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### ***Readmission, return and reintegration: Legal framework in the Republic of Azerbaijan***

**Alovsat Aliyev**

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Legal Framework

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## 1. Return to Azerbaijan and reintegration

Azerbaijan did not adopt any legal acts that would specifically deal with reintegration. In various normative acts one can only find some norms related to reintegration of certain groups of people. Thus, for instance, according to the Law “On combat against human trafficking”, social rehabilitation of human trafficking victims aims to encourage their integration into society and their return to normal life. It envisages measures aimed at providing legal assistance, educational opportunities, psychological, medical and professional rehabilitation, employment and housing<sup>1</sup>. The Law “On the status of refugees and forced migrants (persons forced to move to the country)” creates conditions in which refugees can adapt to the local environment, undergo naturalization, learn the language and learn about their rights and obligations<sup>2</sup>. As for immigrants, Azerbaijani legislation offers them an opportunity to study the Azerbaijani language, as well as the Constitution and laws of Azerbaijan<sup>3</sup>.

Azerbaijani citizens who used to permanently reside in Azerbaijan and stateless persons can be divided into the following groups depending on their status at the time of return:

- Persons who, without abandoning Azerbaijani citizenship, accepted citizenship of another state (who are persons with double citizenship at the moment). As far as these persons arrive in Azerbaijan with Azerbaijani identity documents the legislation does not set any norms regarding them<sup>4</sup>.
- Citizens of Azerbaijan who reside in the country of destination with the status of immigrants.
- Persons who used to be citizens of Azerbaijan, but abandoned Azerbaijani citizenship and failed to acquire the citizenship of another state (stateless persons). Persons who abandoned Azerbaijani citizenship, but for some reasons failed to acquire the citizenship of another state petition for recovery of Azerbaijani citizenship<sup>5</sup>. Petitions for recovery of the citizenship are addressed to the President of Azerbaijan and are submitted to the State Migration Service.
- Stateless persons who used to permanently reside in Azerbaijan and now permanently reside in another country. Legislation does not envisage any norms with regards to stateless persons who used to reside in Azerbaijan and now return to Azerbaijan. However, attitude to them is the same as to other stateless persons, i.e. attitude to citizens and to stateless persons who used to reside in Azerbaijan is different. Therefore, persons who used to be Azerbaijani citizens are entitled to the recovery of citizenship, while stateless persons who used to reside in Azerbaijan do not have such a right.

Legislation stipulates a procedure for return of Azerbaijani citizens and stateless persons permanently residing in the territory of Azerbaijan. The following persons can return to Azerbaijan on the basis of the special return certificate: an Azerbaijani citizen whose passport was lost in a foreign state, was stolen or became unfit for use, or whose passport validity period expired; an Azerbaijani citizen who did not reach

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<sup>1</sup> Article 15 of the Law “On combat against human trafficking”. According to the Law “On ensuring rights and freedoms of persons in correction facilities”, medical evaluation is performed in order to identify physical and physiological disorders that might prevent their reintegration after their release. Moreover, release on parole of the persons who committed crimes is considered a crucial way to reintegrate them into society.

<sup>2</sup> Article 7 of the Law “On status of refugees and forced migrants (persons forced to move to the country)”.

<sup>3</sup> Article 16 of the Law “On immigration”.

<sup>4</sup> Unlike in the Republic of Georgia, in Azerbaijan persons who abandoned Azerbaijani citizenship, but did not acquire citizenship of another country, are not considered Azerbaijani citizens. According to the legislation of Georgia, if a person abandoned Georgian citizenship, but failed to enter the citizenship of another country, this person is considered a Georgian citizen.

<sup>5</sup> According to article 15 of the Law “On citizenship of Republic of Azerbaijan”, a person who used to be the citizen of Azerbaijan or whose citizenship was terminated can be restored in Azerbaijani citizenship.

the age of 18 or who reached the age of 18 while in a foreign state; a stateless person permanently residing in Azerbaijan on legal grounds and a child who did not reach the age of 18 or reached the age of 18 in a foreign state and is returning to Azerbaijan with this stateless person<sup>6</sup>.

Legislation does not envisage any procedures with regards to persons deported from another country.

Azerbaijan has no agreements on readmission. However, it came to an agreement on cooperation with EU member states for the purpose of control and prevention of illegal immigration. Under this cooperation agreement Azerbaijan undertook an obligation to admit its citizens illegally residing in another country without additional procedures following the EU member state's request<sup>7</sup>. However, we do not see fulfillment of this obligation in practice.

