

APPENDIX

ECRI wishes to point out that the analysis contained in its report on Azerbaijan, is dated 28 June 2002, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Azerbaijan to engage in a process of confidential dialogue with ECRI on its draft text on Azerbaijan and a number of his comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the governmental authorities of Azerbaijan expressly requested that the following observations on their part be reproduced as an appendix to ECRI's report.

OBSERVATIONS PROVIDED BY THE AUTHORITIES OF AZERBAIJAN CONCERNING ECRI'S REPORT ON AZERBAIJAN

“Executive summary

Para II

It should be noted that in Azerbaijan various minorities had lived together with Azerbaijanis for centuries in peace and harmony. It may be stated that this ethnic and religious multiplicity has been preserved in Azerbaijan to the present day. It is a matter of fact that at no time in the history of Azerbaijan there have been recorded cases of religious or ethnic intolerance and discord or discrimination on ethnic or religious grounds.

The spirit of tolerance existing in Azerbaijan has been especially mentioned in the speech of His Holiness Pope John Paul II during his recent visit to Azerbaijan.

Mr. Gerard Stoudmann, Director of the OSCE Office for Democratic Institutions and Human Rights, in his opening statement at the OSCE Conference "The Role of Religion and Belief: Searching for Ways to Combat Terrorism and Extremism", held in Baky on 10-11 October 2002, pointed out the following: "It is not by chance that this conference take place in Azerbaijan. This country has a long tradition of different religious communities living together in an atmosphere of tolerance".

Therefore, the last three sentences of the report do not reflect the real situation and represent a misinformation due to the superficial assessment of the situation in Azerbaijan.

Para III

Comments on the phrase "and the need to tackle the prevailing negative climate concerning Armenians", which is contrary to the facts, are given on the content of Section II R of the report.

Section I: Overview of the situation

E. Administration of justice

Para 18

The second, third and fourth sentences are working out in detail the first sentence but at the same time do not reflect the ongoing process of reforming of the judiciary.

H. Reception and status of non-citizens

Para 25

The last sentence of the paragraph refers to "reports of intolerant speech present in the media", which are unknown to the Government. Since there is a strong sense of solidarity between the society and refugees, it is regrettable that report makes references to solitary instances, which create distorted notion of the situation.

K. Vulnerable groups

There is no doubt that the reference in the report to certain minority group, which by no means can be considered as "vulnerable", without careful examination of the situation in general, results in unbalanced approach, which can be overcome by deleting throughout the report of all above-mentioned references. Otherwise, explanations and arguments in this regard, which are given under Section II R, should be taken into consideration.

O. Media

Para 42

There are serious doubts that any sensationalist reports by the printed media in Azerbaijan on issues relating to certain minority groups could contribute to spreading hostile and stigmatizing attitudes vis-à-vis the members of these groups. Changes made by replacing in the first sentence the expression "often" with "sometimes" had slightly improved the text but had not corrected the factual error therein.

P. Situation resulting from the conflict over Nagorno-Karabakh

Paragraphs 43, 44 and 45

While saying about the consequences of the conflict it should be pointed out that the United Nations Security Council in its resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 July 1993, 874 (1993) of 14 October 1993 and 884 (1993) of 11 November 1993 had condemned the occupation of the territories of the Republic of Azerbaijan, reaffirmed respect for the sovereignty, territorial integrity, and inviolability of the borders of the

Republic of Azerbaijan and the inadmissibility of the use of force for the acquisition of territory. In our view, the phrase in the draft report that "Azerbaijan does not currently exercise effective control on Nagorno-Karabakh as well as on other parts of its territory adjacent to this region" in no way can reflect the existing situation resulting from the conflict. In fact not only the conflict itself but also especially the consequences of the conflict, including first of all the continuing occupation of a part of the territory of Azerbaijan, affect negatively all spheres of country's daily life.

In addition to another consequence of the conflict, mentioned in the draft report, namely the presence of hundreds of thousands refugees and internally displaced persons in Azerbaijan, it could be appropriate also to pay the attention to the problem of missing persons as a result of the armed conflict. As at 28 June, 2002 there are 4965 citizens of Azerbaijan reported missing as a result of the armed conflict. This total includes 320 women, 69 children and 358 elderly people. The Azerbaijani side knows that 783 of these people, including 43 women, 18 children and 56 elderly people, were taken hostages or prisoners of war and held at the territory of Armenia and the occupied territories of Azerbaijan. Taking into account the seriousness of the problem, the Government of Azerbaijan initiated the adoption on April 25, 2002 at the United Nations Commission on Human Rights 58th session of the resolution 2002/60 entitled "Missing persons".

In regard to the intention of ECRI to call on the Azerbaijani authorities to pursue a constructive dialogue with all the relevant national and international interlocutors, as well as to remind the obligation of Azerbaijan undertaken on acceding to the Council of Europe, it could be useful to add also the following.

