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# AZERBAIJAN

## **Torture and ill-treatment: Comments on the forthcoming review by the United Nations Committee against Torture**

### **1. INTRODUCTION**

In November 1999 the United Nations (UN) Committee against Torture in Geneva will examine Azerbaijan's Initial Report about the measures the country has taken to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). On the eve of this review Amnesty International remains concerned that Azerbaijan has failed to implement fully its treaty obligations, as allegations that people are being subjected to torture and ill-treatment by law enforcement officials are persistent and widespread. These allegations issue from a range of Azerbaijan's places of detention, in both political and criminal cases, but have not only related to detainees - law enforcement officials are also reported to have abused lawyers, journalists, opposition politicians and demonstrators. And in the army, conscripts are said to have been subjected to brutal hazing while officers turn a blind eye.

A lack of safeguards and procedures from the beginning of detention, and a failure to abide by regulations that do exist, leave people at risk of violations of their fundamental right not to be subjected to torture or ill-treatment. There is no requirement at present for a detained person to be brought promptly before a judge, nor are there any procedures whereby a person can challenge in court the lawfulness of their detention or their continued detention - violations of Azerbaijan's fair trial obligations under the International Covenant on Civil and Political Rights.

State agents have also obstructed access by lawyers, family members, and independent doctors to those held pending trial. There have been persistent allegations that physical and mental abuse has not only flourished in those conditions, but also become a routine tool for obtaining confessions and coercing testimony, or for intimidation and extortion. In many cases the victims of torture and ill-treatment - isolated and feeling vulnerable - do not lodge official complaints at the time, afraid that they will make their situation worse, fearing reprisals, or simply having no faith that officials will launch prompt and impartial investigations. Often they fear even to request a doctor to record or treat injuries, and investigators can refuse requests by detainees and their lawyers to arrange a forensic medical examination. Deprived of this avenue of proving allegations of torture or ill-treatment many victims wait to speak out at a public trial, but then find judges reluctant to order comprehensive inquiries into their allegations, or to exclude as evidence testimony said to have been obtained under duress.

Other obstacles arise even if complaints are made at the time of the alleged torture or ill-treatment. The criminal code does not contain a separate offence punishing torture as defined

in the Convention against Torture. In some instances prosecutors are said to have been reluctant to open criminal cases against law enforcement officials for torture or ill-treatment, even when they have received a complaint that a person has been tortured or ill-treated by an agent of the state. In other instances it has been alleged that when cases have been opened, the authorities have failed to initiate thorough, prompt and impartial investigations. Cases have often been closed for lack of evidence after what is allegedly a perfunctory investigation, with the result that the allegations are never tested in court.

Amnesty International is deeply concerned that the authorities' failure to meet their obligations to initiate impartial and thorough allegations of ill-treatment and torture, and the failure to bring alleged perpetrators to justice in the course of full and fair proceedings, creates both an impression that torture and ill-treatment by law enforcement officials is acceptable conduct, and also allows law enforcement officials to engage in such conduct and violate people's human rights with impunity.

This report examines such issues, and concludes with Amnesty International's recommendations to the Azerbaijani authorities.

## **2. WHAT IS THE CONVENTION AGAINST TORTURE?**

The Convention against Torture was adopted by the General Assembly of the United Nations on 10 December 1984. It is an international human rights treaty aimed at protecting all persons against torture and ill-treatment. Governments which ratify the convention, referred to as "States Parties", agree to be legally bound by its provisions and to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. No exceptional circumstances whatsoever may be invoked as a justification for torture.

States Parties to the Convention against Torture also undertake to ensure that all acts of torture as defined within the convention are offences under their criminal law, punishable by appropriate penalties which take into account the grave nature of the offence. In connection with this States Parties have a duty to instigate prompt and impartial investigations whenever there is reasonable ground to believe an act of torture has taken place, and they are obliged to ensure that any individual who alleges torture has a right to complain, and to have the case heard promptly and impartially.

In addition, the Convention against Torture provides for a system of universal jurisdiction. This means that a state party is obliged to prosecute or extradite (to a state which will fairly prosecute) anyone on its territory alleged to have committed torture, no matter where the act is said to have taken place. States Parties are not to expel, return or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Convention against Torture also obliges states parties to keep rules and methods of interrogation under systematic review and to prohibit the use of testimony elicited by torture, as well as to provide training and education regarding the prohibition of torture for law enforcement officials and others involved in the custody, interrogation or

treatment of any person who is arrested, detained or imprisoned. States parties to the convention are also to ensure that a victim of an act of torture obtains redress and has an enforceable right to reparation, including fair and adequate compensation.

Implementation of the Convention against Torture is monitored by a 10-member body of experts known as the Committee against Torture, which is elected by the states parties to the convention. The committee examines periodic reports from states parties about the measures they have taken to implement the convention and - if the state has agreed to this procedure - examines complaints, including from individuals who claim they have been tortured or ill-treated by or with the consent or acquiescence of state agents.

Azerbaijan became a party to the Convention on 16 August 1996, but has yet to agree to the procedure which would allow the Committee against Torture to examine complaints by individuals or other state parties.<sup>1</sup> The Committee against Torture is set to review Azerbaijan's initial report on its implementation of the Convention against Torture during its forthcoming 23<sup>rd</sup> session. This meeting will be held in Geneva, Switzerland, from 8 to 19 November 1999.

## **2.1 Azerbaijan's other commitments to prohibit torture**

In tandem with the binding commitments under the Convention against Torture, torture is forbidden under Article 7 of the International Covenant on Civil and Political Rights<sup>2</sup>, to which Azerbaijan acceded on 13 August 1992. The Constitution of the Azerbaijani Republic<sup>3</sup> prohibits torture and humiliating treatment,<sup>4</sup> and evidence obtained through violation of legal proceedings has no legal force.<sup>5</sup> In addition it is a criminal offence for investigators and others to force a

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<sup>1</sup> The relevant documentation was deposited with the United Nations on 16 August 1996, and the convention entered into force under the terms of the treaty a month later, on 15 September 1996.

<sup>2</sup> Article 7 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

<sup>3</sup> The Constitution of the Azerbaijani Republic was adopted following a referendum on 12 November 1995, and came into force on 27 November 1995. It replaced the previous Soviet-era basic law, which had been adopted on 21 April, 1978.

<sup>4</sup> Article 46 of the constitution on "Protection of Honour and Dignity" states: "Everybody shall have the right to protect his or her honour and dignity. The state shall protect personal dignity. Nothing can justify humiliation of personal dignity. Nobody can be tortured or tormented, nobody shall suffer a treatment or punishment humiliating to human dignity. Nobody shall be experimented upon - medically, scientifically or in any other way - without his or her voluntary consent."

<sup>5</sup> Article 63 of the constitution states *inter alia* "Evidence obtained through violations of the law cannot be used when exercising justice."

person to give testimony by use of threats or other illegal actions,<sup>6</sup> or to force an accused person or a witness to give false testimony.<sup>7</sup> The criminal code contains other articles punishing torture and forms of ill-treatment (although none contains the definition of torture as given under the Convention against Torture, see section 7.1 below).

In spite of all these provisions, however, local<sup>8</sup> and international non-governmental organizations, including Amnesty International, continue to receive persistent allegations, from a wide variety of different and unconnected sources, that law enforcement officials have engaged in torture and ill-treatment. These have been compounded by allegations that in many cases the response by officials has been at best reluctant, and at worst obstructive or dismissive, leading to a perceived climate of impunity. Concerns about the lack of safeguards to protect people from torture and ill-treatment, and the lack of legal redress for those who allege such abuse, are detailed below.

### **3. PRE-TRIAL DETENTION**

In most of the reports received by Amnesty International relating to people held in custody, the alleged torture or ill-treatment by law enforcement officials is said to have taken place during periods of short-term detention or arrest, or while people are being detained prior to trial. The aims are said to have included forcing a confession or testimony; extracting other information; putting pressure on detainees through ill-treating relatives or friends; or simply extortion - beatings to back up demands for money in exchange for release or the dropping of charges.

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<sup>6</sup> Article 177 of the Criminal Code of the Azerbaijani Republic states: "Compelling to give testimony by means of application of threats or other illegal actions on the part of a person conducting an inquiry or preliminary investigation shall be punished by deprivation of freedom for a term not exceeding three years. The same actions combined with the application of force or with humiliation of the person interrogated shall be punished by deprivation of freedom for a term of three to eight years." The Criminal Code currently in use is still that adopted in 1961 during the Soviet era, with many subsequent modifications.

<sup>7</sup> Article 180 of the Criminal Code of the Azerbaijani Republic states: "Compelling an accused person, a witness, a victim, an expert or a translator to give false testimony, a false opinion or a false translation, committed by threatening such people or their near ones with murder, violence, or the destruction of property, with the aim of impeding the course of justice...shall be punished by a term of up to three years."

<sup>8</sup> Among those organizations most active in reporting torture allegations have been Eldar Zeynalov, Director of the Human Rights Centre of Azerbaijan, Leila Yunusova and Saida Gojamanly, respectively Director of the Institute for Peace and Democracy and head of this body's Human Rights Department; and Arzu Abdullayeva of the Azerbaijani National Committee of the Helsinki Citizens' Assembly.

Most such reports received by Amnesty International have come from the capital, Baku, concerning a range of places of detention there, including temporary detention cells in police stations, the Baku City Main Police Directorate, and the Ministry of the Interior's Department to Combat Organized Crime. (Reports of torture and ill-treatment have also been received from places outside the capital, however, and the fact that they are fewer in volume may be a reflection of such difficulties as poor communications and infrequent access to non-governmental organizations or journalists willing to report such instances.) Allegations of torture and ill-treatment have been made in both criminal and political cases.<sup>9</sup>

### **3.1 Scope for torture - no requirement to be brought promptly before a judge**

Given that pre-trial detention is the norm in Azerbaijan, rather than the exception (see section 3.2 below), one factor facilitating scope for torture is that there is no requirement at present for a temporarily detained person to be brought promptly before a judge, nor are there any procedures whereby a person can challenge the lawfulness of their detention in court - violations of Azerbaijan's fair trial obligations under Article 9 of the International Covenant on Civil and Political Rights.

#### **3.1.1 The right to be brought promptly before a judge or other judicial officer**

In order to safeguard the right to liberty and freedom from arbitrary arrest or detention, and in order to prevent violations of fundamental human rights, international standards stipulate that all forms of detention or imprisonment must be ordered by or subject to the effective control of a judicial or other authority. Anyone arrested or detained must be brought promptly before a judge or other officer authorized by law to exercise judicial power.<sup>10</sup> The purposes of the review

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<sup>9</sup> Amnesty International uses a broad interpretation of the term "political prisoner" so as to cover all cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special conditions. Governments are, however, obliged to ensure they receive a fair trial in line with international standards, and Amnesty International opposes the use of torture and cruel, inhuman or degrading treatment in all cases - both criminal and political - without reservation.

<sup>10</sup> Article 9 (3) of the International Covenant on Civil and Political Rights states *inter alia*: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power." Principle 4 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly resolution 43/173 of 9 December 1988), states: "Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other

before a judge or other judicial authority include to assess whether sufficient legal reason exists for the arrest; to assess whether detention before trial is necessary; to safeguard the well-being of the detainee; and to prevent violations of the detainees' fundamental rights. This procedure often provides the detained person with their first opportunity to challenge the lawfulness of their detention and to secure their release if the arrest or detention violated their rights.

Regarding officers authorized to exercise judicial power, if the detained person is brought before an officer other than a judge, the officer must be authorized to exercise judicial power and must be independent of the parties concerned, for example the detaining authority. All those exercising judicial authority must be independent - they must fulfil the criteria set out in the UN's Basic Principles on the Independence of the Judiciary.

In Azerbaijan, however, decisions to arrest and detain a person, including questions on the legality of detention and on prolonging detention, fall not with the courts but with the prosecutor's office, which is still based on the Soviet model and has wide powers and responsibilities. On the one hand the prosecutor's office has a supervisory function in ensuring that legality is observed in the administration of criminal justice, for example by investigating alleged police abuses and complaints about conditions of detention and ill-treatment. On the other hand this body is also the public prosecution service, working with the police in sanctioning arrest, presiding over the investigation, and representing the case in court.

Interestingly, given Azerbaijan's application to join the Council of Europe, the European Court has held that there was a violation of Article 5 (3) of the European Convention on the Protection of Human Rights and Fundamental Freedoms - which guarantees the right "to be brought promptly before a judge or other officer authorized by law to exercise judicial power" - when the "other officer" was a public prosecutor who could intervene in subsequent proceedings as a representative of the prosecuting authority.<sup>11</sup> Noting the exclusive control of the prosecutor's office in Azerbaijan over decisions to arrest and detain a person, two delegates appointed by the Council of Europe to report on the conformity of the country's legal system with Council of Europe standards noted in their September 1997 report:

"In this context we wish to recall the strict requirements of Articles 5 paras. 3 and 4 of the European Convention on Human Rights, which impose on the authorities the duty to bring a person deprived of his liberty "promptly" before a judge and to provide for effective habeas

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authority." For a detailed guide on the international and regional standards which protect the right to a fair trial, see Amnesty International's *Fair Trials Manual*, AI Index: POL 30/02/98, December 1998, ISBN: 0-86210-277-4 (also available on our website at <http://www.amnesty.org>).

