

22 August 2017

AZERBAIJAN: Torture unpunished; compensation for imprisonment

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

Muslim Unity Movement deputy leader Abbas Huseynov was beaten and handcuffed "as if crucified" in Qobustan Prison's punishment cell. Appeals brought "no result". Movement leader Taleh Bagirov was sent to punishment cell for requesting a doctor. A Baku court compensated two Jehovah's Witnesses for their year's imprisonment.

Deputy leader of the Muslim Unity Movement Abbas Huseynov was put in the punishment cell twice and tortured immediately after his transfer to the harsh Qobustan Prison near the capital Baku on 22 July. The Movement's leader, 33-year-old Imam Taleh Bagirov (also known as Bagirzade), was transferred to the same prison on 29 July. He was put in the prison punishment cell for a week after he felt ill and asked for a doctor.

Huseynov's lawyer appealed about the torture to the General Prosecutor's Office, the government's Human Rights Ombudsperson and a Baku court.

The Ombudsperson's Office told Forum 18 its staff had visited Huseynov but would not confirm that he had been tortured. It added that it had appealed to the General Prosecutor's Office but "there's been no result yet". It knew of no prison officials punished in 2017 for torturing prisoners (see below).

Both Imam Bagirov and Huseynov – arrested when armed police stormed a house in the village of Nardaran in November 2015 - lost their appeals on 20 July against 20-year prison terms (see below).

Meanwhile, two Jehovah's Witnesses, Valida Jabrayilova and Irina Zakharchenko, finally won their suits for compensation for their nearly one-year imprisonment and convictions for offering one religious book to a resident near their homes in Baku. A city court awarded them compensation for "material and moral damage" on 8 August, exactly six months after the Supreme Court finally exonerated them (see below).

Sardar Babayev is awaiting a date for his appeal hearing against his three year prison term. The 43-year-old Shia Imam was jailed on 3 July to punish him for leading Muslim worship services having gained Islamic education abroad, the first known individual to have been punished for this "crime" (see below).

The criminal case on treason charges against 45-year-old Shia Muslim Jeyhun Jafarov has now been closed, with no trial. Arrested in March 2015, he was held by the then National Security Ministry (NSM) secret police. A year and a half after his arrest, a court ordered his transfer to living at home under restrictions in September 2016. The restrictions were lifted with the closure of the case (see below).

UN condemnation

The United Nations Working Group on Arbitrary Detention condemned many aspects of Azerbaijan's prison system in its report of a May 2016 visit to the country. The Working Group - whose delegation visited 23 places of detention on the visit - published its report (A/HRC/36/37/Add.1) on 2 August 2017.

"The Working Group observes that human rights defenders, journalists, political and religious leaders continue to be regularly detained under criminal or administrative charges," the report declares. "These practices are contrary to the obligations of Azerbaijan under international human rights law." It called for those subjected to such arbitrary imprisonment to receive redress and for those guilty of subjecting them to such arbitrary detention to be punished "appropriately".

The delegation received "much testimony" about torture from prisoners during the visit, the Working Group noted.

Among its recommendations to the government were many on the issue of torture: "Take immediate measures to combat torture and

end the practice of impunity, and ensure, in law and in practice, that every person has access to independent complaints mechanisms that will effectively investigate and respond promptly; that alleged perpetrators are prosecuted and, if they are found guilty, receive sentences that are commensurate with the gravity of their acts; and that victims are afforded appropriate redress."

Bagirov, Huseynov: Appeals rejected

Shia Muslim theologian and prisoner of conscience Taleh Kamil oglu Bagirov (also known as Bagirzade, born 23 June 1984), leader of the Muslim Unity Movement, and the deputy leader Abbas Mammadbagir oglu Huseynov were among 18 men who failed in their attempt to overturn the long prison terms handed down in January.

On 20 July, Judge Amir Bayramov of Baku Appeal Court left the convictions and sentences of all 18 men unchanged, according to court records.

On 25 January, Baku's Serious Crimes Court had sentenced the 18 men to prison terms of between ten and 20 years on a range of serious charges, including terrorism, an attempt to seize power violently, illegal firearms possession, and murder. All denied any guilt.

The Court gave Bagirov and Huseynov the harshest terms: 20 years' imprisonment each, with the first seven years to be served in Qobustan strict regime prison along the coast to the south-west of Baku (see F18News 9 February 2017 http://www.forum18.org/archive.php?article_id=2254).

Many of those on trial, including Imam Bagirov, were arrested during or immediately after an armed assault by the authorities on the village of Nardaran, north of Baku. During the 26 November 2015 raid, two police officers and at least five villagers were shot dead and police then detained 14 Muslims as prisoners of conscience. More villagers were detained later. The raid was a major escalation of the authorities' attempts to suppress the Muslim Unity Movement (see F18News 1 December 2015 http://www.forum18.org/archive.php?article_id=2127).

The authorities claim the Muslim Unity Movement under Imam Bagirov was planning an armed uprising and had collected weapons. However, five days after the Nardaran attack, Etibar Najafov, Chief Adviser on Multiculturalism, Ethnic and Religious Affairs in the Presidential Administration, told Forum 18 that the Muslim Unity Movement had not killed or proposed killing anyone. He also could not explain what, if any, laws they might have broken (see F18News 1 December 2015 http://www.forum18.org/archive.php?article_id=2127).

Huseynov: Torture

On 22 July 2017, two days after the rejection of the men's appeal, Huseynov and two other prisoners were transferred to Qobustan strict regime prison. When he arrived, Huseynov was handcuffed and left to stand with other prisoners in the hot sun before being beaten with truncheons, his lawyer Yalchin Imanov told Caucasian Knot website on 9 August. Huseynov was then put in the punishment cell until 29 July.

On 25 July, while Huseynov was in the punishment cell, one warder punched him in the stomach and jaw, the lawyer Imanov added. The following day, warders took him out of the punishment cell and left him for three hours handcuffed to an iron post in the prison yard in the hot sun before returning him to his cell.

On 29 July, Bagirov was also transferred to Qobustan strict regime prison, where he was placed in the cell next to Huseynov's. When Bagirov felt unwell, he asked the warder to summon a doctor. However, the warder instead insulted Bagirov, Huseynov told the lawyer Imanov, according to Caucasian Knot. Huseynov and other prisoners then began to complain. The following day Bagirov too was placed in the punishment cell, where he was held until 7 August.

On 5 August, Huseynov was taken to one of the prison's supervisors. "This is Qobustan, where rights end," the official told Huseynov. "They then knocked Huseynov to the ground and started to beat him with truncheons," Imanov told Caucasian Knot. "They then handed him eight more days in the punishment cell. There they handcuffed his hands and feet to the metal bed. Huseynov was held for two days in the punishment cell practically as if crucified."

Huseynov: Appeals over torture, but "no result yet"

On 9 August the lawyer Imanov lodged a complaint to the Prosecutor's Office and to the state-controlled Human Rights Ombudsperson's Office about the torture meted out to Huseynov, he told Caucasian Knot.

The following day the lawyer also lodged an appeal to Baku's Qaradag District Court. He asked it to order a medical assessment of his client and to recognise his treatment as torture, as recognised in Article 3 of the European Convention on Human Rights and Fundamental Freedoms. This declares: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

However, on 16 August the Court informed Imanov that it does not consider such cases. The lawyer rejected such argumentation, he told Caucasian Knot the same day.

On 15 August officials of the International Committee of the Red Cross visited Qobustan prison, where they met Huseynov, Bagirov and another of the sentenced prisoners.

Major General Huseyn Alikhanov, deputy head of the Justice Ministry's Penitentiary Service, was on holiday, his office told Forum 18 on 22 August. An assistant, who did not give his name, insisted that "everything is normal" at Qobustan Prison. Asked what action the Penitentiary Service is planning to stop further torture and punish those responsible for torturing Huseynov, the official responded: "We don't discuss these issues by telephone."

Rashid Rumzada, head of the Torture Prevention Department at the government's Human Rights Ombudsperson's Office, was also on holiday. Vafa Verdiyeva, head of the Department's Monitoring Unit, told Forum 18 on 22 August that the Ombudsperson's Office had sent officials to visit Huseynov in Qobustan Prison on 10 August.

Huseynov's lawyer Imanov told the Turan news agency that he was transferred to a freshly renovated cell and given clean clothes just for the Ombudsperson's Office visit. Immediately afterwards he was transferred back to his unmodernised cell.

However, Verdiyeva was unable to say if the officials confirmed that Huseynov had been tortured in prison. "I'm not able to say what they found," she told Forum 18. "That's confidential." Asked if any prison officials had been arrested on suspicion of inflicting torture on Huseynov, she responded: "That's not proved yet. No one's been arrested."

Verdiyeva claimed that the Ombudsperson's Office had appealed to the General Prosecutor's Office in Huseynov's case and that any further action is its responsibility. "There's been no result yet – we're waiting."

Verdiyeva added that no prison officials had been punished in Azerbaijan in 2017 for inflicting torture on prisoners. She was unable to say how many had been punished for this in 2016, "maybe none".

No one at the General Prosecutor's Office in Baku was available on 22 August to tell Forum 18 what it had done (if anything) about the appeals over the torture of Huseynov. Eldar Sultanov, head of the press service, asked Forum 18 to call back later. Each time it did so his numbers went unanswered. The telephones of other officials similarly went unanswered.

Of the 18 men convicted in the case in January, 17 told the court that they had been tortured after their arrests to extract confessions and "testimony" against others. Despite Azerbaijan's binding international human rights obligations, no officials have been arrested or put on criminal trial for torturing people (see F18News 9 February 2017 http://www.forum18.org/archive.php?article_id=2254).

Bagirov was also subjected to "severe torture" and a broken nose while in detention at the Interior Ministry's Main Directorate for the Struggle with Organised Crime in December 2015 (see F18News 27 January 2016 http://www.forum18.org/archive.php?article_id=2143).

In its concluding observations on Azerbaijan adopted on 26 November 2015 (CAT/C/AZE/CO/4), the United Nations Committee Against Torture expressed concern about "numerous and persistent allegations that torture and ill-treatment are routinely used by law enforcement and investigative officials, or with their instigation or consent".

The UN Committee added that it was "particularly concerned that, according to the State party's report, during the period 2010-2015 not a single individual was prosecuted despite the 334 complaints against officials of the prison system for torture or ill-treatment investigated by the Prison Service between 2009 and 2013", as well as numerous complaints of torture by police and other agencies.

The Committee noted that Azerbaijan's failure to prosecute anyone for torture is "a strong indication that investigations into allegations of torture are not conducted in a prompt, efficient and impartial manner".

The address of Qobustan strict regime prison is:

AZ-1080

Baki Shahari

Qaradag rayonu

Qobustan qasabasi

Habskhana

Zakharchenko and Jabrayilova: Compensation for wrongful imprisonment, conviction

On 8 August, Judge Shahin Abdullayev of Baku's Nasimi District Court ruled that the Finance Ministry must compensate two Jehovah's Witnesses, Valida Jabrayilova and Irina Zakharchenko, for their imprisonment, according to court officials.

The Judge ordered that the Ministry must pay Zakharchenko 9,744 Manats (1,744 Manats for "material damage" and 8,000 Manats for "moral damage"). Jabrayilova is to receive 8,200 Manats (200 Manats for "material damage" and 8,000 Manats for "moral damage"). The Judge issued the written decision the following day.

Government figures put the average monthly wage for those in work in 2016 at nearly 500 Manats.

The Finance Ministry had not yet handed over the compensation to Zakharchenko and Jabrayilova as of 22 August.

Zakharchenko and Jabrayilova were arrested in February 2015 to punish them for offering one religious book without the compulsory state permission. They were held by the then National Security Ministry (NSM) secret police as prisoners of conscience for ten months before they were transferred to an ordinary prison.

Charges against the two were brought 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 of 7,000 to 9,000 Manats or imprisonment of two to five years.

The United Nations Working Group on Arbitrary Detention called in December 2015 for the two women to be freed and compensated. In January 2016 the two were convicted under Criminal Code Article 167-2.2.1 and given a large fine. At the same time the fine was waived and the women freed, but they were not compensated for their wrongful imprisonment as the Working Group had demanded (see F18News 29 January 2016 http://www.forum18.org/archive.php?article_id=2144).

Zakharchenko and Jabrayilova appealed against their conviction. On 29 March 2016, Baku Appeal Court left the sentence unchanged. The two women's further appeal reached the Supreme Court on 19 September 2016, which exonerated them on 8 February 2017. For reasons which remain unclear, the Supreme Court did not issue the written decision until 8 May 2017 (see F18News 10 July 2017 http://www.forum18.org/archive.php?article_id=2295).

During the February 2017 Supreme Court hearing, lawyers for Zakharchenko and Jabrayilova "highlighted the government's breach of fundamental human rights in the unwarranted and abusive treatment of the two Witness women", Jehovah's Witnesses noted. The Court allowed both women to relate what they had endured through more than 11 months of pre-trial detention and how it had affected them.

