

Call for Immediate Action
To Facilitate Return of Armenian Prisoners of War and Civilians detained in the
context of the Nagorno-Karabakh Conflict from the Azerbaijani Control

To: Ms. Dunja Mijatović
Commissioner for Human Rights of the Council of Europe
E-mail: commissioner@coe.int

14 January 2021

Dear Madam,

We, undersigned civil society organizations, respectfully request you, the Commissioner for Human Rights of the Council of Europe, to engage actively in the protection of core rights of Armenian prisoners of war and civilians under the Azerbaijani control, to urge the Azerbaijani authorities to discontinue any action that puts their life and well-being under imminent risk and to repatriate without delay all prisoners of war and civilians detained in the context of armed conflict of 2020.

On 27 September 2020, the Azerbaijani armed forces launched a widespread aggression against the Nagorno-Karabakh Republic (also known as Artsakh Republic). The hostilities lasted 44 days, and were ceased by the statement on ceasefire of 09 November 2020¹ signed by the Prime Minister of the Republic of Armenia, Nikol Pashinyan, the President of the Republic of Azerbaijan, Ilham Aliyev, and the President of the Russian Federation, Vladimir Putin (hereinafter – the Statement). Among other issues, the Statement stipulates that an exchange of prisoners of war, hostages and other detained persons and bodies of the dead should be carried out.

On 14 December 2020, the exchange of prisoners of war and civilians detained in the context of the Nagorno-Karabakh armed conflict was conducted based on “all for all” principle. According to the official information, 14 Azerbaijani, including two Azerbaijani civilians convicted in Nagorno-Karabakh for murder and other crimes in 2014, and 44 Armenian prisoners of war and civilians were exchanged, including persons detained before the hostilities launched on 27 September 2020. According to the official information, 44 Armenian captives exchanged were not all prisoners of war returned to Armenian side and the second exchange between the parties would have taken place within a short period of time. On 28 December 2020, four Armenian prisoners of war and civilians detained in the context of the conflict returned from Azerbaijan, whereas two Azerbaijani prisoners of war were returned to the country of origin.²

Following the 9 November statement, there were reports of civilian residents of Nagorno-Karabakh being detained by the Azerbaijani forces. Return of some of them has been facilitated by the Peacekeeping contingent of the Russian Federation.

Apart from that, despite the fact that the Statement stipulates that the parties stay at their positions occupied by 9 November 2020, reportedly, on 13 December 2020, the Azerbaijani armed forces launched an offensive on the Armenian positions in and around Hin Tagher and Khtsaber villages

¹ Statement by the Prime Minister of the Republic of Armenia, President of the Republic of Azerbaijan and the President of the Russian Federation, <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>

² Азербайджан и Армения обменялись пленными при посредничестве миротворцев, <https://www.1lurer.am/ru/2020>.

of Hadrut Region of Nagorno-Karabakh. As a result, 9 persons were killed, and at least 62 were taken prisoners.³ The incident was confirmed by the Peace-keeping contingent of the Russian Federation.

According to publicly available information, around 120 other prisoners of war and civilians were identified, including women, as fallen in the hands of the Azerbaijani armed forces. However, Azerbaijan officially confirms captivity of only five Armenians, including civilians.⁴

As of 13 January 2021, no further exchange of prisoners of war has been conducted.

On 31 December 2020, the President of Azerbaijan, Ilham Aliyev, stated that ‘Armenian armed units that still remain in some of the liberated lands are not subordinated to the Armenian political leadership and many of them have been neutralized and many others arrested. They cannot be considered prisoners of war-they are terrorists’.⁵ Reportedly, this included those 64 persons who were taken prisoners on 13 December 2020 as a result of the Azerbaijani offensive. Above-mentioned servicemen under IHL shall be given prisoner of war status and treated accordingly. Moreover, Article 5 of the Geneva Convention (III) on Prisoners of War of 12 August 1949, such persons shall remain under the protection of the Convention from the time they fall into the power of the enemy and until their final release and repatriation. The Convention applies based on the facts on the ground and does not hinge on formalities regarding the beginning or end of a conflict.⁶ Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the Convention until such time as their status has been determined by a competent tribunal.

