

23 October 2012

AZERBAIJAN: Government blames "errors" for negative Venice Commission/OSCE Opinion

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

Following serious criticism of Azerbaijan's Religion Law by the Council of Europe's Venice Commission and the Organisation for Security and Co-operation in Europe (OSCE), Ali Hasanov of the Presidential Administration blamed this on "translation errors" in an "unofficial translation" he claimed had been used for the legal Opinion. However, a Venice Commission spokesperson told Forum 18 News Service that the translation on which the Opinion was based was an official translation supplied by the Government. Hasanov claimed that as soon as the Opinion was released, the Presidential Administration had immediately sent an "official translation" to the Venice Commission. However, the Venice Commission spokesperson told Forum 18 that it has received no new translation from the Azerbaijani government. Hasanov also claimed that the Venice Commission "now considers that the Law .. completely reflects European standards." The Commission's Opinion found that the Law contains "restrictive provisions which are against international standards". The Venice Commission spokesperson told Forum 18 that it fully stands by its Opinion.

Azerbaijan faced wide-ranging criticism in a legal Opinion by the Council of Europe's Venice Commission and the Organisation for Security and Co-operation in Europe (OSCE) over the failure of the controversial Religion Law to meet Azerbaijan's international human rights commitments. A senior Presidential Administration official and a senior official of the ruling New Azerbaijan Party have both rejected the Venice Commission/OSCE's recommendations for legal changes to bring the Law into compliance. However, the Venice Commission told Forum 18 News Service from Strasbourg on 22 October that it stands by its Opinion.

Muslim complaint

Following the Venice Commission/OSCE Opinion, Baku-based Muslim Zeka Miragayev wrote to the Venice Commission endorsing its criticism. He complained about the Azerbaijani government's interference in the life of religious communities, adding that it "prohibits official and non-official religious activities".

Miragayev's 22 October letter, of which he sent a copy to Forum 18, cites the 31 May police and National Security Ministry (NSM) secret police raid on his Baku home in his absence and without a warrant. Officers seized copies of the Koran and books by Muslim authors, including the late Turkish theologian Said Nursi, as well as money and a computer. Several of his friends were interrogated (see F18News 11 July 2012 http://www.forum18.org/Archive.php?article_id=1719).

"State bodies have done nothing for the restoration of my rights. Although I have repeatedly addressed state bodies over these events, I haven't got an answer from them," Miragayev told the Venice Commission. "The event deliberately isn't being investigated and they still pressure me. I have lived in stress, nerves, and fear of death over these more than five months. Human rights aren't protected in Azerbaijan."

Miragayev asks for help from the Venice Commission. "I keep one of the rooms of the house where I live in the destroyed state. State bodies don't come to inspect yet. I ask you to come and inspect."

One of Miragayev's friends who was present during the raid told Forum 18 on 22 October that none of the seized books, money or computer have been returned, despite his attempts. The police told him the NSM have the books, while the NSM told him the police have them.

Legal challenge drifts

In early June, Miragayev lodged a legal challenge against the 18th Department of Baku's Narimanov District police and NSM secret police over the unauthorised raid to Baku's Administrative Economic Court No. 1. However, the Court refused to hear the suit, telling him he had to apply instead to Narimanov District Court. The District Court likewise rejected the suit, telling Miragayev he had to appeal to Baku's Administrative Economic Court No. 2.

Miragayev lodged his suit there in August, his friends told Forum 18. However, despite a requirement that the Court seeks

information from the state bodies which are the subject of the suit within 15 days, the Court has given him no information about the results of such information requests. "They're specially dragging out this case," Miragayev's friends told Forum 18. "It's not clear if this is the police, the secret police or the Court."

Venice Commission/OSCE criticism

The joint Venice Commission/OSCE Opinion – formally adopted on 12 October - pointed out a wide range of provisions in Azerbaijan's Religion Law which fail to comply with Azerbaijan's international human rights commitments and recommended changes. The Opinion was made public on the Venice Commission website on 16 October (<http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282012%29022-e>).

"The Law on Freedom of religious belief as amended in 2011 sets a legal framework which is in several aspects contrary to international standards and would benefit from additional revisions in order to meet these standards," the Opinion declares.

Among numerous recommendations, the Opinion calls the Azerbaijani authorities to:

- "explicitly allow proper proselytism" and remove from Article 1, Part 4 the prohibition on religious propagation by foreigners and persons without citizenship;
- "consider changing or deleting the prescriptive provisions of Articles 7, 8 and 9 imposing a particular organizational structure on religious communities, and to provide religious communities with greater autonomy and self-determination on matters regarding issues of faith, belief or their internal organization as a group, as well as the choice of place of worship";
- "remove from Article 21 the provision stating that "Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan [who] studied in the Republic of Azerbaijan";
- "reform the system of state registration of religious communities by: allowing individuals and religious communities to practice religion without state registration, if they so choose; clarifying which information and documents require state

Registration; ensuring that state authorities in charge of registration do not engage in a substantive review of the statute or character of a religious group";

- set a deadline for the state authorities to decide on registration applications;
- "reconsider the rule stating that religious organizations may only function at legal addresses indicated in the information submitted for state registration";
- "remove undue restrictions on the rights of individuals and religious groups to produce, import, export, and freely disseminate, and sell religious literature, items and other informative materials";
- "cancel the requirement of the consent of a "relevant executive authority" for sending citizens abroad for religious education and for the foreign exchange of clergymen;
- "expressly allow in Article 4 for alternative civilian service for persons who refuse to perform military service owing to their religious or nonreligious conscientious beliefs" (see F18News 16 October 2012 http://www.forum18.org/Archive.php?article_id=1755).

Government comments on Draft Opinion

The Venice Commission submitted its Draft Opinion to the Azerbaijani government for its comments before it was formally adopted.

The eight-page Comments – which the Venice Commission told Forum 18 it received on 9 October – either denied that restrictions in the Law existed or rejected the Venice Commission/OSCE's findings that they violate Azerbaijan's human rights commitments. (The Comments were published on the Venice Commission website on 16 October.)

"The law does not prohibit citizens to unite in religious communities without state registration," the government Comments declared wrongly. "The existing Azerbaijani legislation does not envisage any liability for such an action."

Forum 18 notes that Religion Law Article 12 states: "Religious organisations may function only after state registration by a relevant state body and the state registry of religious organisations". Article 299 of the Code of Administrative Offences punishes "violation of the procedure for creating or running religious organisations", including by "religious leaders who fail to register their communities with the state" (see Forum 18's Azerbaijan religious freedom survey

http://www.forum18.org/Archive.php?article_id=1690).

"Proselytism is allowed in Azerbaijan," the government Comments claimed, despite the Religion Law's ban on unregistered religious activity, on religious meetings at unapproved addresses and on unapproved distribution of religious literature. The government Comments claim that the ban on foreigners propagating their faith "does not mean that foreigners and persons without citizenship may not exercise freedom of expression guaranteed by Article 47 of the Constitution of Azerbaijan".

Forum 18 notes that Religion Law Article 8 bans foreigners from creating mosques, while Article 21 bans them from leading mosques. Foreigners who conduct "religious propaganda" or distribute religious literature face prosecution under Administrative Code Article 300, with deportation one of the punishments (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/Archive.php?article_id=1690).

Senior Presidential Administration official Shahin Aliyev was present at the Venice Commission Plenary Session in Venice on 12 October when the Venice Commission formally adopted the Joint Opinion.

Government rejects Opinion

The Venice Commission spokesperson told Forum 18 that it had received no communication from the Presidential Administration or any other Azerbaijani government agency since the Opinion was adopted on 12 October.

On 16 October, the day the Opinion was made public, New Azerbaijan Party Deputy Executive Secretary Siyavush Novruzov rejected its recommendations in remarks to Parliament. "It's as if they [Venice Commission] wish to turn Azerbaijan into an experimental laboratory and carry out their own plans," Trend news agency quoted him as declaring.

Novruzov particularly objected to the recommendation to allow foreign citizens living in Azerbaijan to be allowed to conduct religious activity. "Such a thing exists in no country in the world," Trend quoted him as saying. "Can a mullah from Azerbaijan who has arrived in France carry out religious activity? He'd be arrested straight away. If the Venice Commission believes its recommendations deserve attention, let them be implemented first in other countries."

However, the Opinion stresses that international law "protects non-coercive religious expression (including proselytism or missionary activity) by 'everyone', regardless of a person's nationality" (see page 11, <http://www.venice.coe.int/docs/2012/CDL-AD%282012%29022-e.pdf>).

"Errors"?

Novruzov's rejection of the recommendations was followed a day later by what was billed as the "official reaction" from Ali Hasanov, head of the Presidential Administration's Social and Political Department. Noting the Venice Commission's criticism, he said "of course we had to react at once", Trend news agency quoted him as declaring on 17 October.

The Venice Commission spokesperson pointed out that it had received the Azerbaijani government's Comments on the Draft Joint Opinion "on 9 October 2012, i.e. prior to the plenary session".

Hasanov claimed that the Venice Commission had used an "unofficially translated draft of the Law". He blamed "translation errors" for the Venice Commission's conclusion that the Law does not meet European standards. However, the Venice Commission spokesperson told Forum 18 that the English translation of the Religion Law on which the Opinion was based had been supplied by the Permanent Representation of Azerbaijan to the Council of Europe in Strasbourg on 29 August.

Hasanov said that as soon as the Opinion was released, the Presidential Administration had immediately sent an "official translation" of the Religion Law to the Venice Commission. However, the Venice Commission spokesperson told Forum 18 that it has received no new translation from the Azerbaijani government since then.

"The Venice Commission has already accepted this explanation from the Azerbaijani authorities," Trend quoted Hasanov as saying. "I believe that the Venice Commission now considers that the Law on Freedom of Religious Belief adopted in Azerbaijan completely reflects European standards."

However, the Venice Commission told Forum 18 it fully stands by its Opinion. "The Venice Commission adopted its opinion fully aware of the Azerbaijani government's comments and therefore maintains its conclusions," the Venice Commission spokesperson told Forum 18.

No response

Forum 18 tried to reach Ali Hasanov at the Presidential Administration in Baku on 22 October. However, officials said he was in a meeting and referred Forum 18 to his senior advisor Jeyran Amiraslanova. The woman who answered her phone asked Forum 18 to

send questions in writing.

Forum 18 wrote on 22 October to ask: when the Presidential Administration sent a new "official" English translation of the Religion Law to the Venice Commission?; whether Azerbaijan intends to amend its Religion Law to bring it into compliance with the country's international human rights commitments; if so, when it intends to amend the Religion Law; and if not, why not?

No response had arrived by the end of the working day in Baku on 23 October.

Last-ditch appeal

Meanwhile, on 15 October Baku's Greater Grace Church lodged its last-ditch appeal at Azerbaijan's Supreme Court in Baku against the enforced liquidation of its legal status, church members told Forum 18. No date has yet been set for its appeal to be heard.

The Church has had state registration with the Justice Ministry since 1993. The State Committee, which is now in charge of registering religious communities, lodged a liquidation suit in December 2011, arguing that the Church should be liquidated for failing to gain re-registration with it in 2009. On 25 April 2012, Administrative Economic Court No. 1 upheld the State Committee's suit. Baku Appeal Court rejected the Church's appeal on 31 July (see F18News 10 August 2012 http://www.forum18.org/Archive.php?article_id=1730).

Court liquidation would forcibly close the Church. Azerbaijan's ban on unregistered religious activity violates the country's international human rights commitments, the Venice Commission/OSCE Opinion declares in its Opinion. "Registering an association should be optional and not a legal requirement."

It adds that "making registration mandatory goes against the fundamental principle of freedom of religion and the applicable international human rights standards, also as regards freedom of association, protected under Article 11 of the ECHR [European Convention on Human Rights and Fundamental Freedoms] and Article 22 of the ICCPR [International Covenant on Civil and Political Rights]". (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1690.

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.

A printer-friendly map of Azerbaijan is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Azerbaijan>.

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

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY