



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

Distr.  
RESTRICTED\*

CAT/C/38/D/270&271/2005  
2 May 2007

Original: ENGLISH

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COMMITTEE AGAINST TORTURE  
Thirty-eighth session  
(30 April – 18 May 2007)

**DECISION**

**Communication Nos. 270 & 271/2005**

<u>Submitted by:</u>	E. R. K. and Y. K. (represented by counsel)
<u>Alleged victim:</u>	The complainants
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	19 May 2005 (270/2005) and 12 June 2005 (271/2005) {initial submission}
<u>Date of present decision:</u>	30 April 2007

Subject matter: Deportation with alleged risk of torture and cruel, inhuman or degrading treatment or punishment

Procedural issue: none

Substantive issue: risk of torture, cruel, inhuman or degrading treatment or punishment upon return

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-eighth session

Concerning

**Communication Nos. 270 & 271/2005**

<u>Submitted by:</u>	E. R. K. and Y. K. (represented by counsel)
<u>Alleged victim:</u>	The complainants
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	19 May 2005 (270/2005) and 12 June 2005 (271/2005) {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 30 April 2007,*

*Having concluded* its consideration of complaint Nos. 270 & 271/2005, submitted to the Committee against Torture on behalf of E. R. K. and Y. K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant, his counsel and the State party,

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

1.1 The complainants are Messrs. Y. K. (Communication no 270/2005)<sup>1</sup>, and E. R. K. (Communication no. 271/2005), who are brothers and Azerbaijani nationals. They claim to be victims of violations of article 3 by Sweden of the Convention against Torture and Other

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<sup>1</sup> The original communication no. 270/2005 related to two complainants, Y. K. and his brother E. N. K. On 15 May 2006, in light of the fact that E. N. K. received a permanent residence permit on humanitarian grounds in Sweden on 20 December 2005, the part of the complaint relating to him was withdrawn by the complainants from communication no. 270/2005 and subsequently discontinued by the Committee against Torture during the 36<sup>th</sup> session. Thus, the only complainant remaining from communication 270/2005 is Y. K. However, as the complaints of the other two brothers (Y. K. and E. R. K.) depend on the facts of their brother E. N. K.'s case, the facts of E. N. K.'s case, the State party's submission and the complainants' comments relating to E. N. K.'s case are included in this decision.

Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel.

1.2 On 13 and 29 June 2005, respectively, the Rapporteur for new complaints and interim measures requested the State party not to deport Y. K. and E. R. K. to Azerbaijan while their cases are under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 16 November 2005 and 16 March 2006, the State party acceded to the Committee's request.

1.3 On 30 April 2007, during the 38<sup>th</sup> session of the Committee against Torture, the Committee decided to join the consideration of these two communications.

### **The facts as presented by the complainants**

2.1 Y. K. was a student at the Azerbaijan State Marine Academy in 1999. His brother E. R. K., who is a painter, graduated from the Azerbaijan State University of Culture and Art on 28 June 1994. From 1992 to 2002, he worked as a teacher at the Gymnasium of Art in Baku. Neither of the brothers was ever engaged in any political activity. However, their brother, E. N. K. (a third brother), had been an active member of the Azerbaijan Democratic Party (ADP) since 12 February 1999 and in December 2001, due to his political activities was forced to leave Azerbaijan. The complainants' case is based on their brother E. N. K.'s activities. The primary political aim of the ADP is to establish a democratic rule of law in Azerbaijan, and the party works actively for human rights and freedoms. E. N. K.'s role in the party included the preparation, planning and carrying out of rallies and demonstrations and he was directly associated with the ideological section of the ADP's local divisions in Khatai and Nasimi districts. As an artist, he was responsible for creating slogans and posters. During demonstrations, he was responsible for handing out political material to the participants.

2.2 On 8 September 2001, E. N. K. was brutally assaulted by two policemen during a demonstration. Due to the confusion created by the crowd, he managed to escape and was taken to hospital, where they found that he had a fracture to his left hand. The police later came to the hospital to interrogate him about the ADP, and ordered him to come to the police station upon release. On 27 October 2001, as E. N. K. had not turned up at the police station, he was arrested at his home. After a body search, he was confined in a "cramped cell" for 9 to 11 hours, after which he was brutally assaulted by two policemen. He was thrown to the floor and severely beaten to the point of unconsciousness on several occasions. Twenty four hours later, he was interrogated about his activities in the ADP. Subsequently, he was released with a warning that he would be interrogated again soon. On 6 December 2001, the police came to his house with an arrest warrant and a search warrant, but E. N. K. had gone into hiding. They searched the house in which they discovered political documents and brutally "mistreated" his wife.

