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AZERBAIJAN: One conscientious objector jailed, others called up

By Felix Corley, Forum 18 (https://www.forum18.org)

The latest conscientious objector to be jailed in Azerbaijan is a 19-year-old Jehovah's Witness, Forum 18 News Service has learned. Fakhraddin Mirzayev was given a one-year prison sentence on 25 September by a court in Gyanja. He has lodged an appeal. "This is the first criminal prosecution of a Jehovah's Witness conscientious objector in Azerbaijan since Farid Mammedov was imprisoned in September 2010," Jehovah's Witnesses told Forum 18. "Others have been investigated, but their cases were never referred to court." Jehovah's Witnesses told Forum 18 that up to 20 others have been called up in the latest conscription round. Asked if the young men fear being prosecuted and possibly imprisoned, one Jehovah's Witness responded: "I'm not sure they're afraid – it's just a reality. They are aware of this when they become Jehovah's Witnesses. They are not afraid just because they are following their consciences." In January 2001, Azerbaijan promised the Council of Europe that it would within two years pardon all jailed conscientious objectors and introduce alternative civilian service.

A 19-year-old Jehovah's Witness conscientious objector to compulsory military service yesterday (15 October) lodged an appeal against his imprisonment, Forum 18 News Service has learned. Fakhraddin Mirzayev was given a one-year prison sentence on 25 September by a court in Azerbaijan's second city Gyanja [Gäncä]. "This is the first criminal prosecution of a Jehovah's Witness conscientious objector in Azerbaijan since Farid Mammedov was imprisoned in September 2010," Jehovah's Witnesses told Forum 18. "Others have been investigated, but their cases were never referred to court."

When Azerbaijan entered the Council of Europe in 2001, it committed itself to pardon and free imprisoned conscientious objectors, and to introduce civilian alternative service, by January 2003. But it has to date failed to do so (see Forum 18's religious freedom survey of Azerbaijan http://www.forum18.org/Archive.php?article_id=1690).

Jehovah's Witnesses told Forum 18 there was a "wave of call-ups" of their young men in the latest conscription round, numbering under 20. Asked if the young men fear being prosecuted and possibly imprisoned as a result of their refusal to conduct compulsory military service, one Jehovah's Witness responded: "I'm not sure they're afraid – it's just a reality. They are aware of this when they become Jehovah's Witnesses. They are not afraid just because they are following their consciences."

In one recent case, Jehovah's Witness Amid Zohrabov, from Lokbatan near the capital Baku, was forcibly conscripted into the army on 23 July and transported to a military unit in Gazakh Region in north-west Azerbaijan. However, after his parents wrote a complaint to the unit's commanding officer, he was freed on 7 August and allowed to return home (see F18News 10 August 2012 http://www.forum18.org/Archive.php?article_id=1730).

One-year prison sentence

The Conscription Office summoned Mirzayev to report for military service on 6 March. He reported as requested. On 24 April he wrote to the Conscription Office explaining his conscientious objection to military service "on the basis of his Scriptural beliefs", Jehovah's Witnesses told Forum 18. Mirzayev hand-delivered his written statement and verbally explained to officials why he could not serve in the military.

Mirzayev requested alternative service on the basis of Article 76, Part 2 of the Constitution, which states: "If the beliefs of citizens come into conflict with service in the military then in some cases envisaged by legislation alternative service instead of regular military service is permitted".

On 25 June, Gyanja City Prosecutor's Office initiated a criminal case against Mirzayev under Article 321.1 of the Criminal Code. This states: "Evasion without lawful grounds of call-up to military service or of mobilisation, with the purpose of evading serving in the military, is punishable by imprisonment for up to two years [in peacetime]".

Mirzayev's trial begun under Judge Nuru Guliyev at Gyanja's Kapaz District Court on 27 August, with further hearings on 10 and 25 September. The one-year prison sentence was handed down on 25 September, according to the verdict seen by Forum 18. Mirzayev was represented by the state-appointed lawyer Hunbat Salahov. The verdict specified that Mirzayev needed to pay him 40 Manats for twenty hours' work. The verdict also required Mirzayev to pay 80 Manats for an "expert analysis" of his signature on a document

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presented to the court, as the analysis had to be sent to Baku.

No interviews

An aide to Judge Guliyev, who did not give his name, said he could not transfer Forum 18's call to the Judge. "The Judge won't give an interview about the case – we're not allowed to give information on individual cases by telephone," he told Forum 18 from the Court on 15 October. "In any case, we have already sent out the verdict in writing." The aide declined to respond to Mirzayev's claim in court that he should be allowed to conduct an alternative service as set out in Azerbaijan's Constitution.

Investigation Prison No. 2

Mirzayev had been restricted in his movements as the case proceeded, but was arrested in the court room as the verdict was handed down and transferred to Gyanja's Investigation Prison No. 2. The verdict specifies that his sentence runs from 25 September. It remains unknown when he will be transferred to a prison to serve his sentence. Jehovah's Witnesses told Forum 18 that Mirzayev's mother has been able to visit him in prison.

The duty officer at Investigation Prison No. 2 told Forum 18 on 16 October he did not know if Mirzayev is being held there. He referred Forum 18 to the prison director Shakir Bayramov. However, the man who answered his telephone the same day kept repeating "I don't know" to all Forum 18's questions and put the phone down.

Appeal

Mirzayev's lawyer Salahov lodged an appeal to Gyanja Appeal Court on 15 October, Jehovah's Witnesses told Forum 18. The appeal, seen by Forum 18, draws heavily on Azerbaijan's international human rights commitments, including under the International Covenant on Civil and Political Rights and as a member of the Council of Europe, to which the European Court of Human Rights (ECtHR) in Strasbourg is subject.

