



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

Distr.: General  
22 August 2023

Original: English

## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 986/2020\*, \*\*

<i>Communication submitted by:</i>	M.R. (represented by counsel, Linn Öst Nori)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	30 December 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 7 February 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	10 July 2023
<i>Subject matter:</i>	Risk of torture or other ill-treatment in case of deportation to Azerbaijan (non-refoulement)
<i>Procedural issue:</i>	Admissibility – non-substantiation of claims
<i>Substantive issue:</i>	Torture and other cruel, inhuman or degrading treatment or punishment
<i>Article of the Convention:</i>	3

1.1 The complainant is M.R.,<sup>1</sup> a national of Azerbaijan born on 18 July 1970. The complainant's asylum application in Sweden has repeatedly been rejected and he claims that his forcible removal to Azerbaijan would amount to a violation by Sweden of article 3 of the Convention. To avoid irreparable harm, the complainant urged the Committee to issue interim measures to request the State party to refrain from removing him to Azerbaijan while his communication was being considered by the Committee.<sup>2</sup> The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 26 June 1987. The complainant is represented by counsel.

1.2 On 7 February 2020, in application of rule 115 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to register the complaint, without a request for interim measures.<sup>3</sup>

\* Adopted by the Committee at its seventy-seventh session (10–28 July 2023).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

<sup>1</sup> The complainant requested anonymity.

<sup>2</sup> The date of deportation is unknown.

<sup>3</sup> The complainant currently resides in Sweden, as informed by the State party.



**Facts as submitted by the complainant**

2.1 The complainant was born in Baku, Azerbaijan. He is married to a woman who lives in the Russian Federation and they have a child. The complainant does not live with them but, on the basis of the documents submitted, it appears that he visits them from time to time in the Russian Federation.

2.2 The complainant first entered Sweden in 2004 and applied for asylum. The reasons for his initial asylum request are not set out in his complaint. On 13 February 2007, the Swedish Migration Agency rejected his application and issued an expulsion order. On 10 December 2007, the complainant withdrew his asylum request and voluntarily returned to Azerbaijan.

2.3 The complainant arrived back in Sweden on 11 March 2008. He applied to the Migration Agency to halt the enforcement of the expulsion order that was still in force. His application was rejected on 9 April 2008. The complainant returned to Azerbaijan on 10 April 2008. In the same year, the complainant applied for a residence permit on the basis of his marriage with a Swedish woman. This request was rejected as the authorities found that the marriage was fake.

2.4 The complainant entered Sweden for the third time in November 2008 and applied for asylum on 9 January 2012. This request was dismissed by the Migration Agency on 4 April 2012. With this decision, he was also banned from re-entering Sweden for four years. The Migration Court upheld the first instance decision. The Migration Court of Appeal refused to grant the complainant's request for leave to appeal on 16 January 2013. The complainant was forcibly removed from Sweden on 18 February 2013.

2.5 On 1 May 2015, the complainant re-entered Sweden for the fourth time and applied for asylum on an unspecified date. The complainant claimed that he had been subjected to torture in the form of beating during several days of detention by the Azerbaijani border authorities when he had returned to Azerbaijan on 18 February 2013. He was accused of being a traitor, of saying bad things about Azerbaijan and of having had contact with Azerbaijani political activists in Sweden. The complainant is on a blacklist in Azerbaijan. Given that the Azerbaijani authorities still have an interest in the complainant, he is at risk of being persecuted by them if he were to be deported to Azerbaijan. The complainant also submitted a medical report indicating that nothing about his injuries contradicted his narrative that he had been tortured. In its decision of 19 October 2018, the Migration Agency, however, found that the fact that the medical report did not refute the complainant's allegation of torture did not prove of itself that he had indeed sustained his injuries the way he described. Furthermore, the Agency did not find it plausible that the complainant was on the blacklist of the Azerbaijani authorities because he had applied for asylum in Sweden, especially due to the fact that he had married in the Russian Federation and had returned to Azerbaijan from the Russian Federation several times without being exposed to any kind of violence on the part of the authorities.

2.6 The Migration Court ordered another medical report to be obtained, on the basis of which it found it plausible that the complainant had been subjected to torture. At the same time, it could not conclude that the complainant would be subjected to ill-treatment or persecution again if removed to Azerbaijan. In that respect, in its decision of 5 July 2019, the Court noted that the complainant had lived in Azerbaijan between 2013 and 2015 without incident and that he had left Azerbaijan with a passport and a valid Schengen visa issued by Lithuania. The complainant filed for leave to appeal, which was rejected by the Migration Court of Appeal on 6 September 2019.

2.7 The complainant claims that he has exhausted all available domestic remedies and that the same matter has not been or is not pending before any other mechanism of international investigation or settlement.

**Complaint**

3.1 The complainant claims that his forcible removal to Azerbaijan would amount to a violation by Sweden of article 3 of the Convention. He claims that there are substantial grounds for believing that he faces a risk of torture and cruel, inhuman or degrading treatment

if removed to Azerbaijan. He would be exposed to a risk because he applied for asylum in Sweden and his application was rejected.

3.2 He argues that he was exposed to torture in the past. When he was forcibly removed to Azerbaijan in 2013, he was kept in detention by the border police and was subjected to serious ill-treatment for seven days. In particular, he was beaten with different objects, dragged on the floor by his arms and raped. He was also forced to sign documents stating that he regretted his anti-government activities abroad and that he promised not to leave the country and apply for asylum again.

3.3 The complainant submits that the Migration Court accepted as fact that he had been subjected to torture, as attested by the forensic medical report, conducted in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); however, on account of minor inconsistencies in his statements, his overall credibility was questioned and the Court therefore concluded that the complainant did not make a plausible case that he would face a risk of torture again if removed to his country of origin. He emphasizes that he left Azerbaijan illegally, as he had paid a bribe to obtain a passport. As to the finding about his trips to the Russian Federation, he notes that he left and returned to Azerbaijan only at those entry points that were not controlled by the border police. Those circumstances do not prove that the Azerbaijani authorities no longer have any interest in him. These facts have not been properly assessed by the State party's asylum authorities.

#### **State party's observations on admissibility and the merits**

4.1 On 6 October 2020, the State party submitted its observations on admissibility and the merits, recalling the main facts of the case and the complainant's allegations before the Committee.

4.2 The State party argues that the communication should be declared inadmissible as manifestly unfounded. As to the merits, it rejects the complainant's claims and holds that the present communication reveals no violation of the Convention.

4.3 As regards the Swedish legislation concerned, the complainant's case was assessed under the 2005 Aliens Act, which entered into force on 31 March 2006 and the Act Temporarily Restricting the Possibility to Obtain Residence Permits in Sweden, which entered into force on 20 July 2016.

4.4 Regarding the facts of the case, the State party refers to the translated summaries of the facts in the Swedish Migration Agency's decision of 19 October 2018 and the Migration Court's judgment of 5 July 2019. According to the reasoning of the national authorities, the complainant has not shown that he would personally face a real risk of being subjected to the kind of treatment upon his return to Azerbaijan that would make his expulsion from Sweden amount to a violation of article 3 of the Convention. The complainant has not therefore shown that he is in need of protection in Sweden and he can be removed to Azerbaijan.

4.5 The complainant applied for asylum in Sweden for the first time on 10 September 2004 under a false identity. The Swedish Migration Agency rejected his application and decided on 13 February 2007 to expel him to Azerbaijan. That decision was appealed to the Migration Court. In August 2007, the complainant submitted an identity card and a driving licence under a new identity. Before a judgement was announced by the Migration Court, the complainant withdrew his appeal on 10 December 2007 and stated that he wanted to return to his country of origin, which he did on 11 December 2007.

4.6 The complainant has stated that he changed his surname in 2008. However, when applying for asylum on 11 March 2008, after his return to Sweden, he gave his previous surname. On 18 March 2008, he notified the Migration Agency that there were impediments to the enforcement of the expulsion order that was still in force. The Swedish Migration Agency decided on 9 April 2008 not to grant the complainant a residence permit pursuant to chapter 12, section 18, or a new examination under chapter 12, section 19, of the Aliens Act. Subsequently, in June 2008, the complainant was registered by the Migration Agency as having most likely left Sweden. According to his own account, he left Sweden and returned to Azerbaijan on 10 April 2008.

