The Alternative Report

Concerning the Third periodic report submitted by the Republic of Azerbaijan to the UN Human Rights Committee

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Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

It is considered the punishment for beating or for causing strong physical pains and mental sufferings through other type of violent actions on the Article 133 of the Criminal Code of Azerbaijan Republic. However, it is considered on the Article 133.1. of the Criminal Code the "regularity" of these actions (*133.1. Causing strong physical pains or mental sufferings* ***by regular*** *causing battery or other violent actions, not entailed to consequences provided in articles 126 and 127 of the present Code a_ "is punished by imprisonment for the term up to three years*). Thus, this is creating problems on the process of application of the article. So the courts are taking as basis the regularity of torture and treatment and punishment abasing human's honor. This means that beating or abasing human's honor happening once might not be classified as torture.

Besides, it is not clarified on this article the cases of "abasing human's honor", including abasing honor without applying physical violence and it is presented under the general provision as a "mental sufferings".

Thus in the court practice the torture and treatment abasing honor and proving the cases of punishment is very complicated.

As the penitentiaries in the country are under the auspices of different ministries is an obstacle for eradication of tortures and treatment abasing honor and cases of punishment.

Currently penitentiaries are under the auspices of the following ministries.

1. Remand isolators – under the auspices of the Ministry of Justice and the Ministry of National Security;
2. Penitentiaries – under the auspices of the Ministry of Justice;
3. Cells for temporary detention – under the auspices of the Ministry of Internal Affairs;
4. Places for detention of persons arrested on administrative basis – under the auspices of the Ministry of Internal Affairs;
5. The Institutions of Obligatory Medical Treatment (places for treatment of mentally disabled persons) – under the auspices of the Ministry of Health;
6. Guardrooms – under the auspices of the Ministry of Defense.

Only the Ministry of Justice among these structures has achieved the effective mechanisms for prevention of tortures, treatment abasing human's honor and punishment. Thus, the following activities have been conducted during the recent years (especially after the year 2000) concerning the remand prisons and penitentiaries under the auspices of the Ministry of Justice.

- A remand prison corresponding to the modern requirements and international standards was built and presented to exploitation.
- The buildings, facilities have been reconstructed in penitentiaries and they had fit to the minimal European standards. The penitentiaries where the technical parameters do not correspond to the modern requirements, including the penitentiary prison of the Penitentiary Service are going to be substituted with buildings corresponding to the minimal European standards.
- There is a separate penitentiary for the prisoners who are suffering from infectious deceases and that penitentiary is corresponding to the modern standards.
- There have been established the following ways of control on the penitentiaries:

- **The Administrative Control** – there is an inspection controlling Penitentiaries within the Ministry of Justice.
- The control conducted by the **Authorized Person on Human Rights (Ombudsman)**. The ombudsman has the authority to enter to penitentiaries without any obstacles and with no previous warning, to conduct confidential meetings, to conduct visits. The prisoners have the right to present complaint to the Ombudsman without facing any censorship. The complaint is submitted to the Ombudsman within 24 hours.
- **Public Control.** There was established the Public Committee on Control to the Penitentiary Service.

The Public Committee is consisted of human rights defenders elected based on the special procedure by the independent Election Commission. The human rights defenders have the authority to enter to the penitentiaries with no obstacle, conduct monitoring, conduct confidential meetings, to provide legal and psychological aid to prisoners, organize trainings etc. The Ministry of Justice provides written and oral replies to the reports of the Public Committee within a month.

- **International control.** The inspectors of the European Committee on Prevention of Tortures have a right to enter to the penitentiaries without obstacle and warning. The inspectors of the committee are conducting visits to such penitentiaries time by time. The Republic of Azerbaijan has joined to the Optional Protocol of the UN Convention on Prevention of Tortures. Currently the procedures providing entrance for the UN inspectors to enter to penitentiaries are conducted.

The agreement with the Red Cross Committee is prolonged by the Ministry of Justice for 2 more years, so the inspectors of this committee can also conduct visits to penitentiaries.

As a result of creation of different control mechanisms at penitentiaries under the auspices of the Ministry of Justice there was basically eradicated the cases of torture and bad treatment at penitentiaries. If such case is occurred it is not difficult to conduct an investigation and to punish the authorized person who abuses his authority.

However the public access to remand prison under the auspices of the Ministry of National Security and to detention cells of the Ministry of Internal Affairs is quite weak. There was created conditions for only to several NGOs to visit these places. From this point of view, the facts of tortures are registered basically at the police structures.

The psychiatric hospitals of the Ministry of Health are completely closed to the public of the country. The condition itself at these places is leading to the treatment abasing human's honor and punishment. The persons who are arrested on the basis of administrative violations with the order of chiefs of military bases (with no court verdict) are detained at the Guardrooms that are under the auspices of the Ministry of Defense. These places may only be visited by the military prosecutor and Ombudsman. There is no access to these places by the public.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 49 of the Constitution of Republic of Azerbaijan adopted on November 12, 1995 stipulates that everybody has the right for freedom of assembly with others.
Pursuant to the Article of the Constitution no permission is required from the authorities to conduct peaceful assemblies, meetings, demonstrations and etc. According to the Constitution the organizers have to notify the relevant body of executive power within the period of time as determined by legislation.
The Law of the Republic of Azerbaijan on "Freedom of Assembly" was enacted in 1998 year, several years after the adoption of the Constitution. Ensuring the right for freedom of assembly of people and sanctions for preventing exercising of this freedom are prescribed by the Criminal Code and Code of Administrative Torts of the Republic as well as rules and procedures are determined for exercising of this freedom.
Relevant parts of the International Covenant on Civil and Political Rights, and Convention for the Protection of Human Rights and Fundamental Freedoms to which Republic of Azerbaijan is a party has placed certain obligations on the state to ensure this fundamental freedom. However there are still serious problems existing in the country in ensuring of this freedom. The political parties, public unions, trade unions and group of people existing in the country encounter serious problems while attempting to use the right for freedom of assembly or when use this right. Exercising of this freedom is de facto of permission character in Azerbaijan while according to the requirements of the Constitution of the Republic of Azerbaijan and the International Standards to which Republic of Azerbaijan is a party, the only condition for realization of the freedom of assembly (or peaceful assembly) is to notify the relevant bodies of executive power ahead of time. Every institution or a group of people has to get permission from the relevant bodies when they want to use the right for freedom of assembly, otherwise any gathering will be considered as "unauthorized assembly".
The government's pressure on the right for freedom of assembly during the recent serious political developments which took place in the country as well as Presidential elections in 2003 and on the eve of Parliamentary elections in 2005 year and aftermath have concerned not only the public but also the international community. OSCE and the Council of Europe are making efforts to ensure the realization of the right for freedom of assembly in the country. International organizations, relevant bodies of foreign countries and International Non-Governmental Organizations defending the Human Rights have several times pointed out in their periodical reports the restrictions of the right for freedom of assembly in Azerbaijan.

On 2007 the Citizens' Labor Rights Protection League carried out monitoring on condition of provision of freedom of assembly in the country.
According to legislation the organization intended to carry out an assemblage has to inform corresponding executive power authority in written form 5 days in advance.
70 notification letters sent mainly by Alliance of Political Parties "Azadlig", different political parties entered this alliance, National Independence Party and Journalist organizations and responses of corresponding executive power authorities were analyzed.

The notification letters that sent were prepared according to legislation requirements and rendered within the time limits considered.
But in most cases the response of the corresponding executive power authorities to the notification letters was made a day before the planned assemblage. (This makes complaint to court useless. According to Article 11 of "Freedom of Assembly" Law, courts should review the case within 3 days. But review of complaints during estimated procedural time never took place).
The response and decisions made to the more than 70 notification letters rendered to corresponding executive power authorities were analyzed and systemized within 3 main groups.

1. Executive Power Authorities basing no legislative norms prohibit all assemblies. In all responses made to the letters expression "carrying out of assemblage is irrelevant and is prohibited" is used.
2. Executive Power Authorities reject all notifications in uncertain form using the expression "irrelevant".

