

BRIEF REPORT

BY “FOR HUMAN RIGHTS” PUBLIC UNION AND “DEMOCRACY MONITOR” ON VIOLATION OF PROPERTY RIGHTS, RIGHT TO FAIR TRIAL AND FORCED EXPROPRIATION OF THE PROPERTY OF ZULFUGARLY BROTHERS IN AZERBAIJAN

The violation of property rights in Azerbaijan are remaining as one of the human rights issues of most concern. The “Baki Electroshtamp” and “Baku Steelworks Company” (Baki Poladtokme) plants that belong to Nouraddin and Loghman Zulfugarly brothers have been by force expropriated.

In December 2005 N.Zulfugarly was invited to Committee on State Property where he was requested to voluntarily relinquish the two plants. The officials justified their requests with a fact that a high level official wants to own this business. Should they not relinquish the plants voluntarily, they would be taken by force. When Zulfugarly brothers said they invested millions into this business, they were threatened with arrest which indeed happened.

Based on groundless and slanderous suit of Afet Aliyeva on 10 December 2005 the Department on Fight against Organized Crime of the Ministry of Internal Affairs of the Republic of Azerbaijan launched a criminal case under articles 182.2.1 and 182.3.2 of the Criminal Code of the Republic of Azerbaijan against Zulfugarli brothers and others; and on 11 December 2005 Zulfugarli brothers were attracted as accused and a preventive measure of arrest was groundlessly applied to them.

Investigation into a criminal case which was launched by instruction from above, from its first day was carried out with serious violation of law. It was impossible for their lawyer to meet with them within 10 days; the confrontation with complainant A.I.Aliyeva and Zulfugarly brothers was not arranged. The lawyer's motion on this was rejected for known reasons because A.I.Aliyeva's complaint was no more than defamation and Zulfugarly brothers had never committed any unlawful actions against this complainant, nor they knew her by face.

As a result, Zulfugarly brothers stayed in custody for 4 months without any interrogation and they were proposed to relinquish 80% of their property in exchange of liberty. Family members and plants' team sent numerous complaints to different bodies about these unlawful demands but in vain.

The officials from Committee on State Property and other state bodies frequently came to investigation isolator and forced Zulfugarly brothers to relinquish their property. With the help form isolator's director and investigator on 30.03.2006 both plants 'Baki Elecktroshtamp' and 'Baki Poladtokme' was obtained from Zulfugarly brothers and since they were not guilty the criminal case against them was terminated on 20.06.2006.

However, when Zulfugarly brothers resumed restoration of plants in December 2010, Rasim Mammadov, director of "BAKUSTEEL COMPANY" came to office of Zulfugarly brothers and demanded to give him 20% of the share in the factory owned by brothers and at the same time to leave the country. High-ranking government officials who were aware of all these illegalities recommended to Zulfugarly brothers to keep silent, and the latter having no other choice left the country.

In addition, despite repeated appeals about forced extortion of a large amount of property owned by brothers Zulfugarly and forcing these entrepreneurs to leave the country were brought to the officials such as the Chairman of the Commission on Combating Corruption of the Republic of Azerbaijan Ramiz Mehdiyev, Prosecutor General of the Republic of Azerbaijan Zakir Garalov, Minister of Internal Affairs of the Republic of Azerbaijan Ramil Usubov, Minister of National Security of Azerbaijan Eldar Mahmudov, and because the mentioned appeals were not at all investigated, the appeals on considering the actions of above-mentioned administrative organs illegal were made to the Baku Administrative-Economic Court # 1, but all attempts brought no result.

Despite numerous appeals were made to Narimanov, Binaqadi, Yasamal, Khatai, Baku administrative-economic court # 1 and all superior courts on the protection of property and other rights of Zulfugarli brothers, there was no result.

Moreover, on 15 August 2012 at about 6pm a group of persons looking as sportsmen who represented themselves as members of security of Rasim Mamammadov, chair of the board of ‘Baku Steel Company’ LLC, attacked private ‘Birlik’ LLC with an aim to seize it and put physical pressure on some staff of administration. The same group at about 2pm on 17 August 2012 again attacked the plant. Video footage of this was posted at <http://www.azadliq.org/media/video/24679339.html> which shows a car of ‘Baku Steel Company’, this group, resistance of the staff and inaction of law-enforcement bodies.

At 1.30 pm on 17 August 2012 assistant of Rasim Mamammadov, chair of the board of ‘Baku Steel Company’ LLC, called Logman Zulfugarli, co-founder of ‘Birlik’ LLC and businessman, and threatened him with causing problems to his family members and putting them in jail in case he does not leave the entity.

Owners of other entities whose property was embezzled by this criminal group demonstrated solidarity with Zulfugarli brothers, and during some attacks some 500 persons gathered in front of the plant.

From the perspective of legislation right to property is a right recognized and protected by the state to possess property jointly or alone in a way you want, use it and make any decision regarding it (Article 29 of the Constitution and Article 152 of the Civil Code of Azerbaijan Republic).

Currently, at a time when in Azerbaijan the building of legal state and civil society, fundament of which is free market economy, is going difficult, executive power structures easily ignoring requirements of the legislation and absence of independent judicial power, the power of the articles 13 and 29 of the Constitution, the article 157.9 of the Civil Code decrease.

Since the inviolability of property is the fundament of social stability and free market economy, the Constitution declares “the inviolability of property”, along with guaranteeing “the protection of the property by the state”. According to the article 29 of the Constitution, everyone has a right to property. Neither kind of property is getting any preference. Right to property, including right to private property is protected by law. Everyone has a right to movable and immovable property. No one can be deprived of his property without the decision of court.

But in spite of these formal protection guarantees, the reality is regretful. The problem regarding the inviolability of the property is a big challenge in Azerbaijan as it is seen in the case of Zulfugarly brothers. It is not by accident that, majority of lawyers face a lot of difficulties in practice of protection of property rights, which has legal, social and political reasons.

The state has violated its obligations under national law and the European Convention on Human Rights regarding the right to property in Zulfugarly brothers' case as Article 13 of Azerbaijan's constitution guarantees the right to private property. Article 29 guarantees that property shall not be expropriated except by court decision.

The crackdown of independent entrepreneurs in Azerbaijan poses major risks to the investment climate in the country. Foreign and local investors now realize that their capital might be at risk due to Azerbaijan's unstable property ownership system. This situation resembles that in Russia, where business tycoon Mikhail Khodorkovsky was arrested on political grounds, or the situation in post-election Ukraine, where one business group seized ("re-privatized") assets owned by another group.

Azerbaijan as a member state of OSCE and CoE is party to the European Convention on Human Rights and its protocols and has taken obligations to ensure and protect the fundamental human rights and freedoms. The Right to Liberty and Security (Article 5), Prohibition of Torture (Article 3), Right to Fair Trial (Article 6), Right to Effective Remedy (Article 13) of the Convention, Right to Protection of Property (Article 1) of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 20.III.1952), Compensation for Wrongful Conviction (Article 3) of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Strasbourg, 22.XI.1984) have been seriously violated in Zulfugarly brothers' case and it casts shadow to the international image of Azerbaijan. This is a clear example of Azerbaijan's not fulfilling its obligations before the international organizations taken on to ensure and protect the human rights in the country.