

Влияние пандемии COVID-19 на права человека в Азербайджане

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The Impact of the COVID-19 Pandemic on Human Rights in Azerbaijan

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Аннотация

В статье рассматриваются предпринятые правительством Азербайджана меры по снижению уровня распространения COVID-19 и их влияние на права человека, а также правовые основания для этого. Приводятся экспертные мнения различных международных специалистов в области прав человека, экономики и здравоохранения. Особое внимание автор уделяет рассмотрению комплексного характера предпринятых государством мер, направленных на обеспечение безопасности людей и страны. Детально анализируются мероприятия направленные на предупреждение распространения пандемии и совершенствование государственного механизма по борьбе с новой коронавирусной инфекцией. В статье проводится сравнительный анализ стратегий по снижению уровня распространения заболевания, используемых другими странами мира и влияние этих мер на права человека в данных странах. Уделяется внимание возможным социально-экономическим последствиям пандемии COVID-19. Данное исследование было проведено, основываясь на современных методах научного познания, в числе которых следует назвать метод сравнительного анализа, методы системного и логического анализа и др.

Ключевые слова: правовые основания, экспертные мнения, экономика, здравоохранение, сравнительный анализ, страны мира, социально-экономические последствия, исследование.

Abstract

First and foremost, the Author focuses on the country of Azerbaijan and in-depth analysis on how the pandemic was spreading, the measures undertaken by the government and the effects it has have and will have on the human rights as well as the legal basis for this. The expert opinions of various international specialists in the field of human rights, economics and health are presented. The author pays special attention to the comprehensive measures taken by the state, aimed to ensure the security of the people and the country. The measures aimed at preventing the spread of the pandemic and improvement of the state mechanisms used to combat the new coronavirus infection are analyzed in detail. Furthermore, this article will also analyze and compare the different strategies that were used by the world's largest economies and the impact of these measures on human rights in these countries. Attention is also paid to the possible, far-reaching socio-economic consequences of COVID-19 pandemic. This study was based on but not limited to modern methods of scientific knowledge, including the method of comparative analysis, methods of systemic and logical analysis.

Keywords: measures undertaken, legal basis, expert opinions, economics, healthcare, comparative analysis, countries of the world, socio-economic impact, research.

To understand the impact of current pandemic on human rights in Azerbaijan, first we need to understand the COVID-19 and the further state measures. To do so, we decided to include the brief history of COVID-19 and to show the steps undertaken by the government once COVID-19

reached the region and finally discuss what will be the long-term consequences of the pandemic.

On December 31st, 2019 the first case of COVID-19 was mentioned. Wuhan Municipal Health Commission reported a large increase in number of cases of pneumonia in Wuhan, Hubei Province.

There was a rapid spread to other regions of China; the disease has later reached the rest of the world. As the spread in China was continuing World Health Organization (WHO) officially recognized the new type of Coronavirus as SARS-CoV-2, which was named COVID-19. As WHO has started to recognize the dangers of the pandemic, they issued a report about status of patients and pneumonia cases in Wuhan. WHO also issued to the public report on how to detect, test and manage potential cases of the virus. First recorded case of COVID-19 outside of China was detected in mid-January in Thailand. This was followed by creation of international teams of leading scientists to travel to China. By the end of January WHO reported 7818 total confirmed cases worldwide, with the majority being in China, and 82 cases reported in 18 countries outside China. Mid-February 2020 the WHO-China Joint Mission began, which included 25 international experts from China, Canada, Germany, Japan, Nigeria, Republic of Korea, Russia, Singapore, the United States of America and WHO. It was headed by Dr Bruce Aylward of WHO and Dr. Wannian Liang of the People's Republic of China. The main objectives of the Joint Mission were to inform China and the whole world about the ongoing situation in the region and preparing next steps for countries already affected by the virus as well as for those which were not yet affected. The first country to see a significant increase of COVID-19 cases in the western world was Italy. During this rapid increase, many other neighboring countries started reporting cases of people infected. It was clear that pandemic could not be contained, as cases started appearing all over the world. The United Nation has mobilized the full capacity of its system through its 131 country teams serving 162 countries. Giving a support to the national authorities in developing public health preparedness and response plans to COVID-19 crisis. About 58% of countries are now using distance medicine (advice by telephone or online means) to avoid in-personal consultations.

