



INTERNATIONAL AND
COMPARATIVE LAW
CENTER - ARMENIA



ARMENIAN
LEGAL
CENTER
FOR JUSTICE AND HUMAN RIGHTS

ARBITRARY DETENTION OF SERVICEMEN CAPTURED IN KHTSABERD

REPORT 2023



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Introduction

The signing of the 9th November 2020 Trilateral Statement ended the 44-Day War in Nagorno Karabakh. The parties to the agreement, Armenia, Azerbaijan and the Russian Federation, agreed to a number of terms, including the repatriation of prisoners of war captured during the conflict. However, on 13th December 2020, 62 military personnel of the Republic of Armenia were captured at their observation posts in Nagorno-Karabakh.

Initially recognized as prisoners of war, they were transported to Azerbaijan. Subsequently, they encountered charges in Azerbaijani courts, accused of terrorism. Eventually, they were convicted for offenses related to their combatant status, including the illegal crossing of the Azerbaijani border and the possession of firearms.

These challenges were exacerbated by the absence of an independent judiciary in Azerbaijan, raising concerns about the arbitrary treatment of the captured individuals. Moreover, some individuals were repatriated at irregular intervals, without any discernible pattern.

This report details the capture of the Armenian military personnel at their positions near Khtsaberid in Hadrut region, as well as their unlawful captivity, charges, trials, and convictions. It notes that the arbitrary nature of the treatment of the captured individuals is in violation of international humanitarian law and human rights standards and breaches the Geneva Convention III relative to the Treatment of Prisoners of War.

Trilateral Statement and Capture of Armenian Military Personnel

On September 27, 2020, Azerbaijan initiated a military offensive against Nagorno-Karabakh, which continued until a ceasefire agreement, reached on November 9, 2020, through a Trilateral Statement involving the Russian President, Armenian Prime Minister, and Azerbaijani President.¹ This statement dictated the following key points:

- **Ceasefire:** A complete ceasefire in the Nagorno-Karabakh conflict area is declared starting from midnight on November 10, 2020. Both Azerbaijan and Armenia are to halt hostilities and remain in their current positions.
- **Territorial Changes:** The Agdam District is to be returned to Azerbaijan by November 20, 2020. Additionally, the Kalbajar District is to be returned by November 15, 2020, and the Lachin District by December 1, 2020. The Lachin Corridor, providing a connection between Nagorno-Karabakh and Armenia, will be under the control of Russian peacekeeping forces, and a plan for a new route via the Lachin Corridor will be outlined within the next three years.
- **Russian Peacekeeping Forces:** Russian peacekeeping forces will be deployed along the contact line in Nagorno-Karabakh and the Lachin Corridor. These forces will remain for five years, with the possibility of automatic extension for subsequent five-year terms unless either party decides otherwise.
- **Ceasefire Oversight:** A peacekeeping center will be established to oversee the ceasefire for more efficient monitoring of the parties' fulfillment of the agreements.
- **Return of Displaced Persons:** Internally displaced persons and refugees are allowed to return to the territory of Nagorno-Karabakh and adjacent areas under the supervision of the United Nations High Commissioner for Refugees.

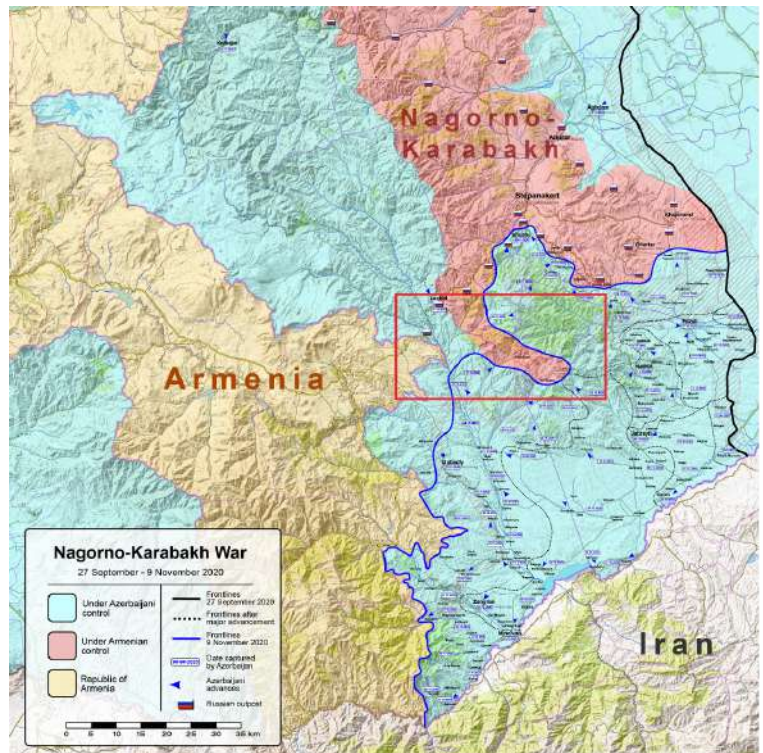
1. <http://en.kremlin.ru/events/president/news/64384>

- **Prisoner Exchange:** The parties agree to exchange prisoners of war, hostages, and other detained persons, as well as the return of dead bodies.
- **Unblocking Economic and Transport Connections:** All economic and transport connections in the region shall be unblocked. Armenia will guarantee the security of transport connections between the western regions of Azerbaijan and the Nakhchivan Autonomous Republic. The Russian Border Guard Service will oversee these connections.
- **Future Transport Communications:** Subject to agreement between the parties, the construction of new transport communications to link the Nakhchivan Autonomous Republic with the western regions of Azerbaijan will be ensured.

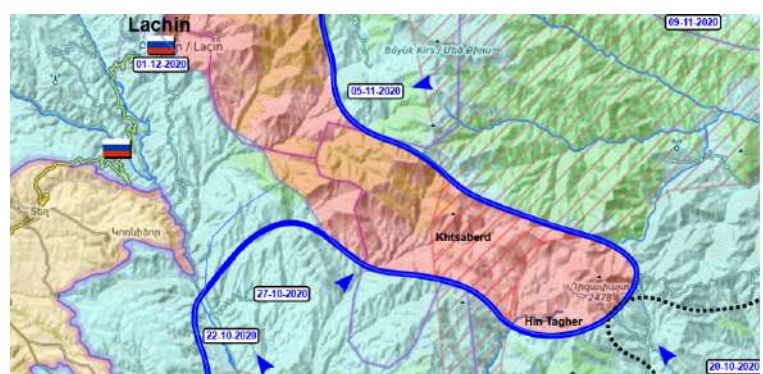
This Statement determined the withdrawal of Armenian forces solely from regions outside the Soviet-era boundaries of the former Nagorno - Karabakh Autonomous Oblast (NKAO) and according to point 1 of the agreement, except for areas beyond the former NKAO, the Republic of Azerbaijan and the Republic of Armenia shall stay at the positions they occupy.

Given that the villages of Hin Tagher and Khtsaberd fall within the territory of the former NKAO, Armenian troops remained stationed in these positions.² Equipped with AK-type rifles, ammunition, and explosives, a group of around 100 Armenian servicemen were positioned on a mountain near the village between November 27, 2020, and December 13, 2020.

Around December 13, Azerbaijani armed forces launched an attack on the two settlements of Khtsaberd and Hin Tagher. As these areas were not mentioned in the agreement and no more advancements were permitted, they were effectively making territorial gains, in violation of the Trilateral Statement. During these hostilities, Armenian servicemen found themselves confronted by a superior force of Azerbaijani soldiers, and relying on assurances from the Azerbaijani side that they would be transferred to Russian peacekeepers, the Armenian servicemen chose to surrender to the Azerbaijanis. Approximately 30 servicemen were indeed handed over to Russian peacekeeping forces. However, 62 servicemen were taken prisoner and can be seen in video footage wearing camouflage and military gear as they are being escorted by Azerbaijani troops.³



This map shows troop movements during the war, relative areas of control and frontlines on the 9th of November 2020. The red rectangle indicates the area of Khtsaberd and Hin Tagher



Enlarged version of the area in the red rectangle. Note that Khtsaberd and Hin Tagher were under Armenian control when the ceasefire agreement was signed

2. <https://oc-media.org/over-70-armenian-soldiers-missing-after-fresh-clashes-in-nagorno-karabakh/>

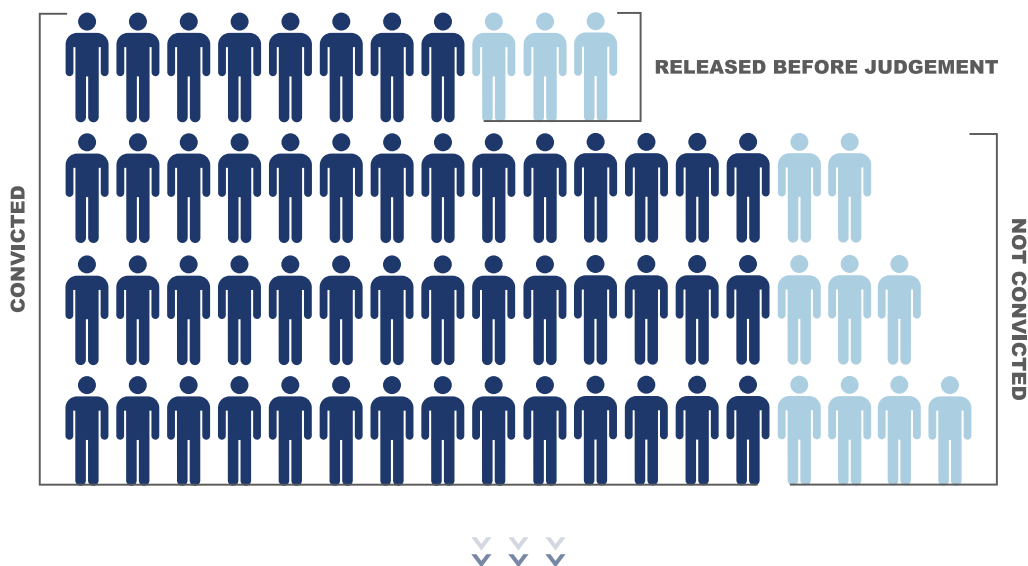
3. https://drive.google.com/file/d/1uA-AM7t0evyp3uS5PRQIM1x4Rol2DY_V/view?usp=drive_link

In his testimony, one of the repatriated servicemen describes the situation as follows: “On the afternoon of December 13th, our unit was ordered to leave its positions. According to the commander's order, we had to go down to the place where we got food; that’s where he was to meet us. However, the commander did not show up, and our unit was surrounded. During the talks with the Azerbaijanis, they told us that the Russians would soon approach but before we had to hand over our weapons. We did so as we were surrounded.”⁴

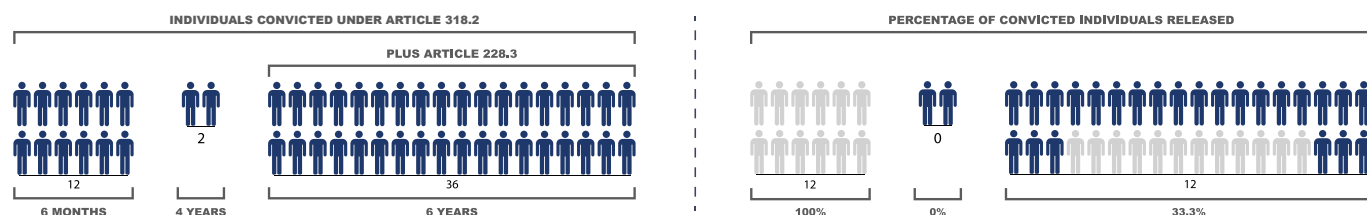
After being held in custody, they were charged with various offenses. Out of these 62, 3 were released before judgment and 9 were neither prosecuted at all nor brought before the court. The remaining 50 Armenian servicemen were tried in four groups at the Baku Court on Grave Crimes. During the trial, the Baku Court of Serious Crimes dismissed charges related to terrorism and involvement in illegal armed units, stating there was no evidence supporting these allegations. The court also excluded certain charges, citing that individuals other than the accused were responsible for setting up military armed formations. In July 2021, the Baku Court of Grave Crimes issued a verdict finding accused Armenian military servicemen guilty of crimes under Articles 228.3 and 318.2 of the Azerbaijani Criminal Code.

Despite the fact that all 62 Armenian servicemen were taken captive under similar circumstances, they were subjected to different legal treatment. Some were released before prosecution or trials, some during the trial, but before the conviction, while the others were repatriated for political concessions.

OUT OF 62 SERVICEMEN FROM KHTSABERD SETTLEMENT



OUT OF 50 CONVICTED SERVICEMEN



NAMES OF CONVICTED INDIVIDUALS*

FOUND GUILTY UNDER ARTICLE 318.2

Individuals serving the sentence

☐ Individuals released

FOUND GUILTY UNDER ARTICLE 228.3

GROUP I

Gevorg Noralovich Asetryan
Volodiya Vachaganin Hakobyan
Mkrtich Simonovich Minosyan
Yuri Tigranovic Karapetyan
Romik Misakini Sedrakyan
Edgar Vachaganovich Matesyan
Albert Kamoyevich Petrosyan
Gor Vagramini Gasparyan
Aram Garnikovich Minasyan
Kamo Karenovich Sefilyan
Armen Yegizari Bagasyan
Sisak Grishai Yengoyan
Gegham Samveli Serobyan
Hrach/Grach Arzumani (Arzumanovic) Avagyan/Avakyan

6 MONTHS

4 YEARS

GROUP II

Varazadt Amushavanovich Manukyan
Martin Mushegovich Agramanyan
Jora Vanoevich Manukyan
Ashot Artakovich Gevorgyan
Grigor Gagigovich Kuregyan
Haykaz Koryuni (Koryunovich) Hovhannisyan/Hovanesyan
Davit Stepani (Stepanovich) Stepanyan
Levon Ashoti (Ashotovich) Tosunyan
Artur Eduardi (Eduardovich) Baghdasaryan
Hrayr Hrachyayi (Hrachovich) Herbayan
Varazdat Seryozhayi (Seryojevich) Harutyunyan/Arutyunyan
Serob Sureni (Surenovich) Avagyan/Avakyan
Narek Aghasu (Aqaovich) Kostanyan

GROUP III

Setrak Samvelovich Soghomonyan
Rafik Robertovich Karapetyan
Feliks Arshakovich Grigoryan
Mels Karapetovich Ambardanyan
Gurgen Hovannesovich Golayan
Vagarshak Merojanovich Maloyan
Andranik Vazgeni Mikayelyan
Manuk Hovhannesi (Hovanesovich) Martoyan
Arsen Arayiki (Araikovich) Vardanyan
Arman Vazgeni (Vazgenovich) Dilanyan
Hrayr Vardeni (Seryojevichin) Tadevosyan
Vahagn Ediki (Edikovich) Bahrikyan
Sasun Seyrani (Seyranovich) Yeghiazaryan

GROUP IV

Ovsep Robertovich Manukyan
Robert Hoviki (Ovikovich) Gevorgyan
Karen Armenaki (Armenovich) Aramyan
Andranik Srap (Srapovich) Sukisyan
Eduard Armeni (Armenovich) Kirakosyan/Giragusyan
Gevorg Samveli (Samvelovich) Martirosyan
Volodya Vachagani (Gagikovich) Hakobyan/Akopyan
Tigran Manuki (Manukovich) Avagyan/Avakyan
Grigor Seyrani (Seyranovich) Saghatelyan
Vagarshak Ashoti Avetisyan

6 YEARS

* The names of the Armenian servicemen are spelled as in the documents of the criminal cases and may differ from the spelling in their passports.

NAMES OF INDIVIDUALS NOT CONVICTED / RELEASED BEFORE JUDGEMENT

REPATRIATED BEFORE JUDGEMENT

Andranik Tigranovich Manukyan
Grigor Gevorgovich Gevorgyan
Yeghish Hovannesovich Aslanyan

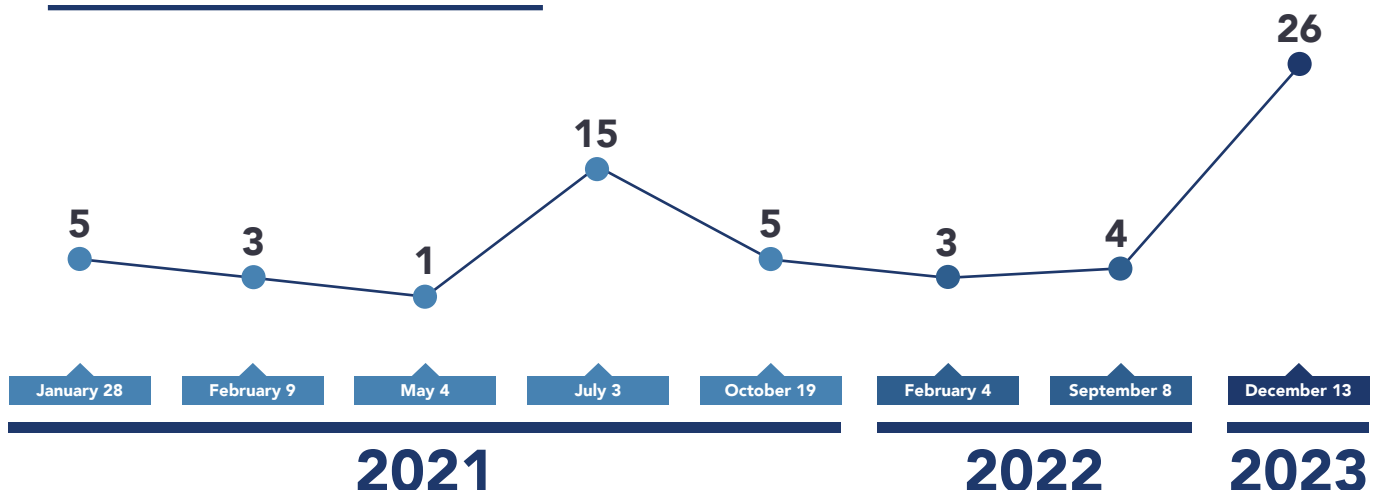
NOT PROSECUTED

Ashot Mnasakanovich Valesyan	Armen Mamikonovich Nalbandyan	Vagran (Vahram) Arayikovich Movsesyan
Seyran Setoyevich Matevosyan	Hovanes Georgiyeich Israyelyan	Edik Hakopevich Arutyunyan (Harutyunyan)
Karen Lyovavich Vartanyan	Tatul Samvelovich Galoyan	Samvel Arturovich Shukhyan

Furthermore, the repatriation of the captured individuals appeared to be arbitrary and not based on their sentencing, as there was no apparent pattern to the order in which the individuals were repatriated.

