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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**Legal aspects of the settlement of the  
Nagorno-Karabakh conflict in the light  
of Council of Europe approaches**

**Report by Mr Raouf Guliyev  
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**Conference on “Legal frameworks to facilitate the settlement  
of ethno-political conflicts in Europe”  
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**THE LEGAL ASPECTS OF THE SETTLEMENT OF NAGORNO-KARABAKH  
CONFLICT IN THE LIGHT OF THE COUNCIL OF EUROPE 'S APPROACHES**

Dear Mr. Chairperson,  
Dear Conference participants,

1. My presentation is devoted to the most stirring us problem that is the Nagorno-Karabakh problem.
2. As it is known one of the commitments undertaken by Azerbaijan and Armenia when acceding to the Council of Europe was the resolution of Nagorno-Karabakh conflict by peaceful means and above all in correspondence with the principles of international law.
3. The core of the conflict is as follows: 20 % of the territory of Azerbaijan including seven districts around Nagorno-Karabakh have been occupied. The authorities of Nagorno-Karabakh proclaimed its independence that is not recognized by any State including Armenia. As a result of ethnic cleansing no person of Azeri origin stayed on the territory of Nagorno-Karabakh. The basic claims are the secession from Azerbaijan and independence or the unification with Armenia. In 1993 in connection with this conflict the United Nations adopted four resolutions. These resolutions confirm the territorial integrity and sovereignty of Azerbaijan and other States of the region.
4. When examining the Nagorno-Karabakh conflict from the point of view of international law we are touching the principles, which are inseparably linked with each other those are the territorial integrity, protection of national minorities and self-determination of peoples and nations. In most of the ethnic conflicts the territory turns to be the object of a dispute. Frequently, the principle of self-determination is not only violated but also wittingly used to justify the gross violations of human rights, terrorism, ethnic cleansing and separatism. The principle of self-determination does not encourage the separatism: it is straightly directed at its prevention. For instance, the UN Declaration of 1970 on Principles of International Law provides that the principle of self-determination "shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States".
5. The priority to territorial integrity is given not only in the UN documents but also in the regional instruments. Item 4 of the Helsinki Final Act underlines this principle to be of primary importance. In the Declaration of the Vienna Summit of 1993 of the Heads of Member States of the Council of Europe it is enshrined that the Heads of the member-States commit themselves to protect the rights of persons belonging to national minorities within the rule of law, respecting the territorial integrity and the national sovereignty of States.

6. Both the principle of territorial integrity, the right of nations to self-determination as well as the rights of national minorities are the notions, which inseparably linked with the human rights. And in this context, the role of the Council of Europe as the Pan-European institution with efficient mechanism of protection of human rights is exceptional. From the moment of getting the independence and recognition of Azerbaijan and Armenia as an integral part of Europe the Council of Europe bodies adopted a number of documents aimed directly at the settlement of Nagorno-Karabakh conflict taking into consideration the principles of European law.

7. Trying to resolve one of the topical and serious problems in the modern Europe namely the problem of protection of national minorities the Council of Europe realizes its activities in this field by means of creation and maintenance of the atmosphere of confidence among different groups of society. At this point the Recommendation 1201 (1993) of the Parliamentary Assembly that is very often referred to when the Parliamentary Assembly adopts one or another document directed at the parties of the ethnic or territorial conflicts is of particular interest. Article 11 of this Recommendation states: "In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state". That implies that the task of the central state authorities is to grant to the territories with ethnically homogeneous population the self-government.

8. Touching directly the Nagorno-Karabakh conflict I would like to cite as an example Resolution 1047 and Recommendation 1251 adopted by the Parliamentary Assembly in 1994. They state that "the Assembly notes with satisfaction that the ceasefire is well respected and calls on the warring parties to organise the return home of refugees on an urgent basis and to respect minority rights as advocated in its Recommendation 1201."

9. The importance of the respect to the principle of territorial integrity while settling the conflicts in Transcaucasia was also underlined in the Resolution 1119 of 1997 where in item 5 the Parliamentary Assembly refers to 1975 Helsinki Final Act and the 1990 Paris Charter and the resolution of Abkhazian and Nagorno-Karabakh conflicts should be based *inter alia* on the principle of inviolability of borders. And para 10 of the Resolution notes the necessity to reconstitute of occupied territories and to return the refugees and displaced persons.

