

TRANSITIONAL JUSTICE IN AZERBAIJAN: DEALING WITH THE PAST¹

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After gaining independence from the Soviet Union in 1991, Azerbaijan's approach to transitional justice has tended mainly toward forgiving and forgetting the injustices of the bloody communist past which is also common to other former Soviet Union countries excluding Baltic states: Estonia, Lithuania, and Latvia.² This approach resulted from the nature of the communist regime, post-independence political instability, lack or insufficiency of political will, and Nagorno-Karabakh war between Azerbaijan and Armenia.

The Repressive Past

Azerbaijan is a former Soviet Union country which proclaimed its independence on 18 October 1991. The Union of Soviet Socialist Republics, commonly referred to as the Soviet Union was a union of 15 countries which included Azerbaijan, Georgia, Armenia, Russia, Moldova, Estonia, Latvia, Lithuania, Belorussia, Ukraine, Turkmenistan, Kazakhstan, Tajikistan, Kirgizstan, and Uzbekistan. Soviet Union existed from 1922 until 1991 and it covered about 293 million people with more than 200 distinct ethnic groups. The Government's policy was defined by the only

¹ "Transitional Justice" refers to range of methods that newly independent or post-conflict states may use to address past human rights violations. It is a new area of International Law and has its roots in International Human Rights and Humanitarian Law. These methods are designed for ensuring four main rights of victims of political repressions and states' obligations in this regard:

- 1) Right to justice (state's duty to prosecute);
- 2) Right to truth (state's duty to search and inform victims and community at large of the truth of violations);
- 3) Right to be guaranteed non-recurrence of violations (state's duty to take necessary measures (e.g. lustration) to guarantee non-recurrence);
- 4) Right to reparation: (state's duty to guarantee reparation to victims and their beneficiaries).

The primary objective of the "Transitional Justice" policy is restoring justice, ending the culture of impunity, and establishing democratic governance, human rights, and rule of law.

More information about this field can be found on the web site of the International Center for Transitional Justice at www.ictj.org

² Lavinia Stan, *Transitional Justice in Eastern Europe and the former Soviet Union: Reckoning with the Communist Past*, London, 2008

political party, the Communist Party of the Soviet Union. “KGB” (Committee for State Security or Secret Police) has 2.9 million secret collaborators across the Soviet Union. Terror, mass deportations, forced labor, prison camps, torture, murders, and russification (the imposition of Russian language, identity, and culture) were characteristics of the Soviet regime. No certain number was defined, however, it is generally estimated that being one of the most bloody regimes in the history, it victimized around 20 million innocent people.³ 3.77 million persons out of them are estimated to be victimized during the Stalin-era repressions while about half million of those victims were shot and others were imprisoned for 25 years.⁴

Azerbaijan had been under the Soviet occupation for more than 70 years, from 1920 until 1991. It is not possible to give the exact number of the victims of repressions in Azerbaijan. Because most of the documents were either destroyed or secretly kept at the archives or taken to Moscow and as a result, ten thousands of Azerbaijanis have not been mentioned in the list of repressions’ victims.⁵ Only in 1937-1938, 40,000 people were convicted. During 1937-40, every year approximately 12,000 persons were imprisoned. Generally 70,000 persons were subject to repressions during 1930-40 and at the beginning of 50’s while 29,000 out of them were Azerbaijani intellectuals.⁶ In 1937 alone, 16 Azerbaijani generals were assassinated.⁷ A person who speaks at least one foreign language was killed in order to destroy intelligentsia. They were called “national enemies” and massively killed after the court hearings lasted only 15 minutes.⁸ Furthermore, Azerbaijanis were deported to the Middle Asia, Siberia, remote places of Russia as “an enemy of bolshevism.” According to information of the Embassy of Azerbaijan in Kazakhstan, about 150,000 Azerbaijanis were killed during Stalin-era repressions and 28,000 out of them were shot without investigations and judicial rulings.⁹

The last atrocities took place on 20 January 1990 (a time that went down in history as Black January) when nearly 26,000 Soviet troops invaded Azerbaijan to stop the independence movement.

³ “The Black Book of Communism”, http://en.wikipedia.org/wiki/The_Black_Book_of_Communism

⁴ “The Memorial for 150,000 victims of Stalin-era Repressions was built in Kazakhstan: <http://www.gunaz.tv/aze/37/newsCat/1/newsID/2712>

⁵ Article by the historian Eldar Ismayilov, published in the “525th newspaper”, May 31, 2008

⁶ Historian Jamil Hasanli, “Black Shadow of White Stains”, Baku, 1991, p. 140-141

⁷ Shamistan Nazirli, Assassinated Azerbaijani Generals, Baku, 2004, page 116

⁸ Ziya Bunyadov, Red Terror, Baku, 1993, page 4-5

⁹ “Memorial for the 150,000 victims of Stalin-era repressions was established in Kazakshtan” <http://www.gunaz.tv/aze/37/newsCat/1/newsID/2712>

130 innocent people died, 744 civilians were wounded, and a country suffered lots of financial damage.¹⁰

As a result of independence movement of 1988-1991, Azerbaijan got independence from the Soviet Union on 18 October 1991. The Commission for Drafting of the New Constitution was established and subsequently, on November 12, 1995, the new Constitution of Azerbaijan was adopted by referendum and it came into force on November 27, 1995. Under Article 7 of the Constitution, Azerbaijan is democratic, legal, secular, unitary republic and the Government is based on the principle of the separation of powers.¹¹ After the adoption of the Constitution, so-called “transition period” had started in Azerbaijan. Now the question comes out: How did the new regime deal with bloody and painful past? Which transitional justice methods did the Government of Azerbaijan employ in order to restore the rights of victims of past human rights? In short, which policy did the new regime choose: forgiving and forgetting or remembering and punishing?

Right to Justice

Unfortunately, Azerbaijan has a poor transitional justice record regarding ensuring victims’ right to justice. After independence, regarding legal assessment of mass repressions, deportations, and killings by the communist regime, Azerbaijani Government did not take any measures. Only regarding Black January which happened on 20 January 1990, some attempts to bring the perpetrators to justice were made, however, no effective results have been achieved until now.

Right after the Black January, the Parliament established an Investigative Commission charged with investigating those events. The Commission interviewed over 2,500 individuals, consulted experts, and gathered relevant materials on details of the event.¹² That evidence was sent to the Azerbaijan General Prosecutor's Office in the hope that a criminal case would be lodged, but that hope has to date gone unfulfilled. On 29 March 1994, Parliament officially recognized the events that took place on 20 January 1990 as a criminal attempt to block Azerbaijan's independence and mandated the Prosecutor's Office to undertake investigations and ensure that perpetrators were held accountable.¹³

¹⁰ <http://www.january20.net/>

¹¹ The Constitution of the Republic of Azerbaijan is available at: <http://e-ganun.az/print.php?internal=view&target=1&docid=897&doctype=0>

¹² The Commission’s Report is available at: <http://e-ganun.az/print.php?internal=view&target=1&docid=6927&doctype=0>

¹³ The Decision is available at:

At this writing, this criminal case is still being heard by the courts. According to the Public Relations Department of the Prosecutor's Office, Azerbaijan officially asked the Russian authorities to release to it the relevant criminal case file and find those perpetrators who are hiding in Russia. However, Russia never answered that request.¹⁴

Furthermore, there is also a case where the applicant who became disabled after Black January, filed a law-suit against Russia as a successor of the Soviet Union and sought compensation. Now the case is before the European Court on Human Rights in Strasbourg since domestic courts ruled against the applicant, ruling the application being “manifestly ill-founded.”¹⁵

Right to Truth

Azerbaijan experience of truth seeking is very limited. There has been no Truth Commission as well as no effective Investigative Commission were set up to identify those responsible for communist-era human rights violations in order to have a common understanding of the past.

The reasons can be mentioned but not limited to:

- 1) The Government did not show the sufficient interest in confronting the past;
- 2) Nagorno-Karabakh war which exhausted the country and all attention was directed to this new conflict;¹⁶
- 3) “KGB” files were not made public because they either were sent to Moscow or kept secretly at the archives of the Ministry of National Security of Azerbaijan or destroyed. Accordingly, the Government failed in establishing the common truth about past events.

<http://e-qanun.az/print.php?internal=view&target=1&docid=8820&doctype=0>

¹⁴ “Zerkalo” newspaper, “Persons, guilty for 20 January event are given to international search”:

<http://zerkalo.az/rubric.php?id=39041&dd=20&mo=1&yr=2009>

See also: Russia does not return the criminal case file on 20 January tragedy to Azerbaijan:

<http://www.anspress.com/index.php?a=2&lng=az&nid=23018>

¹⁵ 20 January disabled person sues Russia, Article is available at:

<http://www.azadliq.org/archive/news/20060120/1/1.html?id=154904>

¹⁶ The Nagorno-Karabakh conflict began in 1988 between Azerbaijan and Armenia over Nagorno-Karabakh, the historical territory of Azerbaijan. As a result of the six-year war, Nagorno-Karabakh and six surrounding regions (20% of Azerbaijan’s territory) were occupied by Armenian military forces. Azerbaijan lost more than 30,000 people in war and currently has nearly one million IDPs and refugees. On May, 1994, the cease-fire agreement was signed. The conflict now is called “frozen conflict” and accordingly, the Azerbaijani and Armenian Governments try to solve the conflict over negotiations process, mediated by OSCE Minsk Group. It should be noted that UN Security Council’s four resolutions # 822, 853, 874, and 884 as well as the Council of Europe, US State Department Reports recognize the territorial integrity of Azerbaijan and urge the Armenian forces to leave Nagorno-Karabakh and surrounding regions of Azerbaijan.

However, it is worth noting that Azerbaijani historians and scientists have researched the Soviet-era atrocities and published numerous books, and this process is now continuing.¹⁷ In addition, TV and Radio broadcasting and press also have had some role in truth seeking. Furthermore, it is noteworthy to state the establishment of Association of Victims of Political Repressions. Currently, the Association is working on the projects about publication of the memorial book, including the full list of victims as well as issuing some privileges (transportation, communal, healthcare services, etc) for the victims of political repressions.¹⁸ Incomplete information about victims was publicized in different sources.¹⁹ Finally, it is worth noting that over 345,000 victims of illegal political repressions in Azerbaijan were acquitted, including victims deported to Kazakhstan, and investigation of archive materials is now continuing.²⁰

Lustration

Since the country did not make a clear break with the communist past, the new political leaders did not adopt any lustration, vetting or screening to ban former communist officials and “KGB” agents from post-communist politics. Lustration laws were successfully adopted in Baltic states. However these draft laws were not adopted at the parliaments of Moldova (2000), Ukraine (2005), and Georgia (2005).²¹ Although lustration has never been seriously debated in the Azerbaijani Parliament during 19 years since independence, lately some discussions are underway on media.²² The reasons why Azerbaijan did not employ the lustration method of transitional justice can be summarized as follows:

- **Lack of political will:** The Government of Azerbaijan did not show any real interest in lustration. Access has not yet been provided to the files compiled by the “KGB”, both because most of these files have been unavailable to the Azerbaijani public and because their opening might

¹⁷ “Ekspress” Newspaper, “Victims of Stalin-era Repressions- Farida Jahannuri’s new book has been published”:
<http://www.ekspress.az/2010/05/22/get=12685>

¹⁸ <http://www.dak.az/view.php?lang=az&menu=16&id=5285>

¹⁹ <http://www.adam.az/az.php?category=71>

See also: http://az.wikipedia.org/wiki/Kateqoriya:Repressiya_qurbanlar%C4%B1

²⁰ “Memorial for the 150,000 victims of Stalin-era repressions was established in Kazakshtan”
<http://www.gunaz.tv/aze/37/newsCat/1/newsID/2712>

²¹ Lavinia Stan, *Transitional Justice in Eastern Europe and the former Soviet Union: Reckoning with the Communist Past*, London, 2008, p. 237-239

See also: *Dealing with the past: The case of Estonia*, available at: <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ord516=OrgaGrp&ots591=0C54E3B3-1E9C-BE1E-2C24-A6A8C7060233&lng=en&id=18990>

²² Interviews with some members of the Parliament and Article on “Bakı Xəbər” newspaper: <http://baki-xeber.com/new/2010/08/26/get=48396>

incriminate many post-communist politicians who started their political careers under communism as “KGB” informers and secret agents.

- **Mandatory membership:** Another reason for lack of lustration law is that the communist regime in Azerbaijan was quite strong and everyone was required to become a member of the Communist Party. For instance, there was a saying: “Everyone is born as a communist.” Of course, there were “true-believers” of the communism too; however, majority of the people, especially intelligence of Azerbaijan had forcibly become the members of the Communist Party. Poets and writers were forced to praise communist regime in their writings. In this regard, lustration would negatively affect on numerous number of people who in fact were victims of the repressive regime.
- **Nagorno-Karabakh war:** As mentioned before, during war obviously, all attention was directed to the war and this also was one of the main reasons, blocking transitional justice efforts.²³
- **Political instability:** Another reason for non-application of lustration method is that due to the ongoing war and non-stability, the central Government was weak, and rebellions were in play. Implementation of lustration policy would more tense the situation and divide the society.

Thus, because of above-mentioned reasons, Azerbaijan did not use lustration as a transitional justice method and communist party members, former “KGB” agents, and collaborators continued working in public administration.

Right to Reparation

The Azerbaijani Government has partially used reparation as a transitional justice method. On 6 November 1991, the Parliament adopted the Law on Returning Confiscated Houses to the Owners. Under the first paragraph, confiscated houses should be returned to the real owners or their family members. However, the second paragraph creates confusion by saying that if the house is sold or given to another person, under the procedure, prescribed by law, it cannot be restituted.²⁴ In practice, numerous Azerbaijani victims, whose houses were confiscated during the Soviet occupation by communist authorities, can not get back to their houses because they have been occupied by new owners or tenants. Applications to courts against the new owners or tenants have not been successful such as the courts refuse the applications of the owners by referring to paragraph two of the Law, which makes restitution of the property impossible. So, as it is seen, the restitution of the property

²³ Lavinia Stan, *Transitional Justice in Eastern Europe and the former Soviet Union: Reckoning with the Communist Past*, 2008, p. 240

²⁴ The relevant Law is available at: <http://e-qanun.az/print.php?internal=view&target=1&docid=6698&doctype=0>

has not been resolved by the Government of Azerbaijan. There is a pressing need to adoption of the new law on restitution and solution of the property rights of thousands of people who are victims of the communist regime.

It should be noted that in Azerbaijan, reparation in the form of administrative compensation and other symbolic measures were in place. The Presidential Decree of 31 March 1998 created the honor of “The Martyr of 20 January,” awarded posthumously to the victims of the Black January²⁵ while the Presidential Decree of 1 January 2006 granted the Presidential Pension worth 300 AZN (around 380 USD) to the family members of the martyrs.²⁶

Moreover, other symbolic reparation measures were done in Azerbaijan such as commemoration of 20 January as a mourning day; naming a subway station after 20 January; establishment of National Martyr Lane Cemetery, National Memorial and Martyr Mosque; as well as publication of many books in different languages.

Thus, in Azerbaijan administrative reparation has only been used in relation to family members of the victims of Black January. The victims of Soviet-era crimes have received no comparable reparations. As to the judicial reparation, because of the contradictory legislation, the restitution has become impossible. In addition, some symbolic measures have been done such as Soviet names and institutions were changed; Soviet monuments were destroyed; the number of Russian schools was reduced; “Russian History” was removed as a separate subject in schools and universities, and other nationalizing measures are now continuing.

Conclusion

As we witnessed, unlike Baltic States, Azerbaijan has employed only limited transitional justice methods in other words Azerbaijan’s approach to dealing with past communist violations was mainly toward forgiving and forgetting. We saw that after independence Azerbaijan did not get back to prosecution of perpetrators. No truth or investigation commission was established and as a result, truth was limited to publication of different books and different opinions by historians and journalists. Furthermore, access to “KGB” files was not granted to public and no lustration was done and accordingly, former communists maintained their power. With respect to Soviet

²⁵ The relevant Decree is available at: <http://e-qanun.az/print.php?internal=view&target=1&docid=4690&doctype=0>

²⁶ The relevant Decree is available at: <http://e-qanun.az/print.php?internal=view&target=1&docid=11356&doctype=0>

repressions and mass killings, no effective reparation measures were taken due to contradiction of the law and the lack of further relevant legislation. The Azerbaijani Government has only compensated the family members of the victims of Black January.

This limited reckoning with Soviet crimes in Azerbaijan results from the following circumstances:

- tense political situation following independence;
- Nagorno-Karabakh war which was accompanied with thousands of killings and other atrocities, and this made Azerbaijan forget about the Soviet occupation since the new occupation took place;
- insufficiency of interest of the ruling political elite to dealing with past;
- comprehensive transitional justice program would have strained Azerbaijan's relations with Russia and generally in the region;
- implementation of transitional justice methods would have more tensed the situation and divided the society;