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AZERBAIJAN: Censorship "to create an environment of freedom of conscience"

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

For the second time a court in the Azerbaijan's capital Baku has backed State Committee for Work with Religious Organisations' decisions on both what religious literature can and cannot be imported into the country, and also what quantities can be imported. Baku Appeal Court rejected the Jehovah's Witness community's appeal on 1 November, Forum 18 News Service has learned. Jehovah's Witnesses told Forum 18 they will continue their legal challenge. State Committee spokesperson Orhan Ali insisted that the literature in question was "harmful". When Forum 18 pointed out that the State Committees' own "expert analysis" had not found any harmful material, Ali put the phone down. An earlier lower court decision claimed that "in order to create an environment of freedom of conscience, putting limitations upon the import of a sufficient amount of literature is normal for all communities." Azerbaijan is the only Council of Europe member state to impose such compulsory censorship, against its human rights obligations.

For the second time in seven months a court in the Azerbaijani capital Baku has backed State Committee for Work with Religious Organisations' decisions on both what religious literature can and cannot be imported into the country, and also - for literature it does allow in - what quantities can be imported. Baku Appeal Court rejected the Jehovah's Witness community's appeal against such restrictions on 1 November, Forum 18 News Service learned. Jehovah's Witnesses told Forum 18 they will continue their legal challenge to the State Committee's repeated reduction in the numbers of copies of their publications it will allow them to import.

The suit was lodged by two people from Baku, Gulsira Akchurina and Kamila Mammadaliyeva, along with their national Jehovah's Witness community. This latest Jehovah's Witness suit – initially lodged on 12 October 2011 - is one of several they have lodged in recent years over denials of import permission and reductions in permitted quantities.

A Baku Administrative Economic Court No. 2 decision of 10 April 2012 records the State Committee, which was represented by Sabina Allahverdieva, as questioning the right of a religious community to defend itself through the courts. "The fact that the Community files claims one after the other in all kinds of directions gives a basis to say that the goal of the Community is not only to worship," the court decision notes.

"Expert" analyses

State Committee approval for the imports came after two "expert analyses" of the Jehovah's Witness publications carried out by Vugar Aliyev of the State Committee, both seen by Forum 18. Both give short factual summaries of each named work. The first, two-page analysis, dated 8 September 2011, covers seven publications. The second, of one page and dated 18 September 2011, covers two. Both conclude with the same paragraph:

"During the investigation of the literature, thoughts that can have a negative influence on the religious stability in the country were not discovered; permission can be given for its import."

The 9 and 20 September State Committee responses came in letters signed by the State Committee's then Chair, Hidayat Orujev, to Aydin Aliyev, Head of Azerbaijan's State Customs Committee. In the 9 September letter, Orujev told him that "we do not object to the import into Azerbaijan through the Red Bridge Customs House [on the border with Georgia] of the following magazines for use within the [Jehovah's Witness] community", as well as a further three publications by air. He then listed the titles and permitted number of copies of each. The 20 September letter, also seen by Forum 18, is similar.

Then-State Committee Chair Orujev did not explain why he specified that these publications were for use "within the community".

Such letters are required before Customs will allow any religious publications to cross the border. Those who bring in such literature without such letters face confiscation of the literature, with possible prosecution. Religious literature was seized from the Byakov family in late September as they returned from Russia and was sent to the State Committee for such an "expert analysis". The family minibus was also seized (see F18News 25 October 2012 http://www.forum18.org/Archive.php?article_id=1759).

Severe reductions

State Committee documents submitted in the court case – seen by Forum 18 - reveal that in none of the applications mentioned in the suit had the State Committee allowed the community to import the quantities they had asked for, even though the State Committee had found nothing harmful in any of these publications. In two cases, requested quantities were reduced by 80 per cent. The documents also reveal that the State Committee took between two and six weeks to respond to Jehovah's Witness applications for permission to import specific texts.

The State Committee operates Azerbaijan's strict prior compulsory censorship of all religious literature produced, distributed, and imported, in defiance of its international human rights obligations (see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1690).

