

DECISION
on refusing commencement of the criminal case

7 February 2004

Jalilabad district

Hereby, I, Aliyev Jeyhun Zulfugar oglu, Jalilabad District Prosecutor assessed the facts on the case 34-C-04 - violation of the state border by Mr. Aghai Arsalan Safar oglu, citizen of the Islamic Republic of Iran and

ASCERTAINED:

On 21 January 2004, Jalilabad District Prosecutor's Office received for consideration the letter of the Chief Prosecutor's Office of Azerbaijan Republic of 17 January 2004, #05/06-04 with the attachment - materials related to the fact of violation of mediate border on 7 April 2003, in Jalilabad district, Uchtapa village by Mr. Aghai Arsalan Safar oglu, Iranian national.

In accordance with the written statement by Mr. Aghai Arsalan, he crossed the state border of Azerbaijan Republic on 7 April 2004 without proper documentation in an area other than the border checkpoints, on the territory of Jalilabad district, close to Uchtapa village. He headed to this village and then to Baku. During the period of his stay in Baku, he applied to the UNHCR Representation in Baku for refugee status.

The document issued to Mr. Aghai Arsalan by UNHCR Representation in Azerbaijan, letter dated 13 September 2003 #AZ/03/4903 which confirmed the fact of application to UNHCR and his application being under consideration was also added to the case.

In his written statement, Mr. Aghai Arsalan affirmed that he was repeatedly arrested and punished by the law enforcement bodies of Iran because of his affiliation with the movement for National Azerbaijan, which is active on the territory of the Islamic Republic of Iran. As his stay on the territory of IRI threatened his rights and freedoms, he was forced to flee the country and entered the territory of Azerbaijan illegally on 7 April 2004. Having reached Uchtapa village he then took a lorry to Baku where he applied for refugee status to the UNHCR Representation. Since then, he lived in Baku, wasn't employed and lived on money sent from Iran by his parents. On 8 January 2004, he came to Bilasuvar together with Mr. Abidzadeh Ahmad Rasul, Afghan national whom he met a month before that, in order to get the money that his parents sent to him through lorry drivers. The same day, when in a tea-house, he was arrested by the police officers and handed over to the State Border Service officials. This was confirmed in the written statement of Mr. Abidzadeh Ahmad Rasul, according to which he came from Germe town in Iran and together with his family members crossed the state border of Azerbaijan Republic illegally and arrived in Baku. He was arrested in Bilasuvar when came there with his friend, Mr. Aghai Arsalan, Iranian national.

As clarified in the letter from the State Committee for Refugees and IDPs of 30 January 2004 # 370a, Mr. Aghai Arsalan had not lodged an application for asylum with the Refugee Status Determination Department of the Committee.

In a reply letter of UNHCR Representation in Azerbaijan dated 30 January 2004 (REF/0055/04) to the inquiry of the Jalilabad District Prosecutor's Office, it is stated that Mr. Aghai Arsalan was registered with UNHCR Representation in Azerbaijan on 7 July 2003 and that the process of examination of his application through interviews and investigation had yet to be completed. It was also mentioned in the letter that in accordance with the Article 5 of the Law of Azerbaijan Republic "on the status of Refugees and Internally Displaced Persons" of 21 May 1999, as well as the international instruments to which Azerbaijan is a party, including the 1951 Convention (Articles 31 and 33) and 1967 Protocol (to which Azerbaijan

acceded in 1993), refugees or asylum seekers shall not be amenable for this kind of administrative violations.

Pursuant to the Article 1 of the Law of Azerbaijan Republic "on the status of Refugees and Internally Displaced Persons" of 21 May 1999, The term "Refugee" shall apply to any person who not being a citizen of Azerbaijan Republic, is outside the country of his nationality owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Article 5 of this Law stipulates that "any person who arrived to the Republic of Azerbaijan due to the reasons indicated in the Article 1 of the present law, entered the territory of the country illegally and applied to the relevant government body as soon as possible shall not be amenable for violation of the state border, on the basis of the well-substantiated decision of this body. The refugee can in no way be refouled to the country where his life and freedom would be threatened due to the reasons mentioned in Article 1 of this Law."

In accordance with the Article 31 of the 1951 UN Convention relating to the Status of Refugees to which Azerbaijan acceded in 1993, "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." Article 33 of this Convention stipulates that "No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

In a Note to Article 318 of the Penal Code of Azerbaijan Republic it is affirmed that "the provisions of this Article do not apply to aliens or stateless persons who entered the territory of Azerbaijan Republic in violation of the existing procedures for crossing the state border of Azerbaijan Republic with a view of availment of the right to political asylum in accordance with the Constitution of Azerbaijan Republic.

Pursuant to Article 151 of the Constitution of Azerbaijan Republic, "in case of contradictions between the normative-legal acts being part of the legislation system of the Azerbaijan Republic (except for the Constitution of the Azerbaijan Republic and the acts adopted via referendum) and international treaties, to which the Azerbaijan Republic is a party, the international treaties shall apply."

Hence, the materials collected suggest that Mr. Aghai Arsalan claims to have faced persecution due to his affiliation with the movement for National Azerbaijan and to have been forced to enter Azerbaijan illegally. He arrived in Baku and approached UNHCR Representation in Baku. In this situation, Mr. Aghai Arsalan has to be considered non-amenable for illegal entry due to the purpose of such violation as stipulated in the Article 5 of the Law of Azerbaijan Republic "on the status of Refugees and Internally Displaced Persons" of 21 May 1999, as well as Article 1 of this Law and Articles 31 and 33 of the 1951 Convention relating to the Status of Refugees.

Therefore, it is concluded that the commencement of the criminal case with regard to actions of Mr. Aghai Arsalan has to be refused for the lack of criminal actions as per Article 318 of the Penal Code of Azerbaijan Republic.

On the basis of the above-mentioned and Articles 2.3, 39.1.2, 207 and 212 of the Penal Procedural Code of the Azerbaijan Republic,

DECIDED:

1. Commencement of the criminal case with regard to actions of Mr. Aghai Arsalan shall be refused.
2. Copy of this decision will be sent to the State Border Service of Azerbaijan Republic for information-sharing purposes.
3. Commander of the unit # 2003 of the State Border Service of Azerbaijan Republic shall be provided information about his right to complain to the superior authority or Jalilabad district court.
4. Materials collected shall be handed over to the archive of the District Prosecutor's Office.

J.Z.Aliev

signature

Jalilabad District Prosecutor