

Apology Videos in Azerbaijani Media: Human Rights and Penological Analysis

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Apology in the criminal justice system is not a recent trend. In most jurisdictions, apology is considered to be a circumstance either that mitigates punishment or releases from criminal liability. However, there is a recent trend in post-Soviet countries, including but not limited to Azerbaijan, in which states have begun using apology as a method of criminal punishment in cases of criminally prohibited acts or even in legal acts that are considered morally^[1] wrong. While such apologies began as a form of vigilantism pursued by differing communities, they have since escalated into an officially mandated punishment, pursued by law enforcement agencies.

Apology videos should be understood within the context of repeated human rights violations of local criminal justice systems. Additionally, apology videos may be understood within the trend of rising penal populism.

In that regard, this piece will include the following topics. It will examine how making and sharing apology videos has become a form of criminal punishment. For the first purpose, I will first indicate the position of criminal legislation of Azerbaijan regarding apology. The Criminal Code of Republic of Azerbaijan prescribes the use of apology for mitigation or release from punishment. After an apology, the defendant is released from criminal liability via the discontinuation of criminal prosecution, in line with the Criminal Procedure Code of Republic of Azerbaijan.

Furthermore, this paper will interpret the emergence of apology videos through the lens of penal theory. It will track

and analyze the motivation behind the official use of apology videos. The official position of law enforcement agencies is littered with inaccurate and controversial interpretations and legal analysis. For a comprehensive approach, this paper will analyze several theses of law enforcement agencies.^[2]

Apology Videos and Arguments of the State Authorities

Local periodic media initiated discussions on apology videos, beginning in early 2022, as the trend emerged during coronavirus pandemic.^[3] At large, governmental and government-organized NGO (GONGO) reactions to such methods were of complimentary character. For instance, Alimammad Nuriyev, a member of the Public Council of the Ministry of Internal Affairs and President of the Constitutional Research Fund,^[4] underlined the importance of such apologies in light of the obligation of law enforcement bodies to secure public safety by stating “if there is a breach of honor and integrity, there must be an apology.”^[5] Public officials exceeding their own authority have also voiced positive opinions about apology videos.^[6] Nevertheless, independent human rights defenders have criticized apology videos because of their unconstitutional nature.^[7] To date, more than 15 apology videos have been disseminated by various media. The state authorities put forward the following set of arguments in favor of such videos. We have numbered them below and provided some counterpoints to them.

1. Apologies are made voluntarily.^[8]

One of the essential arguments of law enforcement agencies suggests that the apologies are given without compulsion and are instead deliberate acts of the perpetrator. However, this position does not seem tenable. These videos are recorded in police precincts, are shared by official social media accounts of law enforcement agencies, and perpetrators in those photos

are clearly complying with pandemic rules, despite the fact that, at the time, compliance with such rules was not demanded.

2. *Apology (or rather remorse) renders intentional criminal act into a negligent one.*^[9]

Local law enforcement agencies peculiarly claim that such apologies transform intentional criminal acts in negligent ones. They are, of course, mistaken about the fundamental legal concept of *mens rea*. In accordance with the well-established interpretation of culpability, which is also supported by criminal legislation of the Republic of Azerbaijan,^[10] degrees of culpability (or whether a person is intentional or negligent in the conduct of a criminally prohibited act) are determined by the mental state of the perpetrator, which logically *precedes* the crime itself. The perpetrator is either informed about the nature and consequences of the act prior to its commission or not; theory and legislation do not provide any alternative.

Another point missed by the official position regarding apologies' effect on *mens rea* is the conflation of apology and remorse. Indeed, from a sociological point of view, these two are connected to one another; however, criminal legislation is detailed about those notions. According to articles 72 and 73 of the Criminal Code of Azerbaijan, a person can be released from criminal liability either if they communicate sincere remorse to law enforcement agencies, or if they apologize to and receive reconciliation with the victim.^[11]

Lastly, while remorse and apology have a connection sociologically, only remorse can release the perpetrator from criminal liability because an apology alone is not necessarily sincere. Nonetheless, there are reasonable doubts as to the sincerity of apology videos issued due to the reasons illuminated in (1).

