



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

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COMMITTEE AGAINST TORTURE  
Thirty-ninth session  
(5 – 23 November 2007)

**DECISION**

**Communication No. 308/2006**

<u>Submitted by:</u>	K. A. (not represented by counsel)
<u>Alleged victims:</u>	The complainant, the complainant's husband, R. A. and their children, A. A. and V. A.
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	16 October 2006 (initial submission)
<u>Date of present decision:</u>	16 November 2007

Subject matter: Deportation of complainant and family to Azerbaijan.

Substantive issues: Risk of being subjected to torture; existence of pattern of gross, flagrant or mass violations of human rights; relevance of state of health to question of degrading treatment.

Procedural issue: Manifestly unfounded claim.

Article of the Convention: 3

[ANNEX]

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\* Made public by decision of the Committee against Torture.

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

Thirty-ninth session

Concerning

**Communication No. 308/2006**

<i>Submitted by:</i>	K. A. (not represented by counsel)
<i>Alleged victims:</i>	The complainant, the complainant's husband, R. A. and their children, A. A. and V. A.
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	16 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 16 November 2007,*

*Having concluded* its consideration of complaint No. 308/2006, submitted to the Committee against Torture by K. A. in her name and on behalf of her husband, R. A., and their children, A. A. and V. A., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainants,

*Adopts the following:*

**Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant is K. A., an Azerbaijani national, born in 1978. She submits the complaint in her own name and on behalf of her husband, R. A., an Azerbaijani national, born in 1978, and their children, A. A. and V. A., born in Sweden in 2004 and 2005, respectively. The complainant and her family were awaiting deportation from Sweden to Azerbaijan at the time of submission of the complaint. The complainant is unrepresented.

1.2 It was unclear from the initial submission dated 16 October 2006 what the facts of the case were and whether all domestic remedies have been exhausted. On 17, 19 and 26 October 2006, and on 22 November 2006, the complainant was requested to provide detailed information on the facts of the case, substantiation of the claims and supporting documents. Specifically, the complainant was requested to provide (1) further details and explanations as to what happened in the past in Azerbaijan and what she and her husband would risk if returned there; (2) information about why her husband was mistreated while serving in the military; (3) explanations as to why she thought that R. A. would be mistreated if he was to serve a prison term; (4) copies of any medical reports attesting to R. A.'s mistreatment in the

military, warrants, etc.; (5) copies of all decisions by the Swedish migration authorities and any documents related to the deportation date; and (6) confirmation whether the complainant and her family were in hiding at the time of submission of the complaint.

1.3 The complainant replied on 19 and 23 October 2006, and on 17 November 2006. She confirmed that her family was not in hiding and provided partial information on some of the above questions. Information received from the complainant is incorporated into the factual background. Many of the questions reproduced in paragraph 1.2 above, however, remained unanswered. The complainant, *inter alia*, did not adduce any documentary evidence attesting to R. A.'s mistreatment in the Azerbaijani military.

1.4 No deportation date was provided, as the Swedish authorities have allegedly refused to indicate the exact date, but the complainant claimed that the deportation could happen any time. She does not invoke any specific articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the facts as presented, however, may raise issues under article 3.

1.5 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 24 November 2006, and requested it, under Rule 108, paragraph 1 of the Committee's rules of procedure, not to expel the complainant and her family to Azerbaijan while their complaint is under consideration by the Committee. The request was made on the basis of the information contained in the complainant's submissions and could be reviewed at the request of the State party in light of information and comments from the State party and the complainant.

1.6 By submission of 9 May 2007, the State Party informed the Committee that following the request by the Special Rapporteur on New Complaints, the Swedish Migration Board decided on 5 December 2006 to stay the enforcement of the expulsion orders against the complainant and her family.

### **Factual background<sup>1</sup>**

2.1 The complainant and her husband are Azerbaijani nationals of Azerbaijani origin, although R. A.'s mother is claimed to be of Armenian ethnicity. R. A. was 10 years old at the time when an armed conflict between Azerbaijan and Armenia broke out. His mother had to leave Azerbaijan, leaving her son behind with his father. R. A. was hidden by his father for a long time and could not go to school. When he was 16 years old, the authorities refused to issue him an Azerbaijani passport. When he attained the age of military duty, he hid for several months in order to avoid being enlisted, as he feared that anything could happen to him while in the Azerbaijani army. On an unspecified date, his whereabouts were established by the Azerbaijani authorities and he was made to serve.