For example, on 30th May of 2007 the Executive Power Authority responded to the notification letter submitted on 23rd May of 2007 by Citizens' Labor Rights Protection League on carrying out piquet for protection of freedom of speech in "Sabir" Park located on Istiglaliyyat street of Baku city saying ***"...we think it would be beneficial not to convene an event but to express your position in a civilized way regarding this issue*** The Executive Power accepted as irrelevant conducting piquet considering peaceful assembly not civil.
«Everybody» himself decides the expediency of realization of the right of freedom of assembly and freedom of speech and opinion. Everybody or every organization himself determine the right of freedom of assembly using the freedom of speech and opinion basing on own view. No one and no authority have the right to reason the importance of the actions to be held.

3. Executive Power Authorities as response to the appeals to assembly violate rudely principles of proportionality and assign worthless places for carrying out the meetings and assemblages.

After 2005 October Parliamentary elections meetings and assemblies were prohibited de-facto in general.

Only after claims of social and political forces of the country and international communities on 27th of October 2006 the head of the Baku City Executive Power in order No 318 basing on point IV of Article 9 of Law of "Freedom of assembly" assigned places for carrying out the assemblies and meetings. But these places are situated 20-25 km far from the city centre and housing areas, there is no public transport going there and these are the useless stadiums and areas. Assemblage in such areas loses the significance and importance of such events.
By the order of the President of Azerbaijan Republic the largest square of Baku "Azadlig" Square is intended for the special governmental events and carrying out any other meetings and assemblies here is prohibited. The prohibition of right of freedom of assembly in this square where usually all massive actions are conducted is not understandable. This square is quite suitable from the points of territory, certain distance from the housing area and not interrupting road traffic. In this square the governmental events take place very rare (may be 1 or 2 times a year). This Act of the President limits the right of freedom of assembly stated in the Article 49 of the Constitution.

The situation is analogical in the other cities and regions of the country. Local authorities do not allow any assemblies and meetings. Only in few cities and regions special places were assigned for pre election campaigns. These places as a rule are situated far from the housing areas, there is no public transport going there and there is no necessary infrastructure and communication means for implementation of such events.

Legislation

Before 30th of May 2008 amendments were made to the law of "Freedom of Assembly", the law in force contradicted Constitution and International norms by creating barriers in implementation of freedom of assembly. Despite intention of procedure of notification for carrying out the assembly, later provisions requested "**approval**" by the corresponding executive power. The assembly organizers had to confirm the place, time, approximate number of participants and approximate topic (even slogans written and the ones to be sounded).
The reality was more defected. The responds to the notification letters concerning the conducting assembly consisted of the standard answers. (For example: for realization of freedom of speech and assembly the Party "Musavat" appealed to the Baku Executive Power for carrying out a meeting, and the Executive Power's respond was: *the implementation of meeting is considered inexpedient, because, the President Ilham Aliyev works as hard as possible to improve the well-being of people, income of oil is increasing year-by-year, the government is fighting corruption, and anticorruption committee is being set under the public prosecutor's office. …»*)
In case of prohibition the participants have right to appeal to the court. Even though the cases were reviewed after the date appointed for the assembly. This limited the right of effective use of legal means for provision of right of freedom of assembly. Since 13th of November 1998 when the law came into force till now none of the assembly participants' appeals was satisfied in the national courts. The courts as usual did not review the cases according to the time limit stated in the legislation and most of the decisions made were about rejection of the appeals.
As there was nothing mentioned in the legislation about coincident, spontaneous and contrary meetings, all of them were considered illegal and prohibited. All efforts of carrying out such assemblies were repulsed by force and administrative (fines or short-term administrative arrests) or even criminal punishments against participants and organizers were applied.

Situation after the substantial amendments to the Law

Amendments made on the basis of recommendations of Venice Commission of the Council of Europe, OSCE and national NGOs to the law of "**Freedom of Assembly**" came into force on 30th of May 2008. Amendments guarantee the right to an effective remedy. In case of prohibition or any impediment of carrying out the right of freedom of assembly the judicial power should review the case and make a decision till date of assembly.
Some imperative norms on law were lightened. For example the time scheduled for the implementation of the assembly are appointed not on the law requirement but basing on consideration of local executive power. Rights of children of being an organizer of assembly were provided. Considerations on contrary meetings were added and etc.
But according to Law the local authorities are again the ones who appoint the place of assemblies. Local authorities use this consideration (appointment of appropriate places for assemblies) as rights given to them and even after the amendments the places appointed for the assemblies are again useless for carrying them out.
On the eve during the important governmental events any kind of mass events in these administrative areas (cities) are prohibited. This contradicts Constitution and International Norms supported by government.
Relatively positive changes after the amendments to the legislation have not eradicated shortcomings in practice. After the amendments made to the legislation till the 1st of August 2008 no approved assembly took place on the territory of the country, in spite of presentation of notification letters and appeals for carrying out the assemblies made to the corresponding executive authorities.
For example: an answer of prohibition was given to the notification letter dating 11th of July 2008 piquet planned to be held in front of the executive power by the "Musavat" Party. The

grounds for the response were shown as contradicting the law. But which law contradicted piquet was not shown. According to the point VIII of Article 9 of the law on freedom of assembly the requirement for the carrying out a piquet is:
"the participants of piquet should not be more than 50 persons, they should not get closer than 10 meters from the entrance of the object of piquet, should not hinder the entrances or exits of the object of piquet, and should not use voice enhancers more than 10 watts."
The requirements for implementation of piquet show us that by observing all these requirements it is possible to organize a piquet in front of any governmental authority. But, before and after the amendments made to the legislation governmental authorities seriously limit right of freedom of assembly.

Any mass actions organized in the country during the recent 6 months of 2009 were only the actions organized by the government. Although there was conducted an important political campaign in the country during this period – conducting referendum concerning the amendments and changes to the main law of the state Constitution it is allowed to conduct public actions. Only one small meeting spontaneously organized in front of the headquarter office of the oppositional party of the country "Musavat" that lasted for very short time on the eve of referendum was not broken up by the police forces.
On the 10th of May 2009 the attempt of a group of youth to conduct picket concerning the terror action happened at the State Oil Academy (there was an attack to the State Oil Academy on the 30th of April 2009 caused to the end of 17 persons' life) was prevented a day before. The police arrested the persons who were going to organize a picket on administrative basis a day before (May 9) conducting the picket.
Currently it is impossible to get permission to conduct any meeting in the country (however there is no procedure of getting permission at all). Any attempt to organize a meeting without sanctioning is prevented through application of force.

As it is seen, amendments made to the legislation did not lead to the positive changes in practice. Corresponding executive authorities as before continue on prohibiting meetings and they base not on the law, but on their subjective and contradicting the law considerations.

So, the Republic of Azerbaijan is not implementing the taken commitment on the Article 21 of the **International Covenant on Civil and Political Rights**.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

According to the Article 58 of the Constitution of Azerbaijan Republic every one has the right to establish union, political party, trade union or other public union or to become a member of existing union.
There are legislative acts related to political parties, trade unions, non governmental organizations, as well as other normative legal acts adopted with the aim to provide legal activity of these organizations.
However, the attitude towards political forces, public unions and trade unions is quite different than it is considered on the legislation. These differences used to exist before, but during recent years, including in 2008 these differences had become much deeper.