Court documents seen by Forum 18 reveal that in three separate letters to the State Committee between 11 and 24 August 2011, the Jehovah's Witness community asked for permission to import between 1,500 and 2,000 copies each of nine named publications in Azeri and Russian. However, in its 9 September 2011 response, the State Committee approved the import of each title, but reduced the quantity allowed to between 300 and 1,000 copies each.

On 20 September 2011, in response to two other Jehovah's Witness applications of 12 and 18 August, the request to import between 1,500 and 2,000 copies of a further four named publications in Azeri and Russian was approved, but with a reduction in the quantities to 1,000 copies per publication.

"Considered to be sufficient and reduced"

No reasons were given in the letters for the reductions. However, in a 27 October 2011 response to the initial suit in Baku's Administrative Economic Court No. 2, Allahverdieva of the State Committee stated that the quantities that the Jehovah's Witnesses wanted to import were "considered to be sufficient and reduced". This was the first time that the State Committee had given any reasons for the reductions.

"This was done because, despite the fact that permission is given for use of the religious literature within the Community, Plaintiff Jehovah's Witnesses puts forth effort to conduct religious propaganda and distribute religious literature in a series of regions in the country," Allahverdieva claimed. "This also shows that the amount of religious literature for which the State Committee gives permission to be imported is not only enough for use within the Community but also the religious Community continues its activity by spreading this literature outside the legal address."

Allahverdieva also pointed out that distribution of literature outside a registered religious community's legal address violates Article 12 of the Religion Law (see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1690).

"That's why they were stopped"

Orhan Ali, spokesperson for the State Committee in Baku, insisted to Forum 18 that the Jehovah's Witness suit was related to literature which the State Committee had found "harmful". "We said something harmful was in their books and that's why they were stopped," he claimed from Baku on 8 November. "But they have their [other] publications."

Forum 18 pointed out that the Jehovah's Witness community had brought this suit not over denial of import permission but over restrictions on quantities of books the State Committee "expert analysis" had declared not to contain "harmful" material. However, Ali refused to discuss this or any other question and put the phone down.

Earlier in the conversation Ali had defended the repeated seizures of religious literature from private homes. This has happened to Muslim readers of theologian Said Nursi's works, to Protestants, and to Jehovah's Witnesses. The latest such known seizures happened at two Baptist-owned homes raided by police in Aliabad in north-western Zakatala Region on 7 November (see F18News 9 November 2012 http://www.forum18.org/Archive.php?article_id=1765).

Censorship court challenge fails

On 10 April, six months after it was lodged in court on 12 October 2011, Judge Intizar Bayramova of Baku's Administrative Economic Court No. 2 rejected the Jehovah's Witness suit against the State Committee seeking compensation for the repeated reduction in quantities of their imported literature, according to the verdict seen by Forum 18.

Jehovah's Witnesses then appealed to Baku Appeal Court. However, after hearings on 30 October and 1 November, Judge Seriyev Seyidova rejected the Jehovah's Witness appeal against the lower court decision, the court website notes. Jehovah's Witnesses say they will take their case to Azerbaijan's Supreme Court once they receive the written decision.

"To create an environment of freedom of conscience.."

"Many of the persons with whom she [Mammadaliyeva] discusses the Bible would like to have their own personal copies of every new magazine," the suit lodged in October 2011 notes. However, the 10 April 2012 Baku Administrative Economic Court No. 2 decision records the State Committee, which was represented by Allahverdieva, as claiming that the Jehovah's Witness community cannot speak on behalf of anyone else who might want their literature, but cannot get it because of the restrictions.

Administrative Economic Court No. 2 also described censorship as necessary "to create an environment of freedom of conscience". Its decision claims: "Because it is not only this Community that imports religious literature into the country, it is impossible to provide them with additional privileges, or it would be contradicting the law. At the same time, in order to create an environment of freedom of conscience, putting limitations upon the import of a sufficient amount of literature is normal for all communities. The Community views this as a restriction."

Azerbaijan is the only Council of Europe member state to impose such compulsory censorship – against its human rights obligations – in both law and practice.

