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AZERBAIJAN: Convicted and freed, but no compensation for 50 week imprisonment

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

Two female Jehovah's Witnesses, Irina Zakharchenko and Valida Jabrayilova, were convicted yesterday (28 January) of offering one religious booklet without the compulsory state permission needed in Azerbaijan to distribute religious literature. Judge Akram Qahramanov of Baku's Pirallahi District Court gave each a large fine, but waived the fines as they had spent nearly a year in prison, a court official told Forum 18 News Service. The two were freed in the courtroom. "The decision completely disregards a United Nations [Working Group on Arbitrary Detention] ruling that directed Azerbaijan to compensate the women for their unjust imprisonment," Jehovah's Witnesses complained to Forum 18. The court official said Judge Qahramanov was hearing another case, and she could not comment on why he had ignored the UN decision that the two women – far from being convicted of any crime – should be compensated. The secret police spokesperson claimed to Forum 18 the case was not within its competence, even though it had led the investigation and held the prisoners of conscience for nearly a year. Many other prisoners of conscience are still being held to punish them for exercising the right to freedom of religion or belief.

After nearly 50 weeks in jail, two female Jehovah's Witnesses Irina Zakharchenko and Valida Jabrayilova were convicted of offering one religious booklet without the compulsory state permission needed in Azerbaijan to distribute religious literature. A Judge in a Baku court yesterday (28 January) handed down a heavy fine on each, but cancelled the fines because the two women had been in prison since February 2015, a court official told Forum 18 News Service on 29 January. Zakharchenko and Jabrayilova were freed in the courtroom and allowed to go home to their families.

"Although in very poor health, Irina Zakharchenko and Valida Jabrayilova are relieved to be free," Jehovah's Witnesses told Forum 18. "They are now back at home and recovering with their families."

Zakharchenko, a 55-year-old widow, has been assessed as being 80 percent disabled because of severe arthritis and a previous injury to her right leg. The 38-year-old Jabrayilova had been the prime care-giver for her elderly mother until her arrest.

While welcoming the release of the two women, Jehovah's Witnesses are concerned that the women now have criminal convictions and have not been compensated for having been imprisoned to punish them for exercising their right to freedom of religion or belief. "The decision completely disregards a United Nations ruling that directed Azerbaijan to compensate the women for their unjust imprisonment," they told Forum 18. The women have not yet decided whether to appeal against their convictions, they added.

The United Nations (UN) Working Group on Arbitrary Detention found in December 2015 that the two women were being punished for exercising their right to freedom of religion or belief and called for the two to be both freed and compensated. Separately, the UN Human Rights Committee the same month called for the release from prison of Zakharchenko in view of her poor health while it considers the substance of an appeal in her case (see F18News 20 January 2016 http://www.forum18.org/archive.php?article_id=2140).

Even though the criminal case was led by the then National Security Ministry (NSM) secret police (now the State Security Service SSS) and the two women were held in the NSM's Investigation Prison for most of 2015, the spokesperson for the SSS refused absolutely to discuss the conviction of Zakharchenko and Jabrayilova. "It's not within our competence," the officer – who would not give his name – told Forum 18 from Baku on 29 January. "Ask the court."

The official of Baku's Pirallahi District Court told Forum 18 that Judge Akram Qahramanov – who convicted the two women – was unavailable as he was hearing another case. The official declined to comment on whether it was right to imprison people for nearly a year and to convict them in court for offering a religious booklet to others. She also declined to explain why the Judge had ignored the UN decision that the two women – far from being convicted of any crime – should be compensated.

Many still in prison for exercising right to freedom of religion or belief

The conviction and release of the two Jehovah's Witness prisoners of conscience leaves many others still in prison for exercising

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their right to freedom of religion or belief. Among the prisoners of conscience awaiting trial on criminal charges are:

- 43-year-old Shia Muslim Jeyhun Jafarov, arrested in March 2015 by the then NSM secret police and facing treason charges (see F18News 14 May 2015 http://www.forum18.org/archive.php?article_id=2061).

- 31-year-old Shia Muslim Taleh Bagirov, leader of the Muslim Unity Movement which the authorities appear determined to crush, arrested in November 2015 as the authorities stormed a home in the village of Nardaran north of Baku. He has been tortured in the hands of the Interior Ministry's Main Directorate for the Struggle with Organised Crime, sustaining a broken nose (see F18News 27 January 2016 http://www.forum18.org/archive.php?article_id=2143).

- Nuhbala Rahimov, Shia Muslim prayer leader of Rahima Hanum Mosque in Nardaran, arrested in December 2015 (see F18News 27 January 2016 http://www.forum18.org/archive.php?article_id=2143).

Many other prisoners of conscience are serving prison terms for exercising their right to freedom of religion or belief. These include five Sunni Muslims imprisoned to punish them for attending a religious meeting in a Baku home, some of another group of five Sunni Muslims from Baku sentenced for selling religious literature without the compulsory state permission (several of the five have already completed their prison terms) and a conscientious objector to compulsory military service, being held in a military disciplinary unit (see F18News 19 November 2015 http://www.forum18.org/archive.php?article_id=2123).

Offering one religious booklet

Trouble began for Zakharchenko and Jabrayilova on 5 December 2014. They were going from door to door to discuss their faith and offer copies of Jehovah's Witness publications in Pirallahi, a town of 16,000 on a narrow peninsula east of the capital. The two women "distributed religious literature without charge, thus illegally distributing it without appropriate permission to do so", the court decision approving their initial pre-trial detention – seen by Forum 18 – noted.