4.7 In May 2008, the complainant applied at the Swedish Embassy in Ankara for a residence permit citing family ties to a Swedish citizen whom he had married. After interviewing the complainant and his wife, the Swedish Migration Agency found that the marriage could not be regarded as genuine and that it had been entered into solely for the purpose of the complainant being granted a residence permit in Sweden. Accordingly, the Migration Agency decided on 16 October 2008 to reject the complainant's application. The complainant submitted an appeal to the Migration Court on 30 October 2008, which was rejected on 30 March 2009.

4.8 According to the complainant's own account, he re-entered Sweden in November 2008. He visited the Swedish Migration Agency on 27 March 2009 and stated that he wanted to apply for a residence permit on account of family ties to a woman he was not married to. The Migration Agency found on 6 April 2009 that there were no impediments to the enforcement of the expulsion order as referred to in chapter 12, section 18 of the Aliens Act.

4.9 The complainant applied once again for asylum in Sweden on 9 January 2012. He then admitted that he had previously given a false identity to the Swedish migration authorities and that he had submitted false information in his previous asylum account, which, according to his own admission, was based on a manuscript that had been given to him. He furthermore stated that he had travelled to Sweden in March 2008 and got married before returning to Azerbaijan. The Swedish Migration Agency decided on 4 April 2012 to reject the complainant's application for a residence permit. On 30 August 2012, the Migration Court decided to reject his appeal. The Migration Court of Appeal decided on 16 January 2013 not to grant the complainant leave to appeal. The complainant was subsequently placed in detention in order to enforce the expulsion order. The Migration Agency decided on 14 February 2013 that the complainant was to travel as an unescorted deportee. The day before the planned enforcement of the expulsion order, the Migration Agency decided to reject the complainant's application for a residence permit, pursuant to chapter 12, section 18 of the Aliens Act, and thus held that there were no impediments to the enforcement of the expulsion order. The complainant left Sweden on 18 February 2013.

4.10 The complainant entered Sweden again on 1 May 2015 and applied for a residence permit on 28 February 2017. The Swedish Migration Agency rejected the application and, since the previous expulsion order had become statute-barred on 16 January 2017, decided again to expel him to Azerbaijan on 19 October 2018. After an oral hearing, the Migration Court in Stockholm ordered an investigation and documentation of the torture cited by the complainant, which was subsequently conducted by the Swedish Red Cross in accordance with the Istanbul Protocol. On 5 July 2019, the Migration Court decided to reject the appeal. From the Court's decision it transpires that the complainant had lived in Sweden, without making himself known to the authorities, from April 2015 up to the point at which the previous expulsion order became statute-barred in January 2017, following which he applied for asylum. In the Court's view, the fact that the complainant waited for so long before citing his need for protection before the authorities suggests that he did not feel that his need for protection was imperative. On 6 September 2019, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable.

4.11 Under chapter 12, section 22, first paragraph, of the Aliens Act, an expulsion order that has not been issued by a general court expires four years after the order became final and non-appealable. In that regard, the State party would like to draw the Committee's attention to the fact that the decision to expel the complainant will thus become statute-barred on 6 September 2023. The State party therefore requests that the Committee consider the admissibility and/or merits of the present communication in good time before that date.

4.12 Regarding admissibility, and the exhaustion of domestic remedies in particular, the State party does not contest the fact that all available domestic remedies have been exhausted. It further holds that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to Azerbaijan fails to rise to the minimum level of substantiation required for the purposes of admissibility. The

communication should therefore be considered as manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention.<sup>4</sup>

4.13 On the merits, the issue before the Committee is whether the forcible removal of the complainant to Azerbaijan would amount to a violation of the State party's obligations, pursuant to article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that they would be in danger of being subjected to torture. When determining whether there are substantial grounds, the Committee has emphasized that the aim of such a determination is to establish whether the individual concerned would personally be at a foreseeable and real risk of being subjected to torture in the country to which they were returned.<sup>5</sup> Furthermore, the State party recalls the Committee's views in which it has affirmed that the burden of proof in cases such as the present one rests with the complainant, who must present an arguable case establishing that he or she runs a foreseeable, present, personal and real risk of being subjected to torture. In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.<sup>6</sup>