10. The adherence of the Council of Europe to the principle of inviolability of borders is enshrined also in the so-called "Budapest Declaration for the Greater Europe without dividing lines" adopted by the Committee of Ministers on 7 May 1999. Its para I states that "We, the foreign ministers of the Council of Europe's member-states, assembled in Budapest for our 104<sup>th</sup> Session: ... commit ourselves to building the Greater Europe without dividing lines. For this purpose, we shall ... - continue to consolidate the stability of our continent based on democratic institutions, - pursue the fight against terrorism, aggressive nationalism and threats to the territorial integrity of States."

11. And the Final Communiqué adopted on the 108<sup>th</sup> Session of the Committee of Ministers expresses "the support for the respect for internationally recognized borders, sovereignty and territorial integrity of States throughout Europe ..."

12. At the 713<sup>th</sup> meeting of the Ministers' Deputies the Venice Commission was invited to draft a general legal reference framework to facilitate the settlement of ethno-political

conflicts in Europe. At its 43rd meeting, held in Venice the Commission approved the drafted document. There had been determined the general guidelines concerning the settlement of ethno-political conflicts in the context of modern constitutional law. This document gives the examples of the resolution of ethno-political disputes in Europe and cites the status of Åland Islands in Finland, Faroe Islands in Denmark, Gagauzia in Moldova, Crimea in Ukraine, Trieste in Italy. At that, the document emphasizes that “the status of the Åland Islands in *Finland* offers one of the best examples of peaceful settlement of a dispute at an international level”. Making the study through the creations of institutions of regional self-government on the territories of compact inhabitation by national (ethnic) minorities as the instrument for the settlement of ethno-territorial conflicts the Commission remarks that “The idea that a conflict can best be solved through division into a number of separate states is not consistent with the real shape of things at the dawn of the 21st century”.

13. On the basis of the written question of the delegation of Azerbaijan Republic in the Parliamentary Assembly of the Council of Europe, the Committee of Ministers on its 764<sup>th</sup> meeting of the Deputy Ministers adopted the document 9212 where the Committee of Ministers clearly expressed its support for the internationally recognized borders, sovereignty and territorial integrity of all Council of Europe’s member-States. In the document it is noted that: “the right to self-determination of peoples and the other principles contained in the Helsinki Final Act will be equally and unreservedly applied, each of them being interpreted taking into account the others. Thus, the right to self-determination should be respected, in conformity with the purposes and principles of the Charter of the United Nations and with the norms of international law, including those relating to territorial integrity of states.

14. And finally, displaying its adherence to the principles of international law the Council of Europe did not recognize the illegitimate actions of the Nagorno-Karabakh authorities connected with holding “the elections to local self-government authorities of Nagorno-Karabakh Republic”. On 24 August, 2001 the Council of Europe called on Nagorno-Karabakh authorities to refrain from staging “the elections” on 5 September, 2001. The Council of Europe Committee of Ministers’ Chairman, Ernst Walch, Parliamentary Assembly President, Lord Russel-Johnston and Secretary General, Walter Swimmer recognized those elections as illegitimate and noted that such actions undermine the efforts to achieve an early and comprehensive settlement of conflict by peaceful and political means. They also reaffirmed that the Council of Europe fully supports the negotiating process being carried out under the OSCE auspices by the “Minsk Conference” and in this framework and in the field of its competences, the Council of Europe is ready to contribute to the peace process, for instance through the good offices of its Commission for Democracy through Law, that is the Venice Commission.

15. I would like to add that the peaceful settlement of Nagorno-Karabakh conflict is very important not only for the stability in the region and its economic development but also for the strengthening and promotion of the democracy in both States.

16. The great ancient Greek philosopher Socrates said: “Start speaking in order to be seen”. The Council of Europe repeatedly expressed its position concerning Nagorno-Karabakh conflict. And it is a duty of each member-State to listen to this not subjective but unbiased position that expresses the opinion of at least 42 States.

Thank you for your attention.