Now that we have discussed the origins and the spread of the virus, we will see how Azerbaijan, has dealt with the spread of COVID-19.

The Government of the Republic of Azerbaijan was acutely aware of the problem that is COVID-19. As a result, Operational Headquarters under the Cabinet of Ministers were established to monitor the situation and to adopt any necessary preventive and urgent measures, and the Cabinet of Ministers created an «Action Plan to prevent the spreading of

a new Corona disease in the Republic of Azerbaijan» on January 30, 2020, later revised on February 28, 2020. It is important that the action plan was created before COVID-19 has reached the country. On 28 February 2020, the Cabinet of Ministers adopted resolution №73-1 «On the Rules for quarantine-organization, prevention and other necessary measures in case of the threat of the emergence or spread of infectious, parasitic and mass non-communicable diseases».

The first official case has been recorded on the 28th of February 2020, with a few more the following day. All these cases involved individuals who arrived from Iran. Undoubtedly, Iran has been the most affected country in the region, with around 407,000 confirmed cases recorded to this day. This has presented a challenge to the Republic of Azerbaijan, as Iran is one of its largest neighbors. The Cabinet of Ministers has decided to set up checkpoints and mobile hospitals at the border. Furthermore, Azerbaijan has donated 5,000,000 US dollars to the Islamic Republic of Iran to help combat the spread of the disease. As the global threat of COVID-19 continued to mount, Azerbaijan has decided to temporally close borders with Iran, Georgia, Turkey and Russia and at least through September 30, 2020 all land and air traffic in and out of Azerbaijan have remained closed.

Additionally, the Cabinet of Ministers decided to temporally suspend all visas to the country. The travel restrictions have created a challenge, due to Azerbaijani nationals being outside of the country. There was a potential for nationals remaining outside the country. Government has solved this issue by organizing special flights to return citizens to the country. Returning citizens had to go through a mandatory quarantine.

Cabinet of Ministers also took action within the country. The first step was closure of schools and universities. National holiday Novruz and all other scheduled events such as the annual Formula 1 race were canceled. However, necessary structures remained active, even during the national holidays. This was followed by nationwide quarantine imposed by the Cabinet of Ministers, the regulations under quarantine included temporary closure of cafes, restaurants, malls and parks.

On 24 March 2020, as the number of Covid-19 cases continued to grow, a 'special quarantine regime' was introduced by the Cabinet of Ministers. This regime was extended repeatedly, most recently through 30 September 2020. Its introduction was

based on the Law on Sanitary and Epidemiological Safety, which allows the government to apply special labor, education, movement, transportation conditions and regimes in response to the threat of the emergence or spread of infectious, parasitic, mass non-communicable diseases. However, at the same time, there are questions about the legal status of the regime as it is not defined in any domestic law and falls outside the scope of the Constitution and the relevant laws on emergency situations. Unlike in the case of emergency situations, this special regime introduced by a decree of the Cabinet of Ministers is not subject to parliamentary supervision or constitutional review.

Under the special quarantine regime, the government enforced a series of restrictions on the freedom of movement and assembly of residents. Among these were restrictions on entering and exiting certain areas, including the capital Baku; the suspension of public transportation; a ban for people over 65 to leave their homes; and a prohibition of gatherings of more than 10 people in public places (later reduced to groups of five people). The government also issued a recommendation to observe a two-meter social distancing rule and only allowed shops and facilities considered essential to remain open. The Ministry of Internal Affairs was charged with ensuring compliance with these regulations.