That same day, a local resident allegedly filed a complaint with Pirallahi District Police, the court decision added. She claimed that the two women she did not know "after providing religious information about Jehovah God, presented her with the religious publication 'Teach Your Children' without charge, and recommended she study and share this religious publication without the appropriate permission". The court ruling does not explain why the resident felt it necessary to complain to the police after holding a discussion on religious themes with visitors, who offered her a religious book.

The decision notes that Zakharchenko and Jabrayilova also approached three other local residents.

However, the State Committee for Work with Religious Organisations - which implements the compulsory state censorship of all religious literature published in or imported into Azerbaijan - approved import of this publication on 11 August 2014. State Committee Deputy Chair Gunduz Ismayilov authorised the State Customs Committee to allow the import of 2,000 copies of the book.

The authorisation, seen by Forum 18, reports the State Committee's expert study as concluding: "In the examination of the samples of religious literature, submitted for analysis to the experts, ideas that could have a negative impact on the religious situation in the country have not been detected and therefore permission to import these may be granted."

"Illegal" distribution

However, the authorities insisted during both the investigation and the eventual trial that the case centred not around the content of the booklet "Teach Your Children", but its "illegal" distribution.

A criminal case was lodged against Zakharchenko and Jabrayilova under Criminal Code Article 167-2.2.1. This 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 of 7,000 to 9,000 Manats or imprisonment of two to five years.

Amid a falling Manat, 7,000 Manats is currently the equivalent of 37,000 Norwegian Kroner, 3,900 Euros or 4,300 US Dollars.

Secret police prison

The NSM secret police then took over the case from the General Prosecutor's Office. The two women were summoned for questioning on 17 February 2015 and arrested. They were held in the NSM secret police Investigation Prison in Baku until late 2015, when Zakharchenko was finally transferred to hospital. Jabrayilova was transferred to the Investigation Prison in Kurdakhani.

Prisoner of conscience Jabrayilova described conditions in the then-NSM secret police Investigation Prison as bad. "She called her confinement room a 'cage', rather than a cell, in that there was no privacy and everything was exposed to the sight of others,"

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Jehovah's Witnesses note. "The smell of sewage in this 'cage' was suffocating". She also noted that officials constantly seek money from prisoners (see F18News 20 January 2016 http://www.forum18.org/archive.php?article_id=2140).

Conditions in the then-NSM (now SSS) Investigation Prison are known to be harsh and Azerbaijan has refused to allow publication of a UN Subcommittee on Prevention of Torture (SPT) report on a visit in late April 2015 (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=2081).

Convictions, fines, release

The trial of Zakharchenko and Jabrayilova finally began under Judge Qahramanov at Baku's Pirallahi District Court with a preliminary hearing on 10 December 2015. The trial proper began on 17 December 2015, with a short hearing on 7 January 2016. Two other hearings were postponed because Zakharchenko was too ill to attend (see F18News 20 January 2016 http://www.forum18.org/archive.php?article_id=2140).

At the final hearing on 28 January, Judge Qahramanov convicted both women of "illegally" distributing one religious booklet. He fined each of them 7,000 Manats. He then cancelled the fines because of the time Zakharchenko and Jabrayilova had spent in prison (nearly 50 weeks), Jehovah's Witnesses told Forum 18 the same day.

The women were freed in the courtroom at the end of the trial and allowed to return to their families for the first time in nearly a year.

What compensation?

In an opinion, adopted on 2 December 2015 (A/HRC/WGAD/2015) and transmitted that same month to Azerbaijan's government, which Forum 18 has seen, the UN Working Group on Arbitrary Detention condemned the arrest and continued detention of the two prisoners of conscience (see F18News 20 January 2016 http://www.forum18.org/archive.php?article_id=2140).

It found that Azerbaijan has broken three articles of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

"Ms. Zakharchenko and Ms. Jabrayilova have been deprived liberty for peacefully exercising the rights to freedom of religion and belief, as guaranteed under article 18 ["Freedom of thought, conscience and religion"] of the UDHR and article 18 ["Freedom of thought, conscience and religion"] of the ICCPR."

The Working Group also found that the two prisoners of conscience "have been deprived liberty for the reason of discrimination based on their religion in violation of article 7 ["Right to equality and non-discrimination"] of the UDHR and article 26 ["Right to equality and non-discrimination"] of the ICCPR."

It also considered that the "non observance of the international norms established in article 9 ["Freedom from arbitrary arrest, detention or exile"] of the UDHR and article 9 ["Liberty and security of person"] of the ICCPR is of such gravity as to give the deprivation of liberty of Ms. Zakharchenko and Ms. Jabrayilova arbitrary character."

In conclusion, the Working Group called on Azerbaijan to release both prisoners of conscience, "and accord them an enforceable right to compensation in accordance with article 9(5) of the ICCPR".

ICCPR Article 9(5) states that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". Azerbaijan ratified the ICCPR in 1992.

In a separate ruling, the UN Human Rights Committee asked for "interim measures" from the Azerbaijani authorities, according to a 3 December 2015 letter from the Committee seen by Forum 18. (It asked that Zakharchenko be freed from prison urgently while it continued to investigate the substance of the complaint. The Committee communicated this request to the Azerbaijani authorities immediately (see F18News 9 December 2015 http://www.forum18.org/archive.php?article_id=2131).

While Zakharchenko and Jabrayilova have now been freed, it remains unclear if the Azerbaijani authorities will comply with the Working Group finding that they should be compensated for the violation of their human rights. (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/archive.php?article_id=2081.

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

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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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