

## NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

### AZERBAIJAN, Situation as of 31 December 2005

#### General Overview: Azerbaijan

*Preliminary Note: this table is accompanied by an explanatory note*

<b>COUNTRY: AZERBAIJAN</b>	<b>Constitutional provisions</b>	<b>Specific legislation</b>	<b>Criminal Law</b>	<b>Civil and Administrative Law</b>
<b>Norms concerning discrimination in general</b>	Yes	Yes	Yes Criminal Code, Art. 109 and Code of Criminal Procedure, Art. 11.	Yes
<b>Norms concerning racism</b>	Yes	No	Yes Criminal Code, Art. 111 and Code of Criminal Procedure, Art. 11.	Yes
<b>Relevant jurisprudence</b>	No	No	No case law found on this subject.	No

#### EXPLANATORY NOTE

##### AZERBAIJAN / GENERAL OVERVIEW

The Republic of Azerbaijan gained its independence from the Soviet Union in 1991. In 1995, it adopted a Constitution which provides for multi-party representative government with power divided between a parliament, president, cabinet and the

judiciary. According to Art. 7 of the Constitution, Azerbaijan is a democratic, secular and unitary republic governed by law..

Azerbaijan has ratified (1996) the Convention on the Prevention and Punishment of the Crime of Genocide as well as the International Convention on the Elimination of all Forms of Racial Discrimination. Nevertheless, according to information provided by the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.75, 12 April 2001 and CERD/ C/AZE/CO/4, 14. April 2005), as a result of the conflict in and around the Nagorny-Karabakh region in which Azerbaijan become engaged soon after its independence, hundreds of thou-sands of ethnic Azerbaijanis are now displaced persons or refugees. For this and diverse other reasons, it is unclear whether the legal provisions concerning racism and intolerance have been fully implemented.

Because of the lack of information, it is impossible to judge the effectiveness of the legal regulations. Although, in all branches of the legal system, there are provisions concerning the prohibition of any kind of discrimination and although there are existing legal procedures for lodging complaints in cases of racial discrimination, the absence of any complaints by victims of racial discrimination may, as stated by the Committee on the Elimination of Racial Discrimination (see above), indicate ignorance of or a lack of confidence in the available legal remedies.

### **Constitutional Law: Azerbaijan**

*Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note*

<b>Constitutional provisions</b>	<b>Scope</b>	<b>Relevant jurisprudence</b>	<b>Remarks</b>
Unity of people Article 5	(1) The people of Azerbaijan are united. (2) The unity of the Azerbaijanian people constitutes the basis of the Azerbaijanian state. The Azerbaijan Republic is the mutual and indivisible motherland for all citizens of the Azerbaijan Republic.		
Right of equality Article 25	(1) All people are equal before the law and courts of law. (2) Men and women possess equal rights and liberties. (3) The state guarantees equality of rights and liberties to everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public		

	organizations. The rights and liberties of a person or citizen cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, or political or social appurtenance.		
Freedom of thought and speech Article 47	(1)Everyone may enjoy freedom of thought and speech.(2) Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions.(3) Propaganda provoking racial, national, religious and social discord and animosity is prohibited.		

### Criminal Law - Azerbaijan

*Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note*

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Principle of equality before the law	Criminal Code (1999) Article 6.	Persons who have committed crimes shall be equal before the law and shall be subject to criminal liability irrespective of race, nationality, creed, language, national origin, property or official position, belief, membership in political parties, trade unions and other public associations, as well as other circumstances.			
Generally aggravating circumstances	Criminal Code (1999) Article 61	According to the Azerbaijani Criminal Code (Art. 61), all offences committed on the basis of			

		racial, national or religious hatred are considered to have been committed under aggravated circumstances		
Racial discrimination (Apartheid)	Criminal Code (1999) Article 111	<p>1) Spreading ideas about the superiority of one race over another, or advocacy of racial hatred, or instigation of racial discrimination.</p> <p>2) Premeditated murder under aggravated circumstances motivated by racial, religious, national or ethnic intolerance.</p> <p>3) Premeditated infliction of serious injury motivated by racial, religious, national or ethnic intolerance.</p> <p>4) Any activity with the purpose of arousing hostility or dissension among races, religions or nationalities, or the direct or indirect restriction of rights or the establishment of direct or indirect privileges for citizens on the basis of the races, religions or nationalities to which they belong.</p>	-provides a punishment of imprisonment for 10 to 15 years, or for life.	No jurisprudence concerning a crime under this provision has been reported.
Persecution	Criminal Code (1999) Article	Any persecution of a group of people or organization on the basis of a	-provides a punishment of imprisonment	

	109	difference in race, colour of skin, nationality, ethnic cultural or religious appurtenance, which violates any of the basic human rights and freedoms acknowledged by the international community	for 10 to 15 years, or for life
Genocide	Criminal Code (1999) Article 103, 104	An act of genocide committed according to an agreed plan for the partial or total destruction of a group of people identified by national, racial, religious or other signs, by means of murder of members of the group, deliberately inflicting upon the group conditions of life which are calculated to bring about its physical destruction, imposition of measures intended to prevent births, or by forcibly transferring children of the group to another group.	- a term of imprisonment of between 10 and 15 years, or for life. Incitement to the crime of genocide will be punished, according to Article 103, with imprisonment from 5 to 10 years.
Infringement of citizens' equality	Criminal Code (1999) Article 154.	1. Infringement of the equality of citizens based on race, nationality, creed, language, national origin, property or official position, belief, membership in political parties,	Will be punished by a fine of 100 to 500 nominal financial units or by public service for a term of up to one year.

		trade unions or other public associations, which causes harm to the rights and legitimate interests of citizens	
		2. The same action committed by an official by using his or her service position	Will be punished by a fine of 100 to 500 nominal financial units or by public service for a term of up to two years, or by imprisonment for a term of up to two years; in addition, the accused may (but need not) be deprived of the right to hold the relevant position or to engage in the relevant activities for a term of up to three years
Inciting national, racial or religious hostility	Criminal Code (1999) Article 283.	1. Inciting national, racial or religious hostility, humiliation based on nationality, as well as actions directed at the restriction of citizens' rights, or the establishment of the superiority of certain citizens on the basis of their	Will be punished by a fine of 1000-2000 nominal financial units or restriction of freedom for a term of up to three years, or imprisonment for a term of

		<p>nationality, race or creed committed publicly or through the use of mass media.</p> <p>2. The same acts committed:          -with application of violence or with the threat of its application;          -by a person [in his or her official/professional capacity ][with use of the service position;]          -by an organized group.</p>	<p>2-4 years.</p> <p>Will be punished by imprisonment for a term of three to five years.</p>
Equality before the law and the courts	Code of Criminal Procedure (2000) Article 11	<p>1. Criminal proceedings in the Azerbaijan Republic shall be carried out on the basis of the equality of all persons before the law and the courts.</p> <p>2. The judicial authorities may accord no advantage to any participant in the criminal proceedings based on such participant's citizenship, social status, gender, race, ethnicity, political or religious affiliation, language, origin, financial situation, professional situation, beliefs, dwelling place, place of origin or any other reasons</p>	

which have no legal basis.

## Civil and Administrative Law: Azerbaijan

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Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Law on Citizenship (1998) Article 3	Equal citizenship: Citizenship of the Azerbaijan Republic is equal for all irrespective of how such citizenship is acquired. The citizens of the Azerbaijan Republic have equal rights, freedoms and obligations irrespective of parentage (birth), social and property statuses, racial and national affiliation, sex, education, language, relation to religion, political and other convictions, line of business (kind of work) and its features, place of domicile or residence, length of time domiciled/resident in a determined territory and other circumstances.			
Civil Procedure Law (1999) (Art. 2)	All persons shall be equal before the law. A person may not be restricted in the exercise of any rights, or be granted any privileges, on the basis of his or her			