<sup>11</sup> *Brincat v. Italy*, (73/1991/325/397), 26 November 1992; *De Jong, Baljet and van den Brink*, 22 May 1984, 77 Ser.A23.

corpus proceedings in case of continued detention. Presently the legislation and practise in Azerbaijan do not appear to meet these requirements.”<sup>12</sup>

### 3.1.2 The right to challenge the lawfulness of detention

There is also no procedure at present in Azerbaijan whereby a detainee can exercise their internationally-guaranteed right to challenge the lawfulness of his or her detention in court, or to challenge their continued detention.

Under Article 9 (4) of the International Covenant on Civil and Political Rights, everyone deprived of their liberty has the right to take proceedings before a court to challenge the lawfulness of their detention.<sup>13</sup> This right safeguards the right to liberty and provides protection against arbitrary detention and other human rights violations. This right differs from the right to be brought before a judge, as described in section 3.1.1 above, because it is initiated by the detainee or on the detainee’s behalf, rather than by the authorities.

Governments are required to create procedures for challenging the lawfulness of detention and obtaining release if the detention is unlawful. Such procedures must be simple and expeditious, and free of charge if the detainee cannot afford to pay.<sup>14</sup>

Commenting on the lack of this safeguard last year, the General Prosecutor of Azerbaijan, Eldar Hasanov, himself expressed support for moves to introduce the procedures providing a detained person the means to exercise their internationally guaranteed right to have a court review and supervise their detention.<sup>15</sup>

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<sup>12</sup> *Report on the conformity of the legal order of Azerbaijan with Council of Europe Standards* by Rudolf Bernhardt and Marek Nowicki, Strasbourg, 19 September 1997.

<sup>13</sup> Article 9 (4) of the International Covenant on Civil and Political Rights requires that: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

<sup>14</sup> Principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: “1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful. “2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.”

<sup>15</sup> *Zerkalo* magazine, 2 May 1998.



This lack of safeguards and procedures means that a detainee awaiting trial first appears before a judge only at the beginning of the court hearing of the case (which can be months after detention), and that detainees' only recourse for complaints - about detention or torture and ill-treatment - is the procuracy, the same body responsible for deciding to detain and prosecute them.

### **3.2 Lack of access to the outside world**

The Azerbaijani criminal justice system, which still uses many codes and procedures inherited from the Soviet system, follows the latter's emphasis of isolating a suspect prior to trial,<sup>16</sup> and pre-trial detention is still the norm in Azerbaijan, rather than the exception.<sup>17</sup> In practice this means that although non-custodial options are available in law, suspects are usually held in custody (commonly in overcrowded conditions) rather than released on surety or their own recognizance, even if charged with minor offences.

International standards relating to the treatment of people deprived of their liberty stress that those in pre-trial detention should be granted access to people such as their defence lawyer, doctor or dentist, and their family. However, another of the factors facilitating torture and ill-treatment in Azerbaijan is the obstruction faced by some detainees - during the period of maximum vulnerability immediately after detention - in obtaining access to those outside the penal system: family members, independent medical practitioners, and even defence lawyers.

#### **3.2.1 Lack of access by the family**

Anyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, their family or friends. This notification is to take place immediately, according to Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>18</sup> According to the

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<sup>16</sup> For a detailed examination of procedural issues in relation to lack of judicial redress and torture, see *Azerbaijan: Impunity for Torture*, August 1999, published by the non-governmental organization Human Rights Watch.

<sup>17</sup> This is at variance with Article 9 part 3 of the International Covenant on Civil and Political Rights, which states *inter alia* "...It shall not be the general rule that persons awaiting trial shall be detained in custody."

<sup>18</sup> Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners states: "An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution." Principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: "Promptly after arrest and after each transfer from one place of detention or imprisonment to

Azerbaijani code of criminal procedure, however, authorities have up to three days to inform the family of someone detained that they have taken him or her into custody, leading to a potential period of unacknowledged incommunicado detention. An example is the case of Rasim Agayev, see below in section 3.2.2, whose family, despite frantic effort to locate him after he was first taken into custody, was unable to determine his whereabouts for three days after his detention

International standards also stipulate that people held in pre-trial detention are to be given all reasonably facilities to communicate with family and friends and to receive visits from them.<sup>19</sup> In Azerbaijan the investigator in the case has discretion whether or not to grant access to family members. In practice, however, in many cases such access has reported been denied for long periods while the investigation is under way. To cite again the example of Rasim Agayev in section 3.2.2 below, his family report that it was two months before they were permitted to visit him for the first time following his detention.

### **3.2.2 State agents obstruct access by defence lawyers**

Under international standards, everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their own choice to protect their rights and to assist in their defence. If the person cannot afford to hire a lawyer, effective, qualified counsel should be assigned. The person must be given adequate time and facilities to communicate with their lawyer. Access to counsel should be immediate.<sup>20</sup>

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another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.”

<sup>19</sup> See Rule 92 in the footnote above, and Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states: “ A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”

<sup>20</sup> See for example Principle 1 of the UN Basic Principles on the Role of Lawyers, and Principle 17 (1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

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Although the right to prompt access to a defence lawyer is guaranteed under the Constitution of the Azerbaijani Republic<sup>21</sup>, there have been many reports of lawyers being prevented from seeing their clients, particularly in the initial period after detention.

An example of state agents obstructing the rights to prompt access to family members and to a defence lawyer is the case of Rasim Agayev, a political scientist and journalist who was sentenced to a four-year term of imprisonment in June 1998 for “concealing a crime against the state” (Article 82-1 of the Criminal Code). Rasim Agayev’s legal team claim that there were numerous procedural violations in the case, including that their client was denied access to a defence lawyer until the fourth day of his detention, and that Rasim Agayev initially made a statement confessing to one charge in the indictment only after officials threatened to prosecute a family member on an allegedly false charge. He later retracted his statement. Amnesty International expressed concern about these allegations, and also about claims that the charges against Rasim Agayev were fabricated in order to punish his known or imputed political views (linked, among other things, with his former role as press secretary of ex-President Ayaz Mutalibov; his membership of the opposition Labour Party; and his support for that party’s idea of a “Euroasian union”<sup>22</sup>).

Rasim Agayev was detained by officials from the Ministry of National Security (MNS) on 25 November 1996 at his place of work, the Academy of Sciences in Baku, and taken to the MNS investigation prison. His home was also searched that day by MNS officials. Reportedly, the grounds for his detention were that the year before in Moscow Rasim Agayev had met with fugitive former Prime Minister Suret Huseynov, wanted by the Azerbaijani authorities in connection with an unsuccessful coup attempt in October 1994.<sup>23</sup> Rasim Agayev was

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<sup>21</sup> Article 61 states *inter alia* “Every person from the moment of being detained, arrested, or charged with crime by authoritative State bodies shall have the right to resort to the help of a defender.”

<sup>22</sup> The Euroasian idea, espoused by the left-wing Labour Party, included greater integration between Europe and Asia within a Euroasian Union, or a political orientation that took into account Azerbaijan’s particular position between Europe and Asia - supporters have denied that this implied a revival of the former Soviet Union, or any other violations of Azerbaijani sovereignty.

<sup>23</sup> Suret Huseynov was forcibly returned by Russia to Azerbaijan in March 1997. Amnesty International subsequently raised allegations that he was ill-treated in pre-trial custody, although the authorities at that time told the organization that the injuries sustained had been minor, and caused by attempts at suicide. It was also alleged during his trial at the beginning of 1999 that Suret Huseynov had been ill-treated in the custody of the Ministry of National Security on 10 and 11 January. Suret Huseynov had reportedly told his lawyer when they met on 13 January that he had been put in solitary confinement for three days for allegedly insulting a prison official, and that he had been beaten before and during this time. The lawyer said that he could see bruises on his client's stomach and legs at their meeting. An official denied the allegations, commenting that it was "not logical" that the defendant should be beaten just before the trial was set to end. The trial, at which at least one other defendant testified that he had been tortured in order to obtain testimony, ended on 15 February 1999

subsequently placed under arrest and charged with treason, under Article 57 of the criminal code. His legal team have claimed that his rights were violated throughout the course of proceedings against him. It is alleged that Rasim Agayev's family were initially told he would only be held for a few hours but, despite their frantic efforts, were subsequently unable to ascertain his exact whereabouts for three days as the MNS initially denied that he was then in their custody.<sup>24</sup> On 28 November a lawyer engaged by the family managed to determine that he was in fact in the investigation prison of the MNS, but was refused permission to see his client when he arrived at the prison with the necessary documentation later that day.

The lawyer was first permitted to see Rasim Agayev and advise him of his rights only on the fourth day after his detention. Serious in itself, this denial of prompt access to a defence lawyer is also of concern because at that time the charge of treason carried a potential death sentence. It is also alleged that Rasim Agayev initially confessed to the meetings in Moscow only after officials had threatened to prosecute his daughter for possession of substances suspected to be drugs and allegedly found in her coat during a search of the Agayevs' apartment after his detention. It is said that immediately after Rasim Agayev had confessed, he was told that the substances found were not in fact narcotics. His family also report that they were allowed to visit him for the first time only on 25 January 1997, two months after he was first detained, and that while in pre-trial detention Rasim Agayev was denied receipt of some medicines he had been prescribed for the treatment of kidney stones.

The trial of Rasim Agayev and 19 other people began on 21 January 1998, heard by the Supreme Court of Azerbaijan. Rasim Agayev pleaded not guilty on all counts of the indictment against him.<sup>25</sup> He also retracted his initial statement and all evidence given in the period between 25 November and 5 December, on the grounds that it had been given under duress - he mentioned the threat to prosecute his daughter for possession of drugs, and also testified that for two nights before confessing he had heard a woman in the next cell crying: "Father, help me!".

On 1 June 1998 Rasim Agayev was sentenced to four years' imprisonment, a sentence that reportedly could not be appealed as the trial was heard by the Supreme Court as court of

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with Suret Huseynov sentenced to life imprisonment for treason, among other charges.

<sup>24</sup> Under Article 93 of the Code of Criminal Procedure of the Azerbaijani Republic, the detaining body has up to three days to inform the family of the detainee's whereabouts. Article 92 of the UN Standard Minimum Rules on the Treatment of Prisoners states: "An untried prisoner shall be allowed to inform immediately his family of his detention."

<sup>25</sup> On 4 May 1998 the prosecutor summed up the state's case against the accused, recommending that the charge of treason against Rasim Agayev be dropped, and replaced by charges of misprision of a crime against the state (Article 82) and concealing a crime against the state (Article 82-1). The prosecutor demanded five years' imprisonment, the maximum sentence under these articles.

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first instance. He was released early just over a year later, following a pardon issued by Azerbaijani President Heidar Aliyev on 10 July 1999.

As this and other cases given below illustrate, there have been frequent reports of defence lawyers being denied prompt access to their clients in criminal cases, even though such access is guaranteed under Azerbaijani law. Until recently, however, those detained under the code dealing with administrative violations had no right to access to a defence lawyer in detention. The administrative violations code is used in, for example, cases involving minor public order offences. Officials such as police officers have the power to detain individuals believed to have violated the code: the suspects are then brought to a court where a single judge can impose a sanction of up to 15 days' "administrative detention".

On 13 July 1999 the Azerbaijani Constitutional Court ruled that the constitutional right to receive qualified legal aid from the moment of detention should be applied to those held under the administrative violations code, as well as to those held in connection with offences under the criminal code.<sup>26</sup> However, since the court's judgment there has been at least one report that a man held under the administrative violations code was denied access to a defence lawyer, and that he was beaten while held in detention.

It is reported that on 9 August 1999 Ibrahim Ikrameddin oglu Yuzbeyov, a Jehovah's Witness from the village of Alekseyevka, was summoned to the regional police administration in Khachmas to discuss a complaint regarding his proselytizing.<sup>27</sup> Four police officers then accompanied him to his home, and in violation of the law they are said to have conducted a search without a warrant and without the presence of witnesses. They are also said to have drawn up the record of the search, during which books, videotapes and audiotapes were confiscated, in a separate location after the items had been removed.

Following the search Ibrahim Yuzbeyov was returned to the regional police administration and detained in a cell there. He was not given access to a defence lawyer, and the following day was sentenced to 15 days' administrative detention by Khachmas district court for petty hooliganism. Ibrahim Yuzbeyov had previously refused to sign a statement relating to this charge at the police administration, claiming that he had not engaged in hooliganism and was instead being prosecuted for his actions as a Jehovah's Witness.

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<sup>26</sup> See, for example, the report in *Bakinsky rabochy* of 16 July 1999. Insofar as Articles 256 and 259 of the Code of the Azerbaijani Republic on Administrative Violations did not envisage the right to legal aid from the moment of detention, the Constitutional Court found them in violation of Article 61 of the Constitution and ordered the repeal of those parts of the articles in question which were not in compliance.

<sup>27</sup> The Jehovah's Witness religion is not officially registered in Azerbaijan and is regarded with hostility by many, among other things because of its adherents' refusal to perform compulsory military service and as a result of its proselytizing. See, for example, the case of Aleksandr Usenko described in section 3.4 below, and the entry on Azerbaijan in the USA's Department of State Annual Report on International Religious Freedom for 1999, released on 9 September 1999 by the Bureau for Democracy, Human Rights and Labor.

Ibrahim Yuzbeyov was taken to a preliminary detention cell (known as KPZ from its acronym in Russian<sup>28</sup>) at the police administration to serve his term. While there he alleges that he was subjected to verbal abuse; that several police officers beat him around the face and head, trying to force him to renounce his religion; and that he received food only once a day. Ibrahim Yuzbeyov reports that on one occasion his father had not been allowed to hand over a food parcel he had brought as police officers falsely told him his son had refused to accept food from home. Instead his father gave money to the head of the KPZ to buy food for Ibrahim Yuzbeyov, although this was not done and neither was the money returned.

Ibrahim Yuzbeyov was released at the end of his term on 25 August 1999. The confiscated items were not returned to him and neither, he alleges, was his watch. This had been removed from him before his detention in the KPZ, but could not be found by the police when he was released. Ibrahim Yuzbeyov further alleges that after his release he was summoned to the regional head of the Ministry of National Security in Khachmas, who warned that he would be forcibly expelled from Azerbaijan within three days if he did not renounce his faith.<sup>29</sup>

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<sup>28</sup> In Russian *kamera predvaritel'nogo zaderzhaniya* (????? ?????????????????? ??????????).

<sup>29</sup> According to a report in the newspaper *525-ji gazet* of 9 April 1999, two Russian citizens named Sergey Ibrahimovich Shabanov and Andrey Avdiyenko were expelled from Azerbaijan after being convicted by Nasiminsky district court of participating in illegal religious activities by Jehovah's Witnesses. Four other adherents were warned and fined. Eldar Zeynalov reports that two other Jehovah's Witnesses named Veniamin Pribytkov and Oleg Saveliyev were expelled in May the previous year (see the news release from the Human Rights Centre of Azerbaijan dated 7 September 1999, regarding the reported sacking of a number of Jehovah's Witnesses because of their beliefs). Azerbaijani law forbids proselytizing by foreigners, and on 15 September 1999 Mustafa Ibrahimov, Advisor for religious questions in the Azerbaijani Cabinet of Ministers, told the newsagency TURAN that foreign missionaries are deported regularly, including three over the previous month.

### 3.2.3 No access to independent medical practitioners

Under international standards people held in custody by law enforcement officials have the right to be examined by a doctor and, when necessary, to receive medical treatment.<sup>30</sup> This right is viewed as a safeguard against torture and ill-treatment, among other things, as well as an integral part of the duty of the authorities to ensure respect for the inherent dignity of the human person. Ensuring that a detainee is entitled to undergo a prompt, impartial, independent and professional medical examination is also one of the ways of proving that a person has been physically ill-treated in custody (and disproving false or malicious allegations).

In Azerbaijan, however, detainees have no right to be attended by their own doctors in pre-trial detention, and detainees and their lawyers do not have the right to arrange forensic medical examinations (or other expert analyses).<sup>31</sup> Although they can request such examinations if these are thought significant to the case, the decision whether to carry them out rests with the investigator, who has the discretion to decide on what is significant.<sup>32</sup> Disturbingly, there have been frequent reports of lawyers' requests for a prompt medical examination of clients allegedly tortured or ill-treated being rejected by the investigating authorities.

In July 1998, for example, defence lawyer Aslan Ismaylov alleged that officials refused his request for a forensic medical examination of his client Aladdin Mamedov, who had reportedly been assaulted while held in solitary confinement at the Baku City Main Police Directorate.<sup>33</sup> Aslan Ismaylov reported that on 3 July he had concluded an agreement to represent Aladdin Mamedov, held on a charge of illegal possession of weapons, but had encountered obstacles from officials in meeting with his client that day. He was able to gain access the following day, at 11am, and at that meeting he alleges that he saw bruises on Aladdin Mamedov's body, in the area of the legs and lower back. Aslan Ismaylov reports that his

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<sup>30</sup> See Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states: "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge." See also Rule 24 of the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>31</sup> People in detention who have not been tried may be treated by their own doctor or dentist, if there is reasonable ground for such a request (see Rule 91 of the UN Standard Minimum Rules for the Treatment of Prisoners). If the request is denied, reasons must be given.

<sup>32</sup> As pointed out in the Human Rights Watch report *Azerbaijan: Impunity for Torture*, August 1999, an investigator must provide an explanation for any such refusal, but this refusal can only be appealed to the procuracy, and not to a court.

<sup>33</sup> TURAN news agency of 7 July 1998, *Azadlyg* newspaper of the same date.

request for an immediate forensic medical examination was turned down by officials, as was his request that Aladdin Mamedov be transferred swiftly to Bailov investigation-isolation prison.<sup>34</sup> Aslan Ismaylov lodged a complaint regarding the allegations of torture with the procuracy, and it was reported that this body appointed two investigators to look into the reports. They visited Aladdin Mamedov on 10 July, after he had been transferred to Bailov prison, and are said to have noted the presence of bodily injuries.<sup>35</sup> However, Amnesty International is not aware of the results of this investigation.

In another case the defence lawyer alleged that he was himself assaulted when he sought to complain about his client's visible and fresh injuries sustained in custody. Lawyer Namik Aliyev alleges that both he and his client Zeybulla Abdulkerimov were assaulted on 12 March 1998 by officers at police station No. 29 in the Yasamalsky District of Baku.<sup>36</sup> Namik Aliyev reports that on 12 March he had concluded an agreement to represent Zeybulla Abdulkerimov, who had been detained in connection with drugs charges. Namik Aliyev met his client briefly at the police station, at which point the latter had no visible signs of injury. When the lawyer returned later at around 5pm, however, he noted that Zeybulla Abdulkerimov had a fresh bruise on his face. Namik Aliyev demanded that his client be given a medical examination, but claims that instead he himself was verbally abused and then beaten by two police officers whom he named (the beating was said to have taken place in front of his client, employees of the police station and members of the public who were in the police station at the time). Namik Aliyev was then searched, placed in a cell and taken an hour later to a hospital to be tested for the presence of alcohol. He was then returned to a cell, he reports, before being released later that evening after his father and colleagues intervened. A doctor who examined Namik Aliyev after his release is said to have found contusions to his head and buttocks.

Six days after these events, which were widely publicized, Baku City Prosecutor's Office instituted criminal proceedings as a result of Namik Aliyev's allegations, charging the duty inspector and the deputy chief of police station No. 29 with exceeding their authority under Article 168 part 2 of the criminal code.<sup>37</sup> However, in February 1999 the Prosecutor General's

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<sup>34</sup> Investigation-isolation prisons (commonly known by the acronym SIzo from the Russian words sledstvenny izolyator - ??????????????????????) hold prisoners awaiting trial or the result of their appeal. Bailov prison also housed prisoners awaiting execution before capital punishment was abolished in Azerbaijan in 1998, and at present still contains a wing for those whose death sentences were commuted to life imprisonment.

<sup>35</sup> 7 *gun*, 11 July 1998.

<sup>36</sup> See reports, for example, in *Zerkalo* of 20 March 1998, and by TURAN news agency on 18 and 23 March 1998.

<sup>37</sup> Article 168 part two states: "Exceeding of authority or official powers, if accompanied by force, by use of weapons, or by actions which torment the victim and insult his personal dignity, shall be punished by deprivation of liberty for a term not exceeding seven years."



office informed Amnesty International that Namik Aliyev's allegations had been "comprehensively examined but not sustained".<sup>38</sup> Although the authorities reported that a forensic medical examination of Namik Aliyev had established light bodily injuries, they decided following an investigation that it was not possible to determine whether these injuries had been caused on the day of the incident. Namik Aliyev's client, Zeybulla Abdulkerimov, had, they continued, testified that he had not been beaten by police, but had instead sustained his injuries "through his own carelessness, having hit the door of his cell". The case was therefore closed on 19 June 1998.

### **3.2.4 Red Cross denied access**

With regard to independent monitoring, it is also noteworthy that the International Committee of the Red Cross is still unable to visit security detainees held in Azerbaijan in connection with the internal situation in the country, for example the large number of political prisoners held following coup attempts in 1994 and 1995.<sup>39</sup>

### **3.3 Reluctance of judges to exclude testimony obtained under duress**

Article 15 of the Convention against Torture states that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings".<sup>40</sup> However, in none of the cases brought to Amnesty International's attention has any testimony been excluded in court on the grounds that it had been extracted under duress.

In many of these cases, people alleging torture or ill-treatment have waited until their first appearance in public, at the beginning of their trials, to make a formal complaint. One of the reasons for this is their hope that the courtroom would provide the opportunity to air such complaints which have been blocked while they awaited trial: the sections above detail the obvious obstacles to proving allegations of ill-treatment and torture pre-trial when lawyers and family members are excluded from contact with detainees, and when detainees are not able

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<sup>38</sup> In a letter dated 23 February 1999 from First Deputy Prosecutor I.A. Najafov, which gave detailed information on a number of allegations of torture and ill-treatment which Amnesty International had raised with officials.

<sup>39</sup> In its Annual Report 1998, issued on 1 June 1999, the International Committee of the Red Cross (ICRC) comments: "In Azerbaijan, negotiations with authorities for access to all detainees yielded no results." During that year the ICRC did, however, have access to the entire prison population (under 200 persons) in the disputed enclave of Karabakh within Azerbaijan.

<sup>40</sup> In prohibiting the use of any statement extracted under torture, Article 15 of the Convention of Torture adds the proviso: "except against a person accused of torture as evidence that the statement was made."

to have access to their own or an independent medical practitioner whom they trust to provide an impartial assessment of any injuries sustained through alleged torture or ill-treatment.

A further reason why some accused wait until their trial to make public their statements alleging torture is their prior lack of access to an independent, external complaints mechanism, and the lack of confidence of victims and lawyers that those officially charged with investigating complaints will act promptly and impartially if allegations of torture are made. Many victims simply do not believe that their complaints will be rigorously, comprehensively and impartially investigated. Others are deterred from lodging complaints by a fear of reprisals, believing that any attempt on their part to bring those responsible to account - or simply to stop the ill-treatment - will only result in greater abuses against them or their relatives. In some such cases people tortured or ill-treated while detained prior to trial have only felt safe enough to make their allegations public when their case comes to trial and they have the opportunity to testify in open court.

For such reasons, in many instances no official complaint may have been lodged at an earlier stage in the proceeding, and no detailed, contemporaneous medical examination may exist which could be used as one of the tools to test and establish such allegations in court. However, people held in pre-trial detention who have been too intimidated to lodge a complaint at the time of their alleged ill-treatment, and who dare to make such claims public only when they finally appear in open court, have often found judges refuse to consider the issue on the grounds that there is no record of complaint or accompanying medical examination dating from the time of the alleged abuse. In other cases, even if the judge decides to permit a medical examination as a result of such claims, injuries may have healed or the time which has elapsed may be too great to permit an injury to be unambiguously ascribed to the alleged incident of torture or ill-treatment.

For example, at the trial of 37 members of the special police force known as OPON<sup>41</sup> which opened on 1 October 1996 in Baku, 24 defendants alleged that following their arrest in early 1996 they had been subjected to physical or mental duress during the first half of the year in order to extract testimony implicating them in a failed coup in March 1995. One of the accused Murshud Mahmudov, for example, stated that he had been subjected to electric shock treatment to his ears. Tahir Ragimov said that he had been regularly and severely beaten during interrogation, and Abulfat Kerimov testified that he had been hung upside down and beaten.<sup>42</sup> Speaking to representatives of the non-governmental organization Human Rights Watch, Abulfat Kerimov's lawyer Osman Kazimov said that he did not see his client until mid-April 1996, a month after he had been taken into custody, and only after strong and repeated complaints to

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<sup>41</sup> OPON is the Russian acronym for special police forces (ОПОН - Оперативная Полиция Особых Назначений). Hundreds of members were arrested in the wake of armed disorders in October 1994 and March 1995, and many alleged torture and ill-treatment.

<sup>42</sup> See the Amnesty International report: *Azerbaijan: Time to abolish the death penalty*, AI Index: EUR 55/02/97, March 1997.

the General Prosecutor's Office about lack of access.<sup>43</sup> When he did gain access, Osman Kazimov reported that almost the whole of his client's body was covered in bruises and swellings, and that Abulfat Kerimov could not pick anything up with his hands or stand on his feet. Osman Kazimov's repeated requests at that time to the General Prosecutor's Office for a forensic medical examination were turned down.

At the start of the trial Osman Kazimov requested medical examinations on the basis of the claims made in court, and X-ray tests were carried out at the end of November 1996. These are said to have shown that at least three of the defendants had sustained broken ribs. However, those carrying out the forensic medical examination were unable to attribute a date and cause to the injuries, owing to the time that had passed since the alleged assaults. Amnesty International's was concerned that evidence elicited allegedly under torture was admitted into evidence against the accused. These concerns were heightened by the fact that the majority of the defendants were charged with, among other things, treason, which at that time carried a maximum sentence of death. The trial ended on 16 January 1997, with all the accused convicted and sentenced to up to 13 years' imprisonment.

Many other former OPON members who have been arrested have described similar treatment. Elshan Javanshir oglu Rahimov also waited until his trial had begun before making his allegations public - in testimony at the trial which began on 9 June 1998 before the Supreme Court.<sup>44</sup> Elshan Rahimov is said to have described acts of torture which took place after his arrest on 15 April 1997 while he was in pre-trial detention at the Ministry of Interior's Department to Combat Organized Crime - the subject of numerous such allegations of ill-treatment and torture. The reason for the torture, he wrote, was his refusal to confess. Elshan Rahimov reported that he had been beaten with truncheons, a parquet brick and a table leg. When he lost consciousness, he was thrown under a cold shower until he revived, and was then beaten again. Elshan Rahimov also alleged that he had been tied naked to a central heating radiator and tortured; that one officer (whom he named) punched him, knocking out three teeth; and that indirect threats were made against his mother and sisters. Elshan Rahimov claimed that he wrote several protest letters to the procuracy but that after this the treatment got worse. He was said at the time of the trial to suffer still from frequent fainting fits, the effects of a broken humerus and to be deaf in one ear. At least two other defendants in the same trial, Ilgar Mamedov and Fazil Muhtarov, also alleged that their testimony had been obtained under duress

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<sup>43</sup> See *Azerbaijan: Impunity for Torture* by Human Rights Watch, August 1999.

<sup>44</sup> See reports for example in the newspapers *Azadlyg* of 19 June 1998 and *525-ji gazet* of 2 July 1998. Elshan Rahimov was subsequently sentenced to 13 years' imprisonment by the Supreme Court under Articles 70-2 part three (participating in the actions of illegal armed groups) and 220 parts two and three (illegal possession of weapons) of the Criminal Code for various offences linked with armed attacks involving OPON forces in October 1994 and March 1995.

while held at the Baku Main Police Directorate.<sup>45</sup> It is alleged that the judge failed to order any investigation into the claims of ill-treatment, and that statements said to have been obtained under duress were admitted as evidence .

Responding to Amnesty International's concerns at such allegations, the Deputy General Prosecutor denied that Elshan Rahimov had made any written or verbal complaints against illegal methods of duress and stated - without elaboration - that it had been established that no such illegal methods had been used against the detainee.<sup>46</sup>

### **3.4 Threats against relatives of detainees**

Over the years Amnesty International has received many allegations that relatives or friends of detainees have been subjected to threats and actual ill-treatment by law enforcement officials in an attempt to exert pressure on those in custody. One of the cases the organization raised with the Azerbaijani authorities is that of Vusal Yashar oglu Rasulov, then aged 12, who was reportedly beaten and harassed by police in the town of Mingechevir in an attempt to extract information about his mother, Sakhiba Giyaz kyzy Rasulova.<sup>47</sup>

Yashar Rasul oglu Rasulov, the boy's father and husband of Sakhiba Rasulova, alleges that the family's troubles began in late 1997 after his wife spoke out in defence of a local inhabitant named Ramiz Akhmedov. Sakhiba Rasulova is said to have intervened with the local procurator's office after reports that Ramiz Akhmedov was being detained illegally by a senior police officer, who was seeking a payment of US\$1,500 for his release. Ramiz Akhmedov was later freed by the Mingechevir police, but the latter subsequently instigated criminal proceedings against Sakhiba Rasulova on a charge of fraud (Article 147 of the Criminal Code). On 6 December 1997 they reportedly detained her two young children, a boy and a girl, in order to obtain evidence against her. It is alleged that three officials - an investigator, the Chief District Inspector, and the Deputy Procurator of Mingechevir - ill-treated the woman's son, Vusal Rasulov. The torture reportedly included shutting Vusal's fingers in the door and beating him on the soles of his feet.

Vusal Rasulov's family report that they took him the same day to Mingechevir's Polyclinic No. 2. Doctors there are said initially to have confirmed the presence of bodily injuries, but to have then destroyed the relevant documents under pressure from the law enforcement agencies, who also ordered staff not to treat the boy. Yashar Rasulov reportedly then took his son to a local hospital in the Kakh district, but at 2pm on 9 December the boy was found there by Mingechevir police officers, who are said to have taken him to the village of Khanabad in Yevlakh district. Vusal Rasulov was held there illegally until 14 December, when

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<sup>45</sup> Information from the non-governmental Institute for Peace and Democracy.

<sup>46</sup> Letter dated 23 February 1999 from I. A. Najafov, First Deputy Procurator General.

<sup>47</sup> See, for example, the TURAN news agency report of 18 December 1997.

he was discovered and released by Kakh district police. He was said to have been held in the home of one of the Mingechevir police officers.

It is alleged that on 16 January 1998 Vusal Rasulov was again detained. Speaking to reporters three days later, Vusal said that as he was returning home from school he had been detained by the same Mingechevir police officer who had held him in his home. He was taken against his will to the police department, and beaten there by a police officer.<sup>48</sup> Vusal claimed that he had been beaten for giving evidence against the Mingechevir policeman concerning the alleged abduction in December, and that the police threatened to beat him again unless he changed his testimony. Yashar Rasulov added that his son had been refused treatment at Mingechevir's clinic No. 20 for injuries sustained, and so was taken to the Agdash district, where doctors noted that he was suffering from torn abdominal muscles.

In a further development the following month, Yashar Rasulov alleged that on 7 February Mingechevir police officers tried to exert pressure on two pupils at his son's school who were said to have witnessed Vusal's beating at the police station.<sup>49</sup> He claimed that police officers attempted to persuade Parviz Niftaliyev and Tarhan Mamishov, pupils at school No. 11, to change their testimony and say instead that Vusal Rasulov had sustained abdominal injuries after falling from a tree. Yashar Rasulov also alleged that under pressure from the police, the local hospital was refusing to remove his son's surgical stitches.

The General Prosecutor's Office had reportedly opened a case on the basis of the allegations of ill-treatment on 12 January 1998, with the investigation being carried out by the prosecutor's office of Sheki district.

In responses to Amnesty International dated 24 April 1998 and 23 February 1999, the General Prosecutor's office reported that a criminal case against the parents of Vusal Rasulov had been opened on 6 November 1997 for fraud (Article 147 part 3 of the criminal code), and that further charges had been laid against them on 18 March 1998. Yashar Rasulov was convicted, but his wife went into hiding. Regarding the reports that their son Vusal was beaten, illegally detained and refused medical aid, the officials reported that there had been "an objective, comprehensive and thorough investigation", but the allegations were not sustained. No further information was given, however, to indicate the scope, detail or thoroughness of the investigation, nor by whom it was conducted.

In another case several Jehovah's Witnesses alleged that they had been ill-treated by law enforcement officials following the arrest of a member of their congregation on charges of bribery. Aleksandr Viktorovich Usenko, a Russian citizen living at that time in Baku, had gone to the Ministry of Justice on 13 November 1997 for an appointment with the head of the department that registers religious communities. He was arrested there by officials from the Baku City Procurator's Office after allegedly offering a bribe of US\$2,000 in exchange for

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<sup>48</sup> TURAN news agency 19 January 1998.

<sup>49</sup> TURAN news agency, 10 February 1998.

registration.<sup>50</sup> Aleksandr Usenko was taken to Investigation Isolation Prison No. 1 (Bailov prison), where, it is alleged, he was beaten and verbally abused by an investigator, and was initially prevented from meeting the lawyer engaged by his family to defend him. Aleksandr Usenko is said to have lodged a complaint about his treatment with the Baku City Procurator, Shukyur Rzayev.

From 16 November 1997 other members of the congregation were called for interrogation, and three - Nazilya Veliyeva (a young woman aged 18), Arif Babayev and Rovshan Nariman ogly Mursalov - were also reportedly beaten by law enforcement officials. Nazilya Veliyeva was said to have been beaten once and Arif Babayev several times. Rovshan Mursalov alleged that he had been beaten for refusing to sign a false statement prepared by the police, and that he had had to seek hospital treatment (at Hospital No. 4, Nasiminsky District, Baku) for a burst eardrum sustained during this beating. Other Jehovah's Witnesses claimed that they had been screamed at and threatened while interrogated, and a total of 11 were said to have lodged a complaint about their treatment with the Office of the General Prosecutor.

Aleksandr Usenko was subsequently sentenced to three years' probation after being convicted of bribery (Article 171 part 1 of the Criminal Code), and was released on 23 February 1998.

Commenting on this case the General Prosecutor's Office noted that an investigation into the allegations did not confirm reports of illegal methods used by the investigator or the reported beatings, adding that employees of medical establishments referred to by the Jehovah's Witnesses had retracted their testimony that medical treatment had been given following beatings.<sup>51</sup>

### **3.5 Prison conditions amounting to cruel, inhuman or degrading treatment**

Until recently conditions for those in remand prisons were reported to violate standards for humane treatment. These institutions, known as investigation-isolation prisons, hold those

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<sup>50</sup> Religious organizations denied official registration in Azerbaijan cannot act as legal entities, for example in renting premises or having a bank account in their name. Jehovah's Witnesses have had problems in registering officially in Azerbaijan, and several other countries of the former Soviet Union, frequently in connection with their position on compulsory military service or proselytizing activity. In a press item by the non-governmental Keston News Service of 5 December 1997, a spokesperson for the Jehovah's Witnesses in the former Soviet Union was quoted as saying that the religious group had first applied for registration in Azerbaijan two years previously. They had met with constant refusals, although no official written refusal had been received as required under the Law on Freedom of Religious Profession.

<sup>51</sup> Letter of 23 February 1999 from I.A. Najafov, First Deputy Prosecutor General.

awaiting trial or the outcome of their appeal.<sup>52</sup> One, Bailov prison in Baku, also held death row prisoners before capital punishment was abolished in Azerbaijan in February 1998.<sup>53</sup> Visiting in November 1997, an investigator from the non-governmental organization Human Rights Watch found conditions in Bailov prison to be so poor that they were considered to amount to cruel and inhuman treatment: “[this facility] was so overcrowded as to require detainees to sleep in shifts in cells that lack proper ventilation and light. Detainees in some cases were seen to be extremely thin and malnourished, raising concerns about lack of adequate food and vitamins. Former detainees who had been in other remand prisons reported that these facilities are equally or more overcrowded.”<sup>54</sup>

Amnesty International had also received frequent allegations that conditions on death row in the fifth wing of Bailov prison were extremely poor owing to severe overcrowding - with those in some cells having to sleep in shifts - and absence of opportunities to exercise or to walk in the open air. Two delegates from the Council of Europe, for example, reported that the fifth wing was built to accommodate 26 prisoners but actually held 110 prisoners during their visit in May 1997 (they also described the prison as a whole as “grossly overcrowded”, and conditions in the disciplinary section as “totally unacceptable”).<sup>55</sup>

Following abolition of the death penalty in early 1998 all the 128 men on death row at that time had their sentences commuted to life imprisonment, and by April that year the majority had been moved to Gobustan prison, some 60 kilometres outside Baku.<sup>56</sup> Only 31 lifers, held

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<sup>52</sup> At the time of writing, pre-trial detention facilities fall under the responsibility of the Interior Ministry (and, to a lesser extent, the Ministry of National Security in connection with cases under its jurisdiction). Responsibility for detention post-trial, in the country’s system of corrective labour institutions, was transferred to the Ministry of Justice in 1993. On 12 October 1999, however, it was reported that Azerbaijani President Heidar Aliyev had signed a decree transferring responsibility for the Interior Ministry’s investigation-isolation prisons to the Ministry of Justice.

<sup>53</sup> Bailov prison is known officially as investigation-isolation prison No. 1 of the Ministry of Internal Affairs.

<sup>54</sup> See the Human Rights Watch report *Azerbaijan: Impunity for Torture*, August 1999.

<sup>55</sup> *Report on the conformity of the legal order of Azerbaijan with Council of Europe Standards* by Rudolf Bernhardt and Marek Nowicki, Strasbourg, 19 September 1997. In the section on “Penitentiary Institutions” they concluded among other things that pre-trial detention centres “appeared to be suffering from overcrowding, with unavoidable consequences for physical, hygienic and psychological conditions”, and that “prolonged detention in the disciplinary units is likely to raise serious issues under Article 3 of the European Convention of Human Rights [prohibition of torture].” In paragraph 165 of the report they also recommended the institution of “an external control mechanism of conditions of detention, including the question of adequate medical care”.

<sup>56</sup> Azerbaijan abolished the death penalty in February 1998, although the law enacting this retained the possibility of its use in wartime. This stance was reflected in Azerbaijan’s accession to

in 16 two-person cells in the prison's fifth wing, were said to remain on 28 July 1999, when the prison was visited by Eldar Zeynalov, director of the non-governmental Human Rights Centre of Azerbaijan. Lack of exercise for prisoners had also reportedly been eased by the building of an exercise yard, with those in the wing now entitled to one hour's daily exercise in the open air. Eldar Zeynalov also noted that at the time of his visit cells in other wings were less crowded than had been reported 18 months earlier, especially in respect of the cells holding women and minors.

Conditions are also said to have improved in the other major remand prison in Baku, Shuvelyan<sup>57</sup>, which Eldar Zeynalov visited on 30 July 1999. At that time he reported that the main problem was humidity, owing to the prison's proximity to the sea, which together with inadequate ventilation made the cells very hot in summer. This, together with a lack of bedding materials in the cells and the possibility of bathing only once a week, hinders the maintenance of sanitary conditions. The problem of humidity was highlighted by a report that two prisoners subsequently died of heat exhaustion while held in a solitary confinement cell in Shuvelyan prison on 6 August 1999. According to the report, temperatures had reached 40°C and the cell had only a small window and no other ventilation.<sup>58</sup> Eldar Zeynalov reports that since 1997 prisoners have been allowed to have electric fans in their cells.<sup>59</sup> These are, however, provided by relatives rather than the prison administration.

Many relatives of those detained have also reported a more general and persistent problem throughout the penitentiary system - the need to pay bribes in order to pass on food packages and medicines - even those permitted by law.<sup>60</sup> Such packages are frequently necessary to supplement deficiencies in the services available to prisoners. Although relatives

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the United Nations Second Optional Protocol to the International Covenant on Civil and Political Rights (on 22 January 1999), which it signed with the reservation allowing for the death penalty "in exceptional cases, adopting the special law, ....for the grave crimes, committed during the war or in condition of the threat of war."

<sup>57</sup> Known officially as Investigation-isolation prison No. 3 of the Ministry of Internal Affairs. According to Eldar Zeynalov, it was built in 1898, originally as a sanatorium, but has been used as an investigation-isolation prison since 1932. There are plans to build a new block in the prison during 1999.

<sup>58</sup> *Sharg*, 21 August 1999. One of the men was said to have been under investigation, and the other to have been already convicted.

<sup>59</sup> In accordance with a instruction No. 195 of the Ministry of Internal Affairs of 14 May 1997, prisoners are now permitted to have in their cells small electrical items such as fans, kettles and radios.

<sup>60</sup> Prisoners in pre- and post-trial detention are allowed to receive a certain amount of parcels and packages each year, depending on their regime of imprisonment. Following a visit to Gobustan prison in this year, for example, Eldar Zeynalov reported that those sentenced to life imprisonment were entitled to receive four food parcels of up to 8 kilograms in weight each year.



have often told Amnesty International about such bribery as a fact of life in their dealings with prison officials and guards, they have not wished to lodge formal complaints for fear of reprisals against their detained relatives and of losing their channel for distributing this food and medicine. It has also reported that some detainees need to pay guards in order to obtain the periods of exercise in the open air that they are entitled to.<sup>61</sup>

Although some improvements have reportedly been made in prison conditions in recent years, the difficulties of full and frequent access by independent persons or bodies such as the International Committee of the Red Cross, make it difficult to determine whether standards have improved to the level or quality spelled out, for example, in the UN Standard Minimum Rules for the Treatment of Prisoners. Reports of overcrowding in pre-trial detention, and allegations that bribes must be paid for supplementary food, medical care, family visits, and access to daily exercise, mean that prison conditions may still amount to cruel, inhuman or degrading treatment.

#### **4. ALLEGATIONS OF ILL-TREATMENT POST-TRIAL**

As mentioned above, the vast majority of allegations of ill-treatment and torture received by Amnesty International relate to the period following detention or arrest and when people are held in pre-trial detention. There have, however, also been reports that people have been subjected to ill-treatment post trial, in the country's system of corrective labour colonies. On 5 March 1998, for example, an inspector at one of the corrective labour colonies under the Ministry of Justice was convicted by Binagadinsky District Court in Baku for assaulting a prisoner.<sup>62</sup> The court heard that in September 1997 Hikmet Bahram oglu Ismaylov, a guard at strict-regime corrective labour colony No. 11, punched prisoner Ilham Nabiyev during a morning roll-call, and then shoved him against an iron door handle. Ilham Nabiyev suffered a broken rib and was hospitalized. Hikmet Ismaylov was convicted of exceeding his authority, under Article 168, part two, of the criminal code, but was given a conditional three-year sentence, with community work rather than imprisonment. Responding to Amnesty International, the General Procurator's office said that the court had taken into account the fact that Hikmet Ismaylov was a first offender, had pleaded guilty, expressed remorse and had positive references from his place of work.<sup>63</sup>

Another case reported in the press in 1998 concerned allegations of ill-treatment at a penal institute for minors.<sup>64</sup> According to this report, seven young men aged 17 to 18 and serving prison terms for theft escaped from their colony near the village of Surahany on 10

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<sup>61</sup> *Azadlyg*, 26 July 1999, quoting Saida Gojamanly of the Institute for Peace and Democracy.

<sup>62</sup> *Zerkalo*, 7 March 1998.

<sup>63</sup> Letter dated 23 February 1999, from I.A. Najafov, First Deputy Prosecutor General.

<sup>64</sup> *Zerkalo*, 11 July 1998, in an article entitled "Violence breeds violence".

February 1998, after what they alleged was sustained ill-treatment at the hands of one of the guards. They killed the guard during the escape.

The escape began at around 11pm, when the youths overpowered the guard, who had entered the quarantine section in which they were held. They are said to have hit the guard over the head with an iron dustpan before strangling him with electric wire. The youths stole the keys from his pocket and escaped, but were recaptured two weeks later. At the trial the young men alleged that the guard had regularly subjected them to what were described as “refined insults” such as forcing them to drink urine, as well as other ill-treatment and demands for money. They also alleged that the treatment to which they were subjected had got worse after they were recaptured, in part to extort testimony and in part as revenge for the murder of the guard, and included severe beatings and sexual violence.<sup>65</sup> Six of the seven youths stood trial before Baku City Court in July 1998, and were sentenced to between five and 10 years’ imprisonment.<sup>66</sup> The seventh youth, Ajar Yahyayev, died shortly after recapture - according to officials he died in February 1998 in prison hospital No. 25 of tuberculosis.

## 5. VIOLENCE IN THE ARMY

As in many of the independent republics which emerged from the break-up of the Soviet Union, there have been persistent reports in Azerbaijan of regular and violent hazing of army conscripts performing their compulsory military service in the army.<sup>67</sup>

Brutal hazing of conscripts has been reported under the practice known in Russian as “*dedovshchina*” (????????). This involves forcing recruits to perform menial tasks, often outside official duties, and can lead to beatings and suicides. Often such activity is alleged to have taken place with the consent, acquiescence or active participation of army officers, who reportedly condone these practices as a means of maintaining discipline. Many complain that such abuses are routine and systematic, and that action is rarely taken in response to complaints.

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<sup>65</sup> One of the alleged methods of torture which has been reported from a variety of sources is “sitting on a bottle”, in which a detainee is threatened with, or subjected to, the insertion of a bottle into the anus.

<sup>66</sup> Four of the youths - Etibar Mamedov, Faik Jafarov, Samir Abdullayev and Elmir Zeynalov - were sentenced to 10 years’ imprisonment in an intensified regime corrective labour colony. Jeyhun Adygezalov was sentenced to nine years’ imprisonment and Jeyhun Nasirov, the only one not to have taken part in the murder, received a five-year term.

<sup>67</sup> Military service is compulsory in Azerbaijan for young men between the ages of 18 and 27. There is no civilian alternative for conscientious objectors. For further information on the situation in Azerbaijan see the section on the South Caucasus in the Amnesty International report *Armenia: “Respect my human dignity” - Imprisonment of conscientious objectors*, AI Index: EUR 54/06/99, September 1999.

In a report dated 27 November 1996, for example, the TURAN news agency carried a story about Javid Gurbanov, a conscript who is said to have hanged himself when he could no longer endure army conditions and verbal abuse from other conscripts and officials in his unit. According to his father, Javid Gurbanov was called up in June 1996 and soon complained in letters about violence related to “*dedovshchina*”. In a letter to his father of 26 October that year he asked for a large sum of money in order to bribe the commander to transfer him to another unit, or at least a lesser sum which could be used to obtain two days’ leave. On 28 October he is said to have hanged himself on a train travelling from Kazakh to Baku. A criminal case was reportedly instigated under Article 100 of the criminal code, “incitement to suicide”, but Amnesty International is not aware of the outcome of the investigation.

It is also alleged that conscripts in army units face obstacles similar to those described by detainees in reporting abuse and having their complaints investigated, with many too afraid of severe reprisals to approach officials, and in any case having no confidence that their complaints would be dealt with impartially and the abuse halted. In a case last year it was reported that a young conscript shot dead three of his fellow soldiers after he had been subjected to repeated beatings and sexual abuse, and had no faith that officers or other officials would intervene. The young man, named only as “V” in the report, was called up in January 1998 and sent to an army post in the Agdam region.<sup>68</sup> He was accompanied by three longer-serving soldiers, who are said to have abused him from the start. “V” is said to have been kicked and beaten in order to force him to perform dirty tasks and to undertake guard duty on behalf of the other three.<sup>69</sup> The abuse reached a further stage when one of the three is said to have viciously beaten “V” as a prelude to forcing him to engage in a sexual act. Such abuses are said to have subsequently occurred on a regular basis, until “V” resisted and shot the three fellow soldiers dead with an automatic weapon. “V” deserted his post but was soon recaptured, and in July 1998 a military tribunal sentenced him to 15 years’ imprisonment. Amnesty International is not aware whether any investigation was carried out into the allegations of abuse against him.

## 6. OTHER ALLEGATIONS OF TORTURE AND ILL-TREATMENT

It is not only detainees and their relatives who have reported ill-treatment at the hands of law-enforcement officials. Such allegations have also been made by numerous journalists, demonstrators, and opposition political figures.

### 6.1 Ill-treatment of journalists

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<sup>68</sup> *Zerkalo*, 1 August 1998.

<sup>69</sup> His military unit in the Agdam region was along the cease-fire line with ethnic Armenian forces from the self-proclaimed Nagorno-Karabakh Republic. Regular skirmishes, with casualties, are reported along this line.

Journalists have frequently reported experiencing verbal and physical abuse by or with the consent or acquiescence of law enforcement officials during the course of their work. Shortly after Azerbaijan became a party to the Convention against Torture, for example, journalist Taptig Farhadoglu of the independent news agency TURAN reported that a man he subsequently recognized as a police officer was among a group who beat him on 17 November 1996 in Baku. Speaking to an Amnesty International delegate in Baku later that month, Taptig Farhadoglu said that he was beaten in the street near Azadlig Square, by a group of men in civilian clothes who approached him shortly after he had conducted an interview with opposition politician Neimat Panahov. Taptig Farhadoglu reported that the men beat him more severely after he tried to explain that he was a journalist. He was knocked to the ground at one point, and kicked repeatedly. Taptig Farhadoglu also alleged that a group of police officers standing nearby watched what was happening but made no attempt to intervene physically. One of the officers asked the men beating Taptig Farhadoglu to stop, but no further preventative action was taken, nor were any attempts made to apprehend those responsible, after one of attackers allegedly said: "Shut up! Don't you see that this is a special operation?" Taptig Farhadoglu reported that he was confined to bed on medical advice after suffering cuts and bruising to his head and body, and that his glasses and dictaphone were broken in the attack (he was still suffering from headaches and had bruises at the end of the month).

On 18 November Taptig Farhadoglu went to the Sabail district police department to report the assault, and alleged that while there he recognized the head of the district's 39<sup>th</sup> Police Department, whom he named, as having been among the group that attacked him the previous day. A criminal case was opened on 28 November, but was closed on 28 January 1997 by the Baku city prosecutor for lack of evidence concerning the identity of those responsible. It was reopened on 16 April 1997 after various protests, but closed again on 6 May 1997. No one has been charged in connection with the assault.

Journalists have continued to report assaults regularly since then, but in the vast majority of instances investigations, even if instituted formally, have not resulted in prosecutions. In most cases reported to Amnesty International, the case has, like that above, been closed without any charges being made, officially owing to lack of evidence. This was particularly the case with a spate of attacks on journalists reported last year, in the run up to the October 1998 presidential elections which were widely condemned as flawed by various observers.<sup>70</sup>

For example Tale Hamid (also known as Taleh Hamid oglu Babayev), editor of the newspaper *Mustigil*, was allegedly beaten on 1 September 1998 by police officers from the Khatainsky district of Baku. The incident took place near the Goskomimushchestvo building about an hour and a half before a convoy carrying Azerbaijani President Heydar Aliyev was due

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<sup>70</sup> See for example the Country Report on Human Rights Practices for 1998 by the USA State Department, which states: "Heydar Aliyev, who assumed presidential powers after the overthrow of his democratically elected predecessor in 1993, was reelected in October in a controversial election marred by numerous, serious irregularities, violations of the election law, and lack of transparency in the vote counting process at the district and national levels."

to pass by. Taleh Hamid was stopped as he was driving along this route by police who told him that the road was closed and suggested - reportedly in offensive and obscene terms - that he leave the road. The journalist objected to their rude attitude. In response a captain of police station No. 35 in Khatainsky district (whom the journalist named) is said to have struck Taleh Hamid in the face. The officer then opened the car door, pulled Taleh Hamid out of the car and continued to beat him on the street. He was joined by three majors from the same police station (all were also named by Taleh Hamid). It is also alleged that when Taleh Hamid tried to show them his accreditation as editor-in-chief one of the officers spat on it and threw it down at his feet.

Taleh Hamid is said to have telephoned the Republican Procuracy and the Ministry of Internal Affairs from the site of the incident, and on the instruction of the General Prosecutor's Office an investigator from the Department of Police Supervision of the Republican Prosecutor's Office arrived on the scene to conduct an investigation. When he tried to investigate, however, the police officers are said to have stated that they were subordinate only to the head of their own department. This head, of Khatainsky police administration, had to be summoned. He is said to have promised to conduct an investigation and that, if one of his subordinates were guilty, Taleh Hamid would get an apology. The officers did reportedly apologise to Taleh Hamid. Nevertheless a forensic medical examination was carried out, and the results were passed to the prosecutor's office, where the case was said to be under investigation. The Ministry of Internal Affairs was informed of what happened, but are said to have taken no action.

Responding to Amnesty International on this case, the General Prosecutor's Office reported that during an investigation the forensic medical examination had confirmed the presence of light bodily injuries, but no facts were established to substantiate the allegations that Taleh Hamid had been beaten or that force had been used against him by police officers.<sup>71</sup>

### **6.1.1 Threats against those who seek to publicize allegations of abuse**

In addition to allegations of physical abuse against journalists, Amnesty International has also expressed concern at threats made against those who have sought to make public reports of torture. An example is the reported threat of criminal prosecution made in 1998 against Elmar Huseynov, the editor of the independent journal *Monitor*, in connection with an issue of the journal dealing with alleged ill-treatment of detainees by officials from the Ministry of Internal Affairs.

According to information available to Amnesty International, *Monitor* was registered as a publication in Azerbaijan in May 1996, and began publication in August that year. As of July 1998 a total of eight editions were said to have been published, containing mainly articles on the political, social and economic situation in Azerbaijan, citizens' rights, and issues of daily life in the republic. According to its editorial team *Monitor* was published in Turkey so as to

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<sup>71</sup> Letter dated 23 February 1999 from I.A. Najafov, First Deputy Prosecutor General.

avoid issues of censorship which arose in Azerbaijan prior to the lifting of such restrictions in August 1998.

The journal's main problems, however, were said to date from its February 1998 issue, which contained articles speculating on the development of political forces in Azerbaijan after President Aliyev; on the alleged existence of a clan system based on natives of the Azerbaijani exclave of Nakhchivan;<sup>72</sup> on prospects for the development of a national identity; and on reported cases of torture or ill-treatment by officials of the Ministry of Internal Affairs. The latter article was said to be based on previously published reports of torture issued by various human rights organizations.

On 27 February 1998, 20 days after this issue of the journal had first appeared, the magazine was confiscated by police from newsstands all over Baku (reportedly without the necessary authorization and without the knowledge of the Minister of Internal Affairs or the Minister of Press and Information). Various articles were also said to have appeared in official publications demanding that *Monitor*'s editor, Elmar Huseynov, be brought to account for the article on national identity (entitled "The Azeri Nation of the 21st Century"). Three history professors at Baku State University (Yagub Mahmudov, Seidaga Onunlahi and Gurban Bayramov) brought a civil suit against Elmar Huseynov, "on behalf of the nation... to protect national honour and dignity". The suit asked for a retraction and apology to the Azeri nation, compensation for moral damage, and for the journal to be closed down. At the hearing, which began in June 1998, the prosecutor, Ahmed Gasanov, suggested that the suit be partially satisfied by compensation set at the rate of the cost of the print run for one issue of the magazine (eight million manats, or around US\$1,900) and a published retraction. He did not recommend that the court request the Ministry of Press and Information to close down the journal, and he also asked the court to comment on the actions of the police in seizing all the copies of *Monitor*. On 7 July 1998 the presiding judge, Zahid Agayev, found for the plaintiffs, ruling that *Monitor* should pay 16 million manats to the fund for refugees from the Karabakh conflict, and publish a retraction. There was no comment on the actions of the police.

Shortly after the trial it was reported that criminal proceedings might be instituted against the journal for its article on torture in the February 1998 issue. According to Elmar Huseynov's lawyer, the Main Police Administration of Baku had already approached the Baku Procurator's office in this regard, which in turn had informed the Office of the Republican Procuracy. Another source had earlier reported that Minister of Internal Affairs Rail Usubov had sent a letter to the editorial office of *Monitor* on 12 April, demanding a retraction of the allegations of torture and threatening the possibility of a criminal prosecution for slander (Article 121 of the Azerbaijani Criminal Code).

Amnesty International expressed concern at the reports that such a prosecution might proceed, especially given the organization's own concerns about the persistent nature of

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<sup>72</sup> Nakhchivan is part of Azerbaijan, although separated from the rest of this republic by a strip of Armenian territory. Heidar Aliyev headed the government there before being elected President of Azerbaijan.

allegations of ill-treatment in detention. The organization urged that great consideration be given to ensuring that criminal law is not used in a way that punishes lawful freedom of expression. In response the General Prosecutor's Office told Amnesty International that they had not opened a criminal case against Elmar Huseynov, and that reports of harassment and threats of the opening of such a case were not true. At the time of writing, no further action had been taken against Elmar Huseynov on this issue.

## **6.2 Alleged beatings of peaceful demonstrators and members of opposition political parties**

Not only journalists reported instances of assault in the run-up to the 1998 presidential elections in Azerbaijan: there were numerous reports of members of opposition political parties and others being beaten by law-enforcement officials while seeking to demonstrate peacefully.

Fagani Nofig oglu Magerramov, for example, chairman of the Geranboy branch of the Party of National Independence of Azerbaijan (PNIA), was said to have been severely beaten on 30 July 1998 by the head of the Department to Combat Organized Crime at the Geranboy police administration.<sup>73</sup> The beating is said to have happened after press reports alleged that the local authorities were interfering in the collection of signatures in support of presidential candidate Etibar Mamedov, Chairman of the PNIA. The Department Head is said to have struck Fagani Magerramov repeatedly with a rubber truncheon in front of other police officers. The ill-treatment is said to have lasted several hours, until Fagani Magerramov was released following the intervention of the Ministry of Internal Affairs. A medical examination was subsequently carried out, and a criminal case was opened by the Geranboy district prosecutor's office under Article 167, part one, of the criminal code (abuse of office). The General Prosecutor's office told Amnesty International that the investigation into this case had been passed to the Khalarksy district "in the interests of objectivity", that allegations of the beating were not substantiated and that the case was closed on 21 November 1998.<sup>74</sup>

People who have participated peacefully in demonstrations have also alleged ill-treatment at the hands of law enforcement officials. They have included those involved in an attempt by opposition parties to hold an unsanctioned demonstration in Baku on 12 September 1998.<sup>75</sup> Vahid Qurbanov, for example, a member of the Azerbaijan Democratic Party, was detained near the "28th May" metro station at around 4.45pm on 12 September, together with some other party colleagues.<sup>76</sup> It is alleged that he objected verbally to police attempts to deny what he viewed as his right to peaceful assembly, and that in consequence he was severely beaten around the head and legs by police officers while being forced into a vehicle. Vahid Qurbanov's shirt is said to have been stained with blood as a result of this incident. He was

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<sup>73</sup> See for example reports by TURAN news agency on 1 and 3 August 1998.

<sup>74</sup> Letter dated 23 February 1999 from I.A. Najafov, First Deputy Prosecutor General.

<sup>75</sup> The opposition parties wished to demonstrate in the centre of Baku, but were refused permission by the authorities who instead granted permission to use the Motordrome stadium on the outskirts of the city.

<sup>76</sup> Information from an interview with Vahid Qurbanov and one of his relatives by an Amnesty International representative in Baku at the beginning of December 1998, plus details supplied by Eldar Zeynalov of the Human Rights Centre of Azerbaijan.



taken to police station No. 22 of the Nasimi District Police Administration and was sentenced the next day to 10 days' administrative detention for resisting a police officer and being under the influence of alcohol.

After sentencing Vahid Qurbanov was due to be transferred to the Qarashahar temporary detention isolator to serve this term, but police officers at station No. 22 were reportedly reluctant to send him there with a blood-stained shirt. They are said to have first asked Vahid Qurbanov's relatives to bring another one, but to have in the end purchased one themselves. A witness has described seeing Vahid Qurbanov being transferred to Qarashahar in a fresh shirt, and with a swollen and bruised eye.

After seven days Vahid Qurbanov was returned to police station No. 22, then, on the evening of 20 September, moved again to Qarashahar. A relative reported being informed by an investigator that this was for a medical examination, to determine whether or not Vahid Qurbanov had been beaten, but no further details were forthcoming on why such an examination had not been carried out closer to the alleged assault.

On 22 September, the day on which Vahid Qurbanov was due to be released after completing his term of administrative arrest, he was transferred back to police station No. 22 and charged with resisting a police officer, under Article 189-1, part two, of the criminal code. Relatives said they were informed that he would be released on bail, but late that evening this decision was reportedly reversed and Vahid Qurbanov was transferred to the Baku Main Police Administration. The following day he was again transferred, this time to Investigation Isolation Prison No. 1 of the Ministry of Internal Affairs (Bailov prison), from which he was subsequently released pending trial.

The trial by Sabayil District Court in Baku was set to begin on 2 November but, after several postponements, began on 15 December 1998. Witnesses are said to have testified that they saw Vahid Qurbanov being beaten by police while being detained. In January 1999 Vahid Qurbanov received a two-year suspended sentence.

Responding<sup>77</sup> to Amnesty International's concerns about this and similar cases following the 12 September demonstration, officials reported that the General Prosecutor had set up a special commission of procuracy employees, experts from the Bureau of Forensic Medical Examination at the republican Ministry of Health, and medical personnel from the investigation-isolation prison No. 1 of the Ministry of Internal Affairs, in order to investigate the appeals lodged and individuals' statements.<sup>78</sup> The full commission is said to have met with 11 of the accused, including Vahid Qurbanov, and to have carried out medical examinations as a

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<sup>77</sup> Letter dated 23 February 1999 from I.A. Najafov, First Deputy Prosecutor General.

<sup>78</sup> There had been wide publicity about a number of journalists and demonstrators reportedly assaulted by police, and also reports that some of those detained were ill-treated while in custody in order to force them to confess to public order offences, or to renounce their membership of a political party. Dozens of police officers were also said to have been injured following assaults by individuals in the crowd, including by stone throwing.

result of which injuries sustained on 12 September 1998 were established only in connection with one of the 11 men (not named). In his response the First Deputy Procurator General also wrote that none of the men when questioned mentioned any complaints. However, speaking following his release to an Amnesty International representative in Baku in early December, Vahid Qurbanov repeated his claims of ill-treatment while expressing doubt that any complaint would be acted on in an impartial manner.

Further allegations of ill-treatment by police were made following an unsanctioned rally on 7 November 1998 (see the case of Ilham Shaban in section 7.2 below), and the following day leading opposition members were said to have been assaulted after a sanctioned meeting while police stood by. Democratic Party leader Ilyas Ismailov and Liberal Party leader Lala Shovkhet-Hajiyeva, together with several of their party colleagues, were said to have been beaten by a group of around 30 attackers as they were leaving at the end of the rally. Democratic Party members alleged that the attackers included members of Baku's Criminal Investigation Department and employees of a commercial firm which is claimed to have links with one of President Aliyev's brothers and with the deputy chief of presidential security. A correspondent with the news agency *Reuters* reported that the attackers, of muscular build and in civilian clothes, punched and kicked the opposition party leaders as the rally drew to a close in full view of police cordoning off the area, who looked on but did not intervene.<sup>79</sup>

Commenting on these allegations in February this year, the General Prosecutor's Office reported that a criminal case had been opened under Article 207, part two, of the criminal code, which punishes malicious hooliganism, with regard to the 8 November attack on several opposition party members, and that an investigation was continuing including through questioning of the demonstrators, police officers on duty, and impartial witnesses.<sup>80</sup> In April, however, opposition sources reported that no criminal case had yet been opened into the beatings although in November 1998 they had supplied the authorities with a list of those they believed to have been responsible.<sup>81</sup> At the time of writing there were still no charges known to have been laid against anyone alleged to have been involved in the attack on the opposition politicians (although a number of participants in the September and November demonstrations have been prosecuted, on charges such as public order offences and insulting the President of the Azerbaijani Republic).

## **7. BRINGING PERPETRATORS TO JUSTICE - ALLEGATIONS OF IMPUNITY**

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<sup>79</sup> *Reuters* report from Baku dated 8 November 1998. See also, for example, TURAN of 9 November 1998.

<sup>80</sup> Letter dated 23 February 1999 from I.A. Najafov, First Deputy Prosecutor General.

<sup>81</sup> *Azerbaijan Bulletin* No. 62, 14 April 1999.

Article 12 of the Convention against Torture obliges States Parties to ensure a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture or cruel treatment has been committed<sup>82</sup>. Article 13 guarantees those alleging torture the right to complain; to have their case promptly and impartially examined; and to be protected, along with witnesses, against any resulting ill-treatment or intimidation.<sup>83</sup> Article 14 obliges States Parties to grant victims of torture an enforceable right to fair and adequate compensation.<sup>84</sup> Article 16 makes it plain that States Parties should also undertake to prevent other acts of cruelty or ill-treatment, which do not amount to torture under the convention's definition, when such acts are committed by or with the consent of public officials.<sup>85</sup>

Amnesty International considers that Azerbaijan is failing in these obligations. The organization is concerned that the failure to investigate impartially and thoroughly allegations of ill-treatment and torture, and the failure to bring alleged perpetrators to justice in the course of full and fair proceedings, creates both an impression that torture and ill-treatment by law enforcement officials is acceptable conduct, and allows law enforcement officials to engage in such conduct and violate people's human rights with impunity.

## **7.1 No specific offence of torture as defined by the Convention against Torture**

A major obstacle in bringing alleged perpetrators to justice is the lack of a specific offence of torture, as defined under Article 1 of the Convention against Torture, in the Criminal Code of

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<sup>82</sup> Article 12 states: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is any reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

<sup>83</sup> Article 13 states: "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

<sup>84</sup> Article 14 states: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

<sup>85</sup> Article 16 states: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

the Azerbaijani Republic. The criminalization of torture as defined by the convention is required by Article 4 of the convention.<sup>86</sup> In its initial state report to the Committee against Torture Azerbaijan admits that “At the present time Azerbaijani internal law does not contain a definition of “torture” such as provided for in article 1, paragraph 1 of the Convention.”<sup>87</sup>

The convention defines torture in Article 1 as an intentional act which causes severe pain or suffering (whether physical or mental), which is inflicted for a particular purpose such as obtaining information or a confession (the list given is not inclusive), and which is inflicted by, at the instigation of, with the acquiescence of, or with the consent of a public official or someone acting in an official capacity.<sup>88</sup> This definition excludes pain or suffering caused by lawful sanctions, although such sanctions must be lawful under both domestic *and* international law.

While some acts that amount to torture or ill-treatment are variously punishable by the Azerbaijani criminal code, none of these contains the definition of torture as given in Article 1 of the Convention against Torture, or a specific mention of torture as an act carried out “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

For example, the Azerbaijani criminal code envisages criminal responsibility for “Intentional infliction of severe bodily injuries” under Article 102, “Intentional infliction of less severe bodily injuries” under Article 105, “Intentional infliction of light bodily injuries” under Article 106, and “Beatings and torture” under Article 108. However, none of these contains the definition of torture as given in Article 1 of the Convention against Torture, especially with regard to specifying the role of officials.

The offence of torture (Article 108) currently in the criminal code, for example, states:

*“The intentional infliction of a beating or other violent acts which cause physical pain but which do not impair the state of health, if such actions are repeated within a year after an administrative warning for such activity, is punishable by deprivation of freedom*

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<sup>86</sup> Article 4 states: “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

<sup>87</sup> Azerbaijan’s initial state report to the Committee against Torture, UN ref: CAT/c/37/Add.3, paragraph 16, dated 17 March 1999.

<sup>88</sup> Article 1 states: “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

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*for a term of up to six months or corrective work for a term of up to one year, or a fine..Systematic beatings or other actions which assume the character of torture are punishable by deprivation of freedom for a term of up to five years.”*

Article 102 which punishes intentional infliction of grave bodily injury states:

*“The intentional infliction of bodily injury dangerous for life or resulting in the loss of any organ or its function, or in mental illness or any other impairment of health, together with persistent loss of at least one third of the capacity to work, or when it results in the interruption of pregnancy or permanent disfigurement of the face, shall be punished by deprivation of freedom for a term of from three to eight years. The same actions, if they cause the victim’s death or assume the character of torment or torture, shall be punished by deprivation of freedom for a term of from five to ten years.”*

None of these four articles carries a specific mention of torture as an act carried out “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Those which do specifically mention crimes involving force by officials, such as “exceeding authority...through use of force” (Article 168, part two, of the criminal code, see footnote 37), “compelling to give testimony...through force or humiliation” (Article 177, see footnote 6), or “compelling an accused person...to give false testimony...by threats” (Article 180, see footnote 7), do not mention the term “torture”, let alone define the unlawful force used as “severe pain or suffering, whether physical or mental”, as required by the definition under Article 1 of the Convention against Torture.<sup>89</sup> In short, there is no criminalization of torture in Azerbaijan, as defined by the convention, as a distinct crime.

## **7.2 Failure to investigate torture allegations and prosecute suspected perpetrators**

Even with the legal sanctions available to them in the current criminal code, it has been alleged that, in violation of Article 13 of the Convention against Torture, prosecutors have in some

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<sup>89</sup> According to Azerbaijan’s state report to the Committee against Torture, in the first six months of 1998 the overwhelming majority of criminal convictions relating to the unlawful use of force - 426 in total - were under articles which do not specify the role of state agents in the acts of torture or ill-treatment (120 convictions were recorded under Article 102, 171 under Article 105, 128 under Article 106 and 7 under Article 108). Only one conviction was reported under Article 177, two under Article 180 and none under Article 168. A further table lists disciplinary punishments handed down to employees of the Ministry of Internal Affairs in 1997 and 1998, but does not indicate whether any of the offences mentioned involved the use of torture or ill-treatment. See Azerbaijan’s state report, UN reference: CAT/C/37/Add.3, 17 March 1999, tables below articles 131 and 237.

instances been reluctant to open criminal cases where they have received an individual complaint.

For example, two journalists who alleged that they were assaulted by police officers in 1997 reported that the district procurator's office and the district police department initially refused to investigate their allegations, and that a criminal case was only opened into the incident after much delay and following appeals to higher authorities by the men's newspaper.

Zakir Jabbarly and Dilgram Bayramov were reportedly assaulted on 22 September 1997 by the head and three employees of the Passport Department of Narimanov District Police Department in Baku.<sup>90</sup> The journalists, correspondents for the *Mozalan* newspaper, were researching the alleged illegal registration of citizens at hostel No. 3 belonging to the Tram and Trolleybus Department, and had gone to the Passport Department to seek further information. They report that while there the head of the department (whom they named) first verbally and then physically assaulted them. Three of the head's employees are also said to have joined in the beating. It is alleged that Zakir Jabbarly lost consciousness as a result of the attack and was taken to the Musa Nagiyev hospital, where he underwent an operation during the night of 22 to 23 September. He was said to have suffered from severe headaches and signs of blood in the urine for some time after the alleged attack. Dilgram Bayramov was initially detained by the police, but was released after the head of the Executive of Narimanov District intervened.

A case was opened by Baku City Prosecutor's Office under Article 168, part two, of the criminal code ("exceeding authority by use of force") in connection with the men's allegations, but not until 8 October that year. The men claimed that officials initially refused to investigate and only agreed after publicity and pressure from the newspaper. The Head of the Passport Department, who was reportedly not suspended during the investigation, denied the allegations, stating that men claiming to be journalists burst into his office without showing any accreditation, and that one of the men sustained an injury when he subsequently struck an iron railing.

Responding to Amnesty International, the General Prosecutor's office said that the case had been transferred from Baku City Prosecutor's Office to the Azibekovsky District Procuracy, but that it was subsequently closed on 26 February 1998 for lack of evidence.<sup>91</sup> This is in spite of a forensic medical examination which is said to have confirmed that the men sustained bodily injuries on the date that they alleged the assault took place. This case has been raised with the Azerbaijani government by the United Nations Special Rapporteur on the question of torture.<sup>92</sup>

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<sup>90</sup> See, for example, *Zerkalo* of 27 September 1997 and TURAN of 30 September 1997.

<sup>91</sup> In a letter dated 23 February 1999 from First Deputy General Prosecutor I.A. Najafov.

<sup>92</sup> See Report of the Special Rapporteur on the question of torture, Sir Nigel S. Rodley, UN ref: E/CN.4/1999/61, 12 January 1999.

In a more recent example, journalist Ilham Shaban of the TURAN news agency was said to have been among those beaten by police following an unsanctioned rally of 7 November 1998. It is alleged that Ilham Shaban showed his press card to a police major, who nevertheless ordered his subordinates to beat him.<sup>93</sup> The response of the General Prosecutor's Office to Amnesty International regarding this case was to state merely that the local prosecutor's office in Yasamalsky district had received no complaint from the journalist concerning his alleged ill-treatment.<sup>94</sup> However, Articles 12 and 16 of the Convention against Torture make it clear that states have a responsibility to conduct a prompt and impartial investigation wherever there are reasonable grounds to suspect an act of torture or cruel treatment has taken place, regardless of whether an alleged victim has actually lodged an official complaint.<sup>95</sup>

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<sup>93</sup> TURAN news agency report of 7 November 1998.

<sup>94</sup> Letter dated 23 February 1999 from I.A. Najafov, First Deputy Prosecutor General.

<sup>95</sup> Article 16 specifies that the obligations in Article 12 to conduct a prompt and impartial investigation apply to "other acts of cruel, inhuman and degrading treatment or punishment", as well as to acts of torture.

### 7.3 Allegations of torture often fail to reach court

There have been some prosecutions for excesses and brutality by law enforcement officials. The case of prison guard Hikmet Ismaylov mentioned above in section 4 was widely publicized, as was that of three police officers given long sentences on 22 June 1998 for severely beating a detainee named Jamal Aliyev who subsequently died in November 1994.<sup>96</sup> The officers convicted were Sarhan Zagam oglu Adbullayev, the former head of the Criminal Investigation Department of Narimanov District Police Directorate, who received seven years' imprisonment, and two other former officers from the same station, Ali Suleyman oglu Mahmudov and Rza Nukh oglu Ibadov, who were both sentenced to six years' imprisonment. Eldar Zeynalov of the Human Rights Centre of Azerbaijan, commenting on the case, alleges that forensic medical staff twice falsified documents concerning the cause of Jamal Aliyev's death, putting the cause of death down as a heart attack, to hinder the investigation.<sup>97</sup> A third post mortem was eventually ordered, reportedly after Jamal Aliyev's family had contacted representatives of the Council of Europe, and these conclusions led to criminal charges. During the trial the police officers continued to allege that the prisoner had caused the injuries himself.

In another high profile case a senior police officer named Adyl Ismaylov received a three-year sentence of imprisonment on 6 May 1998 for raping the mother of a detainee (he was, however, subsequently released early under an amnesty).<sup>98</sup> The Minister of Interior, Ramil Usubov, also reported that during the first six months of 1999 over 200 police officers had been dismissed for various offences, and some had been charged, although it is not known what proportion of these disciplinary and/or criminal actions were for offences involving violence against detainees.<sup>99</sup>

However, it is also widely alleged that when cases are opened against law enforcement officials for torture or ill-treatment, there is frequent failure to follow through with thorough, prompt and impartial investigations. Cases are often closed for lack of evidence after what is

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<sup>96</sup> See for example *Amnesty International Concerns in Europe*, AI Index: EUR 01/02/98, September 1998, and reports such as that in the magazine *Zerkalo* of 9 May 1998.

