

9 April 2015

AZERBAIJAN: Transfer from detention for prisoners of conscience rejected

By Felix Corley, Forum 18

A request by a Jehovah's Witness prisoner of conscience, Valida Jabrayilova, to be transferred from pre-trial detention in the NSM secret police Investigation Prison to house arrest was refused on 4 April. Asked why she is detained and could face a five-year prison term for offering uncensored religious literature, Judge Elshad Shamayev replied "it's in the Criminal Code" to Forum 18 News Service. He refused to say why the government sees Jabrayilova – and seven other Muslim and Jehovah's Witness prisoners of conscience awaiting trial for exercising their freedom of religion or belief – as such a danger to the state that they must be detained by the NSM secret police. Asked why he also ordered Muslim prisoners of conscience to be held in pre-trial detention by the NSM, Judge Shamayev responded: "We're not obliged to account for our decisions". People continue to be prosecuted and punished for exercising freedom of religion or belief, for example in February for discussing their faith with others in public.

A judge in Azerbaijan's capital Baku on 4 April rejected a request to transfer Jehovah's Witness prisoner of conscience Valida Jabrayilova from pre-trial detention in the National Security Ministry (NSM) secret police Investigation Prison to house arrest. "Look at what Criminal Code she is being investigated under," Judge Elshad Shamayev of Baku's Sabail District Court insisted to Forum 18 News Service from Baku on 8 April. Asked why she is imprisoned and could face a five-year prison term simply for offering uncensored religious literature, he responded: "It's in the Criminal Code."

Jabrayilova's lawyer lodged the suit to have her transferred to pre-trial detention on 1 April, Jehovah's Witnesses told Forum 18. Following the rejection of the suit at Sabail District Court, the lawyer will appeal further to Baku Appeal Court.

Judge Shamayev refused to say why the government sees Jabrayilova – and seven other Muslim and Jehovah's Witness prisoners of conscience awaiting trial for exercising their freedom of religion or belief – as such a danger to the state that they have to be imprisoned in the NSM secret police Investigation Prison.

"We're not obliged to account for our decisions"

The same Judge Shamayev also ordered that at least three Muslims be held in pre-trial detention in the NSM Investigation Prison in Baku. In April 2014, he ordered that prisoners of conscience Eldeniz Hajiyev and Ismayil Mammadov be held in pre-trial detention. He also took the decision in September 2014 that they and another NSM Investigation Prison prisoner of conscience Revan Sabzaliyev be transferred to house arrest (see F18News 22 September 2014 http://www.forum18.org/archive.php?article_id=1999). The three are currently under restrictions at home as their criminal trial continues (see F18News 23 February 2015 http://www.forum18.org/archive.php?article_id=2041).

In March 2015, Judge Shamayev ordered that Shia Muslim theologian and translator prisoner of conscience Jeyhun Jafarov be held in pre-trial detention in the NSM secret police Investigation Prison in Baku for four months. He is being investigated for alleged treason (see F18News 16 March 2015 http://www.forum18.org/archive.php?article_id=2048).

Asked why he ordered these Muslim prisoners of conscience too to be held in pre-trial detention at the NSM secret police Investigation Prison, Judge Shamayev responded: "We're not obliged to account for our decisions. Look at the written decisions." Asked again about the Muslims he had imprisoned, he replied: "That's not a journalistic question" and put the phone down.

In October 2014, four Jehovah's Witnesses were prisoners of conscience for up to 20 days for failing to pay earlier fines imposed to punish them for exercising the right to freedom of religion or belief (see below).

Eight NSM secret police prisoners of conscience

Jabrayilova, who is 37, and fellow Jehovah's Witness Irina Zakharchenko, who is 54, were arrested on 17 February and ordered held in pre-trial detention for three months while the investigation continues under Criminal Code Article 167-2.2.1. This punishes: "Production, sale and distribution of religious literature, religious items and other informational materials of religious nature with the

aim of import, sale and distribution without appropriate authorisation" when conducted by an "organised group". Punishment is a fine or imprisonment of two to five years. The case is being led by NSM Chief Investigator Matlab Mehdiyev. Their appeal against their pre-trial detention was rejected on 26 February (see F18News 16 March 2015 http://www.forum18.org/archive.php?article_id=2048).

