

15 June 2022

AZERBAIJAN: Treason case against Imam Sardar Babayev "clearly fabricated"

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

The State Security Ministry secret police arrested Shia Muslim Imam Sardar Babayev in October 2021 on treason charges. On 14 April, a Baku court extended pre-trial detention for a further five months. Human rights defender Elshan Hasanov described the treason case against Imam Babayev as "clearly fabricated". "No one believes Sardar Babayev is an Iranian spy," said exiled human rights defender Arif Yunus. Imam Babayev has already served a three-year jail term for leading mosque prayers after gaining Islamic education outside Azerbaijan.

On 14 April, a Baku court extended pre-trial detention for a further five months for 48-year-old Shia Muslim Imam Sardar Babayev. Arrested by the State Security Ministry (SSM) secret police in October 2021, he is under investigation on treason charges, which he denies. His lawyer Javad Javadov has lodged a further case to the European Court of Human Rights in Strasbourg after repeated court petitions for his release from pre-trial detention failed.

Imam Babayev has already lodged two earlier cases to the ECtHR over his February 2017 arrest and July 2017 jailing for three years for leading meetings for Islamic worship, after having gained his religious education outside Azerbaijan. The ECtHR has asked the regime questions about both these cases, for the first in September 2018 and for the second in May 2022. Judgments are now awaited (see below).

Telephones at the SSM secret police went unanswered each time Forum 18 called on 15 June. Elmar Jamalov, a Deputy General Prosecutor, refused to discuss the criminal case against Imam Babayev with Forum 18 (see below).

"No one believes Sardar Babayev is an Iranian spy," exiled human rights defender Arif Yunus told Forum 18 in February 2022. "He is the last respected Shia theologian qualified to issue fatwas [religious rulings] who was not already in prison" (see below).

Human rights defender Elshan Hasanov described the treason case against Imam Babayev as "clearly fabricated" (see below).

On 5 May, ECtHR accepted Azerbaijan's admission that it had violated the rights of four Jehovah's Witnesses during a 2011 police raid on a meeting for worship and accepted its offer to compensate them. Rashad Niftaliyev, Yegana Gahramanova, Rana Sadigova and Teymur Valiyev were then fined, though Valiyev's fine was waived because of his disability. Each is now due 3,000 Euros in compensation (see below).

The four told the ECtHR that they wanted a full hearing in the case, rather than for the Court to accept the regime's admission of guilt and offer of compensation in a "unilateral declaration". However, the ECtHR insisted that it "has established clear and extensive case-law concerning complaints relating to the domestic authorities' interference with religious meetings held on private premises", including in two cases against Russia (see below).

In 40 of the 62 concluded cases from Azerbaijan related to the exercise of freedom of religion or belief, the ECtHR found that the regime had violated human rights or accepted the regime's admission that it had violated these rights. The regime has paid the compensation awarded by the ECtHR to the victims. However, it has not changed laws to prevent a recurrence of such violations (see below).

Forum 18 was unable to find out why the regime has not enacted legal changes to prevent the recurrence of violations in the area of freedom of religion or belief. It was unable to reach Chingiz Asgarov, Deputy Head of the Supreme Court in Baku. Asgarov has been the government's representative to the ECtHR since December 2003 (see below).

Court extends pre-trial detention for five months

On 14 April, Baku's Sabail District Court agreed to the Prosecutor's Office request to extend the pre-trial detention of Shia Muslim Imam Sardar Akif oglu Babayev (born 12 March 1974). He was ordered held for a further five months, until 19 September, his

lawyer Javad Javadov told the local media. Babayev has been held since his arrest at the State Security Ministry (SSM) secret police Investigation Prison in Baku.

The SSM secret police arrested Imam Babayev on 19 October 2021 (https://www.forum18.org/archive.php?article_id=2718), and prosecutors are investigating him under Criminal Code Article 274 ("High treason"), his lawyer Javadov noted at the time. This carries a punishment of between 12 and 20 years' imprisonment. Javadov was unable to reveal the substance of the prosecutors' case as he had been ordered not to reveal details of the investigation.