REPATRIATION DATES OF ARMENIANS CAPTURED IN KHTSABERD (HADRUT REGION)

BREAKDOWN BY DATES AND NUMBER OF PEOPLE



Circumstances of Captivity

In a series of videos originally disseminated on the Telegram channel "Kolorit_18," Azerbaijani soldiers can be seen with the group of Armenian captives. One clip shows an Azerbaijani soldier recording himself and a group of Armenian captives walking in single-file formation through the snow, instructing two of the captives to "Say hello Yusif," after which he says "No more, no less, 62 people."⁵ Another video depicts two Azerbaijani soldiers instructing two Armenian captives to state "Karabakh is Azerbaijan" along with "Long live Ilham Aliyev" and "Well done Qazax's children."⁶

In a different setting, an Azerbaijani soldier sits on the ground beside an Armenian captive. No snow can be seen here, indicating that this video was shot at a different location. The soldier forces the captive to repeat several greetings in Azerbaijani, after which he says: "Put a gun to his head, he will understand."⁷ Another video shows an Azerbaijani soldier filming himself while directing two captives seated on the ground, one of whom he calls Andranik, to repeat the words "Hello Qazax"⁸

In another clip, an Azerbaijani soldier records himself walking with a group of Armenian captives through the hills, and says "Here they come. They wanted to attack us at night. No more, no less, 62 persons. At once."⁹ In a separate video, three captives are coerced to repeat statements in Azerbaijani, instructing them to "Say hello Aghdesh."¹⁰ Approximately five Armenian captives are seen standing on a snowy hill, surrounded by three Azerbaijani soldiers in another video.¹¹ This treatment persists in subsequent videos. In a forest, an Azerbaijani soldier films himself instructing an Armenian captive to repeat the words "Well done, Qazax's children" in Azerbaijani. Additional soldiers and captives are visible in the background.¹² Another clip portrays an Azerbaijani soldier filming himself with about 20 Armenian captives standing side-by-side in a column formation. The soldier comments: "Look at the Armenian dishonorables. 62 people. We caught them today. Look, today is the 14th. We have caught."¹³

In another video, an Azerbaijani soldier records himself standing on top of a hill with a large group of fellow soldiers. In the distance, roughly 10 Armenian captives can be seen walking away from the group, escorted by Azerbaijani forces.¹⁴ In another video, an Azerbaijani soldier films himself talking to 3 Armenian captives in a snowy forest. He instructs them to say hello to the camera to a certain Amy, Takhir Amy, Shakir Amy, and Vusal.¹⁵

5. https://drive.google.com/file/d/14vRktqAB4LL9ZcrotVEM_DqNvFZeiglM/view?usp=drive_link

6. https://drive.google.com/file/d/1pQns4mCtJ5A1SI74fKVO50yF6em7tAKf/view?usp=drive_link

7. https://drive.google.com/file/d/16_intqKe7hVFrG0VxkrDoEiTbnMv28WZ/view?usp=drive_link

8. https://drive.google.com/file/d/1iq0wvpxOrqoHor-dQEd-Y89QmxxacrNn/view?usp=drive_link

9. https://drive.google.com/file/d/1OJtIX4ucl12ZunRyQYEO_G0_rdC91RaU/view?usp=drive_link

10. https://drive.google.com/file/d/1wKyTdMOB9NbdshqpRMOAkcnZI-PbQbNU/view?usp=drive_link

11. https://drive.google.com/file/d/1P8RL6Bqt5G-QIUY-WGX4NwzyvhNwt51d/view?usp=drive_link

12. https://drive.google.com/file/d/1iw4MjNRRNupTdHSdnM0mOeYXZ0hv_HTIN/view?usp=drive_link

13. https://drive.google.com/file/d/1uA-AM7t0evyp3uS5PRQIM1x4Rol2DY_V/view?usp=drive_link

14. https://drive.google.com/file/d/1c8g6mK8ejYp3_C8cJLEfIVFKA5bm0est/view?usp=drive_link

15. https://drive.google.com/file/d/1cxJuJeyBsEXocP9zXopfilaHK-JUF0sb/view?usp=drive_link

In all of the videos, the Armenian servicemen can be seen wearing standard-issue winter jackets, pants, and hats of the Armenian army.



Group of Armenian servicemen shortly after being captured¹⁶

After being repatriated to Armenia, seven POWs testified to the conditions of their captivity. All seven report being tortured during interrogations by Azerbaijani officials, but several emphasized that the violence was often of punitive nature rather than an attempt to extract information. R.K. notes: "Those questions weren't asked with an anticipation of an answer from us. They were just lashing out their anger verbally while beating us."¹⁷ Other testimonies corroborate the severe and frequent amount of arbitrary violence the Armenian servicemen were subjected to. E.H. describes it as follows: "There were a lot of bruises on me; they had beat me a lot. There was a room where they took us and beat us. There have been times where they beat me so much that I couldn't move, and for 2-3 days I laid down helplessly."¹⁸

At times, this physical violence was so severe that it left permanent damage, exacerbated by the lack of medical treatment provided to the POWs. "Several of my teeth were damaged because of the beatings I received, but I never received dental care. I took care of that issue myself by pulling my teeth out. I now have spinal cord issues because of the abuse I went through. I had a preexisting condition in my right ear which got worse during my imprisonment as a consequence of my abuse. Now I'm deaf in that ear" R.K. describes. Se.S. also testified to the lasting nature of his injuries sustained in Azerbaijani custody: "My arm was broken during the beating in Azerbaijan, which still hurts."¹⁹

Besides the severe amount of physical violence, the Armenian captives also endured psychological abuse. All seven testify to being forced to make statements against their beliefs, alongside constant humiliation by Azerbaijani officials. For example, Sa.S. describes how the guards would make them sing and dance to make fun of them.²⁰ Among the other problematic conditions were

16. <https://www.civilnet.am/en/news/625059/in-pow-trial-baku-says-armenian-terrorists-turned-out-to-be-border-violators/>

17. Testimony R.K.

18. Testimony E.H.

19. Testimony Se.S.

20. Testimony S.S.

the prisoners' lack of food, sleep, and hygienic items. R.K. notes that "After shower, we were forced to share a single towel with the rest of the POWs [...] at night, the lights in the cells stayed on." The testimony of Sa.S. tells a similar experience, as he describes being kept in an overcrowded cell and fed only once a day. Three Armenian servicemen also claim that Azerbaijani officials attempted to recruit them, offering earlier release and better conditions in exchange for cooperation.

All servicemen note issues with their interpreters. M.A. notes that "Sometimes the translator did not translate at all. The court tried to present that we allegedly had a translator, an attorney, that the translation of the documents was submitted, but this does not correspond to reality."²¹ Similarly, all POWs allege that they were presented with fraudulent, pre-written confessions, which were often written in Azerbaijani. According to Sa.S., the trial lasted several minutes. "There was a translator there, but he did not translate or record anything I said. [...] I had a lawyer who did not talk to me and did not represent my interests in court, he was just sitting there. The judge did not ask me any questions."

When the lawyer of R.K. visited him in prison, he asked him where his case was headed, and when he was going to be sent home. The lawyer pointed towards a picture of the Azerbaijani president hanging on the wall and said: "Only he knows the answer to these questions, we know nothing." Se.S. describes a similar experience with his lawyer: "During a meeting [...] he told me that we, the prisoners, were under the command of the President of Azerbaijan."