2.3 On 25 December 2001, E. N. K. and his wife and daughter illegally left Azerbaijan. On 2 January 2002, they arrived in Sweden and applied for asylum. While in Sweden, E. N. K. received a "verdict", sentencing him *in absentia* to 5 years imprisonment for complicity in a coup d'état<sup>2</sup>. On 16 June 2004, the Migration Board rejected his request for asylum, on the

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<sup>2</sup> A copy is provided by the complainants in their comments on the State party's submission. As set out in paragraph 5.7 below, the complainants admit that there was an error in translation and that this was not a judgement/verdict but a warrant for arrest.

basis of a report from the Swedish Embassy in Ankara, which demonstrated that the documents submitted by the complainants to support his claims were false. On 12 April 2005, the Alien's Appeal's Board rejected his appeal.

2.4 From January 2002 and as a result of E. N. K.'s departure, Y. K. and E. R. K. started receiving phone calls from the police, usually late at night, requesting information on their brother's whereabouts, and receiving repeated threats that they and his families would be detained if they failed to indicate where he was. In June 2002, Y. K. was summoned by the police. Upon his appearance at the police station he was interrogated and threatened by two policemen. When he refused to provide any information on his brother, one of the policemen beat him to the point of unconsciousness. Both policemen continued beating him when he came round. He was subsequently released and told that it was "only an initial warning".

2.5 On 3 August 2002, at 2:00 am, four armed policemen called at the K.'s apartment. E. R. K. and his father were beaten and Y. K. was hit in his stomach with a baton and lost consciousness. E. R. K.'s 7-year-old son was pushed to the ground when he started to cry and his wife was locked in a room. The complainants' mother managed to escape and called for help in the street. At this point, the policemen left and the family called an ambulance and received medical assistance.

2.6 Following this incident, Y. K. and E. R. K. moved in with their aunt for three months, after which they returned to their old apartment. On 12 and 13 December 2002, they were both summoned by the police. On 13 December 2002, both brothers illegally left Azerbaijan and fled to Iran by car. On 27 December 2002, they arrived in Sweden and applied for asylum. On 16 June 2004, the Migration Board rejected both their applications on the basis of the report from the Swedish Embassy in Ankara. Following an investigation into the political activities of the complainants' brother (E. N. K.) and the authenticity of certain documents, the report concluded that the complainants had submitted false documents and that their brother had never been politically active. On 31 January 2005 and 8 April 2005, respectively, the Aliens Appeal Board rejected Y. K.'s and E. R. K.'s appeal stating that it shared the Migration Board's views.

2.7 The complainants assert that the Swedish Embassy's report, upon which the domestic authorities refused to grant the complainants asylum, was based on anonymous sources and precludes the possibility of challenging the information it contains. The information therein comes from sources within Azerbaijan and could thus be manipulated by state authorities. The complainants conclude that the Swedish immigration authorities never assessed their cases objectively. They submit that there continues to be a consistent pattern of gross, flagrant and mass violations of human rights in Azerbaijan and provide reports to demonstrate such violations, including extrajudicial and summary executions, disappearances and torture, in particular against political and religious opponents. According to the complainants, these documents confirm that opposition leaders (from the ADP) have been detained and tortured, as the Azeri regime is said to oppress those who criticize it.

### **The complaint**

3. According to the complainants, their deportation from Sweden to Azerbaijan would constitute a violation of article 3 of the Convention against Torture, as they risk being detained, questioned, and tortured in relation to their brother's activities and on the basis of

which they were previously ill- treated themselves<sup>3</sup>. As the complainants are related to someone that has perpetrated serious political crimes, they claim that they will be treated accordingly, as enemies of the State.

