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‘Juvenile justice in the Azerbaijan Republic’

Alternative submission

To: UN Children Rights Convention

Submitted by

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Table of content:

- 1. Current legislation and gaps on juvenile justice system in Azerbaijan**
- 2. Statistics**
- 3. Reform trends of juvenile justice in Azerbaijan**
- 4. Practical issues in implementation of juvenile justice system in Azerbaijan**
- 5. Recommendations**

1. Current legislation and gaps on juvenile justice system in Azerbaijan

According to the Criminal Code of the Republic of Azerbaijan, children may be subject to criminal liability at the age of 16. However, criminal offenses for children under severe crimes begin at age 14. Children under this age may be subjected to criminal liability if they commit crimes such as intentional homicide, deliberate infliction of harm to health, heavy rape, robbery, kidnapping, intimidation, seizure, terrorism, hostage taking, deliberate destruction or damage of property in aggravated circumstances, hooliganism in aggravated circumstances, possession of firearms, ammunition, etc.

The maximum penalty provided in the form of imprisonment for juvenile offenders in Azerbaijan is 10 years. However, most experts believe that the attitude toward children who have committed a crime should be different from adults. Punishments applied to children should be more liberal. However, Article 429.0.4 of the Code of Criminal Procedure of the Azerbaijan Republic provides the possibility of separating the criminal proceedings concerning the minor if other people participated in the offence that he or she committed.

There is no specific legislation that focuses only on juvenile offenders. It turns out that in the country, minors are considered as part of the total mass of criminals, that is, on the part of the authorities there is no special treatment for them, they are perceived as growing-up criminals. As soon as they turn 18, they are transferred from colonies for minors to ordinary colonies, where they face a more violent reality.

According to the law, criminal responsibility comes from the age of 16, and in the case of serious crimes - from 14 years. The maximum penalty envisaged in the form of imprisonment for juvenile offenders in Azerbaijan is 10 years. Lifetime imprisonment is not applied to them. Juvenile offenders are accompanied by pedagogues or psychologists in court if there is no parent or guardian.

On February 10, 2017 the president of the Republic of Azerbaijan Ilham Aliyev signed an executive order “On improving work in the penitentiary system, humanization of the punishment policy and expansion of alternative punishments and procedural enforcement measures not associated with isolation from society”. One of the main objectives of the Decree is to create the necessary conditions to ensure that offenders are rehabilitated without isolation from society. It was

decided to establish a Probation Service of the Ministry of Justice of the new organization, which was aimed at achieving this goal.

2. Statistics

According to official data, 60-70% of children who commit crimes are uneducated, untrained children. In Azerbaijan other reasons which make children commit crimes are social problems. The financial situation of the families and social problems in the family do not allow parents to take care of their children and to bring them up properly. Children deprived of care often follow external influences and join criminal groups.

During 2007-2014 in Azerbaijan the number of preventive measures in the form of arrest against minors was reduced to 30% and the number of children serving punishment for the last 8 years was reduced by 50% percent. Moreover, the program for the prevention of crime among children marked a 25% increase.¹

According to the official data for 2014, 280 children and adolescents were brought to trial in Azerbaijan, of which 8 were girls and 272 were boys. The majority of the offenses were hooliganism, theft, deliberate harm to human health. Several teenagers were convicted of robbery, manufacture and distribution of drugs.

According to statistics, the current situation of juvenile delinquency in Azerbaijan is not bad at all, since the level of juvenile delinquency does not exceed 5% of the total number of crimes per year. Mostly these are thefts or crimes related to the sale of narcotic drugs. This is a low indicator compared to the data of other countries in the post-Soviet region - Russia, Kazakhstan, and Moldova. Moreover, the dynamics of juvenile delinquency in Azerbaijan do not tend to grow.

3. Reform trends of juvenile justice in Azerbaijan

The Committee on the Rights of the Child (CRC) gave Azerbaijan recommendations on the observance of the rights of the child, including juvenile justice. Azerbaijan has joined the United Nations Convention on the Rights of the

¹Statistics provided by the State Statistical Committee of the Republic of Azerbaijan.

Child (UNCRC), which states that it is not possible to impose the same requirements on adults and children for crime commitment.

The Juvenile justice reform was initiated in Azerbaijan from 2007 with the support of the European Union and UNICEF.

Azerbaijan, the first rehabilitation center for children has been functioning since 2007 in the framework of the UNICEF project of the UN Children's Fund in cooperation with a number of government agencies involved in the process of working with juvenile offenders.

If a child commits a minor crime, then he or she enters a rehabilitation center, and there is a chance to avoid prison punishment. In the Baku Grave Crimes Court, a panel of three judges was created, who received three-week training at the Justice Academy of Azerbaijan to work with children with the support of UNICEF lawyers. Now, if the cases of minors fall into the court, they are considered by these three judges.

In addition, in Baku court, within the framework of the project, a separate children's room was created, which is connected to the courtroom by video communication. Thus, the trial is being hold in the courtroom but if necessary, the judge can connect to the children's room. Besides children, only the direct participants of the trial - lawyers, prosecutors, as well as parents or guardians are allowed in this room .

Nowadays Azerbaijan gives great importance to the juvenile justice in the country. In seminars and roundtables have been held, have been held by NGOs, including UNICEF Representative Office in Azerbaijan, other international children's organizations, which involved justice and law enforcement officials, resulting in the percentage of crimes committed by adolescents compared to the previous years. Another positive example in this regard is that the State Statistical Committee of the Republic of Azerbaijan publishes annual data on criminal justice, a separate section of which is devoted to justice for adolescents.

On December 5, 2016, a documentary film by British director Gabriel Menezes "Beyond Detention" on the juvenile justice system in Azerbaijan was presented in Baku. This film focuses on the juvenile justice reform conducted in Azerbaijan, highlighting issues around protection and rehabilitation of children, as well as the work done in the area in partnership with the Government and civil society. The work on the film was conducted within the framework of the project

on juvenile justice jointly with the United Nations Children's Fund (UNICEF) and the Ministry of Justice of Azerbaijan with the financing of the European Union. The heroes of the film are four teenagers, each of whom tells his story. Thus, one of the stories reveals an important problem inherent in the juvenile justice of Azerbaijan, namely prohibitively severe punishments, which sometimes are applied to adolescents who violated the law. According to the author of the film, this has a very negative impact on the child's psyche and does not contribute to his or her rehabilitation.

Article 37 of the United Nations "Convention on the Rights of the Child" states that no child shall be deprived of his or her liberty unlawfully or arbitrarily. Child custody, detention or deprivation of liberty are enforced according to law and are used as a last resort and for a shorter period of time and accordingly. The UN Committee on the Rights of the Child recommended the government that a law on juvenile justice should be adopted in order to safeguard the rights of offenders and their adaptation to society, and specialized courts, police, lawyer and prosecuting authorities should be established. Experts who support the creation of a juvenile justice believe that prosecutors, judges and lawyers advocating for grave crimes, who have been charged with crimes and who have committed these crimes, have difficulty demonstrating fair treatment to children. In their view, the non-professional approach to these children ultimately leads them to commit more serious crimes.

Azerbaijan is still haven't passed a bill on juvenile justice. The possibility of introducing the principles of juvenile justice in Azerbaijan has been discussed for about 10 years. In the process of drafting the bill, the experience of foreign countries was used and experts from international organizations have been involved. "Juvenile Justice" envisages liberalization of sentences for children and juveniles, specialization of children's crimes court, prosecutor and attorneys.

We hope in the next reporting period it will be considered at a meeting of the Milli Majlis.²

4. Practical issues in implementation of juvenile justice system in Azerbaijan

²The National Assembly is the legislative branch of government in Azerbaijan. The unicameral National Assembly has 125 deputies: previously 100 members were elected for five-year terms in single-seat constituencies and 25 were members elected by proportional representation; as of the latest election, however, all 125 deputies are returned from single-member constituencies. MilliMajlis was the first secular republican parliament in the Muslim world.

At present, six judges specialize in juvenile justice in the Baku Court on Grave Crimes. However, in the near future the creation of specialized courts in Azerbaijan that will consider cases against children and adolescents does not look feasible, since Azerbaijan does not have enough resources. In other words, in Azerbaijan there is a lack of judges who deal only with cases of minors or psychologists who work with juvenile offenders.

The existing justice system uses more penal methods and seeks to solve social problems through punishment. In most cases these children are not dangerous to society and there is no need to deprive them of their liberty, and even less for a long time.

In juvenile delinquency cases, prison sentences should be applied as a last resort. This does not mean that we should not react to any violations of the law, the main purpose is to understand the child's commitment, the situation of the victims, to take the child out of this situation, to ensure healthy returns. In this regard, many practices such as mediation, public work, reaching an agreement between a child who has committed a crime against the victim and others can be positively assessed.

In Azerbaijan work on the implementation of juvenile justice should be carried out within the Beijing rules, which establishes a number of rules, relating to the administration of juvenile justice.

5. Recommendations

In order to improve the juvenile justice system in Azerbaijan, our organization puts forward following practical suggestions:

1. Azerbaijan should adopt the Law on juvenile justice. The mentality of the Azerbaijani society should be taken into account while drafting the law. Child friendly approach in criminal proceedings, liberalization of sanctions, and wider use of alternatives to sanctions, specialized teams of justice and law enforcement bodies, diversion of children from criminal system into social rehabilitation system and other relevant issues should be reflected in the law.
2. Specialized judges, prosecutors and lawyers should be trained. They should be informed about the alternatives to detention and being trained to deal with juvenile cases. There should be specialized judges in several courts within the framework of existing justice and judicial

system. Azerbaijan is a small country, so the author does not see a need for separate juvenile courts.

3. The number of psychologists and social workers should be increased in the rehabilitation centers to work with juveniles.
4. The Rehabilitation Center, including Legal Clinic services, should be funded by the government.
5. Improving the material and technical support of the child inspectors, simplifying the procedures for sending children to the Center for Temporary Isolation for Minors under the Ministry of Internal Affairs of the Republic of Azerbaijan. The functions of child inspectors should be increased in investigation, beside prevention function.
6. Increase the effectiveness of the interdepartmental commission for the protection of minors' rights for coordinating the actions of all ministries, interested in this problem.
7. Government n should accept a specific plan of action for supporting children, victims of violence during the COVID 19 Pandemic.

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