



CE-21/06
Strasbourg 22 February 2006

*Azərbaycan Respublikasının
Avropa Şurası yanında
Daimi Nümayəndəsi*

*Représentant Permanent
de la République d'Azerbaïdjan
auprès du Conseil de l'Europe*

Dear Secretary General,

I have the honour to submit the reply of the Government of the Republic of Azerbaijan to your request made in accordance with Article 52 of the European Convention on Human Rights.

I avail myself of this opportunity to express the assurances in highest consideration to you.

Yours sincerely

Agshin MEHDIYEV
Ambassador Extraordinary and Plenipotentiary

H.E. Mr. Terry DAVIS
Secretary General
Council of Europe
Strasbourg

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**Replies of the Azerbaijani Government to the request of the Secretary
General T. Davis for an explanation in accordance with Article 52 of the
European Convention on Human Rights**

***Application of the jurisdiction of the Republic of Azerbaijan concerning the
issues related to officials of foreign states***

In accordance with Article 437.0.6 of the Criminal Procedure Code of Azerbaijan of 14 July 2000, the official delegations of foreign states enjoy diplomatic immunity while being in Azerbaijan in an official capacity or passing Azerbaijan as a transit country for official purposes. Pursuant to Article 436 of the CPC, the jurisdiction of Azerbaijan may apply to persons with diplomatic immunity if there is clearly expressed consent of the respective foreign state.

Article 439.1 of the CPC provides that such persons enjoy immunity in Azerbaijan from criminal jurisdiction. Involving such persons to investigation as a witness or defendant is solved through diplomatic channels taking into account all relevant norms of international law.

Article 438.1 of the CPC provides that such persons enjoy the right of personal immunity. They can not be arrested or detained unless there is necessity to enforce adopted court decision concerning them. The initial investigatory body, which arrests or detains such persons, the prosecutor procedurally directing initial investigation or the court must immediately inform the Ministry of Foreign Affairs of Azerbaijan of that investigation (ref. CPC, Article 438.3). Moreover, Article 440 of the Code provides that such persons enjoy immunity regarding the deposition on criminal matters. Thus, they may reject giving evidence as a witness or a victim. Nevertheless, if they want, they may provide affidavit without coming to the investigator, the prosecutor who directs initial investigation or to the court. The persons who enjoy diplomatic immunity are not obliged to submit the correspondence or any other documents related to their official duties to the investigatory body, the prosecutor who directs initial investigation or to the court (ref. CPC, Article 440.5).

Personal liberty in the Azerbaijani legislation

Personal liberty has been ensured constitutionally in Azerbaijan. Thus, in accordance with paragraph 2 of Article 28 of the Constitution of Azerbaijan, personal liberty may only be confined by lawful arrest, detention or imprisonment.

Rules, enforcement, types and terms of detention, arrest and imprisonment are governed by Section 4 ("Procedural coercion measures") of the CPC and Chapter 2

("Administrative infringement and administrative liability") of the Administrative Infringements Code.

Article 32 of the CC ("Crimes against justice") envisages the liability either for unlawful detention, arrest and imprisonment (Article 292) or taking intentionally unjust verdict, resolution and decision by law-enforcement agencies.

Articles 144 (kidnapping) and 145 (unlawful confinement of personal liberty not related to kidnapping) of the Criminal Code of Azerbaijan (Chapter XIX "Crimes against personal liberty and dignity") determines criminal liability for illegal confinement or deprivation of personal liberty. The acts reflected in those norms are classified as grave or especially grave crimes depending on their character and level of dangerousness for society. In accordance with paragraph 3.1 of the Presidential Decree dated 25 August 2000 on Application of the Criminal Procedure Code of Azerbaijan, which was approved by the Law on Approval and entering into force of the Criminal Procedure Code of Azerbaijan and relevant legal regulatory issues, initial investigation of crimes defined in Article 144 of the CC is conducted by police (interior) authorities. Article 215.3.1 of the CPC provides that investigation of such crimes is directed by the Prosecutor's Office of the Republic of Azerbaijan.

Involvement of officials of foreign agencies in search operations and in conducting investigation in the territory of the Republic of Azerbaijan; compensation to victims of crime

The national legislation of Azerbaijan does not provide for officials of foreign agencies to conduct search operations and investigation in the territory of the Republic of Azerbaijan. However, officials of foreign agencies may be involved in procedural and other acts in the territory of Azerbaijan in the framework of legal assistance. Thus, pursuant to Article 5.3 of the Law of Azerbaijan on Legal Assistance on Criminal Cases dated 29 June 2001, officials of foreign agencies may provide legal assistance only if it is approved by the Ministry of Justice or any other relevant authority of the Republic of Azerbaijan.

According to paragraph 1 of Article 5 of the Law of Azerbaijan on Search Activity dated 28 October 1999 such activities in the territory of Azerbaijan are conducted by investigatory authorities defined by the criminal procedural legislation of Azerbaijan.

Paragraph 2.7 of the Presidential Decree dated 25 August 2000 on Application of the Criminal Procedure Code of Azerbaijan, which was approved by the Law on Approval and entering into force of the Criminal Procedure Code of Azerbaijan and relevant legal regulatory issues, have defined interior, national security, border service, tax and customs agencies as investigatory authorities.

Article 302 of the CC makes those answerable who conduct search operations while having no powers for that or those who conduct such operations while being empowered but without necessary grounds required by legislation.

As regards the control of acts of officials of foreign agencies, pursuant to Article 6 of the Criminal Code ("Equality before law") persons committing crime are equal before law and are brought to justice regardless their race, ethnicity, religion, language, sex, origin, property status, service position and other circumstances.

Chapter XX ("Compensation of victims") of the CPC determines the right of a victim to get compensation for damages as a result of acts as defined by criminal legislation. The chapter also determines the amount of compensation subject to the gravity of crime, the procedure of providing compensation by the state as well as other issues. Moreover, on 17 March 2000 Azerbaijan joined to European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.

Such issues as calling persons who live or reside in Azerbaijan to account or to serve sentence as defined by court for crimes which they have committed beyond the borders of Azerbaijan are governed by the Law on Extradition (Transferring) of Offenders dated 15 May 2001. If persons committing crimes outside the borders of the Republic of Azerbaijan are not extradited and their action is regarded by the Criminal Code as a crime, then the criminal proceedings are instituted against them in the Republic of Azerbaijan. Azerbaijani authorities have no information on violation of the Law on Extradition.

In the period running from 1 January 2002 until the present Azerbaijani authorities have registered no fact that any official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, whether such deprivation of liberty occurred by or at the instigation of any foreign agency.