Long-term talks of Azerbaijan with the EU member states on readmission agreements have not yet come to fruition. In fact, Azerbaijan evades such agreements. Failure to sign agreements on readmission results in failure to protect rights and freedoms of citizens, as well as deliberate failure to issue them return certificates or other identity documents. After signing agreements on readmission with the EU member states Azerbaijan will be obliged to admit its citizens illegally residing in an EU member state, as well as foreigners who used Azerbaijani territory for transit to an EU member state and stateless persons. Readmission agreements can be bilateral and multilateral. They usually contribute to facilitation of the visa regime with the EU member states.

All foreigners and stateless persons arriving in Azerbaijan enjoy equal rights and obligations. As it was said before, as far as Azerbaijan has not yet signed any readmission agreements, its legislation does not establish norms regarding treatment of citizens of the third countries.

## **2. Return from the Republic of Azerbaijan**

### **2.1 Voluntary return**

Azerbaijani legislation does not contain any norms envisaging voluntary return procedure, as well as assistance in voluntary return of foreigners and stateless persons residing in Azerbaijan to the country of origin. That is why Azerbaijan does not implement any programs of assistance in voluntary return of foreigners and stateless persons to the country of origin. However, in the framework of its migration management efforts IOM implements a program to assist foreigners in voluntary return.

### **2.2 Forced return**

#### **2.2.1 Denied entry and return from the state border**

Foreigners and stateless persons can enter and depart from Azerbaijan according to procedure stipulated by law, provided that they proceed through special checkpoints on the basis of passports and permits drawn up in accordance with international treaties, i.e. visas. Foreigners who obtained temporary or permanent permit to reside in Azerbaijan can enter and depart from the country on the basis of passports (or other border crossing documents) and certificates permitting temporary or permanent residence in the country<sup>8</sup>.

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<sup>6</sup> Paragraph 1 of the Regulation on procedure of issuing a Certificate of return to the Republic of Azerbaijan.

<sup>7</sup> Agreement on cooperation and partnership between the EU and Azerbaijan was signed on 22 April 1996 and entered into force on 22 April 1999.

<sup>8</sup> Article 12 of the Law "On departure from the country, entry to the country, and passports".

According to article 15 of the Law “On departure from the country, entry to the country and passports”, foreigners crossing Azerbaijani border in violation of legal requirements, i.e. without a passport / visa or with invalid passport and other documents, are sent back. In practice, if this fact is established at the border, border officer does not allow this person to enter the country. Legislation does not establish a procedure for appeal in such a case. If a person refers to the state border service with a purpose of entering Azerbaijan through the third country and does not have permit to enter Azerbaijan, and his or her entry is inadvisable, then this person is not allowed into Azerbaijan and is sent back to the third country. If a person has a permit to reside in Azerbaijan, illegally crosses the border of a neighboring country and is sent back to Azerbaijan, this does not serve as a basis for his or her return to the country of origin. Such a person who claims to have lost the passport and documents can be admitted until the investigation by the Ministry of Interior and is placed in a facility (as a rule, this is a center of the State Migration Service for placement of illegal migrants) chosen by the executive body of the nearest district<sup>9</sup>.

### **2.2.2 Illegal crossing of the state border**

Crossing of the guarded state border of Azerbaijan without necessary documents or circumventing the checkpoint at the state border is penalized with a fine from two hundred to five hundred manats or prison term from two to five years<sup>10</sup>. According to Azerbaijani legislation, illegal crossing of the Azerbaijani border gives rise to criminal liability. According to article 52 of the Azerbaijani Criminal Code, foreigners can be subject to forced expulsion from Azerbaijan after they serve their sentence.

This provision does not cover foreigners and stateless persons who arrived in Azerbaijan violating the state border crossing rules, in order to use their right to political asylum stipulated in the Constitution of Azerbaijan, if actions of these persons are not associated with any other offence<sup>11</sup>.

In urgent cases, based on petition of the foreign state, executive bodies of Azerbaijan undertake necessary steps to find and arrest the person in question before receiving the request for extradition<sup>12</sup>. These steps are set forth in the criminal procedure legislation of Azerbaijan.

### **2.2.3 Expulsion**

#### **2.2.3.1 Immigrants**

Decision on stripping a foreigner or stateless person of the immigrant status and on expulsion from Azerbaijan is made by the court (judge).

