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AZERBAIJAN: Will regime implement alternative service commitment?

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

Ruling party deputy Siyavush Novruzov told parliament on 30 March that an Alternative Service Law should be adopted. Parliament's Defence Committee is handling this, he told Forum 18. The government has not made public any draft. Azerbaijan committed to the Council of Europe to have alternative service by 2003 but failed to meet its obligation. Jehovah's Witnesses say criminal cases against their conscientious objectors are not being pursued.

After pledging in 2001 to the Council of Europe it would have introduced a civilian alternative for those who cannot perform military service on grounds of conscience by January 2003, a senior ruling party politician told Azerbaijan's parliament, the Milli Majlis, on 30 March 2020 that an Alternative Service Law should be adopted. The brief remark by parliamentary deputy Siyavush Novruzov was widely reported in the media with no comment. The government has not yet made public any draft law.

Novruzov told Forum 18 that the issue is in the hands of the Milli Majlis Defence, Security and Anti-Corruption Committee, chaired by Ziyafat Asgarov. Telephones at the Committee went unanswered on 28 April (see below).

Some are optimistic that the government has finally decided to honour its Council of Europe commitment. "Parliament is not independent," human rights defender Rasul Jafarov told Forum 18. Novruzov "would only have said this if it comes from the government". However, Jafarov warns that even if the country adopts such a Law, he remains "quite sceptical" about how it might be implemented (see below).

The Baku-based Human Rights Club, which Jafarov heads, issued its own proposal for the text of an Alternative Service Law on its website in August 2019 to try to put the issue on the public agenda. "We have had no response to our proposal from official people," Jafarov noted (see below).

Council of Europe and United Nations bodies have repeatedly condemned Azerbaijan's long failure to introduce a civilian alternative to compulsory military service and its punishment of those unable to perform compulsory military service on grounds of conscience (see below).

Jehovah's Witnesses told Forum 18 that about ten of their young men who have been called up for military service have submitted written applications to perform an alternative civilian service on grounds of conscience. The young men have been blocked from leaving the country, but earlier criminal cases against at least some of them appear to have been suspended (see below).

The European Court of Human Rights in Strasbourg found in October 2019 that the Azerbaijani government violated the rights of five Jehovah's Witnesses, four of whom were jailed and one given a suspended sentence and fined. The judgment became final on 17 January 2020 and the government is arranging to pay the total compensation and legal expenses of 38,269 Euros which should have been paid by 17 April (see below).

In its judgment, the Court reminded Azerbaijan of its obligation to the Council of Europe and to its own Constitution to introduce a system of alternative service, pointing out that violations flowed from the lack of such provision (see below).

The two most recent convicted conscientious objectors – Emil Mehdiyev and Vahid Abilov - lodged applications to the European Court of Human Rights in October 2019 as they were completing their one-year non-custodial sentences (see below).

Parliamentary call for Alternative Service Law

During a debate on 30 March in the Milli Majlis about extending the period of military service by one month because of the coronavirus outbreak, deputy Siyavush Novruzov of the ruling party proposed several changes to the call-up requirements. He then added a brief remark at the end of his address noting that a Law on Alternative Service needs to be adopted.

"Parliament is not independent," Rasul Jafarov, head of the Baku-based Human Rights Club, told Forum 18 from Baku on 23 April. Novruzov "would only have said this if it comes from the government. They seem to have some kind of plan for this."

Novruzov, who chairs the Milli Majlis Regional Affairs Committee, declined to answer any questions about his call for an Alternative Service Law. "It's not an issue for our Committee," he told Forum 18 from Baku on 28 April. "The issue is in the hands of Ziyafat Asgarov and the Defence Committee."

Telephones at the Milli Majlis Defence, Security and Anti-Corruption Committee went unanswered each time Forum 18 called on 28 April.

Elshad Babayev of the Defence Department of the Presidential Administration said that he has not seen a text of any draft Alternative Service Law and had no information. "It is possible that something is being prepared," he told Forum 18 from Baku on 28 April. An official of the Legal Expertise Department of the Presidential Administration said he had no information about any draft Law.