	sex, race, nationality, language, origin, social status, religion, moral convictions, or opinions.		
Administrative Criminal Law (2000) (Art. 7)	All individuals are equally liable to prosecution and punishment under administrative criminal law. Administrative liability may be imposed upon only person regardless of his or her sex, race, nationality, language, origin, social status, religion, moral convictions, or opinions.		
Law on Parliamentary Elections 1995 (Art. 3) Law on Presidential Election 1997 (Art. 38) Law on Municipal Elections 1999 (Art. 3, 30) Law on Milli Mejlis Elections 2000 (Art. 51)	Every citizen has the right to elect or to be elected regardless of race, skin color, language, gender, religion, education, political or other beliefs, national, ethnic and social background, origin, property or title of nobility.		
Unified Election Code 2003 Article 3 Universal Suffrage	Irrespective of their race, nationality, religion, language, gender, origin, property status, office position, persuasions, membership in political parties, trade		

unions and other public associations, or other status, the citizens of the Azerbaijan Republic shall have the right to elect, to be elected and to participate in referendum.

Legal Status of Aliens Act 1995 (Art.4)

Aliens are equal before the law, irrespective of origin, social and material status, race, nationality, sex, education, language, religion, political or other views, occupation, etc.

Labour Code 1999 (Art. 7)

In offering employment and in defining the rights and duties arising from employment, employees shall not be discriminated against on account of their sex, nationality, race or religion.

Associations Code 1992 (Art. 4)

The establishment and the activities of associations whose programmatic documents propagate or which practice racial, religious, social or class inequality or hatred, methods of forcible (violent) seizure of power, war, violent propaganda, violation of human rights and freedoms, or other ideas or actions which are incompatible with universally

	recognized norms of international law, are strictly forbidden.		
Media Act (1999) Article 10	Article 10 prohibits the use of the media to incite ethnic, racial or social discord and intolerance; the publishing, under the guise of an official source, of rumours, lies or biased publications that are an affront to citizens' honour and dignity, or the commission of other unlawful acts.		
Family Code (2000) Article 2	Under article 2, marriage is the voluntary union of a man and a woman, which is registered with the appropriate government body, for the purpose of founding a family. All restrictions on the rights of citizens to enter into a marriage and family relations on the grounds of social, racial, ethnic, linguistic or religious affiliation are prohibited. The rights of citizens in a family may be restricted only on the basis of law and with a view to protecting the morality, health, rights and legitimate interests of other family members or of other citizens.		
Civil Code	It establishes the		

<p>(1999) Article 6</p>	<p>principles of civil legislation, including the equality of subjects of civil law, the free will of subjects of civil law, the financial independence of participants in civil matters, the inviolability of property, the freedom of contract, the prohibition of arbitrary interference in private life, the creation of conditions for the unimpeded exercise of civil rights, guarantees of the restoration of violated rights, and judicial protection of civil rights.</p>	
<p>Education Act (1992) Article 3</p>	<p>According to article 3, citizens are guaranteed the right to education regardless of their race, ethnicity, religion, language, sex, age, state of health, social and material status, sphere of activity, social origin, place of residence, attitude towards religion, political beliefs, or criminal record.</p>	
<p>Status of Refugees and Forcibly Displaced Persons (Persons Resettled in Azerbaijan) Act</p>	<p>Refugees have the same rights and freedoms and the same obligations as Azerbaijani citizens, unless otherwise provided by the Constitution and</p>	

(1999) Article 6	other legislation.		
Culture Act (1998)	<p>Article 1 proclaims the legal equality of all persons in the creation, use and dissemination of cultural property, irrespective of social and material status, ethnicity, race, religion or sex.</p> <p>Article 8 provides State guarantees for cultural identity and reaffirms the right of everyone to preserve their cultural identity and to the free choice of spiritual, aesthetic or other values.</p> <p>Article 17 of the Act establishes restrictions on interference in cultural activity, except for the purpose of preventing incitement to violence, exclusion based on racial, ethnic and religious criteria, and activities that are contrary to universal spiritual values, and to prohibit pornography and drug addiction.</p> <p>These articles provide a direct legal guarantee of the right of individuals to satisfy their cultural needs, irrespective of race, ethnicity or national origin.</p>		

