

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CPT/Inf (2018) 26

Response

of the Azerbaijani Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Azerbaijan

from 11 to 13 January 2004

The Azerbaijani Government has requested the publication of this response. The CPT's report on the January 2004 visit to Azerbaijan is set out in document CPT/Inf (2018) 25.

Strasbourg, 18 July 2018

Note: In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

The Comments of the authorities of the Republic of Azerbaijan on the CPT report prepared following the visit to Azerbaijan on 11-13 January 2004

Ministry of Interior

A number of points, especially of advisory character are set out in the report concerning the detention condition and provision of rights of detained and arrested persons in the provisional detention centers of regional police organs and Department for the Fight against Organized Crime of the Ministry of Interior on charges of events that took place after the presidential elections held on 15 October 2003.

Following the inquiry of the CPT, the detention condition, provision of rights of detained and arrested persons in provisional detention centers of regional police organs and Department for the Fight against Organized Crime of the Ministry of Interior, charged with participation at disturbances committed on 15 October 2003 have been investigated by the Prosecutors Office and comprehensive information has been prepared.

Regarding the recommendations, commentaries and appeals set out in paragraphs 8, 11-17 and 20-22 of the given CPT report, we additionally point out following.

Imprisonment measure was decided on 77 persons and 471 persons were arrested on administrative basis (totally 548 persons) on charges of participation at mass disturbances, which took place on 16 October after the presidential elections. Due to difficulties concerning allocation of detainees, also closeness of Department for the Fight against Organized Crime of the Ministry of Interior to the occurrence location, as well as correspondence of provisional detention centers of mentioned Department to the modern norms and requirements 18 persons among mentioned 548 detainees were placed in this Department.

None of the detainees in mentioned Department was keep under arrest longer than the term prescribed by normative acts of the Ministry, and they were transferred to investigative isolators or detention center for arrested persons on administrative basis within 5-7 days. One of the reasons of these persons' detention in the provisional detention centers for mentioned term was the decision-making procedure on detainees in the forensic and investigation agencies.

Concerning the threat of sufferance of detainees from ill-treatment at Department for the Fight against Organized Crime of the Ministry of Interior. International Red Cross Committee and OSCE representatives had a meeting with detainees at Department for the Fight against Organized Crime of the Ministry of Interior, and no discontent, recommendation and suggestion had been made by them concerning detention condition of and illegal treatment against detainees.

Implementation of the rights of detainees, and performing of religious rites in the provisional detention centers, the rights and obligations of detention center collaborators in the field of communal services and facilities, medical and sanitary-epidemiological provision are fully reflected in “Internal order rules at provisional detention isolators of police agencies” endorsed by order numbered 428 dated 06.11.2001 of the Ministry of Interior and prepared in full accordance with international standards on provision of human rights, requirements of UN relevant conventions and legislative acts of the Republic of Azerbaijan, and in the Ministry orders numbered 224 and 81 dated 12.06.2002 and 16.02.2004 respectively, on additions and amendments to the aforementioned rules. The relevant work has being constantly conducted with collaborators for due execution of aforementioned duties, as well as irreproachable guaranteeing of human rights. The study of legislative acts concerning the protection of human rights has being organized in professional training courses and the concerned collaborators should undergo relevant tests.

Along with sufficiently thorough reflection of implementation procedure of detainee’s rights in the provisional detention centers, a mechanism for consideration of detainee’s applications and complaints, and regulation of proper deliverance of their appeals addressed to other agencies are set out in the fifth chapter of the rules.

Along with other trial participants, the rights and obligations of suspected (Article 90) and accused persons (Article 91), as well as interrogation rules are thoroughly reflected in the relevant provisions of the Code of Criminal Procedure of the Republic of Azerbaijan. The right of these persons to not give a testimony (explanation) or reject giving a testimony (explanation) is also enshrined in the aforementioned articles. According to the legislation of the Republic of Azerbaijan only inspectors and investigators could conduct interrogation of suspected and accused persons. The supervision over the observation of legislation at provisional detention centers is exercised by Prosecutor agencies.

At the same time, with a view to examining the lawfulness of detention of detainees in the provisional detention centers the Commissioner for Human Rights (Ombudsperson) of the Republic of Azerbaijan has the right without barriers and prior notification to enter into these places, talk to detainees tête-à-tête, and become acquainted with documents attesting the legality of detention. On the basis of appeals of relevant international organizations, as well as NGO representatives and lawyers, an opportunity has also been afforded to them for the meeting with detainees.

A person who conducts the inspection registers his notes and suggestions.

Concerning the opportunity for detainees to inform their relatives. According to Articles 90.7.6, 153.2.1-153.2.7 of the Criminal-Procedure Code suspected person from the very outset of the detention has the right to have a lawyer, inform by phone or other communication facilities his family, relatives, his residency and work (study) place about detention, as well as have an opportunity to meet with lawyer privately and to get in confidential contacts with him without any time restrictions.

Along with the provision of right to inform relatives immediately after the detention, notification by the administration of provisional detention centers to family members of old men and underages, as well as detainees who have not relevant ability due to their psychological condition is also enshrined in Article 153.2.4 of the Code of Criminal Procedure.

This right is also set out in “Internal order rules of provisional detention centers of police agencies” approved by order of the Ministry of Interior numbered 428, as well as Paragraphs 1.3-1.4 of the Ministry’s order numbered 81 dated 04.03.2000.

Regarding the notes in the report concerning receipt of medical consultation by detainees it should be pointed out that the person brought to the provisional detention center should go through medical examination and sanitary purification before and in the day of location at cell. The appeals of detainees for medical aid, as well as their withdrawal of that aid are reflected in relevant registration books.

No considerable injury was discovered on persons brought to the Department for the Fight against Organized Crime, as well as regional police agencies and they also did not ask for medical aid. In the course of detention of these persons, no complaints were received on beating, sufferance from torture, lack of notification to their families and relatives, their detention in bad condition or starvation, without daily walking and medical aid. Only deputy head of “Musavat” party after being brought to this Department complained of headaches. Through medical examination was discovered that his blood pressure was below the norm and the necessary medical aid was provided to him.

Concerning the application of standard, single and comprehensive arrest protocols for all arrested persons. According to the legislation of the Republic of Azerbaijan detention and arrest of a person on charges of suspicion in crime and commission of administrative offence are considered to be different procedures and the implementation mechanisms are regulated accordingly by the Administrative Offences Code and the Code of Criminal Procedure. So, due to unconformity with aforementioned legislative acts the application of standard, single form protocols on detention and arrest of persons on charges of various offences is not possible.

Daily one hour walking right of detainees is also provided according to internal order rules. But if detainee violates the internal order rules, as a punishment measure he would be deprived from this right for one day.

Along with proposals of relevant international organizations, the recommendations of the European Committee for the prevention of torture, inhuman or degrading treatment and punishment (CPT) have always been taken into account for improvement of the activity of interior agencies in the field of provision of human and civil rights and liberties. Necessary measures have been taken for the implementation of recommendations set out in items 3, 33, 36 and 42 of the CPT report, which had been prepared on visit to Azerbaijan in 2002.

Considerable work has also been done for bringing the detention condition of detainees and arrested persons into the line with international standards.

Within nine months of 2003 provisional detention centers that correspond to international standards were built and put into operation in 7 city-district police agencies, and capital repairs, which are in line with modern standards, have been done in provisional detention centers of 28 agencies. The conditions in all these detention centers correspond to international standards. Furthermore, the Ministry of Interior has begun the construction of new isolator in Baku and intends to put it into operation in short time. Currently relevant amount of money have been allocated for the construction of new provisional detention centers in 4 police agencies and capital repair in 15 agencies.

Constitutional principles claiming the guarantee of human and civil rights and liberties as the main goal of the state are reflected in normative-legal acts of the Ministry of Interior and they serve as a basis for the work of interior agencies. The rules on provision of rights of detainees and arrested persons by police in accordance with international norms are enshrined in relevant orders and instructions of the Ministry of Interior.

Along with continuation of all necessary measures for regulation of police-civil relations in respect to legal-ethic norms, the observation of legality, human rights and liberties are always kept under control during the detention and at the time of bringing to administrative responsibility.

Workshops have been organized jointly with collaborators of the Ombudsperson's Office on such subjects as more effective protection of rights of suspected and accused persons and civilized treatment of collaborators toward detainees in the provisional detention centers of the city-district police agencies of the Republic of Azerbaijan, and on the basis of relevant measures scheme other organizational works are systematically carried out.

As a whole, notes, recommendations and reproaches regarding the Ministry of Interior contained in the report of the European Committee for the prevention of torture and inhuman, degrading treatment or punishment (CPT) have a particular importance in organization of service in higher level. The necessary measures have been taken with a view to bringing relevant explanations to the attention of all police staff, taking them into account and avoiding the repetition of faults and errors in this field in future.