2.2 The couple applied for asylum in Sweden on 8 September 2003, allegedly three days after they arrived. They carried neither travel nor identity documents; no identity documents, or other documents issued by Azerbaijani authorities, were presented to the Swedish asylum authorities. An initial interview was conducted with the complainant and her husband on 15

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<sup>1</sup> As the facts were unclearly described by the complainant, the factual background in the present complaint was reconstructed mainly on the basis of the decisions of the Swedish authorities.

September 2003. During the interview, R. A. stated, *inter alia*, that during his military service in July 2001, he was beaten, hit with weapons and tortured due to his mother being Armenian. For this reason, he fled from military service after 65 days. After that, he moved around to different places, never publicly revealed his full name and was in hiding from the authorities for two years. He and the complainant got married in April 2003 and settled down in a village (in Azerbaijan), where he worked on a farm looking after animals. On an unspecified date, his supervisor requested him to register in that village. Fearing that the authorities and people around him would find out about his mixed ethnic background, he did not comply with the request. R. A. claimed that a person with an Armenian mother runs the risk of losing his or her citizenship and, at worst, of being murdered.

2.3 The complainant stated that she had no separate reasons to seek asylum and that she subscribed to her husband's reasons for seeking asylum. During the second interview, she confirmed that R. A. was abused during his military service.

2.4 On 10 October 2003, R. A. was injured in a car accident in Sweden. He suffered, *inter alia*, a cerebral haemorrhage and a fractured thigh. Initially, he was treated at the hospital in Umea but was later transferred to Sunderby Hospital in Lulea. He was discharged from Sunderby Hospital on 19 December 2003.

2.5 The Migration Board conducted a second interview with the complainant and her husband on 10 February 2004 (a complete asylum investigation). On that occasion, R. A. was using crutches. During the interview, he stated, *inter alia*, that the car accident caused a cerebral haemorrhage and he had undergone four surgical operations. Since the accident he had suffered memory loss and had difficulties walking and moving his right hand. He remembered having lived in a village, outside Baku, but could not give any details in this regard. He did not remember where he had been registered, where he had gone to school, or the name of his former employer. He had had many problems in Azerbaijan, but did not remember that they were of the character and magnitude that he had described in the first interview. R. A. was unable to provide the interviewer with any detailed information about, for example, his journey to Sweden, or to elaborate on the reasons he had previously given for seeking asylum. The interviewer informed R. A. that he was expected to submit a medical certificate and, if deemed necessary, that a complementary investigation would be conducted at a later date. Concerning his identity, R. A. stated that he had given his passport to the person who brought him to Sweden and was not in possession of any other documents.

2.6 On 12 February 2004, the complainant and her husband were appointed a professional counsel. In a submission of 27 February 2004, counsel confirmed that the reasons for seeking asylum were correctly reproduced in the record of 10 February 2004 and stated, *inter alia*, that R. A. suffered from double vision and his right hand was partially paralysed as a result of the cerebral haemorrhage. Every month he underwent medical examinations at the neurological clinic at the hospital in Lulea. For the time being, R. A. was to take twenty different tablets a day. In his home country, he would not be able to receive the care his medical condition required. These circumstances constituted humanitarian reasons for granting a residence permit. Moreover, if returned to Azerbaijan, R. A. would be arrested and interrogated for deserting military service.

2.7 The records from the hospital in Lulea, including the hospital discharge records of 19 December 2003, were attached to the counsel's submission. These records described R. A.'s

medical condition at the time of his discharge and included a physician's conclusion that that the neuropsychological assessment gave no indication of remaining cognitive disturbance.

2.8 On 11 January 2004, the complainant gave birth to a son, A. A. An application for asylum was lodged on his behalf. His application was considered by the Migration Board jointly with his parents' appeal.