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

4.1 On 16 November 2005 and 16 March 2006, the State party provided its submissions on the admissibility and the merits of both complaints. It submits that they are both inadmissible as manifestly ill-founded, and sets out the relevant provisions of the Aliens Act, pointing out that several provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The national authority conducting the asylum interview is naturally in a good position to assess the information submitted by asylum seekers. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until the entry into force of a new Aliens Act on 31 March 2006. The temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new Chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, *inter alia*, if there is reason to believe that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

4.2 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It must also be considered whether the alien committed crimes and a residence permit may be refused for security reasons. Decisions made by the Migration Board under Chapter 2, Section 5 b, as amended, are not subject to appeal.

4.3 The Migration Board decided on its own accord to examine whether E. R. K. qualified for a residence permit under the temporary wording of Chapter 2, section 5 b of the Aliens Act and appointed counsel to represent him before the Board. On 3 March 2006, it found that he should not be granted such a permit as the circumstances of his case could not be considered to involve an urgent humanitarian interest and he had not developed such ties to Sweden to warrant granting of a permit.

4.4 On the merits and as to the general situation of human right in Azerbaijan, the State party submits that Azerbaijan has been a party to the Convention against Torture since 1996 and has made a declaration under article 22 to deal with communications. It has also been a party to the Council of Europe (CoE) since January 2001 and is a State party to the European Convention on Human Rights. The CoE has been monitoring the human rights situation and it appears that some progress has been made. However, the State party admits that although

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<sup>3</sup> No medical evidence has been provided to demonstrate that they were previously ill-treated.

positive results have been achieved, Azerbaijan is still reported as committing numerous human rights abuses, including beatings and torture of persons in custody by members of the security forces. It also submits that, while it does not wish to underestimate these concerns, they do not in themselves suffice to establish that the return of the complainants would entail a violation of article 3.

4.5 The State party explains that following a request by the Migration Board, the Swedish Embassy in Ankara consulted legal and other expertise to obtain an opinion concerning the political activities of E. N. K. and the authenticity of the documents invoked by the complaints before the Board. When deemed necessary, checks with relevant public Azerbaijani registers were carried out, without disclosing the identity of the complainants to the Azerbaijani authorities. The documents provided by E. N. K. on which the Embassy was consulted, included a police summons, the alleged “judgement” by the Court of the Khatai district of Baku of 15 April 2003, a reference letter allegedly issued by the ADP and a medical certificate. The results of the investigation have been accounted for in a report from the Embassy dated 16 February 2004. The report states that there are no indications that any criminal case or other criminal proceedings have been instituted against E. N. K. It submits that, according to these investigations, all the examined documents are false.

4.6 On the police summons, the place of residence of the concerned person is 20/40, Azadlig Av., Baku. However, E. N. K. has never resided at that address. His place of registration is 21/25, Ganja Av. Baku. Moreover, it refers to article 181 of the former Criminal Code of the Soviet Azerbaijan. According to the new criminal code, a person who does not adhere to a police summons will be escorted to the police department by police officers from the relevant police station and would not, as indicated in the summons in question, be punished according to article 181 of the former Criminal Code. Further, this summons was issued by the police department of the Nasimi district of Baku and endorsed by a stamp with no. 66, a number which does not correspond to that police department.

4.7 As to the alleged judgement convicting E. N. K. *in absentia* for complicity in a coup d'état and sentencing him to five years imprisonment, the State party submits that, this document is not described as a judgement but a warrant. The Court of the Khatai district has never instituted or held any court proceedings against E. N. K.. The Judge R. Aliyev, who is alleged to have signed the warrant, is not listed among the serving judges of the Court of the Khatia, and the design and content of the warrant is not in conformity with current legal procedures. As to the reference letter, dated 21 November 2001, allegedly issued by representatives of the ADP, E. N. K. is not listed among the members of the party and the letter has not been registered in the ADP office. The letter was stamped by the Nasimi branch of the ADP but signed by the alleged chairman, Mr. S. Jalaloghlu. According to the State party, Mr. Guliyey, who is the Chairman, signs all official letters for that party.

4.8 As to the medical certificate invoked by E. N. K., it would appear that he did not undergo any medical treatment in the traumathology and orthopaedic hospital under the Ministry of Health on the dates mentioned in the certificate. It is signed by a Mr. Gafarov, referred to in the certificate as head of a division within the hospital, and a Mr. Salimov, referred to as a physician at the hospital. However, neither of these people was listed among the managers and physicians serving at the hospital before or after the date of issuance of the certificate. Finally, the certificate states that a political manifestation was planned on 8

September 2001 near the “28 May” underground station, but according to the Report, no such manifestation took place.

