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AZERBAIJAN: Conscientious objector's trial to begin after 4 months' detention

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

Four months after being forcibly detained in October 2013 and sent to a military unit, conscientious objector to military service 18-year-old Kamran Shikhaliyev is due to go on trial at a military court in southern Azerbaijan on 13 February. His fellow-Jehovah's Witnesses told Forum 18 News Service that "despite physical abuse, verbal humiliation, and psychological pressure, Shikhaliyev has refused to wear a military uniform, perform military duties, or take the military oath". The head of the Conscription Office which forcibly seized him claimed to Forum 18 that "he wasn't detained, just sent to a military unit". Elsewhere, after a Gyanja Police raid on a Jehovah's Witness meeting, five of those present were fined the equivalent of one year's teacher's salary. "More than 40 people were gathered in the flat," police complained to Forum 18. "That's banned. They had no permission from the state organs to meet." And the State Committee for Work with Religious Organisations has declined to tell Forum 18 what measures are planned against the unregistered Sunni mosque in Mushfiqabad, as "work in this direction is in progress". Many such mosques have been forcibly closed by the state.

Four months after his October 2013 forcible seizure and dispatch to a military unit against his will, 18-year-old conscientious objector Kamran Shikhaliyev is due to go on trial at Jalilabad Military Court in southern Azerbaijan on 13 February, the court confirmed to Forum 18 News Service today (10 February). Charged with fraudulently evading military service, he faces a maximum two-year term in a military disciplinary prison if convicted.

Meanwhile, Orhan Ali, spokesperson for the State Committee for Work With Religious Organisations, told Forum 18 on 10 February that he had no information about an 11 January police raid on a Jehovah's Witness meeting in Azerbaijan's second city Gyanja [Gäncä] or about fines of about one year's salary for a state employee outside Baku, such as a teacher, handed down on five of those present. Appeals against these fines are also due to be heard on 13 February (see below).

Ali also defended on-site "inspections" of religious communities that meet for worship without the compulsory state registration. One of the communities "inspected" by the State Committee is the Sunni mosque in the village of Mushfiqabad on the edge of the capital Baku (see below).

"He wasn't detained, just sent to a military unit"

Shikhaliyev, a Jehovah's Witness from Baku, was seized at Nizami District Conscription Office on 10 October 2013 as he responded to a call-up notice, two days after his 18th birthday. Rovshen Babayev, Head of the Conscription Office claimed to Forum 18 on 10 February that: "He wasn't detained, just sent to a military unit".

Officials at Babayev's office had earlier told Shikhaliyev he would be assigned to some kind of civilian alternative service, his fellow Jehovah's Witnesses told Forum 18. Instead, Shikhaliyev was taken against his will from the Conscription Office first to Bilajari in the capital Baku, then to Beylegan on Azerbaijan's central southern border with Iran.

Finally he was taken further south east to Military Unit No. 704 in Lankaran "where he has been detained against his will ever since", Jehovah's Witnesses added. "For four months, Shikhaliyev has been deprived of his liberty and unlawfully confined."

When Nizami District Conscription Office called Shikhaliyev for medical examinations on 23 August 2013, he immediately attended. He returned to the Conscription Office four times in the next three weeks. Each time, he explained that as a Jehovah's Witness, his conscience did not permit him to go to the military.

Babayev of Nizami District Conscription Office, rejected suggestions that Shikhaliyev's transfer against his will to a military unit was unlawful. Asked by Forum 18 who was to blame for Shikhaliyev's four-month detention without trial, he responded: "I'm not responsible." He refused to answer any other questions on the case and put the phone down.

"Despite physical abuse, verbal humiliation, and psychological pressure.."

Shikhaliyev has been maltreated since his enforced conscription in October 2013, Jehovah's Witnesses told Forum 18. But he remains committed to his objection to any form of military service, they added.

"Despite physical abuse, verbal humiliation, and psychological pressure, Shikhaliyev has refused to wear a military uniform, perform military duties, or take the military oath," they told Forum 18. "He has not wavered in his conscientious religious position."

Officials at the Defence Ministry in Baku refused to discuss Shikhaliyev's case with Forum 18 on 10 February.

Appeals had been sent by those close to Shikhaliyev to many state agencies on 30 December 2013, including to Military Unit 704, the Defence Ministry, the General Prosecutor's Office, President Ilham Aliyev and to the Human Rights Ombudsperson's Office.

No one was available at the Military Issues Department of the Human Rights Ombudsperson's Office in Baku on 10 February. Forum 18 asked in writing the same day what action it had taken to defend Shikhaliyev's human rights. It also asked whether it is lawful to seize and conscript such young men against their will after they have declared their conscientious objection to serving in the military and whether it is legal for military units to detain such individuals with no court decision for four months. Forum 18 had received no response by the end of the working day in Baku on 10 February.

Criminal trial after four months' detention

Once in his military unit, Shikhaliyev was charged with "fraudulently evading military service", including by "causing harm to health" or "falsifying documents", under Article 335.1 ("Evasion of military service by causing harm to health or in another way") of the Criminal Code. This carries a maximum punishment of two years' imprisonment.

Jehovah's Witnesses insisted that the charges have been brought inappropriately. "They can be levied only on soldiers," they told Forum 18. "Kamran is not a soldier as he has rejected the military oath and not agreed to serve."

Shikhaliyev's trial is due to begin at Jalilabad Military Court under Judge Vugar Ahmadov at 12 noon on 13 February, a court official told Forum 18. The official – who would not give his name – was unable to tell Forum 18 if Shikhaliyev will be represented by a lawyer.

Jehovah's Witnesses complain that the 13 February Military Court hearing is the first since his October 2013 detention. "Shikhaliyev was held for four months without being charged with or convicted of any criminal or administrative offence," they point out. "He did not appear before a judge. He has not been to court."

Defiance of international human rights obligations

Azerbaijan repeatedly breaks its international human rights obligations. Ahead of its accession in January 2001 to the Council of Europe, the country formally promised "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".

The Council of Europe's Venice Commission – which Azerbaijan is a member of – has repeatedly criticised the country's failure to meet its commitment to introduce a genuine civilian alternative to compulsory military service (see F18News 16 October 2012 http://www.forum18.org/archive.php?article_id=1755).

Similarly, the Council of Europe's European Commission against Racism and Intolerance (ECRI) in May 2011 condemned Azerbaijan's violations of freedom of religion or belief, and other human rights. ECRI also reiterated "its strong recommendation that the authorities should not prosecute or imprison those who have refused to perform military service" (see <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Azerbaijan/AZE-CbC-IV-2011-019-ENG.pdf>).

In August 2009 Concluding Observations on Azerbaijan's report to the United Nations (UN) Human Rights Committee (CCPR/C/AZE/CO/3), the Committee stated that it: "remains concerned that no legal provision regulates the status of conscientious objectors to military service (art. 18). The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civilian service of equivalent length be adopted at an early date in compliance with article 18 of the Covenant and the Committee's general comment No. 22 (1993) on article 18 (Freedom of thought, conscience or religion)".

However, Azerbaijan has still not halted its prosecution of conscientious objectors, or introduced a civilian alternative service for those who cannot perform compulsory service in the armed forces on conscientious grounds.

Conscientious objectors are usually imprisoned under Article 321.1 of the Criminal Code. This states: "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]" (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=1690).

The two most recent known imprisoned conscientious objectors - both Jehovah's Witnesses sentenced under Article 321.1 – were amnestied in 2013. Fakhraddin Mirzayev was amnestied in May 2013 after eight months' imprisonment and Kamran Mirzayev (no relation) was amnestied the following month after three months' imprisonment (see F18News 28 June 2013 http://www.forum18.org/archive.php?article_id=1852).

Three formerly jailed conscientious objector prisoners of conscience have lodged cases to the European Court of Human Rights (ECtHR) in Strasbourg (see F18News 16 October 2012 http://www.forum18.org/archive.php?article_id=1755). They are:

Mushfiq Mammedov and Samir Huseynov v. Azerbaijan (Application No. 14604/08);

and Farid Mammedov v. Azerbaijan (Application No. 45823/11).

All three had been convicted under Criminal Code Article 321.1. However, no admissibility decisions have yet been taken.

"They had no permission from the state organs to meet"

On 11 January 2014, officers of Kapaz District Police in Azerbaijan's second city Gyanja raided a Jehovah's Witness meeting, held in a private house. Police officer Lieutenant Zamaddin Mehdiyev drew up records of an offence against five of those present (Elgiz Aliyev, Irada Huseynova, Elyar Bakirov, Anar Huseynov and Asif Jafarov). He accused them of violating Code of Administrative Offences Article 299.0.2.

Article 299.0.2 punishes "violating legislation on holding religious meetings, marches, and other religious ceremonies" with fines for individuals of between 1,500 and 2,000 Manats (11,400 to 15,200 Norwegian Kroner, 1,400 to 1,880 Euros, or 1,900 to 2,550 US Dollars). Local residents estimate that such fines represent about one year's salary for a state employee outside Baku, such as a teacher.

"More than 40 people were gathered in the flat," Lieutenant Mehdiyev complained to Forum 18 from Gyanja on 10 February. "That's banned. They had no permission from the state organs to meet. We didn't know what provocation they were preparing." Asked why individuals need state permission to meet for worship, he insisted the law requires it.

Lieutenant Mehdiyev refused to say how he had found out that a religious meeting was being held in a private flat. "We had information," was all he would say. He added that he had been ordered to visit the flat by the head of Kapaz District Police, Agahuseyn Mammadov.

Mammadov's telephone went unanswered each time Forum 18 called on 10 February.

Fines

In separate hearings on 23 January, Judge Emin Aliyev of Kapaz District Court found all five Jehovah's Witnesses guilty under Article 299.0.2. He fined them each 1,800 Manats.

Forum 18 was unable to reach Judge Aliyev on 10 February. The court telephone was engaged or went unanswered each time it called.

On 3 February, all five lodged appeals against the decisions to Gyanja Appeal Court. Appeal hearings are due on 13 February under different judges for Bakirov, Aliyev and Jafarov, according to the court website. The website gives no date for Huseynova or Huseynov's appeals.

Appeals fail

A group of eight Jehovah's Witnesses from the northern town of Aliabad in Zakatala [Zakataly] Region have lost their appeals against fines for meeting for worship without state registration. A Jehovah's Witness meeting in a private Aliabad home was raided by police on 21 September 2013. All eight were fined 1,500 Manats each by Zakatala District Court under Administrative Code Article 299.0.2 (see F18News 12 December 2013 http://www.forum18.org/archive.php?article_id=1906).

Police Captain Aydin Seyidov, who drew up the prosecution records against the eight, refused to discuss the raid and subsequent fines with Forum 18 on 7 February 2014.

All eight appealed against the fines to Sheki [Säki] Appeal Court. However, on 23 December 2013, the appeal court upheld the

convictions of Aziz Aliyev, his wife Havva Aliyeva, their son Jeyhun Aliyev, Vagif Aliyev and Gamar Aliyeva, and Yevdokiya Sobko, according to the court decisions seen by Forum 18. On 10 January 2014 the same court upheld the convictions of Rauf and Samira Agayev, a married couple from Baku present during the police raid.

"Inspections"

State Committee inspectors visited the Sunni mosque in the village of Mushfiqabad in Baku's Garadag District, Committee spokesperson Ali confirmed to Forum 18. He failed to explain what the "inspection" consisted of. The mosque functions without the compulsory re-registration introduced with the harsh 2009 Religion Law amendments. He declined to say what measures are planned against the mosque as "work in this direction is in progress". He added that any measures "will be announced to the public in the near future".

Local Muslims earlier told Forum 18 that the Caucasian Muslim Board will not process the mosque's registration application. Under Azeri law, without this the State Committee will not register the Mosque. Muslims stated that at least two other local mosques – in Gobustan and in Alat – are facing similar re-registration problems.

The mosque's Imam, Mubariz Gachaev, faced repeated police threats that the mosque would be closed down in 2010, though they did not enforce the threat (see F18News 24 January 2011 http://www.forum18.org/archive.php?article_id=1531).

Many mosques – including those both inside and outside the Muslim Board – have been forcibly closed by the state (see eg. F18News 17 January 2013 http://www.forum18.org/Archive.php?article_id=1791).

Independent mosques are banned, and many religious communities of other faiths are subjected to threats, raids and fines (see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1690).

"Range of violations"?

Ali of the State Committee defended on-site "inspections" of religious communities that meet for worship without the compulsory state registration. "This is the daily activity of the Committee," he insisted to Forum 18. "The purpose of the committee is registering all unregistered communities as required by law." He did not explain why religious communities need state registration. Nor did he identify other unregistered religious communities that the State Committee had "inspected".

Ali of the State Committee made no mention to Forum 18 of claims by unnamed State Committee officials to the local media on 30 January that the Mushfiqabad mosque inspection had been triggered by the fact that the mosque had sent fighters to take part in Syria's civil war. Officials told the media that the inspection had been completed by then and "a range of violations" had been uncovered.

The unnamed State Committee officials did not explain why it was investigating the mosque for its lack of state registration. Allegedly sending young men to fight in Syria would normally be an issue for the ordinary police or the National Security Ministry secret police, not the State Committee.

Local media quoted Imam Gachaev as declaring that officials had not told him why his mosque was being inspected. Forum 18 was unable to reach Imam Gachaev on 10 February.

On 31 January, the day after the State Committee's comments, the state-backed Muslim Board issued a statement on its website criticising the Mushfiqabad mosque, as well as another Sunni mosque, the Ashurbey Mosque (also known as the Lezgin Mosque) in Baku's Old City. It complained that neither was registered with the State Committee and that the Muslim Board does not recognise the imams of either mosque.

Muslims close to both communities declined to comment to Forum 18 on 10 February. (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.

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