2.9 On 22 July 2004, the Migration Board rejected the family's applications for residence permits, work permits, declarations of refugee status and travel documents and ordered that they be expelled to their country of origin. As to whether the complainant and her family should be regarded as refugees or otherwise in need of protection pursuant to Chapter 3, Sections 23 of the 1989 Aliens Act, the Migration Board noted, *inter alia*, that Azerbaijan became a member of the Council of Europe in 2001 and the Azerbaijani authorities pledged to initiate a number of legal reforms. There was a truce between Azerbaijan and Armenia since 1994 and the Azerbaijani constitution guarantees the protection of equal rights for all Azerbaijani citizens. There is an Armenian minority residing in the country, mostly comprised of the Armenian-Azerbaijani families. Couples where one of the spouses is of Armenian origin can usually lead ordinary lives in Baku, especially if the woman is of Armenian origin. Acts of discrimination in working life and harassment at schools and workplaces have been reported, but there is no discrimination or persecution sanctioned by the government. Children of mixed marriages have the right to choose, at the age of 16, which ethnic group they wish to belong to.

2.10 Without questioning the incidents of assault that R. A. said he had been subjected to during his military service, the Migration Board found that the general situation in Azerbaijan did not constitute grounds for granting asylum in Sweden. The Migration Board considered that the incidents could not be imputed to the Azerbaijani authorities, but should be viewed as criminal acts performed by certain individuals, and that R. A. had not established a probability that Azerbaijani authorities had lacked the will or the capability to protect him from the alleged assaults. Moreover, the Board noted that refusal to carry out one's military service could, if punishment by imprisonment were imposed, lead to a maximum of seven years' imprisonment. The Migration Board found that refusal to carry out one's military service or deserting military service does not normally constitute grounds for granting a residence permit and that a permit can only be granted if the summoned person risks a disproportionately harsh punishment. Without passing judgment on the truth of the information provided by the complainant and her husband, the Migration Board did not find support for the conclusion that R. A. and his family, if returned to Azerbaijan, would risk persecution or such an unreasonable punishment owing to, *inter alia*, race and nationality, that they were to be regarded as refugees or otherwise in need of protection. As to whether the complainant's family should be granted a residence permit for humanitarian reasons, the Migration Board found that the family's physical and mental condition was not severe enough to constitute grounds for granting a residence permit.

2.11 Counsel assigned to the complainant and her husband appealed the Migration Board's decision. In support of the appeal, they stated, that the Migration Board has misjudged the general situation in Azerbaijan. If returned to Azerbaijan, R. A. would be arrested and imprisoned due to his refusal to carry out his military service. It is probable that he would die in prison. R. A. still suffers from the after-effects of the car accident, he is easily irritated and it is difficult for the complainant to take care of their son on her own. The Aliens Appeals Board rejected the appeal on 16 May 2005, stating that it shared the conclusions reached by

the Migration Board and that the circumstances invoked before it did not entail a different position.

2.12 On 31 July 2005, the complainant gave birth to a daughter, V. A. An application for asylum was lodged on her behalf. The application was rejected by the Migration Board on 8 September 2005 and the Board ordered that she be expelled with her family. The decision was appealed to the Aliens Appeals Board, which rejected the appeal on 25 October 2005.

2.13 The complainant, her husband and their son filed new applications with the Aliens Appeals Board through another counsel. They stated that the prison conditions in Azerbaijan were very poor and acts of torture occurred. R. A. would be sentenced to seven years' imprisonment due to his refusal to carry out his military service. He suffered from a neurological injury which makes it impossible for him to endure a long prison sentence. The family had nowhere to live and no social network in Azerbaijan.

2.14 On 21 September 2005, the Aliens Appeals Board examined the applications pursuant to the 1989 Aliens Act in its wording before the temporary legislation entered into force. The Board rejected the applications, stating that the circumstances invoked had previously been examined in the case and that the family's argumentation before the Board was not sufficient to warrant a different conclusion.

2.15 On 11 April 2006, the Migration Board examined the case on its own initiative for determination in accordance with the temporary legislation concerning aliens. The Migration Board was of the view that although the complainant's family had stayed in Sweden for almost three years and that their children were born and being raised in Sweden, the family could not be considered to have developed such close ties with Sweden that residence permits could be granted exclusively on that ground. Furthermore, the Migration Board noted that it is possible to return people to Azerbaijan employing coercive measures. Moreover, the Migration Board did not find it to be of urgent humanitarian interest to grant residence permits. Against this background, and considering that no new circumstances had come to light in the case, as required by the temporary legislation, the Migration Board concluded that the family could not be granted residence permits under that legislation.

