



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr. general
22 May 2010
English
Original: French

Committee against Torture
Forty-third session

Summary record of the first part (public)* of the 909th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 10 November 2009, at 3 p.m.

Chairperson: Mr. Grossman

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* There was no summary record for the remainder of the meeting.

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The meeting opened at 3.05 p.m.

Consideration of reports submitted by the States parties under article 19 of the Convention *(continued)*

Third periodic report of Azerbaijan (CAT/C/AZE/3; CAT/C/AZE/Q/3; CAT/C/AZE/Q/3 and Add.1 (document distributed in Russian, English and Spanish only); HRI/CORE/AZE/2008) (continued)

1. *At the invitation of the Chairperson, the delegation of Azerbaijan resumed places at the Committee table.*
2. Mr. Zalov (Azerbaijan) said that a national plan of action to combat trafficking in persons for 2009–2013 had been adopted by presidential decree in 2009. The aim of the plan was to enhance the effectiveness of the prosecution of human trafficking, to improve the safety of victims, to assist them with their rehabilitation, and to improve the coordination of activities in that area and the awareness of groups dealing with the problem. Among the measures introduced, two bills on rules governing the national mechanism in charge of the rehabilitation of victims of human trafficking and on recognition of the status of victim of human trafficking had been drafted and submitted to the Council of Ministers for approval. Under the new national plan of action adopted in March 2009, the Ministry of the Interior and a coalition of 45 non-governmental organizations (NGOs) had signed a memorandum of agreement in order to coordinate their activities in the fight against trafficking. Officials of the department responsible for combating human trafficking had taken part in seminars and training programmes organized in Austria, Serbia, Finland, Georgia, Ukraine and Turkey, and had held discussions with experts of the United Nations and the International Labour Organization (ILO) on the question of trafficking.
3. In 2005, amendments had been made in the Criminal Code with the addition of articles 144-1 (Trafficking in persons), 144-2 (Forced labour) and 316-1 (Disclosure of confidential information about victims of trafficking in persons). During the period 2006-2008, 248 persons had been tried under article 144-1, while 17 criminal gangs had been identified and their members brought to trial. In the first nine months of 2009, 71 victims of human trafficking had been identified, including 44 women and two minors; 22 of those had been given shelter in a home, while 31 had received financial assistance, three had received help finding a job and 22 had been admitted to vocational training.
4. With regard to the question concerning the registration of suspects at the moment of apprehension, he said that every time a person was brought to a police station his name, the time of arrival, the reason for detention, the measures taken and the date and time at which the suspect left the police station must be registered in a special register, which was kept in a safe place in order to ensure that the information held in the register could not be modified or falsified. In 2008, the Ministry of the Interior had set up a computing network, to which all law enforcement bodies were connected, which meant that as soon as a suspect was placed in custody, information on the person was immediately transferred to the Ministry of the Interior's central data base. New items had been added, moreover, to the registers of temporary holding facilities to enter the name and signature of the lawyer and doctor who interviewed the suspect, as well as the date and time of the interview or medical examination. Lastly, rules had been adopted on the protection of suspects during their transfer to a temporary holding facility and rules governing disciplinary measures had been introduced in those establishments.
5. In reply to question 9 of the list of issues, he said that according to the Code of Criminal Procedure, persons suspected of having committed an offence could not be detained in a temporary holding facility for more than 48 hours. If an order had been issued to place a suspect on remand, the person had to be transferred within 24 hours to one of the

temporary holding centres of the Ministry of Justice. In the course of the first six months of 2009, 5,830 suspects had been detained in temporary holding facilities in the country.

6. With regard to measures taken against police officials who had either committed violations of the Convention or allowed them to be committed, he said that allegations that torture was systematically practiced in temporary holding facilities were totally unfounded. He said that only temporary detention centres were attached to the Ministry of the Interior and that all suspects brought there had to be examined on arrival by a doctor; all injuries observed or complaints lodged were entered in the police register, which the Prosecutor consulted at regular intervals. All temporary holding facilities were accessible at all times to representatives of the Ombudsperson and non-governmental human rights organizations. It was therefore impossible that access to those centres should have been denied to NGOs, as stated in the first part of the consideration of the report.