Starting on 4 April 2020, an SMS notification system was introduced for all residents wishing to leave their homes, except for those working in health, social, retail, transport, and certain other sectors (who were given special permits). In their SMS messages, residents were required to provide the serial number of their ID card or temporary or permanent residence permit, as well as the relevant code indicating the reason for leaving their homes. Residents were only allowed to leave their homes once a day for up to two hours, in the following cases: in cases of urgent medical necessity and scheduled medical appointment, for purchase of food and other daily necessities such as medicine, use of banking or postal services, and for attending the funeral of a close relative.

Residents were not allowed to leave their homes before receiving a positive response to their SMS messages. An exemption to this rule was applied in cases of imminent danger to life and health, and if a person was summoned to court or law enforcement agencies. According to official reports, the SMS notifications were automatically transferred to the

police to verify if a person had the permission to leave his/her home. Failure to comply with this rule was subject to administrative and criminal responsibility, similarly to violations of other quarantine requirements and measures. This rule remained in place until 4 May in some regions and until 18 May in Baku.

On 1 May 2020, the Cabinet of Ministers adopted 'Rules of quarantine control and isolation in case of airborne infectious diseases in the territory of the Azerbaijan Republic' setting out specific rules to be applied during the quarantine, such as isolation, self-isolation, placement of individuals in quarantine places and others. An amended version of this regulation adopted on 9 June 2020 stipulates that individuals who fail to abide by the rules set out in it will be held liable under administrative and criminal law.

On 31 May, some of the restrictions introduced under the special quarantine regime were eased or lifted, such as by allowing shopping malls to reopen and restaurants and cafes to resume on-site service under certain conditions. However, most restrictions remained in force. A compulsory requirement to wear facemasks in public was introduced on 29 May, along with the existing requirement to maintain social distancing of 1,5–2 meters.

In early June 2020, as the lifting of some restrictions led to a growing number of Covid-19 cases, the Cabinet of Ministers introduced two two-day long tightened quarantine regimes, also known as 'full lockdowns'. Under these regimes, residents in several major cities and districts were prohibited from leaving their homes unless there was an 'immediate danger to life and health'. The first such lockdown, which lasted from 6 to 8 June 2020, was imposed in the cities of Baku, Sumgait, Ganja, and Lankaran, as well as in the Absheron region. The second one was enforced on 14–16 June in Baku, Sumgayit, Ganja, Lankaran, Absheron, Salyan, Kurdamir, Yekhlakh and Ismayilli regions.

A similar lockdown was imposed in the period 21 June–6 July, whereby residents of the cities of Baku, Sumgayit, Lankaran, Yevlakh, Masalli and Jalilabad cities, as well as the Absheron district were only allowed to leave their homes for shopping food and medicine, or for medical reasons and only after receiving an SMS confirmation. Permission to leave one's home was limited to two hours a day. This tightened regulation was further extended until 5 August 2020.

Additional rules introduced on 12 June 2020 required those who tested positive for the

Coronavirus and displayed mild symptoms to self-isolate at home and commit to being tracked through a mobile tracking application, which enables authorities to verify that users are at their place of residence.

To enforce the new regulations adopted in response to the Covid-19 pandemic, a number of amendments to domestic legislation have been made to establish both administrative and criminal liability for violations of quarantine measures and other related regulations.

New amendments to the Code of Administrative Offences adopted on 17 March 2020 introduced fines of 100-200 AZN (approx 50-100 EUR) for individuals and 1500-2000 AZN (approx 780-1040 EUR) for officials or administrative detention for up to one month for violating 'anti-epidemic, sanitary-hygienic, and quarantine regimes'. For legal entities, fines of 2000-5000 AZN (approx. 1 040-2 600 EUR) were foreseen. This provision was further amended on 2 June 2020 to introduce fines of 50 AZN (approx. 25 EUR) for individuals, of 100 AZN (approx 50 EUR) for state officials and of 200 AZN (approx 105 EUR) for legal entities for failing to comply with the requirement to wear a protective facemask.

On 17 March 2020, the Criminal Code was amended to introduce criminal liability for committing the violations and causing the spread of a contagious disease or creating a real threat of this. This crime is punishable by a fine of 2 500-5 000 AZN (approx 1 300-2 600 EUR), or restriction of freedom for up to three years, or imprisonment for up to three years. When the prohibited acts cause death or other serious consequences due to carelessness, the crime is punishable by imprisonment for three to five years.