4.9 The same Embassy Report of 16 February 2004 highlighted the results of an investigation into documents submitted specifically with respect to Y. K.’s case. As to the police summons, the report states that there are no indications that any criminal case or other criminal proceedings have been instituted against Y. K. The documents contain formal and other errors and deviations in comparison with authentic police summons issued by the Azerbaijani police authorities. According to applicable rules and regulations, police summons have to be endorsed by a special stamp belonging to the police department of the Khatai district. Such a stamp is only used by the head of the police department who signs a document. In this case, information concerning full name, rank and position of the person who signed the document is missing. It is stated in the document that the summoned person should report to investigator Jabarov S. But no further details are provided.

4.10 The same report of 16 February 2004, highlighted the results of an investigation into documents submitted specifically with respect to E. R. K.’s case, which included a letter stating that he would be reported to a court and a summons, both were alleged to have emanated from the police department of the Khatai district. According to the report, the letter of 13 December 2002 is not registered at the police department in the Khatai district and has an unknown reference number. It appears to be a kind of summons but a letter-head belonging to a police agency is not used on summons and they are not sent in envelopes. The police investigator who is alleged to have signed the letter, Mr. Jafarov, did not serve at the police department of the Khatai district in 2002. As to the alleged police summons, the report states that the rank and position of the officer who signed the document should be, but is not, indicated on the summons. According to the summons, if the complainant does not comply with it he shall be punished under Article 298 of the Criminal Code. However, this article actually refers to the punishment imposed in the event that a person refuses to testify in criminal proceedings. The police investigator who is alleged to have signed the letter, Mr. Jafarov, did not serve at the police department of the Khatai district at the time the summons was issued. There is also an incorrect stamp marked on the summons.

4.11 The complainants raised objections to the findings of the Embassy Report on several grounds upon which the Swedish Embassy in Ankara was requested to comment. In a further report of 16 June 2005, the Embassy explained that it normally uses external expertise and that the persons chosen are independent of the authorities and political parties in Azerbaijan. It shares the view of the Government that the identities of the persons are not disclosed to the Azerbaijani authorities or otherwise to the public to prevent them from being the subject of threats or physical abuse. The Embassy exercises great caution in selecting suitable persons to assist it, and due to security concerns and the future possibilities of obtaining expert advice in similar cases, it refrains from disclosing the identity of the sources used in this matter. As to the documents invoked, the Embassy had already conducted a thorough examination and concluded that they were false.

4.12 The Embassy’s Report also underlined the contradictory information concerning E. N. K.’s membership and political activities within the ADP. When the Embassy conducted the initial investigation in April 2004, there were no indications that E. N. K. was a member of the ADP. In February 2005, in a meeting in Baku between representatives of the Embassy and Mr. A. Shahbazov, the Secretary General of the ADP, the latter stated that E. N. K. was

an ordinary member of the ADP but without any specific responsibilities or tasks. He could not explain why E. N. K. had not been registered as a member in April 2004. Moreover, the ADP is an officially registered and legal political organisation in Azerbaijan. It is not a criminal offence to be a member of it and there is no systematic persecution of members of the political opposition in Azerbaijan. In a complementary report from the Swedish Embassy of 1 July 2005, it pointed out that it is well known that the members of the ADP have been issuing false documents for which some people have been dismissed, including representatives of the Narinamov branch to which E. N. K. had belonged.

4.13 The State party also refers to a report of the UNHCR of September 2003, in which it was stated that mere membership of an oppositional political party would not suffice to substantiate a claim to refugee status. However, in certain cases, being an outspoken activist, writing critical articles in opposition newspapers, leading unauthorised demonstrations or “provocative actions” can result in a harsh response from the authorities, including arrest, detention and unfair trial.