2.16 On 12 July 2006 the complainant's family lodged an application with the Migration Board concerning, *inter alia*, impediments to enforcement of the expulsion orders and applied for residence permits under Chapter 12, Section 18 of the New Aliens Act. They stated that A. A. had to go to hospital in December 2005 and June 2006 due to pneumonia, which required antibiotic treatment, and that his medical condition required a continuous follow-up for two years. The Migration Board rejected the applications on 11 August 2006.

### **The complaint**

3.1 The complainant does not invoke any specific articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Her statements amount, however, to a claim that Sweden would violate article 3 of the Convention in deporting her and her family to Azerbaijan, since there is a real risk that her husband would be subjected to torture. She claims that according to the Azerbaijani Constitution, he would be sentenced to a minimum of 7 years' imprisonment for deserting military service and tortured in detention because he is half Armenian. She additionally claims that prison conditions in Azerbaijan are poor and that torture is commonly practiced. Her husband, who

suffered brain haemorrhage and partial paralysis of his hand, would not survive seven years in prison.

3.2 She claims in her own name and on behalf of her children that they would not be able to live in Azerbaijan alone, while her husband was in prison, since the family does not have a place to live, no money for A. A.'s medical treatment and no support. In November 2005, the Swedish government adopted Temporary Aliens Act for families with children who lived in Sweden for long time. In April 2006, the Migration Board concluded that A. A., who at that time was two years and four months old, did not develop close ties to Sweden. The complainant claims that should he had been 3 years old at that time, the family would have been permitted to stay in Sweden. She states that A. A. goes to the Swedish kindergarten, speaks only Swedish language and, in addition, he was diagnosed with asthma in July 2006 and would require regular medical supervision for several years.

### **The State party's admissibility and merits observations**

4.1 On 9 May 2007, the State party acknowledges that the case of the complainant and her husband had been assessed mainly under the old 1989 Aliens Act, which was replaced by the 2005 Aliens Act,<sup>2</sup> and that domestic remedies were exhausted. The State party maintains that the assertion of the complainant and her husband that they are at risk of being treated in a manner that would amount to a breach of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. It accordingly submits that the communication is manifestly unfounded and, thus, inadmissible pursuant to article 22, paragraph 2 of the Convention. On the merits, the State party contends that the communication reveals no violation of the Convention.

4.2 On the merits, the State party refers to the Committee's jurisprudence<sup>3</sup> 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. For a violation of article 3 of the Convention to be established, additional grounds must exist to show that the individual would be personally at risk.

4.3 The State party recalls that Azerbaijan was a party to the Convention against Torture since 1996 and it recognised the competence of the Committee to deal with individual communications. It is also a party to the International Covenant on Civil and Political Rights, Optional Protocol thereto and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Azerbaijan was a member of the Council of Europe since January 2001 and is a State party to the European Convention on Human Rights and Fundamental Freedoms. By becoming a member, Azerbaijan undertook to introduce reforms to strengthen respect for democracy and human rights. The Council of Europe monitored the situation for some time to ensure that progress is being made. The State party lists the following positive developments: (a) a number of persons defined by the Council of Europe as political prisoners have been released by Azerbaijan in a series of

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<sup>2</sup> 2005 Aliens Act entered into force on 31 March 2006. Between 15 November 2005 and 31 March 2006, the 1989 Aliens Act with certain temporary amendments remained in force.

<sup>3</sup> Reference is made to *S.L. v. Sweden*, Communication No.150/1999, Views adopted on 11 May 2001, para.6.3 and *E.J.V.M. v. Sweden*, Communication No.213/2002, Views adopted on 14 November 2003, para.8.3.

presidential pardons during 2004 and 2005; (b) according to the Azerbaijani Department of Internal Affairs and human rights observers, in 2005 criminal proceedings were initiated and disciplinary measures taken against policemen and other government officials found guilty of human rights violations;<sup>4</sup> (c) initiatives are being taken to train police officers and other government representatives with the support of the OSCE and other organisations; (d) in 2002 Azerbaijan established an Ombudsman's office and (d) the same year, torture was defined as a crime in the new Criminal Code and carries a punishment of seven to ten years' imprisonment.