One of the POWs, Z.M., described the circumstances of his captivity in detail in a testimony. He was stationed near the village of Khtsaberd alongside fellow villagers and was captured on December 13, 2020. Z.M. describes being misled by Azerbaijani forces, as they initially claimed they would hand them over to Russian peacekeepers but instead took them prisoner. During captivity, Z.M. details severe physical and psychological abuse, including beatings, humiliation, and forced statements praising Azerbaijan. He recounts being taken to Azerbaijan, where he endured further beatings, inadequate food, and unsanitary conditions. The captors desecrated an Armenian church, displaying actions he considers reminiscent of the Armenian Genocide. Furthermore, Z.M. reveals a pattern of systematic abuse, including torture methods such as using pliers, electric shocks, and physical assault. He describes being deprived of proper sleep, hygiene items, and medical attention. The captives were coerced into making false statements in videos and were threatened with harm if they refused. Despite informing the Red Cross about the abuse, conditions only slightly improved, and the captives were subjected to continued mistreatment during court hearings. Z.M. also mentions the psychological tactics employed, such as forcing captives to read distorted historical narratives and coercing them to convert to Islam. After being transferred to the 'Sanhai' pre-trial detention center, Z.M. describes ongoing maltreatment, lack of proper bedding, and extreme temperature variations. The Azerbaijani captors monitored conversations and manipulated Red Cross visits to create a false impression of improved conditions. He was repatriated on October 19, 2021.²²

Reports by the Human Rights Defender of Armenia, Human Rights Watch and the European Union also highlight the harsh treatment of Armenian POWs whilst in Azerbaijani custody.²³ The general attitude and treatment were abusive, violent, and degrading. Azerbaijani soldiers consistently beat POWs, made degrading anti-Armenian chants, and punished those who deviated from these practices. The conditions of captivity were particularly severe. POWs were denied adequate food, water, medical attention, and hygiene items. They were subjected to physical

21. Testimony M.A.

22. Testimony Z.M.

23. <https://www.ombuds.am/images/files/8f33e8ccaac978faac7f4cf10442f835.pdf>;

<https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>;

<https://www.europarl.europa.eu/news/en/press-room/20210517IPR04125/human-rights-chad-haiti-and-armenian-prisoners-of-war-in-azerbaijan>

and psychological suffering, including being tied to radiators or heating rods, kept handcuffed for extended periods, and forced to stand or sit without rest. Solitary confinement lasting up to six months was reported, and captives faced arbitrary physical violence as a standard practice. Many (repatriated) POWs reported sleeping on cold floors, enduring insufficient or tasteless food, and being denied medical treatment. Many were refused food and water, and when provided, the quality was substandard. Instances of guards teasing captives with food and water were reported, and some were given a mere 10 seconds to eat before having their food discarded. Medical treatment was lacking, with wounded captives often ignored, leading to infections and prolonged suffering. Red Cross visits would sometimes lead to improved conditions, but captors would hide certain POWs during external monitoring visits to conceal the harsh conditions of their confinement.

Officially, Azerbaijani denied these allegations and has consistently changed its narrative about the Armenian servicemen. Initially, they asserted that they did not possess these individuals. Subsequently, they provided inaccurate information regarding both the number of detainees and the conditions they were subjected to, while also dismissing appeals for the release of POWs and the enhancement of their overall conditions.²⁴

Trials of the Armenian Servicemen

Azerbaijan's foreign minister confirmed the capture of 62 Armenian servicemen in a letter to the United Nations on December 28.²⁵ The Azerbaijani official claimed that the individuals were engaged in "terrorist activities," and were subject to further investigation. In his December 31 remarks, President Ilham Aliyev called the captive Armenians "terrorists." Following this, legal actions were taken against the Armenian servicemen, and the timing of the trials suggests that they were influenced by political directives. According to IHL, delaying the repatriation of POWs constitutes an offense, but by pursuing legal action, Azerbaijan now had ostensible justification to delay their repatriation.

The Armenian servicemen were trialed in 4 groups. Group 1 consisted of 14 individuals, all convicted on 2 July 2021 for illegal border crossing. Here, 12 individuals were sentenced to 6 months and the 2 others were given 4 years by judges Afgan Hajiyeu, Telman Huseynov, and Ali Mammadov. Group 2 consisted of 13 individuals, all convicted on 22 July 2021 for illegal border crossing and possession of weapons and explosives. Out of this group, 8 individuals were sentenced to 6 years, whilst 6 others were released. In this case, the presiding judge was Eldar Ismayilov, supported by Javid Huseynov and Samir Aliyev. Group 3 consisted of 13 individuals, out of which 6 were released and 7 were convicted on 23 July 2021 for illegal border crossing and possession of weapons and explosions. The 7 convicted individuals were given 6-year sentences by judges Azad Majidov, Zeynal Agheyev, and Sabukhi Guseynov. Group 4 consisted of 10 individuals, 1 being released and the other 9 being convicted on 29 July 2021 to 6 years by judges Faig Ganiyev, Mirza Khankishiyev, and Illham Mahmudov for illegal border crossing and possession of weapons and explosions.

24. <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>

25. <https://digitallibrary.un.org/record/3896498>



TRIALS OF 50 SERVICEMEN (KHTSABERD INCIDENT)

IN CAPTIVITY   REPATRIATED

Case No. 1(101)-1204/2021



PRESIDING JUDGE
AFGAN HAJIYEV

OTHER JUDGES

TELMAN HUSEYNOV
ALI MAMMADOV

CONVICTED
UNDER ARTICLE 318.2



12 POWS



6 MONTHS



2 POWS



4 YEARS

Case No. 1(101)-1242/2021



PRESIDING JUDGE
ELDAR ISMAYILOV

OTHER JUDGES

JAVID HUSEYNOV
SAMIR ALIYEV

CONVICTED
UNDER ARTICLES 228.3 & 318.2



13 POWS



6 YEARS

Case No. 1(101)-1256/2021



PRESIDING JUDGE
AZAD MAJIDOV

OTHER JUDGES

ZEYNAL AGHAYEV
SABUKHI GUSEYNOV

CONVICTED
UNDER ARTICLES 228.3 & 318.2

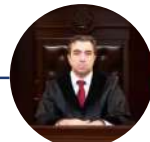


13 POWS



6 YEARS

Case No. 1(101)-1258/2021



PRESIDING JUDGE
FAIG GANIYEV

OTHER JUDGES

MIRZA KHANKISHIYEV
ILLHAM MAHMUDOV

CONVICTED
UNDER ARTICLES 228.3 & 318.2



10 POWS



6 YEARS

**ALL 12 JUDGES INVOLVED IN THE TRIALS OF 50 SERVICEMEN FROM KHTSABERD INCIDENT HAVE PREVIOUSLY
PASSED POLITICALLY MOTIVATED SENTENCES**