Ministry of Justice

In the Investigative Isolator No1, cells with 6m² spaces in the 5th regime building have been taken out of use for reconstruction works and as a result of these repairs eliminating screens of relevant cells their spaces have been enlarged.

Systematic measures have been taken for the decrease of number of detainees in cells. Primarily in the light of this and according to the recommendations of CPT, in order to improve detention condition of juvenile and woman detainees detained in the Investigative Isolator No 1 they were transferred to buildings with normal life conditions of the Investigative Isolator No 3.

Furthermore, according to the recommendations of CPT the relevant measures have been taken for the removal of density in the Investigative Isolator #1 on the basis of restriction or regulation principles of number of accused and sentenced persons.

Delegation of the issues of arrests to the exceptional competences of the courts, more sensible and careful approach to the implementation of arrest measures, in accordance with the recommendations of the international organizations and following the judicial-legal reforms held in Azerbaijan, have resulted in gradual decreasing of the number of detainees in recent years. Furthermore, the judicial investigation bodies pay lastly more attention to the application of alternative measures that have no relation with the deprivation of liberty.

The measures taken for decrease of detainee number in the Investigative Isolator No 1 will allow the provision of detainees with effective occupation.

Concerning the provision of medical workers' independence and special role of this service, it should be pointed out that the medical service has been taken out from the structure of Head Department for the Enforcement of Court Decisions and it has been given to the direct subordination of the Ministry of Justice. Currently in order to re-organize medical services and to provide to the detainees and accused persons modern medical aid of high quality, necessary measures have been taken and continue to be taken on the structure, staff division, statute, status of medical workers and solution of other organizational and technical issues of this body.

For in-depth study of requirements of international documents on human rights and torture combating by collaborators of the Medical Department of the Ministry of Justice, courses were organized in Legal Training Center on the basis of specially worked out program with the participation of chief officers of the Ministry of Justice, judges, medical scientists, representatives of the International Red Cross Committee and other international organizations in June 2004.

Necessary measures have been taken for the medical examination of all detainees brought to investigation isolators, receipt of necessary medical aid by them during the detention period, registration of injuries according to complaints on ill treatment and deliverance of these registered notes to relevant agencies, and necessary conditions have been created for acquaintance by detainees themselves and their lawyers with these notes.

At the same time concerning inappropriate attention of judges to the injuries on detainees, it should be pointed out that courts pay special attention to the irreversible and due implementation of the relevant provisions of international documents, to the comprehensive and obligatory consideration of information on torture during inquiry, preliminary investigation, as well as detention period and taking necessary subsequent measures on, and to non-acceptance of testimonies gained with law violations.

Prosecutor's Office

After the Presidential elections held on 15 October 2003 13 persons who committed administrative offence and 5 persons on whom was chosen imprisonment measure were detained at the Provisional Detention Isolator of Department for the Fight against Organized Crime of the Ministry of Interior of the Republic of Azerbaijan (the list is added).

The information concerning the detainees, among whom 13 persons committed administrative offence and 5 imprisoned persons, at provisional detention isolator of Department for the Fight against Organized Crime of the Ministry of Interior of the Republic of Azerbaijan, detained after the presidential elections held on 15 October 2003 is provided below:

1. A. was sentenced to 7 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of the Administrative Offences Code of the Republic of Azerbaijan - was sent to the Special receiving station of Police Headquarter of Baku city on 23.10.2003.
2. B. was sentenced to 7 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of the Administrative Offences Code of the Republic of Azerbaijan - was sent to the Special receiving station of Police Headquarter of Baku city on 17.10.2003.
3. C. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was sent to the Special receiving station of Police Headquarter of Baku city on 18.10.2003.
4. D. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan.
5. E. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was sent to the Special receiving station of Police Headquarter of Baku city on 23.10.2003.
6. F. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was sent to the Special receiving station of Police Headquarter of Baku city on 23.10.2003.

7. G. was sentenced to 15 days' imprisonment by Narimanov district court on 17.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was released on 22.10.2003 by decision of the Appeals Court.
8. H. was sentenced to 15 days' imprisonment by Narimanov district court on 17.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was released on 22.10.2003 by decision of the Appeals Court.
9. I. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was released on 22.10.2003 by decision of the Appeals Court.
10. J. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was sent to Special receiving station of Police Headquarter of Baku city on 28.10.2003.
11. K. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was sent to Special receiving station of Police Headquarter of Baku city on 28.10.2003.
12. L. was sentenced to 15 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was released on 24.10.2003 by decision of the Appeals Court.
13. M. was sentenced to 10 days' imprisonment by Narimanov district court on 16.10.2003 for the commission of administrative offence by Article 310.1 of Administrative Offences Code of the Republic of Azerbaijan - was released on 24.10.2003 by decision of the Appeals Court.
14. N. was arrested by Prosecutor's Office of the Republic of Azerbaijan by Articles 315.2, 220.1 of the Criminal Code of the Republic of Azerbaijan on 17.10.2003 - was sent to the Investigative Isolator #1 on 23.10.2003.
15. O. was arrested by Prosecutor's Office of the Republic of Azerbaijan by Articles 315.2, 220.1 of the Criminal Code of the Republic of Azerbaijan on 17.10.2003 - was sent to the Investigative Isolator #1 on 22.10.2003.
16. P. was arrested by Prosecutor's Office of the Republic of Azerbaijan by Articles 315.2, 220.1 of the Criminal Code of the Republic of Azerbaijan on 18.10.2003 - was sent to the Investigative Isolator #1 on 22.10.2003.

17. Q. was arrested by Prosecutor's Office of the Republic of Azerbaijan by Articles 315.2, 220.1 of the Criminal Code of the Republic of Azerbaijan on 17.10.2003 - was sent to the Investigative Isolator #1 on 22.10.2003.

18. R. was arrested by Prosecutor's Office of the Republic of Azerbaijan by Articles 315.2, 320.1 of the Criminal Code of the Republic of Azerbaijan on 19.10.2003 - was sent to the Investigative Isolator #1 on 22.10.2003.

Q. due to his complaints of headaches was rendered immediate medical aid on 22.10.2003. After medical examination was discovered that Q.'s health was normal, but due to low level of his blood pressure he had a headache.

Among 18 detainees at Department for the Fight against Organized Crime only R. in his testimony alleged that he was beaten by collaborators of this Department while carrying from his residence to the Department on 19.10.2003.

After the imprisonment of R. while investigating the allegations about his beating and other illegal actions against him during his detention at Department for the Fight against Organized Crime of the Ministry of Interior of the Republic of Azerbaijan was defined that R. as one of the opposition representatives had been charged with commission of violation, plunders, property destruction, and organization of health hazard violation against authority representatives under Articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan and were arrested on 19.10.2003.

In this connection police collaborators who brought him to the Department for the Fight against Organized Crime of the Ministry of Interior were defined and interrogated, but in their testimonies they refuted the allegations of R.

Thus in his testimony S. stated that on the basis of instructions he and other collaborators of the Department for the Fight against Organized Crime – T. and U. went to R.'s residence, introducing themselves they offered him to go to the Department for the Fight against Organized Crime. R. went without any objection to this Department and then he was carried from there to the Prosecutor's Office. No pressure or violation were used against him.

Both T. and U., interrogated as witnesses, gave the same testimonies.

Head of the isolator in his testimony also confirmed that no physical pressure, illegal acts were used against R. during his detention at the Department for the Fight against Organized Crime.

In order to define the existence of any injuries on R.'s body the forensic medical examination was assigned on 28.10.2003.

In forensic medical examination report of 30.10.2003 was shown that the scrape of left elbow joint, bruise of back surface of right shin and bruise of internal ankle of right foot were discovered on R.'s body. The degree of these injuries, while not denying the possibility that these injuries could be inflicted by hard blunt object on 16.10.2003, due to their belonging to no health hazard injuries is not defined.

Thus, the injuries on R.'s body are defined to appear before being brought to the police. Allegations concerning his beating by collaborators of the Department for the Fight against Organized Crime on 19.10.2003 were refuted by testimonies and forensic medical examination report.

As the allegations on R.'s beating by police officers had not been confirmed, the institution of proceedings on this case was rejected.

Other persons did not complain about ill-treatment against them and their health during detention period. That is why they were not passed through forensic medical examination. Because of this it is not possible to provide the CPT with copies of forensic medical examination reports on other detainees.

Supreme Court

In order to increase the attention to the allegations on torture and other inhuman, degrading acts during the trials, the Supreme Court, by a letter addressed to all the courts of the Republic of Azerbaijan dated 26 May 2004, recommended to the courts that when an information concerning the physical and psychological influence, deception or harassment of accused persons, victims or witnesses for extortion confession from them, these allegations should be investigated, discussed and relevant measures should be taken consequently. In case of rejection of this kind of allegations the subsequent explanation of motives and relevant judicial evaluation of that must be reflected in judgments.