4.14 As far as the general human rights situation in Azerbaijan is concerned, Azerbaijan is a party to the Convention and to the International Covenant on Civil and Political Rights. The updated country information on the situation of human rights is therefore available to the Committees. In addition, a reference is made to the United States Department of State country report on human rights practices 2019 for Azerbaijan, dated 11 March 2020;<sup>7</sup> the Human Rights Watch world report for 2020, dated 14 January 2020;<sup>8</sup> the report of the Commissioner for Human Rights of the Council of Europe following her visit to Azerbaijan from 8 to 12 July 2019, dated 11 December 2019;<sup>9</sup> and the report of the Swedish Migration Agency's function for environmental and country information on Azerbaijan, dated 7 November 2019.<sup>10</sup> As indicated by the State party's migration authorities in the complainant's case, the situation in Azerbaijan has not been deemed such that there is a general need to protect all asylum-seekers from that country. In its assessment, the Committee must thus focus on the foreseeable consequences of the complainant's expulsion to Azerbaijan in the light of his personal circumstances, including a personal and real risk of being subjected to treatment in violation of article 3 of the Convention if removed to Azerbaijan. However, the complainant has failed to substantiate his claim that he runs such a risk.

4.15 The State party submits that several provisions in the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. A test similar to the one that the Committee applies has been employed in the present case by the Swedish asylum authorities, in accordance with chapter 4, sections 1, 2 and 2 (a) and chapter 12, sections 1–3 of the Aliens Act.

4.16 In the present case, both the Swedish Migration Agency and the Migration Court have on several occasions investigated and assessed the complainant's cited grounds for seeking asylum and a residence permit. After the complainant's arrival in Sweden in May 2015 and his subsequent asylum application on 28 February 2017, the Swedish Migration Agency held introductory interviews with him on 7 March 2017. It was noted that he had once again changed his surname. On 26 April 2018, an extensive asylum investigation that lasted for over two hours took place. A two-hour long supplementary asylum investigation before the Swedish Migration Agency was held on 12 September 2018. Furthermore, upon appeal, the Migration Court ordered a torture-related injury assessment, subsequently conducted by the Swedish Red Cross in accordance with the Istanbul Protocol. Through his public counsel, the

<sup>4</sup> *H.I.A. v. Sweden* (CAT/C/30/D/216/2002), para. 6.2.

<sup>5</sup> *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3, and *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.3.

<sup>6</sup> *H.O. v. Sweden* (CAT/C/27/D/178/2001), para. 13, and *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.3.

<sup>7</sup> See <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/>.

<sup>8</sup> See <https://www.hrw.org/world-report/2020/country-chapters/azerbaijan>.

<sup>9</sup> See [https://www.ecoi.net/en/file/local/2021164/CommDH%282019%2927+-+Report+on+Azerbaijan\\_EN.docx.pdf](https://www.ecoi.net/en/file/local/2021164/CommDH%282019%2927+-+Report+on+Azerbaijan_EN.docx.pdf).

<sup>10</sup> See <https://lifos.migrationsverket.se/dokument?documentSummaryId=43815>.

complainant has been invited to scrutinize and submit written observations on the minutes from the investigations, and make written submissions and appeals. The complainant has had ample opportunity to explain the relevant facts and circumstances in support of his claim and to argue his case, orally and in writing.

4.17 It must be considered that the Swedish Migration Agency and the Migration Court have had sufficient information, including the facts and documentation, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the complainant's need for protection in Sweden. The State party recalls the Committee's views, in which it has confirmed that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight will be given to the findings of facts made by organs of the State party concerned.<sup>11</sup> Moreover, the Committee has held that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.<sup>12</sup> The State party holds that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. Accordingly, considerable weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainant to Azerbaijan.