4.4 The State party concedes that although positive results have been achieved, Azerbaijan is still reported as committing numerous human rights abuses, including arbitrary detentions, beating and torture of persons in custody committed by members of the security forces. Corruption is widespread.<sup>5</sup>

4.5 The State party refers to the 2005 US Department of State report, according to which some of the approximately 20.000 persons of Armenian ethnicity living in Azerbaijan have complained of discrimination and Azerbaijani citizens of Armenian ethnicity often choose to hide their ethnicity by having their ethnic designation changed in their passports.<sup>6</sup> According to a survey conducted in 2003 by UNHCR Implementing Partner, the treatment of ethnic Armenians varies from community to community. Reports of discrimination are frequent and include access to government jobs, payment of pensions and other social benefits, and more generally problems with the authorities when claiming one's rights. Discrimination in the workplace is also common.<sup>7</sup> The UNHCR concludes that while discrimination against ethnic Armenians is not a proclaimed official policy in Azerbaijan, there is clearly a certain amount of discrimination against them in daily life that is tolerated by the authorities. According to the UNHCR, however, such discrimination is not such as to amount to persecution *per se*, but in individual cases it is possible that the cumulative effect amounts to it.<sup>8</sup>

4.6 Regarding the issue of discrimination, the State party points out that Azerbaijan has acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and made a declaration recognising the Committee's competence to receive communications under article 14 of the Convention. Azerbaijan has also ratified the Framework Convention for the Protection of National Minorities. The Advisory Committee noted that Azerbaijan made commendable efforts in opening up the personal scope of application of the Framework Convention to a wide range of minorities; however, the Nagorno-Karabakh conflict between Azerbaijan and Armenia and its consequences have considerably hampered the efforts to implement the Framework Convention.<sup>9</sup> Azerbaijan has enacted new legislation containing anti-discrimination provisions, including the Criminal Code and the Criminal Procedure Code.

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<sup>4</sup> Reference is made to the 2005 US Department of State report, "Azerbaijan, Country Reports on Human Rights Practices".

<sup>5</sup> Reference is made to the 2006 Report on Human Rights 2006 issued by the Swedish Ministry of Foreign Affairs, the 2006 US Department of State Country Reports on Human Rights Practices 2006 and the 2006 Amnesty International Annual Report 2006.

<sup>6</sup> *Supra* n.4.

<sup>7</sup> UNHCR, "International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees", September 2003, para.117.

<sup>8</sup> *Ibid*, para.124.

<sup>9</sup> ACFC/INF/OP/I(2004)001.

4.7 The State party concludes by agreeing with the Swedish migration authorities in that the current situation in Azerbaijan does not appear to be such that a general need exists to protect asylum seekers from Azerbaijan. It highlights that this conclusion applies whether or not R. A. is regarded as being half Armenian owing to his mother's ethnic origin.

4.8 As to the personal risk of torture, the State party underlines the complainant's assertion before the national authorities that she had no separate reasons for seeking asylum and, therefore, subscribed to her husband's reasons for seeking asylum. The State party also draws the Committee's attention to the fact that several provisions of the 1989 Aliens Act and the new Aliens Act reflect the same principle that is laid down in article 3, paragraph 1, of the Convention. It refers to the Committee's jurisprudence<sup>10</sup> 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, the complainant must 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. Therefore, it is for the complainant to collect and present evidence in support of his or her account of events.<sup>11</sup>

4.9 The State party contends that due weight must be attached to the opinions of the Swedish migration authorities, as expressed in their decisions to refuse the residence permits in Sweden for the complainant and her family. Furthermore, it considers that the Migration Board's decision of 22 July 2004 - to which the Aliens Appeals Board refers in its decision of 16 May 2005 - is nuanced and well motivated.

4.10 The State party submits that the main issue at stake before the Committee is the complainant and her husband's claim that their forced return to Azerbaijan would put them at risk of being arrested and subjected to torture by the Azerbaijani authorities on the account of R. A.'s refusal to carry out or desertion from military service. According to the State party, in assessing whether there are substantial grounds for believing that they face a real risk of being subjected to treatment contrary to article 3 of the Convention, the credibility that can be attached to their statements is significant. Although the Migration Board and the Aliens Appeals Board in their decisions did not deal with the question of credibility of the complainant and her husband, this does not mean that their statements are altogether undisputed. The State party maintains that there are several circumstances that give reason to question their allegations of ill-treatment.

