



“Legal Analysis and Research” Public Union

The Trial Observation Report

2 June – 2 August 2021

Introduction

The Independent NGO Observers Team (Ramil Iskandarli and Fariz Akberov) comparatively analyzed the trial observers’ conclusions on observation, collected while court proceedings to identify courts’ compliance with domestic legislation and international fair trial standards.

During the reporting period (June 2 – August 2, 2021), two independent NGO trial observers monitored court proceedings in the capital city of Baku, administrative building of Yasamal District Court of Baku conducted by the Judges of the Baku Military Court in regards with the criminal case against Armenian citizens Khosrovyan and Mkrtchyan which are accused on committing crimes against peace and humanity and war crimes during the 1st and 2nd Karabakh war. The trial observers collected the results of the observations of each of the sessions (including preparatory) related to courts’ compliance with domestic legislation and international fair trial standards. Following ICJ trial observation guidelines, trial observers conducted observation in an objective and impartial manner, refraining from conducting any assessment in connection with the substance of the case.

The methodology of the Report is similar to the focus the International Commission of Jurists, used for the Trial Observation Guidelines (2009), the findings of this Report identify compliance of the procedural aspects of the case with fair trial norms and standards in line with applicable domestic laws, International Human Rights Law and International Humanitarian Law.

Background information

Armenia that occupied in 1992-1993 one fifth of the internationally recognized territory of the Republic of Azerbaijan, has been refusing to liberate them despite a clear call for the unconditional withdrawal of the Armenian forces from the occupied territories of Azerbaijan in the UN Security Council resolutions 822, 853, 874, 884 adopted in 1993, as well as Azerbaijan’s good-will and dedication to the peaceful resolution of the conflict. For decades, Azerbaijan struggled with the consequences of unprecedented humanitarian catastrophe which made every 7th person in the country forcefully displaced. Most of Azerbaijani cities under the Armenian occupation turned to ghost cities with totally destroyed and plundered infrastructure.

From September 27 to November 10, 2021, Azerbaijan exercised the right to self-defense enshrined in Article 51 of the UN Charter within the framework of these resolutions, as well as the use peace enforcement operations provided for in Chapter VII of the UN Charter.

In order to prevent Armenian military aggression and ensure protection of the civil population, the Azerbaijani Army took counter-attack measures to repel the assault. As a result, all occupied areas of Karabakh which were mentioned in UN SC Resolutions were liberated by the Azerbaijani army.

The process of bringing Armenian militaries into the Azerbaijani courts for justice, for their committed crimes during the 1st Karabakh war (in 1992-1994), during the occupation of Karabakh for the last 30 years and crimes committed recently in 2nd Karabakh war (autumn 2021) is started from the beginning of 2021. One of this case is the case of Armenian citizens Khosrovyan and Mkrtchyan is described in this Trial Monitoring report.

As it is known, hundreds of Azerbaijani citizens, including children, women and the elderly, have been subjected to intolerable torture while held in captivity and taken hostage as a result of numerous crimes committed against the Azerbaijani civilian population on the illegal instructions of the Armenian leadership during the 1st Karabakh war with following 30 years of occupation.

The third Geneva Convention provides a wide range of protection for prisoners of war. It defines their rights and sets down detailed rules for their treatment and eventual release. International humanitarian law (IHL) also protects other persons deprived of liberty as a result of armed conflict. They must be released and repatriated without delay after the end of hostilities.

Despite the fact that Armenia has acceded to both the GC I-IV in 1993 and the Human Rights CAT in 1992, it has time and time again failed to follow the provisions of the Convention in the treatment of Azerbaijani prisoners of war and detainees during the 1st Karabakh war and the following 30 years of occupation.

After the 1st war ended, Armenia was continuing to hold nearly 5,000 Azerbaijani prisoners and hostages in Armenia and occupied areas of Azerbaijan.