4.14 The State party refers to contradictory information provided by all of the complainants. E. N. K. told the Migration Board on 7 August 2003, that he had worked as a painter within the ADP, producing posters and showcases, which he had distributed during the political events such as demonstrations<sup>4</sup>. According to the documents submitted to the Aliens Appeal Board on 19 August 2004, E. N. K. had been responsible for ideological issues within the party and had been elected secretary for the ideological departments in the Khatai and Nasimi districts. Before the Committee, however, E. N. K. claimed that he had been directly associated with the ideological section of the ADP’s local divisions in Khatai and Nasimi districts. Y. K. stated to the Committee that he had been summoned by the Azerbaijani police in June 2002 and that upon reporting to them he was physically abused. He also stated that he had received threatening phone calls daily from the police in January and February 2002. None of this information had been provided to the domestic authorities and in the interview with the Migration Board, he stated that he had never been arrested.

4.15 The State party submits that should the Committee consider that E. N. K. was a member of the ADP, it contends that his activities and level of responsibilities within the party were not of such a magnitude that he could be considered a prominent person. His alleged activities took place mainly during 1999 and 2001, and must be viewed in light of recent presidential pardons. He has not even submitted a copy of the alleged judgement sentencing him to prison for political activities to the Committee. According to the State party, the advancement of false documents by all of the complainants calls into question their credibility. In its view, none of the complainants have substantiated their claims that there are substantial grounds for believing that they would be at personal risk of being tortured if returned to Azerbaijan.

#### **Complainant’s comments on the State party’s observations on the admissibility and the merits**

5.1 On 15 May 2006, the complainants responded to the State party’s submission. They state that the Migration Board only had one interview with them lasting for only one hour and fifteen minutes with respect to Y. K. and two hours and thirty minutes with respect to E. R. K.

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<sup>4</sup> It would appear that both E. N. K. and E. R. K. are painters.



This is considered insufficient time to conduct a thorough and satisfactory investigation of the complainants' reasons for applying for asylum, particularly bearing in mind that the Aliens Appeal Board relies on the same information. Because these interviews were held in question and answer mode, and while recognising that they had an opportunity to make comments upon the minutes subsequent to their interviews, the complainants claim that they were unable to give a thorough and complete description regarding the events preceding their flight from Azerbaijan.

5.2 The complainants deny the State party's claim that the Migration Board and the Aliens Appeal Board applied the same kind of test as the Committee in considering these complaints. According to the complainants this is clear from the importance attached to the report from the Swedish Embassy in Ankara. The evidence presented by the complainants against these conclusions has not been commented upon in the State party's examination. Although both brothers rely on E. N. K.'s case to demonstrate a real and personal risk to them, their cases are not limited to the facts of his case. The fact that they were harassed, threatened, and physically abused and detained (in the case of Y. K. only) confirms that risk. The complainants note that the State party agrees that the human rights situation in Azerbaijan raises legitimate concerns.

5.3 As to the Embassy report, the complainants submit that making such inquiries of Embassies often involve substantial risk to reveal the identity of the asylum applicant, thus creating a risk to him/her and their families and refers in this regard to an advisory opinion on this issue from UNHCR<sup>5</sup>. In the complainants' view, the State party's claim that enquiries were made without disclosing their identities or the identity of their brother E. N. K. is unreasonable. In order to obtain the acquired information a person must specify to the authorities concerned which person he wishes to have information regarding. It is also reasonable to assume that the person or persons who conduct these investigations are well known to the Azerbaijani authorities.

5.4 The complainants deny that they falsified any documents and submit that they lack the means and necessary legal expertise to make any comments upon what is asserted in the Embassy's report. However, they do submit that the objections regarding the documents are exclusively related to alleged formal errors. For example, the design of a warrant was said not to match current procedures but no details on a correct design were provided. Also, the domestic authorities chose to believe an anonymous source rather than the complainant's evidence that a demonstration had taken place on 8 September 2001. In addition, the complainants submit that they are not in a position to comment on the qualifications of those who undertook the investigation.

5.5 The complainants submit that the State party left out relevant information in its account of the Embassy Report of 16 June 2005. Mr. Shahbazov, two weeks after the meeting with the migration attaché in February 2005 (see para. 4.12), wrote an official letter in which he stated that E. N. K. was an active member of the party and is wanted by the police department in Azerbaijan and that he risks persecution and arrest upon return. This letter was submitted to the Aliens Appeal Board. The Embassy should have considered the fact that the APD has over 40,000 members and thus it would be unreasonable to expect the party's leadership to have specific knowledge concerning individual members, even prominent members. Neither

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<sup>5</sup> UNHCR Advisory Opinion, Case number 1061/04, Dated 24 September 2004.

did it take into account the fact that several prominent members who were active during the same time as E. N. K. and who knew him had fled the country themselves or had been arrested and were not released until 2005.

