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## الجمعية العامة



## مجلس حقوق الإنسان

الدورة الخامسة والأربعون

14 أيلول/سبتمبر - 2 تشرين الأول/أكتوبر 2020

البند 4 من جدول الأعمال

حالات حقوق الإنسان التي تتطلب اهتمام المجلس بها

## رسالة خطية مقدمة من مكتب المدافع عن حقوق الإنسان\* في أرمينيا

## مذكرة مقدمة من الأمانة

تشرف الأمانة بأن تحيل إلى مجلس حقوق الإنسان الرسالة الخطية المقدمة من مكتب المدافع عن حقوق الإنسان في أرمينيا، والتي تعمم وفقاً للفقرة (ب) من المادة 7 من النظام الداخلي للمجلس (انظر مرفق قرار المجلس 1/5)، واستناداً إلى الترتيبات والممارسات التي وافقت عليها لجنة حقوق الإنسان في قرارها 74/2005.

\* مؤسسة وطنية لحقوق الإنسان معتمدة من جانب التحالف العالمي للمؤسسات الوطنية لتعزيز وحماية حقوق الإنسان ضمن الفئة "ألف".



الرجاء إعادة الاستعمال

GE.20-12508(A)



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## Submission by the Human Rights Defender of Armenia\*\*

### Statement of the Human Rights Defender (Ombudsman) of Armenia on violations of the Armenian military officer Mr. Gurgen Alaverdyan's rights after his appearance in the territory of Azerbaijan

This statement is dedicated to violations of the Armenian military officer Mr. Gurgen Alaverdyan's rights after his appearance in the territory of Azerbaijan.

The facts presented below demonstrate gross violations of the International Humanitarian Law, in particular, the Geneva Convention related to the Treatment of Prisoners of War (Geneva Convention III), with respect to the treatment of Armenian Army officer Mr. Gurgen Alaverdyan, who appeared in the Azerbaijani territory on August 23, 2020.

Immediately after Mr. Gurgen Alaverdyan's appearance in Azerbaijan, several videos with Azerbaijani soldiers were published on YouTube and later largely disseminated on social networks on August 23. These videos demonstrate Mr. Gurgen Alaverdyan surrounded by members of the Azerbaijani military, who handcuffed and blindfolded him with a winter-hat. Furthermore, the videos clearly demonstrate Azerbaijani military servicemen making insulting, humiliating statements, pronouncing ethnic slurs and diminishing Mr. Alaverdyan's ethnicity and honor.<sup>1</sup> Another video was published accompanied by a song diminishing the officer's dignity.<sup>2</sup> All the videos are full of hate speech with a clear reflection of Armenophobia.

On 26 August, the Azerbaijani authorities disseminated another video showing Mr. Alaverdyan, sitting in front of the Azerbaijani flag, and reading out a statement about his service in the Armenian Armed Forces, about his appearance in Azerbaijan and his further plans.<sup>3</sup>

In particular, Mr. Gurgen Alaverdyan "confesses" in detail on how "he appeared in Azerbaijan on August 23. The officer also "confesses" that he does not want to continue his military service in Armenia any longer and deeply regrets his actions, he wants to stay in Azerbaijan and make his contribution to the Azerbaijani state. At the end of the text, he announces that "Armenians do not have chances to win the Azerbaijani army".

According to the official statement of the Armenian Ministry of Defense, the assertion by the Azerbaijani authorities on sabotage committed by officer Gurgen Alaverdyan is misinformation. The Armenian Ministry of Defense declared that on August 22 at around 7:30 p.m., while checking the military post, the officer Gurgen Alaverdyan got confused and was lost due to unfavorable climate condition.<sup>4</sup>

The Human Rights Defender of Armenia initiated an immediate investigation proceeding under the Constitutional Law on the Human Rights Defender once the information about the disappearance and alleged ill-treatment of Mr. Gurgen Alaverdyan became available.

The Office of the Human Rights Defender contacted Mr. Alaverdyan's family who confirmed the official information provided by the Armenian Defense Ministry and conveyed their grave concerns over the life and health of Mr. Gurgen Alaverdyan. The family members requested the Human Rights Defender's assistance in the protection of the rights of Mr. Alaverdyan.

The disseminated videos illustrate serious breaches of human dignity, honor, and other rights of Mr. Alaverdyan grossly violated the Common Article 1 of the 1949 Geneva

\*\* Circulated as received, in the language of submission only.

<sup>1</sup> [https://www.youtube.com/watch?v=xo7mQ7YDZJM&has\\_verified=1](https://www.youtube.com/watch?v=xo7mQ7YDZJM&has_verified=1) //

<https://www.youtube.com/watch?v=Si7FKBmN2mQ>.

<sup>2</sup> <https://www.youtube.com/watch?v=H-S0b4EZqOE>.

<sup>3</sup> <https://www.youtube.com/watch?v=sqWhLGSdcsQ>.

<sup>4</sup> <https://armedia.am/eng/news/86005/armenia-mod-officer-gurgen-alaverdyan-got-lost-due-to-unfavorable-climate.html> // <https://www.facebook.com/shushanstepanyan/posts/3167962116573260>.

Conventions coupled with other violations of the International Humanitarian Law. The Common Article 1 of the 1949 Geneva Conventions provides that the general respect of the Geneva Conventions in all circumstances shall prevail. These videos demonstrate the diminishing treatment of Mr. Alaverdyan by the Azerbaijani officers in a gross violation of Geneva Convention III requirements for the treatment of Prisoners of War.

**According to Article 14 of the Geneva Convention III “Prisoners of War are entitled in all circumstances to respect for their persons and their honour”.** The filming and publication of the videos of August 23, 2020 violates Mr. Guren Alaverdyan's right for the respect of his dignity and honor protected by Article 14 of the same Convention. This international obligation prohibits any verbal assault and precludes any treatment during detention that humiliates prisoners, for example, scornful language or other harassment.

Article 13 of the Geneva Convention III that provides the Detaining Power's obligation to ensure humane treatment of Prisoners of War was grossly violated in case of Mr. Guren Alaverdyan through the dissemination of the video of August 26, 2020, where the Armenian armed forces officer was delivering his explanations regarding his appearance in Azerbaijan.<sup>5</sup>

Article 17.4 of the Geneva Convention III sets out that neither physical or mental torture, nor any other form of coercion, can be inflicted on Prisoners of War to secure from them information of any kind. Article 99.2 sets out that it is prohibited to use moral or physical coercion to induce a prisoner of war to admit guiltiness. The 2020 Commentary of ICRC to Article 99 explains that the prohibition on inflicting any form of coercion applies to secure “any kind” of information.<sup>6</sup>

Article 14.3 of the International Covenant on Civil and Political Rights (ICCPR) enshrines that in the determination of any criminal charge against him/her, everyone enjoys the guarantee of not being compelled to testify against himself/herself or to confess guiltiness.

Article 7 of the ICCPR establishes that no one shall be subjected to inhuman or degrading treatment. In its General Comment on Article 14 of the 1966 International Covenant on Civil and Political Rights in 2007, the Human Rights Committee stated: it is unacceptable to treat an accused person in an inhuman or degrading manner contrary in order to extract a confession. In *Saldias Lopez v. Uruguay and Kelly v. Jamaica* the UN Human Rights Committee specified that the prohibition of “compelling to testify against himself or to confess guilt” must be understood “in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt”.

The European Court of Human Rights has revealed forms of systemic practice of severe ill-treatment cases, including torture, of ethnic Armenians who appeared under the jurisdiction of Azerbaijan.

Particularly, the Court recognized violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) and Article 2 (right to life) in case of *Saribekyan and Balyan v. Azerbaijan*. The Court recognized that Mr. Saribekyan, an Armenian national, was subjected to ill-treatment in the form of severe physical violence during the final days of his life, while he was detained at the Military Police Department in Baku” (application no. 35746/11, para. 86). According to the Court, the ill-treatment of Mr. Saribekyan prior to his death “involved very serious and cruel suffering and [...] carried out intentionally on a detained person under the exclusive control of the authorities” was characterised as torture” (para. 87).

It is worth to recall the judgment in the case of *Makuchyan and Minasyan v. Azerbaijan and Hungary* (application no. 17247/13), where an Azerbaijani officer was pardoned by the Azerbaijani authorities for murdering an ethnic Armenian, giving him benefits at the highest state level and glorification among the entire Azerbaijani society. The European

<sup>5</sup> [https://www.youtube.com/watch?v=F-n1DbgU\\_JU&feature=emb\\_title](https://www.youtube.com/watch?v=F-n1DbgU_JU&feature=emb_title).

<sup>6</sup> The 2020 Commentary of ICRC to the Geneva Convention relative to the Treatment of Prisoners of War, para. 3969.

Court established the action of the Azerbaijani authorities were ethically motivated and condemned them for the release and glorification of a person who committed murder as a result of ethnic hatred, which is a dangerous impetus for creating an atmosphere of impunity (para 163, 171-172).

Taking into consideration these internationally recognized cases of torture and other forms of severe ill-treatment of ethnic Armenians in Azerbaijan and the systemic hatred towards Armenians by the Azerbaijani authorities, the Human Rights Defender is gravely concerned by the state of officer Gurban Alaverdyan being in the custody under jurisdiction of the Azerbaijani authorities.

In the video, Mr. Alaverdyan reads out the text that is allegedly prepared beforehand by the Azerbaijani authorities. As concluded by experts of the Human Rights Defender's Office, it is clear that Mr. Alaverdyan was not familiar with the text or its content and the text pronounced by him does not express his real position. According to the experts, being forced to sit in front of the Azerbaijani flag and to pronounce a text against the Armenian Armed Forces, and stating that he is willing "to remain in Azerbaijan and to make a contribution for the Azerbaijani state" **is in breach of the beliefs and values of Mr. Alaverdyan**. All the evidence gathered prove that he has been a conscientious serviceman of the Armenian Army for many years and has been devoted to the service.

Furthermore, this breach may entail serious mental suffering for Mr. Alaverdyan, which itself can be of such a serious nature to qualified as cruel treatment (as evidenced by the European Court of Human Rights Judgment of *Ireland v. UK*, International Criminal Tribunal for the former Yugoslavia Trial Judgment of *Naletilić and Martinović*, Inter-American Court of Human Rights Judgment of *Loayza Tamayo v. Peru*).

The 2020 Commentary of ICRC to Article 17 of Geneva Convention III specifies that coercion need not cause physical harm, but could be aimed at breaking a prisoner's mental resistance. This may involve forcing prisoners to engage in tasks that leads to humiliating or degrading treatment, **demanding they act against their belief systems** or threatening harm or humiliation to someone close to them.<sup>7</sup>

The above-mentioned information and analyses create grave concerns over Mr. Alaverdyan's **procedural rights under Article 99 of the Geneva Convention III** (e.g. rights to a fair trial, access to lawyer, etc.). As provided by ICRC, the rights and means of defense also extend to pretrial investigations and to the procedures for placement in pretrial confinement.<sup>8</sup>

The Human Rights Defender of Armenia draws the attention also to the fact that on August 25 the State Security Service and Prosecutor General's Office of the Republic of Azerbaijan issued a joint statement on charging Mr. Alaverdyan with 5 different crimes under the Azerbaijani Criminal Code.<sup>9</sup> The Armenian Army officer was charged with

- conducting aggressive war,
- espionage,
- creation of armed formations or groups, which are not provided by the legislation,
- illegal purchase, transfer, selling, storage, transportation and carrying of firearms, accessories to it, supplies, explosives, illegal crossing of the state border of the Republic of Azerbaijan.

The above-mentioned information and facts come to prove that these charges have no legal grounds, they are brought to intimidate and humiliate the citizen of Armenia Mr. Gurban Alaverdyan motivated by hatred. Apart from this conclusion, the Human Rights Defender

<sup>7</sup> The 2020 Commentary of ICRC to the Geneva Convention relative to the Treatment of Prisoners of War, para. 1824.

<sup>8</sup> The 2020 Commentary of ICRC to the Geneva Convention relative to the Treatment of Prisoners of War, paras. 3973 and 4027.

<sup>9</sup> <https://contact.az/ext/news/2020/8/free/politics%20news/en/127003.htm> // <https://razm.info/145394>

of Armenia has solid grounds to stress that the text pronounced by Mr. Guren Alaverdyan does not express his own beliefs and values and is delivered under intimidation and fear.

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