On 17 March 2020, the Parliament also passed amendments to the Code on Administrative Offences, which increased penalties for violating anti-epidemic, sanitary-hygienic and quarantine regimes and introduced the new offence of spreading false information that threatens to harm human life and health and causes significant property damage. The penalties for the new offence included fines of 100-200 AZN (approx 50-100 EUR) for individuals and 1500-2000 AZN (approx 780-1 040 EUR) for officials, or administrative detention of up to one month, while legal entities may be fined 2000-5000 AZN (approx 1300-2600 EUR). In conjugation with the amendments made to the Code on Administrative Offences, the Law «On Information, Informatisation

and Information Protection» was amended to prohibit the dissemination of false information that threatens to harm human life and health; causes significant property damage; mass violation of public safety; disruption of vital facilities, or financial, transport, communications, industrial, energy or social infrastructure facilities; or leads to other socially dangerous consequences.

The new provisions setting out liability for violations of quarantine rules are problematic as they do not specify the circumstances in which they are to be applied, such as the nature of the offence, the circumstances characterizing the offender, the degree of his or her guilt, or mitigating and aggravating circumstances to be taken into consideration. This results in wide discretion for law enforcement agencies in interpreting and applying the new rules and raises issues of proportionality of the sanctions. For example, in practice, many individuals were fined 100 AZN (approx 50 EUR) for alleged violations of the Code of Administrative Offences regardless of the circumstances of each case. According to official information, only during the period 1 April – 13 April 2020, traffic police officers fined 16,483 road users 100 AZN for violating anti-epidemic regime, sanitary-hygienic and quarantine regimes under Article 211 of the Code of Administrative Offences. Furthermore, on 7 July 2020, a domestic court ruled that the police obtained the right to issue fines for quarantine related offences only as of 14 April 2020, meaning that all fines issued before this date were deemed groundless.

On 21 July 2020, the Ministry of Internal Affairs published information, according to which administrative measures had been taken against 195,000 people for violating the rules of the special quarantine regime during the period 1 April – 20 July 2020. According to the Ministry, 788 people were detained and 193,560 were fined, out of whom 17,820 people were fined for not wearing medical masks.

This imposed quarantine has delivered positive results, as could be seen through daily statistics posted by the Cabinet of Ministers. In response to the calls of the World Health Organization and the Operational Headquarters under the Cabinet of Ministers, special videos were prepared to support the population. The aim of the video clips under the mottoes "Stay at home" and "We are strong together" was to ensure the safety of the citizens by staying at home unless it is a necessity. The number of new

cases has been decreasing and the number of people recovered from COVID-19 has been increasing. Seeing this positive dynamic, the Cabinet of Ministers decided to slowly open back the country. This was done gradually first in the regions, after which the main cities like Baku and Ganja, where the population density makes the disease more likely to spread. In the main cities citizens were allowed to be outside of their houses for 3 hours for their daily activities. And the cafes and restaurants began to open.

Undoubtedly, this pandemic continues to affect the economy of the country. To help people deal with the monetary demands that this pandemic has caused, number of measures was taken. The President has issued a decree awarding a monetary bonus to all medical workers, helping in this fight against the pandemic. Furthermore, a Coronavirus Response Fund was created to cover all necessary expenses. During this uncertain time a further 1 billion manat was transferred to help small and medium businesses. The president has also ordered release of convicts who are 65 or older; releases are reviewed on case-by-case basis.

