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AZERBAIJAN: Five years' imprisonment for "normal Muslims" who "simply conduct prayers"?

By Felix Corley, Forum 18

Five Sunni Muslims who attended a religious meeting in a home in the Azerbaijani capital Baku raided by armed and masked police in April 2014 could be imprisoned for up to five years each if convicted. "These are normal Muslims who are not involved in politics and simply conduct prayers," the lawyer for four of the five men Asabali Mustafayev told Forum 18 News Service. Their trial is likely to last two more months. Three of the five - Eldeniz Hajiyev, Ismayil Mammadov and Revan Sabzaliyev – have lodged cases to the European Court of Human Rights in Strasbourg over the months they spent in secret police detention in 2014. A verdict is likely to be handed down in Sumgait on 18 February to Zohrab Shikhaliyev, to punish him for maintaining a Sunni Muslim prayer room in his home. He faces up to three years' imprisonment on charges of illegal weapons, which his friends vehemently deny. And Jehovah's Witness conscientious objector Kamran Shikhaliyev (no relation) was finally transferred to a military disciplinary unit 14 months after being seized. He is supposed to be serving a one-year sentence.

The criminal trial of five Muslims who are being punished for holding a religious meeting in a home in the Azerbaijani capital Baku is continuing. Four of them are facing charges with a maximum penalty of five years' imprisonment. The next hearing is due on 13 February, the lawyer for four of the five men Asabali Mustafayev told Forum 18 News Service from Baku on 10 February. He says the trial is likely to last up to two more months.

Three of the five defendants have already lodged complaints to the European Court of Human Rights (ECtHR) in Strasbourg over their months in pre-trial detention in 2014 in the National Security Ministry (NSM) secret police investigation prison in Baku (see below).

The verdict in another criminal trial of a resident of Sumgait [Sumqayit] who maintained a Sunni Muslim prayer room in his home is expected on 18 February. If convicted, he could be imprisoned for up to three years (see below).

In defiance of its international human rights commitments, Azerbaijan maintains strict controls on who is allowed to hold meetings for worship and where they are allowed to take place. The Shia-dominated Caucasian Muslim Board has a state-backed monopoly on Muslim activity (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=1690).

Meanwhile, three of the 12 remaining prisoners serving prison terms for participating in street demonstrations in Baku against a ban on female students wearing the headscarf (hijab) in school were freed in late December 2014 (see below).

Convicted conscientious objector Kamran Shikhaliyev, transferred to a disciplinary unit in the military, is about to appeal to Azerbaijan's Supreme Court in Baku. The final appeal of former conscientious objector prisoner Kamran Mirzayev is due to be heard at the Supreme Court on 24 February (see below).

In addition to these criminal prosecutions, individuals have been punished for exercising their right to freedom of religion or belief with massive fines under the Administrative Code, while a Sunni mosque in Baku was raided (see F18News 24 February 2015 http://www.forum18.org/archive.php?article_id=2042).

Armed raid, literature and money confiscation, criminal cases

The criminal cases against the five Muslims - Eldeniz Hajiyev, Ismayil Mammadov, Revan Sabzaliyev, Zakariyya Mammadov and Shahin Hasanov - were launched following a massive armed police raid on Muslims studying the writings of the late Turkish Sunni Muslim theologian Said Nursi in Hajiyev's house in Baku's Yasamal District in April 2014.

Officers seized all the religious literature they could find, including hundreds of books by Nursi. They also seized money and individuals' mobile phones. Almost all the 39 adults and two children present were taken to a police station for questioning. Many of the 41 were held for up to two days. Hajiyev and Mammadov were held in the NSM secret police Investigation Prison since April 2014, Sabzaliyev since May, before being transferred to house arrest in September (see F18News 22 September 2014

http://www.forum18.org/archive.php?article_id=1999).

As well as the arrests on criminal charges, nine other attendees were each fined 1,500 Manats (then about 11,400 Norwegian Kroner, 1,400 Euros or 1,900 US Dollars) at Yasamal District Court in April 2014 for their attendance at the meeting (see F18News 16 April 2014 http://www.forum18.org/archive.php?article_id=1948).

"The men conducted no criminal activity, everyone agrees," Mustafayev insisted. "These are normal Muslims who are not involved in politics and simply conduct prayers." He said the case is based on complaints investigators say came from neighbours – who are billed in the case as "victims".

Baku trial underway

The criminal trial of the five began under Judge Akshin Afandiyev at Baku's Yasamal District Court with a preliminary hearing on 10 December 2014. At least six hearings have already taken place, lawyer Asabali Mustafayev, who represents all the defendants except Sabzaliyev, told Forum 18 from Baku on 10 February 2015.

Hajiyev and Ismayil Mammadov are being prosecuted under Criminal Code Article 167-2.2.1 and Article 168.2. Sabzaliyev is being prosecuted under Criminal Code Article 168.2. Zakariyya Mammadov and Hasanov are being prosecuted under Criminal Code Article 167-2.2.1 and Article 168.1. The Mammadovs are brothers.

Article 168 punishes "Creation of a group carrying out activity under the pretext of spreading a religious faith and carrying out religious activity and by this illegally harming social order, or harming the health of citizens or violating the rights of citizens irrespective of the form of infringement, as well as distracting citizens from performance of duties established by law, as well as leadership of such a group or participation in it". Cases when minors are involved are prosecuted under Article 168.2, which carries a maximum punishment of three years' imprisonment (see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/archive.php?article_id=1690).

Article 167-2.2.1 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 or imprisonment of two to five years.

Penalties under Criminal Code Article 168 (as well as under Article 167-1) were expected to be sharply increased in a proposed amendment to the Criminal Code, unnamed Milli Mejlis (parliament) officials told the local media in August 2014 (see F18News 14 August 2014 http://www.forum18.org/archive.php?article_id=1985).

However, these amendments have not yet been adopted. Forum 18 has been unable to find out if they existed and, if so, how far they have proceeded through parliament. No one at the Milli Mejlis Legal Policy and State Building Committee was prepared to tell Forum 18. The man who answered the phone at the Human Rights Committee on 12 February 2015 told Forum 18: "I'm not allowed to help you."

Three of the five men on trial in Baku – Hajiyev, Ismayil Mammadov and Sabzaliyev - spent up to five months in the NSM secret police's Baku investigation prison in 2014. A Baku court ordered the three men's release on 12 September 2014 and transfer to house arrest. All five men have had to sign statements that they are under police supervision and that they will not leave Baku without permission, the lawyer Mustafayev told Forum 18.

"Illegal" detention cases in Strasbourg

Between late October and late November 2014, soon after their release from the secret police prison, Hajiyev, Ismayil Mammadov and Sabzaliyev lodged cases against Azerbaijan to the ECtHR in Strasbourg, the court told Forum 18 from Strasbourg on 2 February 2015.

The three alleged that their detention had been "illegal" and violated their human rights (Hajiyev Application No. 74567/14, Ismayil Mammadov Application No. 71584/14, Sabzaliyev Application No. 73334/14).

Sumgait verdict imminent?

The criminal trial began in late January of 36-year-old Sunni Muslim Zohrab Shikhaliyev on charges of keeping illegal weapons and ammunition in his Sumgait home. His friends have vehemently denied the charges to Forum 18, insisting that the weapons the authorities claim to have found in his home were planted.

The trial – under Judge Azer Ismayilov at Sumgait City Court – is under Criminal Code Article 228.1. This carries a punishment for having illegal weapons of imprisonment of up to three years. A verdict is expected at the final hearing due on 18 February, Shikhaliyev's friends told Forum 18 on 12 February.

Shikhaliyev established a Sunni Muslim prayer room in his home more than two years ago as no other Sunni mosque exists in Sumgait. The government is hostile to Sunni Muslims and has aided efforts to turn exclusively Sunni mosques into Shia-dominated communities, working with the state-backed Caucasian Muslim Board (see F18News 18 November 2014 http://www.forum18.org/archive.php?article_id=2016).

Shikhaliyev was arrested in Sumgait by the Police Department for the Fight Against Organised Crime and Sumgait Town Police on 13 November 2014. The same day armed and masked police raided his home. Police claim to have discovered a Walther pistol and three bullets, 48 other bullets of various calibres, three grenades, six detonators and two memory cards from security cameras. They also claim to have seized 500 items of religious literature and 210 discs. Others detained for several hours the same day Shikhaliyev was arrested – including two invalid veterans of the Karabakh war - complain that police officers beat and humiliated them (see F18News 18 November 2014 http://www.forum18.org/archive.php?article_id=2016).

On 15 November 2014, Baku's Narimanov District Court ordered Shikhaliyev's detention for two months in pre-trial custody as criminal charges were being investigated. He has been held at Investigation Prison No. 1 at Kurdakhani in Baku's Sabunchu District, his friends told Forum 18 on 2 February.

Three freed, nine still in prison

Meanwhile, three Muslim men imprisoned for protesting on the streets of Baku in October 2012 against a 2010 Education Ministry ban on girls wearing a headscarf (hijab) in schools were freed after being included in a 29 December 2014 presidential pardon, according to the text of the decree on the presidential website. Jeyhun Guliyev and Muraday Guluyev had been serving five-year prison terms, while Nahid Gahramanov had been serving a four-year prison term (see F18News 18 November 2014 http://www.forum18.org/archive.php?article_id=2016).

They were among the largest number of prisoners of conscience jailed on grounds of freedom of religion or belief. Street protests in Baku against the hijab ban were held in December 2010, May 2011 and – a much larger protest – in October 2012.

Nine men arrested in connection with the October 2012 protest are still in prison. All but one were convicted under Criminal Code Article 233 ("Organisation of actions promoting infringement of a social order or active participation in such actions"). Some were also convicted under other Criminal Code Articles. Eight more were freed earlier in 2014.

Those still imprisoned are: Tarlan Agadadashov (5 years, 6 months, Prison No. 16), Rovshan Allahverdiyev (5 years, 6 months, Prison No. 16), Nasimi Hasanov (4 years, Prison No. 16), Ilham Hatamov (5 years, 6 months, Prison No. 14), David Karimov (6 years, Prison No. 16), Anar Gasimli (5 years, 6 months, Prison No. 14), Elshad Rzayev (6 years, Prison No. 16), Telman Shiraliyev (6 years, Prison No. 16), and Ramil Valiyev (6 years, 6 months, Prison No. 5).

Appeal from military disciplinary unit

Imprisoned conscientious objector Kamran Shikhaliyev (no relation of Zohrab Shikhaliyev) is about to lodge an appeal to the Supreme Court in Baku, his fellow Jehovah's Witnesses told Forum 18 on 10 February. He was punished for refusing the compulsory military service on grounds of his religious conscience.

Before 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, 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". Fourteen years later, there are no signs that the government has any intention of keeping this promise (see Forum18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=1690).

Shikhaliyev was forcibly conscripted in Baku in October 2013 just days after his 18th birthday and then was transferred to a military unit. He was maltreated following his enforced conscription. In April 2014 Jalilabad Military Court sentenced him under Criminal Code Article 335.1 ("Evasion of military service by causing harm to health or in another way") to one year in a military disciplinary unit. In July 2014 he lost his appeal against the conviction (see F18News 7 August 2014 http://www.forum18.org/archive.php?article_id=1983).

However, it was only in mid-December 2014 that he was transferred from a military unit in Astara in Lankaran District to a military disciplinary unit further north in Salyan, Jehovah's Witnesses told Forum 18. Shikhaliyev is unclear if his sentence is deemed to have already begun and, if so, when.

Shikhaliyev's legal representative was unable to meet him when he travelled to the disciplinary unit on 18 January, Jehovah's Witnesses told Forum 18. Military officials told him that only close relatives were allowed to visit. Lawyers and legal representatives can only meet their clients with written approval.

Shikhaliyev's father was not allowed access to him on his first visit, as the prisoner was in "quarantine" after arriving in the disciplinary unit. However, he was able to visit him in the disciplinary unit in January on the second attempt.

Supreme Court appeal

Meanwhile, former conscientious objector prisoner Kamran Mirzayev appealed in November 2014 against his conviction to Azerbaijan's Supreme Court. The case is due to be heard on 24 February 2015 with Judge Gulzar Rzayeva presiding, the court website notes.

Jehovah's Witness Mirzayev was convicted at Goychay District Court in March 2013 under Criminal Code Article 321.1 and sentenced to nine months' imprisonment. Sheki Appeal Court rejected his first appeal in May 2013. He was amnestied on 20 June 2013 after three months' imprisonment (see F18News 28 June 2013 http://www.forum18.org/archive.php?article_id=1852).

Criminal Code Article 321.1 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]".

However, Mirzayev continued his attempts to clear his name, arguing that Azerbaijan's Constitution upholds the right to perform an alternative to the compulsory military service. If his Supreme Court appeal fails, he will then be able to appeal to the ECtHR in Strasbourg. (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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