

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Recognises Committee's competency under Article 22 ²	Other core treaties ratified	Date of previous report/examination, an submission of present report
16 August 1996	No	Yes	ICCPR, ICESCR, CRC, CEDAW, CRPD	7 November 2001/30 April – 1 May 2003, 13 July 2007

Opening remarks by the delegation

The delegation of the Republic of Azerbaijan was led by Mr Khalaf Khalafov, Deputy Minister of Foreign Affairs of the Republic of Azerbaijan. He was supported by a large high-level delegation consisting of representatives of the Ministry of Internal Affairs of the Republic of Azerbaijan, Ministry of National Security, Ministry of Justice, Health Ministry, State Committee for Family, Women and Children Affairs, Office of the General Prosecutor, and the Permanent Mission in Geneva. The delegation was made up of 13 high-ranking officials, six of which were representing the Ministry of Foreign Affairs and the Permanent

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Article 22 provides that a State Party to the Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

Mission in Geneva respectively, and two the Office of the General Prosecutor. Other agencies were represented by one delegate, at the Deputy Minister or Deputy Chair level.³

Mr Khalafov started his presentation of the third State report with thanking the Committee against Torture (the ‘Committee’) for the opportunity to inform it about measures taken by Azerbaijan to implement the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the ‘Convention’). In his opening remarks, the head of delegation provided up-dated detailed information on the set of topics covered in the State report, namely: progress on implementation of the Convention and the Committee’s concluding observations, ratification status with regard to other international instruments, recent changes in domestic legislation, fundamental reforms of the judicial system, construction of new penitentiary institutions in compliance with international standards, and prison conditions. Mr Khalafov updated the Committee on the status of NGOs, including human rights NGOs. He stressed that as a result of measures taken in past years, there were significant positive changes in activity and development of NGOs in the country.

In conclusion, the head of delegation drew the Committee’s attention to the State’s lack of jurisdiction over the Nagorno-Karabakh territory, and the inability of Azerbaijan to implement its international obligations in that region. In that context he mentioned violations of international humanitarian law, instances of torture and extrajudicial executions in Nagorno-Karabakh area. Mr Khalafov also acknowledged human rights violations by Azerbaijan, highlighting, however, that such instances did not have a systematic character, and that all measures are taken by the Government to eliminate such violations.

Overview of key issues

The following overview addresses five of the Committee’s concluding observations following the examination on the basis of those themes that the Committee dedicated most time to, whether it requested specific follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe. Each issue is assessed according to how it was addressed in the examination, including the initial views of the State, questions, comments and responses provided.

Azerbaijan engaged in an open discussion with the Committee. However, most of the Committee members found the level of detail of information provided by the State to be insufficient. Despite the openness of the delegation, as it was pointed out by the Chairperson, Mr Grossman, and its readiness for the dialogue, not all concerns expressed by the Committee were supported and shared by the delegation. For instance, the delegation did not fully share the Committee’s concern over the insufficiency of basic legal safeguards against torture and the absence of a definition of torture in domestic law. At the same time, the majority of Committee members highlighted as a positive aspect the efforts made by the Government to implement the Committee’s previous recommendations. Notably, during the oral replies of the delegation to questions of Committee members substantial time was devoted to updating the Committee on individual instances of violations of the Convention.⁴

Torture and ill-treatment

‘The State party should adopt all necessary measures to ensure that, in practice, all allegations of torture are subjected to a prompt, impartial and effective investigation and, as appropriate, prosecute and if responsibility is found, punish accordingly.’⁵

³ <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

⁴ Alleged violations against Emin Milly and Adnan Abduallev; Chechen refugee Alikhan Khasanov; cases of extradition of Haji Chankaev and Yusup Nagaev.

⁵ CAT/C/AZE/CO/3, para 9, available at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

Torture and ill-treatment of suspects and other detainees in Azerbaijan remains a concern for the Committee. Aspects of the issue considered by the Committee included allegations of torture and ill-treatment of detainees committed by law enforcement officers, lack of effective and independent investigation, and lack of information on convictions against officials allegedly involved in torture and ill-treatment. The issue was brought to the Committee's attention by Mr Grossman who informed the members about allegations of torture and ill-treatment by the police at the time of questioning. He noted that such instances were not subject to effective investigation, which created an atmosphere of impunity. The latter was reiterated during the discussion by Ms Kleopas. The State provided the Committee with very little of information on acts of torture allegedly committed by law enforcement officers.

Insufficient basic legal safeguards

'The State party should take prompt and effective measures to ensure that individuals are registered from the actual moment of deprivation of liberty, and that they are not subjected to acts in breach of the Convention when they are under custody, but not yet registered as detainees.

The State party should ensure that suspects are brought before a judge as soon as possible, calculated from the actual moment of deprivation of liberty, so as to determine the legality of their detention.

The State party should also take effective measures to ensure that in practice, all detainees in all detention and remand centres are guaranteed, *inter alia*, immediate access to independent legal counsel and an independent medical examination.'⁶

During the examination of the State report, the issue of basic legal safeguards against torture was one of the dominating and recurring issues. The Committee focused on the system of official registration of detainees at pre-trial detention facilities and access to independent medical examination and legal assistance while in detention. Mr Grossman asked about the availability of independent medical examinations for detainees and the legal provisions ensuring access to lawyer. He referred to cases where detainees were denied access to a lawyer for prolonged periods after their arrest, and several instances of death in custody with allegations of denial of medical assistance. Further, Mr Marino enquired specifically about the current system of legal aid for detainees.

It was not evident that the Committee's concerns regarding the insufficiency of basic legal safeguards were shared by the delegation. Mr Usubov, the First Deputy of the General Prosecutor, informed the Committee, access to a lawyer was provided from the moment of arrest. Referring specifically to Mr Gyer's questions regarding the cases of Emin Milly and Adnan Abdullaev, he pointed out that unimpeded access to legal aid and a lawyer were ensured from the moment of arrest. Allegations of torture and ill-treatment in pre-trial detention facilities under the jurisdiction of the Ministry of Internal were denied by Mr Zalov, of the Ministry of Internal Affairs. He also assured members of the Committee about availability of medical examinations at pre-trial detention facilities, however, not elaborating further on the independence of such examination and legal guarantees. Mr Zalov was supported by the Head of Department at the Office of the General Prosecutor, Mr Abbasov, who stated that legal aid was subject to strict legal procedural regulations.

The replies of the delegation, however, did not fully satisfy Committee members as no information was provided by the delegation on the number of cases of alleged violations of due process guarantees, including denial of access to lawyer, and allegations regarding conditions and treatment of prisoners and access to medical assistance.

Independent monitoring of places of detention

⁶ CAT/C/AZE/CO/3, para 11, available at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

‘The State party should guarantee that the public committee has an unrestricted right to conduct unimpeded and unannounced visits to all places of detention in the country, including pre-trial detention facilities and the remand centre under the Ministry of National Security.’⁷

The issue of independent monitoring of places of detention by civil society organisations and human rights defenders and specifically the Public Committee was first raised by the Committee in the ‘list of issues’ to be considered during the examination of the State report. The Government of Azerbaijan in its written replies to the list of issues provided information on the mandate and functioning of the Public Committee, created under the *Rules governing participation of members by civil society in the rehabilitation of convicts and public oversight of prisons*, adopted by the Ministry of Justice on 25 April 2006. The information was reiterated by the head of delegation in his opening remarks.

During the examination, the question of monitoring by the Public Committee was first raised by Mr Grossman, whose main concern was the frequency and small number of visits, as well as the limited mandate of the Public Committee. He noted the importance of the work of the Public Committee, but pointed out that many people were detained in places other than detention facilities under the oversight of the Ministry of Justice, which thus, remain inaccessible to the Public Committee. He also asked about the availability of reports produced by the Public Committee.

In response Mr Alekberov, of the Ministry of Justice, drew the Committee’s attention to the independence of the Public Committee from the Ministry of Justice. He stated that the reports produced by the Public Committee are submitted to the Ministry of Justice for it to take necessary measures to address the problems raised in the reports. Mr Alekberov confirmed that the Public Committee’s mandate only covers penitentiary facilities under the jurisdiction of the Ministry of Justice. Thus, pre-trial detention facilities under the jurisdiction of the Ministry of Internal Affairs and detention facilities under the Ministry of National Security still remain closed to the Public Committee. Although the issue of independent monitoring by the Public Committee did not dominate the discussion on the State report, it was very important in the context of allegations of torture and ill-treatment by the police during the pre-trial detention, insufficiency of basic legal guarantees for individuals deprived of their liberty in the pre-trial detention facilities and penitentiary facilities, *inter alia*, access to independent medical examination and legal assistance.

Domestic violence

‘The State party should ensure protection of women and children by speedily enacting the draft law on domestic violence and taking measures to prevent in practice such violence. The State party should provide for the protection of victims, access to medical, social and legal services, temporary accommodation, and compensation and rehabilitation. Perpetrators should also be punished in accordance with the gravity of their crimes.’⁸

The data provided by Mr Khalafov caused misunderstanding among the Committee members regarding the application of article 133 of the Criminal Code, which covers the crime of torture. Mr Grossman asked for further clarification of how that article was applied to punish the crime of domestic violence, as well as detailed information on sentences and charges brought in cases of domestic violence and statistical data on investigation into domestic violence. He further requested information on the status of the draft legislation on domestic violence. The issue was also raised by Mr Kovalev, who was also concerned with early marriages in Azerbaijan. The questions were answered by Ms Gahramanova, Deputy Chair of the State Committee for Family, Women, and Children Affairs. According to her, the status of the draft law on domestic violence remained unchanged, and the law had not been adopted by the Parliament yet. Other measures taken by the State to address the problem included compensations and physiological assistance to victims of domestic

⁷ CAT/C/AZE/CO/3, para 12, available at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

⁸ CAT/C/AZE/CO/3, para 19, available at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

violence, and the establishment of rehabilitation centres. However, no statistical data was provided on the number of cases and charges, as requested by the Committee.

Violence against journalists and human rights defenders

‘The State party should fully guarantee and protect the right of freedom of opinion and expression of journalists and media representatives, and introduce legal mechanisms and practical measures to that effect. The State party should conduct prompt and impartial investigation into allegations of violence against journalists and human rights defenders, and prosecute and punish perpetrators.’⁹

The issue of violence against journalists and human rights defenders was the focus of attention of Ms Sveaass, who enquired about results of investigations into violence during the 2003 and 2005 elections in Azerbaijan. However, the delegation did not enter into a discussion on the issue. In response Mr Khalafov agreed that violations had occurred during the elections, but merely stated that measures had been taken and criminal cases had been initiated. He did not specify, the nature of measures taken or the results of investigations into violations against journalists and human rights defenders.

Other issues

Most issues raised during the examination of the State report were included in the concluding observations of the Committee. Besides the observations of the Committee covered above, discussions focused on the definition of torture, extradition and *non-refoulement*, independence of the Ombudsman’s Office, independence of judiciary, and conditions in places of deprivation of liberty.

Conclusions and next steps

The Chairperson, Mr Grossman, noted the openness of the delegation during the examination. The head of delegation Mr Khalafov expressed the readiness of the Government to continue the dialogue and provide the information and data requested by Committee members, emphasising that the collaboration with the Committee contributes to the development of more effective mechanisms of torture prevention.

The **follow-up** issues as selected by the Committee cover, insufficient basic legal safeguards, independent monitoring of places of detention, and violence by the armed forces.¹⁰ The forth periodic report is due to be submitted by 20 November 2013.

Last revised and updated: 5 January 2010.

⁹ CAT/C/AZE/CO/3, para 21, available at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

¹⁰ CAT/C/AZE/CO/3, para 30, available at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>.

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