5.6 As to the State party's claim that contradictory information was provided on E. N. K.'s political activities, the complainants provide detailed information on the efforts made by the complainants to obtain written evidence in this regard. Their efforts culminated in the receipt of a letter dated 23 March 2006, from Sardar Calaloglu, a "front figure" of the ADP, and Hasret Rustamov, first deputy administrator, which asserted *inter alia* that E. N. K. had been a member since February 1999, had participated in legal and illegal manifestations, including one on 8 September 2001, and had been exposed to physical violence. According to the complainants, this information is also confirmed by a statement in a letter of 24 March 2006 from the NGO "Democracy, Human Rights and Media Monitor".

5.7 The complainants confirm the legality of the ADP and question the relevance of the State party's assertion of the alleged absence of systematic persecution of members of the political opposition. They deny that they provided contradictory information, but merely added to and provided more detail at each stage in the proceedings. As to the claim that the complainants should have had a clearer picture of E. N. K.'s political activities, the complainants submit that E. N. K. didn't wish to involve his relatives in such dangerous activities. As to the judgement against E. N. K., the complainants confirm the State party's information that this document was in fact a warrant for arrest rather than a judgement. They submit that due to a translation error it was incorrectly referred to as a "verdict" or judgement rather than a warrant.

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

### ***Consideration of admissibility***

6.1 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 its submissions that domestic remedies have been exhausted.

6.2 The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

### ***Consideration of the merits***

7.1 The issue before the Committee is whether the removal of the complainants to Azerbaijan would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to

establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its General Comment No.1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

7.4 The complainants' claim that there is a risk that they will be tortured if returned to Azerbaijan, due to their brother's alleged previous political activities on the basis of which they claim to have been previously mistreated by the Azerbaijani authorities. The Committee notes that the complainants have failed to adduce any evidence medical or otherwise that they were subjected to ill-treatment themselves in Azerbaijan. It also notes that the State party has provided extensive reasons, based on expert evidence obtained by its Embassy in Ankara, on why it questioned the authenticity of each document provided by the complainants to support their own claims and those of their brother, E. N. K.

7.5 The Committee observes that in their comments to the State party's submission, the complainants now claim that the document which they had purported to be a judgement, sentencing the complainants' brother E. N. K. *in absentia* to five years imprisonment, is in fact a warrant for arrest (see para. 5.7). The complainants challenge the decision to request information of the Embassy in Ankara, which they claim risked revealing their identities to the Azerbaijani authorities. The Committee notes that the State party denies that the complainants were identified, but in any event considers the means by which the State party conducted its investigations irrelevant for the purposes of establishing whether the complainants would be subjected to torture upon return to Azerbaijan. Having presented the State party with documents which were alleged to corroborate the complainants' claims, it was up to the State party to attempt to establish the authenticity of those documents. The Committee also notes that the only other arguments made by the complainants with respect to the information in the Embassy's report, were that the discrepancies in the documents were merely "alleged formal errors" and that they lack the means and necessary legal expertise to make any further comments. The Committee considers that the complainants have failed to disprove the State party's findings in this regard, and to validate the authenticity of any of the

documents in question. It recalls its jurisprudence that it is for the complainants to collect and present evidence in support of his or her account of events<sup>6</sup>.

8. For the abovementioned reasons, the Committee concludes that the complainants have failed to substantiate their claim that they would face a foreseeable, real and personal risk of being subjected to torture upon his return to Azerbaijan.

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 removal of the complainants to Azerbaijan would not constitute a breach of article 3 of the Convention.

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

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<sup>6</sup> See Mehdi Zare v Sweden, Communication No. 256/2004, Views of 17 May 2006, para. 9.5; M.A.K. v Germany, Communication No. 214/2002, Views of 14 May 2004, para. 13.5; S.L. v. Sweden, Communication No. 150/1999, Views of 11 May 2001, para. 6.4.