Imam Mubariz Qarayev of Baku's Lezgin Mosque, who is 40, and three other Sunni Muslims – Habibullah Omarov, Salim Qasimov and Eyvaz Mammadov - were arrested on 24 February. The Lezgin Mosque is one of many Sunni Muslim mosques the government seeks to close (see eg. F18News 18 November 2014 http://www.forum18.org/archive.php?article_id=2016). Another Sunni Muslim Azad Qafarov was arrested on 26 February. All five prisoners of conscience were ordered held in pre-trial detention for three months while the investigation continues (see F18News 16 March 2015 http://www.forum18.org/archive.php?article_id=2048).

Omarov and Qafarov are, like the two Jehovah's Witness women prisoners of conscience, being investigated under Criminal Code Article 167-2.2.1. NSM Investigator Samir Aliyev is leading the case against the two.

Imam Qarayev, Qasimov and Mammadov are being investigated under Criminal Code Article 167-2.1. This punishes: "Production, sale and distribution of religious literature, religious items and other informational materials of religious nature with the aim of import, sale and distribution without appropriate authorisation". Punishments for first time offenders acting alone are a fine or up to two years' imprisonment.

Shia Muslim theologian and translator Jafarov, who is 42, was arrested on 10 March and ordered held in pre-trial detention for four months while the investigation continues under Criminal Code Article 274 ("treason"). This carries a maximum life sentence (see F18News 16 March 2015 http://www.forum18.org/archive.php?article_id=2048).

The NSM secret police Investigation Prison in Baku – where all eight of these prisoners of conscience are being held – is on the upper floor of the main NSM building in Baku. The address is:

Milli Tahlükasizlik Nazirliyinin

Istintaq Tacridxanasi

Parlament Prospekti 14

Baku AZ-1006

Azerbaijan

The arrests appear to be part of a continuing wider state crackdown on people exercising human rights Azerbaijan's government has solemn international obligations to protect. This has led to the arrests of many lawyers, journalists, human rights defenders and public figures the government dislikes, including Muslims and Jehovah's Witnesses exercising their freedom of religion or belief, including a conscientious objector to military service (see F18News 12 February 2015 http://www.forum18.org/archive.php?article_id=2037).

"No meetings, no phone calls, only visits from the lawyer"

No relatives, friends or fellow-believers are allowed into the NSM secret police Investigation Prison for visits to the prisoners of conscience, friends of the two Jehovah's Witness women, the five Sunni Muslims and Shia Muslim Jafarov separately complained to Forum 18. "No meetings, no phone calls, only visits from the lawyer," a friend of one of the prisoners told Forum 18.

"Jeyhun Jafarov has been given a Koran, but they won't allow him any other religious literature," a friend told Forum 18 from Baku on 9 April. Forum 18 has been unable to find out if any of the other prisoners are allowed access to religious literature.

"The lawyers say that Valida Jabrayilova and Irina Zakharchenko are being treated reasonably well," Jehovah's Witnesses told Forum 18. They note, however, that prison is prison and that they themselves are unable to verify these assessments.

"It is difficult to gain release in such cases through the courts," friends of Imam Qarayev and the other detained Sunni Muslims told Forum 18.

Three Muslim prisoners of conscience were held for several months in 2014 in the same NSM Investigation Prison. Along with two other Muslims, they are all now on trial in Baku for meeting together to discuss their faith and texts by Islamic theologian Said Nursi. Four of the five - Eldeniz Hajiyev, Ismayil Mammadov, Zakariyya Mammadov and Shahin Hasanov – face up to five years' imprisonment if convicted. The fifth - Revan Sabzaliyev – faces up to three years' imprisonment. The trial began under Judge Akshin Afandiyev at Baku's Yasamal District Court with a preliminary hearing on 10 December 2014 and hearings have continued since then (see F18News 23 February 2015 http://www.forum18.org/archive.php?article_id=2041).

