



Prisoners in the Qobustan closed prison, which is notorious for its harsh conditions. © HRCA

IHF FOCUS: Elections; freedom of expression and the media; independence of the judiciary; freedom of association; peaceful assembly; judicial system, independence of the judiciary and fair trial; torture, ill-treatment and misconduct by law enforcement officials; conditions in prisons and detention facilities; right to privacy; international humanitarian law; homosexuals' rights; human rights defenders.

Improvements were observed in some fields of human rights in Azerbaijan in 2000, but it was difficult to assess whether they took place only as a result of discussions at the Council of Europe to invite Azerbaijan to become a member state. The new Criminal Code and the Code on the Execution of Sentences improved prisoners' situation somewhat. NGOs were allowed to visit prisons, but this right was abruptly restricted after the country's accession to the Council of Europe. Judicial reform did take place, improving, for example, the system of appointing judges.

Nevertheless, many problems persisted. Dozens of political prisoners remained in prison, despite amnesties, and torture, ill-treatment and other misconduct continued, with the perpetrators largely escaping punishment. The due process standards were violated through the fabrication of evidence and procedural violations, and while the elections marked progress compared

with previous ones, they fell seriously short of international standards.

Elections²

On 5 November, the 125 members of the *Milli Majlis* (National Assembly) were elected for a term of five years by the citizens of Azerbaijan through a direct and secret vote, on the basis of a mixed system.

The election legislation was supplemented in 2000 by the 9 June Law on the Central Election Commission (CEC Law), the 5 July Law on Elections to the *Milli Majlis* and the Law on the Mass Media. The CEC Law in particular provided for the multi-party composition of the election administration. The two legislative texts on elections incorporated recommendations by the OSCE/ODIHR and the "Venice Commission."

The three-tiered election administration was composed of the Central Election Commission (CEC), 100 Territorial Election

Commissions (TEC) and some 5,001 Polling Station Election Commissions (PEC). The CEC included six members appointed by the parliamentary majority; six appointed by so-called independent parliamentarians; and six appointed by the parliamentary minority. Decisions were made with a two-thirds majority. However, the opposition doubted the political neutrality of the independent parliamentarians.

By 22 September, the CEC had registered five parties to run in the elections. The applications of eight parties and blocs were rejected on suspicion that some signatures in the nomination petitions papers had been falsified. As a result of the invalidity of the alleged falsified signatures, the number of signatures fell below the 50,000 limit required for registration. Four of the rejected parties appealed to the court, which upheld the CEC's decisions. However, in a 6 October letter, President Aliyev stated that "as the refusal of registering political parties for the proportional ballot restricts to a certain degree opportunities for people from all strata of society to express freely their political views...[I] ask the CEC to reconsider its decision." On 8 October, the CEC reversed its decision and registered all parties and blocs originally denied registration.

408 out of 817 candidates who applied for the majority election were registered by the TECs, who had initially rejected many opposition parties and initiative groups, predominantly for alleged irregularities concerning the required 2,000 valid signatures required for a candidate's registration. Many of the decisions were appealed to the CEC or local courts. The ad hoc Committee of the Council of Europe regretted that the CEC failed to establish a credible and consistent procedure to verify voter signature petitions.

The ruling New Azerbaijan Party (YAP) registered 140 candidates; there were 147 "independent candidates," and the 16 other parties had a total of 113 candidates. From the latter total, 40 candidates were

from the Popular Front, 28 were from the National Independence Party, 22 were from Musavat, four were from the Democratic Party and the remaining candidates represented other parties.

The ruling YAP won 17 seats (62.45 percent) in proportional elections and 56 seats (56 percent) in majority elections, thus creating a majority. The opposition won 12 seats (less than 10 percent).

The Council of Europe Observers' Mission, the OSCE Parliamentary Assembly and the OSCE/ODHR all observed the parliamentary elections.

The ad hoc Committee of the Council of Europe "...recognised that the election marked progress over previous elections - in particular with regard to enhancing political pluralism. The newly amended election legislation provided multiparty election commissions at all levels. The media coverage provided for a wide diversity of views, although the state media clearly favoured the incumbents... However, strong disappointment was expressed regarding the polling process and the serious deficiencies observed in regard to the implementation of the election legislation... There seemed to have been a clear manipulation of the electoral procedures. An appeal was made to the authorities to urgently investigate in an open and transparent manner all irregularities... The elections fell seriously short of international standards."

The new Law "On the Non-Governmental Organizations" was adopted in October. Among other provisions, it rejects the observation of elections by NGOs that receive foreign funding, i.e., the entire NGO community trained and funded by grants from foreign sponsors. As a result, the experienced NGOs that observed the previous elections in 1995, 1998 and 1999 could not observe the 5 November parliamentary elections.

Re-runs took place on 4 January 2001 in 11 districts where the President had cancelled the election through a decree dated 25 November.

Freedom of Expression and the Media

Legal provisions governing the use of free airtime by the state media were respected during the election campaign. The state-owned television, AZTV 1- the only television channel that covers the whole country - implemented the law in the way that and all political parties were allowed to present their platforms to the electorate and express their opinions freely.

Nevertheless, outside "free airtime", the public media favoured the ruling party considerably and the opposition was only covered extremely marginally, i.e. about 1 percent of all political programmes. All candidates were able to buy extra airtime on the private channels, in an attempt to provide more balanced coverage of the election campaign.

Freedom of the Media

According to the Ministry of Press and Information, 348 newspapers, 106 magazines, 25 news agencies and 10 television and radio stations were registered in Azerbaijan as of 1 January 2000. In 1999, the numbers were 344, 86, 25, and 30 respectively. However, in 2000, only 170 newspapers were published, at least 43 newspapers stopped publishing, and 13 newspapers began publishing. Three new radio stations and one independent television channel began operating.

The problems faced by the printed media related mainly to the fact that newsprint prices doubled during the year. However, there were also dozens of cases of harassment, beatings and arrests of journalists, trials against media outlets, fines, and other forms of pressure.

◆ On 8 February, dozens of residents of the village of Nehram in the Autonomous Republic of Nakhchivan (NAR) arrived in Baku by airplane paid by one of NAR officials. They attacked the editorial office of the opposition newspaper *Yeni Musavat* while the police present did nothing to intervene. The police initiated investigations,

but by the end of 2000 no measures had been taken against the hooligans, whose names and photographs were published. *Yeni Musavat's* editor-in-chief, Rauf Arifogly, was arrested on 23 August and charged with participating in an attempted terrorist act. This happened after a hijacker had called at the editorial office and made this allegation. Arifogly was released on 5 October, but his trial was still pending as of this writing.

◆ In March, Minister of Culture Polad Bulbuloglu charged the newspapers *Paritet*, *Hurriyyet* and *Bakiskie Vedomosti* with insulting his dignity after they wrote critical articles about him.

◆ On 10 March, Azer Aykhan, the editor of the erotic newspaper *Alem*, was fined for "distributing pornography" (Article 228 of the Criminal Code), but was immediately amnestied. The lawsuit was brought by a group of Islamic religious activists who considered the photos of topless women to be pornographic.

◆ On 3 June, a correspondent with the *Yeni Musavat* newspaper in the Qazakh region, Elkhan Hasanli, was sentenced to five days in administrative detention reportedly for resisting the police. The local branch of the Human Rights Centre of Azerbaijan considered the sentence to be revenge for his articles criticising the Government.

◆ In July, First Deputy Prosecutor General R. Rzayev officially warned the television and radio company ANS that a broadcast interview with Chechen field commander Shamil Basayev amounted to support of terrorism and demanded that the station stop airing similar programmes. ANS President Vahid Mustafayev held this action to be a violation of freedom of the media guaranteed under the Constitution.

