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AZERBAIJAN: Alternative service "not under discussion" despite latest ECtHR decision

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

Despite another European Court of Human Rights (ECtHR) decision that Azerbaijan violated the human rights of two more conscientious objectors, Saadat Novruzova of the Presidential Administration's Human Rights Protection Unit told Forum 18 that changing the law to introduce a civilian alternative to compulsory military service "is not under discussion". Azerbaijan committed to the Council of Europe to introduce an alternative service by January 2003. The 7 October 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".

Despite a further decision from the European Court of Human Rights (ECtHR) in Strasbourg that Azerbaijan had violated the human rights of two conscientious objectors, an adviser in the Presidential Administration's Human Rights Protection Unit indicated that the regime has no plans to introduce a civilian alternative to compulsory military service. Reminded of Azerbaijan's commitment to the Council of Europe to introduce such a civilian alternative service by January 2003, Saadat Novruzova responded: "At the moment this is not under discussion." She declined to discuss the latest ECtHR decision with Forum 18.

Lawyers who have taken cases to the ECtHR and human rights defenders have repeatedly pointed out that Azerbaijan fails to take the corrective action it is obliged to undertake – such as changing laws - in response to such decisions to prevent the violations recurring. "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," human rights defender Eldar Zeynalov told Forum 18 in March (see below).

On 7 October, the ECtHR accepted Azerbaijan's admission that it had violated the human rights of two Jehovah's Witness young men who had been convicted in 2018 for refusing compulsory military service on grounds of conscience. Both Emil Mehdiyev and Vahid Abilov had declared a willingness to conduct an alternative civilian service. Both lost their appeals against their suspended jail terms in Azerbaijan's Supreme Court before taking their cases to Strasbourg. The ECtHR ordered that the victims be paid compensation and costs (see below).

The total amount Azerbaijan is to pay each of the victims in compensation and legal costs is 3,500 Euros (6,850 Azerbaijani Manats, 35,000 Norwegian Kroner or 4,000 US Dollars).

Mehdiyev and Abilov welcomed the government's acknowledgment of a violation and the award of compensation, but told the ECtHR in August that they were dissatisfied that the regime has still not adopted a law introducing a civilian alternative to compulsory military service for those unable to serve on grounds of conscience (see below).

The ECtHR's October decision brings to seven the number of conscientious objectors from Azerbaijan whose human rights the Strasbourg court has found the regime violated and to whom it has had to pay compensation (see below).

In its decision, the ECtHR reminded Azerbaijan of comments it made in an October 2019 decision in the cases of five other conscientious objectors. It stressed that "the Court also points out that the question of adoption of a law on alternative civilian service by Azerbaijan has already been addressed by the Court". The October 2019 decision had noted that the case "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" (see below).

A Jehovah's Witness who has been following the cases told Forum 18 from Baku that the community hopes the ECtHR decisions both in October 2019 and October 2021 "will contribute to the early adoption of a law on alternative service". However, they added: "So far we don't see any progress on introducing a civilian alternative to military service" (see below).

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 pardon all convicted conscientious objectors. It failed to do so and since 2001 has continued to arrest and prosecute conscientious objectors like Mehdiyev and Abilov (see below).

Forum 18 was unable to reach Chingiz Asgarov, the government's representative to the ECtHR. His phone went unanswered each time it called.

The latest decisions bring to 61 the number of known cases related to violations of freedom of religion or belief that have concluded at the ECtHR. In 39 cases the Court found violations or the regime admitted violations. In a further 11 cases, the regime paid compensation while not acknowledging violations (see below).

Nine cases from Azerbaijan related to the regime's violations of freedom of religion or belief – lodged by Muslims and Jehovah's Witnesses - are known to remain at the Strasbourg court (see below).

On 20 September, the ECtHR asked the regime questions about the oldest unresolved freedom of religion or belief case, lodged in 2012. This concerns the refusal of the State Committee for Work with Religious Organisations to re-register the Baku Jehovah's Witness community in the round of compulsory re-registration in 2009 (see below).

Jehovah's Witnesses from Azerbaijan also have six freedom of religion or belief cases pending with the UN Human Rights Committee. Four relate to police raids on meetings for worship and two to speaking to others about their beliefs.

"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.