Prison conditions

The officer who answered the main number at the NSM secret police Investigation Prison on 9 April declined to answer any questions about the prisoners of conscience's detention conditions or to put Forum 18 through to anyone who would be able to answer.

Elchin Behbudov of the Azerbaijan Committee Against Torture – who is able to visit the NSM Investigation Prison once a month – says he has met all these prisoners with the exception of Zakharchenko. "They had no complaints," he told Forum 18 on 9 April. "Conditions there are better than in the Justice Ministry Investigation Prison. They don't torture anyone, the food is OK and there is a big library." He added that the Koran is available to prisoners who want to read it. "I saw it there in the library."

Muslim prisoners of conscience Hajiyevev and Mammadov were not allowed access to the Koran or any other books while they were in 2014 held in the NSM Investigation Prison (see F18News 8 May 2014 http://www.forum18.org/archive.php?article_id=1956).

Behbudov says the Investigation Prison holds fewer than 100 prisoners at any one time. He says prisoners are generally kept in cells designed for two or four prisoners, though at times more are held in such cells. "Most of the women held there are facing drugs-related charges," he told Forum 18.

The NSM Investigation Prison was among Azerbaijan's prisons visited by a delegation from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in December 2012. However, the Azerbaijani government has refused to allow the Committee to publish its report of the visit (see F18News 23 February 2015 http://www.forum18.org/archive.php?article_id=2041). It has still not been published.

Violence has been used by the NSM secret police and other officials against those it questions (see eg. F18News 18 November 2014 http://www.forum18.org/archive.php?article_id=2016).

Other freedom of religion or belief prisoners of conscience

The largest single group of freedom of religion or belief prisoners of conscience consists of those imprisoned to punish them for protesting on the streets of Baku in October 2012 against a 2010 Education Ministry ban on girls wearing a headscarf (hijab) in schools. Two more of the original twenty prisoners were freed under presidential pardons on 18 March, according to the presidential website: Anar Gasimli (serving a sentence of 5 years, 6 months) and Ramil Valiyev (6 years, 6 months). Seven are still imprisoned (see F18News 12 February 2015 http://www.forum18.org/archive.php?article_id=2037).

Among other prisoners of conscience jailed for exercising their freedom of religion or belief is Sunni Muslim Zohrab Shikhaliyev, who is 36. On 18 February, a court in the town of Sumgait [Sumqayit] north of Baku handed down a six-month prison term for maintaining an open prayer room in his home. As he had already been held for more than three months in pre-trial detention, he had nearly three months left to serve (see F18News 23 February 2015 http://www.forum18.org/archive.php?article_id=2041).

Islamic theologian and preacher Taleh Bagirov (also known as Bagirzade), who is 30, was arrested in May 2013. He was given a two-year strict regime prison sentence in November 2013 on charges his supporters insist were fabricated. At a further trial in August 2014, a Baku court sentenced prisoner of conscience Bagirov to an extra four months' imprisonment for allegedly having an illegal mobile phone in his cell (see F18News 18 November 2014 http://www.forum18.org/archive.php?article_id=2016).

Arrested with Bagirov in May 2013 was his driver Anar Melikov. He was given a 19-month prison term in August 2013, similarly on charges their supporters insist were fabricated (see F18News 7 November 2013 http://www.forum18.org/archive.php?article_id=1894). Prisoner of conscience Melikov completed his jail term in February 2015 (pre-trial detention counts towards the term of imprisonment) and was freed, his lawyer Javad Javadov told Forum 18 from Baku.

Jehovah's Witness conscientious objector Kamran Shikhaliyev (no relation of Zohrab Shikhaliyev) was forcibly conscripted in Baku in October 2013 just days after his 18th birthday and then was transferred to a military unit. He was maltreated following his enforced conscription. In April 2014 Jalilabad Military Court sentenced him under Criminal Code Article 335.1 ("Evasion of military service by causing harm to health or in another way") to one year in a military disciplinary unit. In July 2014 he lost his appeal against the conviction. He was finally transferred to a military disciplinary unit in Salyan in December 2014, though it remains unclear if and when his one year sentence has begun (see F18News 12 February 2015 http://www.forum18.org/archive.php?article_id=2037).