3. *Apology are not prohibited by legislation; therefore it is allowed.*^[12]

This argument presents a very dangerous case of (mis)interpretation of the fundamentals of criminal law. The argument contradicts basic principles of criminal justice because the apology videos are created without any charges being made.

What Rights Are Violated By Apology Videos

Now that we have seen some of the justifications for the use of forced apology videos, let us turn to how such practice violates fundamental human rights guarantees enshrined in the European Convention on Human Rights, the Constitution of the Republic of Azerbaijan and the Criminal Code of the Republic of Azerbaijan. Apology videos violate the following human rights and laws.

1. Right to be protected from ill-treatment (Art. 3 ECHR)

Article 3 of the ECHR puts forward an absolute prohibition on torture, inhumane treatment or degrading punishment. Not all types of harsh treatment are classified as violations of Art.3; ill-treatment must attain a minimum level of severity if it is to fall within the scope of Art.3.^[13] The minimum level of severity is relative and should be assessed on the basis of all circumstances of the case, for instance, duration of the ill-treatment, its physical and mental effects and in some cases, the sex, age and state of health of the victim.^[14] The state has both negative and positive obligations in line with Art.3, emanating from obligations of refraining from infliction of serious harm and, in our particular case, constructing a regulatory framework for protection.^[15]

In regard to our particular case, apology videos fall within the interpretation of degrading treatment/punishment. We come to this interpretation based on the particularities of apology

videos. Degrading treatment is classified as when an action “humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance.”^[16] Such actions can involve treatment which may lead to diminishing physical or moral resistance of the victim^[17] or making him/her/them act against their own conscience.^[18]

Although the absence of intent to humiliate does not, *per se*, constitute a violation of Art.3,^[19] there is reasonable ground to assert the following. Namely, with the rise of understanding of apology as ritual within the context of restorative justice, academics have noted that such official apologies often have a punitive quality because of the humiliation they impose.^[20] We can also point to several circumstances around these videos that merit the term “degrading.” For the purposes of shooting such videos, the supposed perpetrators are brought to police precincts for talks and negotiations with law enforcement authorities in which there are obviously unequal power relations and psychological pressure. As a result, the video itself in which the supposed perpetrators, with humbled voice and lowered eyes, express their utmost remorse and apologize to all those harmed by their actions: Azeri people, law enforcement authorities and the others, although victims are not named. For greater effect, apology videos are shared in the official media and social media accounts of law enforcement bodies. –

All in all, forcing alleged perpetrators to make apology videos could be considered degrading treatment/punishment in line with Art.3 of ECHR

2. Not to be found guilty in cases not prescribed by law (Art.7 ECHR)

Article 7 of the ECHR puts forward essential guarantees long

recognized by modern criminal justice systems, stemming from the Roman system, namely, *nullum crimen sine lege* and *nulla poena sine lege*. Roughly translated, these principles prohibit holding a person as guilty of non-existent criminal offense and applying penalties not prescribed by legislation. Though several concepts, such as guilt and legislation should be unpacked for comprehensive analysis, for the purpose of this piece, only the concept of penalty will be scrutinized.

Penalty within the context of Art.7 is of an independent nature^[21] and does not depend only on the existence of criminal conviction.^[22] Other criteria to be taken into account are the nature and purpose of the proposed measure, including any intended punishment, its categorization under domestic law, the processes involved in its adoption and implementation, and the seriousness of the proposed act.^[23]

An analysis allows us to classify an apology video as a penalty. Law enforcement bodies indicate that they pursue prevention and rehabilitation objectives,^[24] and thereby, these videos are made in precincts or headquarters of law enforcement agencies, police officers initiate them, monitor and regulate the process of making these videos and are responsible for informing the public about the process and share the result of the video.

Returning to the official justification I denoted above as (3)—namely, the argument that “apologies are not prohibited by law; therefore, they are legal”—apology videos contradict fundamentals of criminal law in two ways: 1) lack of articulation of appropriate charges and 2) penalty in the form of apology videos. In several cases where apology videos of assumed perpetrators have been made, the alleged crimes committed—hate speech, recording video of insulting people while they are in a personal car—do not constitute a crime found in the Criminal Code of the Republic of Azerbaijan. Therefore, there cannot be a law-enforcement-issued

punishment.

As to the second point, despite the fact that authorities deny the function of apology videos as penalties, their articulation of such videos as rehabilitative and preventative implies a punitive function, since explicitly appropriate objectives are pursued by Criminal Code.^[25] Therefore, apology videos could be counted as a violation of Art.7.

3. Right to privacy (Art. 8 ECHR)

Article 8 of the ECHR protects an individual's right to respect for private and family life. For the purposes of this piece, it is vital to dive into the how we should understand the terms "private life" or "privacy". The idea of "private life" encompasses components of one's identity, such as their name, picture, or moral and physical integrity.^[26]

In the official justification I denoted above as "apologies are made voluntarily" (1), the official claim of that apology videos are voluntary was disputable; ultimately, there is no reason to believe in the sincerity of apologies issued in videos recorded in police stations and under police supervision. Naturally, the reader will notice that the official positions are contradictory: how can an apology video be voluntary yet also punitive? Law enforcement agencies try to have it both ways, yet they only create contradiction in their justifications.

In the making of apology videos, the violation of privacy is found in the dissemination of apology videos with the absence of consent of the alleged offender. Art.8 protects one's right to their personal image because it is one of the essential elements of one's personality.^[27] The ECHR Court has found violation of Art.8 in cases where an individual's personal image has been disseminated without their consent.^[28] In the question of whether apology videos area violation of Art.8, we

must check also when the right to privacy is limited in accordance with Art.8(2). Art.8(2) allows an individual's right to privacy to be curtailed if such action is *in accordance with law*, pursues *legitimate aim* and is *necessary in democratic society*. There then arises a legitimate question, namely, do apology videos meet these criteria?

"In accordance with law"

Dissemination of apology videos is certainly not "in accordance with law" because there is no such punitive measure indicated in local criminal legislation, which, as mentioned earlier, is contrary to the principle of *nulle poene sine lege*.

According to the Art.18 of the Statute of the Republic of Azerbaijan "on Police," which is dedicated to a police officer's rights in order to facilitate the protection of public order and security, police officers enjoy the right to take photos of detained or probated suspects. However, there is no indication of the right to shoot video or to share such videos in traditional or social media. As a result, such infringement on an individual's right to privacy is not in accordance with law.

"Legitimate aim"

The list of legitimate aims enumerated in EHCR Art. 8(2) are the following: "the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

It is for the government to prove that its infringement on the right to privacy pursued such an aim.^[29] Law enforcement bodies claim that such actions are intended for preventative and rehabilitative purposes. In that regard, such purposes may fall into the interests of national security, public safety or

prevention of disorder or crime.

“Necessary in democratic society”

EHCR Art. 8(2) also requires that the justifications for an infringement on one's right to privacy are relevant, sufficient, and proportionate to the legitimate aims pursued.^[30] While the supposed legitimate aim of the dissemination of apology videos is to inform society about the crime and its perpetrator, there is reason to believe that such measures are not necessary in democratic society. Law enforcement bodies publish the videos of perpetrators who are undergoing a punitive measure. It is perfectly reasonable for law enforcement agencies to share the news about the crimes committed and the culprits punished. However, taking into account the humiliating nature of apology videos for supposed offenders, such publications are excessive, irrelevant and disproportionate to the legitimate aims. Hence, the infringement here fails the test of necessity in democratic society.

Penological Analysis

Now that we have reviewed the practice of apology videos within the framework of human rights, this piece will try to dig deeper on why the Azerbaijani state utilizes such method and how such punitive measure are not able to achieve their officially stated objectives.

The emergence of apology videos can be seen as a manifestation of penal populism. The term “penal populism” refers to the umbrella of ideas on how politicians and relevant stakeholders communicate with society in order to tailor penal policy.^[31]

The emergence and widespread use of apology videos should be interpreted within the context of a rising penal populism in Azerbaijan and elsewhere in the post-Soviet world. There could be valid and reasonable questions as to the effectiveness of

such punishment—we will investigate these below—notwithstanding the governmental position on prevention and rehabilitation. Instead, apology videos are regarded as a graphic tool which serves as the government's penal populist mandate to humiliate the assumed perpetrator, with the full support of government-oriented and official social and mass media.

Although, in most of the cases, apology videos are utilized in ordinary and common-sense cases such as drug abuse,^[32] reckless driving,^[33] disrespect of national symbols,^[34] we can see signs that law enforcement bodies execute such punishment in order to strengthen their authority. For instance, on 17 February 2022, several truck drivers protested against the government authority which refused to provide documents of permission for cargo delivery.^[35] Officials preventatively took swift actions by spreading fake news about the dismissal of guilty officials and then detaining the protesters. Apology videos of the protestors were then shot and disseminated via mass media.^[36]

The Azerbaijani state, as an authoritarian regime, is likely trying to channel and redirect public opinion through its penal policy. Nonetheless, the trend of the politicization of penal policy has been indicated in both academic^[37] and popular sources regarding Asian state,^[38] which presupposes consensus and support from wide range of masses. In this way, the government can test public opinion not only in relation to apology video as penalty, but also as to whether the deeds for which the apology is issued are to be punished as criminal. Although, there is no official or even systematic metric to have a comprehensive view on the necessity of apology videos, rough social media analysis provides an alarming view of such initiatives.

Azerbaijan's transformation into a culture of absolute control over crime should be assessed holistically. The emphasis on

the supposed rehabilitative side of apology videos indicates a shift into a punitive and rehabilitative process where the focus is on offense itself rather than the offender. This then implies that efforts are put into the *rehabilitation* of the victim instead of the perpetrator.^[39] The contradiction and ambiguity of the official position on apology videos should not be misconstrued as a surfeit of contradictory legal interpretations. Penal populism is instrumental in tailoring governmental penal policies that serve all types of political agendas.^[40] Therefore, because different actors within the Azerbaijani state use these videos, there are and will be inconsistencies in the selection and execution of apology videos.

While we have discussed the official justifications and unofficial reasons behind the rise of apology videos, we have not yet discussed another matter: whether they are effective at all, i.e., do they facilitate punishment and rehabilitation adequately? Apology definitionally does not accomplish reconciliation of the offender and offended;^[41] the offended still always has the right not accept the offender's apology. But in the context of Azerbaijani apology videos, we also see that that apologies in these videos are not offered to the offended parties or victims but rather to "Azerbaijani society." The lack of reconciliation results in a distortion of rehabilitation and correction of the offender due to the fact that the supposed offender addresses only the "psychological needs of the mercy granting authority" rather than the offender or societal order at large.^[42] The apologies of apology videos operate as a rhetorical wolf in sheep's clothing which does not result in the benign alterations intended by law enforcement bodies, but instead simply reinforces the social and political order.^[43]

This criminological analysis allows us to identify apology videos as an alarming tendency following from an emerging

penal populism in the form of excessive and humiliating punishment. This penal populism seriously challenges the supposed rehabilitating and correctional effects of apology videos.

Conclusion

Azerbaijani law enforcement agencies have been rightly accused of abuse of power for arbitrary arrests, detentions, torture and other cruel, inhumane, or degrading treatment or punishment and other issues, which are contradictory to the fundamental rights of the individual.^[44] It would be unreasonable to claim, however, that the entirety of the Azerbaijani criminal justice system is incompatible with the standards of human rights as a whole. Nevertheless, in light of the peculiarities of criminal justice, i.e., the state-individual relationship where the state enjoys broad opportunities to use violence to accomplish socially required aims, human rights concerns should be specifically highlighted when monitoring the execution of penalties. The recent increased use of apology videos should be understood in the context of repeated human rights violations of law enforcement agencies. In addition to their being clearly outside prescribed law and violating the dignity of the individual, we have found that apology videos are utilized for increasing control of the society. Apology videos are not just another trend in Azerbaijan which violates fundamental human rights, but an alarming initiative that threatens the rule of law. This piece was an attempt to provide a comprehensive analysis of the tendency, how the emergence and increasing use of such videos can be explained, rather than simply stating the violations of human rights.

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