◆ On 17 July, the Yasamal District Court in Baku deprived the magazine "Monitor-Weekly" of its license. The suit was brought by the Ministry of Press and Information.

The editor-in-chief of the magazine, Elmar Huseynov, was not invited to the trial, where the court recommended that he should not be granted a license in the future.

The new law "On the Mass Media" was adopted on 8 February. Journalists and human rights activists considered some of the articles to be controversial. The Council of Europe required Azerbaijani authorities "to re-examine and amend the law on the media within two years of its accession at the latest."³

On 22 July, the Government celebrated the 125th anniversary of the first Azerbaijani newspaper *Ekinchi*. On this occasion, President Aliyev met dozens of editors of governmental, opposition and independent media who informed him on the problems faced by the media. The situation, however, did not improve as a result.

Harassment of Journalists

The harassment of journalists remained a frequent phenomenon in 2000.

◆ On 25 February, Shahriyar Rauf, editor-in-chief of the television and radio company Sara, was beaten by plain clothed individuals. Rauf had been lobbying for the re-opening of Sara since its closure in October 1999.

◆ On 27 April, some ten refugees from Armenia attacked the editorial office of the newspaper *P.S.* and threatened editor-in-chief, Eldaniz Elgun, because of an article he had published.

Typically, such attacks were not investigated.

Access to Information

From January to March, journalists frequently faced problems covering the trial of the case involving a 1999 riot in the Qobustan Prison. The trial was organised in the prison itself, and journalists had problems with transportation and access to the prison.

In the second half of 2000, journalists and human rights defenders were no longer allowed to visit the prisons.⁴

On 1 February, Aynur Aliqizi, a journalist with the newspaper *Telescope*, was not permitted to enter Parliament. The parliament guards cited the trial of one of members of Parliament, Minaya Aliyeva, against the newspaper as the reason for the refusal.

On the 5 November elections, journalists were widely refused access to information.

Freedom of Association

The situation regarding the registration of legal entities improved significantly since December 1999. The Azerbaijan Committee on Human Rights and Democracy was registered in January, after five unsuccessful attempts since 1995. The Trade Union of Journalists of Azerbaijan was registered on 28 March, also after several unsuccessful attempts. However, another trade union was refused official registration.

The Workers' Union of Azerbaijan was refused registration on 5 May 1999. The renewed application in 2000 was reportedly rejected without any mention of the name of the union. Many observers believed that registration was not possible because of the union's close affiliation with the Communists.

One of the oldest and most influential political parties, the Azerbaijan Democratic Party, was registered in 2000. The party had previously been refused numerous times, including one occasion on which the Supreme Court overturned the decision. However, the Supreme Court ruling was not respected.

At the same time, the party *Namus* claimed that its registration application had been rejected unlawfully. The Islamic Party continued to face rejection, and has done so since 1995.

Some leading opposition parties faced hate speech and harassment in the pre-election period of 2000.

◆ On 18 August, hijacker Mehdi Huseynov, who was identified as the chief of the

Djulfa regional branch of the opposition Party Musavat, was arrested. Soviet-style "protest meetings by the public" were immediately organised at state enterprises, blaming the opposition of terrorism. Hundreds of opposition members left their parties in the countryside, in some cases under threat and strong administrative pressure from the local authorities.

◆ The party newspaper *Yeni Musavat* and its employees were harassed, and the editor-in-chief Rauf Arifoglu was arrested.

Peaceful Assembly

Permits for peaceful assemblies remained subject to a controversial policy in 2000. Many unsanctioned meetings, street rallies, and pickets were dispersed by the police.

◆ The unsanctioned meeting of the opposition in Baku on 29 April, demanding free elections, was dispersed forcefully by the police. Hundreds of people were injured and about 50 demonstrators were arrested. As of the end of 2000, all of them had been released, but the charges had not been dropped.

◆ The peaceful picket by nine prominent human rights defenders under the slogan "Police, know and respect the Constitution!" was also dispersed by police officers on 5 May in Baku.

Following the elections, mass protests against the hard economic situation were held in the rural regions.

◆ On 18 November, clashes between demonstrators and police forces in the towns of Sheki and Djalilabad resulted in injuries on both sides. Hundreds of people were arrested and interrogated for a short period of time. As of early February 2001, at least 18 Sheki demonstrators were still being held in detention in the Ganja investigation prison and charged with crimes.

On the other hand, in the pre-election period, the authorities did permit some

public opposition activities. For example, the first permitted opposition meeting in 2000 took place on 20 May and attracted some hundreds of participants.

Judicial System, Independence of the Judiciary and Fair Trial

The judicial system was changed significantly on 1 September. The new system includes the courts of first instance (City and Districts Courts, Military Courts, the Court for Heavy Crimes, the Military Court for Heavy Crimes as well as the Regional Economic Courts), the Appellate and Economic Appellate Courts, the Supreme Court of the Nakhchivan Autonomous Republic and the Supreme Court. The Constitutional Court was established in 1998.

In the courts of first instance (excluding the Court for Heavy Crimes), decisions are to be made by one judge, while the other courts have 3-5 judges. Only the Court for Heavy Crimes has a jury.

In January, the President ordered that judges be appointed following an examination and an interview. Of the 900 chosen candidates, 602 were able to take the test and only 318 reached the second stage. The new procedure was introduced to prevent judges' dependence of the Executive: prior to 2000, judges had been chosen by the Ministry of Justice and appointed by the President.

The continuing discussion about political prisoners became more lively in the context of Azerbaijan's expected membership in the Council of Europe. The Council of Europe Parliamentary Assembly (PACE) stated on 28 June that it was necessary for Azerbaijan to release its political prisoners or review their cases. In particular, the PACE noted the cases of Alakram Hummatov, Rahim Qaziyev and Isgander Hamidov.

The radical opposition claimed that there were 47 political prisoners in Azerbaijan who were members of the Popular Front party, the Democratic Party of Azerbaijan and the Musavat Party, in addition to prisoners representing other political

groups. The list compiled by human rights groups, however, differed from that information. According to the Human Rights Centre of Azerbaijan, as of late 2000, there were 716 political prisoners belonging to 11 political parties or groups serving prison terms, 28 of whom were imprisoned in 2000. Some names were still being checked as of this writing.

While the opposition political groups simply claimed that their political prisoners were innocent, human rights defenders focused on the violations of fair trial standards, unfair legal procedures, and the torture and ill-treatment of prisoners. The Human Rights Centre of Azerbaijan stated that it was obvious that the authorities generally falsified the political background of the events against which the persons were arrested, fabricated evidence, violated the presumption of innocence, resorted to ill-treatment and torture, restricted adequate legal consultation, used unfair court procedures, and restored the Stalin era's principle of collective guilt.

According to reliable information, on the eve of Azerbaijan's accession to the Council of Europe, political prisoners were subjected harsher treatment. For example, in September and October, dozens of political prisoners were transferred from ordinary prisons to the Qobustan closed prison with harsher conditions. Three of them experienced the transfer two times.

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Torture was criminalised in Azerbaijan following the recommendations of the UN Committee Against Torture. On 1 September, it was included as a crime in the new Criminal Code (Article 113) and defined as "causing physical pain or mental suffering to persons who are detained or whose freedom is limited in other ways." The crime carries a punishment of 7 to 10 years imprisonment.

Torture inflicted by an official upon a detainee with the goal of obtaining infor-

mation, a confession or to punish the person, is punishable by 5-10 years imprisonment (Article 133.3). The torture of a military serviceman by his superior is punishable by 3-7 years imprisonment (Article 331.3).

In March, President Aliyev issued several decrees and instructions concerning the investigation of allegations of torture published by Amnesty International and Human Rights Watch. He also instructed the Presidential Commission on Pardons not to consider the cases involving torturers. In April, the President criticised the Prosecutor General and his office for covering up the torture of a non-political detainee in 1994: the detainee died. This led to the dismissal of the Prosecutor General, his deputy and many prosecutors, and the Investigation Department of the Prosecutor's Office was abolished. One prosecutor was arrested in Russia, extradited to Azerbaijan and imprisoned.

However, allegations of the torture of political prisoners were typically ignored, and perpetrators were only punished administratively, if at all.

◆ The allegations of torture voiced from January to March during the trial related to the 1999 riot in the Qobustan Prison were not investigated. Many prisoners stated that they had been tortured to extract confessions of guilt, and some of them had shown visible marks of torture.

◆ Opposition sources and the media reported that a number of detainees were ill-treated and tortured in Sheki and Jalilabad after the mass disorder and clashes in these regions on 18 November.

Conditions in Prisons and Detention Facilities

The New Code on the Execution of Punishments came into force on 1 September. Like the previous code, it provides that public associations have the right to participate in the education of prisoners

(Article 20). However, by the end of 2000, no legislation had been adopted on NGO access to prisons, a fact that affected the co-operation of NGOs and the prison administration.

There was a controversial situation involving public control of penitentiary institutions: On 1 June, following the recommendations of PACE, an agreement was signed with the International Committee of the Red Cross (ICRC) guaranteeing it unrestricted and unreserved access without outside witnesses to prisoners. In early summer, the ICRC began visiting the prisons most closed to public control. However, since the summer, domestic human rights defenders could only access prisons for women and juvenile offenders. The Human Rights Centre of Azerbaijan could visit the Investigative Prison of the Ministry of National Security, the Bayil Prison (Investigative Isolator No.1), the Central Prison Hospital, and the prisons for women and juvenile offenders. After the Centre criticised the holding of political prisoners, it was no longer granted access to prisons.

According to reliable information, the general conditions in prisons improved. The Code of the Execution of Punishments provided for some additional rights. For example, those sentenced to life in prison were granted the right to have four instead of two family meetings per year, including one long-term visit (up to three days), and six phone calls instead of four. In addition, there were improvements in the prison regimes, etc.

However, widespread corruption interfered with the maintenance of normal relations between prisoners and their families: it was estimated that hundreds of thousands of dollars were paid monthly by relatives to secure the rights that the prisoners were supposed to enjoy by law.

Prisoners' correspondence underwent prison censorship on the basis of Article 83.2 of the Code on the Execution of Punishments. The absence of legislation prohibiting this kind of censorship resulted in the

barring of letters, literature and other material on political life and human rights issues.

Nevertheless, some important steps were taken to inform prisoners of their rights. In the summer of 2000, a pocket-size *Reference Book for Prisoners* was prepared by the Ministry of Justice together with the Human Rights Centre of Azerbaijan and distributed in some prisons. As of early 2001, following changes in penal legislation, a new edition was under preparation.

The Central Administration for the Execution of Court Decisions (MQIBI) of the Ministry of Justice began publishing a specialised magazine *Cemiyet ve Ceza* (Society and Punishment) on 1 March; it focuses on the problems of the penitentiary system.

The Government preferred to liberate political prisoners, rather than review their cases. In 2000, more than 160 political prisoners were released by presidential pardon.

Right to Privacy

As of 1 September, Article 156 of the new Criminal Code criminalises the violation of the right to privacy in the form of the "illegal collection of information about the private life of a person, comprised of content related his/her personal or family secrets." Such an act committed by an official, by abuse of his/her position, can be punished by imprisonment of up to two years.

The violation of confidential correspondence, telecommunications, other mail and telegraph communication remained a crime. The new Criminal Code also provides for a punishment for violations of "other forms of communication," i.e. e-mail, Internet telecommunication, etc. According to the Human Rights Centre of Azerbaijan, this was important because of the inappropriate means of controlling electronic communications.

The "Internet war" between the Azerbaijani and Armenian hackers, with dozens of attacks of "propagandist" web sites, ended in February at a mutual "peace agreement" between the computer crimi-

nals. This event prompted the Parliament to include Section 30 on "Crimes in the Sphere of Computer Information" in the new Criminal Code. In particular, Article 271 prohibits unsanctioned access to computer information.

However, one negative outcome of the "Internet war" was that the Council of Internet Providers proposed co-operation with the Ministry of National Security (MNS) in March. In connection with this, the Human Rights Centre of Azerbaijan expressed its concern that the MNS could access confidential information about Internet users.

International Humanitarian Law

The new Criminal Code contains new provisions on "military crimes," including mercenary (Article 114), violations of the law of war and traditions (Article 115), violations of international humanitarian law during armed conflict (Article 116), inaction or criminal order during armed conflict (Article 117), marauding (Article 118), and abuse of the protected signs of the ICRC, UN, etc. (Article 119).

In 2000, human rights groups in Azerbaijan and Armenia co-operated to protect the rights of prisoners of war. For example, in March, the Human Rights Centre of Azerbaijan, together with the Foundation Against Violation of Law (FAVL, Armenia) and the NGO "Former Political Prisoners for Human Rights" (Georgia) visited ten Azerbaijani prisoners of war in Armenia who had been held for 2-21 months. The human rights defenders discussed the problem with the Armenian State Commission on "Prisoners of War, Hostages and Persons Missing in Action". In June, the Vice-President of FAVL visited Azerbaijan and met with the respective Azerbaijani Commission and local NGOs. As a result of these efforts, two Armenian and 13 Azerbaijani prisoners of war were released in the following months.

An international group representing independent non-governmental mediators from Germany, Georgia and Russia, who

dealt with cases of persons missing in action, visited the conflict region on several occasions.

On 9 June, the ICRC was granted access to all places of detention, including the military prisons, mental asylums, etc.; a fact that will improve the ICRC's work in the search and protection of persons imprisoned in connection with war operations.

Homosexuals' Rights

Until 1 September, a homosexual relationship between consenting adults was punishable under Article 113 of the Criminal Code. Such relationships were decriminalised through paragraph 13.III.f of the new Criminal Code, following the recommendation of PACE. Currently, Article 150 only prescribes punishment for violent homosexual intercourse, which is punishable by 3-15 years imprisonment.

Homosexual prisoner have frequently been harassed and discriminated against in prison. In early 2000, a group of homosexuals was allegedly forced to commit perjury as witnesses against political prisoners and other defendants accused of participating in a riot in the Qobustan prison.

Human Rights Defenders

In general, human rights defenders worked in better conditions in 2000 than they did in 1999. The Council of Europe showed support for human rights defenders, especially with regard to political prisoners.⁵ The ICRC and, to an extent, human rights organizations were given access to even the most closed penal institutions. The ICRC had struggled for access to prisons since November 1994.

Officials and members of Parliament routinely criticised some human rights defenders for their "non-patriotic" position on the country's membership in the Council of Europe, and particularly about keeping up the issue of political prisoners. The last 2000 session of the newly elected Parliament on 29 December was highly offensive. The

leaders of some main human rights groups were criticised for providing “false information” on human rights developments and even for meeting with Armenian counterparts. Summarising the discussion,

Chairman of the National Assembly, Murtuz Aleskerov, stated that the Ministry of Justice would not re-register the organizations in question according to the new Law “On Non-Governmental Organizations.”

Endnotes

- ¹ Unless otherwise noted, based on Human Rights Center of Azerbaijan, *The Status of Civil and Political Rights Azerbaijan (2000)*
- ² Based on the report of the ad hoc Committee to observe the parliamentary elections in Azerbaijan, 5 November 2000, established by the Council of Europe, Doc. 8918, 22 December 2000.
- ³ Opinion No. 222 (2000).
- ⁴ See Conditions in Prisons and Detention Facilities.
- ⁵ Opinion No. 222 (2000), Doc.8757.