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AZERBAIJAN: Jehovah's Witness seeks right to alternative service

By Felix Corley, Forum 18

Despite a constitutional right to do alternative service and Azerbaijan's commitment to the Council of Europe to introduce a law regulating such alternative service (for which the deadline has long expired), Jehovah's Witness Mahir Bagirov has so far failed to secure this right in two court hearings. "I'm a Jehovah's Witness, and my religious convictions would be violated if I was forced to bear arms," he told Forum 18. He has now lodged an appeal against the denial of his rights to the Supreme Court, but fears he could be seized and sent to a military unit at any time. A man who said he was from the police telephoned Bagirov's mother on 3 October threatening that her son would be imprisoned.

A Jehovah's Witness who is trying to claim his constitutional right to do alternative non-military service rather than military service has so far failed. Mahir Bagirov told Forum 18 News Service that on 16 September the appeal court in the capital Baku rejected his case that the demand that he present himself for military service was illegal and unconstitutional. "I have now received the text of the judgment and have lodged my further appeal to the Supreme Court," he told Forum 18 on 5 October. "But the other problem is that, as a civil judgment, the ruling has already entered into force."

Bagirov fears he could be seized and sent to a military unit at any time. An unidentified man who said he was from the police telephoned Bagirov's mother at her home on 3 October threatening that her son would be seized and imprisoned.

Rauf Guliev, head of the international relations department at Azerbaijan's Constitutional Court, maintains that the right to perform alternative service does not depend only on the constitution, but on the proposed law on alternative service now being considered by parliament. "Under the constitution and Azerbaijan's commitments to the Council of Europe the right to perform alternative service must be provided," he told Forum 18 from Baku on 22 September, "but I am not permitted to issue clarifications of the legal position on such issues."

Guliev did not appear to support the unqualified supremacy of the constitution. "Our basic objective at the Constitutional Court is to ensure the supremacy of the constitution," he told Forum 18. "The constitution is the supreme law, but it depends on the situation." He did not elaborate.

Guliev said the Constitutional Court can act only in response to petitions brought by individual citizens who claim their rights have been violated, adding that he is not aware that it has ever ruled on an alternative service case. He said that if Bagirov believes his rights are being violated he should take his case through the courts. "He should go to the Supreme Court and if he is still not satisfied he can bring his case to the Constitutional Court."

Adil Gadjeiev, an official at the ombudsman's office in Baku, told Forum 18 that as no alternative service law has yet been adopted setting out the mechanism of how such a service should work, those unable to do military service on grounds of conscience should inform the military commissariat, who would then not generally call up the individual.

Asked what should happen if the commissariat ignored the individual's request not to serve, Gadjeiev responded: "Then the person should apply to us immediately as we'll deal with the appropriate commissariat." He said so far his office had dealt with only one case, of a Jehovah's Witness in 2003. "This was resolved positively."

Told about the 16 September appeal court ruling rejecting Bagirov's case, Gadjeiev responded: "I can't criticise a court ruling, but I would consider it a mistake because it contradicts the constitution." He offered to intervene to resolve Bagirov's case. After Forum 18's interview with Gadjeiev, Bagirov sought his assistance and presented all the documents in the case, but Gadjeiev said he was unable to help as it was before the courts.

Bagirov, who is 28, was called up in 2000 but wrote to the recruitment office declaring that he wished to perform alternative service because of his faith. "I'm a Jehovah's Witness, and my religious convictions would be violated if I was forced to bear arms," he told Forum 18. His application received no response, but he then received a three-year deferment as he began studies.

He was called up again in May of this year and ordered to report to a military unit. On 9 June he lodged his suit at Baku's Khatai

district court, arguing that the insistence that he perform military service was illegal and in violation of Article 76 part 2 of the constitution, which declares: "If the beliefs of citizens come into conflict with service in the army then in some cases envisaged by law alternative service instead of regular army service is permitted." Bagirov claims that in rejecting his suit on 16 September, the court failed to give any reasoned argument.

In a separate case, Bagirov has appealed for the military unit that claims to have conscripted him to remove him from its list. The hearing at Baku's Sabail district court is due to be heard on 8 October.

Although Azerbaijan adopted an alternative service law in the early 1990s, the war with ethnic Armenian forces over the Nagorno-Karabakh region meant that it was never implemented. Azerbaijani officials have since then always denied that an alternative service law exists.

One of Azerbaijan's commitments on joining the Council of Europe in January 2001 was "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". Azerbaijan failed to meet this deadline, although a constitutional amendment approved by referendum in August 2002 spelled out the right to perform alternative service.

The whole process of adopting an alternative service law has been shrouded in secrecy. "The law has not been adopted," Rahim Ahundov of the parliamentary press service told Forum 18 from Baku on 27 September. "We are still working on it, introducing improvements and consulting." He said he was unable to give a specific date for when it will go to parliament as this depends on parliament's agenda.

But he claimed that parliament was taking its commitment seriously. "This needs very serious deliberation. You can't just pass any piece of paper – there could be a lot of flaws." He declined to make the current draft of the law available to Forum 18.

Mats Lindberg, the Council of Europe's representative in Baku, insisted to Forum 18 on 23 September that Azerbaijan still must meet this commitment, adding that his organisation has already given its comments on the current draft of the law. He added that his office had not dealt with Bagirov's case.

A Council of Europe official who has been involved in the issue of alternative service at its headquarters in Strasbourg told Forum 18 that the organisation is awaiting confirmation of a date to meet the law's drafters to discuss its recommended changes. "We know the deadline for adopting this law under Azerbaijan's commitments has passed," the official declared. "Adopting such a law meeting basic standards is high on our agenda – and we know it's high on the Azerbaijani government's agenda."

On 5 October the Council of Europe parliamentary assembly debated how far Azerbaijan's institutions are now democratic and approved a resolution calling for the introduction of an alternative service.

Eldar Zeynalov, head of the Human Rights Centre of Azerbaijan, is concerned about Bagirov's failure to secure his constitutional right, especially in contrast to the way a similar case – against fellow Jehovah's Witness Leonid Moroz – was resolved in 2002. "Very interesting is that the criminal case against Moroz was closed because of the 2002 amendment to the constitution. So the current behaviour of the military authorities appears anachronistic," he told Forum 18 from Baku on 17 September. "Beside the urgency to protect him from the draft, the new trend of the judiciary to ignore the amended Constitution is why there is a need to intervene."

Moroz argued on the same basis that the constitution guaranteed his right not to do military service but an alternative instead. But the military commissariat of Baku's Khatai district appealed to the district prosecutor's office, which instituted legal proceedings. The court hearing began on 2 July 2002 in Khatai district court, but the prosecutor immediately petitioned the judge to send the case back to the prosecutor's office as it was not completed. After looking into materials submitted by Moroz's lawyer, the judge ruled to direct the case for additional investigation.

Moroz was never tried and the case was closed, though Forum 18 has received reports that new attempts have been made in recent months to conscript him.

For more background information see Forum 18's Azerbaijan religious freedom survey at

http://www.forum18.org/Archive.php?article_id=92

A printer-friendly map of Azerbaijan is available at

<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=azerba>

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