The Facts of the Case

On June 2, the trial of the two Armenian soldiers, Ludvig Mkrtchyan and Alyosha Khosrovyan, began in the Yasamal court. The trial is chaired by judge Elbey Allahverdiyev.

The defendants are accused of torture and inhumane treatment of Azerbaijani prisoners of war during the First Karabakh War of the 1990s.

Mkrtchyan was captured on October 20, 2020, near the village of Melikjanli, Fizuli district.

The second defendant, a citizen of Armenia, b.1967, R. Khosrovyan Alyosha, is also accused of similar crimes. The investigation established that he tortured five Azerbaijani prisoners in 1994, near the village of Msmna (Agbulag), former Martuni district.

He was detained on October 3, 2020 by the Azerbaijani military while carrying out intelligence operations on the territory of Azerbaijan.

Mkrtchyan and Khosrovyan are charged under Articles 113 (torture), 115.2 (violation of the laws of war), 279.1 (participation in illegal armed groups), 318.2 (illegal crossing of the Azerbaijani border) of the Criminal Code of Azerbaijan, other Articles

"The facts of hostage-taking, torture and ill-treatment of prisoners and other persons protected by international humanitarian law have been revealed during the investigation of the criminal case launched by the Military Prosecution Office under various articles of the Criminal Code of the Republic of Azerbaijan in connection with war crimes against peace and humanity committed against Azerbaijanis in the occupied territories of the Republic of Azerbaijan by the armed forces of the Armenian separatist regime operating illegally in the Nagorno-Karabakh region of the Republic of Azerbaijan and by the Armed Forces of the Republic of Armenia.

According to the Public Prosecutor Office, "Thus, the investigation established that, an Azerbaijani citizen taken hostage in July 1991 in a forest called "Ballija" near Khojaly city followed by unlawful restriction of liberty, and a civilian taken hostage in Tapgaragoyunlu village, Goranboy district on September 13, 1999 and brought to Yerevan city, the Republic of Armenia, who was detained in one of the military units in the city and acted as an interpreter during the interrogation by the Armenian special services, were tortured by Mkrtchyan Ludwig Mkrtichovich, a citizen of the Republic of Armenia, born in 1969, who upon prior conspiracy entered into criminal relations with a group of individuals participating in the activities of the armed groups consisting of nationalist Armenians living in the Nagorno-Karabakh region, as well as coming from the Republic of Armenia.

"The investigation also revealed that 11 Azerbaijani citizens taken captives, at different times were beaten and exposed to various tortures in Khojavend and Aghdara districts, Shusha prison and Yerevan city. Struck by automatic gunfire, a serviceman of the N military unit, Defense Ministry, was killed.

"Ludwig Mkrtichyan was detained by the servicemen of the Azerbaijani Armed Forces on October 20, 2020 in the territory of Malikjanli village, Fuzuli district.

"Investigative measures carried out also exposed the criminal acts by Khosrovyan Alyosha Aramaisovich, a citizen of the Republic of Armenia, born in 1967, who together with Ludwig Mkrtichyan brutally treated and tortured Azerbaijanis.

"It was revealed that Alyosha Khosrovyan tortured 5 Azerbaijanis during their captivity and subjected them to cruel and inhumane treatment.

"Thus, a former soldier of the military unit N of the Ministry of Defense taken prisoner in April 1994 was exposed to cruel and inhumane treatment by Khosrovyan Alyosha Aramaisovich. During his illegal

detention in one of the houses in Mysmina (Aghbulag) village, Khojavand district he was forced to do heavy construction work of a house for the so-called Minister of Defense of the “Nagorno-Karabakh Republic” Babayan Samvel Andranikovich, and inflicted various bodily injuries.

"Alyosha Khosrovyan also demonstrated especial cruelty to soldiers of the Azerbaijani Armed Forces, who were taken captives in 1993-1994 and illegally detained in the Shusha city prison. He tortured them by exposing to regular beatings, starving, and inflicting mental anguish and physical pain.

"Khosrovyan Alyosha was detained by servicemen of the Azerbaijani Armed Forces on October 3, 2020 while conducting reconnaissance operations in the territories of the Republic of Azerbaijan.

"On 20.05.2021 the indictment on the criminal case was approved and sent to Baku Military Court for consideration.

The trial on the criminal case of Armenian war criminals Mkrtychyan Ludwig Mkrtychovich and Khosrovyan Alyosha Aramaisovich began on June 2, 2021.

The trial was presided over by a judge of the Baku Military Court.

International and national legal framework

According to the International Humanitarian Law, all the States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.

Although POWs cannot be prosecuted for taking a direct part in hostilities (According to the Third Geneva convention), the detaining power may prosecute them for possible war crimes.

The Armenian citizens were faced charges under Articles 113 (torture), 115.2 (violation of war laws and customs), 279.1 (creation of armed formations or groups not provided by law), 318.2 (illegal crossing of the state border of the Republic of Azerbaijan) and other articles of the Criminal Code. Therefore, they were charged with these articles, and by court decisions, arrest as a measure of restraint was chosen against them. On 20 May 2021, the indictment on the criminal case was approved and sent to the Baku Military Court for consideration.

The Geneva Conventions require States to search for persons alleged to have committed, or ordered to have committed, grave breaches and to try or extradite them. The obligation to investigate and prosecute persons alleged to have committed crimes under international law is found in a number of treaties that apply to acts committed in both international and non-international armed conflicts.

In addition, the obligation to investigate war crimes and prosecute the suspects has been reaffirmed on several occasions by the UN Security Council in relation to Afghanistan, Burundi, Democratic Republic of the Congo, Kosovo and Rwanda.

The UN Commission on Human Rights has adopted a number of resolutions, most of them without a vote, requiring the investigation and prosecution of persons suspected of having committed violations of international humanitarian law in the context of the conflicts in Burundi, Chechnya, Rwanda, Sierra Leone, Sudan and the former Yugoslavia.

In a resolution on impunity adopted without a vote in 2002, the Commission recognized that perpetrators of war crimes should be prosecuted.

In relation to crimes committed in non-international armed conflicts, a number of States have issued amnesties for war crimes, but these have often been found to be unlawful by their own courts or by regional courts and were criticized by the international community. There is, however, sufficient practice, as outlined above, to establish the obligation under customary international law to investigate war crimes allegedly committed in non-international armed conflicts and to prosecute the suspects if appropriate.

Numerous States, including Azerbaijan, have adopted legislation criminalizing war crimes committed in non-international armed conflicts. It is likely that more will follow, in particular States adopting implementing legislation for ratification of the Statute of the International Criminal Court and wishing to take advantage of its complementarity principle. Several individuals have been tried by national courts for war crimes committed during non-international armed conflicts. There have also been many official statements since the early 1990s in national and international fora regarding individual criminal responsibility in non-international armed conflicts.

Practice of international organizations has also, since the early 1990s, confirmed the criminality of serious violations of international humanitarian law committed in non-international armed conflicts. The UN Security Council, UN General Assembly and UN Commission on Human Rights have recalled the principle of individual criminal responsibility for war crimes committed in non-international armed conflicts, for example, in Afghanistan, Angola, Bosnia and Herzegovina, Burundi, Rwanda, Sierra Leone, Somalia and the former Yugoslavia.^[15] Similar statements were also made by the European Union in relation to Rwanda in 1994 and by the Organization of African Unity in relation to Liberia in 1996.

European Convention on Human Rights

Article 6(1) of the 1950 European Convention on Human Rights provides: "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal."

International Covenant on Civil and Political Rights

Article 14(1) of the 1966 International Covenant on Civil and Political Rights provides: "Everyone shall be entitled to a ... hearing by a competent, independent and impartial tribunal."