7. With regard to the violations of religious freedom, of which Jehovah Witnesses had allegedly been the victims, he said that in Azerbaijan freedom of conscience and worship were guaranteed by the Constitution, which authorized the dissemination of religious messages. Thirty-one non-Muslim religious minorities were present in the country, including 20 Christian communities, all of whom lived peacefully alongside the Muslim majority. With regard to the allegation that three persons had been prevented from worshipping, he said that the persons concerned had indeed been arrested by the police for breaches of the law against religious agitation, but they had been immediately released after receiving a simple warning.

8. Mr. Usubov (Azerbaijan), referring to the Mahir Mustafayev case, said that the person had been sentenced to life imprisonment for several serious crimes, including one murder. While serving his sentence in the district prison of Qobustan, he had suffered an epilepsy attack while smoking a cigarette and had suffered serious burns as he had been unable to move. The forensic examination had shown that the man, who had already been an epileptic before entering prison, had died of a heart attack brought about by first and second degree burns. For that reason it had been considered unnecessary to initiate criminal proceedings.

9. With regard to Farida Kunqurova, he said that the person had been arrested while in possession of a large quantity of drugs and had been prosecuted under article 234 of the Criminal Code. The forensic examination conducted following her death in detention, which had occurred in November 2007, had shown that she had died of a double brain and lung haemorrhage. As a result, it had not been considered necessary to initiate criminal proceedings.

10. With regard to Novruzali Mamadov, he said that the person had been tried for high treason on account of the contacts he had maintained with the Islamic Republic of Iran and that in June 2008 he had been sentenced to ten years' imprisonment. After he had been admitted to penitentiary colony No. 15, he had been examined by a physician because he had suffered from several disorders, including a prostate cancer. He had several times been offered a transfer to the hospital of the penitentiary administration, but had refused. He had been sent there only in July 2009, but he had died despite the care he had received at the hands of experts. The forensic report had shown that death had been due to a brain stroke, as a result of which it had not been considered necessary to initiate criminal proceedings.

11. With regard to the case of Kamil Sadreddinov, he said that the man had belonged to a criminal gang, which had abducted persons to obtain ransoms and had committed murders. After his arrest, Sadreddinov had been allowed access to a lawyer and had not suffered any breach of his rights.

12. With regard to the case of the three minors, who had been judged and convicted in 2005 for the murder of one of their friends and who had subsequently lodged a complaint,

maintaining that they had been tortured and ill treated in the course of the investigation and during their detention, he said that the allegations had been investigated by the General Prosecutor, but no proof had been established that the minors had been subjected to torture and ill treatment. It had therefore not been considered necessary to initiate criminal proceedings.

13. With regard to the Sardar Mammadov case, he recalled that the person concerned, who had been arrested and convicted in 2003 for having spoken at an illegal demonstration, had lodged a complaint with the European Court of Human Rights for ill treatment and discrimination. The Court had found Azerbaijan guilty of violating articles 3 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and had ordered it to pay compensation of 10,000 euros to the plaintiff (*Mammadov v. Azerbaijan*, complaint No. 34445/04). The Court's verdict had been duly transmitted to the competent authorities and was currently being considered. With regard to Mr. Emin Hüseyinov, the Director of the Institute for the Freedom and Security of Journalists, who had been arrested in June 2008 for having taken part in an illegal meeting organized to commemorate the death of the Argentine revolutionary, Che Guevara, and had been taken to the police station of the district of Nasimi in Baku, where allegedly he had been subjected to ill treatment, an official investigation had been opened and a medical examination had established that the body of the person concerned showed no injuries. With regard to the decease in detention of Mr. Mammadov Zaur Golmammad Oglu on 25 October 2008, the investigation carried out by the Prosecutor of the region of Lenkaran into the circumstances of his death had established that he had not been subjected to any act of violence; the case had therefore been shelved for lack of evidence. With regard to the death of Mr. Rahimov Mahammad Ali Oglu on 31 August 2008, which had occurred during his transfer to the police station of Delimamedli, forensic examinations had shown that the person had died of a heart attack, as a result of which the prosecutor of the region of Goranboy had decided not to initiate criminal proceedings.