Joining to the trade unions

Law on Trade Unions was adopted on 24 February 1994. Other legislative acts adopted later, also LC neutralized a number of provisions of that law. According to article 19 of LC, '*Trade union organization can be created in institutions upon pure voluntarism principles making no difference among employees, getting no permission from employers in advance*'.
According to the Code, organizations established in institution must be created as first organization of any field trade union functioning already. According to article 1 of Law on Trade Unions, '*Trade Unions are independent public, non-political organization operating upon their charters and this Law where employees working in field of production and non-production, also pensioners and persons studying are voluntarily assembled upon individual membership Principle in level of workplace, professions and republic for protection of their labor, social and economic rights and legal interests*'. By article 3 of Law, '*…at least 7 persons are entitled to assemble in trade union organization and adopt its charter*'. It seems from provisions that organizations founded in institution can be formed as first organization of trade union organization possessing charter and respective state registration. Because in the domestic practice there are not independent trade union organization created in institution. Only separate trade unions were registered in due time in one of Production Units of State Oil Company and it continues to operate as first organization.
According to information of Azerbaijan Trade Unions Confederation, at present there are 18 671 trade union organizations in country that are united at 26 field trade unions affiliated to the Confederation. This figure is too low and covers small part of institutions, specially state sector institutions. As Journalists Trade Unions not included in the Confederation and without state registration have no structure (first organization) cannot function as trade union.
Existing trade unions are not able t be social partner of employers, despite in institutions where these structures exist rights of employees are protected better than institutions with no trade unions.
There are serious obstacles for creation of trade unions in a number of companies specially foreign oil companies. Efforts by employees face serious resistance, initiators undergo pressure. Despite domestic legislation sets serious punishments for creating obstacle to assembly at trade unions, these provisions are 'dead provisions' and not applied.
Membership fee from employees in institutions where trade unions exist are taken by management. Every person employed is considered member of trade union. Employees not wanting to be member of trade union must submit written notification on this to accounting of the institution. Despite no norm on this exists, it has been established in this way in the practice.
So, freedom of employees to come together in workplaces has not been assured. Activity of any trade union organization against the will of the employers or foundation of new trade union organization is very complicated.
The right to join to trade unions is seriously violated especially at the **multinational companies** working in the country. At the multinational oil companies working in the country including the BP Company and in its subcontractors all initiatives directed to establish trade unions are prevented and the persons who want to establish trade unions are fired from their jobs. Names of

these persons are included to the secret “black lists” and their further employment in other oil companies becomes impossible.

Concerning the right on joining to political parties

The Law on “Political Parties” adopted in 1992 is on the force in the country. The initiative group that collected signature of 1000 people and conducted the establishment meeting can create a political party. There are close to 60 political parties in the country. The serious problems existing concerning the registration that used to exist before have been particularly eradicated.
In state structures, in organizations financed from the state budget and in economic entities under the state auspices the membership to the ruling party is propagated and sometimes even required. Oppositely, the members of oppositional parties is oppressed, the active ones are fired from their job. The condition for the activity of political parties is different. The ruling party and satellite parties around it have central and regional headquarters. However, oppositional parties are deprived from their headquarters or the headquarters were substituted with the ones that are in suburbs. There were created obstacles for members of oppositional parties to conduct active political strike. The oppositional parties have become weaker during the recent years and they are facing a danger to disappear from political arena. As a result of it in elections conducted in all levels there are unequal opportunities and unequal resources are occurred. During the recent presidential election the political opposition had to boycott the elections as a result of unequal conditions. Through this the political opposition had tried to preserve its image. Currently the political opposition is not capable to compete with ruling party and parties close to authority and to win the elections (excluding separate majority constituencies). There are no serious oppressions towards the members of political opposition (because of political allegiance), however there are still problems on getting access to employment for oppositional activists.

Non Governmental Organizations

There were observed serious changes on the attitude of the government towards the non – governmental organizations. The previous “cold” attitude of government towards non – governmental organizations has become further to the level of cooperation, later to partnership. There was established a specialized state structure under the president of Azerbaijan with the aim to support non – governmental organizations. The majority of members of this structure which is a collegial structure are the representatives of civil society. During the recent two years there was added a separate provision to the state budget considering financial aid to NGOs. In comparison with political parties the attitude towards NGOs is neutral.
The official registration of NGOs is not defined on the law as an objection. The application for getting registration is a right of NGO. It can use this right or can conduct activity without having official registration. The government has allocated the subsidiary in amount of close to 3.5 million US Dollars for financial support of national NGOs for 2009.

However the liberal policy conducted towards the NGOs is on the eve of serious changes at the moment. It is under discussion at the parliament the addition of restricting amendments to several legislative acts on NGOs. According to the changes the NGOs are able to conduct activity in the country only after they have got the official registration. For the persons who are representing non – registered NGO will be considered serious administrative and criminal responsibility.
The registration regime is going to be made much complicated. The citizens of foreign countries and stateless persons might not be establisher of NGO.

The organizations of foreign countries can work in the country only if there is an intergovernmental contract. There are considered other restrictions as well.