4.18 As regards the complainant's claim that after his expulsion order was enforced in February 2013, he was subjected to torture because he had applied for asylum in Sweden, and his claim that upon his return, he would again risk being subjected to torture, the State party notes the following. During the asylum proceedings, the complainant claimed that the direct cause of the treatment he was subjected to upon his return to Azerbaijan in 2013 was that he was escorted and returned to the Azerbaijani border police by the German police. However, the Swedish Migration Agency objected to this statement and referred to a decision dated 14 February 2013, from which it was clear that the complainant's expulsion order was to be enforced without an escort. The Migration Agency held that it was clear from the information available about the complainant's transit through Germany that the journey from Germany took place without an escort. The complainant claims that the torture-related injury assessment was not attributed enough evidentiary value in the assessment by the Migration Court and that the migration authorities considered certain shortcomings in the reliability of the information submitted by him to be sufficient to reject his general credibility. The complainant therefore argues that the Migration Court's reason for its decision is questionable and should be considered to be in violation of article 3 of the Convention.

4.19 The State party notes that the Swedish Migration Agency and the Migration Court did not question that the complainant had been exposed in Azerbaijan to the kind of treatment described in the torture-related injury assessment. During the proceedings before the Migration Court, the Swedish Migration Agency submitted that it did not question that the complainant had been subjected to violence or that he suffered from mental ill health as stated in the torture-related assessment. However, the Migration Agency considered that the complainant had not plausibly demonstrated that the injuries were caused in the way he cited as grounds for seeking asylum.

4.20 The Migration Court found that the torture-related injury assessment demonstrated that the complainant had been subjected to treatment constituting grounds for protection. However, the Court found that the assessment, accompanied by additional written evidence submitted in the case, was not sufficient to plausibly demonstrate that the complainant would once again be subjected to such treatment upon his return to Azerbaijan. In view of this, the State party holds that the Swedish migration authorities have complied with article 3 of the Convention.<sup>13</sup>

<sup>11</sup> *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.4.

<sup>12</sup> *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12.

<sup>13</sup> See European Court of Human Rights, *R.C. v. Sweden*, Application No. 41827/07, Judgment of 9 March 2010.

4.21 The Migration Court further found that the complainant had provided the authorities with false information concerning his identity and that he had failed to cooperate with the Swedish Migration Agency in order to facilitate his return when he was residing illegally in Sweden. The Court noted that this had had a negative impact on the complainant's general credibility. The Court made the assessment that the complainant's statement during the oral hearing on the circumstances of the arrest, detention and subsequent events was vague and lacking in detail. Furthermore, the complainant's account of how and when he had received his passport was deemed to be vague. The Migration Court thus concluded that the complainant was substantially lacking in general credibility and that his account was lacking in essential respects. However, the Swedish Migration Agency considered that the checks carried out indicated that he held a genuine passport registered with the Azerbaijani authorities. The Agency noted that the information available on his country of origin indicated that personal attendance was required for the issuance of a passport.

4.22 The State party further notes that the complainant, when applying for a residence permit again on 9 January 2012, admitted to having previously provided a false identity to the Swedish migration authorities and also that he had given false information in his previous asylum account, which he said had been based on a manuscript that had been given to him. The State party reiterates that the Migration Court considered the torture-related injury assessment and did not question the findings. However, it concluded that the complainant had not plausibly demonstrated that he risked being subjected to treatment constituting grounds for protection upon his return to Azerbaijan. The State party emphasizes that the Migration Court and the Swedish Migration Agency have had the benefit of seeing, hearing and questioning the complainant in person, of directly assessing the information and documents submitted by him and of examining the veracity of the claims made. The State party also recalls that the application of domestic law in the complainant's case was neither arbitrary nor amounted to a denial of justice.

4.23 Against this background, the State party finds no reason to question the conclusions reached during the national asylum process as regards the need for protection cited by the complainant in his complaint to the Committee. In that respect, it may be reiterated that the Committee is not a court of fourth instance that should re-evaluate facts and evidence *de novo*.

4.24 The State party states that the complainant's account and the facts relied on in his complaint are insufficient to conclude that the alleged risks of ill-treatment upon his return to Azerbaijan are foreseeable, present, real and personal. Consequently, an enforcement of the expulsion order would not, under the present circumstances, constitute a violation of the obligations of Sweden under article 3 of the Convention.