On 11 January 2021, as a follow-up to the 9 November Statement, a trilateral agreement was signed on joint transportation infrastructure between Armenia, Azerbaijan and Russia. No agreement has been reached on further exchange of prisoners of war and civilians.⁷

In this respect, we state our deep concern that dozens of prisoners of war under the Azerbaijani control have not been repatriated yet and their rights and faith are being under-prioritized vis-a-vis the economic gain. The videos and images of atrocities committed against Armenian servicemen and civilians, as well as mutilation of their remains by the Azerbaijani armed forces circulating in social media, as well as well-documented record of ill-treatment and in some cases deliberate killing of ethnic Armenian prisoners of war and civilians in Azerbaijan⁸ increase the concern and anxiety of the families as the whereabouts and possible return of their relatives remain in question. As facts of ill-treatment and execution of Armenian prisoners of war became public knowledge and some of them were verified by international rights organizations and media, Azerbaijan itself admitted ill-practice by its servicemen and launched few criminal cases into these facts.

³ No casualties on Armenian side as a result of clashes near Hadrut, <https://en.armradio.am/2020/12/13/no-casualties-on-armenian-side-as-a-result-of-clashes-near-hadrut/>

⁴ <https://news.am/arm/news/623147.html?fbclid=IwAR3BNUUyYiD8zEtMIKZaiuI2FK7gWF1GfCiejJE3qUEZPEHFPJZHErvXWtU>

⁵ Turkish- Russian Joint Center to be ready in two weeks,

https://www.hurriyetdailynews.com/turkish-russian-joint-center-to-be-ready-in-two-weeks-aliyev-161305?fbclid=IwAR0tRCDd9RAY92f8WTum3XTZsuWoz9CG9Ngq-TMgEHJFbIBBJEyeF_Ym0Hw , See also the letter of 28 December 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/75/689.

⁶ See more at the 2020 Commentary to the Geneva Convention III, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=0837F01F5B0DBC5BC125858500469047>

⁷ <https://www.primeminister.am/en/press-release/item/2021/01/11/Nikol-Pashinyan-Moscow-meeting/>

⁸ Human Rights Watch, Azerbaijan: Armenian Prisoners of War Badly Mistreated, 2 December 2020, <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated> ; https://www.youtube.com/watch?v=ftHHS7gUSu0&feature=youtu.be&fbclid=IwAR1Ca9eb7uyo0FN2O1Thd3W9ndZ6En4IMAGlkCSJwDOONGa_XSs_qLARhyg; [https://twitter.com/KarabakhRecords/status/1319203595368226818;](https://twitter.com/KarabakhRecords/status/1319203595368226818) https://twitter.com/Artak_Beglyaryan/status/1330936149347536900

The return of Armenian prisoners of war and civilians should be conducted without any preconditions according to the agreed principle “all for all”. The prisoners of war and interned civilians fallen under the control of adversary should be repatriated without delay⁹ and any unjustified delay in the repatriation of prisoners of war or civilians constitute a grave breach of Additional Protocol I.¹⁰

Hence, the situation and obstacles created by the Azerbaijani authorities require the urgent attention and active actions of international community and human rights protection agencies under their mandate to facilitate the return of Armenian prisoners of war and civilians as a real manifestation of protection and promotion of fundamental human rights and adhesion to values adopted under it.

Protection of Rights without Borders NGO

Helsinki Citizens' Assembly -Vanadzor

Open Society Foundations- Armenia

Transparency International Anti-Corruption Center

Law Development and Protection Foundation

Analytical Centre on Globalization and Regional Cooperation

Journalists' Club "Asparez"

⁹ Third Geneva Convention, Articles 118; Fourth Geneva Convention, Article 132 and Article 133.

¹⁰ Additional Protocol I, Article 85(4)(b)