14. Mr. Abbasov (Azerbaijan), replying to a question concerning the division of jurisdiction between civil and military courts, said that there were three levels of jurisdiction in Azerbaijan: courts of first instance, appeal courts and the Supreme Court, which operated as a court of cassation. Military courts, whose jurisdiction was strictly limited to cases involving military personnel, did not deal with civil cases. The military Court for Serious Crimes (para. 172 of the report) practically never intervened in cases involving civilians. With regard to acts of torture and cruel, inhuman or degrading treatment, Azerbaijan made every effort to bring its legislation into line with international instruments of which it was a party, particularly the Convention against Torture. In order to give effect to the provisions of the Convention, the recommendations put forward by the Committee after its consideration of the second periodic report of Azerbaijan (CAT/C/59/Add.1) had been followed by a decree addressed to all law enforcement bodies, such as the courts and services dealing with preliminary investigations. It was stipulated in the decree that in the event of the use of torture, cruel treatment or physical or moral pressure, the facts needed to be duly ascertained and give rise to criminal proceedings, since they could not be justified by any exceptional circumstance. It was also worth recalling that no decision of justice could be based on evidence obtained by unlawful means. With regard to fines used as a substitute for prison sentences, they were never applied to serious offenders. Such penalties, which did not involve deprivation of liberty, were not at all unjust and on the contrary complied perfectly with the general principles of criminal law. Methods of interrogation and other means of investigation were governed by very precise rules, which began to apply the moment a suspect was arrested and lasted until he was charged. Under article 85 of the Code of Criminal Procedure, the police official in charge of an interrogation was obliged, from the moment of arrest, to ensure that the

suspect was entitled to be assisted by a lawyer. Any infringement of the rights of defence was severely penalized.

15. With regard to Azerbaijan's exercise of its universal jurisdiction, any Azerbaijani or foreign national or any stateless person who had committed a war crime or crime against humanity, acts of torture or other offences banned by international instruments to which Azerbaijan was a party, was held criminally liable under Azerbaijani law, regardless of the place where the crime had been committed.

16. Mr. Alekberov (Azerbaijan), in reply to a question concerning access to a lawyer and a physician, said that any person arrested in Azerbaijan was first of all placed in the temporary holding facilities of the Ministry of National Security. When 24 hours had elapsed, the person concerned had to be either released or charged and transferred to one of the temporary detention centres under the authority of the Ministry of Justice, where he would automatically undergo a medical examination. The right of detainees to request and obtain a medical examination was guaranteed, as was that of any person held in police custody to see a lawyer as necessary. It was worth pointing out that a new prison had been inaugurated in May 2009 in Baku in the presence of representatives of the Council of Europe, the ICRC and human rights defenders, who had been able to observe that international standards concerning conditions of detention had been properly applied.

17. Offering some statistics regarding female and juvenile delinquency, he said that 109 women were currently facing criminal charges, including 39 for offences related to human trafficking, 33 for drug trafficking, 15 for theft, six for homicide and 16 for minor offences. Among the juveniles, 26 currently faced criminal charges, including four for homicide, six for serious assault, four for theft and 12 for minor offences. Women and men were held in separate detention facilities and minors were kept apart from adults. There were 239 women who were employed in the prisons, which represented about 5 per cent of the workforce. Among those, 33 worked in the only women's prison in Azerbaijan, where they accounted for 8 per cent of the staff. The body searches of detainees were governed by very strict rules and they could be carried only out by female staff.

18. The Committee had welcomed the measures taken to combat tuberculosis, while rightly observing that the sickness continued to affect many prisoners. Thanks to the programme to combat tuberculosis in prisons, however, under which 700 detainees were currently kept under medical supervision, as soon as a case was detected the necessary treatment was immediately initiated, so that Azerbaijan had been able to stabilize the mortality rate due to that disease.

19. The delegation was unfortunately unable to say whether any of the 9,000 prisoners released under the amnesty law of 17 March 2009 had been found guilty of acts of torture. That was unlikely, however, insofar as the amnesty law was mainly concerned with less serious offences and even if some of the more serious offenders had benefited, only those who had already completed the bulk of their sentence had been released.

