

Legal Regulation of Ethnic Minorities in Azerbaijan

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According to the latest census conducted in 2019, 94,8 percent of the population are Azerbaijanis, while the remaining 5,1 percent are composed of various ethnic minorities.^[1] This represents a decrease of the share of ethnic minorities in the population. In the previous census (2009), ethnic minorities made up 8,4% of the population.^[2] Ethnic minorities enjoy certain rights and freedoms flowing from local legislation and international obligations. This piece will analyze the state of local legislation and international documents in relation to the rights and freedoms of ethnic minorities. In the second section, implementation of the rights and freedoms of ethnic minorities will be analyzed using data from regional and international reports. Finally, the article will present a general picture of the rights and freedoms of ethnic minorities on the basis of policy analysis.

Rights and Liberties Stipulated in Legislation

Art. 21 of the Constitution of the Republic of Azerbaijan enshrines the right for free use and development of other languages spoken by the population. Art. 25 of the constitution guarantees the equality of rights and freedoms to everyone, irrespective of race, ethnicity, religion, language, sex, origin, property status, occupation, beliefs or affiliation with political parties, trade union organizations or other public associations. Restrictions of rights and freedoms on the grounds of race, *ethnicity*, religion, language, sex, origin, beliefs, or political or social affiliation are prohibited. Art. 45 guarantees everyone the right to use their native language without any hinderance or deprivation.

Despite common sense constitutional guarantees for the protection of ethnic minorities, Azerbaijan lacks stringent implementation of the above rights and liberties. The only national legal document that is specifically related to the issues of ethnic minorities is the Presidential Decree of 16 September 1992 *On the protection of the rights and freedoms and on state support for the promotion of the languages and cultures of national minorities, numerically small peoples and ethnic groups living in the Republic of Azerbaijan*. This decree was signed a couple months before the adoption of the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages,^[3] which will be discussed further in the section on Azerbaijan's international obligations. The decree indicates the provision of state assistance in safeguarding, preserving, and fostering the distinctive cultural, religious, and linguistic characteristics of ethnic minorities, and freedom to adhere to national traditions; freedom to practice religion; freedom to preserve and use places of worship (religious services); freedom to develop national handicrafts, amateur talent activities, and folk arts; protection of all nations' historical monuments; preservation and protection of places of public importance, such as reserves, parks, and other natural facilities.

Other legislative documents of the Republic of Azerbaijan stipulate certain guarantees for ethnic minorities. Both according to the Statutes of the Republic of Azerbaijan *On Education* and *General Education*, the state ensures that every citizen, regardless of gender, race, language, religion, political belief, ethnicity, social status, origin, or health, has the opportunity to get an education and is not discriminated against. Despite this fact, both statutes clearly indicate the language of education is the state language, that is, Azerbaijani. Thus, these acts ignore specific guarantees and regulations observed in the constitution with regard to education on and in minority

languages.

The Statute of the Republic of Azerbaijan *On Culture* gives its minorities equal rights, as well as the freedom to protect and develop their cultural resources, as well as to choose their own identity and culture. But likewise, there are several examples of how the rights set out in “On Culture” are violated by other statutes. For instance, prior to the adoption of the notorious and heavily-criticized^[4] Statute *On Media*, the previous Statute in force, the Statute of The Republic of Azerbaijan *On Mass Media* maintained that there must be no restriction on the language of communication of mass media in the territory of the Republic of Azerbaijan. The Statute of the Republic of Azerbaijan *On Public Television and Radio Broadcasting* similarly obliged public television to include broadcasting in the languages of ethnic minorities. However, the new Statute *On Media* reneged on these provisions and now obliges that all media be only in the state language. In order to use another language, a mandate of the Audiovisual Council is required.

The rights of ethnic minorities were also delineated in National Action Plans on Promotion of Human Rights in the Republic of Azerbaijan of 2006 and 2011. The only priority set out for ethnic minorities in those documents was the protection and development of the cultural heritage of ethnic minorities. This language is vague and the provisions for protecting cultural heritage were also vague, which is not consistent with the UN Guidelines on preparation of National Action Plans for the Protection of Human Rights.^[5] The plans included several commitments rather than a roadmap for comprehensive action. Nevertheless, no specific actions were taken in order to solve the problems of preservation of cultural heritage of ethnic minorities. These problems included the underrepresentation of minority ethnic groups, the lack of resources, and the absence of particular laws recognizing their cultural history.^[6] In addition, there is

no clear public information on what has been done and accomplished as the result of these plans.