4.11 The State party firstly notes that R. A.'s statements concerning past harassment and ill-treatment are vague and lacking in details. During his first interview at the Migration Board, he stated that he was beaten, hit with weapons and tortured during his military service in 2001, but gave no further details about these incidents. In addition, R. A. has not adduced any evidence in support of his statements of past ill-treatment although it would have been possible for him to obtain a medical certificate from a doctor after having deserted military service. Furthermore, R. A. has not submitted any documents, for example a detention order, supporting his statement that he would be of particular interest to the authorities and would

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<sup>10</sup> S.M.R. and M.M.R. v. Sweden, Communication No.103/1998, decision adopted on 5 May 1999, para.9.7.

<sup>11</sup> A.H. v. Sweden, Communication No.265/2005, decision adopted on 16 November 2006, para.11.6.

be sent to prison if returned to Azerbaijan. No explanation has been given for the lack of evidence. The State party also emphasises that the complainant and her husband have not submitted any identity documents to the Swedish migration authorities. Thus, it cannot be excluded that the family carry a different name and that R. A. is of a different ethnic background than stated before the national migration authorities.

4.12 The State party submits that in January 2007 it requested the assistance of the Norwegian Embassy in Baku, Azerbaijan, in providing information about the punishment for deserting military service in Azerbaijan. The Embassy responded that there were two different punishments for this crime: up to four years' imprisonment (Section 321.1 of the Criminal Code) and between tree and six years' imprisonment (Section 321.2 of the Criminal Code) respectively. According to legal sources, a prison found guilty of this crime would as a general rule receive a conditional sentence. If the crime has been committed repetitively, the person in question may be sentenced to prison term. The State party notes that the complainant and her husband stated that R. A. escaped from military service on one occasion, in July 2001, and that this incident occurred almost six years ago. Against this background, the State party finds it most unlikely that R. A., if condemned at all upon return to Azerbaijan, would be sentenced to prison term due to his refusal to carry out his military service.

4.13 In this context, the State party draws the Committee's attention to the fact that before the Committee the complainant argued that R. A. would be sentenced to prison for "minimum seven years" upon return to Azerbaijan. At the same time, the submission to the Migration Board does not contain any statements at all about R. A. running the risk of being sentenced to prison if returned to Azerbaijan. In their application to the Aliens Appeals Board, the complainant and her husband stated, for the first time, that R. A. would be sentenced to seven years' imprisonment due to his refusal to carry out his military service. However, the statement before the Committee that he would be sentenced to prison for "*minimum* seven years"<sup>12</sup> is not to be found in the case files of the national authorities. This example of a recently added piece of information, in the State party's view, calls into question the complainant and her husband's credibility in this matter. It also indicates that their story of the possible consequences of R. A.'s refusal to carry out his military service has escalated during the course of the asylum investigation as well as before the Committee. This gives rise to further doubts concerning the complainant and her husband's general credibility.

4.14 As to the question of the complainant and her husband's behaviour before the national authorities, the State party submits that during the second interview at the Migration Board, R. A. stated that he had suffered memory loss as a result of the car accident. For this reason, he was unable to give any details with regard to, for example, where he had lived, where he had gone to school and where he had worked in Azerbaijan. He remembered having had many problems in Azerbaijan, but not that they were of the character and magnitude that he had described during the first interview. The investigator tried to obtain more information but R. A. was unable to provide any details about, for example, his journey to Sweden, or to explain in more depth the reasons he had previously given for seeking asylum. The only document submitted to corroborate R. A.'s injuries, i.e., the hospital record of 19 December 2003, does not support that he suffered from memory loss after being discharged from the hospital (paragraph 2.7 above). None of the submissions the Migration Board or the Aliens Appeals Board contain any arguments about R. A.'s memory loss as a result of the injuries

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<sup>12</sup> Italics added by the State party.

caused by the car accident and he has not submitted a medical certificate in this respect. In the State party's view, R. A.'s behaviour before the Migration Board indicates that it should not be excluded that he has consciously obstructed and rendered the asylum investigation more difficult. His behaviour gives rise to doubts as to the truth of his statements and claims before the Swedish migration authorities and before the Committee.