<sup>97</sup> See, for example, his document entitled "Torture, Ill-treatment and Misconduct by Law Enforcement Officials in Azerbaijan, January - August 1998".

<sup>98</sup> See *Amnesty International Concerns in Europe*, AI Index: EUR 01/02/98, September 1998. Numerous allegations of torture are said to have been made against this official during political trials in 1996 and 1997, including threats to rape wives or female family members of detainees. Adyl Ismaylov was released at the beginning of 1999. The information agency TURAN reported on 20 August 1997, two days after Adyl Ismaylov's arrest, that a case had been opened against him as early as the previous year, in July 1996, but that he was not detained at that time and the warrant for his arrest was subsequently cancelled.

<sup>99</sup> TURAN news agency, 28 July 1999.



allegedly a perfunctory investigation, and so never come to be tested in court. Many of the cases given above are examples of this. In the case of the lawyer Namik Aliyev and the journalists Zakir Jabbarly and Dilgram Bayramov, for example (see sections 3.2.3 and 7.2), their complaints never reached court, despite forensic medical examinations which attested to bodily injuries sustained on the day the alleged assaults took place.

It is not difficult to see that the lack of robust investigations and prosecutions in such cases has led to a widespread public perception that there is little official commitment to pursue rigorously claims of torture and ill-treatment, and that those responsible for abuse do not expect to be brought to account. When they are, there is also a perception that their treatment is inappropriately lenient.

The case of Samir Huseyn oglu Zulfugarov is an example of this. Alleged possession of a very small amount of drugs is said to have served as the basis for his detention with the intention of extorting large sums of money from relatives, and Samir Zulfugarov subsequently died after what were reportedly severe and sustained beatings while in police custody.<sup>100</sup> No one has been tried and convicted as a result of Samir Zulfugarov's death, and his case is also one which has been raised with the Azerbaijani government by the United Nations Special Rapporteur on the question of torture.<sup>101</sup>

Samir Zulfugarov was arrested at his home in Baku at around midnight on 28 July 1997 by three officers from the Department for combatting drug addiction and drug trafficking of Yasamalsky District Police Directorate. They detained him after he was reportedly found in possession of 0.9 grammes of opium. After tests had confirmed that the substance was indeed narcotic, a criminal case was opened against Samir Zulfugarov on 30 July for possession of drugs (Article 226-1 of the criminal code). Instead of transferring Samir Zulfugarov to the investigation cells of the Baku Main Police Directorate, as required by law, officials held him in section 28 of the Yasamalsky District Police Directorate until 1 August. On that day Samir Zulfugarov was transferred to Baku's city hospital No. 1 at Semashko owing to a deterioration in his health, and he died there some three hours later. The same day a criminal investigation was opened into his death by Yasamalsky District prosecutor's office under three articles of the criminal code: intentional homicide (Article 95), exceeding authority accompanied by use of force (Article 168, part two), and bribe taking by a senior official (Article 170, part three). These bare facts of the case are not in dispute. Behind them, however, are allegations of extortion and torture for which no one has been brought to account.

Samir Zulfugarov's father, Huseyn, reports that he saw his son at the police station the day following his detention. Speaking to investigators from Human Rights Watch in late 1997, he said of his son: "He was in a terrible condition, bloody, his shirt torn, he could barely stand. They beat him on the ribs and broke them, there was a dark mark on his forehead above one

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<sup>100</sup> See for example *Chag*, 19 August 1997.

<sup>101</sup> See Report of the Special Rapporteur, Sir Nigel S. Rodley, UN ref. E/CN.4/1999/61, 12 January 1999.

of his eyes. I asked my son if they had beaten him, and my son answered that if they had beaten him or not, it was not important, only if they had made a decision to release him.”<sup>102</sup>

Huseyn Zulfugarov reports that following this meeting he was contacted by the head of the Department for combatting drug addiction (his name is known to Amnesty International), who demanded a bribe of some US\$2,500 for the release of Samir. Having visited his son at the police station, and being convinced that he had been severely beaten while in custody, Huseyn Zulfugarov tried to collect the required amount from friends and relatives but could raise only around half the sum demanded. By this time, however, the Department head had reportedly increased his demand to around US \$5,000. Huseyn Zulfugarov managed eventually to raise most of this sum and handed it over, but when he was eventually able to see his son he found him in an extremely serious condition. On 1 August he was told that his son had been taken to hospital and had died there. A death certificate shown to Human Rights Watch investigators cited the cause of Samir Zulfugarov’s death as traumatic shock, accompanied by internal bleeding and a broken rib.

In addition to the reports of extortion, Huseyn Zulfugarov also alleges that his son’s detention had not been recorded in the police log as required by law; that the procuracy had not been officially notified of his detention; and that the Yasamalsky District prosecutor’s office refused to investigate his complaints about Samir Zulfugarov’s condition when he approached them before his son’s death.

There are conflicting reports on the outcome of the criminal case instituted into Samir Zulfugarov’s death. The publication *Rezonans* reported at the beginning of February 1998 that Sabail District Court in Baku under presiding judge Hanlar Bayramzade had heard a case involving the Department head alleged to have been involved in the death, but that the charges of bribery and intentional homicide had been dropped through lack of evidence.<sup>103</sup> Writing to Amnesty International in February this year, however, the First Deputy Prosecutor General said that reports of his acquittal had been incorrect and stated of the homicide charge: “During the course of the investigation those concerned gave contradictory testimony of doubtful veracity at repeated interrogations, as a result of which the case was halted in view of the non-identification of the persons who had committed the crime”.<sup>104</sup> According to another source, investigations into the case were halted on 1 April 1998, leaving no one held accountable for Samir Zulfugarov’s death.

#### **7.4 Lack of compensation for victims of torture**

In accordance with Article 14 of the Convention against Torture, Azerbaijan is obliged to grant victims of torture “an enforceable right to fair and adequate compensation, including the means

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<sup>102</sup> See the Human Rights Watch report: *Azerbaijan: Impunity for Torture*, August 1999.

<sup>103</sup> In its edition of 30 January - 6 February 1998.

<sup>104</sup> Letter dated 23 February 1999.

for as full rehabilitation as possible". This obligation extends to dependents, if a victim dies as a result of torture. Article 68 of the Constitution of the Azerbaijani Republic also enshrines the right to demand compensation for damage inflicted by government bodies or their officials.<sup>105</sup>

However, Amnesty International is not aware of any laws or procedures currently in force which would enable victims of torture by state agents, or dependents should the victim have died, to exercise their rights under the provisions of Article 14. In December 1998 the country's parliament, the Milli Mejlis, did pass in its first reading a draft bill on compensation for damage to individuals as a result of illegal actions by the judicial, investigative and public prosecutors agencies. To Amnesty International's knowledge this has not yet become law and, when or if it does, it is not known whether it will be retroactive, allowing victims to claim compensation for any acts of torture committed since the Convention against Torture came into force for Azerbaijan.

Eldar Zeynalov of the Human Rights Centre of Azerbaijan reports that a law "On Complaints to Courts about Decisions and Actions/Inactions Violating the Rights and Freedoms of Citizens" was published in July 1999.<sup>106</sup> The law stipulates that courts are to define the responsibility of the individual or organization guilty of the violation, but does not mention the issue of compensation for those whose rights were violated.

## **8. RETURNING INDIVIDUALS TO FACE THE POSSIBILITY OF TORTURE**

Article 3 of the Convention against Torture forbids States Parties to expel, return or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Amnesty International is concerned about reports over the past year that Azerbaijan has returned to Turkey several people believed or reported to be supporters of the Kurdish Workers' Party (PKK), an illegal armed organization in Turkey. Torture continues to be widespread in Turkey, and is frequently directed against those who have known or suspected contacts with the PKK. Turkish officials involved in such human rights violations frequently enjoy impunity. In a document issued in April this year, for example, Amnesty International wrote: "Those who survive torture in Turkish police stations and gendarmeries are almost invariably frustrated in their attempts to bring their torturers to justice....[in] almost every one of the thousands of well-documented reports of torture, death

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<sup>105</sup> Article 68 reads: "The rights of a person who has been a victim of a crime and abuse of power shall be protected by the state. A victim shall have the right to participate in court examination and to demand compensation for damage rendered to him/her. Every person shall have the right to receive compensation from the State for the damage rendered to him/her as a result of illegal actions of government bodies or their officials."

<sup>106</sup> The law is dated 11 June 1999, and was published on 18 July 1999.

in custody, extrajudicial execution and “disappearance” in the 1990s, the perpetrators have remained free to continue working as police officers or even to be promoted.”<sup>107</sup>

At least one person reported to be a member of the PKK is said to have been returned from Azerbaijan to Turkey this year.<sup>108</sup> He was named as Aydyn Ozdemir, who was reportedly detained at his flat in the Azerbaijani exclave of Nakhchivan on 19 January. He was subsequently handed over to Turkish authorities who took him to Idgyr province for questioning. According to Eldar Zeynalov of the Human Rights Centre of Azerbaijan, dozens of Kurds were also returned to Turkey in 1998.

## 9. AMNESTY INTERNATIONAL’S RECOMMENDATIONS

Torture and ill-treatment of persons under any circumstances are expressly prohibited under the Convention against Torture. Amnesty International recognizes the problems which may exist within the law enforcement system, for example those caused by lack of funding for professional staff, training and infrastructure, or those caused by a lack of confidence in the willingness of such a system to address abuses. However, these problems do not excuse or justify torture and ill-treatment. Neither should they be an excuse for delaying the implementation of safeguards and procedural changes which would narrow the potential scope for abuse or for impunity for perpetrators. Amnesty International urges the Azerbaijani authorities to take the following steps to address abuse, in line with the international obligations they have pledged to undertake and uphold:

- , ensure that all people deprived of their liberty or arrested by law enforcement officials are brought promptly before a judge and also have recourse to a judge to challenge the lawfulness of their detention;
- , criminalize torture as defined in the Convention against Torture as a distinct crime with appropriate punishments under national law (in line with Article 4 of the Convention against Torture);
- , ensure that all people deprived of their liberty or arrested by law enforcement officials are informed promptly of the charge or charges against them, and that they are allowed prompt and regular access to a lawyer of their own choice, as well as to relatives and an independent medical practitioner;

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<sup>107</sup> See *Turkey: The duty to supervise, investigate and prosecute*, AI Index: EUR 44/24/99, April 1999. For further reports of torture during the first six months of 1999, see the entry on Turkey in *Concerns in Europe: January to June 1999*, AI Index: EUR 01/02/99, August 1999.

<sup>108</sup> See the report by TURAN news agency of 2 February 1999.

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- , ensure that every person deprived of their liberty is informed by the authorities of their rights, including the right to complain to the authorities against ill-treatment;
  - , ensure that a family member is informed promptly about the detention or arrest of a relative, and their whereabouts;
  - , ensure the initiation of prompt, impartial and comprehensive investigations of all complaints of torture or ill-treatment of detainees, as well as when there are reasonable grounds to believe that torture or ill-treatment has occurred even if no complaint has been made (in line with Articles 12, 13 and 16 of the Convention against Torture);
  - , ensure that all detainees are medically examined upon deprivation of their liberty, and thereafter as required, or whenever a detainee alleges torture or ill-treatment;
  - , ensure that investigations into allegations that a person has been tortured include the prompt, impartial and professional examination of that person by qualified doctors;
  - , ensure that no statement extracted as a result of torture is invoked as evidence in any proceedings (except against a person accused of torture as evidence that the statement was made);
  - , bring those law enforcement officials responsible for torture or ill-treatment to justice in the courts, in the course of proceedings which meet international standards;
  - , ensure that every victim of torture has unhindered access to the means of obtaining redress and an enforceable right to reparation including fair and adequate compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and that every detained person is informed of this right (in line with Article 14 of the Convention against Torture);
  - , establish an effective system of independent inspection of all places in which people are deprived of their liberty, including by granting access to the International Committee of the Red Cross;
  - , review all procedures to ensure that no one is expelled, returned or extradited to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or other human rights violations (in line with Article 3 of the Convention against Torture);

- , ensure that information regarding the absolute prohibition against the use of torture and ill-treatment is fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;
- , take steps to investigate and respond to the cases raised by the UN Special Rapporteur on the question of torture, and make both his concerns, and the government's responses, public;
- , publicize widely the Concluding Observations of the UN Committee against Torture after it has reviewed Azerbaijan's initial report, and implement its recommendations swiftly;
- , ensure that Azerbaijan's next report to the UN Committee against Torture is compiled in consultation with non-governmental organizations, and is made widely and publicly available for comment and discussion before and after it is examined by the Committee against Torture.