Regarding the international obligations of the Republic of Azerbaijan, Azerbaijan has signed several regional and international legal standards for minority rights protections. This list includes the Council of Europe Charter for Regional or Minority Languages and Council of Europe Framework Convention for the Protection of National Minorities. While the latter, the Framework Convention, was ratified on 26 June 2000, the Charter still awaits ratification, although its ratification was one of the conditions for Azerbaijan's Council of Europe membership.^[7] Despite European authorities' continuous promotion of ratification, Azerbaijan has been hesitant to do so. In 2010, it cited lack of funds as a reason not to ratify the Charter.^[8] A later fact-finding mission found immense gaps in the compliance of local legislation with the Charter^[9] and proposed a "cost-neutral" instrument of ratification^[10], but Azerbaijan has taken no significant steps on this cost-neutral instrument.

Protection of the Rights of Ethnic Minorities

Given that Azerbaijan's legislation often violates and countermands protections granted to ethnic minorities in the constitution, local legislation, and accepted international legal documents, we should also examine how legal protections for ethnic minorities are observed in practice. The European Union conducted four cycles of monitoring on implementation of Framework Convention for the Protection of National Minorities in Azerbaijan. Its opinion on the Fourth Cycle, which was adopted in 2017, concluded that Azerbaijan possessed a lack of public spaces for expressions of minority identity, which is ultimately suppressed by the Azerbaijani government-backed policy of *multiculturalism* and a general climate of intolerance in the context of Nagorno-Karabakh conflict. All this, the opinion finds, occurs in the background of

deteriorating general situation of human rights, democracy and rule of law.^[11] The opinion finds that Azerbaijan's *multiculturalism* substantially restricts the public expression of minority identity, and it is founded on a limited conception of national minority identity in terms of minority cultures.^[12]

This evaluation coincides with a BRI independent analysis of the policy of multiculturalism that finds that the government of Azerbaijan perversely interprets "multiculturalism" such that the state does not ensure protection of minorities in an comprehensive manner, but creates "a climate of social peace" in which ultimately the state defines the perimeters of tolerance.^[13] The Advisory Committee's specific recommendations included free and voluntary ethnic self-identification in the 2019 population census, adoption of an adequate legal framework for the protection of national minorities and comprehensive anti-discrimination legislation, removal of obstacles to freedom of expression and freedom of association for minorities and educational reforms in the context of minority languages.^[14] Although in its Fifth Periodic Report submitted in 2022, Azerbaijan notes that it has effectively implemented relevant recommendations,^[15] Azerbaijan's commitments to ethnic minority protection remained uncertain. Hence, in its alternative report on implementation of Framework Convention, the Public Council of the Talysh People in Azerbaijan accused the government of assimilatory policies, violation of educational and language rights, and the arrest, prosecution and murder of minority rights activists.^[16] A similar conclusion is found in the report submitted by the Unrepresented Nations and Peoples Organization^[17] for the consideration of the 3rd Universal Periodic Review of the Republic of Azerbaijan. This report draws attention to the violations of cultural, educational, religious, speech and economic rights and freedoms.^[18]

Thus, various regional and international reports conclude that Azerbaijan's protection of the rights of its ethnic minorities is unsatisfactory. Other issues that reports pinpoint include lack of minority representation in decision-making,^[19] the limited involvement of minorities in local governance,^[20] and the absence of minority-language education and media.^[21] In that regard, we can conclude that these problems stem from the non-existence of rigid legislation establishing enforcement bodies to lead the policy of anti-discrimination and effectively protect the rights of ethnic minorities.

Why the Rights of Ethnic Minorities are not Protected

Azerbaijan, to put it mildly, is not enthusiastic about promoting ethnic minorities policy. Despite the fact that the Soviet Union fell apart some 30 years ago, Azerbaijani identity is still in formation.^[22] This nation-building process is endorsed by state and accordingly is manifested through various socio-economic policies, including but not limited to language policy. Observers note that Azerbaijan uses its state-language policy to suppress other ethnic and national languages in order to strengthen a sense of national identity.^[23]

Prior to assessing Azerbaijan's internal ethnic minority policy, it is useful to remind that Azerbaijan acceded to the Council of Europe Framework Convention with certain reservations. A statement by the Republic of Azerbaijan in 2014 specifies that the ratification and implementation of the Council of Europe Framework Convention on Protection of National Minorities excludes any actions that may prejudice or damage the territorial integrity and sovereignty, internal and external security of Azerbaijan.^[24] The state thus deems the protection and promotion of rights of ethnic minorities as a threat to the sovereignty and integrity of the state of the Republic of Azerbaijan. Such an attitude is supported by the

trauma that occurred following the Nagorno-Karabakh conflict, which Ceylan Tokluoglu states “is central to any discussion of the development of the Azerbaijani national movement and national identity.”^[25]