20. Mr. Shafiyev (Azerbaijan) said that Azerbaijan had not been able to follow up the Committee's recommendation to close the temporary detention facility of the Ministry of National Security. The authorities had concluded that the centre should be maintained and kept under the authority of the Ministry of National Security, which was thought to be more effective for the purposes of combating the most serious offences, such as terrorism, the financing of terrorist activities, treason, subversion and espionage. It should be remembered that, since the 1980s, more than 130 terrorist acts against goods or persons had been perpetrated in Azerbaijan. In the circumstances, the authorities had considered that it was not desirable to close a centre, thanks to which the officials of the Ministry of National Security had been able to conduct successful operations in the fight against terrorism. It was also worth mentioning in that respect that seven dangerous terrorist groups with

international ramifications had recently been dismantled. A further reason for maintaining the centre was the need to protect State secrecy and to avoid any leakage of information in sensitive cases.

21. The temporary detention centre concerned had been completely renovated in 2005. Cells had been refurbished and a system of air conditioning and heating had been installed. Detainees had been given access to a sports gymnasium and a library, as well as to a medical service, which employed a State physician with nearly 30 years' experience. Members of the Red Cross and observers of the European Committee for the Prevention of Torture (CPT) had made several visits to the centre. In February 2008, a delegation of diplomats and representatives of the Organization for Security and Co-operation in Europe (OSCE) had also inspected the centre. All visitors had found that the conditions of detention there were satisfactory. With regard to the assassination of the chief editor of the *Monitor*, which had been committed on 2 March 2005, the case had been transferred to the Ministry of National Security in April 2005 because it concerned a terrorist act. In the course of the investigation, more than 600 persons had been questioned and several foreign crime experts had been consulted. The prosecutor had brought charges against the two main suspects, Tahir Khubanov and Teimuraz Aliyev, both of Georgian nationality. The proceedings were still at the preliminary investigation stage, as the Azerbaijani authorities had not yet received a positive response to their requests for extradition. Hadji Mamedov, who had been tried and convicted for abductions, extortion and murder, had declared at his trial that he had organized the assassination of the *Monitor* journalist. That crime was still being investigated. Mamedov was still in the temporary detention centre because he himself did not wish to be transferred, as he was afraid of reprisals on the part of influential personalities, particularly Chechen nationals.

22. Mr. Khalafov (Azerbaijan) said that the Constitutional Act on the Commissioner for Human Rights (Ombudsperson) had been amended in order to extend the term of office of the incumbent and to increase the corresponding salary. He recalled that the Ombudsperson could transmit complaints received to the relevant investigatory bodies or decide to proceed with an investigation *ex officio*. The Ombudsperson was assisted by a special adviser on torture and detainees' rights for the examination of complaints related to acts of torture. As it was stated in the report, the Ombudsperson currently holding the post had received several complaints from persons placed on remand or in temporary detention centres. All the complaints had been forwarded to the relevant bodies and had been investigated. The judicial authorities had found some human rights violations and had taken the necessary measures. In 2008, 134 such violations had been registered and 154 State officials, particularly members of the prison staff and prosecution service, had been penalized. The acts in question had not been acts of torture but serious violations, such as arbitrary arrests or detentions. As a result, several officials of the Ministry of Internal Affairs had been either transferred, suspended or downgraded. Five officials had also faced criminal charges.

23. With regard to the extradition of Elif Pelit, several steps had been taken to ensure that the person concerned would be correctly treated on her return to Turkey. The Government of Azerbaijan had received diplomatic assurances from the Turkish authorities. It had also instructed its ambassador in Ankara to monitor the person's conditions of detention. She had received several visits and the outcome of the visits had been forwarded to the Commission on Human Rights, whose response had been positive. Since then, Ms. Pelit had been released and had left Turkey for Germany. The Government of Azerbaijan had given its agreement for the 2008 report of the CPT to be published and disseminated in the country. It was continuing to consider the possibility of acceding to the Rome Statute of the International Criminal Court, which was a particularly delicate matter insofar as it touched directly on certain provisions of the Constitution. An initiative had been launched to review the legislation concerning NGOs but the proposed amendments had not been adopted by Parliament.