Criminal Code of Azerbaijan Republic:

Article 113. Application of tortures

Causing of a physical pain or mental sufferings to detained persons or persons, or other restrictions of freedom – shall be punished by imprisonment for the term from seven up to ten years.

Article 115. Violation of laws and customs of war

115.1. Mitigation of captured and other persons protected by the international humanitarian right to serve in armed forces of the party which have taken them in a captivity, and also compulsion of enemy state citizens to participate in a military operations directed against the country – shall be punished by imprisonment for the term from two up to five years.

115.2. Application to a persons provided in article 115.1 of the present Code, tortures, severe or brutal manipulation with them, implementation of medical, biological and other researches, including withdrawal of bodies for transplantation, and also their use as a barrier for protection of armies or objects, or maintenance as hostages, as well as attraction of civilians to forced hard labor or compulsory moving from places of a lawful settlement for other purposes – shall be punished by imprisonment for the term from five up to ten years.

Article 279. Creation of an armed formations or groups, which are not provided by the legislation

279.1. Creation of armed formations or groups, which are not provided by the legislation of the Azerbaijan Republic, and also participation in their creation and activity, supplying them by weapon, ammunition, explosives, military engineering or military equipment – is punished by imprisonment for the term from three up to eight years.

Article 318. Illegal crossing border of the Azerbaijan Republic

318.1. Crossing of protected frontier of the Azerbaijan Republic without established documents or outside of check point of frontier – 100 is punished by the penalty at a rate from two hundred up to five hundred of nominal financial unit or imprisonment for the term up to two years. 318.2. The act provided by article 318.1 of the present Code, committed on preliminary arrangement by group of persons or organized group either with application of violence or with threat of its application – is punished by imprisonment for the term up to five years.

The Verdict of the Court

On August 2, 2021, A military court in Baku has found Ludvig Mkrtyan and Alyosha Khosrovyan guilty of torturing Azerbaijani soldiers during the first Karabakh war and sentenced each to 20 years in prison. Mkrtyan and Khosrovyan were charged with torture, violation of war laws and customs, creation of illegal armed formations or groupings, and illegal border crossing.

They will spend their first 10 years in prison; and the rest – in a high security institution. Prior to sentencing, the defendants apologized. "We apologize to the President of Azerbaijan and the Azerbaijani people. We ask you to forgive us" –they said.

Evaluation of the trial:

According to the results of the Trial Observation, the Observers came into conclusion that, the following in Fair Trial standards have been fulfilled by the Court during the court proceedings and all the sessions:

First Preliminary Session

Baku Military Court, chaired by Judge Elbay Allahverdiyev, consisting of judges Rafiq Abbasov and Jamal Ramazanov, with the participation of Mahir Abbasov, Assistant to the Prosecutor General of the Republic of Azerbaijan, defending the public prosecution, held a preliminary hearing on the criminal case of Armenian citizens Ludwig Mkrtchyan and Alyosha Khosrovyan under the relevant articles of the Criminal Code in June 2, 2021.

Translators attended the meeting in accordance with the requirements of criminal procedure legislation.

At the same time, more than 45 representatives of local and foreign media, non-governmental organizations, representatives of international status, as well as the Commissioner for Human Rights (Ombudsperson) of the Republic of Azerbaijan Sabina Aliyeva attended the preliminary hearing.

The participation of ambulance staff was also provided.

Ramil Iskandarli – Chairman of the Legal Analysis and Research Public Union and Fariz Akberov – independent lawyer, were observed all the sessions of the trial of Armenian citizens Mkrtchyan and Khosrovyan as an independent trial observer from a civil society organization.

