



## **ARBITRARY DETENTION OF ARMENIANS BY AZERBAIJAN**

Azerbaijan subjects at least over five dozen of Armenians to arbitrary detention, in some cases for almost three years. This includes arbitrary detention of Armenian servicemen and civilians captured in the context of Nagorno-Karabakh conflict and military attack launched by Azerbaijan in September 2020, detention of Armenian servicemen captured as a result of Azerbaijani military attack against the Republic of Armenia in May 2021 and May 2023 as well as detention of Armenian civilians captured in the Lachin corridor at the unlawful Azerbaijani checkpoint installed in April 2023 in violation of the 2020 Trilateral statement and former political and military leadership of Nagorno-Karabakh in July-September 2023. Continuous detention of Armenian servicemen and civilians detained in Azerbaijan is arbitrary and is not in compliance with Azerbaijan's international obligations.<sup>1</sup> Azerbaijan uses Armenian POWs and civilians as a bargaining chip to extort concessions from Armenia, thus making the detainees hostages. All captives are convicted or accused of bogus charges in Azerbaijan.

### ***Prisoners of war***

Over 40 Armenian servicemen who remain in detention in Azerbaijan were captured while on duty in their official capacity wearing uniforms, therefore under International Humanitarian Law (IHL), they shall be provided with a status of POWs, benefit from a combatant immunity and be repatriated without delay as they were detained in the context of an international armed conflict. Of these, 26 Armenian servicemen under the Azerbaijani captivity were detained in December 2020 in the military positions near Khtsaberd and Hin Tagher villages of Nagorno-Karabakh (Khtsaberd group) that remained under Armenian control after the signature of the Trilateral Statement on Ceasefire on 9 November 2020, two were detained during the 2020 44-day war, two Armenian servicemen who were detained from the territory of the Republic of Armenia on 27 May 2021, and two Armenian servicemen who were abducted and detained on 23 May 2023 as well as an Armenian serviceman detained on 16 August 2023.

### ***Khtsaberd Group***

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<sup>1</sup> Azerbaijan is a state party to the majority of human rights treaties prohibiting arbitrary deprivation of liberty, including the European Convention on Human Rights, International Covenant on Civil and Political Rights (hereinafter – ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the four Geneva Conventions of 1949.

A group of 62 Armenian servicemen who were captured as a result of the attack of Azerbaijani armed forces on positions in Khtsaberd and Hin Tagher of Nagorno-Karabakh held by the Armenian side,<sup>2</sup> on 11-13 December 2020, a month after the signature of the Trilateral Statement. The statement records the end of active hostilities, retaining positions by the parties as of 9 November 2020, contains an explicit provision stipulating an exchange of all POWs, hostages and other people detained in the context of the armed conflict. However, on 11 December 2020, the Azerbaijani armed forces attacked positions held by Armenian servicemen in Hin Tagher and later Khtsaberd, killed at least nine and captured 62 Armenian servicemen. While Azerbaijan refused to provide them with a status of POWs as they were captured after the signature of the ceasefire statement, there was resort to armed force between at least two parties resulting in death, capture and wounding servicemen, that means that IHL continues to apply. While the majority of these 62 were released in exchange of various concessions from Armenia, 26 of these 62 remain detained in Azerbaijan.

All 62 captured Armenian servicemen were officially mobilized as reservists. Under the applicable legislation, mobilized reservists are part of the armed forces. Analysis of the video posted by Azerbaijanis following the capture demonstrates that all Armenian servicemen wear uniform and they had arms prior of handing over their arms.<sup>3</sup> This means that they fall under category 4(1) of Geneva Convention III and shall have POW status. Instead, Azerbaijan charged them with the following crimes under its Criminal Code: Articles 214 (terrorism), 228 (illegal acquisition, possession of weapons and explosives), 279 (creation of groups in an illegal armed formation, participation in them), 318 (illegal crossing of the state border).<sup>4</sup> Most of these charges were later dropped as ungrounded.