Imam Babayev is accused of treason for allegedly cooperating with and taking instructions from an Iranian intelligence agency, and acting against Azerbaijan. At the hearing, Imam Babayev rejected the allegations against him, arguing that they are politically motivated. His lawyer Javadov objected to the continued pre-trial detention.

Telephones at the SSM secret police went unanswered each time Forum 18 called on 15 June.

Elmar Jamalov, a Deputy General Prosecutor, refused to discuss the criminal case against Imam Babayev with Forum 18 on 15 June.

"No one believes Sardar Babayev is an Iranian spy," exiled human rights defender Arif Yunus told Forum 18 in February 2022 (https://www.forum18.org/archive.php?article_id=2718). "He is the last respected Shia theologian qualified to issue fatwas [religious rulings] who was not already in prison."

Human rights defender Elshan Hasanov described the case against Imam Babayev as "clearly fabricated". He said he had written an official enquiry about his case to the Especially Serious Crimes Department of the General Prosecutor's Office. "They replied by telephone that the case is classified as secret and that no information could be given," Hasanov told Forum 18 from Baku on 15 June. "They told me not to bother them again."

Imam Babayev had earlier been jailed in 2017 for three years for leading Islamic worship after having studied abroad. He had led Friday prayers at the invitation of the state-controlled Caucasian Muslim Board (https://www.forum18.org/archive.php?article_id=2429) since 2009. His lawyer Javadov pointed out at the time that Babayev completed his theological education abroad in 2000, 15 years before the Criminal Code article Babayev was convicted under came into force.

Oktay Gulaliyev of Azerbaijan Without Political Prisoners told Caucasian Knot in July 2017 (https://www.forum18.org/archive.php?article_id=2429) that Imam Babayev was jailed "because of his popularity among believers". He described the Imam as "an educated theologian" whose sermons "aroused great interest". "The authorities see a threat in the activity of believers," he explained.

Babayev's appeal against the 14 April 2022 decision was considered at a hearing on 22 April at Baku Appeal Court, chaired by Judge Ramin Qaraqurbanli. Babayev was also present at the hearing. "We defended the appeal and demanded the annulment of the decision and the release of Sheikh Sardar," his lawyer Javadov told the local media. "However, Baku Appeal Court upheld the decision of the first instance court."

The regime has recently increased its restrictions on Muslims exercising their freedom of religion and belief. In the first known use of new powers for appointing, re-appointing every five years, and firing all Islamic clergy (https://www.forum18.org/archive.php?article_id=2749), in early May the State Committee for Work with Religious Organisations fired Imam Mirseymur Aliyev in Neftchala. He had held end of Ramadan prayers on 3 May, not the regime-enforced date of 2 May.

Court rejects Babayev's petition for transfer out of pre-trial detention

On 3 June, Judge Ilkin Rustamli of Sabail District Court considered a petition to replace Babayev's pre-trial detention with house arrest or release on bail, his lawyer Javad Javadov told the website Maide.az. He said that Babayev – who rejects all the allegations against him - also took part in the hearing. However, Sabail District Court rejected the petition. Javadov said that he would appeal against the decision.

The address of the SSS secret police Investigation Prison where Imam Babayev is being held is:

Dövlət Təhlükəsizliyi Xidməti

Istintaq Təcridxanası

Parlament Prospekti 14

Baku AZ-1009

Azerbaijan

Babayev's third appeal to ECtHR in Strasbourg

On 23 March, Babayev's lawyer Javadov lodged a third appeal to the European Court of Human Rights (ECtHR) in Strasbourg. The ECtHR has already registered the case (Application No. 19549/22), court officials told Forum 18 from Strasbourg on 13 June.

The ECtHR is already considering two earlier applications concerning Imam Babayev. The first application is over the regime's arrest of Imam Babayev in February 2017 (https://www.forum18.org/archive.php?article_id=2263). The second application is about the regime's July 2017 jailing of him for three years (https://www.forum18.org/archive.php?article_id=2263) for leading meetings for Islamic worship, after having gained his religious education outside Azerbaijan (see below).

Regime admits violations in further Jehovah's Witness ECtHR case

On 5 May, the European Court of Human Rights (ECtHR) in Strasbourg accepted Azerbaijan's admission that it had violated the rights of four Jehovah's Witnesses during a 2011 police raid on a meeting for worship and accepted its offer to compensate them.

In its "unilateral declaration" in the case of Niftaliyev and Others v. Azerbaijan (Application No. 561/12 (<https://hudoc.echr.coe.int/eng?i=001-217618>)), the regime admitted that "there was a violation of the applicants' rights guaranteed under the [European] Convention [on Human Rights and Fundamental Freedoms]". It agreed to pay each of the four applicants compensation of 3,000 Euros (5,300 Azerbaijani Manats, 31,000 Norwegian Kroner or 3,125 US Dollars).

"By a letter dated 4 March 2020, the applicants indicated that they welcomed the recognition of the violation of their Convention rights by the Government, but that they were not satisfied with the terms of the unilateral declaration," the ECtHR decision notes. "In particular, they contended that the issues raised in the present application had not been determined by the Court in previous cases against the respondent State and that the Government's unilateral declaration did not address the problems underlying the alleged violations of the Convention."

Despite the applicants' insistence that the regime needed to address why the violations had occurred, the ECtHR accepted the terms of the "unilateral declaration". The ECtHR pointed out that it "has established clear and extensive case-law concerning complaints relating to the domestic authorities' interference with religious meetings held on private premises", including in two cases against Russia.

In June 2011, police raided a Jehovah's Witness meeting for worship in Yegana Gahramanova's home in Ganca. A court fined Gahramanova, as well as Rashad Niftaliyev, Rana Sadigova and Teymur Valiyev (though his fine was reduced to a warning because of his disability) (https://www.forum18.org/archive.php?article_id=1604) for an "illegal" religious meeting. The Baku Jehovah's Witness community joined the application to the ECtHR, which was lodged in January 2012.

The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-175874>) about the case on 6 July 2017. The ECtHR received all submissions from both parties by 7 February 2018.

"It is easier a couple of times a year to buy off those few complainants"

In line with Azerbaijan's legally-binding international human rights obligations, the decisions of both the ECtHR and the United Nations (UN) Human Rights Committee require the regime to change its laws and practices so that freedom of religion and belief violations cannot recur (https://www.forum18.org/archive.php?article_id=2664). Forum 18 is not aware of any proposed government legal or other changes to meet this obligation.

Forum 18 was unable to find out why the regime has not enacted legal changes to prevent the recurrence of violations in the area of freedom of religion or belief. It was unable to reach Chingiz Asgarov, Deputy Head of the Supreme Court in Baku. Telephones went unanswered on 15 June. Asgarov has been the government's representative to the ECtHR since December 2003.

Elmar Jamalov, a Deputy General Prosecutor, refused to discuss with Forum 18 on 15 June why ECtHR decisions do not lead to any legal changes to prevent violations recurring.

One lawyer argues that more must be done to achieve the fulfilment of ECtHR decisions. "At present, the government offers only compensation for the judgments of the European Court of Human Rights," the lawyer – who asked not to be identified for fear of state reprisals – told Forum 18 in June 2021 (https://www.forum18.org/archive.php?article_id=2664). "The Council of Europe must launch enforcement mechanisms, as the judgment of the Court alone is not enough for justice. Only the Court judgment together with an enforcement mechanism can be fair."