As previously mentioned after the quarantine has been lifted the number of new confirmed cases of COVID-19 in the country has significantly increased. As of 15 September 2020, over 38.000 Covid-19 cases had been confirmed, with 564 deaths, and more than 35.860 recoveries. It is important to point out that this is an ongoing issue. The latest measure taken by the government was a reintroduction of the quarantine measures, which are already delivering positive results. According to Shahmar Movsumov Assistant to the President of the Republic of Azerbaijan – Head of the Department of Economic Issues and Innovative Development Policy of the Presidential Administration of the Republic of Azerbaijan has mentioned that if the positive dynamic with the Coronavirus continues in Azerbaijan, then the activity in many spheres may be resumed. Movsumov also mentioned that Coronavirus is still spreading and we still need to continue taking all the suggested safety measures. «If we don't follow the rules, the virus will begin to spread again, and the state will again be forced to tighten the quarantine regime. This is not desirable for each of us», – he said.

The effects of COVID-19 on the country and people lives have not yet been completely seen, and the future is truly uncertain. The consequences of the COVID-19 will directly affect all aspects of our lives and leave a deep trace in history.

It is also important to point out that similarly to what happened in Azerbaijan, with the increase in number of new cases after the loosening of the quarantine regime may happen again, and the so called «second wave» may happen all over the world. In fact the problem of Coronavirus may not go away anytime soon. One of the biggest reasons of the pandemic is that not enough people fully aware of all the danger that the disease can cause. Thereby citizens disregard wearing masks or social distancing. Especially we can observe such type of tendency in United States. The US has recorded 6,604,355 confirmed cases of Coronavirus by mid-September, which according to Johns Hopkins University led to a total of 195,765 deaths. That is why Dr. Anthony Fauci a member of the White House Coronavirus Task Force and public health spokesperson for the office of President Trump, mentioned that new virus cases in the country can reach 100,000 per day. Showing clearly that government is not in control right now. This example that demonstrates the disregard of the pandemic is not limited to United States but could be observed worldwide.

A common counter argument made by population that disregards the safety measures recommended is the treatment of pandemic by Sweden. The Swedish officials at the beginning of the pandemic decided not to impose strict quarantine. However, it is crucial to understand that even Sweden's chief epidemiologist Anders Tegnell, who is responsible for this decision taken in June, said that he might have acted differently today. «If we were to encounter the same illness with the same knowledge that we have today, I think our response would land somewhere in between what Sweden did and what the rest of the world has done», Anders Tegnell said in an interview with Swedish Radio. Therefore, claims that quarantine measures are not necessary, was refuted by Sweden themselves.

As we now understand the measures undertaken by the government, and as we have seen this problem may remain unsolved for a meaningful period, we can finally discuss how the pandemic infringed on the human rights, on the global level and particularly in the Republic of Azerbaijan.

During the COVID-19 pandemic, we can see gross violations of human rights almost all over the world. This sentiment is reflected by Marija Buric Secretary General of the Council of Europe said: «While the virus is resulting in the tragic loss of life, we must nonetheless prevent it from destroying our way of life

– our understanding of who we are, what we value, and the rights to which every European is entitled».

Firstly, when thinking about violation of Freedom of speech and expression we can mention China, where the government in the early stages censored information about COVID-19 and its danger. It was done to avoid the panic reaction of the citizens. Li Wenliang a Chinese doctor who worked at Wuhan Central Hospital was one the first people who spoke about deadly danger of COVID-19 on the social media platforms was detained for spreading of false information. Unfortunately, he passed soon after because of the pandemic. This is not the only example of countries violating freedom of speech and expression; another example that comes to mind is Azerbaijan's Caspian Sea neighbour Turkmenistan. In Turkmenistan, the word «Coronavirus» is completely banned at the legislative level.

Secondly, right to health needs to be mentioned. As in many countries of the world, hospitals have been restructures into centers for Coronavirus treatment. Thus, many patients suffering from number of medical conditions were deprived of due medical attention and some were even sent home for self-treatment.

Thirdly, Freedom from discrimination has grossly violated. Many people faced racism and xenophobia. All over the world cases of racism against Asians increased, especially towards Chinese people. There developed a stereotype that Coronavirus is a «Chinese virus». On 17th of April 2020, the OSCE High Commissioner on National Minorities issued a document called "Streamlining diversity: COVID-19 measures that support social cohesion" that showed zero tolerance for discrimination and xenophobia.