The appeal makes frequent reference to the landmark ECtHR decision in the case of Vahan Bayatyan against Armenia, as well as several cases of imprisoned Turkish conscientious objectors. In July 2011 – in a judgment that has implications for other states that still imprison conscientious objectors – the ECtHR's Grand Chamber ruled that Bayatyan's right to freedom of thought, conscience and religion had been violated by his imprisonment for his rejection of military service and awarded him compensation (see F18News 7 July 2011 http://www.forum18.org/Archive.php?article_id=1591).

The appeal also cites two cases – those of Yunus Ercep (No. 43965/04) and Feti Demirtas (No. 5260/07) – where the ECtHR found in favour of Turkish Jehovah's Witness conscientious objectors (see F18News 1 May 2012 http://www.forum18.org/Archive.php?article_id=1696).

Two cases at ECtHR

Three Jehovah's Witness conscientious objector former prisoners of conscience have already lodged cases against Azerbaijan at the European Court of Human Rights (ECtHR) in Strasbourg. All had been prosecuted under Criminal Code Article 321.1. Mushfiq Mammedov (no relation of Farid) and Samir Huseynov lodged a joint application (No. 14604/08) on 7 March 2008. Farid Mammedov lodged an application (No. 45823/11) on 18 July 2011 (see Forum 18's religious freedom survey of Azerbaijan http://www.forum18.org/Archive.php?article_id=1690).

Mushfiq Mammedov was first prosecuted and given a suspended sentence of six months in July 2006. He was prosecuted a second time for the same "offence" and was fined 250 Manats (1,737 Norwegian Kroner, 206 Euros or 312 US Dollars) in October 2009. The judge took account of the two months he had spent in pre-trial detention (see F18News 3 December 2009 http://www.forum18.org/Archive.php?article_id=1382).

Huseynov was freed in May 2008 after serving most of a ten-month sentence handed down in October 2007. "The state one hundred percent had no right to imprison me," he insisted to Forum 18 on his release (see F18News 14 May 2008 http://www.forum18.org/Archive.php?article_id=1129).

Farid Mammedov was sentenced to nine months' imprisonment in Baku in July 2010, but was not imprisoned until September, when his first appeal failed. His appeal was rejected in the Supreme Court in January 2011 (see F18News 22 February 2011 http://www.forum18.org/Archive.php?article_id=1544).

The ECtHR confirmed to Forum 18 that, as of today (16 October 2012), no admissibility decisions had been made on either case.

"No communication"

Chingiz Asgarov of the Presidential Administration's Department for Coordination of Law Enforcement Agencies – who is the

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Azerbaijani government's Agent at the ECtHR – said the Court had not informed the government of any conscientious objection cases from Azerbaijan. "I have not had any communication from the Court on this issue," he told Forum 18 from Baku on 16 October.

The ECtHR has unequivocally found that conscientious objection to military service is protected under Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms. This entered into force in Azerbaijan in 15 April 2002 (see a personal commentary, by Derek Brett of Conscience and Peace Tax International, on the implications of the ECtHR judgment at F18News 26 July 2011 http://www.forum18.org/Archive.php?article_id=1597).

Asked about the continued imprisonment of conscientious objectors, such as Mirzayev, Azerbaijan's Agent at the ECtHR Asgarov said it was not his role to comment. "Do you think that as the government Agent to the European Court I control all courts in Azerbaijan? Is it my duty?"

Asked why Azerbaijan has failed to honour its obligation to introduce a civilian, alternative service by 2003 under its commitments to the Council of Europe, Asgarov told Forum 18: "You will have to ask Parliament about that. It adopts laws, I don't."

Similarly, Ramin Gurbanov, head of the Reforms Division of the Justice Ministry and the Azerbaijani government representative to the Council of Europe's European Commission for the Efficiency of Justice, declined to comment. "I'm not engaged in these issues," he told Forum 18 from Baku on 16 October. He agreed that Azerbaijan committed itself to introduce an alternative service, but said this was a question for the Presidential Administration. He refused to comment on the continued imprisonment of conscientious objectors.

Latest condemnation

Intergovernmental bodies – of which Azerbaijan is a member – have repeatedly criticised the country's failure to meet its commitment to introduce a civilian alternative to compulsory military service.

On 13 October, the Council of Europe's Venice Commission adopted a joint Opinion on Azerbaijan's Religion Law with the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights. The opinion was made public on the Venice Commission website on 16 October (http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282012%29022-e).

The Opinion noted Azerbaijan's failure to meet its Council of Europe obligation to introduce an alternative service and pointed to European Court of Human Rights judgments upholding the rights of those who have been imprisoned for exercising this right. "It is therefore recommended introducing legislation so as to expressly allow for alternative civilian service for those who refuse to perform military service owing to their religious (or non-religious conscientious) beliefs," the Opinion declares.

Among its "key recommendations", the Opinion called on Azerbaijan "to expressly allow in Article 4 [of the Religion Law] for alternative civilian service for persons who refuse to perform military service owing to their religious or nonreligious conscientious beliefs".

In its response – also published on the Venice Commission website on 16 October – the Azerbaijani government noted that Article 76 Part 2 of Azerbaijan's Constitution notes the right to alternative service. Its wording is echoed in Article 3.3 of the Law on Military Duty and Military Service of 23 December 2011. Article 23.0.4 of this Law also notes that conscripts conducting alternative service are among those exempt from military service, but provides no mechanism for young men to be approved for alternative service.

In response to the Opinion's recommendation on alternative service, the government merely stated that "this issue will be governed by a separate law, the adoption of which is one of the commitments of the Republic of Azerbaijan before the Council of Europe". It gave no explanation as to why this has not been done or when it is likely to be achieved. (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.

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.

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http://education.nationalgeographic.com/education/mapping/outline-map/?map=Azerbaijan.

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