Since February 1992 the process of mediatory efforts on the settlement of the Armenian-Azerbaijani conflict within the framework of the Conference for Security and Cooperation in Europe began. At the meeting of the CSCE Council of Ministers held in Helsinki on 24 March 1992 the decision was adopted to convene in Minsk a conference on Nagorno-Karabakh under the auspices of the CSCE as an ongoing forum for negotiations towards a peaceful settlement of the conflict on the basis of the principles, commitments and provisions of the CSCE.

The United Nations Security Council had demanded as long ago as 1993 the immediate, complete and unconditional withdrawal of all occupying forces from the occupied areas of Azerbaijan.

Since May 1994 the cease-fire is in force. On December 5-6, 1994 at the CSCE Budapest Summit a decision was adopted, in accordance with which Heads of State and Government of CSCE participating States established Co-Chairmanship of the Minsk Conference for the coordination of all mediatory efforts within the CSCE framework. The Budapest Summit tasked the CSCE Chairman-in-Office to conduct negotiations aimed at the conclusion of a political agreement on the cessation of the armed conflict, the implementation of which would lift the consequences of the conflict and would permit to convene the Minsk Conference. The Summit also decided to deploy the CSCE multinational peacekeeping force after the achievement of the agreement between the Parties on the cessation of the armed conflict, as well as to set up High-Level Planning Group aimed at the preparation of the peacekeeping operation.

At the OSCE Summit held in Lisbon in 1996 the following principles were worked out for settling the armed conflict, recommended by the Co-Chairmen of the OSCE Minsk Group and supported by all the OSCE member states with the exception of Armenia:

territorial integrity of the Republic of Armenia and the Republic of Azerbaijan;

legal status of Nagorno-Karabakh defined in an agreement based on self--determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;

guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.

Since 1999 direct talks between presidents of Armenia and Azerbaijan began. They did not result in the conflict settlement due to destructive position of the Armenian side. Up to now, despite unambiguous demands of the UN Security Council and other international organizations Armenia continues to occupy Azerbaijani territories and increases its military potential there.

Section II: Issues of particular concern

Q. General awareness of racism and racial discrimination

Para 48

The conclusions in the fifth sentence create incorrect and subjective perception of the situation concerning the enjoyment of certain rights by persons belonging to minorities.

R. Negative climate concerning Armenians

Paragraphs 50-55

The present part of the draft report, which has been compiled basically by using unchecked and unbalanced information from various sources, will not be able to have pretensions to be considered as a positive contribution in solving the problem and, moreover, will give an opportunity for those who are not interested in restoration of peace and good-neighbourly relations in the region to use it in their own political agenda. In this regard the following information on some historical phases of the Azerbaijani-Armenian relations and the root causes of the present conflict makes the perception of information contained therein more balanced, though the deletion of the above-mentioned paragraphs could had a beneficial effect on the report in general.

It is well-known, that by 1918, the number of Azerbaijanis in the present-day Armenia stood at 575 000 - more than a third of all the inhabitants of the area. But as a result of the Armenian Government's deliberate policy of expelling the Azerbaijani population, there remains today in Armenia not a single Azerbaijani out of that half million-strong community.

It is a matter of historical fact that between 1905 and 1907, 1917 and 1918, 1918 and 1920 a series of large-scale bloody actions had been carried out by Armenians against Azerbaijanis in various parts of Azerbaijan and present-day Armenia.

By the Decree of the President of the Republic of Azerbaijan of March 26, 1998 the Day of Genocide of the Azerbaijanis is commemorated every year in Azerbaijan on 31 March.

Over the 70-years of Soviet rule, the Armenia conducted a policy of building an "Armenia for Armenians only", expanding their territory at the expense of Azerbaijani lands and using every possible means to expel Azerbaijanis from their historical and ethnic lands. During this period, the aforementioned policy was implemented systematically and methodically.

While being even a part of the USSR, Azerbaijan faced the threat to its territorial integrity and security. During the Soviet times the territories of Zangezur, Goycha, a part of Nakhchivan and other regions were taken from Azerbaijan in favor of the neighboring Armenia. As a result, the territory of Azerbaijan that during the times of the Azerbaijan Democratic Republic (1918-1920) constituted 114 thousand sq. km. reduced to 86.6 thousand sq. km. On July 7, 1923 at the initiative of the Moscow leadership of the Bolshevik party, the Nagorno-Karabakh Autonomous region (NKAR) with dominating Armenian population was artificially set up at the territory of Azerbaijan. This decision became the first step on the way of goal-oriented policy of separation of Nagorny-Karabakh from Azerbaijan.

Furthermore, on the pretext of providing a labour force for the cotton-growing regions of the Mugan-Milsk steppe in the Azerbaijani SSR, the resettlement of Azerbaijanis from the territory of the Armenian SSR had been carried out in order to settle the vacated lands with Armenians coming from abroad.

Consequently, on December 23, 1947 the Council of Ministers of the USSR adopted Decision No. 4083 on resettling collective farm workers and other members of the Azerbaijani population from the Armenian SSR to the Kura-Araks lowlands of the Azerbaijan SSR. On March 10, 1947 the Council of Ministers of the USSR supplemented its first decision with decision No. 754, which had outlined the planned measures to resettle Azerbaijanis.

The first section of the decision of December 23, 1947 indicates that between 1948 and 1950. "on the basis of the voluntary principle", 100 thousand collective farm workers and other members of the Azerbaijani population living in the Armenian SSR were to be resettled in the Kura-Araks lowlands of the Azerbaijan SSR.

The reason for the haste in drawing up this decision is abundantly clear from one particular section of the decision, namely "to authorize the Council of Ministers of the Armenian SSR to use buildings and living accommodation vacated as a result of the resettlement of the Azerbaijani population to the Kura-Araks lowlands for the installation of Armenians coming from abroad".

All the necessary measures were taken to enforce the decision to drive Azerbaijanis from Armenia. In 1948 a total of 10 584 Azerbaijanis were resettled from Armenia in various regions of Azerbaijan. Between 1948 and 1950, 34 383 people were resettled from the Armenian SSR. Large-scale resettlement continued right up to Stalin's death in 1953. and only then the numbers begin to decrease. According to official records, 53 thousand Azerbaijanis were resettled in the Kura-Araks lowlands region alone. However, this is not a complete list of the people who were resettled or forced to migrate from Armenia. Most of the people resettled from mountain pasture in Armenia were unable to adapt to the environment of the Mugan-Milsk steppe and either died or were forced to move on to other regions of Azerbaijan.

Thousands of Azerbaijani families were forced to flee not just to various regions of Azerbaijan, but also to other Republics of the USSR.

In February 1988, at the session of the regional Soviet of NKAR, without the participation of Azerbaijani deputies a decision was adopted on the withdrawal of the NKAR from Azerbaijan and its joining Armenia. On December 1, 1989 the Supreme Soviet (Parliament) of the Armenian SSR adopted a decree, which is still being in force, on the annexation of the Nagorno-Karabakh region of Azerbaijan to Armenia. This and other similar decisions of the Armenian side, aimed at the unilateral separation of a part of territory of Azerbaijan from it, contradicted the Constitutions of the USSR and Azerbaijan SSR, according to which the territory of a union Republic could not be changed without its consent. The borders between union Republics could be changed by mutual agreement of respective Republics, to be confirmed by the USSR.

Despite the affirmations of the Armenian side which, by spreading disinformation about alleged violations of the rights of persons belonging to the Armenian minority in Azerbaijan, tries to justify its aggressive policy towards Azerbaijan, the former NKAR, a number of residents in which before the conflict were 186,1 thousand (138,6 thousand Armenians (73,5%) and 47,5 thousand Azerbaijanis (25,3%), had acquired all the basic elements of self-government and achieved considerable progress through its social, economic and cultural development.

In fact the NKAR was developing more rapidly than Azerbaijan as a whole. Accordingly, the statistics and NKAR's experience of development within Azerbaijan confirm that the form of autonomy which had evolved was entirely appropriate to the specific social, cultural, national and daily needs of the population of the autonomous region.

The mass expulsion since 1988 of Azerbaijanis, from NKAR and Armenia (there more than 200 thousand Azerbaijanis were expelled from Armenia) resulted in complete ethnic cleansing of these territories from all non-Armenians. The Soviet leadership was not able to stop anti-constitutional actions of Armenia and prevent from sending military units and terrorist groups to the territory of Azerbaijan.

In accordance with the Law adopted by the Supreme Soviet of the Republic of Azerbaijan on November 26, 1991 the NKAR had been abolished. One of the reasons of this decision was that the creation of NKAR had promoted deepening national enmity between the Azerbaijan and Armenian peoples.

Full-scale hostilities began to unfold end 1991/early 1992. Armenian armed units, using most sophisticated weapons systems, expanded their military operations in Nagorny Karabakh, the culmination of which were the seizure in February 1992 of the Khojaly town, resulted in deaths of over 600 civilians, including women, children and elderly people, occupation in May 1992 of the Shusha town and Shusha district. As a result of these actions, all Azerbaijani population was expelled from Nagorny Karabakh, which had been completely occupied. By the seizure of Lachin in May 1992, the territory of the former Nagorno-Karabakh Autonomous region was joined with Armenia.

Afterwards, the military operations have spread beyond the confines of the region and have extended to other territories of Azerbaijan outside the administrative borders of the region, as well as to the Azerbaijan-Armenia border. Six more districts were occupied by Armenia.

It is regrettable that while drafting the relevant parts of the report concerning Armenians the rapporteurs have not found necessary to take into consideration the fact that despite the cease-fire regime the two countries are still in a state of war and a part of Azerbaijan is still under the military occupation. It is also regrettable that, while insisting on the so-called negative climate concerning Armenians, the rapporteurs have not expressed their interest to meet with Armenians living in Baky in order to get information at first hand. The preference to unchecked information resulted, in our view, in predominance of subjectivity in some parts of the draft report. In this regard the Section II R of the draft report should be either deleted or redrafted in accordance with the above-mentioned information.”