



**Permanent Mission
of the Republic of Azerbaijan
to the UN Office and other
International Organizations**

GENEVA

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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and with reference to the Note Verbale Ref: EMLER/YB/YH dated 24 February 2023, has the honour to transmit herewith the information received from the relevant authorities of the Republic of Azerbaijan in response to the call for inputs to the preparation of the report of the UN International Independent Expert Mechanism pursuant to the Human Rights Council Resolution A/HRC/RES/47/21.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Enclosure: 5 pages

**Office of the United Nations
High Commissioner for Human Rights
GENEVA**

ohchr-emler@un.org

INFORMATION ON THE 2023 REPORT ON ADVANCING RACIAL JUSTICE AND EQUITY IN LEGISLATION

Question 1. Compliance with the international legal framework of laws, policies, requirements and procedures related to the use of force and the carrying of firearms by law enforcement agents

Many laws and other normative-legal acts regulating the activity of the Ministry of Internal Affairs have been adopted, which create guarantees for the provision of legal state-building, as well as human and civil rights and freedoms, as established in the Constitution of the Republic of Azerbaijan.

The Law of the Republic of Azerbaijan "On Police" which is in compliance with relevant international standards regulates among others issues mentioned in the questionnaire.

The right to carry and use firearms is given to police officers, whose main activities and tasks are to protect people's lives, health, rights and freedoms, the legal interests and property of the state, natural and legal entities from illegal acts, by the Law of the Republic of Azerbaijan "On Police". Physical force, special means, as well as firearms should be applied to any person as a last resort, according to the severity of the crime, and most importantly, in the cases and in the manner required by the law.

The use of private force, special means or firearms by the police is permitted only in exceptional cases provided by the Law "On Police". Thus, in accordance with Articles 26 and 27 of this Law, the use of special force, means or firearms in absolutely necessary cases should be proportionate to the danger.

In each case where special force, means, and firearms are used by a police officer, an official inspection must be conducted in the relevant police body and an appropriate opinion must be given on the legality of special force, means, and firearms. It is prohibited to provide the police with special means that can have a devastating effect on the anatomical integrity of a person by causing various degrees of injuries or which are a source of high danger that does not justify itself.

In accordance with Article 27 of the aforementioned Law, a police officer performing his duties related to the use of special force, means and firearms shall use special force, means or firearms against a person only as a means of last resort and for purposes of necessary defense, and use all other means of influence fail to procure desired outcome, as well as to the degree proportionate to the gravity of the offence and personality of the offender, shall not use special force, means and firearms against women, juveniles or persons who accompany minors, have obvious signs of disability, and other physical and mental disorders, as well as in crowded places with high probabilities of harm to by-passers, except for the cases of assault by means of firearms and armed resistance.

The firearms can be used exclusively for prevention of a real danger. Police must provide medical aid to the persons who sustain injury as a result of the use of special force, means and firearms.

The conditions and limits of the use of force, special means, weapons and military equipment by the internal troops of the Republic of Azerbaijan are regulated by the Law "On the Status of the Internal Troops". According to Article 19 of the mentioned Law,

when using force, special means, weapons or military equipment, the military personnel of the internal troops must give a warning about the intention to use them, and at this time, must give enough time for the fulfillment of their requirements.

At the same time, military personnel must provide medical aid to the injured persons, and immediately inform the team about every case where force, special means, weapons and combat equipment is used. The respective commanders and chiefs of internal troops are obliged to inform immediately the regional prosecutor about all cases of injury or death during the use of private force, special means, weapons and combat equipment.

In addition, in accordance with the Law "On Service and Civil Weapons", in the exceptional cases provided for in the aforementioned Law, the use of service or civilian weapons is allowed only for the purpose of preventing a real threat. It should be noted that the use of weapons should not harm third parties. The conditions and limits of the use of force, special means or firearms in prisons are regulated by the Law "On Ensuring the Rights and Freedoms of Persons Detained in Prisons".

Regarding the mechanism of control over the use of force by representatives of law enforcement agencies, by the Law No.724-IIIQD dated December 2, 2008, the Republic of Azerbaijan joined the Optional Protocol to the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed 15, 2005.