Here is the link to the Video Report of the Report News Agency from the First Preparatory Court Session of the Case:

<https://youtu.be/IBZ372PK4fQ>

International Fair Trial Standards

Right to Equality Before the Law and independent and impartial court

The accused Khosrovyan and Mkrtchyan in all criminal proceedings were entitled to both equality before the law and equal protection of the law, without discrimination. They also were entitled to a trial before an independent, impartial and competent tribunal established by law. During the court proceedings, it

was clearly observed that, judges of the Baku Military Court, had no interest or stake in the specific case they are examining, and hold no preconceived views about the matter they are dealing with and refrained from acting in ways that promote the interests of any of the parties. The impartiality of the court is observed with the absence of bias, animosity or sympathy towards any of the parties by the judges.

A Competent Tribunal/Court Established by Law.

The accused Khosrovyan and Mkrtchyan were tried before a competent tribunal established by law. Tribunals, courts and judges, including examining magistrates, must be competent in accordance with the international and national laws. Everyone has the right to be tried by courts and judges established under ordinary jurisdiction in accordance with legally-established procedures. The Military Court of Baku was established in August 1992. It operated under the name of Baku garnison's military tribunal from 1992 to 10 June 1997 and it was called garnison military tribunals – military courts following amendments made to the legislation on that date.

The Role of Prosecutors. The accused were entitled to a trial in which the prosecutor is fair and impartial. Prosecutor Mahir Hasanov in the case of the Mkrtchyan and Khosrovyan carried out its professional functions impartially and objectively and avoided discrimination on political, social, religious, racial, cultural, sexual orientation grounds or any other grounds, according to the observations.

The Independence of the Legal Profession. Mkrtchyan and Khosrovyan were assisted and defended by a competent lawyers, members of the Azerbaijan Bar Association.

Mkrtchyan and Khosrovyan were also provided with the following Fair Trial guarantees by the Court:

- **Information on the nature and cause of the accusation were given.**

Geneva Convention III

Article 96, fourth paragraph, of the 1949 Geneva Convention III provides: "Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused."

- **Assistance of an interpreter is fully provided during the whole process.**

Geneva Convention III

Article 96, fourth paragraph, of the 1949 Geneva Convention III provides: "The accused shall be ... permitted ... to have recourse, if necessary, to the services of a qualified interpreter."

Geneva Convention IV

Article 72, third paragraph, of the 1949 Geneva Convention IV provides:

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement.

European Convention on Human Rights

Article 6(3)(e) of the 1950 European Convention on Human Rights provides: "Everyone charged with a criminal offence has the following minimum rights ... to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

- **Presence of the accused at the trial had been provided**

Accused Mkrtchyan and Phosrovyan were present at the court room during the whole process without any placement in the metal cages and without any shackles. They were seated right near the lawyers and had a free access to talk with the lawyers.

Geneva Convention IV

Article 123, second paragraph, of the 1949 Geneva Convention IV refers to the disciplinary punishment awarded to internees and states: "The decision shall be announced in the presence of the accused."

European Convention on Human Rights

Article 6(3)(c) of the 1950 European Convention on Human Rights provides that everyone charged with a criminal offence has the right "to defend himself in person".

- **Public proceedings**

More than 45 representatives of local and foreign media, 2 members of the non-governmental organizations, representatives of international status, as well as the Commissioner for Human Rights (Ombudsperson) of the Republic of Azerbaijan Sabina Aliyeva and her representatives attended the hearings.

Geneva POW Convention

Article 62 of the 1929 Geneva POW Convention provides:

The representatives of the protecting Power shall have the right to attend the hearing of the case. The only exception to this rule is where the hearing has to be kept secret in the interests of the safety of the State. The detaining Power would then notify the protecting Power accordingly.

Geneva Convention III

Article 105, fifth paragraph, of the 1949 Geneva Convention III provides: “The representatives of the Protecting Power shall be entitled to attend the trial of the case...”

European Convention on Human Rights

Article 6(1) of the 1950 European Convention on Human Rights provides:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing.

International Covenant on Civil and Political Rights

Article 14(1) of the 1966 International Covenant on Civil and Political Rights provides:

In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing ...

The Report is prepared by the NGO Trial Observers Team (Ramil Iskandarli and Fariz Akberov).

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