Jabrayilova described conditions as bad in the then-NSM secret police Investigation Prison. The two women were held there from February until December 2015. "She called her confinement room a 'cage', rather than a cell, in that there was no privacy and everything was exposed to the sight of others," Jehovah's Witnesses noted. "The smell of sewage in this 'cage' was suffocating." Prison officials constantly demanded money from prisoners (see F18News 20 January 2016 http://www.forum18.org/archive.php?article_id=2140).

Zakharchenko and Jabrayilova long tried to gain compensation for their imprisonment. Baku's Administrative Economic Court No. 2 rejected their appeal for compensation. On 6 December 2016, Baku Appeal Court rejected the women's appeal against that decision.

The two women lodged a further compensation suit against the NSM secret police's successor, the State Security Service (SSS), in Baku's Sabail District Court, which rejected it on 19 April 2017. Baku Appeal Court rejected their appeal against that rejection on 30 May, according to court records.

The two women lodged a parallel suit – not against the SSS secret police but the Finance Ministry - to Baku's Nasimi District Court on 11 April, with an amended suit on 3 July. This time the suit resulted in compensation being ordered.

Babayev: Awaiting appeal hearing

Shia Imam Sardar Akif oglu Babayev (born 12 March 1974) is awaiting his appeal hearing against his three year prison term. On 24 July, his lawyer Javad Javadov lodged the appeal on behalf of his client to Shirvan Appeal Court, Javadov told Forum 18 from Baku on 21 August. The court has not yet set a date for the appeal hearing.

Imam Babayev, who is married with three children, was jailed on 3 July to punish him for leading Muslim worship services having gained Islamic education abroad, the first known individual to have been punished for this "crime". Masalli District Court handed down the three-year prison term under Criminal Code Article 168-1.3.1 (see F18News 10 July 2017 http://www.forum18.org/archive.php?article_id=2295).

Criminal Code Article 168-1 punishes "violation of the procedure for religious propaganda and religious ceremonies", including by conducting of Islamic rites by a citizen who has received their education abroad. Article 168-1.3.1 punishes those who commit such violations "repeatedly", with a prison term of between two and five years.

Article 168-1 was added to the Criminal Code in December 2015 as part of a hastily-prepared package of amendments to a variety of laws. Officials did not explain why those who conduct Islamic rituals are singled out for especially harsh punishment (see F18News 16 December 2015 http://www.forum18.org/archive.php?article_id=2134).

Imam Babayev is still being held in Kurdakhani Investigation Prison in Sabunchu District in north-eastern Baku, his lawyer Javadov told Forum 18.

The Investigation Prison address is:

AZ-1104, Baki shahari

Sabunchu rayonu

Zabrat-2 qasabasi

Baki Istintaq tacridxanasi

Azerbaijan

Jafarov: Criminal case closed

The criminal investigation against Shia Muslim Jeyhun Mammadli Jafarov (born 7 June 1972) has now been closed with no trial, his lawyer Javad Javadov told Forum 18 from Baku on 22 August. A translator of Islamic works, broadcaster on Islamic themes and leader of haj pilgrimage groups to Mecca, Jafarov was being investigated under Criminal Code Article 274 ("treason"). This carries a prison term of between 12 years and life.

Jafarov was arrested in March 2015 by the then NSM secret police, which held him in their Investigation Prison in Baku. While held there the prison authorities allowed him an Azeri-language translation of the Koran. However, they refused to give him a copy of the Koran in Arabic sent by family members. Prison authorities also refused to allow him to have a watch to be able to know when it was time for prayer (see F18News 14 May 2015 http://www.forum18.org/archive.php?article_id=2061).

In October 2015, Jafarov's lawyer Javadov lodged a case to the European Court of Human Rights in Strasbourg (Application No. 46446/15). He argued that Jafarov's rights under Article 3 of the European Convention on Human Rights and Fundamental Freedoms (Prohibition of torture) and Article 5 (Right to liberty and security) had been violated.

During the year and a half Jafarov was imprisoned (the maximum period of pre-trial detention allowed for serious offences), his lawyer Javadov repeatedly tried to have the pre-trial detention order overturned. Finally, on 30 September 2016, Baku's Sabail District Court ordered Jafarov freed from pre-trial detention and allowed him to live at his home in the city under restrictions as the criminal investigation continued. He was freed in the courtroom.

When the case against Jafarov was closed, the restrictions he was living under were cancelled, Javadov told Forum 18. (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/archive.php?article_id=2081.

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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