AFGAN HAJIYEV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



ELDAR ISMAYILOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



AZAD MAJIDOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



FAIG GANIYEV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



TELMAN HUSEYNOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



JAVID HUSEYNOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



ZEYNAL AGHAYEV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



MIRZA KHANKISHIYEV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



ALI MAMMADOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



SAMIR ALIYEV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



SABUKHI GUSEYNOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



ILHAM MAHMUDOV



[SENTENCES AGAINST POLITICAL PRISONERS](#)



Trial of the first group of Armenian servicemen

During the trials, the defendants maintained their innocence. They testified that they were called to serve in the Armenian military in November 2020 and were supplied with AKM-type rifles, ammunition, and military uniforms. Subsequently, along with other soldiers, they were placed in buses and taken to a nearby military unit, being commanded by Arsen Gazaryan. Initially, they were informed they would be taken to Kajaran. The orders changed, and they were sent to Lachin, unable to reject the order due to potential criminal consequences for disobedience. Arriving late at night, they were placed in vehicles and drove for approximately 2 hours to a mountainous area. They emphasized their lack of knowledge about the precise location of their deployment. After a 4-hour climb on foot, they reached a location where Gazaryan informed them that the war was over, and they were ordered to take up defensive positions without using force. During their 16-day stay, they did not see any Azerbaijani soldiers, as the area was often foggy. They were given food by Russian peacekeepers. On December 13, 2020, they were ordered to come down from their positions and when they descended, Gazaryan was not present, and they encountered Azerbaijani soldiers who informed them that the war had ended and ordered them to surrender. They surrendered without objection, handed over their weapons, had their hands tied, and were taken to an unknown location by the Azerbaijanis.

After their testimonies, the court disagreed with the preliminary investigation's interpretation, stating that the crimes were not committed by an "organized group." Moreover, the court ruled that the defendants' actions did not fall under the offenses outlined in Articles 279 and 214 of the Criminal Code. Instead, the court classified their involvement as "a group of persons acting by pre-conspiracy," and dismissed charges related to terrorism, participation in illegal armed formations, and illegal possession of weapons and ammunition.

All 12 judges involved in these trials have previously passed sentences by political order. For example, Afgan Hajiyeve, the judge presiding over the first group, has been involved in numerous politically sensitive trials and has convicted journalists and activists. In 2015, prominent human rights activists Arif Yunusov and Leyla Yunus were sentenced to lengthy prison terms on fabricated charges by Hajiyeve. This action drew criticism from Western governments and was denounced as a show trial by human rights organizations.²⁶ Eldar Ismayilov, the judge presiding over the second group, has also sentenced numerous critics of the regime under questionable legal circumstances. Similarly, all other judges have been involved in similarly politically sensitive trials, successfully sentencing critics of the Azerbaijani state.²⁷

Notably, some of those sentenced were released in exchange for providing landmine maps, an action officially acknowledged by Azerbaijan.²⁸ This process had no legal basis and was instead based on political order and incentives. Similarly, from capture, custody, trial, to release, every phase of these procedures was arranged and based on political directives, lacking due legal process and justification.

26. <https://www.omct.org/en/resources/urgent-interventions/trial-against-leyla-yunus-and-arif-yunusov-fainting-of-mr-yunusov-and-hurdles-to-trial-observers>

27. <https://www.ipd-az.org/judges/>

28. <https://www.reuters.com/world/europe/azerbaijan-hands-over-10-captured-soldiers-armenia-2021-12-04/>

Many of the captured individuals were convicted under domestic law under various charges. Of those who were convicted and sentenced, the prison terms ranged from 6 months to 4 years or 6 years. The 4 groups' sentencing took place at the Baku Court of Grave Crimes, with judgments delivered between July 2, 2021, and July 19, 2021. All 26 individuals were found guilty of committing crimes under Article 318.2 of the Criminal Code of Azerbaijan. Additionally, 24 of the 26 were also convicted under Article 228.3. These charges constitute the following:

- **Article 318** - Crossing of protected frontier of the Azerbaijan Republic without established documents or outside of checkpoint of frontier is punished by the penalty at a rate from two hundred up to five hundred of nominal financial unit or imprisonment for the term up to two years.
- **Article 228** - Illegal purchase, transfer, selling, storage, transportation and carrying of firearms, accessories to it, supplies, explosives.²⁹

Because these individuals were convicted of committing these acts as part of an organized group, they received extended sentences as this was seen as an aggravating factor. The 26 POWs were taken captive by Azerbaijani forces in an almost identical situation, of which several were released over the course of a few months. Besides the domestic criminal charges, Azerbaijan failed to provide a good reason for the delay in repatriation, and the approach it has taken to this entire group is of arbitrary character, lacking any consistency.

A key issue is the denial of combatant privilege to the captured individuals. The Geneva Convention (GC) Article 4 states that prisoners of war are, "individuals who have fallen into the power of the enemy."³⁰ Combatant privilege is the privilege and recognition given to legitimate individuals in a conflict, and in this case entitles them to specific treatment upon their capture as prisoners of war. Part of this treatment includes no prosecution of prisoners of war for participation in hostilities.³¹

Were they classified as combatants, the captured individuals would have been considered prisoners of war and as such been immune to charges in Azerbaijani domestic courts; prisoners of war are immune from prosecution for basic participation in a conflict.³² Even in regards to grave breaches of IHL such as war crimes, IHL continues to recognize the rights of prisoners of war. GC III Article 85 states, "prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention."³³ The charges, trials, and convictions of the captured individuals are thus no justification to deny the captured individuals the status of prisoners of war.

The classification for combatants, whether formal members of the armed forces of a party to a conflict or members of militias or other such groups, is dependent on the ability to clearly distinguish the combatant from civilians, as well as additional criteria for those not belonging to the armed forces of states participating in a conflict.³⁴

29. https://adsdatabase.ohchr.org/IssueLibrary/AZERBAIJAN_Criminal%20Code.pdf

30. <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-4/commentary/2020?>

31. <https://casebook.icrc.org/law/combatants-and-pows#chapter4>

32. https://casebook.icrc.org/a_to_z/glossary/immunities

33. <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-85/commentary/2020?>

34. <https://casebook.icrc.org/law/combatants-and-pows>

As the captured individuals are members of the armed forces of the Republic of Armenia and on active duty at the time of their capture, as well as their capture taking place at a location at which they were under orders to take up defensive positions, this would classify them as combatants under IHL. Furthermore, in the 1960 Commentary on the GC III, Article 2, it is noted that, "even if there has been no fighting, the fact that persons covered by the Convention are detained is sufficient for its application."³⁵ Thus, the capture of these individuals occurring after the signing of the ceasefire does not justify the refusal to classify them as prisoners of war.

As the captured individuals fall under the legal definition of "prisoners of war" - "individuals who have fallen into the power of the enemy" - and being members of the armed forces of the republic of Armenia, this legally establishes them to be prisoners of war. As GC III Article 2 states, the timing of their capture is not a suitable justification to deny them the status of prisoners of war. Article 85 further states that prosecution by the detaining power does not remove this status from them.

The Trilateral Statement contains specific mention to the release of prisoners of war from the conflict; this implies Azerbaijan's acceptance of combatant privilege in principle. The ceasefire also established the line of contact between the forces of the Republic of Azerbaijan and the forces of the Republics of Armenia and Artsakh. The capture of members of the armed forces of the Republic of Armenia on the Armenian side of the line of contact and the failure to offer them combatant privilege - which was acknowledged by Azerbaijan in the ceasefire agreement - can then be considered arbitrary.

The charges brought against the captured individuals under Article 318.2 are only possible due to the lack of combatant privilege extended to the captured individuals; illegal border crossings are not triable offenses for prisoners of war under IHL. Furthermore, the charges brought against them under Article 318.2 ignore the terms of the ceasefire agreement, which established the line of contact between opposing forces. Under the terms of the ceasefire agreement, the positions the captured individuals were stationed at was not on the Azerbaijani side of the line of contact.

It is of note that many POWs were convicted for illegal border crossing, which the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has recommended to be repealed and decriminalized as these "should never be considered criminal offences, as they do not infringe upon fundamental, legally protected values and, as a result, are not crimes per se against persons, property or national security."³⁶

Their carrying of arms, the subject of the charges brought against them under Article 228.3, is not mentioned in the criteria for the classification of a combatant belonging to the armed forces of a state in an international conflict; it can be safely assumed that the carrying of arms by members of the armed forces of a party in an international conflict is implied. Additionally, the carrying of arms is specifically mentioned as distinguishing parties to a conflict outside of armed forces as a feature that would distinguish one as a combatant as opposed to a civilian. In any case, the carrying of arms would reinforce the classification of the captured individuals as prisoners of war, making the charges brought against them under Article 228.3 arbitrary and without legal merit.

The lack of independence in the judiciary of Azerbaijan further compounds the issue of the arbitrariness of the charges, trials, and convictions of the captured individuals.

35. <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-2/commentary/1960>

36. Concluding observations on the third periodic report of Azerbaijan, OHCHR, Published 2 November 2021, <https://uhri.ohchr.org/Document/File/810bc6b3-220e-49c4-b27f-bc6094ebb6a1/ABE74937-537E-4880-BDAA-A0510D8DA118>

According to the BTI transformation index of 2022, “there is no independent judiciary. The courts are corrupt and often operate as a punitive mechanism in the hands of the executive power”.³⁷ According to the Freedom House report of 2022, the judiciary in Azerbaijan is “corrupt and subservient to the executive. Judges are appointed by the parliament on the proposal of the president. The courts’ lack of political independence is especially evident in the many trumped-up or otherwise flawed cases brought against opposition figures, activists, and critical journalists.”³⁸ Azerbaijan is ranked last by its record on independence of judiciary by Eastern Partnership Index 2020-2021 based on its existing system of appointment and removal of judges, corruption cases, etc.³⁹

The lack of independence in the Azerbaijani judiciary has contributed to concerns over fair trials; consecutive reports by the US State Department have noted that, “judges and prosecutors took instructions from the Presidential Administration and the Justice Ministry, particularly in politically sensitive cases,”⁴⁰ and that, “the constitution and law provide for the right to a fair and public trial, but the judiciary generally did not enforce this right in most cases that were widely considered to be politically motivated. In such cases, criminal defendants were often denied the right to a presumption of innocence; a fair, timely, and public trial; to communicate with an attorney of their choice; to have adequate time and facilities to prepare a defense; to confront witness and present one’s own witnesses and evidence; and not be compelled to testify or confess guilt.”⁴¹

The US State Department commented on this case in particular regarding the irregularities with the judicial proceedings against the captured individuals, noting, “the men were assigned public defenders; none were permitted to hire their own attorneys. Several stated that they had not seen the attorney representing them before meeting them in the courtroom during the trial and were not provided relevant documents. Some persons captured with this group were returned to Armenia without a conviction, a few were repatriated while their trials were underway, and some were repatriated after six months when they were released for time served.”⁴²

The United Nations Working Group on Arbitrary Detention noted the precedent of, “finding a detention arbitrary in cases where the judiciary is indistinguishable from the executive, or if the executive branch has the ability to control the workings of the adjudicatory body.”⁴³ This referenced past cases such as *Bahamonde v. Equatorial Guinea* and explicitly noted the need for a clearly defined separation between the judicial and executive branches for a fair trial.⁴⁴

37. BTI Transformation Index, Azerbaijan country report 2022, available at <https://bti-project.org/en/reports/country-report/AZE>

38. Freedom in the world report 2022, Azerbaijan, Freedom House, available at <https://freedomhouse.org/country/azerbaijan/freedom-world/2022>

39. Eastern Partnership Index 2020-2021, Charting Performance in the Eastern Partnership: Democracy and Good Governance, Policy Convergence and sustainable development, available at <https://eap-csf.eu/wp-content/uploads/EaP-Index-2020-2021.pdf>

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

41. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>

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

43. Genser J. *The UN Working Group on Arbitrary Detention: Commentary and Guide to Practice*. Cambridge: Cambridge University Press; 2019. doi:10.1017/9781139540711, p. 283-4

44. *Bahamonde v. Equatorial Guinea*, Communication No. 468/1991, Human Rights Committee, CCPR/C/ 49/D/468/1991, Oct. 20, 1993, at } 9.4; Joseph & Castan, at 404.

The elements of Armenophobia in Azerbaijan, as identified by the European Commission against Racism and Intolerance⁴⁵ and the Advisory Committee on the Council of Europe Framework Convention for the Protection of National Minorities,⁴⁶ contribute to the politically sensitive nature of the charges, trials, and convictions of the captured individuals. It cannot be discounted that these trials are of discriminatory character, greatly contributing to the arbitrary nature of these individuals' detention. Widespread, institutionalized hatred towards Armenians has long been documented in Azerbaijan, and it is likely that this bias played a role in the disparate treatment of the Armenian servicemen.⁴⁷ This not only compromises the legitimacy of the charges, but also indicates that the detention is driven by factors beyond legal considerations, rendering it arbitrary and inconsistent with international human rights standards.

International human rights law dictates the following fair trial standards:⁴⁸

- **Presumption of Innocence:** The accused is presumed innocent until proven guilty according to law. The burden of proof rests with the prosecution.
- **Right to a Competent, Independent, and Impartial Tribunal:** The accused has the right to be tried by a competent, independent, and impartial tribunal established by law.
- **Right to Legal Counsel:** The accused has the right to legal representation, and if they cannot afford a lawyer, they should be provided with one at state expense.
- **Right to a Public Trial:** In general, trials should be open to the public. However, in certain circumstances, such as protecting the interests of juveniles or national security, a trial may be conducted in private.
- **Right to Adequate Time and Facilities for the Preparation of Defense:** The accused should have sufficient time and resources to prepare a defense.
- **Right to Examine Witnesses:** The accused has the right to examine, or have examined, witnesses against them and to obtain the attendance and examination of witnesses on their behalf.
- **Right to a Fair and Public Hearing:** The proceedings should be fair and conducted in a public manner. The accused has the right to be informed promptly and in detail of the nature and cause of the charges against them.
- **Protection Against Self-Incrimination:** The accused cannot be compelled to testify against themselves. They also have the right to remain silent.
- **Right to Appeal:** The accused and the prosecution both have the right to appeal a verdict or sentence to a higher tribunal.
- **No Double Jeopardy:** The principle of non-bis-in-idem ensures that a person cannot be tried or punished twice for the same offense.

45. European Commission against Racism and Intolerance. CRI(2016)17. ECRI Report on Azerbaijan (fifth monitoring circle). Adopted on 17 March 2016. Published on 7 June 2016. At par. 25. The full text of the report is available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-V-2016-017-ENG.pdf>

46. Fourth Opinion on Azerbaijan – adopted on 8 November 2017, ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, available at

<https://rm.coe.int/4th-acfc-opinion-on-azerbaijan-english-language-version/1680923201>

47. European Commission against Racism and Intolerance. CRI(2016)17. ECRI Report on Azerbaijan (fifth monitoring circle). Adopted on 17 March 2016. Published on 7 June 2016. At par. 25. The full text of the report is available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-V-2016-017-ENG.pdf>

European Commission against Racism and Intolerance, Report on Azerbaijan, Adopted on 28 June 2002, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-II-2003-003-ENG.pdf>

48. <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>
<https://www.ohchr.org/sites/default/files/ccpr.pdf>

The convictions of the captured individuals fail to meet international legal standards and fall under the classification of arbitrary detention based on these criteria. The violation of combatant privilege breaches IHL in that the captured individuals should have been classified as prisoners of war by Azerbaijan, the detaining power; such would have entitled them to certain privileges, including immunity for the charges brought against them in Azerbaijani criminal court. These charges themselves are rendered irrelevant by the captured individuals being members of the armed forces of a party to a conflict, by definition giving them combatant privilege and meaning their status should have been that of prisoners of war. Prior even to the judgment being rendered, these were severe irregularities regarding the treatment of the captured individuals.

The legal proceedings themselves then failed to meet normative fair trial standards based on prior judgments and the testimony of those individuals to have been repatriated. The unaddressed concerns of the independence of the judiciary in Azerbaijan raise questions of the ability of the tribunal to provide a fair trial. The ongoing issue of Armenophobia in Azerbaijan further complicated the possibility of a fair trial for the captured individuals. The circumstances in which these trials and convictions took place, one where the impartiality and independent tribunal was in question, made a fair trial for the captured individuals impossible. With the additional testimony of the captured individuals regarding the deficiencies in translation, legal representation, forced confessions, and lack of meaningful ability to appeal, the trials for the captured individuals fell short of the standards for fair trial based on the criteria of the UDHR.

The OHCHR outlines the following criteria for arbitrary deprivation of liberty:

“When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights [UDHR] and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”⁴⁹

These issues relating to the trials and convictions of the captured individuals are not in observance with international norms regarding the right to a fair trial, and when taken into consideration with the breach of IHL regarding prisoners of war, meet this criteria to be considered arbitrary detention.

49. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet26en.pdf>

Conclusion

The events surrounding the capture and subsequent legal proceedings of the Armenian servicemen raise serious concerns about the adherence to international law and human rights standards. The Trilateral Statement outlined specific provisions such as the release of prisoners of war, and established the line of contact between the conflicting parties. However, the treatment of the Armenian servicemen, from their initial capture to the trials conducted in Baku, demonstrate a disregard on the part of Azerbaijan for these principles. The flaws in Azerbaijan's judicial system are evident in the failure to provide a fair trial for high-profile cases, characterized by the unfounded and irrelevant charges brought against these prisoners of war. In violation of international law, they have not been treated as prisoners of war and have been charged with crimes relating to their basic participation in an international conflict, namely illegal border crossings and carrying firearms.

These trials, often conducted without proper legal representation and interpreters, rely on false evidence and coerced confessions, undermining their legitimacy. Additionally, many of these judgments are issued by the Baku Grave Crimes Court, known for handling high-profile cases. Human rights activists, journalists, and other government critics receive lengthy prison sentences there on questionable or fabricated charges, indicative of the pre-determined nature of these verdicts. The involvement of judges with a history of politically motivated rulings in trying these POWs further compounds concerns about the fairness of these trials, raising questions about the judiciary's impartiality and independence. Furthermore, international bodies have raised concerns regarding the independence of Azerbaijan's judiciary, particularly in politically sensitive cases. The circumstances of their captivity revealed by reports and testimonies reveal that these individuals were subjected to inhumane treatment, physical and psychological abuse, as well as an utmost disregard for the basic rights of the detainees. Additionally, the selective release of some detainees in exchange for providing landmine maps is similarly problematic and adds another layer of inconsistency and arbitrariness to the process. The evident Armenophobia in Azerbaijan, as identified by international bodies, raises concerns about the discriminatory nature of the charges and trials.

Although the Armenian servicemen were repatriated, they still endured arbitrary detention for up to three years. As with the previously repatriated servicemen, the exchange of the final 26 prisoners captured near Khtsaberd was also based on political favors, outside of any established legal procedures. From capture, custody, trial, to release, the treatment of these Armenian servicemen was arranged and based on political directives, with a complete lack of legal process and justification. Their captivity meets all the criteria of arbitrary detention.