24. Ms. Gaer (Rapporteur for Azerbaijan) thanked the delegation for all the information it had given the Committee but she was sorry that several questions had remained unanswered. She would in particular have liked to have more details about allegations regarding the failure to follow regular procedures. In the *Milli* and *Hadji Zadeh* case, the delegation had given details of the charges brought but it had not explained why the persons concerned had not had access to a lawyer. Similarly, no explanation had been given regarding the reasons why Kamil Sadraddinov had been obliged to wait 16 days before being assisted by a lawyer of his own choosing, why Novruzali Mamadov had not been admitted to hospital – where he had died – until five months after his request for a transfer had been approved and why Mahir Mustafayev, after suffering serious burns, had remained without treatment for 11 hours. The Committee needed to know how such situations had arisen and what remedies were available in the event that such violations occurred. Furthermore, the delegation had supplied details of the system of registers for detainees, but had not said whether the CPT's recommendations concerning the content of the registers had been fully applied.

25. According to information available to the Committee, the inspections carried out by members of the civil committee in detention centres were subject to a 24-hour notice, which did not necessarily apply to other NGOs. She would appreciate further details from the delegation in that respect. In response to allegations of violations committed against Jehovah Witnesses, the delegation had explained the situation regarding freedom of worship in the country but had not explained whether the persons belonging to that faith who had been arrested by the police had been allowed the right or the possibility to lodge an appeal.

26. With regard to universal jurisdiction, she said that what she really wanted to know was whether in practice charges had been brought in Azerbaijan for acts of torture perpetrated outside the country. Similarly, with regard to the application of article 133 of the Criminal Code, she would like to know whether any police official had ever been prosecuted and convicted under that article. She asked for further details concerning the 161 persons convicted under article 133, apparently for acts of domestic violence, particularly regarding their identity, the reasons for their convictions and the sentences handed down.

27. She also asked whether there were any mechanisms other than the committee established by presidential decree to ensure the follow-up and implementation of the recommendations made by the Committee against Torture and other bodies. Regarding the Ombudsperson, it would be interesting to know, apart from the number of complaints received, the number of complaints she had herself filed. Returning to the question of the definition of torture, she said the Committee needed to be sure that the definition adopted by the State party really covered acts committed at the instigation of or with the consent or acquiescence of a public official, as well as all forms of discrimination, in accordance with article 1 of the Convention. She welcomed the Government's decision to publish the CPT's report and asked whether a date had already been fixed for the publication. Regarding the *Elif Pelit* case, she asked whether minimum conditions had been set for receiving diplomatic assurances and what criteria had been applied with regard to monitoring the person's situation.

28. Mr. Wang Xuexian (Co-Rapporteur for Azerbaijan) expressed surprise at the fact that no case of torture appeared among the complaints that the Ombudsperson had investigated since the beginning of 2009 and he asked for further details in that respect. He said that he had not obtained the details he had requested regarding amendments in the laws governing NGOs, which had the effect of increasing the Government's control over the organizations, and he would like to hear the delegation's views on that issue.

29. Ms. Sveaass said that she had not received any reply to her question concerning allegations about the use of psychiatric internment as a means of silencing persons who filed complaints about violations against themselves or other persons and she hoped that the delegation would be able to furnish a reply. She would also like to know whether the State party intended to initiate investigations into violations committed during the presidential elections of 2003 and the legislative elections of 2005.

30. Mr. Gaye asked whether, with regard to the directives concerning the processing of evidence obtained by illegal means, including torture, issued by the Supreme Court to trial courts in a decree handed down in 2004, any evidence had ever been rejected by judges on the grounds that it had been obtained under torture. He would like to have some examples of such cases.

31. Ms. Belmir reiterated her concern about the treatment of juvenile delinquents and urged the State party to change its methods in that area in order to bring its practice into line with international human rights standards. Returning to the question of military courts, she recalled that according to the jurisprudence of all the treaty bodies, there was no doubt that military courts should be considered special courts, and should therefore be clearly distinguished from ordinary courts.

32. Mr. Mariño Menéndez asked whether diplomatic assurances had been sought only for the purposes of extradition procedures or in other cases as well. The Office of the Ombudsperson, as the national preventive mechanism, should be able to visit all detention places without exception, including military barracks and military prisons. That should be clearly covered in the Office's terms of reference. He had understood that the Immigration Board and the authorities in charge of attributing refugee status were both authorized to sign deportation orders. It would be useful to have more details regarding their precise powers. It would also be worth knowing whether their decisions came under court supervision.