4.15 The State party submits that there is no evidence to support that R. A. was beaten and tortured during military service on account of his ethnic origin or for any other reason. Furthermore, there is no evidence to support the conclusion that, if returned to Azerbaijan, he would be sentenced to long-term imprisonment for having deserted military service and that he will be mistreated in prison due to his ethnic origin or for any other reason. Against this background, the complainant and her husband have not substantiated that R. A. would attract any particular attention from the Azerbaijani authorities upon return to his country of origin. Accordingly, the State party maintains that they have not shown substantial grounds for believing that they will run a real and personal risk of being subjected to treatment contrary to article 3 if deported to Azerbaijan.

4.16 To conclude, the State party is of the view that the evidence and circumstances invoked by the complainant and her husband do not suffice to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Given Azerbaijan's participation in the Convention against Torture and the fact that in the past the Committee has taken note of the State party's argument that Azerbaijan has made some progress to improve the human rights situation since it joined the Council of Europe, enforcement of the expulsion orders would not constitute a violation of article 3 of the Convention. In so far as the complainant and her husband's claims under article 3 fail to rise to the basic level of substantiation, the communication should be declared inadmissible for being manifestly unfounded.

4.17 The complainant and her husband do not seem to claim that an enforcement of the expulsion orders would entail a violation of article 16 of the Convention due to R. A.'s medical condition. However, the State party adds that, in its opinion, the case does not reveal any violation of the Convention in this regard.

#### **The complainant's comments on the State party's observations**

5.1 On 11 July 2007, the complainant reiterates the events that lead to her and her husband's departure from Azerbaijan. She adds that R. A. was wanted by military authorities and that he could not ask for asylum in the Russian Federation because of the bilateral extradition agreement between Azerbaijan and the Russian Federation. She restates that her husband fears to be killed if returned to Azerbaijan, since 'many boys die' while in the Azerbaijani military, hundreds of them are being beaten up and tortured. Some have escaped to Armenia.

5.2 The complainant confirms that she did not have separate reasons to seek asylum when she arrived in Sweden with her husband in 2003 but submits that she does have reasons to seek asylum now after having lived in Sweden for four years. She has two children born in Sweden, who started going to Swedish kindergarten in November 2005 and December 2006, respectively, and who are well integrated into the Swedish society. She challenges the conclusion of the Migration Board of 11 April 2006 that her son, who was two years and four months old at that time, did not develop close ties to Sweden and questions how one could

come to such a conclusion without knowing her family and children. She submits that she has a copy of a decision in which a permanent residence permit was granted to another family from Azerbaijan only because of their three years old child born in Sweden.

5.3 On the facts, the complainant adds that she was also in the car accident of 10 October 2003 which resulted in numerous injuries of her husband. Although during the second interview with the Migration Board R. A. could not provide any detailed information about his reasons for seeking asylum, she answered to the interviewer's question on his journey to Sweden. She confirms that as a result of the car accident, her husband suffered from the memory loss and abnormal speech. He had difficulties in thinking, attention deficit, frustration and mood swing. After the accident, he acted like a child and it seemed that all his past experiences were simply erased from his memory. He 'woke up as a new person and started living an absolutely new life'. On 17 March 2006, R. A. was diagnosed by a local physician with Post Traumatic Stress Disorder.

5.4 The complainant challenges the State party's assertion that her husband could have 'consciously obstructed and rendered the asylum investigation more difficult', as, according to her, it was clear to the migration authorities that they were interviewing a sick person. She further refutes the State party's argument that it was possible for R. A. to obtain a medical certificate from a doctor after having deserted military service (paragraph 4.11 above). She submits, specifically, that in order to get such certificate, he should have explained where and under what circumstances he had received the injuries in question, which, in turn, would have prompted the doctors to call for police.

5.5 Finally, the complainant submits that Azerbaijan's membership in the Council of Europe does not mean that it is a democratic country. She refers to a number of the OSCE, PACE, Amnesty International and Radda Barnen publications,<sup>13</sup> and adds that there are currently ninety thousand of Azerbaijani asylum seekers in Europe. She concludes by stating that she is not a lawyer to name specific violations of the Convention by the State party but she is certain that her family cannot return to Azerbaijan.