Before its accession to the Council of Europe in January 2001, Azerbaijan promised "to adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative civilian service". There is no sign that the government has any intention of keeping this promise (see Forum 18's Azerbaijan religious freedom survey

http://www.forum18.org/archive.php?article_id=1690).

"Guilty simply for talking to people about the Bible"

People continue to be prosecuted and punished for exercising their right to freedom of religion or belief.

On 2 February, Judge Ahmad Sariyev of Barda District Court found two Jehovah's Witnesses from the central town of Barda, Rza Babayev and Ilham Hasanov, guilty of violating Administrative Code Article 299.0.2. This punishes "violating legislation on holding religious meetings, marches, and other religious ceremonies" (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=1690).

The case was brought to punish the two men for talking to others about their faith on the streets of Barda, according to case materials. Barda's Deputy Police Chief and other officers, who had seen them from their car, got out and detained the two men at about 12 noon on 19 December 2014. They then drew up a record of an offence under Article 299.0.2.

However, in his verdicts on Babayev and Hasanov, Judge Sariyev confined his punishment to official warnings instead of the large fines he could have imposed.

Babayev and Hasanov challenged their convictions in Gyanja Appeal Court. Both men cited provisions guaranteeing freedom to share one's beliefs from: Azerbaijan's Constitution; the Universal Declaration of Human Rights; and the European Convention on Human Rights and Fundamental Freedoms. They also cited condemnation of Azerbaijan's restrictions from reports of the European Commission against Racism and Intolerance, as well as case law from the European Court of Human Rights in Strasbourg.

However, at separate hearings on 12 March, Judge Fikret Aliyev rejected Babayev's appeal and Judge Elchin Khasmammadov rejected Hasanov's appeal, according to court records.

"Babayev and Hasanov wanted to challenge the decisions because they are considered guilty simply for talking to people about the Bible," one Jehovah's Witness explained to Forum 18.

The Old Testament, the writings of Islamic theologian Said Nursi, and some Jehovah's Witness texts are on a police list of banned religious literature (see F18News 6 May 2014 http://www.forum18.org/archive.php?article_id=1955). These texts are routinely confiscated by police (see eg. F18News 3 June 2014 http://www.forum18.org/archive.php?article_id=1964).

Captain Ahad Mammadov, head of Barda Police, repeatedly put the phone down when Forum 18 asked him on 9 April why individuals are punished for speaking to others on the street about their faith.

October 2014 short-term prisoners of conscience

Numerous Jehovah's Witnesses, Muslims and Protestants have often been punished with administrative fines for exercising their right to freedom of religion or belief, often after police raids. Such fines can be imposed for distributing religious literature which has not undergone compulsory state censorship in locations where the state does not permit religious literature to be distributed. Fines for exercising freedom of religion or belief are also imposed for "offences" including meeting for worship without state permission and "religious activity not within a religious association's registered address" (see F18News 24 February 2015 http://www.forum18.org/archive.php?article_id=2042).

Four Jehovah's Witnesses from Gyanja are known to have been imprisoned in October 2014, for failing to pay earlier fines imposed for exercising their freedom of religion or belief. All four prisoners of conscience were jailed for between three and 20 days under Administrative Code Article 313-1.1, one of them for the second time. This Article punishes "failure to meet the requirements of court decisions or other official orders" with a fine on individuals or imprisonment of up to one month.

The fines imposed on the four who became prisoners of conscience were (as is often the case) large in relation to many people's income and savings – 1,000 Manats can in rural areas be the financial value of one family's home and assets (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=1690).

Rashad Niftaliyev, who was then 26, was given a 20-day prison term under Article 313-1.1 by Judge Yashar Hashimov at Gyanja's Kapaz District Court on 15 October 2014. The sentence began at Gyanja Police Detention Centre that day, according to the court decision seen by Forum 18.

Prisoner of conscience Niftaliyev was jailed after paying only part of a fine of 2,000 Manats (now about 15,400 Norwegian Kroner, 1,780 Euros, or 1,900 US Dollars) imposed under Article 299.0.2 ("Violating legislation on holding religious meetings, marches, and other religious ceremonies") in November 2011. "Even though the debtor was repeatedly warned, he has paid only 50 Manats [now about 385 Norwegian Kroner, 45 Euros, or 50 US Dollars]" bailiff Tural Imanov told the Court. Niftaliyev told the Court that he does not have the money to pay the rest of the fine. He appealed to Gyanja Appeal Court, but on 30 October 2014 his appeal was

declared inadmissible. He tried to challenge this finding in December 2014, but failed to overturn it.

In July 2012, Niftaliyev had been given an official warning at Gyanja's Kapaz District Court for failing to pay the November 2011 fine (see F18News 10 August 2012 http://www.forum18.org/archive.php?article_id=1730).

Similarly, 61-year old prisoner of conscience Mardan Mammadov was given a 10-day prison term under Article 313-1.1, by Judge Afiq Huseynzada at Gyanja's Kapaz District Court on 16 October 2014. Mammadov had paid only 60 Manats (now about 460 Norwegian Kroner, 50 Euros, or 57 US Dollars) of a November 2011 fine of 1,500 Manats (now about 11,550 Norwegian Kroner, 1,335 Euros, or 1,425 US Dollars) under Article 299.0.2.

Mammadov told the Court he could pay a further 100 Manats (now about 770 Norwegian Kroner, 90 Euros, or 95 US Dollars), but has no money to pay more as he cannot work because of ill-health. The sentence began at Gyanja Police Detention Centre that day, according to the court decision seen by Forum 18. On 13 November 2014, Gyanja Appeal Court rejected his appeal.

Prisoner of conscience Irada Huseynova, who was then 49, was given a three-day prison term under Article 313-1.1 by Judge Emin Aliyev at Gyanja's Kapaz District Court on 21 October 2014. She had paid only 40 Manats (now about 308 Norwegian Kroner, 36 Euros, or 38 US Dollars) of a January 2014 fine of 1,800 Manats (now about 13,860 Norwegian Kroner, 1,600 Euros, or 1,710 US Dollars) under Article 299.0.2 (see F18News 10 February 2014 http://www.forum18.org/archive.php?article_id=1926).

Huseynova told the Court she has no money to pay as she does not work and looks after her mother. The sentence began at Gyanja Police Detention Centre that day, according to the court decision seen by Forum 18. On 5 November 2014, Gyanja Appeal Court rejected her appeal.

Prisoner of conscience Asim Mammadov, who is 25, was given a 10-day prison term under Article 313-1.1 by Judge Nuru Quliyev at Gyanja's Kapaz District Court on 27 October 2014. He had paid only 30 Manats (now about 230 Norwegian Kroner, 27 Euros, or 29 US Dollars) of a November 2011 fine of 1,500 Manats under Article 299.0.2. The sentence began at Gyanja Police Detention Centre that day, according to the court decision seen by Forum 18. On 13 November 2014, Gyanja Appeal Court rejected his appeal.

Mammadov had earlier been given a similar three-day prison term under Article 313-1.1 at Gyanja's Kapaz District Court in July 2012. This was also for failing to pay the November 2011 fine (see F18News 10 August 2012 http://www.forum18.org/archive.php?article_id=1730). (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1690.

More coverage of freedom of thought, conscience and belief in Azerbaijan is at <http://www.forum18.org/Archive.php?query=&religion=all&country=23>.

See also the Norwegian Helsinki Committee/Forum 18 report on freedom of religion or belief in Azerbaijan at: http://www.nhc.no/content/uploads/2018/07/Rapport2_15_Aserbajdsjan_web.pdf
(http://www.nhc.no/content/uploads/2018/07/Rapport2_15_Aserbajdsjan_web.pdf)

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

For a personal commentary, by an Azeri Protestant, on how the international community can help establish religious freedom in Azerbaijan, see http://www.forum18.org/Archive.php?article_id=482.

A printer-friendly map of Azerbaijan is available at <http://education.nationalgeographic.com/mapping/outline-map/?map=Azerbaijan>.

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