Immigrant status is annulled in the following cases:

- when permit to reside in Azerbaijan was obtained on the basis of fake documents and false information;
- when it is required by the Azerbaijani state security or public order;
- when administrative expulsion is applied to foreigners and stateless persons in cases envisaged by the Azerbaijani Code of Administrative Offences<sup>13</sup>;
- when the person in question leaves to reside permanently in another country;
- when the person in question resides outside Azerbaijan for over 6 months a year.

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<sup>9</sup> Article 15 of the Law “On departure from the country, entry to the country, and passports”.

<sup>10</sup> Article 318 of the Criminal Code of Azerbaijan.

<sup>11</sup> Article 318 of the Criminal Code of Azerbaijan.

<sup>12</sup> Article 7 of the Law “On extradition of persons who committed a crime”.

<sup>13</sup> Note: Article 29 of the Code of Administrative Offences, administrative expulsion from Azerbaijan of foreigners or stateless persons is applied in cases stipulated in the special section of the Code.

If an immigrant does not leave the territory of the country within 7 days after the court ruling on expulsion, he or she is expelled from Azerbaijan by force. An immigrant who committed a grave crime or felony can be forcefully expelled from Azerbaijan<sup>14</sup>. Forced expulsion from Azerbaijan can be imposed on foreigners after they serve their sentence<sup>15</sup>.

### 2.2.3.2 Foreigners and stateless persons without immigrant status

Foreigners and stateless persons, who do not have immigrant status and committed a gross violation of the legislation on legal status of foreigners and stateless persons<sup>16</sup>, can be expelled from Azerbaijan on the basis of decision made by the Ministry of Interior, the State Migration Service or the court<sup>17</sup>.

If decision is made by the State Migration Service or the Ministry of Interior to expel a foreigner or a stateless person without immigrant status from the country, they are to leave Azerbaijan within the period stipulated in this decision (48 hours). The term of expulsion from Azerbaijan is the same for all foreigners to be expelled. However, the body that made a decision on expulsion considers a possibility of extending the term of expulsion in certain cases, such as delayed processing of documents of the foreigners to be expelled or circumstances delaying the execution of decision on expulsion (the need for urgent medical treatment of this person or severe illness or death of this person's close relative)<sup>18</sup>. Decision on expulsion of a foreigner from the country is made by the body that discovered an administrative offence committed by this foreigner within its scope of competence. For instance, the State Migration Service focuses on such offences as foreigner's stay in Azerbaijan without necessary documents; residence in Azerbaijan on the basis of invalid documents; failure to comply with travel, residence and registration procedures; violation of employment rules; failure to leave Azerbaijan after expiration of the assigned period of stay.

An administrative offence committed by a foreigner or a stateless person giving rise to administrative liability under the Code on Administrative Offences serves as a basis for decision on administrative expulsion of this foreigner or stateless person from Azerbaijan.

Foreigners and stateless persons who do not have immigrant status and evade departure from Azerbaijan are subject to arrest and forced expulsion from Azerbaijan on the basis of court (judge) ruling<sup>19</sup>.

If a foreigner or a stateless person is likely to evade<sup>20</sup> the execution of decision on administrative expulsion from Azerbaijan, the court can place this person in the facility of the relevant executive body for placement of illegal migrants, until the expulsion takes place<sup>21</sup>. Expenses associated with administrative expulsion from Azerbaijan are borne by foreigners or stateless persons to be expelled. If these persons do not have necessary funds, these expenses are covered by host institutions, enterprises and organizations, and in case of foreigners or stateless persons who resided in Azerbaijan or arrived in Azerbaijan for personal reasons these expenses are covered by the relevant executive body of

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<sup>14</sup> Article 13 of the Law "On immigration".

<sup>15</sup> Article 52 of the Criminal Code of Azerbaijan.

<sup>16</sup> Position of foreigners and stateless persons in Azerbaijan is regulated by the Law "On legal status of foreigners and stateless persons".

<sup>17</sup> Paragraph 2 of the Rules of expulsion from Azerbaijan of foreigners and stateless persons without immigrant status.

<sup>18</sup> Paragraph 12 of the Rules of expulsion from Azerbaijan of foreigners and stateless persons without immigrant status.

<sup>19</sup> Paragraph 14 of the Rules of expulsion from Azerbaijan of foreigners and stateless persons without immigrant status.

<sup>20</sup> Cases of evasion are discovered by officers of the executive body and relevant information is included in the decision on detention. However, legislation does not envisage such procedural action.

<sup>21</sup> Article 457 of the Code of Administrative Offences. Note: decision is executed within 48 hours. In Azerbaijani practice there have been no cases where expulsion of foreigners or stateless persons from Azerbaijan to the country of origin (or third country) would be impossible.

Azerbaijan<sup>22</sup>. If the host institutions, enterprises and organizations refuse to cover these costs, then expulsion takes place at the expense of the state. However, these costs can then be reclaimed in court.

*Rules of expulsion of foreigners and stateless persons without immigrant status*

A protocol is drawn up on violation of Azerbaijani legislation by a foreigner or a stateless person without immigrant status. This protocol lists the facts associated with violation of legislation and establishes legal grounds for expulsion<sup>23</sup>. In each particular case the body making decision on expulsion of these persons is obliged to consider the reasons for their failure to leave the country. If the foreigner to be expelled does not have identity documents, procedure of document processing and identity check is direct, if there is an agreement between this body and authorized agencies of the foreign state, and in all other cases it is done via Ministry of Foreign Affairs<sup>24</sup>.

Before the decision on expulsion is made, information about this person is checked by way of inquiries submitted within the inter-agency automated search system “Entry-Exit and Registration” or within the unified migration information system<sup>25</sup>. Decision on expulsion of a person from Azerbaijan is to list the grounds for his or her expulsion<sup>26</sup>. One copy of this decision is given to the person expelled. If the person does not speak Azerbaijani, he or she is provided an interpreter<sup>27</sup>. The person is to leave Azerbaijan within 48 hours<sup>28</sup>. Before expulsion takes place, the person can be voluntarily placed in a facility of the State Migration Service for placement of illegal migrants<sup>29</sup>. Persons evading departure from Azerbaijan following the court (judge) ruling are subject to arrest and forced expulsion from Azerbaijan<sup>30</sup>. The Ministry of Interior and the State Migration Service are to perform forced fingerprint registration of the person with regards to whom decision was made on expulsion from Azerbaijan<sup>31</sup>. Expulsion is organized as follows:

- a foreigner is expelled to his or her country of citizenship;
- a stateless person is expelled to the country where he or she earlier resided permanently, to the country where he or she directly came to Azerbaijan from, to the country that agreed to admit this person and filed a corresponding request;
- a person with double citizenship is expelled to the country of permanent residence or to the country with which he or she has the strongest ties<sup>32</sup>.

The Ministry of Foreign Affairs informs the relevant country about expulsion of a certain person from Azerbaijan via Ministry of Foreign Affairs and State Migration Service<sup>33</sup>.

Information on persons to be expelled from Azerbaijan is also sent to the State Border Service. These persons are escorted by officers of the Ministry of Interior and the State Migration Service to the checkpoints at the state border and are transferred to the officers of the State Border Service<sup>34</sup>.

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<sup>22</sup> Article 457.4 of the Code of Administrative Offences.

<sup>23</sup> Paragraph 5 of the Rules of expulsion from Azerbaijan of foreigners and stateless persons without immigrant status.

<sup>24</sup> Ibid. Paragraph 5.

<sup>25</sup> Ibid. Paragraph 8.

<sup>26</sup> Ibid. Paragraph 9.

<sup>27</sup> Ibid. Paragraph 10.

<sup>28</sup> Ibid. Paragraph 11.

<sup>29</sup> Ibid. Paragraph 13.

<sup>30</sup> Ibid. Paragraph 14.

<sup>31</sup> Ibid. Paragraph 17.

<sup>32</sup> Ibid. Paragraph 18.

<sup>33</sup> Ibid. Paragraph 18.

<sup>34</sup> Ibid. Paragraphs 18-19.

Persons expelled from Azerbaijan according to procedure established by the State Border Service are entered into the inter-agency automated search system “Entry-Exit and Departure” and the State Migration Service keeps record of them<sup>35</sup>.

### 2.2.3.3 Entry ban

According to article 12 of the Law “On departure from the country, entry to the country, and passports”, entry to Azerbaijan is banned for persons were earlier expelled from Azerbaijan. According to article 12, entry of foreigners to Azerbaijan is banned only in the following cases:

- if this is required by national security interests or public order protection;
- if this is necessary for protection of rights and legal interests of Azerbaijani citizens and other persons;
- if the person in question violated Azerbaijani law during the previous visit to Azerbaijan;
- if the person gave false personal information when petitioning for entry to Azerbaijan;
- if entry to Azerbaijan of the person suffering from psychiatric or contagious diseases poses a threat to the health of the population (persons not posing such a threat and arriving for medical treatment at their own expense or at the expense of legal guardians or representatives are an exception from this rule);
- if this person was earlier expelled from Azerbaijan;
- if the stay of this person in Azerbaijan was deemed undesirable<sup>36</sup>.

### 2.2.3.4 Rights and protection

Forced expulsion from Azerbaijan is not imposed on persons who had resided in Azerbaijan for five years by the time the sentence entered into force (judicial ruling proving commitment of a crime by this person); persons who are married to the citizen of Azerbaijan when the sentence enters into force; persons born in Azerbaijan; persons whose parent is a citizen of Azerbaijan; persons with refugee status or political asylum in Azerbaijan; persons having underage dependents; as well as legally incompetent persons or persons with type I and II disabilities; persons with regards to whom there are sufficient reasons for believing that they will be subjected to torture or persecution in the country where they will go after expulsion<sup>37</sup>.

Extradition can be denied in the following cases:

- if the legislation of the requesting foreign state envisages death penalty for the crime that serves as a basis for extradition;
- when there are sufficient reasons to believe that as a result of extradition the person in question will be subjected to torture or cruel, inhumane treatment or degrading punishment in the requesting state;
- if there are sufficient reasons to believe that as a result of extradition the person in question will be subjected to persecution due to race, nationality, language, religion, citizenship, political beliefs or gender;
- if the crime serving the basis for extradition was committed outside the requesting foreign state and there is no criminal liability for this crime according to Azerbaijani legislation;
- when this person is held criminally liable in Azerbaijan for the crime that serves the basis for extradition;

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<sup>35</sup> Ibid. Paragraph 20.

<sup>36</sup> Article 12 of the Law “On departure from the country, entry to the country, and passports”.

<sup>37</sup> Article 52 of the Criminal Code of Azerbaijan.

- when there are sufficient reasons to believe that extradition will inflict damage on sovereignty, security or other important interests of Azerbaijan;
- when decision was made in accordance with Azerbaijani law to stop prosecution for the crime that is a basis for extradition<sup>38</sup>.

If a foreigner or a stateless person is recognized as a victim of human trafficking, for one year this person is not subject to administrative expulsion from Azerbaijan. If the one year period expired, but this foreigner or stateless person is assisting criminal investigation of the human trafficking cases, this person is not subject to administrative expulsion from Azerbaijan until completion of the criminal investigation. A foreigner or a stateless person who is a victim of human trafficking within one year can apply to the relevant government agencies for a residence permit in Azerbaijan. When this application is considered, one takes into account cooperation of the human trafficking victim with criminal prosecution agencies, physical and moral suffering of the human trafficking victim, period of time as a human trafficking victim, as well as the danger of becoming a human trafficking victim again or being subjected to persecution by human traffickers after repatriation to the home country. Administrative expulsion from Azerbaijan is not imposed on children who became victims of human trafficking. Return of children who became human trafficking victims to their countries or their parents is permitted only if this child does not risk becoming a human trafficking victim. When one decides on the issue of return of children who became human trafficking victims to their countries or to their parents, opinion of children older than 10 is taken into account. If the human trafficking victim wishes to leave Azerbaijan, assistance is rendered in providing this person with necessary documents and covering transportation and other necessary expenses, recommendations are given on reducing the danger of becoming a human trafficking victim in the recipient country. Residence permit cannot be granted to human trafficking victims, foreigners and stateless persons, whose identity cannot be established. Measures are undertaken to carry out administrative expulsion of this person from Azerbaijan<sup>39</sup>.

When foreigners are assigned punishment in the form of expulsion from Azerbaijan, one takes into account the nature and degree of public danger posed by the crime committed and the personality of the criminal, including mitigating and aggravating circumstances, as well as impact of the assigned punishment upon reformation of the offender and his or her family's living conditions<sup>40</sup>.

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<sup>38</sup> Article 3 of the Law “On extradition of persons who committed a crime”.

<sup>39</sup> Article 20 of the Law “On combat against human trafficking”.

<sup>40</sup> Article 52 of the Criminal Code of Azerbaijan.