In accordance with Articles 17 and 19 of that Protocol, after acceding to this Protocol, each State Party shall support, designate or establish independent national preventive mechanisms for the prevention of torture at the national level. In order to strengthen the protection against torture and other cruel, inhuman or degrading treatment and punishment, in case of necessity, the competence of the national preventive mechanisms should be regularly reviewed on the issue of the treatment of persons deprived of liberty in detention facilities and taking into account the relevant norms of the United Nations, includes providing recommendations to relevant institutions to improve the treatment and conditions of detention of persons deprived of liberty, prevention of torture and other cruel, inhuman or degrading treatment and punishment.

In this regard, by Law No. 163-IVKQD dated June 24, 2011, the Constitutional Law "On Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan" was amended and Article 18-1 entitled "National preventive group" was added.

According to Article 18-1.2 of this Law, the national preventive group rights to access to police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions, detention centers for illegal migrants and other places, which detained persons cannot leave on their own will at any time, without hindrance or prior notification, to meet privately or when deemed necessary with participation of an expert or interpreter and interview in private the detained persons, as well as any other persons who may provide relevant information, to get acquainted with and obtain copies of the documents confirming the lawfulness of detention of the detained persons, as well as, to prepare acts. Regarding the issue of applying force to convicts, it should be noted that in accordance with Article 78.5 of the aforementioned Code, the procedure for applying security measures in the prisons is determined by legislation.

Instruction on "Security measures in the penitentiary system of the Republic of Azerbaijan and the rules of their application" (hereinafter the Instruction) prepared by

taking into account the recommendations mentioned in the reports of the delegation of the Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment (CPT) of the Council of Europe on the results of their visits to our country, was approved by the decision No. 20-N dated September 28, 2018 of the Board of the Ministry of Justice of the Republic of Azerbaijan.

According to paragraph 1.4 of the Instruction, special means against a person should be used only as a mean of last resort or for purposes of necessary defense, if the use of all other means of influence fail to procure desired outcome, depending on the gravity of the offense and personality of the offender who committed it.

In accordance with paragraph 4.15 of the Instruction, the heads of penitentiary institutions, the commander of the Guard regiment and the Convoy battalion send written information to the Minister of Justice and the head of the Penitentiary Service regarding the fact of using special means. At this time, it is investigated whether special means are applied on legal basis. If the criminal offense is determined in cases of illegal use of special means, in the act of the person who used it, the collected materials are sent to the prosecutor's office in the area for legal assessment.

The right of the person on whom special measures have been applied to complain about that issue is provided for in paragraph 4.17 of the mentioned Instruction.

In general, the cases of the use of special means by the employees and military personnel of the penitentiary institutions, pretrial detention centers, Guard regiment, and Convoy battalion under the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan are identical to the cases of the use of a special means by the police officers.

Question 2. Use of best practices of new initiatives to prevent systemic racism in law enforcement and justice sphere

According to the Constitution, the highest goal of the state is to ensure human and civil rights and freedoms, as well as a decent standard of living for the citizens of the Republic of Azerbaijan.

According to Part III of Article 25 of the Constitution of the Republic of Azerbaijan the State shall guarantee the equality of rights and freedoms to everyone, irrespective of race, ethnicity, religion, language, sex, origin, property status, occupation, beliefs or affiliation with political parties, trade union organisations or other public associations. Restrictions of rights and freedoms on the grounds of race, ethnicity, religion, language, sex, origin, beliefs, or political or social affiliation are prohibited.

Agitation and propaganda inciting racial, national, religious, social discord and animosity or relying on any other criteria is inadmissible. In the performance of their duties, the police respect the rights of all persons, regardless of their race, nationality, religion, language, gender, origin, property status, official position, beliefs, membership in political parties, trade unions and other public associations, provided for by the Constitution of the Republic of Azerbaijan and interstate agreements to which it is a party, and protects its legitimate interests from illegal actions.

According to Article 6 of Criminal Code of the Republic of Azerbaijan, the persons who have committed crimes, shall be equal before the law and shall be subjected to the crime liability irrespective of race and also other circumstances. On those grounds, no one can be brought to criminal responsibility or punished, or exempted from punishment or criminal responsibility.

According to Article 61.1.6 (commitment of a crime on grounds of national, racial, religious hatred or fanaticism, revenge from lawful actions of other persons, with mercenary purpose or other low prompting, and also with a purpose to hide other crime or to mitigate its commitment as aggravating case), 103 (genocide), 109 (persecution), 111 (racial discrimination (apartheid), 120.2.12 (intentional homicide with the intention of national, racial, religious enmity), 154 (violation of the right to equality), 283 (incitement of national, racial or religious enmity) of the Criminal Code for harming the rights and legal interests of a person depending on his nationality, race, religion, language, gender, origin, property status, service position, beliefs, affiliation to political parties, trade unions and other public associations is assumed criminal responsibility.

According to Article 120.2.12 of the Code, murder with the intention of national, racial, religious enmity or enmity is a case of aggravated punishment.

On February 16, 2022, the Committee of Ministers of the Council of Europe (CoE) adopted a new Action Plan for Azerbaijan covering 22 priorities for 2022-2025. Among other important areas this Action Plan identifies a new area of cooperation such as the promotion of tolerance and non-discrimination.

In addition, the Council of Europe, in cooperation with national authorities, intends to increase public awareness of tolerance in a democratic society, the inadmissibility of discrimination, and the inadmissibility of hate crime and hate speech. The Action Plan will help to implement the "UN 2030 Agenda for Sustainable Development" by supporting the UN's Sustainable Development Goals, in particular goal 10 (reducing inequality).

Specifically, it is planned to make changes in the relevant legislation on the fight against racism and discrimination, promoting the social, political and economic integration of all in accordance with the standards of the Council of Europe. In addition, by increasing the capacity of relevant national institutions and civil society organizations operating in the field of tolerance and anti-discrimination, the Council aims to ensure better protection of human rights and freedoms for the benefit of all. Promoting an inclusive dialogue between the government and civil society organizations representing different social groups will further contribute to these goals.

Question 3. Alternative methods used in the law enforcement system

The Constitution of the Republic of Azerbaijan established the priority of international law over national laws and created real conditions for the wide application of norms of international law by internal affairs bodies. At the same time, international legal norms are widely applied in the national law of the Republic of Azerbaijan and have become an integral part of the legal system.

The Presidential Decree signed on February 10, 2017 "On improving activities in the penitentiary field, humanizing the penal policy and expanding the application of alternative punishments and procedural coercive measures not related to social isolation" determined new strategic goals in this field. The Decree envisaged modernization of the state administration system, continuation of reforms in the judicial and legal field, establishment of the execution of punishments in accordance with modern requirements, elimination of deficiencies in the institutions that execute the punishment, application of modern technological means in the execution of punishments, organization of effective control over the execution of punishments that are not related to isolation from society

and other conceptual issues. For this purpose, the Probation Service of the Ministry of Justice, a new institution that executes punishments not related to the isolation of convicts from society, was established.

With the Presidential Decree dated November 7, 2017 related to the establishment of a new structure of the Probation Service organized by taking into account the Recommendation of the European Council dated January 20, 2010 "On European Probation Rules", other international acts, and the experience of developed countries, the authority of the head office was given to the Probation Service, the Regulation of the this Service was approved by the decision of the Board of the Ministry dated December 22, 2017.

In connection with the creation of the aforementioned Service, the Code of Execution of Sentences was amended, and the scope, characteristics, and other regulatory provisions of the application of probation activities and electronic control tools were included in the process of execution of sentences not related to deprivation of liberty.

At the same time, the Probation Service was instructed to implement the execution of non-custodial sentences, fines, deprivation of the right to drive a vehicle, the right to hold a certain position or engage in a certain activity, public works, correctional works, probation on persons sentenced to punishments, such as restriction of freedom.

In addition, supervision of the execution of duties imposed by legislation or by the court on persons who have been sentenced to a conditional sentence, who have been conditionally released from their sentence early or the serving of their sentence has been postponed, who have been prescribed mandatory medical measures for the treatment of alcoholism, drug addiction, correction of convicts, social adaptation and rehabilitation, execution of public works imposed as an administrative punishment are also attributed to the powers of the Probation Service.

After the changes made to the Criminal Code in connection with the humanization of the legislation, the courts preferred the use of custodial sentences, especially the use of electronic surveillance, as an alternative to imprisonment, as a result, in 2018-2022, more than 15 000 people were given electronic monitoring tools applied. For information about the efficiency of the new institute, it should be informed that, currently more than 4000 prisoners are being monitored electronically.