



**ARMENIAN
LEGAL
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FOR JUSTICE AND HUMAN RIGHTS



**REPORT ON
DENIAL OF FAIR TRIALS
TO ARMENIAN CAPTIVES
IN AZERBAIJAN**

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I. Introduction

Since the end of the war unleashed by the Republic of Azerbaijan against the Republic of Nagorno-Karabakh on September 27, 2020 (hereinafter referred to as '2020 War'), the issue of Armenian prisoners of war (hereinafter referred to as 'POWs') remains unresolved. In defiance of the trilateral ceasefire statement signed on November 9, 2020 (hereinafter referred to as 'trilateral statement') and unanimous calls by the international community, Azerbaijan continues to hold dozens of Armenian military servicemen and civilian hostages in captivity.

Starting in February 2021, Azerbaijani officials at the highest level, such as President Ilham Aliyev and Minister of Foreign Affairs Jeyhun Bayramov, have repeatedly insisted that there are no longer Armenian POWs being held in Azerbaijan and that the Armenian servicemen currently in Azerbaijani custody are 'terrorists' and 'saboteurs'.¹ As a thin veil for its use of Armenian POWs as a bargaining chip to force concessions out of the Armenian side, on the direct orders of Azerbaijani President Ilham Aliyev, Azerbaijani authorities began criminal proceedings, in violation of international law, against more than sixty Armenian POWs and civilian captives. The process was based on fabricated charges and riddled with violations of the basic human rights of the individuals on trial. The factual bases of the charges demonstrate serious narrative inconsistencies and are replete with violations of well-established human rights doctrine regarding the rights of individuals to a fair trial.

This report documents the information on the unlawful trials of Armenian POWs and civilian captives (media monitoring, analysis of the judgements delivered by Azerbaijani judges, etc.) gathered from Azerbaijani sources and interviews of 20 repatriated individuals who faced trial during their captivity in Azerbaijan.

Two servicemen captured during the war, three civilians captured immediately after the 9 November Trilateral Statement, 53 servicemen captured in Khtsaber, as well as two servicemen captured from the sovereign territory of the Republic of Armenia, became participants of unfair and illegal trials in Azerbaijan. Detailed descriptions of these cases are presented in Sections II, III and IV.

¹ 'We Have Returned All Prisoners of War' - Ilham Aliyev." *AZƏRBAYCAN24*, 26 Feb. 2021, https://www.azerbaycan24.com/en/we-have-returned-all-prisoners-of-war-ilham-aliyev/?__cf_chl_jschl_tk__=pmd_GPHODUaufGlrxw08Q7C6LJRfoaA30_I5LwhkWSRNeAc-1635753528-0-gqNtZGzNApCjcnBszQj9 ; "Azerbaijan releases all POWs to Armenian side", *TASS*, March 15, 2021, <https://tass.com/world/1266031>



POWs and Civilians Captured During the 2020 War and Their Trials

Azerbaijan has tried two Armenians who were taken prisoner during the 2020 war.

First, **Lyudvig Mkrtchyan** (born 1969), was captured during the fighting in Nagorno-Karabakh in October 2020. While in captivity, he was tortured and beaten alongside other Armenian servicemen by Azerbaijani soldiers. The torture and beating of the Armenian servicemen is evident in a video recorded by the Azerbaijani soldiers.

He appears in video materials wounded, lying on the ground with his hands bound to the back, being kicked, prodded and tortured by a metal rod on different parts of his body by Azerbaijani soldiers, along with five other POWs (V.H., M.M., V.A., S.M. and M.S.).² Mkrtchyan was kept incommunicado and unacknowledged for an extended period following his capture. On November 14, 2020, the European Court of Human Rights (ECtHR) granted an interim measure against Azerbaijan in relation to Mkrtchyan's case. On December 4, 2020, the Azerbaijani government confirmed that Mkrtchyan was in their custody and described him as a POW in response to a request by the ECtHR for information. Mkrtchyan was the only one who was not repatriated in December out of the group of six soldiers that were captured with him. No official explanation was given as to why Mkrtchyan was not repatriated along with the others, however, the repatriated POWs from his group stated that their Azerbaijani captors told them Mkrtchyan would remain in captivity because he had participated in the First Nagorno-Karabakh War (1988-1994).

Mkrtchyan was put on trial in Azerbaijan in June 2021, along with civilian Alyosha Khosrovyan (born 1967) who was captured during the 2020 War while delivering a vehicle to a friend serving near Jrakan (Jabrayil). The Azerbaijani authorities alleged that Mkrtchyan and Khosrovyan tortured Azerbaijani captives in a prison in Shushi while serving together in an 'illegal armed formation' during and after the First Nagorno-Karabakh War (1988-1994). During the trial, Mkrtchyan confirmed his participation in armed hostilities during the First Nagorno-Karabakh War but denied having harmed any Azerbaijanis. Khosrovyan stated during the trial that he did not know any of the purported victims and had never been to the prison in Shushi. He stated that he had visited Nagorno-Karabakh for the first time in 1996, two years after the end of the first war.

² Google Drive, Google, <https://drive.google.com/file/d/1tzKO6ML8aZqxI97-mISpUp0fXYv7tvbz/view>.

Several POWs recount the torture of Mkrtchyan and the Azeribjani's clear intention of detaining him for his participation in the First Nagorno-Karabakh War. One POW identified Mkrtchyan in the aforementioned video as the individual being stabbed around his neck with a skewer. He also noted that Mkrtchyan was isolated from the rest of the POWs while in prison. He believed this could have been because they found a passport on him, and he was born in Nakhichevan in the Azerbaijan Republic. Another POW recalls that an investigator informed him that Mkrtchyan would not be repatriated to Armenia with the rest of the POWs because he fought in the First Nagorno-Karabakh War. Yet another POW recalls that during his interrogations, he was specifically questioned about Mkrtchyan.

Lyudvig and Alyosha were charged under Article 113 (torture), Article 115.2 (violation of the laws and customs of war), Article 318.2 (illegal crossing of the state border of the Republic of Azerbaijan), and Article 279.1 (creation of armed formations or groups not provided for by law) of the Criminal Code of the Republic of Azerbaijan. After unreasonably short trials, both Lyudvig and Alyosha were each sentenced to 20 years in prison. Both men also faced additional animosity while in Azeri captivity because they were presumed to have participated in the First Nagorno-Karabagh war due to their older age. Exemplified by the case of L. Mkrtchyan and A. Khosrovyan, numerous accounts by repatriated POWs testify to the fact that older captives are treated with particular cruelty by their Azerbaijani captors.



POWs and Civilians Captured after the 2020 War and Their Trials

Two civilians, **Gevorg Sujyan** and **Davit Davtyan**, were kidnapped by members of the Azerbaijani armed forces while traveling on the Berdzor (Lachin)-Shushi road on November 11, 2020, two days after the signing of the ceasefire agreement. A criminal case was opened against Sujyan and Davtyan on March 18, 2021. They were tried at the Baku Court on Grave Crimes and each sentenced on July 28, 2021 to 15 years of imprisonment under the following articles of the criminal code of the Republic of Azerbaijan: “illegal possession of weapons” (228.2.1), “creation of armed groups or groups not provided by law” (279.1), “illegal crossing of the state border [of Azerbaijan]” (318), and “espionage” (276). According to the verdict, both individuals are to serve five years of their sentence in a prison and the rest in a high-security penitentiary institution (calculated from November 11, 2020), after which they are to be deported from Azerbaijan.

Sujyan, who is the head of the charitable organization “New Armenia Motherland-Diaspora”, had gone to Nagorno-Karabakh together with Davit Davtyan more than once during the 2020 war to provide critical supplies and aid to the residents of the region. When they were captured, Sujyan and Davtyan were traveling to Stepanakert to help displaced families affected by the war move to Armenia. When traveling near Shushi, they encountered Azerbaijani soldiers who detained them.

The judgment concluded without any evidence that Sujyan and Davtyan fought in the 2020 war in Nagorno-Karabakh and cooperated with the National Security Service of Armenia to collect useful information about units of the Azerbaijani armed forces. Sujyan and Davtyan partially admitted to illegally crossing the state border of Azerbaijan. However, they denied all other charges. The judgment delivered by the Azerbaijan Court has absolutely no evidence to support the claims that Sujyan and Davtyan possessed illegal weapons at the time of their arrest, that they were involved in the formation of extrajudicial armed groups, or that they were involved in espionage activities. In addition, various accounts of repatriated Armenian nationals indicate that Azeri authorities frequently employ coercive tactics to force prisoners to make false confessions. Specifically, there is evidence that Armenian prisoners have been forced to sign documents and repeat false statements to avoid further torture. Here, any statements made by Sujyan or Davtyan were likely made in response to coercion. As such, any statements are likely inadmissible as they were procured using threats of continued physical abuse.

Next, yet another civilian captive, **Vicken Euljekjian**, who is an Armenian national originally from Lebanon, was captured near Shushi, the day after the ceasefire agreement. On November 10, 2020, he drove to Shushi with **Maral Najarian**, another Armenian from Lebanon, to collect their belongings from their room in Shushi. At that time, Vicken was not aware that the town was already under Azerbaijani control. On the way to Shushi, Vicken and Maral were captured by Azerbaijani forces and transferred to Baku in a bus with many other Armenian captives. Maral Najarian was later released, but Vicken remains in captivity.

He was presented as an illegal mercenary from Lebanon and forced to state in a video that he accepted an offer to take part in hostilities for \$2,500. Contrary to the allegations made in the fabricated and patently false video recording, Vicken has had Armenian citizenship for three years prior to the war and was not involved in the hostilities. During the captivity for a prolonged period (four months), Vicken was held incommunicado. Vicken was allowed to telephone his family for the first time in five months. On May 5, Azerbaijan's State Security Service announced that Vicken Euljekjian's investigation was completed and that his case had been sent to court. Euljekjian was charged under Article 114.3 (participation of a mercenary in a military conflict or military operation), Article 214.2.1 (terrorism committed by a group of persons, an organized group or a criminal organization) and Article 318.2 (illegal crossing of the state border of the Republic of Azerbaijan) of the Criminal Code of the Republic of Azerbaijan. Euljekjian was sentenced to 20 years in prison.

On May 27, 2021 six servicemen were captured from the Gegharkunik province of Armenia. In June, Azerbaijan released four of them but started court proceedings against two captives, **Ishkhan Sargsyan** and **Vladimir Rafaelyan**. Azerbaijani media introduced them as sapper engineers who illegally crossed the state border of Azerbaijan and mined the roads across the village.³ On November 17, 2021, they were both charged and found guilty under the following articles of the Criminal Code of the Azerbaijan Republic: Article 214.2.3 (terrorism committed through firearms and items used as weapons), Article 228 (illegal acquisition, transfer, sale, storage, transportation, or carrying weapons, their components, ammunition, explosives and explosive devices), Article 318 (illegal crossing of the state border of the Republic of Azerbaijan), and Article 282 (sabotage).⁴ Rafaelyan was sentenced to nineteen years of imprisonment, Sargsyan to twenty. It is important to note that the four other servicemen who were captured in identical conditions were released after one month of captivity, while the other two, Sargsyan and Rafaelyan, were prosecuted. This example of the arbitrary detention and release of Armenian captives once again shows that Azerbaijan uses Armenian prisoners of war as bargaining tools.

An undeniable piece of evidence showing that Armenian POWs are kept for bargaining and trade is found in video footage of a conversation between Azerbaijani President Ilham Aliyev and Turkey's First Lady Emine Erdogan dated on June 15, 2021. Erdogan advises Aliyev to "return them [POWs] portion by portion..." in exchange for mine maps.⁵

³ "Judicial Investigation of Two Armenian Citizens Accused of Terrorism Is Complete in Azerbaijan [Update]." Azernews.Az, 24 Jan. 2022, <https://www.azernews.az/nation/188371.html>.

⁴ Criminal Code of the Azerbaijan Republic. https://adsdatabase.ohchr.org/IssueLibrary/AZERBAIJAN_Criminal%20Code.pdf.

⁵ Facebook, <https://www.facebook.com/100017676420633/videos/874047149861158/?t=0>. Accessed 17 June 2022.



POWs Captured in Khtsaber and Their Trials

On December 11, 2020, Azerbaijani armed forces violated the ceasefire agreement and launched an attack on the settlements of Hin Tagher and Khtsaber in the Hadrut region of Nagorno-Karabakh. Hin Tagher and Khtsaber were the only two settlements of the Hadrut region that remained under Armenian control following the 2020 War. Armenian servicemen were stationed there in accordance with the terms of the ceasefire agreement, executed on November 9 2020. Pursuant to the terms of the agreement, both sides were obliged to remain at their positions at the time of the signing of the agreement.

Approximately one-hundred Armenian soldiers were stationed at positions near Khtsaber and Hin Tagher. Most of the soldiers were residents of the Shirak province in the Republic of Armenia. Following the handover of the adjacent Lachin district to Azerbaijani control on December 1, 2020, they found themselves almost completely surrounded by new Azerbaijani positions.

Under these circumstances, Azerbaijani armed forces attacked the positions in Hin Tagher. In result, nine of the eleven soldiers were killed by Azerbaijani servicemen and the two Armenian servicemen who survived were captured and taken prisoner.

The Armenian servicemen positioned in Khtsaber also encountered a larger force of Azerbaijani soldiers. In reliance upon assurances from the Azerbaijanis that they would be delivered to the Russian peacekeepers, the Armenian servicemen surrendered to the Azerbaijani soldiers. Approximately thirty of the Armenian servicemen were delivered to the Russian peacekeeping forces. However, the remaining sixty-two servicemen from Khtsaber were taken prisoner and taken deeper into Azerbaijani-controlled territory. The soldiers were eventually taken to Baku.

The soldiers captured near Khtsaber were accused of violating multiple articles of the Criminal Codes of Law of Azerbaijan. The majority of soldiers that were captured near Khtsaber faced trials in the Baku Grave Crimes Court and served sentences. In particular, fifty of the sixty-two captured Armenian servicemen were tried and sentenced to imprisonment. However, nine of the sixty-two were not accused of any crime and did not face trial. Notably, three captives were tried, but the ongoing trials were suspended due to their repatriation. As of 30 September 2022, Azerbaijan has returned thirty-six POWs of Khtsaber to Armenia, but twenty-six POWs of the same group remain in Azerbaijani custody.

Fourteen of the POWs captured at Khtsaberd were convicted only under Article 318.2 of the Criminal Code⁶ (crossing of protected frontier of the Azerbaijan Republic, committed on preliminary arrangement by group of persons or organized group either with application of violence or threat of its application) and sentenced to six months (twelve POWs) or four years (two POWs) in prison. Despite the imposed sentences, ten were released on “time served” and returned to Armenia. The remaining thirty-six POWs were convicted under Articles 318.2 and 228.3 of the Criminal Code⁷ (illegal purchase, transfer, selling, storage, transportation or carrying of firearms, accessories to it, supplies, explosives, by organized group) and were sentenced to six years imprisonment.

Interestingly, identically situated servicemen have each experienced vastly different outcomes while in the captivity of the Azerbaijani government. Some POWs were released without facing any trial or were repatriated during the ongoing trials (without facing a sentence). Many Armenian servicemen convicted and sentenced to four- or six-years imprisonment were released and repatriated without serving the imposed punishment in full. This very fact is the most glaring piece of evidence that the trials of POWs have nothing to do with serving justice, but rather are a thinly veiled means of justifying the continued detention of the POWs in order to coerce the Armenian side into complying with Azerbaijan’s various demands. The decision to prosecute a characteristically identical population in a dissimilar fashion strongly suggests that the Government of Azerbaijan is using the fate of Armenian servicemen to advance its political goals. The Azerbaijani government has not articulated any discernable reason supporting the disparate treatment of Armenian servicemen.

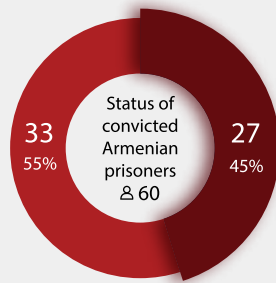
⁶ Pursuant to Article 318.2 of the Criminal Code of the Azerbaijan Republic, “crossing of the protected frontier of the Republic of Azerbaijan without established documents or outside of the checkpoint of the state frontier... committed on preliminary arrangement by a group of persons or organized group either with application of violence or with threat of its application ... is punished by imprisonment for the term up to five years.”

Charging the captured Armenian civilians and POWs with illegally crossing the border is a baseless charge which only serves to further the Azerbaijani agenda. The individuals who were charged under Article 318.2 were not part of an organized group and did not have any intention of threatening or engaging in violence against the citizens with an intention to apply violence or threat. As noted above, on 1 December 2020, one-hundred (100) Armenian soldiers were stationed at positions in Khtsaberd and Hin Tagher not upon their own or private initiative, but based on a military order in observance of the letter and the spirit of the Trilateral Statement. Thus, all soldiers were merely executing a command and were placed in their positions by the orders of their military commanders. The charges against Armenian POWs of “illegal border crossing” are also groundless as there is no internationally recognized and explicit borderline between Armenia and Azerbaijan. The processes of delimitation and demarcation remain ongoing.

⁷ *Criminal Code of the Azerbaijan Republic*. https://adsdatabase.ohchr.org/IssueLibrary/AZERBAIJAN_Criminal%20Code.pdf.

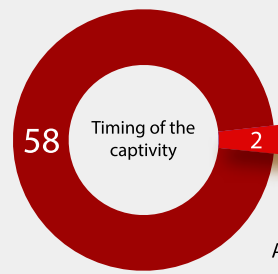
Status of convicted prisoners

- Still in captivity
- Repatriated



Timing

- During the 44-day war
- After signing the Trilateral Statement



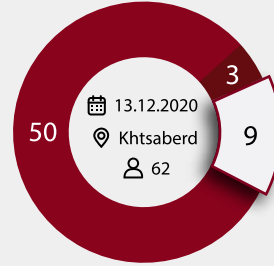
Status of POWs from Gegharquniq

- 2 Sentenced
- 4 Repatriated without a trial



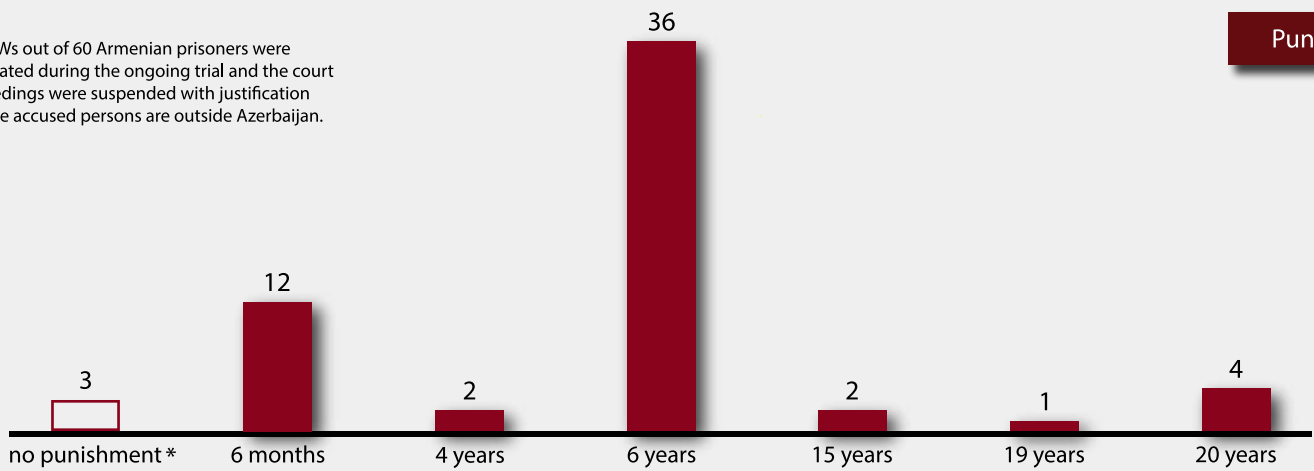
Status of POWs from Khtsaberd

- 50 Sentenced
- 3 Repatriated during the ongoing trial
- 9 Repatriated without a trial



* 3 POWs out of 60 Armenian prisoners were repatriated during the ongoing trial and the court proceedings were suspended with justification that the accused persons are outside Azerbaijan.

Punishments



Sentencing articles

Articles 114.3, 214.2.1, 318.2



1 Articles 112, 113, 115, 120.2.1, 120.2.3, 120.2.12, 29, 120.2.7, 206.3.2, 228.2.1, 228.2.2, 279.1, 279.3, 318.2

1 Articles 115, 206.3.2, 228.2.1, 276, 279.1, 318.2

Articles 228.2.1, 276, 279.1 and 318.2



Articles 214.2.3, 228, 318, 282



12 Article 318.2

2 Article 318.2

8 Articles 228.3, 318.2

28 Articles 228.3, 318.2

A. Legal Definition of POWs and Detainees

Article 4 of Geneva Convention (GC) III defines “prisoners of war” as “individuals who have fallen into the power of the enemy”. The term “[i]ndividuals” includes members of the armed forces, militias or volunteer corps who are fighting as a part of the armed forces of either of the Parties to the conflict. [2] In addition, the term “[i]ndividuals” also includes members of other volunteer corps belonging to a Party to the conflict that are fighting outside their own territory as long as they adhere to the criteria set out in Article 4.2. Article 4.3 demands that “members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power” who fall into the power of the enemy must also be classified as POWs and their treatment by the Detaining Power must also adhere to the principles of the named convention. Here, the text of Article 4.3 makes clear that members of the Armenian forces who profess allegiance to the Republic of Artsakh, “a government not recognized by the detaining power”, must be classified as POWs when they fall into the power of the Government of Azerbaijan. As the conditions of this conflict satisfy the preconditions to the application of Article 4.3, any deviation from the requirement to treat the captured Armenian nationals as prisoners of war is a clear violation of the Geneva Convention.

Here, the ICRC 1960 Commentary on GC III provides that “[a]ny difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2,” regardless of the scale or length of the conflict, the number of combatants involved or whether one of the parties denies the existence of an armed conflict. The commentary establishes that “it suffices for the armed forces of one Power to have captured adversaries falling within the scope of Article 4. Even if there has been no fighting, the fact that persons covered by the Convention are detained is sufficient for its application.”[3]

Moreover, the ICRC 2020 Commentary on GC III adds that “[t]here are compelling...reasons for not linking the existence of an international armed conflict to a specific level of violence. This approach is consistent with the overriding purpose of the Geneva Conventions, which is to afford maximum protection to the individuals that these instruments seek to defend. For example, under the Third Convention, if members of the armed forces of a State engaged in a dispute fall into enemy hands, they are eligible for prisoner-of-war status regardless of whether there is full-fledged fighting between the two States.”[4]

Pursuant to the text of the ICRC, the Armenian servicemen in Azerbaijani captivity must be classified as POWs, irrespective of whether they were captured during the main phase of hostilities or afterwards. This is because the Armenian servicemen held captive in Azerbaijan are “members of the armed forces of a State in dispute with another” that have fallen into the power of the enemy. Although the trilateral ceasefire agreement brought an end to active, large-scale hostilities between Armenian and Azerbaijani

forces, the cessation of active hostilities cannot be used as a basis for depriving captured servicemen of their rights under the Geneva Conventions. The status of the captive Armenian servicemen as POWs must be observed without regard to the timing of the ceasefire agreement.

Regarding trials for POWs, GC III states the following: “No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed. Moreover, [n]o moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused. No prisoner of war may be convicted without having had an opportunity to present his defense and the assistance of a qualified advocate or counsel. A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.”

It can be other militias or members of other volunteer corps belonging to a Party to the conflict that are fighting outside their own territory, as long as they adhere to the four criteria set in Article 4.2.⁸ Article 4.3 adds that “members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power” who fall into the power of the enemy must also be classified as POWs and their treatment by the Detaining Power must also adhere to the principles of the named convention.⁹ The ICRC 1960 Commentary on GC III argues that “any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2”, regardless of the scale or length of the conflict, the number of combatants involved, or whether one of the parties denies the existence of an armed conflict.¹⁰ The commentary continues, “it suffices for the armed forces of one Power to have captured adversaries falling within the scope of Article 4. Even if there has been no fighting, the fact that persons covered by the Convention are detained is sufficient for its application.”¹¹ The ICRC 2020 Commentary on GC III adds: “There are compelling protection reasons for not linking the existence of an international armed conflict to a specific level of violence. This approach corresponds with the overriding purpose of the Geneva Conventions, which is to ensure the maximum protection of those whom these instruments aim to protect.

⁸ *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 4 - Prisoners of War*, <https://ihl-databases.icrc.org/ihl/WebART/375-590007?OpenDocument>.

⁹ *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 4 - Prisoners of War*, <https://ihl-databases.icrc.org/ihl/WebART/375-590007?OpenDocument>.

¹⁰ *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 4 - Commentary of 1960*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=ECA76FA4DAE5B32EC12563CD00425040>.

¹¹ *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 2 - Commentary of 1960*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=07B4DAD7719E37E4C12563CD00424D17>.

Regarding trials for POWs, GC III states the following: “No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed. No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused. No prisoner of war may be convicted without having had an opportunity to present his defense and the assistance of a qualified advocate or counsel. A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.”¹² As the accounts presented below will demonstrate, practically all Armenian POWs put on trial have been subjected to physical violence and coercion in order to force them into admitting to non-existent crimes. In addition, they were not given the opportunity to present their defence, and were not adequately defended by the attorneys appointed to them.

All the Armenian servicemen who were captured were fulfilling their constitutional duty, i.e. mandatory military service, and all were soldiers of regular armed forces. They were ordered to be in their positions by high-ranking military officers and were acting on behalf of Armenia. In other words, they were lawfully executing military command. Therefore, they are entitled to the status of POW and cannot be prosecuted or convicted for their military service. All Armenian POWs are entitled to combatant’s privilege, meaning that if the representative of a State is acting on behalf of the State and doing faiths that are allowed under PIL, that individual is immune from the authority of the third State(s). Combatant’s privilege pertains to every soldier who operates on behalf of the State and has no time limitation. Therefore, Armenian soldiers cannot be prosecuted in a third country and they must all be released without any preconditions and returned safely to Armenia. However, Azerbaijan initiated criminal proceedings against Armenian POWs with gross violations of fair trial standards. Following these principles, it becomes immediately clear that the Armenian servicemen in Azerbaijani captivity are, by definition, POWs – regardless of whether they were captured during the main phase of hostilities or afterwards, since they are “members of the armed forces of a State in dispute with another” that have fallen into the power of the enemy.¹³ Although the ceasefire agreement brought an end to large-scale active hostilities between Armenian and Azerbaijani forces, under the Geneva Conventions that can not be used as a basis for depriving captives of either side of their rights in the event of the outbreak of small-scale hostilities occurring after the signing of the agreement.

¹² *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 99 - Article 99 : Judicial Procedure: General Principles - Commentary of 2020*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1CAB9739A62DEA9CC12585850054ABB1>.

¹³ *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 4 - Prisoners of War*, <https://ihl-databases.icrc.org/ihl/WebART/375-590007?OpenDocument>.

B. Legal Definition of Civilians

Relative to the protection of civilian persons, Article 4 of Geneva Convention (GC) IV defines protected persons as “those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”¹⁴ Article 31 of GC IV prohibits any physical or moral coercion against them for obtaining information from them or from third parties.¹⁵ Article 27 of GC IV stipulates that protected persons and their honor, family rights, religious convictions and practices, and their manners and customs shall be respected. The same Article stresses that protected persons “at all times shall be treated humanely, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.”¹⁶ According to Article 42 of GC IV, the internment of protected persons can be ordered only if it is ‘absolutely necessary’ for the security of the Detaining Power.¹⁷ In the case of Armenian POWs and captive civilians, there was no difference in the treatment of Armenian POWs and civilian detainees by Azerbaijani authorities, and the rights of protected persons were entirely violated. After the war, some Armenian civilians returning to their former places of residence to collect their personal possessions were captured on the way, becoming civilian detainees.

VI. Violations of Fair Trial Rights during the Trials of Armenian Captives

Azerbaijan has a well-documented history of violating the fair trial rights of defendants in Azerbaijani courts. Specifically, Azerbaijan has frequently violated the rights of individuals to a trial by an independent tribunal, the right to effective legal representation and the right to an interpreter. The OSCE Baku office has released a number of Trial Monitoring Reports over the last decade, according to which, Azerbaijani courts have shown a lack of independence, endangered the rights to liberty and security, the right to effective legal representation, the right to free assistance of an interpreter, quality legal aid by state appointed lawyers, and other fundamental rights upon which the integrity of the legal process rests.¹⁸

¹⁴ *IV Geneva Convention Relative to the Protection of ... - United Nations.*

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

¹⁵ *IV Geneva Convention Relative to the Protection of ... - United Nations.*

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

¹⁶ *IV Geneva Convention Relative to the Protection of ... - United Nations.*

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

¹⁷ *IV Geneva Convention Relative to the Protection of ... - United Nations.*

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

¹⁸ “*Trial Monitoring Reports Collection.*” OSCE, <https://www.osce.org/baku/106677>.

The absence of independence and impartiality by Azerbaijani judges was exemplified in several forms, which included judges granting motions the prosecutor raised, not ensuring an effective investigation of sound and serious allegations by the defendants regarding violations that allegedly took place during the pre-trial investigation phase, showing bias while questioning the accused, and appearing as predetermining the guilt of the accused,¹⁹ openly engaging in ex parte communications with prosecutors, unbeknownst to the defense.²⁰

The official statistics of the ECtHR provide further evidence of the continuous violations by Azerbaijan of the right to a fair trial. From 2002 to 2021, 251 total judgements were made against Azerbaijan, from which 119 were concerned with the violations of the right to a fair trial, length of proceedings, and non-enforcement of judgements.²¹

The US State Department in the 2021 Country Reports on Human Rights Practices: Azerbaijan confirmed the denial of fair public trials in Azerbaijan.²² In the report it is specified that judges were not functionally independent of the executive branch. The judiciary remained largely corrupt and inefficient, and lacked independence. Many verdicts were legally unsupportable and largely unrelated to the evidence presented during a trial, with outcomes frequently appearing predetermined.

These serious flaws in the judicial process of Azerbaijani system are significantly more pronounced when the defendants are Armenian military personnel or citizens, as a consequence of the extreme levels of state-sponsored Armenophobia in the country.²³ An analysis of ECtHR judgements (Makuchyan and Minasyan v. Azerbaijan and Hungary, no. 17247/13, Saribekyan and Balyan v. Azerbaijan no. 35746/11, Badalyan v. Azerbaijan no. 51295/11, Sargsyan v. Azerbaijan no. 40167/06) found that ethnic Armenians were denied legal remedies necessary to protect and restore their rights in Azerbaijan. The deeply rooted hostility against Armenians has only intensified with the outbreak of the 2020 war.

¹⁹ Trial Monitoring Reports Collection." OSCE, <https://www.osce.org/baku/106677>.

²⁰ "Trial Monitoring Reports Collection." OSCE, <https://www.osce.org/baku/106677>.

²¹ https://www.echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf

²² <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/azerbaijan/>

²³ One of the most stark examples of Azerbaijan's state-sanctioned Armenophobia is seen in the case of Ramil Safarov. In January of 2004, Azerbaijani soldier Ramil Safarov brutally murdered Armenian soldier Gurgen Margaryan while he was asleep by decapitating him with an axe during a NATO-sponsored "Partnership for Peace" program in Budapest (Hungary). In subsequent criminal proceedings, Safarov showed no remorse for the crimes he committed and admitted that he had murdered Margaryan on account of his Armenian origin. In April of 2006, the Budapest High Court found Safarov guilty of the "exceptionally cruel and premeditated murder" of Margaryan, additionally concluding that "the crimes were committed with vile motives and exclusively because of the Armenian nationality" of Margaryan. Safarov was transferred to Azerbaijan on August 13, 2012 upon a third appeal by Azerbaijan for Safarov's transfer from Hungary to complete his prison sentence in his home country, and set free on the basis of a presidential pardon that had been issued on the same day. The following day, on September 1, 2012, Safarov was promoted to the rank of major by Azerbaijan's Minister of Defense. Safarov became an Azerbaijani national hero and a beacon of Azerbaijani pride and nationalism. Azerbaijani officials and public figures praised Safarov throughout the entirety of the trial and expressed their congratulations on his release and pardon. For example, in 2004, Ambassador Agshin Mehdiyev, Permanent Representative of Azerbaijan to the Council of Europe, stated: "Armenians should better not sleep peacefully as long as the Karabakh conflict is unsettled, the possibility of incidents similar to the one in Budapest cannot be ruled out."

A. Lack of a Trial by an Independent and Impartial Tribunal

The judicial system of Azerbaijan is not well functional, in ordinary criminal cases it operates under undue influence, the courts validate the criminal charges of the prosecutor's office and continuously fail to ensure fair trial guarantees, even for the accused of Azerbaijani nationality. In the same manner, the trials of Armenian POWs and detainees were conducted unfairly. However, due to the Armenian nationality of the defendants, violations of the right to a fair trial have multiplied, expressing long-lasting hatred and prejudice against Armenians.

The courts examining the criminal charges against Armenians, lacked independence and impartiality, as the criminal charges were related to Nagorno-Karabakh, a very sensitive, politicised and nationalistic issue and as such no court in Azerbaijan could have been impartial. During the pre-trial investigation, National Security Service was engaged, and the charges included accusations on terrorism, which was another major constrain for independent and impartial adjudication.

Though in general, Azerbaijani judges are not functionally independent of the executive branch, the cases of Armenian POWs were specifically assigned to judges, who have adjudicated politically motivated cases, in order to secure fully-fledged control over the judges (see the Appendix).

For example, the presiding judge of the trial of fourteen Armenian POWs from Khtsaber, was conducted by Afgan Hajiyev of the Baku Court on Grave Crimes, who has been the presiding judge in several politically motivated cases. Most notably, in August 2015, he sentenced Azerbaijani human rights activists Arif Yunusov and Leyla Yunusova to seven and eight and a half years of imprisonment in a trial that was widely denounced by human rights advocates as a sham. Amnesty International recognized Arif Yunusov and Leyla Yunusova as prisoners of conscience. Numerous, human rights organizations, including the US Mission to the OSCE, called for their release.

The presiding judge of the trial of thirteen Armenian POWs from Khtsaber, who were sentenced to six years of imprisonment, Azad Madjidov, and two other judges, Zeynal Agayev and Sabuhi Huseynov, ruled over a number of politically motivated cases. Notably, they pronounced a guilty verdict on twelve innocent people in the 'Nardaran-3' case, a case which exemplified the full range of systemic human rights abuses that are ongoing in Azerbaijan.²⁴

²⁴ "Bagirov v Azerbaijan." *European Human Rights Advocacy Centre (EHRAC)*, 31 Mar. 2021, https://ehrac.org.uk/en_gb/key-ehrac-cases/bagirov-v-azerbaijan/.

Ismayilov Eldar Gerov oglu, the presiding judge of the trial of another thirteen Armenian POWs from Khtsaber, has also been a judge in the so-called 'Ganja case', where the proceedings were conducted with serious breaches of the principle of presumption of innocence and relied mainly on prosecutors' claims and witness statements.²⁵ Faiq Qaniyev, Mirza Khankishiyev, and Ilham Mahmudov, the judges who convicted another group of ten Armenian POWs to six years of unlawful imprisonment, were the judges who also sentenced journalists Afgan Sadiqov and Polad Aslanov to seven and sixteen years of imprisonment respectively with serious violations of the right to a fair trial in both cases.

B. Lack of a Public Trial

The public character of proceedings is one of the procedural guarantees of a fair trial. Article 6.1 of ECHR provides that "in the determination of ... any criminal charge against him, everyone is entitled to a ...fair and public hearing...by [a] tribunal..." It protects defendants against the secret administration of justice by ensuring court hearings are held in public and allows for public scrutiny and the right to give comments on any submitted evidence.²⁶

In the absence of international trial monitoring, possibilities for the involvement of non-Azerbaijani lawyers and attendance of family members of captured civilians and servicemen, the observance of the principle of a public hearing was of crucial importance, which was disregarded. The trials of Armenian POWs were conducted behind closed doors. The public representatives were not allowed into the courtroom. Only a selected group of pro-government journalists were allowed in the courtroom to report on the trial, who provided one-sided information for state propaganda purposes. The lack of publicity in the trials was also raised and well-documented by the Institute for Peace and Democracy (IPD).²⁷

²⁵ 114, Views, and 114. "Relatives of Those Arrested in Connection with 'Ganja Case' Protest in Baku." *1Lurer*, 24 May 2021, <https://www.1lurer.am/en/2021/05/24/Relatives-of-those-arrested-in-connection-with-%E2%80%98Ganja-Case%E2%80%99-protest-in-Baku/480834>.

²⁶ Dls. "Riepan v Austria: ECHR 14 Nov 2000." *Swarb.co.uk*, 29 Aug. 2021, <https://swarb.co.uk/riepan-v-austria-echr-14-nov-2000/Third-Section-Instituto-De-Relaciones-Internacionales>.

<https://www.iri.edu.ar/wp-content/uploads/2018/12/RI-55-SG-documentos-TE-CASE-OF-IBRAGIM-IBRAGIMOV-AND-OTHERS-v.-RUSSIA.pdf>

²⁷ <https://www.ipd-az.org/?s=prisoners+of+war>

C. Right to Effective Legal Representation

The right to effective legal representation is an essential pillar of the judicial process. Article 6(3)c of the ECHR states that everyone charged with a criminal offense has the following minimum rights: “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”²⁸ The legal assistance must be effective, since the ECHR is intended to guarantee rights that are practical and effective, not theoretical or illusory; specifying that “mere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may...shirk his [or her] duties. If they are notified of the situation, the authorities must either replace him [or her] or cause him [or her] to fulfill his [or her] obligations.”²⁹ The right to effective legal representation “contributes to the prevention of miscarriages of justice” and “to the equality of arms between the investigating or prosecuting bodies and the accused”.³⁰ It is worth noting that the use of a confession obtained from a detainee with the absence of a lawyer as evidence will lead to a violation of defense rights and of the right to a fair trial.³¹ OSCE commitments echo those of Article 6(3) of the ECHR: “Any person prosecuted will have the right to defend himself or herself in person or through legal assistance of his or her own choosing or, if s/he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”³²

Azerbaijan prosecuted detained Armenian civilians and servicemen in trials that lacked the key element of due process, the right to choose one’s own legal counsel. Azerbaijani authorities, including judges, did not ensure the accused’s right to choose a defense lawyer and the legal aid was rendered by the state-appointed lawyers, who lacked the required independence and professional qualities. Azerbaijani authorities violated the due process by failing to provide Armenian captives with independent legal counsel of their own choosing.

As reported by the Lawyers for Lawyers and the Law Society of England and Wales organizations the Azerbaijani authorities, in general, fail to respect the rights of lawyers and subject the lawyers to intimidation, hindrance, harassment, or other improper interferences, in order to prevent them from performing their professional functions.³³

²⁸ *European Convention on Human Rights*. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁹ “Artico v Italy, Merits, Just Satisfaction, App No 6694/74, A/37, [1980] ECHR 4, (1981) 3 Ehrr 1, IHRL 26 (ECHR 1980), 13th May 1980, European Court of Human Rights [ECHR].” *Oxford Public International Law*, <https://opil.ouplaw.com/view/10.1093/law:ihrl/26echr80.case.1/law-ihrl-26echr80>.

³⁰ *Third Section - Instituto De Relaciones Internacionales*.

<https://www.iri.edu.ar/wp-content/uploads/2018/12/RI-55-SG-documentos-TE-CASE-OF-IBRAGIM-IBRAGIMOV-AND-OTHERS-V-RUSSIA.pdf>

³¹ *Salduz v. Turkey (Application no. 36391/02) 27 November 2008* para. 62

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-89893%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-89893%22]})

³² OSCE Commitments, Right to a fair trial, Copenhagen Document (1990), para 5.17.

<https://www.osce.org/files/f/documents/b/0/40046.pdf>

³³ Mid-term Report - Review of the implementation of recommendations with respect to the rule of law and the role of lawyers accepted by Azerbaijan during the UPR in 2018, available at

https://www.ohchr.org/sites/default/files/Documents/HRBodies/UPR/NGOsMidTermReports/MidTermReview_UPR_AZERBAIJAN_Law_Society.pdf

These types of harassment are particularly stronger against the lawyers who work on cases that engage human rights or represent persons undesirable for the Azerbaijani authorities. Over the last few years, a number of human rights lawyers have been harassed, criminally prosecuted, suspended or barred from practising law after raising concerns about possible violations of their clients' human rights or after exercising their freedom of expression by publicly speaking out in cases that can be seen as politically sensitive.

On the other hand, independent lawyers from Armenia or other countries were not allowed to represent Armenian detained civilians and servicemen in Azerbaijan. Only the members of the Collegium of Advocates in Azerbaijan represented the Armenian captives in criminal cases, which is a government-dominated bar association, imposing punitive measure on defense lawyers willing and able to accept politically sensitive cases. Such punitive measures included disciplinary proceedings resulting in the censure, suspension, and in some cases disbarment of human rights lawyers.

The Azerbaijani state-appointed lawyers failed to provide timely and quality legal assistance. Their engagement was solely of formal nature. The Azerbaijani state-appointed lawyers failed to perform their duties competently by refraining from asking relevant legal questions, raising motions or taking the initiative to submit evidence, culminating in a generally passive attitude. The behavior of the Azerbaijani state-appointed lawyers contradicted the best interests of their Armenian clients.

The statements of virtually all repatriated Armenian POWs, who faced trials in Azerbaijan, provide strong evidence that the legal representation given to them failed to adequately represent their interests. Here, the captured Armenian Servicemen were not allowed to choose their lawyer and were only told that they were allowed to refuse legal representation. Judges had introduced state-appointed lawyers to the accused person for the first time during the process of the hearing. The vast majority of the interviewed repatriated POWs stated that they only ever met their attorneys while in court and never discussed the trial with their attorneys during, before, or after the trial. The captive servicemen were not afforded an opportunity to discuss the basis of the charges against them with their attorneys at any time. The repatriated POWs reported that attorneys came to visit once at the place of detention. However, it was impossible to discuss anything of substance because the entire visit lasted only one minute. Many of the POWs stated that their lawyers did not speak at all during the trials, which sought to adjudicate their guilt. Other POWs state that their lawyer only spoke briefly about routine tangential issues in the trial. For example, repatriated POW G.G recalled having no contact with a lawyer or any discussions about his case before, during, or after the court session. In another case, POW E.K. noted that his lawyer did not work to defend his interests whatsoever and remained silent for the duration of the trial, only telling him that "everything would go according to their plan" POW N.S. stated that his lawyer was not willing to properly perform his duties, and POW D.V. also noted that his lawyer was not involved in his case.

Repatriated POW S.S. reported that he attempted to speak to his attorney during one of the court sessions, but he was not allowed to do so by the court. Finally, repatriated POW, K.S., stated that his attorney only spoke to him once before the court session, to ask whether he had killed any Azerbaijanis. The accounts of virtually all Armenian servicemen, who were subjected to trials in Azerbaijan provide evidence that the captives were not provided with effective legal counsel, in violation of the well-established international law.

D. The Right to Free Assistance of an Interpreter

Article 6(3)e of the ECHR states that everyone charged with a criminal offense has the right “to have the free assistance of an interpreter if he [or she] cannot understand or speak the language used in court.”³⁴ The right to an interpreter is not limited to the appointment of an interpreter, but includes the adequacy of the interpretation provided. This is a component of a fair trial and “applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings,” thus enabling the defendant to interpret the case from his/her side.³⁵

Repatriated POWs testified that the judges frequently failed to provide instructions on the rights and duties of the translator. They stated that they either were not given a translator, or alternatively, the interpreter failed to translate the issues discussed. There were also cases when the prisoner was provided with an Armenian translator, but that the trial was conducted in Russian, which was not this individual’s native language. Armenian prisoners were forced to sign many documents after the end of the court session, the content of which they did not know. Even though these documents were written in a foreign language, no translator was provided to explain the contents of the documents to Armenian prisoners. Despite the fact that prisoners were provided with a translator, Armenian prisoners did not benefit at all from interpretation into Armenian. The interviewed repatriated POWs also reported that they were not provided with a translated copy of the courts’ judgments.

E. Investigation of Ill-Treatment and Torture Allegations in Practice

Article 3 of the ECHR states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”³⁶ Unlike most of the substantive clauses of the ECHR, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15(2) of the ECHR, even in the event of a public emergency threatening the life of the nation.³⁷

³⁴ *European Convention on Human Rights*. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

³⁵ *Echr. “European Court of Human Rights.” HUDOC*, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-57614%22%5D%7D>.

³⁶ *European Convention on Human Rights*. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

³⁷ *Selmouni v. France*, ECtHR Judgment of 28 July 1999, para 95 .

<https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%5B%22001-58287%22%5D%7D>

Azerbaijan has a poor human rights record. It sees democracy and human rights as an existential threat. Based on six of its visits to Azerbaijan from 2004 to 2017, the Committee for the Prevention of Torture (CPT) of the Council of Europe concluded in 2018 that torture and other forms of physical ill-treatment by the police and other law enforcement agencies “remain systemic and endemic” in Azerbaijan.³⁸ The CPT reports confirm that the use of torture in Azerbaijan to extract forced confessions is widespread. After years of denial, Azerbaijani authorities recently acknowledged one of the most infamous cases of mass torture in the country’s history, the so-called ‘Terter case’ in which at least one hundred Azerbaijani servicemen were tortured while being detained on suspicions of spying for Armenia. The World Organization Against Torture (OMCT) reported in April 2021 that of the seventy-eight people sentenced to prison terms in connection with the case, eleven people had died as a result of torture in custody.

In its December 7, 2021 order, the International Court of Justice (ICJ) stated that “Azerbaijan must... protect from violence and bodily harm all persons captured in relation to the 2020 Conflict who remain in detention, and ensure their security and equality before the law”.³⁹ However, without exception, Armenian POWs were tortured in Azerbaijani captivity, particularly during interrogations. Human Rights Watch documented the cruel and degrading treatment of Armenian POWs and civilian detainees were subjected to when they were captured, during their transfer, or in Azerbaijani custody. Europe and Central Asia director at Human Rights Watch, Hugh Williamson, called the abuse and torture of detained Armenian soldiers “abhorrent and a war crime.”⁴⁰ Human Rights Watch interviewed four former POWs who described their ill-treatment in custody, stating they faced prolonged and repeated beatings and electric shocks; one described being prodded with a sharp metal rod, and another was repeatedly burned with a cigarette lighter.⁴¹

Torture, or the threat of torture were used to force POWs to sign confessions or appear in videos in which they were forced to confess fabricated crimes. For example, repatriated POW D.V. testified that during the interrogations there was always a muscular person next to the investigator who would beat him and the other POWs if their answers were not considered to be credible. Another repatriated POW, S.P., recounted that the investigator “gave [him] bundles of papers to sign. When I would give an answer that they did not expect or refused to sign the papers, he would be electrocuted”.

³⁸ “Azerbaijan: torture, impunity and corruption highlighted in new anti-torture committee publications”, July 18, 2018, <https://www.coe.int/en/web/cpt/-/azerbaijan-torture-impunity-and-corruption-highlighted-in-new-anti-torture-committee-publications>

³⁹ *7 Décembre 2021 Ordonnance - International Court of Justice*.
<https://www.icj-cij.org/public/files/case-related/180/180-20211207-ORD-01-00-EN.pdf>

⁴⁰ “Azerbaijan: Armenian Pows Abused in Custody.” *Human Rights Watch*, 19 Mar. 2021, <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>.

⁴¹ “Azerbaijan: Armenian Pows Abused in Custody.” *Human Rights Watch*, 19 Mar. 2021, <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>.

He was also forced to falsify a video recorded confession, that was subsequently shown during his trial. According to him “during the filming of the video there was a State Security Service member standing on the side threatening me to make sure I did not divert from the script [of the video]. Repatriated POW A.H. also testified that he was forced to sign a number of papers while being threatened with an electroshock device and was beaten severely during his interrogation. It should be highlighted that the use of confession statements in order to establish the relevant facts in criminal proceedings which were obtained as a result of torture or of other ill-treatment “renders the proceedings, as a whole, unfair.”⁴² Furthermore, “incriminating evidence – whether in the form of a confession or real evidence – obtained as a result of acts of violence or brutality or other forms of treatment which can be characterised as torture – should never be relied on as proof of the victim’s guilt, irrespective of its probative value.”⁴³

Armenian POWs were tortured without exception in Azerbaijani captivity and forced to sign confessions throughout interrogations. The judges did not scrutinize the admissibility of evidence, which had been obtained under duress. The judges relied on the pre-trial statements of the accused, which conflicted with the sworn testimony of captive serviceman provided during the court hearings.

Furthermore, Armenian POWs stated that the judges would reach a verdict without posing any questions to them. Judges would often spend only around two minutes in the deliberation room before reaching a verdict and would not provide any explanation identifying the legal and factual basis of their judgments. Moreover, each of the repatriated POWs that were interviewed reported that they were either not given a copy of the court decision, or that the copy they received was confiscated from them as soon as they returned to their place of detention.

F. Presumption of Innocence and Hate Speech

Article 6(2) of the ECHR guarantees that “everyone charged with a criminal offense shall be presumed innocent until proven guilty according to the law.”⁴⁴ The principle embodies inter alia, that “the members of a court should not start [the trial] with the preconceived idea that the accused has committed the offense charged”, rather the burden of proof is on the prosecution, and any doubt should benefit the accused.”⁴⁵

⁴² Case of Belugin v. Russia 26 november 2019 (Application no. 2991/06) para. 70) https://www.stradalex.com/en/sl_src_publ_jur_int/document/echr_2991-06

⁴³ Jalloh v. Germany (Application no. 54810/00) 11 July 2006 para. 105). [https://hudoc.echr.coe.int/fre#{%22fulltext%22:\[%22Jalloh%22\],%22itemid%22:\[%22001-76307%22\]}](https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Jalloh%22],%22itemid%22:[%22001-76307%22]})

⁴⁴ European Convention on Human Rights. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁴⁵ Barberà, Messegué and Jabardo v. Spain, (Application no. 10590/83) <https://www.legal-tools.org/doc/a84e3a/pdf/>

In cases where there are prejudicial public statements and opinions made by judges, prosecutors, politicians, and other public officials, the presumption of innocence is violated.⁴⁶

In 2018, the Institute for Democratic Initiatives (IDI) published a report revealing statistics and comparative analysis of regular violations of the presumption of innocence in Azerbaijani media.⁴⁷ In line with this policy, the Azerbaijani government and public officials deprived the Armenian captives of their presumption of innocence.⁴⁸

All criminal proceedings against Armenian POWs were conducted by already prejudiced courts and judges with constant violations of presumption of innocence lacking transparency and fair trial guarantees. The presumption of innocence of Armenian POWs was violated with an abundance of state-supported hate speech toward Armenian soldiers. They were mostly introduced as saboteurs, terrorists, spies, etc., without any proper evidence or investigation. For example, an Azerbaijani news source published an article claiming that Armenian captives “have nothing to do with prisoners of war”, but rather are “saboteurs sent by Armenia to carry out subversive and terrorist activities.”⁴⁹ On numerous social media outlets, Azerbaijani nationals are seen commenting under posts of trials of Armenian POWs where they call to kill Armenian soldiers, stating that they deserve the death penalty. In one specific comment, an Azerbaijani individual suggested putting Armenian POWs in their Baku Military Trophy Park/War Trophies Park containing war trophies from the 2020 War, “so that they [Azerbaijani people] could show them [Armenian POWs] to their children.”

Armenian POWs were not presumed innocent under Article 6 § 2 of ECHR, as Azerbaijani officials made public statements in which they were called ‘criminals’ before the criminal proceedings were initiated against them. In particular, on February 26, 2021, the president of Azerbaijan Ilham Aliyev made a statement announcing: “We carried out an anti-terrorist operation, as a result of which more than 60 terrorists were arrested. They are now called prisoners of war. We think this is a distortion of the issue, because 20 days after the end of the war there can be no prisoners of war. We have returned all the prisoners of war. We returned them before they returned our captives to us. And these people are not prisoners of war, they are terrorists, they are saboteurs.” This was a green light for the Azerbaijani prosecutors to start the criminal charges against Armenian POWs.

⁴⁶ *Daktaras v. Lithuania*, 10 October 2000 no. 42095/98, §§ 44

<https://cambodia.ohchr.org/sites/default/files/echrsource/Daktaras%20v.%20Lithuania%20%5b10%20Oct%202000%5d%20%5bEN%5d.pdf> & *Ismoilov and Others v. Russia*, § 161, (*Application no. 2947/06*), 24 April 2008 <https://www.refworld.org/cases,ECHR,48108eb82.html>

⁴⁷ Studio, Mannat. “Statistical and Comparative Analysis of Violations of the Presumption of Innocence in Azerbaijan in 2018.” IDI, <http://idi-aze.org/en/report/121>.

⁴⁸ “The Presumption of Innocence in Azerbaijan.” OSCE, <https://www.osce.org/baku/20270>.

⁴⁹ “Armenian Saboteurs Are Not Prisoners of War.” *Day.Az*, 21 Jan. 2021, https://news.day.az/politics/1309132.html?fbclid=IwAR1uFQ_HMzj9WBliuOh5_kd9q4NXLQhwZHQn2_45hbNDYOBLa6aOi0PQHY *Armenia Risks Playing Out*. <https://minval.az/news/124243027> .

Later, on March 15, 2021 the Azerbaijani Foreign Minister, Jeyhun Bayramov, at a press conference following his meeting with the OSCE Chairman-in-Office noted: “Azerbaijan has returned all the captives to Armenia in accordance with its obligations... on November 26, [captured] armed men from the Shirak province of Armenia (...) are not prisoners of war.”

Another statement about “liquidating those scoundrels abroad who criticize the authorities and the head of the state, and awarding medals and comfortable life to those heroes who are on a mission to eliminate the enemies of Azerbaijan” was made by Siyavush Navruzov, former Deputy Executive Secretary of New Azerbaijan Party, who is the husband of the Commissioner for Human Rights (Ombudsman) in Azerbaijan, Sabina Alieva.

The image shows a screenshot of a social media post with several comments highlighted in callout boxes. The background text is partially obscured but includes the words "Зеркало.az" and "без вмешательства России. Вы видели подобную наглость?". The comments are as follows:

- Леня Пантелеев** (11 months ago): "Азербайджан если захочет этих диверсантов в минное поле сунет и никто ему не указ. Захочу ИРЕВАН заберу и никто ни Россия ни Америка нам не указ. Азербайджан 21 вековую войну поменял и все страны об этом думают. Гинесса Азербайджан должен попасть как войну за 44 дня закончил капитуляцией Армении. Так что сидите на месте что Ильхам Алиев скажет то и будет. Слава Армии Азербайджана. See Translation"
- Jimmy Creto** (11 months ago): "Karabakh is internationally recognized as part of Azerbaijan. Armenian soldiers were there illegally. Now, they should stay in jail."
- Бахром Хусанов** (11 months ago): "Зачем судить надо просто в расход. Враг который был прошень не когда не станет другом! 191 likes, 30 replies"
- Анастасия Соколова** (11 months ago): "Казнить. Дать высшую меру наказания !!! Насильникам и убийцам нет места среди людей ! 165 likes, 6 replies"
- Давид Никитин** (11 months ago): "Это называется - справедливость! Карабах Азербайджан 🇦🇿🇧🇦🇷🇸 78 likes"
- Руслан Бакински** (11 months ago): "Азербайджан судить двух террористов гетешен ! See Translation"
- Eldar Musaev** (11 months ago): "Надо вообще устроить Нюрнбергский процесс над всеми See Translation"
- S Sharif** (11 months ago): "Пожизненное заключение в одиночной камере думаю будет обеспечено. Но самое лучшее это ввести исключительную меру наказания через повешение только для таких военных преступников. 50 likes"



VII. Conclusion

The trials of Armenian POWs and civilians by courts in Azerbaijan were illegal and violated Azerbaijan's obligations stemming from the 2020 Trilateral Statement. The trials involved numerous violations of the right to a fair trial. The violations were deliberate, and fueled in part by Azerbaijan's widespread, state sponsored campaign of Armenophobia. Azerbaijan's pattern of behaviour provides irrefutable evidence that the State has no appetite for a peaceful resolution to the conflict in Nagorno-Karabakh and normalization of relations with Armenia. Azerbaijan's refusal to comply with the terms of the statement places the negotiation at risk and promotes mutual distrust between the two sides of the conflict.

While there have been calls by various international actors for the unconditional release of the remaining Armenian POWs and civilians, dozens of people remain in the lawless captivity of the Azerbaijani Government. Over two years since the end of the 2020 War, Azerbaijan has suffered no meaningful consequences for its illegal detention and mistreatment of the POWs. In fact, Azerbaijan continues to violate the provision of the negotiated ceasefire agreement, by engaging in hostile acts of aggression in the sovereign territory of Armenia and taking other prisoners. There have been very few explicit condemnations of the illegal trials of Armenian POWs and engaged judges have not been held accountable. As a point of comparison, on December 2, 2021, the European Union (EU) adopted the fifth package of sanctions against the Lukashenko regime. The new package imposed sanctions upon several judges in Belarus for committing serious human rights violations and undermining the rule of law, civil society and democratic opposition.⁵⁰ No such measures have been applied by the EU or by other states against the Azerbaijani judges involved in the unlawful prosecution and imprisonment of Armenian POWs.

In order to apply pressure on the Government of Azerbaijan to grant the unconditional release of Armenian POWs and civilians, the following recommendations are made to the international community:

- 1) To enact sanctions against Azerbaijan which will remain in effect until all Armenian POWs and civilian detainees are released and allowed to repatriate to Armenia;
- 2) To enact individual sanctions against President Ilham Aliyev, Prosecutor General of Azerbaijan Kamran Aliyev, Minister of Justice of Azerbaijan Fikrat Mammadov, and all of the judges who presided over the illegitimate trials of Armenian POWs and civilians (see appendix below),
- 3) To expressly condemn the trials of Armenian POWs as illegitimate proceedings, which violate Azerbaijan's international obligations.

⁵⁰ "Joint Statement on December 2 Sanctions in Response to the Situation in Belarus." *Joint Statement on December 2 Sanctions in Response to the Situation in Belarus* | EEAS Website, https://www.eeas.europa.eu/eeas/joint-statement-december-2-sanctions-response-situation-belarus_en.

These common sense measures should be adopted for the singular reason that the Government of Azerbaijan will otherwise not respect its international obligations and the terms of the Ceasefire Agreement. In the absence of these critical measures, Armenian servicemen and civilians alike will continue to suffer abusive treatment in the custody of the Azerbaijani Government.

Appendix

Names of judges who presided over the trials of Armenian POWs and civilians

- Aghayev, Zeynal Kurban oglu - Judge at Baku grave crimes court
 - ▶ Unlawful imprisonment of 13 Armenian POWs. Delivered politically motivated rulings including in the Nardaran case, which breached the right to a fair trial and holds torture allegations.

- Aliyev, Samir Imamverdi oglu - Judge at Baku grave crimes court
 - ▶ Unlawful imprisonment of 13 Armenian POWs

- Allahverdiyev, Elbey Hidaat oglu - Judge at Baku military court
 - ▶ Sentenced Vicken Euljekjian to 20 years imprisonment.

- Azad, Ali Aga olgu - Judge at Baku grave crimes court
 - ▶ Delivered politically motivated rulings including in the Nardaran case, which breached the right to a fair trial and holds torture allegations. He is also guilty of the unlawful imprisonment of 13 Armenian POWs

- Hajiyev, Afgan Niyatulla oglu - Judge at Baku grave crimes court
 - ▶ Politically motivated ruling against Elvin Isayev and 14 Armenian prisoners of war. Violated the rights of defense and of the right to a fair trial in both cases

- Hajiyev, Siyavush Habib oglu - Judge at Baku grave crimes court
 - ▶ Guilty of the unlawful imprisonment of Armenian civilians Davit Davtyan and Gevorg Sujyan. Also sentenced opposition activist Niyamaddin Ahmadov to imprisonment for 13 years in a case, which involved serious torture allegations.

- Huseynov, Javid Ibadulla oglu - Judge at Baku grave crimes court
 - ▶ Guilty of the unlawful imprisonment of 13 Armenian POWs

- Huseynov, Sabuhi Sabir oglu - Judge at Baku grave crimes court
 - ▶ Delivered politically motivated rulings including in the Nardaran case, which breached the right to a fair trial and holds torture allegations. He is also guilty of the unlawful imprisonment of 13 Armenian POWs

- Huseynov, Telman Quramali oglu - Judge at Baku grave crimes court
 - ▶ Delivered politically motivated ruling against activist Elvin Isayev and 14 Armenian prisoners of war. Violated the rights of defense and of the right to a fair trial in both cases.

- Ismayilov, Eldar Gerov oglu - Judge at Baku grave crimes court
 - ▶ Delivered politically motivated rulings that breached the right to a fair trial. Unlawfully imprisoned 13 Armenian POWs.

- Khankishiyev, Mirza Aslan oglu - Judge at Baku grave crimes court
 - ▶ Guilty of the unlawful imprisonment of 13 Armenian POWs. Also sentenced journalists Afgan Sadiqov and Polad Aslanov to 7 and 16 years of imprisonment respectively.

- Mahmudov, Ilham Aga oglu - Judge at Baku grave crimes court
 - ▶ Guilty of the unlawful imprisonment of 13 Armenian POWs. Also sentenced journalists Afgan Sadiqov and Polad Aslanov to 7 and 16 years of imprisonment respectively.

- Mammadov, Ali Irfan oglu - Judge at Baku grave crimes court
 - ▶ Delivered politically motivated ruling against, among others, activist Elvin Isayev and 14 Armenian prisoners of war. Violated the rights of defense and of the right to a fair trial in both cases.

- Qaniyev, Faiq Asad oglu - Judge at Baku grave crimes court
 - ▶ Delivered politically motivated rulings against journalist Polad Aslanov (16 years imprisonment) and Afgan Sadiqov (7 years), as well as the unlawful imprisonment of 16 Armenian POWs.