted a number of applications for a residence permit, which were all rejected. The last decision was issued on 29 April 2010 by the Migration Court of Appeal, which triggered an order to expel Mr. [redacted] to Azerbaijan.

4.7 The State party acknowledges that the complainant has exhausted all available domestic remedies, but argues that the complaint is inadmissible as it is manifestly ill-founded. If the Committee considers the complaint admissible, the State party denies that it would violate the Convention by deporting the complainant back to Azerbaijan.

4.8 The State party refers to the Committee's jurisprudence 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. The State party argues that additional grounds must exist to show that the individual would be personally at risk². Therefore, the State party submits, the Committee should consider both the general situation with human rights in Azerbaijan and the personal risk of the complainant being subjected to torture upon his return.

4.9 The State party further submits that Azerbaijan has signed on to all important UN conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Since 2006 Azerbaijan has been a member of the UN Human Rights Council. The State party refers to several reports³, and it claims that they all arrive at the same conclusion – that the mere membership or other involvement in an opposition party in Azerbaijan does not necessarily mean that a person will be subjected to torture or ill-treatment.

4.10 The State party also argues that the individual concerned must face a foreseeable, real and personal risk of being tortured if returned to the country of his origin⁴. The State party also submits that according to the General Comment No. 1, it is up to 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 probable.

² The State party refers to 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*, Decision adopted on 14 November 2003, para. 8.3.

³ 2007 Country Report on Human Rights – Azerbaijan, by the Swedish Ministry for Foreign Affairs; 2009 Country Report on Human Rights Practices, by U.S. Department of State; World Report 2010, dated 20 January 2010, by Human Rights Watch; Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan 1-5 March 2010 and 29 June 2010.

⁴ The State party refers to Communication 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

4.11 The State party submits that great weight must be attached to the decisions of the Swedish migration authorities. The State party submits that the complainant has presented certain contradictory statements. Inter alia, the complainant first submitted that it was his mother-in-law that worked as a prosecutor, only to claim later that it was his father-in-law who was a prosecutor. Additionally, the complainant provided different reasons for leaving Azerbaijan. First, he stated that he was not able to obtain employment due to his political activities, and that he did not want his brothers to support him. After two months he changed his story, and claimed that he was forced to leave Azerbaijan because he was sought by the police.

4.12 The State party submits that the complainant has not submitted any evidence that he had been wanted for or accused of any crimes in Azerbaijan. In addition, Mr. [redacted] has not claimed to have been arrested or interrogated while in Azerbaijan. The complainant has provided very vague information concerning the alleged threats against him. The State party submits that there is no evidence or any other reason to believe that the complainant would be subjected to torture if returned to Azerbaijan.

Complainant's comments on the State party's observations

5.1 On 18 March 2011, the complainant commented on the State party's submission of 30 December 2010. He reiterates his position that it was his father-in-law who helped him to avoid being arrested. Because of this, the complainant had to escape from Azerbaijan. This decision was made in consultation with his father-in-law, who, according to the complainant, confirmed that he was wanted by the police.

5.2 The complainant further reiterates that he was politically active as a member of the AMIP party in Azerbaijan, and became active with the Musavat party while in Sweden. He submits that his political beliefs are well-known to the authorities in Azerbaijan. The complainant claims he has submitted extensive written evidence to prove his political beliefs and activities.

5.3 The complainant further argues that once he has provided a certain level of detail and information, the burden of proof then shifts to the State party⁵. In order to further verify his claims, the complainant submits a certificate from the Popular Front Party of Azerbaijan. The certificate provides that the complainant has written more than 150 comments in the Azadliq newspaper and appeared in several online videos. The complainant submits that despite some improvements with the human rights situation in Azerbaijan, there still exists a pattern of gross, flagrant and mass violations.

5.4 The complainant claims that he has provided sufficient information and details about his need for asylum and protection in Sweden or elsewhere outside of Azerbaijan. He further argues that his story is confirmed by the written evidence that he has presented. The complainant reiterates that if he is returned to Azerbaijan, he will be arrested for his political beliefs, and tortured.

State party's further observations

6.1 By note verbale of 7 November 2011, the State party submits its further observations, stating that while the situation in Azerbaijan with freedom of expression, freedom of press and freedom of assembly remains problematic, it does not change the assessment of the complainant's need for protection. The State party disputes that the complainant provided sufficient information for burden to shift to the State party.

⁵ The complainant refers to Communication No. 149/1999, A.S. v. Sweden, Views adopted on 24 November 2000.

6.2 The State party also submits that the authenticity of the certificate from the Popular Front Party is questionable. The certificate states that the complainant was subjected to numerous persecutions, yet the complainant has never himself made such claims. The State party reiterates its position that the expulsion of the complainant would not be in violation of article 3 of the Convention.

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 complainant has complied with article 22, paragraph 5 (b).

7.4 The State party submits that the complaint is "manifestly ill-founded" and should not be examined on its merits. 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 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. Conversely, 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 aim of the present exercise is to determine whether the complainant would be personally at risk of being subjected to torture in Azerbaijan after his return⁶. The Committee recalls its General Comment No.1 on article 3, which states that the Committee

⁶ Azerbaijan has accepted the Committee's competence under article 22 of the Convention and has ratified the Optional Protocol to the Convention.

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 foreseeable, real and personal⁷. The Committee further recalls that under the terms of its General comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it 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

8.4 The Committee notes the claim that there is a risk that the complainant would be tortured or ill-treated if deported to Azerbaijan because of his past political activities. The Committee notes that the complainant has failed to adduce any evidence that he was wanted for his political activities in Azerbaijan. In this regard, the complainant has not presented a copy of an arrest warrant or proof that there is an on-going investigation and that he is personally the subject of such investigation. The Committee notes that the complainant has not claimed that he was detained or tortured in the past.

8.5 As to the complainant's alleged involvement in political activities, the Committee notes that although it is uncontested that he was a member of the AMIP and later of Musavat, which are registered parties in Azerbaijan, it does not appear that he was in a leading position in either of those parties, and would not attract the particular interest of the Azerbaijani authorities if returned. Nor is there any evidence that while in Sweden he has been involved in any activity which would attract the interest of the same authorities several years after he left Azerbaijan.

8.6 The Committee considers, on the basis of all the information before it, that there is no ground to conclude that the complainant would face a foreseeable, real and personal risk of being subjected to torture if returned to Azerbaijan. The Committee therefore concludes that his 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 complainant's removal to Azerbaijan by the State party would not constitute a breach of article 3 of the Convention.

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

⁷ See, *inter alia*, Communication No. 296/2006, *E. V. I. v. Sweden*, Decision adopted on 1 May 2007; Communication No. 270 and 271/2005, *E. R. K. and Y. K. v. Sweden*, Decision adopted on 30 April 2007.

⁸ See, *inter alia*, Communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.