#### **Supplementary submission from the State party**

6.1 By submission of 3 September 2007, the State party recalls that the main task before the Committee is to establish whether R. A. would be personally at risk of being subjected to torture on return to Azerbaijan on account of having deserted from military service. It submits that the complainant and her husband did not adduce any new circumstances or evidence in this regard. Accordingly, the issue of whether the Migration Board's decision not to grant applications for residence permits in Sweden to the complainant's family under the temporary legislation on aliens – which were based on their having young children – would constitute a violation of the Convention, is irrelevant for the proceedings before the Committee. In addition, the State party contends that the complainant's statement that many young men are murdered and tortured during military service is a general and unconfirmed observation.

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<sup>13</sup> OSCE Representative on Freedom of the Media: "I am shocked by arrest of two more Azerbaijani Journalists", PACE: "Human Rights and Democratic Principles Abused in Azerbaijan".

6.2 The State party adheres to its previous statements and conclusions regarding the human rights situation in Azerbaijan and R. A.'s medical condition. It further notes that no medical certificates were submitted in the present case.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes the State party's confirmation, in the submission of 9 May 2007, that all domestic remedies have been exhausted.

7.2 The Committee recalls that for a claim to be admissible under article 22 of the Convention and Rule 107 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility. It notes that the complainant has provided no documentary evidence in support of her account of events in Azerbaijan prior to her and R. A.'s departure for Sweden. Specifically, she claimed that in July 2001 her husband was beaten and tortured during military service in the Azerbaijani military due to his mother being Armenian. However, beyond the mere claim, she and R. A. have failed to provide any detailed account of these incidents or any medical evidence which would corroborate this claim, including a proof of possible after-effects of such ill-treatment. Even assuming that R. A. was ill-treated in July 2001 during his military service, this did not occur in the recent past.

7.3 The Committee also notes that the main reason given by the complainant and her husband for his alleged ill-treatment in the Azerbaijani military and difficulties in living in the Azerbaijani society was his half Armenian ethnic origin. Neither proof of R. A.'s mixed ethnic origin nor any other identity documents was presented, however, by the complainant and her husband to the State party's migration authorities and the Committee. Equally, there is no proof that R. A. was or is wanted for having deserted military service or for any other reason.

7.4 The Committee takes note of the complainant's argument, contested by the State party's authorities, that her husband suffered memory loss as a result of the car accident in October 2003 and, therefore, could not give any details of what happened to him in Azerbaijan. In this regard, the Committee observes that R. A.'s initial interview with the Migration Board took place on 15 September 2003, that is, before the car accident, and thus he had a possibility to give a more detailed account of his past experience and to present at least some of the documentary evidence in support of his claims. Moreover, the Committee was not provided with any medical evidence confirming that R. A. suffered from memory loss; such medical evidence was not presented to the Swedish migration authorities even when the complainant and her husband were assisted by a professional counsel. Furthermore, the complainant, who married R. A. in Azerbaijan in April 2003, also had a possibility to obtain a copy of her and her husband's documents proving their identity and/or ethnic background.

7.5 Lastly, the Committee notes that the Swedish Migration Board gave the complainant and her family ample opportunity to substantiate their claims, by interviewing them several

times, examining their case on its own initiative for determination in accordance with temporary legislation concerning aliens and examining the family's application concerning impediments to enforcement of the expulsion orders. The Committee observes that the complainant has not provided fresh evidence which would cast doubts on the findings of, or the factual evaluation made by, the Migration Board and the Aliens Appeals Board.

8. The Committee therefore considers that the complainant's claims fail to rise to the basic level of substantiation required for purposes of admissibility, and concludes, in accordance with article 22 of the Convention and Rule 107 (b) of its rules of procedure, that the communication is manifestly unfounded and thus inadmissible.<sup>14</sup>

9. The Committee against Torture consequently decides:

(a) That the communication is inadmissible;

(b) That the present decision shall be communicated to the State party and to the complainant.

[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.]

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<sup>14</sup> See, for example, H.I.A. v. Sweden, Communication No.216/2002, decision adopted on 2 May 2003, para.6.2; H. S. V. v. Sweden, Communication No.229/2003, decision adopted on 12 May 2004, para.8.3; R. T. v. Germany, Communication No.242/2003, decision adopted on 24 November 2005, para.7.