



Human Rights Center of Azerbaijan

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Azerbaijan National League
of the International Federation for Human Rights

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Fédération Internationale des Ligues des Droits de l'Homme
Federación Internacional de los Derechos Humanos
International Federation for Human Rights
الفيدرالية الدولية لحقوق الإنسان

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The Human Rights Center of Azerbaijan (HRCA) is a non-governmental organization (NGO) established in 1993 and officially registered in 1999. The HRCA is a national league of the International Federation for Human Rights (FIDH) and member of World Organization against Torture (OMCT).

Keywords

Elections, human rights defenders, national minorities, political prisoners, prison conditions, torture.

Submission

1. The political background of the human rights situation in Azerbaijan is defined by the continuing transition to the market economy aggravated by unresolved conflict with neighboring Armenia for the Nagorno-Karabakh region, authoritarian tradition of governance, election frauds, corruption and lack of national reconciliation. The economy is based at the exploration of Caspian oil and gas.

2. Last years, the suppression of secular opposition, Islamic revival and influence of foreign countries provoked the growth of the radical Islam and arrests of Islamists.

Elections

3. The monitoring mission of the Congress of Local and Regional Authorities of the Council of Europe, which monitored the municipal elections in December 23, 2009, concluded that elections “demonstrated the weakness of local democracy in Azerbaijan and local self-government agencies”, “there was no competition among the political parties.” and “concrete improvements are needed.” The official information that 31.86% of the electorate voted confirms the poor pre-election campaigning and insufficient interest, due to the lack of real political pluralism. During additional municipal elections in December 2011 in 330 municipalities in 86 precincts, the turnout of voters was even lower, 23,46%.

4. It is related to their low profile in the political system. The municipalities have no real authority and can only deal with real property. In 2011, the Department of Ministry of Justice on the work with municipalities proposed to abolish or amend 1646 municipal acts. The illegally sold 5483,16 hectares of land were returned to the municipalities. The heads of 581 municipalities were punished in administrative order, the criminal proceedings were opened in 15 occasions. Some heads and members of municipalities were arrested and sentenced.

5. The Parliamentary elections in November 7, 2010 also were marred by serious violations. The monitors led by the Organization for Security and Cooperation in Europe (OSCE) said the elections did not mark "meaningful progress" in the democratic development of the country.

6. The elections resulted in replacement of real opposition by pro-governmental “constructive opposition”. The “extraparliamentary” opposition created so called “Public Chamber” (PC) which included former candidates and civil society activists. The PC protest

actions coincided with the “Cairo Spring” and provoked the repressive reaction of authorities, including arrests of youth activists, bloggers and some oppositionist ex-candidates (Bakhtiyar Hajiyev, Vidadi Isganderov, Arif Hajili).

7. In 2009-2012, the European Court of Human Rights (ECtHR) passed several judgments and decisions against Azerbaijan related to the previous Parliamentary elections of 2005, and found out various violations of rights of rejected candidates: Namat Aliyev (no. 18705/06, 08 April 2010), Salimov and Others (no. 26287/06, 02 September 2010, dec.), Flora Kerimova (no. 20799/06, 30 September 2010), Gambar and Others (nos. 4741/06, 19552/06, 22457/06, 22654/06, 24506/06, 36105/06 and 40318/06, 09 December 2010, dec.), Nadir Orujov (no. 4508/06, 26 July 2011), Arif Hajili (no. 6984/06, 10 January 2012), Kerimli and Alibeyli (nos. 18475/06 and 22444/06, 10 January 2012), Sardar Mammadov (no. 2) (no. 4641/06, 10 January 2012), Khanhuseyn Aliyev (no. 19554/06, 21 February 2012). The applicants received some pecuniary compensation (up to €8,000), but the election officials and judges who ignored the evidences of election frauds never were punished.

Political prisoners

8. As many other countries in transition to the democracy, Azerbaijan has a problem of political persecutions and as result a number of imprisoned opponents of the Government. For example, in spring 2011, seventeen PC activists were arrested for preparation or participation of the actions. Two of them, Shahin Hasanli and Vidadi Isganderov still are in detention.

9. According to the obligations of Azerbaijan before the Council of Europe (CoE) provided in the Opinion 222 (2000), the Government has “to release or to grant a new trial to those prisoners who are regarded as “political prisoners” by human rights protection organisations.” In 2001, the CoE established and in 2012 reaffirmed the objective criteria of definition of political prisoner (PACE Resolution 1900, 03 October 2012).

10. In 2005-2008, the dialogue between the Government and human rights defenders in the framework of the Task Force on Political Prisoners facilitated release of about 130 prisoners from this category. Unfortunately, the work of the Task Force was suspended.

11. The dialogue of Azerbaijan with the CoE on the problem of political prisoners also stagnates. Since 2009, the Azerbaijani authorities do not permit the PACE Special Rapporteur on political prisoners in Azerbaijan Mr. C.Straesser to visit country to examine about 70 cases of alleged political prisoners from his list.

Prison conditions

12. Despite of continuing penitentiary reform, the conditions in majority of Azerbaijani post-trial prisons are far from the regional (European) standards.

13. The location of majority of prisons in Baku city and around created the obstacle for keeping the contacts of prisoners with their families. As result, the prisoners from the distant regions are detained in de facto stricter regime than provided by judgment.

14. The prisoners are not provided by the work places which prevents them from payment compensation of pecuniary harm. Professional education of prisoners often related to the unpopular professions.

15. During the proceedings concerning early release, change of regime of detention or removal the forcible treatment from drugs addiction from the judgments, the executive power (prosecutor office) illegally intervenes to the work of judiciary by providing the prosecutor’s opinion which absent in domestic law. That created the situation when the person who has been considered as recovered from drug addiction by doctors is instructed to get additional medical treatment because of opinion of non-professional (prosecutor).

16. The persons who had been sentenced in 1990s under the old penal legislation by Supreme Court without a right for appeal, still are deprived an opportunity to challenge their sentences

(see e.g. ECHR case *Pashayev v. Azerbaijan*, no. 36084/06, 28 February 2012). That is especially sensitive in the cases of former death row prisoners, whose life sentences are a result of mechanic commutation of death sentences.

17. The pre-trial prisons (investigatory isolators) are not covered by the public control, because the Public Committee under Minister of Justice has mandate for visits only post-trial prisons. One of remand prisons still is subordinated to the Ministry of National Security despite of recommendations of CAT in 2003 and 2009 to transfer it to the Ministry of Justice or to close.

The problem of torture

18. The definition of torture in domestic law does not comply with Article 1 of the CAT. The wording of the respective Article 133 of Criminal Code prevents the perpetrators from the liability. Since September 1, 2000 when the torture was criminalized, no single torturer was sentenced under this Article.

19. The absence of independent forensic examination prevents from the timely and fair registration of facts of physical abuse. The National Preventive Mechanism (NPM) which has no investigative capacity also is forced to use the state examination which never confirms the received allegations.

20. Simultaneously, a failure of proper investigation of alleged torture was founded in the case *Khilal Avadanov v. Azerbaijan* (communication No. 1633/2007, 2 November 2010) examined by the UN Human Rights Committee, and ECtHR cases *Rizvanov v. Azerbaijan* (no.31805/06,17 April 2012) and *Najafli v. Azerbaijan* (no.2594/07, 2 October 2012).

21. The UN TB decisions related to torture issues, i.e. *Avadanov* and CAT case *Elif Pelit v. Azerbaijan* (communication No. 281/2005, 29 May 2007) still are not implemented because of lack of procedures in the domestic law.

Situation of human rights defenders

22. In violation of provisions of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the NGO activists and individuals are persecuted in Azerbaijan for opposing violations of human rights by authorities, especially in rural areas.

23. The amendments in 2009 to the NGO Law endanger the NGO activities. On 3 October 2011, the Conference of INGOs of the Council of Europe concluded that amendments “reverse in a number of significant respects previous efforts to develop a legal framework for the establishment and operation of NGOs that meets the requirements of international standards. This is especially so as regards the restrictions on ‘political’ and ‘governmental’ activities, the choice of names, the ability to be founders and office-holders, the capital requirements for foundations and the basis on which foreign NGOs will be allowed to operate. Apart from the retrograde nature of various substantive provisions, the 2009 amendments suffer from a lack of clarity in their formulation which is inconsistent with the requirement of international standards that the regulatory framework governing the establishment and operation of NGOs should be sufficiently precise and foreseeable... Viewed as a whole, the 2009 amendments not only render the NGO Law less compliant with international standards but they also do so without providing any evidence of problems that need to be addressed.”

24. In March 2012, the activities of foreign NGOs in Azerbaijan were limited by resolution of the Cabinet of Ministers. Foreign NGOs wishing to work in Azerbaijan must “respect the national and moral values,” and should not be involved in “political and religious propaganda,” but there is no definition of these concepts. As result, the activities of the US National Democratic Institute (NDI) and the Norwegian Human Rights House were immediately suspended (NDI restored its work in 2012).

25. Despite of prominent number of registered NGOs (over 2700), their state registration

sometimes faces the artificial obstacles. Some of NGOs failed to get registered several years. The courts traditionally support the Ministry of Justice. That provokes a number of successful applications to the ECtHR (nos. 44363/02, 138/03, 6285/03, 37083/03, 4307/04, 4439/04, 14712/05, 26241/05, 28736/05). The problem was raised during annual meeting of the pro-governmental NGO Forum on March 3, 2012, and during the meeting of the human rights defenders with a Head of the Social and Political Department of Presidential administration Ali Hasanov in July 2, 2012.

26. Some human rights defenders are arrested under various trumped up charges. So, Mr. *Vidadi Isgandarov* from Goychay region was arrested on April 02, 2011, two hours before the opposition rally in Baku, and initially sentenced to 15 days of administrative detention. The representatives of the Ombudsman's office who visited him in prison discovered the traces of physical abuse and called to the Prosecutor General and Interior Minister to check these facts "completely and fully", and to take actions in the frames of law. Instead of that, he was charged under the Articles 159.3 (forcing people to vote against their will), 160.1 (interference into the work of election commission), and 132 (beating) of Criminal Code. The charges were related to the Parliamentary elections in November 2010, when he had been a candidate, discovered and published the forged voting documents. Iskenderov believes that the real reason of his arrest 5 months after the events is the picket in front of the presidential administration organized by him and his participation in investigation of police abuses. On August 27, 2011, he was sentenced to three years in prison.

27. On November 12, 2011, the founder of the company "Law and Order 2010" *Taleh Khasmammadov* was arrested in Kurdamir. He is actively defended the rights of local residents, violated by the police. The day before his arrest, two people came up to him under the guise of policemen, and asked to give the materials on the illegal actions of police. After the materials were given, a human rights activist was arrested and charged with disorderly conduct and resisting police under Articles 221 and 315 of Criminal Code. Consequently, police confiscated his computer and archives. During first period of detention, he has not been provided with a lawyer. On April 20, he has been sentenced to 4 years in jail.

28. The coordinator of "Kur" Civil Society Headquarter, Chairperson of the Public Association for Democratic Reform, and Chief Editor of Transparency and Kura-Araz, Mr *Oqtay Gulaliyev* has been arrested on April 08, 2012 as he was conducting a meeting with residents of Minbashi in the Sabirabad region as part of a monitoring mission. Initially, he was charged with "minor hooliganism" and placed under 12 days of administrative arrest. On 19 April 2012, he was charged under Article 220.2 of the Criminal Code of Azerbaijan for "active resistance to orders from authorities" and "incitement to mass riots and violence towards citizens". He subsequently declared that he was beaten by police while in administrative detention. They hit his head, stomach and lower parts of the body, insulted and threatened him, and refused him medical attention. The prison doctor consequently found serious problems with his intestines and recommended surgery, but the investigator opposed a demand to invite an independent doctor. On June 13, the measure of restraint was changed. He was released, but is under criminal charges.

29. Another member of "Kur", Mr. *Ilham Amiraslanov* was arrested on June 8, 2012, four days after the meeting with the Minister of Emergency Situations, Kamaledin Heydarov, about the resolution of problems of flood victims in 2010 who had blocked the road to Baku and managed various non-violent protest actions. He was charged with Article 228.1 of the Criminal Code (possession of firearms and ammunition), and there were serious allegations on the torture which never had been properly investigated. On September 12, he was sentenced for 2-years imprisonment.

30. On June 21, 2012, the police arrested Mr. *Hilal Mammadov*, a defender of rights of Talysh minority and editor-in-chief of the Tolishi-Sado (Voice of Talysh) newspaper, in relation to a criminal case opened against him under Article 234.4.3 of the Criminal Code ("illegal manufacture, purchase, storage, transfer, transport or sale of drugs in a large quantity"). On July

4, the Interior Ministry and Prosecutor General of Azerbaijan stated that he was in reality arrested for “cooperation with the intelligence agency of a foreign country” (Iran). He was additionally accused under Articles 274 (“treason”) and 283.2.2 (“inciting national, racial, social and religious hatred, hostility and ethnic discrimination”). His lawyer photographed injuries on his leg, and subsequently lodged a complaint for torture which was rejected.

31. The previous head of the Talysh Cultural Center and Editor-in-Chief of the Tolyshi Sado (Voice of Talysh) newspaper, Mr. *Novruzali Mammadov* had been charged under the same accusations, sentenced on 24 June 2008 for 10 years imprisonment under the Article 274 of the Criminal Code (“high treason”). On 17 August 2009, he died in detention in 68 years without timely and adequate medical assistance. In December 2011, the court bailiffs enforced a sentence in the part of forfeiture and confiscated from his home the used table, 5 chairs, a carpet and a TV set. His 72-year-old widow M. Mammadova was forced to emigrate after the death of husband and suspicious deaths of both sons. The complaints against the prison doctors were rejected.

32. All these cases are denounced by the authoritative international organizations like Amnesty International, FIDH, Observatory of Human Rights Defenders, Frontline Defenders, Human Rights Watch.

National minorities

33. The unresolved conflict over Nagorno-Karabakh area created a situation of suspicion against any claims for minority rights as hidden separatism. The fates of N.Mammadov and H.Mammadov demonstrate a danger of minority rights activism. The domestic courts considered as high-treason the following activities of N.Mammadov: appealing to international organizations due to violation of human rights of Talysh people in order to damage Azerbaijan’s image; propaganda of the Talysh language, culture and art; sending young Talysh people for getting religious education outside Azerbaijan; appealing to the management of the Public TV for opening a programme in Talysh language, and appealing to the Ministry of Justice for registering the Talysh Cultural Centre and the Tolishi Sedo newspaper; cooperating with Iranian and Western linguist colleagues and research on the contemporary Talysh language by conducting social surveys, trips, etc.

34. Among the Azerbaijan’s obligations before the CoE which still is not fulfilled is an obligation “to adopt, within three years of its accession, a law on minorities which completes the provisions on non-discrimination contained in the constitution and the penal code and replaces the presidential decree on national minorities”. Moreover, the legislation of Azerbaijan contains no definition of the term “national minority” despite some minority rights are guaranteed by the Constitution.

35. Azerbaijan signed the European Charter for Regional or Minority Languages on December 21, 2001. But the Charter is still not ratified despite that also one of obligations before the Council of Europe.

Eldar Zeynalov,
Director.



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