#### **Complainant's comments on the State party's observations**

5.1 On 18 December 2020, the complainant submitted his comments on the State party's observations, maintaining that the communication was admissible as his assertions achieved the minimum level of substantiation required for purposes of admissibility.

5.2 Furthermore, he stated that there were substantial grounds to believe that he was in danger of being subjected to torture upon return to his country of origin, because he had applied for asylum in Sweden. His case was politically motivated (paras. 2.5 and 3.2 above) and he had been subjected to torture in the past. The results of the torture-related assessment and other written evidence conducted show that he had been subjected to treatment constituting grounds for protection. The fact that he had already been subjected to persecution and other serious harm was a serious indication that his fear of persecution was well-founded and that there was a real risk of him suffering serious harm if returned to Azerbaijan.

5.3 As to the circumstances under which the complainant's expulsion order was enforced in 2013, he maintains that the execution report is wrong and that he was escorted and returned to the Azerbaijani border by the German police. When deported, he did not receive his passport and he was handed over to the Azerbaijani border police, together with his documents.

5.4 On the issue of the evidentiary value of the torture-related injury assessment, the complainant holds that it should be granted a greater evidentiary value and to his advantage.

The documentation from the assessment states the following: in several places on his back, shoulders and legs, the complainant has scarring on his skin; many of these injuries were incurred by him being stabbed with a hard object; on his ankles, there are scars that were probably caused by leg-cuffs; and the little finger on his right hand has been cut short and is missing the two other phalanges. There is nothing to contradict the claim that the complainant has been subjected to violence in the way he has described. He correctly describes symptoms of post-traumatic stress disorder, suggesting that he has experienced them himself. The conclusion drawn from the assessment is that the injuries and problems that the complainant presents are consistent with the account of torture he submitted.

5.5 It should be noted that the torture-related injury assessment confirms that the complainant shows symptoms of post-traumatic stress disorder. The presence of a mental or intellectual disability, such as post-traumatic stress disorder, entails difficulties in receiving, processing and communicating information. However, the Migration Court has made the assessment that the complainant submitted vague information and little detail during the oral hearing on the circumstances of his arrest and detention and subsequent events. The complainant maintains that the torture-related injury assessment should have been given higher evidential value. The complainant also submits that the fact that the Red Cross investigation was conducted over 12 hours by people with specialist expertise in meeting individuals who have been subjected to torture is notable, compared to the oral hearing at the Migration Court that lasted just a few hours. It cannot reasonably be questioned that the latter affected his ability to reproduce a detailed and meaningful account of traumatic events.

5.6 As regards the State party's argument that the complainant is substantially lacking in general credibility, the complainant maintains that central to the application for protection is the information related to the reasons why he fears persecution. Insignificant details in the complainant's statement should not form the basis of the credibility assessment, as has been the case with the decisions of the Migration Agency and the Migration Courts. The credibility assessment should be based on the central and relevant parts of the complainant's story. In any case, the contradictions found in the complainant's story are not of a substantial nature and should therefore not give rise to any doubt of his general credibility.

5.7 Furthermore, the complainant challenges the State party's argument that there is no present or personal risk of him being subjected to torture. He was subjected to torture in 2013 and the risk of that happening again is still present. In that context, it should be noted that the complainant was accused of being a traitor, of saying bad things about the Azerbaijani State and of having had contact with Azerbaijani political activists in Sweden. The complainant was forced to sign documents stating that he regretted his anti-Azerbaijani activities abroad and that he promised not to leave Azerbaijan and apply for asylum abroad again. The complainant is on a blacklist in Azerbaijan. There are insufficient reasons to assume that persecution or serious harm will not be repeated, especially in the light of the fact that the complainant left Azerbaijan again to seek international protection.

5.8 In conclusion, the complainant maintains that the claims in the present communication are admissible, well-founded and reveal that his expulsion to Azerbaijan would constitute a violation of the Convention.

#### **State party's additional observations**

6.1 On 17 February 2021, the State party submitted observations on the complainant's comments dated 18 December 2020.

6.2 The State party notes that the complainant's further comments do not include any new information of substance or evidence that have not already been considered in the State party's observations of 6 October 2020. The State party therefore fully maintains its position regarding the admissibility and merits of the present complaint, as expressed in its initial observations.