"It is easier a couple of times a year to buy off those few complainants who manage to get to the European Court than to change the well-established system that suits the authorities," Eldar Zeynalov of the Human Rights Centre of Azerbaijan told Forum 18 from

Baku in March 2021 (https://www.forum18.org/archive.php?article_id=2647). "And if it is possible to do this without bringing the essence of the problem to public consideration at all, this is ideal for the government. And this is exactly what happens when concluding friendly settlements or when the ECtHR accepts a unilateral declaration from the government."

Baku lawyer Asabali Mustafayev, who has taken freedom of religion or belief cases to the ECtHR, commented: "Demands on the government from outside are too weak," he told Forum 18 in June 2021 (https://www.forum18.org/archive.php?article_id=2664). "The Council of Europe and other international organisations are not insistent enough, so the government gets away with flouting [its obligations]".

An example of this is the regime's flouting of its obligations in relation to conscientious objection to military service. Despite an October 2021 ECtHR decision that the regime had violated the human rights of two more conscientious objectors, Saadat Novruzova of the Presidential Administration's Human Rights Protection Unit told Forum 18 (https://www.forum18.org/archive.php?article_id=2695) in November 2021 that changing the law to introduce a civilian alternative to compulsory military service "is not under discussion".

Ahead of 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" (https://www.forum18.org/archive.php?article_id=2429).

The 7 October 2021 ECtHR decision reminded Azerbaijan of a similar earlier decision that "calls in principle for legislative action" to satisfy "the obligations incumbent on it of assuring .. the right to benefit from the right to conscientious objection" (https://www.forum18.org/archive.php?article_id=2695).

Seven known cases awaiting ECtHR decisions

The ECtHR in Strasbourg has already completed 62 cases from Azerbaijan submitted since 2004 related to violations of freedom of religion or belief and inter-related rights (https://www.forum18.org/archive.php?article_id=2665).

Of these 62 completed cases:

- 19 ended in findings of violations and awards of compensation;
- 20 were closed after Azerbaijan admitted violations and offered compensation in a "unilateral declaration";
- 12 were friendly settlements, where the regime agreed to pay compensation (in 1 case it also admitted violations);
- 11 were dismissed or withdrawn (one following the death of the applicant).

In 40 of the 62 concluded cases the ECtHR found that the regime had violated human rights related to the exercise of freedom of religion or belief or the ECtHR accepted the regime's admission that it had violated these rights. The regime has paid the compensation awarded by the ECtHR to the victims. However, the regime has not changed laws to prevent a recurrence of such violations (see above).

With the latest case by Shia Imam Sardar Babayev, seven ECtHR cases related to the regime's violations of freedom of religion or belief are known to remain. The cases – submitted between 2012 and 2022 - cover a wide range of violations. Of these, 6 were lodged by Muslims and 1 by Jehovah's Witnesses. Some cases cover more than one violation, such as police seizing religious literature during a raid on a meeting for worship.

In approximate reverse chronological order of violation they are:

- Jailed for exercising freedom of religion or belief (1 case involving 1 individual applicant)
- State censorship of religious literature (1 case involving 1 individual applicant)
- Raid on meetings for worship (1 case involving 1 individual applicant)
- Jailed for leading prayers (2 cases involving 1 individual applicant)
- Unlawful house search (1 case involving 1 individual applicant)
- Registration denial (1 case involving 2 individual applicants and 1 community)

Details of all seven cases are given below.

ECtHR: Jailed for exercising freedom of religion or belief

Babayev v. Azerbaijan (Application No. 19549/22)

The State Security Ministry (SSM) secret police arrested Shia Muslim Imam Sardar Babayev in October 2021. Prosecutors are investigating him on treason charges, accusing him of cooperating with and taking instructions from an Iranian intelligence agency, and acting against Azerbaijan. Imam Babayev rejects the allegations against him, arguing that they are politically motivated. His lawyer Javadov objected to the continued pre-trial detention.

The ECtHR has not yet asked the regime questions about the case.

ECtHR: State censorship of religious literature

Miriyev v. Azerbaijan (Application No. 1717/20).

In February 2018, the State Committee for Work with Religious Organisations on theological grounds banned the publication and distribution of the book (https://www.forum18.org/archive.php?article_id=2351) "Things Not Existing in Islam" by Muslim theologian Elshad Miri (also known as Miriyev). Repeated legal appeals against the ban failed (https://www.forum18.org/archive.php?article_id=2485). After failing on 20 December 2019 in the Supreme Court to overturn the ban, Miri lodged a case in the ECtHR (https://www.forum18.org/archive.php?article_id=2490).

The ECtHR has not yet asked the regime questions about the case.

ECtHR: Raids on meetings for worship

Rafiyev v. Azerbaijan (Application No. 81028/17 (<https://hudoc.echr.coe.int/eng?i=001-186530>)).

In March 2017, police raided a home in Quba where Muslims who study Said Nursi's works were meeting and seized religious literature. Almost all of those present were fined in March 2017, including Vuqar Rafiyev (https://www.forum18.org/archive.php?article_id=2294).

The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-186530>) about the case on 6 September 2018.

ECtHR: Jailed for leading prayers

1) Babayev v. Azerbaijan (Application No. 34015/17 (<https://hudoc.echr.coe.int/eng?i=001-186531>)).

Police arrested Shia Muslim Imam Sardar Babayev in February 2017 for leading prayers in a mosque having gained his religious education outside Azerbaijan (https://www.forum18.org/archive.php?article_id=2295).

The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-186531>) about the case on 4 September 2018.

"The government gave its comments, they were sent to us and we in turn gave our comments," his lawyer Javad Javadov told Forum 18 in March 2020 (https://www.forum18.org/archive.php?article_id=2557). He said they are now waiting for the ECtHR to give its judgment.

2) Babayev v. Azerbaijan (Application No. 26896/18). After a court jailed Imam Sardar Babayev in July 2017 for three years, his lawyer lodged this second case (https://www.forum18.org/archive.php?article_id=2353) to challenge the conviction for leading prayers.

The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-217506>) about the case on 3 May 2022 (see above).

ECtHR: Unlawful house search

Miragayev v. Azerbaijan (Application No. 29550/14 (<https://hudoc.echr.coe.int/eng?i=001-187776>)).

In May 2012 police and the then-National Security Ministry (NSM) secret police raided Zeka Miragayev's Baku home (https://www.forum18.org/archive.php?article_id=1719). Police confiscated 30 copies of the Koran, 24 other books (including some by Said Nursi), a computer, and a small sum of money. After repeated failures of legal challenges to the raid and confiscations (https://www.forum18.org/archive.php?article_id=1820), the ECtHR application concerns the unlawful search of the applicant's flat.

Miragayev also notes that he was not duly notified of a hearing before the Supreme Court.

The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-187776>) about the case on 24 October 2018.

ECtHR: Registration denial

Moroz and Others v. Azerbaijan (Application No. 49264/12).

Baku's Jehovah's Witness community was first registered in December 1999 and gained the compulsory re-registration in February 2002. It applied for another compulsory re-registration in November 2009 (https://www.forum18.org/archive.php?article_id=1389), but the State Committee rejected the re-registration application in February 2010 (https://www.forum18.org/archive.php?article_id=1429), after which the community went to court. After nearly two years from 2010 of unsuccessful legal challenges to the State Committee (https://www.forum18.org/archive.php?article_id=1632), in February 2012 Jehovah's Witnesses finally lost their case in the Supreme Court (https://www.forum18.org/archive.php?article_id=1689).

Leonid Moroz, another community member, and the Baku community itself then lodged their ECtHR application on 1 October 2012.

The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-212587>) about the case on 20 September 2021. (END)

Full reports on freedom of thought, conscience and belief in Azerbaijan
(<https://www.forum18.org/archive.php?query=&religion=all&country=23>)

For more background, see Forum 18's Azerbaijan religious freedom survey (https://www.forum18.org/archive.php?article_id=2429)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments
(https://www.forum18.org/archive.php?article_id=1351)

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