Azerbaijan has continuously used the Khtsaberd group servicemen as a bargaining chip to extort concessions from Armenia: some of the detained POWs were repatriated in exchange of mine field maps or other concessions from Armenia.<sup>5</sup>

With an exception of few, the majority of Khtsaberd group captives were divided and tried in four groups. The trials took place in June-July 2021 (two-three hearings in total). As reported in Azerbaijani media, the state prosecutor dropped terrorism, sabotage, and other grave charges in court. The prosecutor pressed only the charge of illegal crossing of the state border in a group and

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<sup>2</sup> See more at 'Over 70 Armenian soldiers missing after fresh clashes in Nagorno-Karabakh', <https://oc-media.org/over-70-armenian-soldiers-missing-after-fresh-clashes-in-nagorno-karabakh/>, 'Armenian MoD: Azerbaijan has resumed attacks on Karabakh villages', <https://jam-news.net/azerbaijani-armed-forces-attack-armenian-villages-of-khtsaberd-in-taher/>, 'Renewed Fighting Reported in Southern Karabakh', <https://www.civilnet.am/en/news/474714/renewed-fighting-reported-in-southern-karabakh/amp/>

<sup>3</sup> See videos here <https://bit.ly/3W1fXXd>

<sup>4</sup> As reported in Azerbaijani media, Azerbaijan accused the captured Armenians in acquisition of weapons and explosives, creation of illegal armed group, then penetration into Azerbaijani territory on 26-27 November 2020 and taking over military positions, attacking institutions situated in Azerbaijan up until 13 December 2020, including attacks on people, organization of explosions and other acts aimed at creation of panic and violation of security. See more at 'Trial of 14 Armenian terrorists to continue in Baku soon', <https://en.trend.az/azerbaijan/politics/3445339.html>; 'Armenian soldiers on trial in Azerbaijan', <https://eurasianet.org/armenian-soldiers-on-trial-in-azerbaijan>

<sup>5</sup> '15 Armenian POWs Freed by Azerbaijan', <https://www.azatutyun.am/a/31304702.html>

illegal acquisition and possession of arms. The sentences ranged from six months, four years or six years of imprisonment.<sup>6</sup>

As we can see, under Geneva Conventions all these acts are legitimate belligerent acts and POWs cannot be convicted for that. This means that their detention and conviction has been arbitrary.

Arbitrariness of the detention is also demonstrated by the fact that nine of them were repatriated weeks or months after being captured without being convicted, whereas some were repatriated in exchange for landmine fields maps. Importantly, Azerbaijan allowed repatriation of some of the Armenian servicemen who were charged and tried together under the same charges, whereas the others from the same group remain in custody as demonstrated below.

- On 3 July 2021, 15 prisoners were released and sent back to Armenia, 12 of them were convicted to six months of imprisonment and three detainees were released before the judgement against them was delivered.<sup>7</sup> Six months was exactly the time the majority of captives spent in detention in Azerbaijan. This is a clear indication that the sentence was political and not in line with fair trial standards.
- On 19 October 2021, five captives tried and convicted in three different groups, all were convicted to six years of imprisonment (whereas the majority of the other servicemen convicted together with them remain in custody),<sup>8</sup>
- On 4 February 2022, three captives tried and convicted in two different groups, all convicted to six years of imprisonment (whereas the majority of the other servicemen convicted together with them remain in custody),<sup>9</sup>
- On 8 September 2022, four captives tried and convicted in two different groups, all convicted to six years of imprisonment (whereas the majority of the other servicemen convicted together with them remain in custody).<sup>10</sup> Moreover, in case of four of them, on 8 September 2022, the Supreme Court of Azerbaijan commuted the sentence to formally permit repatriation.<sup>11</sup> They were repatriated on the same day – 8 September 2022.<sup>12</sup> Such selective approach with the justice in Azerbaijan further attests to the fact that this detention is arbitrary.

As a result, out of 62 group members, 26 servicemen remain in detention in Azerbaijan to-date.

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<sup>6</sup> 'Armenian terrorists turned out to be border violators', [https://www.turan.az/ext/news/2021/7/free/politics\\_news/en/5557.htm](https://www.turan.az/ext/news/2021/7/free/politics_news/en/5557.htm), 'Fifteen Armenian POWs released in Russian mediated deal', <https://oc-media.org/fifteen-armenian-pows-released-in-russian-mediated-deal/>

<sup>7</sup> 'Armenia and Azerbaijan exchange detainees for mine maps', <https://eurasianet.org/armenia-and-azerbaijan-exchange-detainees-for-mine-maps>

<sup>8</sup> 'Plane carrying Armenian captives landed at Erebuni Airport', <https://www.1lurer.am/en/2021/10/19/Plane-carrying-Armenian-captives-landed-at-Erebuni-Airport/581299>

<sup>9</sup> 'MFA releases names of 8 captives returned to Armenia from Azerbaijan', <https://news.am/eng/news/685630.html>

<sup>10</sup> 'Azerbaijan returns five Armenian POWs', <https://armenpress.am/eng/news/1092022.html>

<sup>11</sup> See Reply submitted by the Permanent mission of the Azerbaijani Republic to the United Nations Office and Other International Organizations in Geneva, 21 February 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37389>

<sup>12</sup> <https://en.armradio.am/2022/09/08/azerbaijan-returns-five-pows-to-armenian-side/>

### *Gegharkunik group*

On 27 May 2021, in another flagrant violation of the cease-fire, Azerbaijani armed forces attacked and detained six Armenian servicemen engaged in engineering activities in the borderline areas of **Gegharkunik province of the Republic of Armenia** (*emphasis added*). All of them were wearing official military uniform and were on duty. Despite of that, Azerbaijan did not treat them as POWs but prosecuted. Four of the six servicemen were later repatriated. However, two servicemen were charged and convicted on bogus charges<sup>13</sup> to 18 and 19 years of imprisonment respectively and remain detained in Azerbaijan since then.<sup>14</sup>

### *Armenian servicemen abducted from the territory of Armenia*

On 26 May 2023, two Armenian servicemen, Harutyun Hovakimian and Karen Ghazarian, who were on duty while delivering food and water to the Armenian positions were abducted by Azerbaijani servicemen **on the territory of the Republic of Armenia** (*emphasis added*) on the road between Chakaten and Shikahogh. They were wearing the official military uniform of the armed forces of the Republic of Armenia, were in a vehicle identifiable as belonging to the armed forces, had clearly visible arms, etc., that is to say complied with all required criteria for combatants.

In an apparent act of retribution for the conviction of two Azerbaijani servicemen in Armenia weeks prior to the incident, instead of granting a POW status and repatriating them, Azerbaijani authorities charged and quickly convicted two servicemen under trumped up charges. On 7 July 2023, just 10 days after falling into captivity, two Armenian servicemen were sentenced for terrorism, illegal crossing of the state border of Azerbaijan, actions aimed at inciting national enmity to 11 years and six months of imprisonment.<sup>15</sup> In this case, too, Azerbaijan failed to ensure fair trial rights, among other violations.

On 16 August 2023, a reservist who had been participating in annual military drills was captured by the Azerbaijani armed forces. Azerbaijani Defense Ministry announced that an Armenian subversive group infiltrated into the Azerbaijani territory whose activities were stopped by shooting. The Armenian Defense Ministry released a video showing only unarmed Armenian serviceman, Gagik Voskanyan, lost in the indecision of the terrain talking to Azerbaijani military servicemen, who was captured by them and driven in unknown direction.<sup>16</sup>

## **Conclusion**

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<sup>13</sup> In a criminal case initiated by the State Security Service, Sargsyan and Rafaelyan were charged under Article 214.2.3 (terrorism committed with the use of firearms and objects used as weapons), Article 228 (illegal acquisition, transfer, sale, storage, transportation or carrying weapons, components for them, ammunition, explosives and explosive devices), Articles 318 (illegal crossing of the state border of Azerbaijan) and 282 (sabotage) of the Criminal Code of Azerbaijan.

<sup>14</sup> <https://news.am/eng/news/689983.html>

<sup>15</sup> <https://www.rferl.org/a/armenia-soldiers-azerbaijan-sentenced-trespassing/32493521.html>, <https://www.azadliq.org/a/ermeni-herbchiler-mehkeme/32492148.html>

<sup>16</sup> [https://t.me/mil\\_armenia/11356](https://t.me/mil_armenia/11356)

Azerbaijan denied Armenian captives a POW status and charged them with such crimes under its Criminal Code as illegal acquisition, possession of weapons and explosives, creation of groups in an illegal armed formation, participation in them and illegal crossing of the state border, etc. This means that all Armenian servicemen were convicted for belligerent acts not prohibited under IHL which is not a legitimate ground for prosecution of adversary's combatants during an international armed conflict. These facts coupled with several instances of release of detainees in exchange of landmine field maps and acknowledgment of this practice by high-level Azerbaijani authorities demonstrates that Azerbaijan keeps the detainees as hostages to compel Armenia to carry out or to abstain from carrying out certain acts as an explicit or implicit condition for the release of the detainees. This detention is arbitrary both under IHL and international human rights law and may amount to hostage-taking.