Fourth human rights violation could be seen in Freedom of movement and Freedom of assembly in many countries of the world. This could also be seen, in Republic of Azerbaijan by implementing the SMS system the government limited the amount of time spent by citizens outside of their houses to 2–3 hours. Such lock downs influence the expression of Freedom of assembly as well, by imposing a limit on the number of people that could gather, which is a maximum of 10. Gatherings entail a high risk of infection and spread of the virus, which is why officials decided to make the above-mentioned restrictions.

Additionally, we can see violations of the Right to privacy in Azerbaijan. By using a SMS system, individual automatically informs the state about its intention to leave the house. Thus, the concept of

the right to privacy is lost. Azerbaijan is not the only country who violated this human right. For example, a more drastic violation can be observed in China, where government installed CCTV systems at the doors of quarantined individuals to ensure that they will not leave their houses. Indonesia has also violated this human right. On July 1, 2020 Human rights organization and the ASEAN Intergovernmental Commission on Human Rights (AICHR) sent a letter to Indonesian government on how to deal with COVID-19 contact tracing efforts, including the data collection and data treatment to keep populations privacy protected.

Sixth human rights violation that we can observe due to Coronavirus, is the Violation of right of employment. This is due to increasing levels of unemployment worldwide, with number of businesses unable to employ people due to COVID-19. This problem is also prevalent in Azerbaijan, even though for the past five years unemployment rate in Azerbaijan has been below 5%, Coronavirus will undoubtedly negatively affect this number. Republic of Azerbaijan's Ministry of Labor are very conscious about this issue and have taken number of steps including a so called "Notifications of labor contracts" to increase the number of officially employed population. However, when analyzing the economic statistic in Azerbaijan, whose Gross Domestic Product (GDP) has also only expanded 2,2% in 2019, compared to 6,1% in the past, we can expect a further slowdown in the economy due to COVID-19 and as a result we can conclude that unemployment numbers will increase. This trend of infringement on freedom of employment can be seen, in many different countries for example in USA unemployment has reached 14,7% in April, in EU unemployment reached 6,7% and in Russia since the beginning of the pandemic crisis, over 1 million Russians have become unemployed.

Finally, it is important to mention violation of Freedom of religion. Many European countries have restricted visiting of religious ceremonies and places of worship. For example, the authorities of such countries as France, Italy, Austria and a few other European countries restricted access to the mosques during the Muslim holiday Ramadan. Which undoubtedly was a hard hit to the Muslim population. In general, this pandemic has made practicing religion and attending religious establishments almost impossible for the population. This violation is also true for Azerbaijan.

To conclude, it should be noted that the Government of Azerbaijan has not imposed a state of emergency on the territory of the country during the pandemic. As mentioned earlier, the fight against the disease involves restrictions on human rights. In the international legal field, the state may derogate from its obligations to protect human rights in accordance with Article 4 of the International Covenant on Civil and Political Rights. Thus, a state deviating from its obligations during a state of emergency must notify the UN Secretary General with reference to the WHO's opinion. If this has not been done, the legality of the measures taken will be assessed using the principle of proportionality. Its application in the courts provides for a multistage test: Does the measure have a legitimate aim? Is the measure admissible to achieve the objective? Are there alternative measures that allow the same results to be achieved, but are less likely to infringe on the rights and freedoms of citizens?

In practice, the application of the principle of proportionality by the courts is most often to determine the balance either between a legitimate objective and specific human rights or between different rights. In potential Coronavirus cases, the balance between civil and political rights on the one hand, and the right to health under the International Covenant on Economic, Social and Cultural Rights on the other, will most often be discussed. In international law, human, civil and political, economic, social and cultural rights have equal weight. It can therefore be predicted that potential lawsuits will focus on finding possible measures with the same result but less threat to citizens' rights and freedoms.

It should be noted that total mass quarantine is a new phenomenon that is not directly regulated by the International Health Regulations. Therefore, potential court decisions regarding human rights violations related to quarantine will vary considerably depending on the restrictions, their impact on the life of the individual and the context of the disease.

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