6.3 In view of the above, the State party is of the opinion that no further correspondence should be necessary prior to the Committee's consideration of the admissibility and merits of the present communication.



## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any complaint contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's submission that it does not contest the fact that all available domestic remedies have been exhausted in the present case.

7.3 The issue before the Committee is whether the forcible removal of the complainant to Azerbaijan, where he fears that he will face torture or other ill-treatment or persecution, would constitute a violation of the State party's obligations under article 3 of the Convention.

7.4 The Committee recalls that, for a communication to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.

7.5 In that connection, the Committee notes the State party's argument that the complainant appears to have misled the national asylum authorities, as he repeatedly changed his name and identity documents (identity card and passport) thereby undermining the veracity of his grounds for claiming asylum; that he stayed in Sweden unlawfully, overstaying the set dates of the expulsion orders to leave the country; that he repeatedly left Sweden to return to Azerbaijan and that he travelled back to Sweden despite a ban on re-entry; and that he was allegedly tortured by the Azerbaijani border guards in February 2013 once he had been handed over to them by the German authorities. However, the State party considers the latter claim as not plausible, since the complainant returned repeatedly to Azerbaijan without facing any difficulties and he was not escorted in February 2013. The Committee further notes the State party's objection that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if removed to Azerbaijan fails to rise to the minimum level of substantiation.

7.6 The Committee also notes the complainant's assertion that his past torture has been established by the torture-related injury assessment undertaken by the Swedish Red Cross, which was considered as fact by the Migration Court. In the complainant's view, this assessment should have been given greater weight. In that regard, the Committee observes that while the Migration Court did not question the fact that the complainant had been exposed to some forms of violence, as evidenced by the scars on his body and the missing parts of the little finger on his right hand, the cause of the violence was not established and was perceived as not corresponding with the alleged grounds for seeking asylum by the asylum authorities. The State party's authorities held, in the context of examining the complainant's asylum application and the negative decisions thereon, that the complainant's repeatedly evolving and untrue assertions and claims, including the changes of his family name, put his general credibility in question. As a consequence, the Migration Agency and the Migration Court concluded that the complainant could be removed to Azerbaijan, as he would not risk being subjected to treatment constituting grounds for protection. Furthermore, the Committee observes that, while the complainant alleged that he had been exposed to torture in the past, he failed to substantiate his claims of a personal and present risk of torture or other ill-treatment in Azerbaijan, as he did not submit any evidence that he had been recently sought by the Azerbaijani authorities. The complainant could not therefore benefit from the reversal of the burden of proof by the Swedish asylum authorities, in accordance with the Swedish Asylum Act, since his account did not appear credible, nor does he offer any clarification as to his constantly evolving arguments and facts. The Committee observes that the possibility of the alleged risk of torture or other ill-treatment if he is deported back to Azerbaijan, let alone any consequences that might follow subsequent to his removal, have not been sufficiently substantiated for the purpose of admissibility.

7.7 Lastly, the Committee notes that the Swedish Migration Agency provided the complainant with ample opportunity to substantiate his claims by interviewing him several times and examining his alleged impediments to enforcement of the expulsion order. The Committee observes that the complainant has not provided additional evidence that would cast doubt on the findings of or the factual evaluation made by the Migration Agency and the Migration Court.

7.8 While recalling its jurisprudence to the effect that strict consistency of accounts or complete accuracy by the victims of torture or violence can seldom be expected,<sup>14</sup> the Committee considers that any such inconsistencies and imprecision in accounts cannot rise to such a point as to prevail over the general credibility of the complainant or the general veracity of his or her claims.<sup>15</sup>

8. The Committee accordingly 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 113 (b) of its rules of procedure, that the communication is manifestly unfounded and is therefore inadmissible.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 of the Convention;
- (b) That the present decision shall be communicated to the complainant and to the State party.

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<sup>14</sup> General comment No. 4 (2017), para. 42.

<sup>15</sup> Ibid., para. 49 (i).