

2015-02-27

## Fråga-svar

### Azerbajdzjan – straff för desertör och fängelseförhållanden

#### Fråga

- Vad riskerar en azerbajdzjansk medborgare för straff för desertering?
- Finns det någon information angående fängelseförhållanden för desertörer/vapenvägrare som blivit fängslade?

#### Svar

##### **Straff för vapenvägrare och desertörer**

*Criminal Code of the Azerbaijan Republic (2005):*

Article 321. Evasion serving in military

321.1. Evasion without the lawful grounds from next appeal on military service or from an appeal on mobilization, with a purpose of evasion from serving in military –

is punished by imprisonment for the term up to two years.

321.2. The same act committed in wartime –

is punished by imprisonment for the term from three up to six years.

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Article 334. Desertion

334.1. Desertion, that is autocratic absence of a military man from military unit or places of service, or not returning (absence) to a place of service for over three months, as well as autocratic absence from military unit or places of service, or not returning (absence) to a place of service with a view of evasion from serving in military, irrespective of duration –

is punished by imprisonment for the term from three up to seven years.

334.2. Desertion with a weapon, supplies or explosives entrusted on service, without purpose of their plunder, as well as desertion committed by group of persons –

is punished by imprisonment for the term from five up to eight years.

334.3. The acts provided by articles 334.1 and 334.2 of the present Code, committed in wartime or fighting conditions –

is punished by imprisonment for the term from five up to ten years.

NOTE: The person who for the first time has committed acts, provided by articles 334.1 of the present Code, can be released from a criminal liability if of these acts was committed on consequence of confluence of heavy circumstances.

Article 335. Evasion from military service by causing harm to health or in different way

335.1. Evasion of a military man from military service by causing any harm to health or feigned illness, forgery of documents, or other deceit, as well as refusal from implementing duties of military service –

is punished by restriction on military service for the term up to one year or maintenance to disciplinary military unit for the term up to two years.

335.2. The same acts committed in wartime or fighting conditions –

is punished by imprisonment for the term from three up to five years.

### **Allmänt om fängelseförhållanden**

United States Department of State (2014):

#### **Prison and Detention Center Conditions**

Many prisoners experienced harsh detention conditions, some of which were life threatening. While the government continued to construct new facilities, some Soviet-era facilities did not meet international standards. Overcrowding, inadequate nutrition, deficient heating and ventilation, and poor medical care combined to make the spread of infectious diseases a problem in some facilities.

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Authorities reported increased efforts to ensure adequate physical exercise for prisoners and opportunities to work or receive training. Authorities at times limited visits by attorneys and family members. Former prisoners reported guards punished prisoners with beatings

or by holding them in isolation cells. Local and international monitors continued to report poor conditions at the maximum security Qobustan Prison.

The Ministry of Justice reported that 111 persons died in detention in 2012. The ministry reported that 84 of the deaths were in medical facilities and due to medical conditions. Tuberculosis remained the leading cause of death in prison facilities in 2012, followed by cancer and heart disease. The Ministry of Internal Affairs reported two deaths in pretrial detention facilities during 2013. Both were reportedly suicides. The ministry took action against 11 employees for the incidents.

The majority of prisons and detention centers provided access to potable water.

Administration: Prison recordkeeping appeared adequate. Prisoners had access to family visitors, although in some cases authorities limited this access. Authorities permitted religious observance. While most prisoners reported that they could submit complaints to judicial authorities and the Ombudsman's Office without censorship, domestic NGOs reported that some prisoners in high-security facilities experienced difficulty submitting such complaints. Prison authorities regularly read prisoners' correspondence. The national human rights ombudsman received a variety of human rights complaints, including from prisoners. While the Ombudsman's Office reported systematic visits and investigations into complaints, NGOs reported a lack of interest in fully addressing prisoner complaints.

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Improvements: According to the ICRC, the government undertook significant efforts to improve detention conditions by building new facilities and modernizing existing detention centers. The Ministry of Internal Affairs reported that it opened five new detention facilities and renovated eight facilities during the year.

#### Freedom House (2014):

The judiciary is corrupt, inefficient, and subservient to the executive branch. Arbitrary arrests and detention are common, particularly for members of the political opposition. Detainees are often held for long periods before trial, and their access to lawyers is restricted. Police abuse of suspects during arrest and interrogation reportedly remains common; torture is sometimes used to extract confessions. Prison conditions are severe, with many inmates suffering from overcrowding and inadequate medical care. Protesters detained during 2013 reported ill-treatment in custody. Most were arrested arbitrarily and denied legal counsel in closed pretrial hearings.

UN Human Rights Council (2013a):

In response to questions regarding conditions of detention and living conditions in prisons, Azerbaijan stated that great efforts have been made to modernize the infrastructure of the penitentiary system. In several regions of Azerbaijan, new penitentiary establishments have been built, legislation has been amended to improve detention conditions of detainees and increase their rights. (s. 9)

UN Human Rights Council (2013b):

The Special Rapporteur on the right to health raised concern about the inadequate sanitation conditions in prisons, in general, and in prison medical facilities in particular. He stated that the absence of mental health services and services for persons living with disabilities, and difficulties faced by prisoners in obtaining transfer to external health facilities for specialized treatment were of significant concern. (s. 6-7)

UN Human Rights Council (2013c):

A special attention has been given to the recommendations presented by European Committee for the Prevention of Torture (CPT) during their visits to the places of detention beginning from 2002. During their 6th and the last visit in 2011 to the places of detention, CPT Representatives noted that detention terms of the convicts, the medical services that are provided had been improved in a very high grade, and that during the monitoring they did not observe any concerns about torture or misconduct in penitentiary institutions towards convicts instead they have witnessed good conduct. (s. 15-16)

Council of Europe: Parliamentary Assembly (2012):

There have been alarming reports by human rights defenders and domestic and international NGOs about alleged cases of torture and other ill-treatment at police stations, during the investigation period and in penal institutions. Torture is also reported in the armed forces. (s. 27)

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The allegations of ill-treatment and the climate of impunity are confirmed by several judgments of the European Court of Human Rights. In recent years, the Court has found Azerbaijan guilty of violations of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention on several occasions. (s. 28)

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The most recent report on Azerbaijan was published by the CPT in 2008. It also reports ill-treatment in prisons. In this regard, we welcome the National Programme for Action approved by the President of Azerbaijan on 27 December 2011, which raises the effectiveness of the protection of human rights and freedoms. This

programme provides for stronger measures to investigate cases of violation of human rights of persons in custody, including cases of torture, ill-treatment and abuse. It also provides for the adoption of a new law on the rights of arrested persons and training for judges and law enforcement officers. (s. 28)

Council of Europe: Commissioner for Human Rights (2010):

Moreover, when persons are admitted to the investigation isolators they undergo preliminary medical examination which is registered in their medical book. Their right for medical care is also ensured throughout their detention. If a detainee complains about ill-treatment, then any injury resulted from that ill-treatment is duly recorded during the preliminary medical examination and the relevant authorities are informed of the case. The accused persons in investigation isolators and inmates in correctional institutions can also receive outpatient medical care in the medical-sanitary units of those institutions. Those accused persons or inmates who need stationary medical care can be transferred to specialised or ordinary medical institutions upon the instructions by the General Medical Department of the Ministry of Justice.

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It has to be pointed out that 20 out of 65 police detention facilities have been reconstructed to meet the international standards, whereas another 39 of such facilities have been renovated. (s. 31-32)

**Exempel på fängelseförhållanden för vapenvägrare/desertörer**  
Reporters Without Borders (2011):

A second hearing in netizen Bahthiyar Hajiyev's trial before a Nizami district court in the city of Ganja was held yesterday. Facing a charge of desertion (under article 321.1 of the penal code) ...

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Hajiyev, whose trial began on 19 April, complained of being the victim of repeated violence while held in prison and of being threatened with rape. The judge however refused to call witnesses over the conditions of his detention.

Forum 18 (2011):

Farid Mammedov became a Jehovah's Witness in July 2004. He was in regular correspondence since 2006 with Baku's Nasimi District Military Conscription Office and the Defence Ministry insisting that he should be allowed to conduct an alternative civilian service in line with his religious beliefs. He pointed out the guarantee of an alternative service under Article 76 Part 2 of Azerbaijan's Constitution and Azerbaijan's commitments to introduce such a civilian alternative service on joining the Council of Europe. Despite presenting such arguments, the Prosecutor's Office launched a criminal case against him.

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Following his jail sentence, Farid Mammedov has been held in Prison No. 14 in the village of Gizilbash near Baku. ... Conditions for him in prison are "reasonable", Jehovah's Witnesses told Forum 18.

Human Rights Watch (2012):

Bakhtiyar Hajiyeu, a Harvard University graduate and a member of the youth movement Positive Change, was arrested on March 4, 2011 in advance of a March 11 protest that he actively promoted through social media. He was charged with evading mandatory military service and sentenced to two years in prison. Hajiyeu alleged police severely beat him while he was in their custody; the prosecutor's office has failed to investigate his complaint about the abuse. In June 2012 Azerbaijan's Supreme Court released Hajiyeu on parole.

Forum 18 (2014):

Both Hajiyeu and Mammadov have been held since their arrest at Baku's NSM secret police investigation prison. "Conditions there for my client are OK, and he has not been beaten," Hajiyeu's lawyer Nizami Abbasov told Forum 18 on 8 May.

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On 16 April, Judge Vugar Ahmadov of Jalilabad Military Court in southern Azerbaijan sentenced Jehovah's Witness conscientious objector Shikhaliyev to one year in a disciplinary military unit, the court chancellery told Forum 18 on 8 May. He was punished under Criminal Code Article 335.1 ("Evasion of military service by causing harm to health or in another way").

Conditions in disciplinary military units are governed by Articles 138-153 of the Code of Enforcement of Punishments. These specify that those held there are allowed to write letters and make phone calls, and receive periodic visits. They can be required to work in the military unit and can be punished for failing to abide by the rules, most seriously by up to ten days in solitary confinement.

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Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

## Källförteckning

(alla källor hämtade 2015-02-23)

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