33. The Chairperson, speaking as a member of the Committee, asked whether a detainee who said he had been subjected to torture or ill treatment had the right to be examined by a physician of his choice or whether he was automatically examined by a physician appointed by the authorities. At the previous session, the members of the delegation had appeared to agree on the need to include discrimination as a cause of torture in the definition of torture that would appear in the Criminal Code. He would be grateful if the delegation would confirm that fact. Lastly, he would like to know whether the Azerbaijani authorities had heard of allegations whereby Ms. Elif Pelit had undergone ill treatment in detention after her extradition to Turkey.

34. Mr. Khalafov (Azerbaijan) said that there appeared to have been many misunderstandings and that certain matters needed to be clarified. Before extraditing Ms. Elif Pelit to Turkey, the Azerbaijani authorities had taken all the necessary steps to ensure that she would be correctly treated by the Turkish authorities and they had obtained the necessary diplomatic assurances in writing. Representatives of the Azerbaijani consular authorities had monitored the situation on the spot and had paid several visits to Ms. Pelit during her detention. The reports of those visits had been submitted to the United Nations High Commissioner for Human Rights, who had personally thanked the Government of Azerbaijan for the way it had conducted the matter. After her trial, Ms. Pelit had been released and she had gone to live abroad. The Government of Azerbaijan therefore considered that the case was closed.

35. The Ombudsperson had all the necessary powers to play a full part as a national preventive mechanism, as defined in the Optional Protocol to the Convention against Torture. She was able to visit all kinds of establishments and institutions, including places where persons were held pending extradition or had been placed under a deportation order.

Deportation orders were subject to appeal with suspensive effect. The amendments made in the laws governing NGOs referred to by a member of the Committee had not yet been considered by Parliament. A question had been asked as to whether Azerbaijani courts had ever rejected evidence on the grounds that it had been obtained under torture. He said that to his knowledge the case had never arisen.

36. All human rights violations, including offences related to vote counts, which had been committed during the 2003 and 2005 elections, had been investigated and duly prosecuted. Sentences had been passed in some 20 cases. If the Committee so wished, further details could be provided. He said that Ms. Gaer had asked a question about domestic violence, but such violence within the family did not fall within the definition of torture as given in the Convention. The cases mentioned by Ms. Gaer had nevertheless been investigated and those found guilty had been punished according to the law. With regard to the definition of torture, the Committee had stressed the need to complete the definition that appeared in the Azerbaijani Criminal Code and thought would be given to introducing the necessary legislative amendments as soon as possible.

37. Mr. Zalov (Azerbaijan) said that the necessary steps had been taken to implement the CPT's recommendations regarding the information that should be entered on detention registers. In 2008 and in the first six months of 2009, the Ombudsperson and her assistants had paid 318 visits to establishments operating under the Ministry of the Interior without prior notice.

38. Mr. Usubov (Azerbaijan) said that there had been no violation of the right to be assisted by a lawyer in the case of the two bloggers Emin Milli and Adnan Hadji Zadeh, or in the case of Kamil Sadreddinov, since a lawyer had been appointed *ex officio* as soon as they had been arrested. They had subsequently requested the services of a lawyer of their own choice, which had been granted. As far as Novruzali Mamadov was concerned, he had received appropriate medical supervision throughout his detention. When informed in March 2009 that he could be transferred into a medical unit of the prison system, he had declined the offer, as shown in the documents appearing in his file. Mr. Mamadov had in the end been transferred to a prison hospital in July 2009, where he had received all the treatment his condition had required.

39. Mr. Khalafov (Azerbaijan) said that there was not enough time to reply in detail to all the questions asked by members of the Committee. The Azerbaijani authorities, however, remained at the Committee's disposal for whatever further information it might require. Azerbaijan attached the greatest importance to its dialogue with the Committee, whose comments and recommendations helped it to improve its legislation and to convey to the law enforcement bodies what torture was and how to prevent and combat it. In that respect, the definition of torture was essential and the question would be looked into very carefully.

40. *The delegation of Azerbaijan withdrew.*

The first part (public) of the meeting ended at 5.05 p.m.