In its rejection of the Jehovah's Witness suit, Administrative Economic Court No. 2 held that the reduction in permitted quantities of religious literature was part of the "discretionary power" of the State Committee in implementing "oversight" of religious literature. It argued that as the extra literature for which permission had been denied was to be used to give to others, the rights of the plaintiffs had not been violated and therefore no claim for damages was applicable.

Censorship violates human rights commitments

In their suit against the enforced reduction in quantities of the literature, lodged in court on 12 October 2011, Jehovah's Witnesses describe the practice as "de facto censorship". They noted that they comply with the demand to seek permission to import religious literature despite the fact that this requirement is "unconstitutional and in violation of the European Convention [of Human Rights and Fundamental Freedoms], since it exposes to prior state restraint legitimate religious and educational material that does not violate the interests of public safety; public order, health, and morals; or the rights and freedoms of others".

Jehovah's Witnesses described to Forum 18 as "interesting" the Azerbaijani government's claim to the Council of Europe Venice Commission that restrictions on religious literature are rooted in Article 18, Part 2 of the country's Constitution, which prohibits propagating religious movements that humiliate others.

"One wonders, therefore, what this has to do with restrictions on the quantity of publications approved for import which the State Committee has found harmless," one Jehovah's Witness told Forum 18 on 8 November. "In this case, the Court received copies of the State Committee's own expert studies recommending import because the literature is harmless. The expert conclusions contained no limitations. We argued all of this before the Appeal Court, to no avail."

The Azerbaijani government made its claim in its response to a highly critical review of the country's Religion Law in a joint Opinion by the Venice Commission and the Organisation for Security and Co-operation in Europe (OSCE) adopted in October. The Opinion declared: "The requirement of prior consent for the production and dissemination of religious literature is arguably unnecessary in a democratic society and may violate both freedom of expression and freedom of religion norms" (see F18News 23 October 2012 http://www.forum18.org/Archive.php?article_id=1757).

Censorship also directly violates Azerbaijan's other international human rights commitments, such as Paragraphs 16.9 and 16.10 of the OSCE's Vienna Concluding Document of 1989. These Paragraphs read:

"(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

(16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief" (see compilation of OSCE freedom of religion or belief commitments at http://www.forum18.org/Archive.php?article_id=1351).

Years of censorship

Jehovah's Witness noted that religious literature imports were generally permitted – with several exceptions – between 2003 and early 2007. However, they complained in their suit that "systematic and regular" State Committee denial of import permission or reduction in permitted quantities "began on 28 February 2007 and continues until now". "Where importation has been permitted, Defendant State Committee has also systematically and regularly reduced the quantities permitted by anywhere from 30 to 80 percent of what was requested by Plaintiff Religious Community."

Jehovah's Witnesses also complain that the State Committee has restricted use of the literature permitted importation to "within the community". "These practices have greatly restricted the rights of the individual Plaintiffs and Plaintiff Religious Community's members to carry out their religious worship and the private and public expression of their faith."

State Committee resources

State Committee spokesperson Ali denied to Forum 18 that its employees were slow in processing religious communities' re-registration applications. Many hundreds have not been processed, despite being submitted before a 31 December 2009 deadline (see F18News 9 November 2012 http://www.forum18.org/Archive.php?article_id=1765).

Ali had ended the call before Forum 18 could ask why it takes so long to process "expert analyses" of religious literature submitted by religious communities or seized by police during raids.

On 13 August, President Ilham Aliyev issued a Decree allocating a further 1 million Manats (7.3 million Norwegian Kroner, 1 million Euros, or 1.3 million US Dollars) to "strengthen the technical/material base" of the State Committee. The Decree, published on the presidential website, did not indicate how the money was to be spent.

Forum 18 asked the State Committee in writing on 13 August how it intended to spend the extra funds, but had received no response by 12 November.

Forum 18 notes that the State Committee has recruited many more staff in recent years, especially after harsh amendments to the Religion Law in 2009 and 2011. (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.

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

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