Human rights defender Jafarov warns that even if the country adopts an Alternative Service Law, he remains "quite sceptical" about how it might be implemented. "They might claim that because of the war over Nagorno-Karabakh, they should wait to implement it until the war is over."

Jafarov believes the government is concerned about its image in Europe and wants to improve relations with the Council of Europe. He adds that the October 2019 European Court of Human Rights judgment in favour of five Azerbaijani conscientious objectors – which found that their rights had been violated (see below) – might have influenced the government's apparent aim to introduce an Alternative Service Law.

Jehovah's Witnesses expressed hope that such a law might be adopted, given that criminal cases against their conscientious objectors are not being pursued (see below). "We feel that there is progress with conscientious objection," they told Forum 18 from Baku on 27 April, "and we hope that soon the new Parliament will pass a new Law on Alternative Service."

Human Rights Club draft Law

In August 2019, the Baku-based Human Rights Club, which Rasul Jafarov heads, published on its website (in Azeri (<http://www.humanrightsclub.net/wp-content/uploads/2019/08/Alternativ-Herbi-Xidmet-haqqinda.pdf>) and English (<http://www.humanrightsclub.net/wp-content/uploads/2019/08/Draft-law-on-Alternative-military-service.pdf>)) its own proposal for the text of an Alternative Service Law to try to put the issue on the public agenda.

Article 4.2 of the draft specifies that alternative service should be available for people holding both religious and non-religious beliefs that do not allow them to perform military service. Article 5.1 specifies that any alternative service should not be longer than military service. Article 6.1 would put a State Commission for Alternative Service in charge of assessing alternative service applications, identifying places where those doing alternative service would serve, and assigning such individuals to specific institutions.

Article 9.3 of the Human Rights Club's draft Law would allow those refused alternative service to challenge the denial in court.

"We have had no response to our proposal from official people," Jafarov told Forum 18.

Council of Europe obligation ignored

Military service of 18 months (12 months for those with higher education) is compulsory for all young men. Article 76, Part 2 of Azerbaijan's Constitution 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." However, no mechanism exists to enact this provision.

Ahead of its accession to the Council of Europe in January 2001, Azerbaijan promised (http://www.forum18.org/archive.php?article_id=2429) "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 has never done this, and conscientious objectors to military service have been repeatedly prosecuted and even jailed under Criminal Code Article 321.1. This states (http://www.forum18.org/archive.php?article_id=2429): "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]".

United Nations (UN) human rights bodies, as well as the Council of Europe's Venice Commission and its European Commission against Racism and Intolerance (ECRI), have repeatedly criticised Azerbaijan's failure to introduce a civilian alternative to compulsory military service.

In November 2016 Concluding Observations on Azerbaijan's report to the UN Human Rights Committee (CCPR/C/AZE/CO/4), the Committee again expressed concern about the lack of a civilian alternative to military service (http://www.forum18.org/archive.php?article_id=2408).

The Committee stated that Azerbaijan "should adopt without delay the legislation necessary to give effect in practice to the constitutionally recognized right to conscientious objection to military service, without limitation on the category of conscientiously held beliefs. Moreover, it should provide for alternative service of a civilian nature for conscientious objectors and repeal all sanctions against them."

In March 2016, ECRI again condemned Azerbaijan's violations of freedom of religion or belief, and other human rights, and noted the continuing sentencing of conscientious objectors (http://www.forum18.org/archive.php?article_id=2408). "ECRI strongly recommends that the authorities fulfil the undertaking given upon accession to the Council of Europe to enact legislation on alternatives to military service."

The government claimed in its response to ECRI that "due to the war with Armenia, Azerbaijan has not been able to enact a separate law on alternative service".

On 3 April 2019, in its Conclusions on Azerbaijan's follow-up to the March 2016 report (<https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/azerbaijan>), ECRI declared: "ECRI notes that the Azerbaijani authorities have not taken any initiative to enact legislation on alternatives to military service. ECRI therefore considers that this recommendation has not been implemented."

Forum 18 asked the Human Rights Ombudsperson's Office in Baku in writing on 17 December 2018 (resent on 30 April 2019) what action (if any) it had taken to defend the rights of convicted conscientious objectors Emil Mehdiyev and Vahid Abilov. It also asked what action (if any) it had taken to push for the adoption of a law to allow for those who have conscientious objections to military service to perform a civilian alternative service, which Azerbaijan committed to introduce by 2003. Forum 18 received no reply from the Ombudsperson's Office. (http://www.forum18.org/archive.php?article_id=2473)

Prosecutions of conscientious objectors not being pursued

About ten Jehovah's Witness young men called up for military service by Conscription Offices since 2015 have lodged statements with them explaining that they cannot perform military service on grounds of conscience and offering to perform an alternative, civilian service outside the framework of the armed forces.

Conscription Offices have handed at least some of these cases to Prosecutor's Offices to prepare criminal prosecutions. The Conscription Office handed the case against Jehovah's Witness Levani Otarashvili to Qakh District Prosecutor's Office in 2018. The same year, Conscription Offices threatened others – including Jehovah's Witness Emin Tahmazov in Baku and Jehovah's Witness Fuad Hasanaliyev in Khachmaz – with criminal cases. (http://www.forum18.org/archive.php?article_id=2415)

On 29 July 2019, Conscription Office staff forcibly took Fuad Hasanaliyev and his older brother Kanan to a military unit in Baku and tried to force them to enlist. However, both refused and officials freed them that evening.

Ganca's Kapaz District Conscription Office even tried to conscript Fakhraddin Mirzayev again in 2019, six months before the European Court of Human Rights ruled in his favour over his 2012 jailing for refusing military service on grounds of conscience (see below).

However, Jehovah's Witnesses say that earlier criminal cases against their conscientious objectors appear to have been suspended. "Currently no one is being pursued," they told Forum 18 from Baku on 27 April.

Travel restrictions can be imposed when prosecutors launch a criminal case, as happened with Emil Mehdiyev and Vahid Abilov in 2018.

Yet despite the halting of active measures to prosecute conscientious objectors, Conscription Offices have blocked some who are not facing active prosecutions from leaving the country should they wish to do so. On 2 April 2019, as he tried to leave Azerbaijan by land for neighbouring Georgia, Azerbaijani border guards told Fakhraddin Mirzayev that the Conscription Office had blocked any foreign travel and sent him back. On 20 April 2019, the same happened to another Jehovah's Witness conscientious objector, Aslan Aliyev.

"Currently about 10 young men have travel restrictions," Jehovah's Witnesses told Forum 18. "Usually they receive no official

notification. Some find out when they try to cross the border. Border control officers do not allow them to leave the country and these young men are forced to return home."

"We discussed this problem with different government agencies and they assured us that this will soon be solved," Jehovah's Witnesses added.

In some cases, Jehovah's Witness young men cannot obtain a passport. "According to our legislation, to obtain it young men need to submit a document confirming that you've already served in the army or have a deferment," Jehovah's Witnesses explained.

European Court of Human Rights judgment

On 17 October 2019, the European Court of Human Rights (ECtHR) in Strasbourg found in favour of five Jehovah's Witnesses punished through the courts between 2007 and 2013 for refusing compulsory military service on grounds of conscience. Four of them had been jailed, while the fifth had been given a suspended prison sentence and a fine. The judgment covered four cases (one involving two applicants) (http://www.forum18.org/archive.php?article_id=2490), which the Court considered together.

1) Mammadov and Huseynov v. Azerbaijan (Application No. 14604/08). Goranboy District Court jailed Jehovah's Witness Samir Huseynov for ten months in October 2007 for refusing compulsory military service on grounds of conscience. He was freed in May 2008 after serving most of his sentence (http://www.forum18.org/archive.php?article_id=1129). Baku's Sabail District Court gave Jehovah's Witness Mushfiq Mammadov a suspended six month prison term in July 2006 for refusing compulsory military service on grounds of conscience. He was tried on the same charges again in October 2009, by which time he was aged 26. At the end of his second trial, taking account of the two months he had spent in pre-trial detention, the judge fined him 250 Manats. The Supreme Court rejected his final appeal in December 2010. (http://www.forum18.org/archive.php?article_id=1544)