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 (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 (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 (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]"

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 (https://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 (https://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 (https://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 (https://www.forum18.org/archive.php?article_id=2408), and other human rights, and noted the continuing sentencing of conscientious objectors. "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 Mehdiyev and 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 (https://www.forum18.org/archive.php?article_id=2473).

Law to introduce alternative civilian service "not under discussion"

Saadat Novruzova, an adviser in the Presidential Administration's Human Rights Protection Unit, declined to discuss the ECtHR's decision in the cases of Mehdiyev and Abilov with Forum 18 on 3 November 2021. Reminded of Azerbaijan's commitment to introduce a civilian alternative to military service by January 2003 and asked about whether any law is being prepared nearly two decades later, she responded: "At the moment this is not under discussion." She then put the phone down.

The telephone of the Head of the Presidential Administration's Human Rights Protection Unit, Habib Abdullayev, went unanswered each time Forum 18 called between 3 and 5 November.

On 30 March 2020, Siyavush Novruzov, a senior ruling party politician, made a brief remark to parliament, the Milli Majlis, that an Alternative Service Law should be adopted (https://www.forum18.org/archive.php?article_id=2567). His phone went unanswered each time Forum 18 called between 3 and 5 November 2021.

"So far we don't see any progress on introducing a civilian alternative to military service," a Jehovah's Witness who has been following the cases told Forum 18 from Baku on 5 November. "But, on the other hand, we are glad that at the moment no one is being persecuted because of their refusal to serve in the army."

The Jehovah's Witness added that the community hopes the ECtHR decisions both in October 2019 and October 2021 "will contribute to the early adoption of a law on alternative service".

The Jehovah's Witness noted that from time to time young men are summoned to the State Service on Mobilisation and Conscription, but "after they explain their religious position they are usually required to get medical examinations but not conscripted into the military".

About ten Jehovah's Witness young men have refused military service and offered to do an alternative civilian service since 2015. Some of these were told by the State Service for Mobilization and Conscription that their cases would be sent to the Prosecutor's Office, and some were prohibited from leaving the country (https://www.forum18.org/archive.php?article_id=2664). However, no criminal cases were instituted and no one was forcibly taken to the army.

Rashad Niftaliyev, who was first summoned to the State Service on Mobilisation and Conscription and threatened with criminal prosecution in 2008, was again summoned on 15 May 2020, where he underwent a medical examination. Despite oral and written

statements explaining his conscientious objection to military service, officials ordered him to report for military service on 1 July 2020. The State Service on Mobilisation and Conscription wrote to him on 23 February 2021 alleging that he is evading military service and that if he failed to report for military service on 10 March 2021, measures would be taken to prosecute him. He did not report for military service.

Jalal Gasimov has been summoned several times to the State Service on Mobilisation and Conscription since September 2019, despite stating that he cannot serve in the military because of his conscientious beliefs. After being threatened with criminal prosecution, he was again summoned – most recently on 21 June 2021.

ECtHR: Azerbaijan violated conscientious objectors' human rights

On 7 October, the European Court of Human Rights (ECtHR) in Strasbourg issued a decision that Azerbaijan had violated the human rights of two Jehovah's Witness young men, Emil Mehdiyev and Vahid Abilov, who had been convicted in 2018 for refusing compulsory military service on grounds of conscience.

Mehdiyev refused to perform military service on grounds of conscience and offered to do an alternative civilian service (which does not exist in Azerbaijan). In July 2018, Barda District Court convicted him and handed down a one-year suspended prison term, and required that he live under probation for one year (https://www.forum18.org/archive.php?article_id=2408). Ganca Appeal Court rejected his appeal in October 2018 (https://www.forum18.org/archive.php?article_id=2440). The Supreme Court rejected his final appeal in April 2019 (https://www.forum18.org/archive.php?article_id=2473).

Abilov refused to perform military service on grounds of conscience and offered to do an alternative civilian service (which does not exist in Azerbaijan). In September 2018, Agdam District Court found him guilty and sentenced him to a one-year suspended prison term (https://www.forum18.org/archive.php?article_id=2415). Ganca Appeal Court rejected his appeal in October 2018 (https://www.forum18.org/archive.php?article_id=2440). The Supreme Court rejected his final appeal in April 2019 (https://www.forum18.org/archive.php?article_id=2473).

Mehdiyev lodged his case with the ECtHR on 7 October 2019 (Application No. 52773/19 (<http://hudoc.echr.coe.int/eng?i=001-209027>)), and Vahid Abilov on 17 October 2019 (Application No. 54768/19 (<https://hudoc.echr.coe.int/eng?i=001-209027>)). Given the similarity of the violation, the ECtHR considered the cases together. The ECtHR asked the regime questions (<https://hudoc.echr.coe.int/eng?i=001-209027>) about both cases on 1 March 2021.

Azerbaijan responded to the court on 5 July 2021 offering a "unilateral declaration" that it had violated Mehdiyev and Abilov's human rights and offering to pay compensation and legal costs to the two men. The Strasbourg court accepted this in its 7 October decision.

The ECtHR ordered that Azerbaijan is to pay each of the victims in compensation and legal costs 3,500 Euros (6,850 Azerbaijani Manats, 35,000 Norwegian Kroner or 4,000 US Dollars).

Mehdiyev and Abilov welcomed the government's acknowledgment of a violation and the award of compensation, but wrote to the ECtHR on 10 August that they were dissatisfied that the regime has still not adopted a law introducing a civilian alternative to compulsory military service for those unable to serve on grounds of conscience.

In its decision, the ECtHR reminded the regime that it has "established clear and extensive case-law in respect of Azerbaijan relating to the criminal conviction for refusing to perform military service on religious grounds", pointing to the October 2019 decision that the regime had violated the human rights of five conscientious objectors.

The decision added that "the Court also points out that the question of adoption of a law on alternative civilian service by Azerbaijan has already been addressed by the Court" in the October 2019 decision.

ECtHR's October 2019 decision in favour of five conscientious objectors

On 17 October 2019, the ECtHR 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 decision covered four cases (one involving two applicants) (https://www.forum18.org/archive.php?article_id=2490), which the Court considered together.

In its decision, 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 decision 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."

The Committee of Ministers of the Council of Europe is conducting "enhanced supervision" of the implementation of the October 2019 decision (<https://hudoc.exec.coe.int/eng?i=004-54609>). "An enhanced procedure is used for cases requiring urgent individual measures or revealing important structural problems," it explains (<https://www.coe.int/en/web/execution/the-supervision-process>).

Nine known cases awaiting ECtHR decisions

The ECtHR in Strasbourg has already completed 61 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 61 completed cases:

- 19 ended in findings of violations and awards of compensation;
- 19 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).

Nine ECtHR cases related to the regime's violations of freedom of religion or belief are known to remain. The cases – submitted between 2012 and 2020 - cover a wide range of violations. Of these, 7 were lodged by Muslims and 2 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:

- State censorship of religious literature (1 case involving 1 individual applicant)
- Raids on and punishments for meetings for worship (3 cases involving 6 individual applicants and 1 community)
- Jailed for leading prayers or religious meetings (3 cases involving 5 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 nine cases are given below.

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 and punishments for meetings for worship

1) Hajiyev v. Azerbaijan (Application No. 21807/18).

A Baku court fined Eldeniz Hajiyev under Administrative Code Article 515.0.2 ("Violating legislation on holding religious meetings, marches, and other religious ceremonies") to punish him for a meeting for worship without state permission. He lodged a case to the ECtHR on 27 April 2018. The ECtHR has not yet asked the government questions about the case.

2) Rafiyev v. Azerbaijan (Application No. 81028/17 (<http://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 (<http://hudoc.echr.coe.int/eng?i=001-186530>) about the case on 6 September 2018.

3) Niftaliyev and Others v. Azerbaijan (Application No. 561/12 (<https://hudoc.echr.coe.int/eng?i=001-175874>)).

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.

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, and the case is awaiting an ECtHR decision.

ECtHR: Jailed for leading prayers or religious meetings

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 (http://www.forum18.org/archive.php?article_id=2353) to challenge the conviction for leading prayers.

3) Mammadov and Others v. Azerbaijan (Application No. 30498/17).

Police raided a religious meeting in a Baku home by Muslim readers of Said Nursi's works in April 2014. In October 2015, a Baku court jailed Ismayil Mammadov, Eldeniz Hajiyev, Shahin Hasanov and Zakariyya Mammadov. Their April 2016 appeal hearing reduced their sentences but did not overturn them (https://www.forum18.org/archive.php?article_id=2173). They lodged a case to the ECtHR on 10 April 2017 about their jailing. The ECtHR has not yet asked the government questions about the case.

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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