

INFORMATION

Submitted by the Government of Azerbaijan regarding the report to be prepared on “Application of the principle of non-punishment in the context of trafficking in human beings”

1. Gender consideration in realization of the principle of non-punishment

According to the Constitution of the Republic of Azerbaijan, everyone is equal before the law and the court. Equality before the law is also one of the basic principles of the Criminal Code of the Republic of Azerbaijan (hereinafter referred to as the Criminal Code).

In general, 92.5% of identified victims of trafficking in human beings in Azerbaijan in the last 5 years are women. During this period, 121 out of 154 persons prosecuted for crimes related to trafficking in human beings were women. In a number of cases, the courts imposed a punishment not related to imprisonment on accused women with dependent underage children.

2. Cases of deprivation of nationality during the punishment of human traffickers

According to the Constitution of the Republic of Azerbaijan, citizens of the Republic of Azerbaijan may not be deprived of nationality of the Republic of Azerbaijan other than in cases related to losing citizens of the Republic of Azerbaijan prescribed by law. According to the law “On citizenship of the Republic of Azerbaijan”, trafficking in human beings is not related to cases that constitute grounds for deprivation of citizenship.

3. Arrest, detention or other measures of punishment as the measures of punishment applied to human traffickers

Measures of punishment applied to human traffickers are fixed in the sanctions of Articles 144-1, 144-2 and 144-3 of the Criminal Code.

Thus, trafficking in human beings (Article 144-1) is punishable by imprisonment for 5-10 years, and in case of aggravating circumstances – for up to 15 years; forced labor (Article 144-2) is punishable by imprisonment for 4-8 years and in case of aggravating circumstances – for up to 12 years; illegal acts with documents for the purpose of trafficking in human beings (Article 144-3) are punishable by custodial restraint for up to 3 years or imprisonment for 1-3 years and in case of aggravating circumstances – by custodial restraint for up to 3 years or imprisonment for 1-4 years

4. Cases of forced return to the country of nationality as a type of punishment

In accordance with Article 52 of the Criminal Code, compulsory deportation from the Republic of Azerbaijan is applied only to foreign citizens as a type of

punishment. This type of punishment was not applied in 2020, because there were no foreign citizens among the persons prosecuted for trafficking in human beings.

5-6. Restrictions or difficulties in applying the principle of non-punishment in law or practice. Facts of discrimination related to non-punishment in law or practice.

The legislative enactments of the Republic of Azerbaijan regulating the application of penalties for trafficking in human beings or cases of non-punishment conform to international standards. There are no gaps in this field.

7. Positive examples in practice with the availability of the special legislation adopted to apply the principle of non-punishment, including the established policy, when its effective enforcement prevented criminal, civil or administrative prosecution of exploited persons, as well as migration crimes, i.e. cases when such prosecution was a direct consequence of being a victim of human trafficking.

According to Article 17.7 of the Law of the Republic of Azerbaijan on Combating Trafficking in Human Beings (No 958IIVQ dated 28.06.2005), persons shall not be subjected to civil, administrative and criminal prosecution for their involvement in criminal activities, which they were compelled to commit as a direct consequence of being a victim of human trafficking according to the procedure and in cases provided by applicable legislation of the Republic of Azerbaijan.

Decisions were made to deny criminal prosecution for illegal actions committed by persons as a direct consequence of being a victim of human trafficking in the previous years. In 2020, no facts of any breach of law by victims of trafficking in human beings have been registered.

8. Special information on application patterns, in particular:

- Have there been special legal regulations on non-punishment implemented under the local legislation?

Article 17.7 of the Law of the Republic of Azerbaijan on Combating Trafficking in Human Beings contains a provision on non-punishment only for victims. Cases of non-punishment of perpetrators of crimes are regulated by the Criminal Code.

- Criteria used to establish a link between an illegal action and an act committed by a person as a direct consequence of being a victim of human trafficking

According to Article 38 of the Criminal Code of the Republic of Azerbaijan, any act committed to inflict harm or damage to objects protected by this Code in the event of an extreme necessity, i.e. in order to eliminate the threat that causes fear of the person's own or other persons' lives, health and rights or interests of the state and society, when it is impossible to prevent such threat by any other means in this situation and it is unacceptable to exceed the limit of such extreme necessity, shall not be considered as a crime. Exceeding the limits of extreme necessity means infliction of harm or damage which is clearly not correlated with the nature and extent of the threat as well as with the conditions of threat prevention and is equal

to or exceeding the inflicted harm. Exceeding the limits of extreme necessity in this case shall entail criminal liability only in case of intentional damage.

A link between an illegal action and an act committed by a person as a direct consequence of being a victim of human trafficking is assessed in the process of investigative activities carried out by investigators in respect of this type of crime based on reliable proof and evidences.

- Does the principle of non-punishment for illegal actions committed by a person as a direct consequence of being a victim of human trafficking apply to all types of illegal actions or to certain types of illegal actions?

The principle of non-punishment for illegal actions committed by a person as a direct consequence of being a victim of human trafficking applies to all types of illegal actions provided for in the Criminal Code.

- Who and at what stage of the investigation or criminal prosecution can apply the principle of non-punishment for illegal actions committed by a person as a direct consequence of being a victim of human trafficking (at this moment, the need arises for official identification of a victim)?

Persons carrying out legal proceedings can apply the principle of non-punishment for illegal actions committed by a person as a direct consequence of being a victim of human trafficking at any stage of preliminary investigation and judicial investigation of criminal cases in accordance with the criminal legislation of the Republic of Azerbaijan.