Although Azerbaijan’s ethnic and nationality policies are based on the necessity of the government to address issues related to security and identity, execution of those policies alone, without other considerations, may provide insufficient benefits for ethnic minorities.^[26] Such consequences can be observed in two specific directions: the government’s language policy and its *multiculturalism* policy. With regards to language policy, Jala Garibova argues that, despite a shift from a “tolerance-oriented” language policy to a language policy that promotes the national language above others, “this promotion-oriented policy lacks certain supportive pillars and explicit indicators, without which the country will encounter more challenges in promoting itself as a developing democracy.”^[27]

Language policy in Azerbaijan is framed in consideration of what the government believes is consistent with its current ideology, its national priorities, territorial integrity concerns, public opinion and reaction, international political and legal standards, pressure from international partners/organizations.^[28] The government uses language policy, including educational policy, as a “nationalizing institution”^[29] whereas the “linguistic rationalization of the state (unifying the state under one language) takes precedence over multilingualism.”^[30] In the face of the imminent threat of language loss among minorities, government officials blame minorities themselves, pointing to their absence of initiative.^[31] As for the government’s *multiculturalism* policy, minority ethnic groups are supported by the government so long as they remain apolitical, and the government in turn uses

this support to prove itself a modern, democratic state.^[32]

Considering the absence of a proper legislative basis for the rights of ethnic minorities and obligations of governmental bodies, it is rather unclear which government body should act in the case of allegations of the violation of the rights and liberties of ethnic minorities as stipulated via regional and international treaties. From the perspective of institutional governance, everyone is in charge in the area of minority protection because no one is in charge.^[33]

Conclusion

This piece was an attempt to present the legal basis for ethnic minority protection in Azerbaijan and the ways in which those protections are not fulfilled, both legally and in practice. The lack of protections resulted from security and identity concerns that have deep roots in formation of Nagorno-Karabakh conflict. Despite Azerbaijan's recent victory in the Second Karabakh War and thus a presume easing of interethnic tensions between Azerbaijanis and Armenians, it is still tough to predict whether the official attitude towards ethnic minorities will change in the face of deteriorating situation within human rights, rule of law and democracy.

References:

^[1] The State Statistical Committee of the Republic of Azerbaijan, Population of Azerbaijan, Population by ethnic groups, Last updated on 7.09.2023.

^[2] The State Statistical Committee of the Republic of Azerbaijan, Population of Azerbaijan, Population by ethnic groups, Last updated on 7.09.2023.

^[3] Human Rights Without Frontiers Int'l, *Ethnic Minorities in Azerbaijan An Overview*, November 2014, 45.

[4] See specifically, CDL-AD (2022)009-e Azerbaijan – *Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Law on Media*, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022).

[5] *Birləşmiş Millətlər Təşkilatının İnsan Hüquqları üzrə Ali Komissarının İdarəsi, İnsan Hüquqları üzrə Milli Fəaliyyət Planlarına dair Məlumat Kitabçası*, Birləşmiş Millətlər Təşkilatı Nyu-York – Cenevrə 29 avqust 2002, 88-95.

[6] “Policies on Cultural Heritage of National Minorities in Armenia, Azerbaijan, and Georgia”, Agshin Umudov, Giorgi Bobghiashvili, Lusine Kharatyan, Caucasus Edition, *Journal of Conflict Transformation*, 1 September 2019.

[7] Human Rights Without Frontiers Int’l, *Ethnic Minorities in Azerbaijan An Overview*, November 2014, 43.

[8] *Report: The European Charter for Regional or Minority Languages*, by the Committee on Legal Affairs and

Human Rights of the Parliamentary Assembly of the Council of Europe, 21 October 2010 (Doc. 12422), paragraph 35

[9] Ewa Chylinski, Mahulena Hofmannová (eds.), *Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification*, Volume: 2, 34-49.

[10] Ewa Chylinski, Mahulena Hofmannová (eds.), *Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification*, Volume: 1, 26-27.

[11] Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Fourth Opinion on Azerbaijan* – adopted on 8 November 2017, ACFC/OP/IV(2017)006, 4.

[12] Ibid., 5.

[13] Benoit Filou, "Multiculturalism in Azerbaijan", 06 July 2021, Baku Research Institute, accessed at: https://bakuresearchinstitute.org/en/multiculturalism-in-azerbaijan/#_ftnref26

[14] Ibid., 34.

[15] *Fifth Periodic Report of the Government of the Republic of Azerbaijan on the Framework Convention for the Protection of National Minorities of the Council of Europe*, ACFC/SR/V(2022)004, 3-7.

[16] *An alternative report prepared by the Public Council of the Talysh People in Azerbaijan on implementation of CE Framework Convention for the Protection of National Minorities in the Republic of Azerbaijan for the protection of Talysh people, covering the period of 2016 – 2021 years*, Baku, 2021, 5-15.

[17] National Talysh Movement is represented in UNPO since 29 June 2014.

[18] UNPO, *Submission to the UN Office of the High Commissioner for Human Rights for the consideration of the 3rd Universal Periodic Review of the Republic of Azerbaijan*, 3-8.

[19] Garcés De Los Fayos, *In-Depth Analysis Minorities in the South Caucasus: New visibility amid old frustrations*, DG EXP0/B/PolDep/Note/2014_104 June 2014 ST/1030125, 13.

[20] Johanna Popjanevski, *Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan*, Central Asia-Caucasus Institute & Silk Road Studies Program, September 2006, 64.

[21] Johanna Popjanevski, *Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan*, Central Asia-Caucasus

Institute & Silk Road Studies Program, September 2006, pp.66-67; CIMERA, *Minorities in Azerbaijan The Sociolinguistic Situation of Lezgis, Udis,*

Georgians (Ingiloyes) and Talyshs in Azerbaijan-with a Particular Focus on Education; Zeynep Arslan, Giorgi Bobghiashvili, Leyla Djafarova, Eviya Hovhannisyan, "Representation of Minorities in the Media in Armenia, Azerbaijan, Georgia, and Turkey", 21-29.

[22] David S. Siroky & Ceyhun Mahmudlu (2015): "E Pluribus Unum?", *Problems of Post-Communism*, 5.

[23] Ceyhun Mahmudlu and Yashar Ehtibarli, *Ethnic and Nationality Policy in Azerbaijan*, in Olaf Leïße (ed.), *Politik und Gesellschaft im Kaukasus Eine unruhige Region zwischen Tradition und Transformation*, Springer VS, 2019, p.257; Kyle L. Marquardt (2011) "Framing language policy in post-Soviet Azerbaijan: political symbolism and interethnic harmony", *Central Asian Survey*, 30:2, 181-196, 189.

[24] Human Rights Without Frontiers Int'l, *Ethnic Minorities in Azerbaijan An Overview*, November 2014, 43; Azərbaycan Respublikasının "Milli azlıqların müdafiəsi haqqında Çərçivə Konvensiyasına qoşulmaq barədə" Qanunu, 16 iyun 2000-ci il, accessed: <https://e-qanun.az/framework/759>

[25] Ceylan Tokluoglu, (2005) "Definitions of national identity, nationalism and ethnicity in post-Soviet Azerbaijan in

the 1990s", *Ethnic and Racial Studies*, 28:4, 722-758

[26] Ceyhun Mahmudlu and Yashar Ehtibarli, *Ethnic and Nationality Policy in Azerbaijan*, in Olaf Leïße (ed.), *Politik und Gesellschaft im Kaukasus Eine unruhige Region zwischen Tradition und Transformation*, Springer VS, 2019, 260.

[27] Jala Garibova, "Language policy in post-Soviet Azerbaijan: political aspects", *Int'l. J. Soc. Lang.* 198

(2009), pp. 7–32, 27.

[28] Ibid., 8.

[29] Val D. Rust, “Minority Education Policy in Azerbaijan and Iran”, *World Studies in Education*, Vol. 9, No. 2, 2008, pp. 5-21, James Nicholas Publishers, 18.

[30] Kyle L. Marquardt (2011) “Framing language policy in post-Soviet Azerbaijan: political symbolism and interethnic harmony”, *Central Asian Survey*, 30:2, 181-196, p.189; Ceyhun Mahmudlu and Yashar Ehtibarli, *Ethnic and Nationality Policy in Azerbaijan*, in Olaf Leiß (ed.), *Politik und Gesellschaft im Kaukasus Eine unruhige Region zwischen Tradition und Transformation*, Springer VS, 2019, 255.

[31] Kyle L. Marquardt (2011) “Framing language policy in post-Soviet Azerbaijan: political symbolism and interethnic harmony”, *Central Asian Survey*, 30:2, 181-196, p.190; Kamil Pirijev, “Azerbaijan: Languages Under Threat”, Friday, 31 October, 2003, IWPR, accessed at: <https://iwpr.net/global-voices/azerbaijan-languages-under-threat>

[32] Kyle L. Marquardt (2011) “Framing language policy in post-Soviet Azerbaijan: political symbolism and interethnic harmony”, *Central Asian Survey*, 30:2, 181-196, 189.

[33] Ewa Chylinski Mahulena Hofmannová (eds.), *Early compliance of non-States Parties with the European Charter for Regional or Minority Languages A Handbook with twenty proposed instruments of ratification*, European Centre for Minority Issues, Ready for Ratification seriesm Vol.1, 57.