2) Farid Mammadov v. Azerbaijan (Application No. 45823/11). Baku's Nasimi District Court jailed Jehovah's Witness Farid Mammadov for nine months in July 2010 for refusing compulsory military service on grounds of conscience. He was not imprisoned until September 2010 when his first appeal failed. The Supreme Court rejected his final appeal in January 2011. (http://www.forum18.org/archive.php?article_id=1544)

3) Fakhraddin Mirzayev v. Azerbaijan (Application No. 76127/13). Ganca's Kapaz District Court jailed Jehovah's Witness Fakhraddin Mirzayev for one year in September 2012 for refusing compulsory military service on grounds of conscience. He was amnestied in May 2013 after eight months' imprisonment. The Supreme Court rejected his final appeal in June 2013. (http://www.forum18.org/archive.php?article_id=1852)

4) Mirzayev v. Azerbaijan (Application No. 41792/15). Goychay Court jailed Jehovah's Witness Kamran Mirzayev for nine months in March 2013 for refusing compulsory military service on grounds of conscience. He was amnestied in June 2013 after serving three months' imprisonment (http://www.forum18.org/archive.php?article_id=1852). The Supreme Court rejected his final appeal in February 2015, arguing that relevant legislation implementing an alternative service had not yet been passed and alternatives to service only applied when the nation was not at war.

In its judgment, the European Court found that Azerbaijan had violated the rights of all five. It specified compensation and legal expenses totalling 38,269 Euros payable to the applicants.

Moreover, the Court "observes that the present case casts light on a problem linked to the absence of an alternative service law in Azerbaijan". It pointed out that this violates both Azerbaijan's commitments on joining the Council of Europe and Article 76 of Azerbaijan's Constitution.

"In these circumstances," the judgment noted, "the Court considers it useful to stress that such a situation calls in principle for legislative action by the defending State in order to satisfy, in conformity with the present decision, the obligations incumbent on it of assuring the applicants and other persons in the same situation the right to benefit from the right to conscientious objection."

Azerbaijan did not contest the European Court judgment and it became final on 17 January 2020, according to the Court website. The government had three months – until 17 April – to pay the compensation and legal costs mandated by the Court.

Forum 18 was unable to reach Chingiz Asgarov, the Azerbaijani government's Agent at the Court, on 28 April. His telephone at the Presidential Administration went unanswered on 28 April.

Jehovah's Witnesses told Forum 18 that they are "in the process" of providing information to the Government Agent. "Because of Covid-19, everything is delayed or postponed," they added, but hope that the five applicants will soon receive compensation.

"At the moment we have no problems with the government regarding compensation," Jehovah's Witnesses add. Their Baku community received compensation awarded by the European Court of Human Rights in one recent case not related to conscientious objection and are awaiting compensation for another Court judgment.

Two new European Court of Human Rights cases

The two most recent convicted Jehovah's Witness conscientious objectors have lodged applications to the European Court of Human Rights. Emil Mehdiyev filed his appeal on 7 October 2019 (Application No. 52773/19), while Vahid Abilov filed his appeal on 17 October 2019 (Application No. 54768/19), the Court told Forum 18.

On 6 July 2018, Barda District Court convicted Mehdiyev and handed down a one-year suspended prison term, and required that he live under probation for one year. Ganca Appeal Court rejected his appeal on 8 October 2018. The sentence then came into legal force, meaning that it expired on 8 October 2019. The Supreme Court rejected his final appeal on 10 April 2019 (http://www.forum18.org/archive.php?article_id=2473).

On 6 September 2018, Agdam District Court found Abilov guilty and sentenced him to a one-year suspended prison term. Ganca Appeal Court rejected his appeal on 31 October 2018. The sentence then came into legal force, meaning that it expired on 31 October 2019. The Supreme Court rejected his final appeal on 24 April 2019 (http://www.forum18.org/archive.php?article_id=2473). (END)

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

For more background, see Forum 18's Azerbaijan religious freedom survey (http://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
(http://www.forum18.org/archive.php?article_id=1351)

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If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY