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AZERBAIJAN: Regime admits freedom of religion and belief violations to ECtHR

By Felix Corley, Forum 18

In nine cases concluded in September at the European Court of Human Rights (ECtHR), Azerbaijan admitted it violated freedom of religion or belief and the ECtHR has closed the cases. Yet, as lawyer Khalid Agaliyev noted, despite many ECtHR judgments against Azerbaijan, "we don't see any follow-up from these judgments. We want the general human rights situation to change under the influence of these judgments. Unfortunately, this is not happening".

In nine cases concluded in September at the European Court of Human Rights (ECtHR) in Strasbourg, Azerbaijan admitted that it violated the rights of people to freedom of religion or belief. The regime pledged to pay compensation to the victims within three months of the ECtHR decisions. On 3 September the Court issued its decisions and then closed all nine of the cases.

The government is increasingly admitting violating human rights in a range of cases at the ECtHR, allowing it to pay small amounts of compensation and have the cases closed. However, victims and lawyers complain that the ECtHR does not then review the substance of an individual case. They also contend that the government does nothing to change the legal framework under which such violations occur (see below).

In all nine cases, as well as in earlier cases where the government admitted its violations, the victims expressed concern at both the low level of compensation the government offered and what they saw as its failure to make a sufficient commitment that the violations of freedom of religion or belief could not recur (see below).

Asabali Mustafayev, the lawyer who represented the seven Muslims whose cases were decided on 3 September expressed dissatisfaction that, by accepting the government's "unilateral declaration", the Court had not reviewed the substance of the cases. He told Forum 18 that they had tried "to have the government commit to its obligations to take general measures that such violations could not recur in future. But here the government has simply admitted a violation but has not taken any obligation on itself" (see below).

Khalid Agaliyev, a lawyer who has taken up freedom of religion or belief cases, told Forum 18 in June that the judgments were important for the individuals. But he noted that despite many ECtHR judgments against Azerbaijan, "we don't see any follow-up from these judgments. These judgments usually have only an individual impact," Agaliyev told Forum 18. "We want the general human rights situation to change under the influence of these judgments. Unfortunately, this is not happening" (see below).

Azerbaijan has admitted to the Court its violation of the freedom of religion or belief of Muslims and Jehovah's Witnesses in earlier cases (see below).

The government admitted violating the rights of four Jehovah's Witnesses punished for meeting for worship in 2010, and the Jehovah's Witness community in the capital Baku denied permission to import religious literature in 2011. It also admitted violating the rights of seven Muslims punished for discussing their faith in a meeting raided by police in 2015 (see below).

"The Government of the Republic of Azerbaijan hereby wishes to express – by way of unilateral declaration – acknowledgement of the fact that there have been violations of the applicants' rights guaranteed under the Convention [European Convention on Human Rights]," the government admitted in the case of those punished for meeting for worship. The wording in the other cases varied only over whether there was one or more applicant.

34 pending cases, another to be lodged

Former parliamentary staff member Rahim Akhundov, who says he was dismissed from his job at the Milli Majlis in December 2018 on the orders of the secret police because of his Christian faith (http://www.forum18.org/archive.php?article_id=2579), is planning to lodge his case to the ECtHR. He lost his final appeal at the Supreme Court in Baku on 23 September.

Akhundov's case would join at least 63 other cases lodged from Azerbaijan since 2004 over its persistent and repeated violations of the right to freedom of religion or belief. The ECtHR in Strasbourg is yet to rule on 34 of these known cases (http://www.forum18.org/archive.php?article_id=2606), lodged between 2007 and 2019.

These 34 pending cases cover a range of violations of freedom of religion or belief:

- Jailed for leading prayers
- Punished for conscientious objection
- Police raids on meetings for worship
- Unlawful house search
- Punishment for talking to others about faith
- State censorship of religious literature
- Registration denial
- Movement restrictions because of appearance

Forum 18 was unable to reach Chingiz Asgarov, the Azerbaijani government's Agent at the ECtHR (see below).

ECtHR decisions, but no changes in the law

ECtHR judgments require governments not only to pay any compensation awarded but to rectify the conditions which led to the human rights violations. Azerbaijan has paid compensation to victims of violations of the right to freedom of religion or belief, though not always within the prescribed three-month period.

In all nine of the religious freedom cases on which the ECtHR issued decisions in September 2020 after the government issued a "unilateral declaration" admitting violations, as with similar earlier cases, the victims were unhappy. They do not believe the government gave a sufficient commitment that the violations of the right to freedom of religion or belief could not recur (see below).

Asabali Mustafayev, the lawyer who represented the seven Muslims whose cases were decided on 3 September (see below), expressed dissatisfaction that, by accepting the government's "unilateral declaration", the Court had not reviewed the substance of the cases. He told Forum 18 on 29 September that the ECtHR has not yet examined the substance of violations of the freedom of religion and belief of Muslims (<http://www.forum18.org/archive.php?country=23>) in Azerbaijan.

Mustafayev added that they had tried "to have the government commit to its obligations to take general measures that such violations could not recur in future. But here the government has simply admitted a violation but has not taken any obligation on itself."

Khalid Agaliyev, a lawyer who has taken up freedom of religion or belief cases, told Forum 18 in June (http://www.forum18.org/archive.php?article_id=2580) that the judgments were important for the individuals. But he noted that despite many ECtHR judgments against Azerbaijan, "we don't see any follow-up from these judgments".

"These judgments usually have only an individual impact," Agaliyev told Forum 18. "We want the general human rights situation to change under the influence of these judgments. Unfortunately, this is not happening."

Since 2019, the government has also almost stopped raiding religious communities meeting for worship – whether or not they have state permission to meet – and almost stopped raiding shops where religious literature and other materials are offered for sale.

Jehovah's Witnesses – who have in the past faced frequent fines for meeting for worship – note that the last time a fine was levied against a community member was in January 2017. They also note that the State Committee for Work with Religious Organisations – which oversees state control of the exercise of freedom of religion or belief – has not rejected their applications to import religious literature since November 2015.

However, the regime has changed no laws as a result of the many ECtHR decisions. Meeting for worship without state permission remains illegal and punishable. Sharing faith with others remains illegal and punishable. Importing, producing or distributing religious literature without State Committee approval remains illegal and punishable. It remains illegal and punishable for Muslims who have gained their religious education outside Azerbaijan to lead prayers and preach without permission. (http://www.forum18.org/archive.php?article_id=2429)

"We hope that this important ECtHR judgment will speed the process of obtaining registration in Ganca and other cities in Azerbaijan," Jehovah's Witness Kirill Stepanov noted after the decision about religious censorship on which the ECtHR ruled on 3 September (see below). "It is our hope that the government review of our literature before importation will be removed in time."

Why do people have to seek justice from the ECtHR?

The telephone of Chingiz Asgarov, the Deputy Chair of the Supreme Court - and the Azerbaijani government's Agent at the ECtHR - went unanswered each time Forum 18 called on 30 September 2020.

Forum 18 asked Asgarov in writing the same day what steps (if any) Azerbaijan is taking to prevent future violations of freedom of religion or belief, what legal changes (if any) the government is proposing to prevent such violations, and why people have to seek justice from the ECtHR not domestic courts. Forum 18 received no response by the afternoon of the working day in Baku on 2 October.

Asked in October 2012 why Azerbaijan was then jailing conscientious objectors in violation of its commitments to the Council of Europe, Asgarov told Forum 18 (http://www.forum18.org/archive.php?article_id=1755): "Do you think that as the government Agent to the European Court I control all courts in Azerbaijan? Is it my duty?"

The telephone of Aynur Sabitova, head of the Human Rights Department at the Justice Ministry in Baku, went unanswered on 30 September 2020. The same day Forum 18 asked the deputy head of the Department, Rahim Rahimov, why the government had not admitted in courts within Azerbaijan that it had violated the rights of people to freedom of religion or belief and what steps it was undertaking to prevent such violations from recurring. As soon as Forum 18 asked the questions the line went silent and then cut off. All subsequent calls went unanswered.

The telephone of Yaqut Aliyeva, spokesperson for the State Committee for Work with Religious Organisations in Baku, went unanswered each time Forum 18 rang on 30 September. Forum 18 asked in writing the same day what steps (if any) Azerbaijan is taking to prevent future violations of freedom of religion or belief, what legal changes (if any) the State Committee is proposing to prevent such violations, and why individuals have to seek justice from the ECtHR rather than through domestic courts. Forum 18 received no response by the afternoon of the working day in Baku on 2 October.

Forum 18 received no response to the same written questions it sent to Aliyeva in July 2019 (http://www.forum18.org/archive.php?article_id=2490).

Regime admits more freedom of religion or belief violations to ECtHR

In nine cases concluded in September 2020 at the European Court of Human Rights in Strasbourg, the Azerbaijani government admitted through "unilateral declarations" that it violated the right to freedom of religion and belief. The government pledged to pay compensation to the victims within three months of the decisions being notified.

The nine cases were concluded with ECtHR decisions on 3 September. The ECtHR published the nine decisions on 24 September. This means that Azerbaijan will have to pay the compensation to the victims in these cases by 24 December.

"The Government of the Republic of Azerbaijan hereby wishes to express – by way of unilateral declaration – acknowledgement of the fact that there have been violations of the applicants' rights guaranteed under the Convention [European Convention on Human Rights]," the government admitted in the case of those punished for meeting for worship. The wording in the other cases varied only over whether there was one or more applicant.

Seven of the nine cases the ECtHR decided on 3 September 2020 had been lodged by Muslims punished for attending a meeting to study Muslim theologian Said Nursi's works at a home in Baku in September 2015: Agayev v. Azerbaijan (Application No. 9327/16); Khanlayev v. Azerbaijan (Application No. 9594/16); Rahimov v. Azerbaijan (Application No. 11504/16); Bakirov [Bashirov] v. Azerbaijan (Application No. 11601/16); Mammadov v. Azerbaijan (Application No. 11604/16); Sungur v. Azerbaijan (Application No. 11071/16); and Mikdat v. Azerbaijan (Application No. 11573/16).

In September 2015, police raided the meeting to study Muslim theologian Said Nursi's works at a home in Baku. They seized religious books and took about 85 people to the police station. Samir Agayev, Fakhraddin Khanlayev, Latif Rahimov, Sayavush Bashirov and Zakariyya Mammadov were fined for an "illegal" meeting, while two Turkish visitors - Nurullah Sungur and Mikdat Senol – were fined and deported. (http://www.forum18.org/archive.php?article_id=2106) The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-192840>) about the seven cases on 3 April 2019.

The seven Muslims and the Azerbaijani government failed to reach a "friendly settlement". After this, the Azerbaijani government issued a "unilateral declaration" in each of the cases.

On 3 September the ECtHR accepted the Azerbaijani government's admission (<http://hudoc.echr.coe.int/eng?i=001-204951>) that it

had violated the men's human rights and its offer to pay each of the victims 4,400 Euros in compensation and costs tax-free within three months.

"The Court has established clear and extensive case-law concerning complaints relating to the domestic authorities' interference with religious meetings held on private premises," it declared in the judgment in the seven cases, pointing particularly to two judgments in cases from Russia. The ECtHR accepted the "unilateral declarations" and closed the cases.

Agayev and the six other Muslims are "not completely satisfied" with the ECtHR judgments, their lawyer Asabali Mustafayev told Forum 18 on 29 September.

"We tried to have the Court review the substance of the complaints," Mustafayev told Forum 18, "and to have the government commit to its obligations to take general measures that such violations could not recur in future. But here the government has simply admitted a violation but has not taken any obligation on itself."

Another of the cases on which the ECtHR ruled on 3 September concerned a group of four Jehovah's Witnesses: Valiyev and Others v. Azerbaijan (Application No. 42651/11). Police raided a Jehovah's Witness meeting for worship in Yegana Gahramanova's home in Ganca in December 2010. Officers detained her, Teymur Valiyev, Saladdin Mammadov and Rashad Niftaliyev. A court fined all four for "illegal" religious activity (http://www.forum18.org/archive.php?article_id=1527), though Valiyev's fine was changed to a warning because of his disability. The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-192097>) about the case on 6 March 2019.

On 3 September the ECtHR accepted the Azerbaijani government's admission (<http://hudoc.echr.coe.int/eng?i=001-204940>) that it had violated the individuals' human rights and its offer to pay each of the four victims 4,000 Euros in compensation and costs tax-free within three months.

The Court accepted the unilateral declaration despite the victims' concerns. "By a letter of 9 December 2019," the ECtHR noted in its decision, "the applicants indicated that they were not satisfied with the terms of the unilateral declaration. In particular, they contended that the issues raised in the present application have not been determined by the Court in previous cases against the respondent Government and that the Government's unilateral declaration did not address the problems underlying the alleged violations of the Convention."

In its decision, the ECtHR stressed that it "has established clear and extensive case-law concerning complaints relating to the domestic authorities' interference with Jehovah's Witnesses' meetings", pointing in particular to two cases from Russia.

Jehovah's Witnesses note that the government is still refusing to grant legal status to their community in Ganca and thus the right legally to exist. However, they add that the situation has improved in recent years and they "have held meetings composed of small groups in private homes without government interference".

The ninth case on which the ECtHR ruled on 3 September concerned the Jehovah's Witness community in the capital Baku: Religious Community of Jehovah's Witnesses v. Azerbaijan (Application No. 12739/13).

In March 2011, the State Committee rejected the community's request to import Jehovah's Witness literature. A Baku court held that as the community was asking for more literature than the number of its members warranted, the community wanted the literature to share their faith with others. It rejected the community's appeal against the denial. The community subsequently sought to have five further 2011 State Committee literature import denials overturned. The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-192837>) about the case on 3 April 2019.

On 3 September the ECtHR accepted the Azerbaijani government's admission (<http://hudoc.echr.coe.int/eng?i=001-204942>) that it had violated the community's human rights and its offer to pay 3,000 Euros in compensation and costs tax-free within three months.

The Court accepted the unilateral declaration despite the community's concerns. "By a letter of 9 October 2019," the ECtHR noted in its decision, "the applicant indicated that it was not satisfied with the terms of the unilateral declaration. In particular, it contended that the issues raised in the present application have not been determined by the Court in previous cases against the respondent State and that the Government's unilateral declaration did not address the problems underlying the alleged violations of the Convention."

In its decision, the ECtHR stressed that it "has established clear and extensive case-law relating to complaints about the domestic authorities' interference with dissemination of religious publications", pointing particularly to a similar case in Azerbaijan on which it had ruled in February 2020 (see below), as well as cases in Russia.

Earlier government admissions of violations

The first known instance when the Azerbaijani government admitted violations of the right to freedom of religion or belief through a "unilateral declaration" in a Jehovah's Witness case came in the case of Bagirov v. Azerbaijan (Application No. 41832/15).

Baku's Qaradag District Court fined Jehovah's Witness Ismayil Bagirov 1,500 Manats in January 2015 (http://www.forum18.org/archive.php?article_id=2042) for sharing his faith in a Baku shopping centre and offering religious literature. The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-193189>) about the case on 26 April 2019.

On 30 January 2020, the ECtHR accepted the Azerbaijani government's admission (<http://hudoc.echr.coe.int/eng?i=001-201596>) that it had violated Bagirov's human rights and its offer to pay the victim 2,000 Euros in compensation and costs tax-free within three months.

The Court accepted the unilateral declaration despite Bagirov's concerns. "By a letter of 2 December 2019," the ECtHR decision noted, "the applicant indicated that he was not satisfied with the terms of the unilateral declaration. In particular, he contended that the amount of compensation provided in the Government's unilateral declaration was low and that it lacked measures to prevent similar future Convention breaches."

In its decision, the ECtHR stressed that it "has established clear and extensive case-law concerning complaints relating to the Jehovah's Witnesses' prosecution following public preaching", particularly pointing to a decision over the late Greek Jehovah's Witness Minos Kokkinakis. He had been punished for sharing his faith, but in 1993 the ECtHR upheld his right to share his faith.

In three separate decisions issued in 2020 – the most recent two on 4 June - the ECtHR accepted the government's "unilateral declarations" admitting that it violated the freedom of religion and belief of 13 individuals by subjecting them to excessively long pre-trial detention and ordered compensation to each (http://www.forum18.org/archive.php?article_id=2580). Of those ordered compensated, five had been detained for exercising freedom of religion or belief. After failing to agree "friendly settlements", the ECtHR accepted the government's "unilateral declarations" and the award of 3,000 Euros in compensation to each.

Among the victims whose excessively long pre-trial detention the government admitted were three Muslims who were punished for participating in a religious meeting in 2014 in a Baku home, in the cases of Hajiyev v. Azerbaijan (Application No. 74567/14), Mammadov v. Azerbaijan (Application No. 71584/14), Sabzaliyev v. Azerbaijan (Application No. 73334/14).

Armed police and NSM secret police raided Eldeniz Hajiyev's home in Baku in April 2014 as Muslims were meeting to study the works of Said Nursi. Officers seized religious literature and arrested Hajiyev, together with Ismayil Mammadov and Revan Sabzaliyev. The three lodged the ECtHR cases after their September 2014 transfer to house arrest (http://www.forum18.org/archive.php?article_id=1999) and before their trial and October 2015 jailing. (http://www.forum18.org/archive.php?article_id=2173) The three alleged that their detention had been "illegal" and violated their human rights. The ECtHR asked the government questions about all three cases on 22 March 2018.

Earlier findings against Azerbaijan

In all other freedom of religion or belief cases, the government has vigorously contested the victims' claims that they had suffered violations of their human rights.

The ECtHR ruled on 20 February that Azerbaijan had violated the freedom of religion and belief of seven Jehovah's Witnesses who had been sharing their faith in public in 2010 in the case Nasirov and Others v. Azerbaijan (Application No. 58717/10). The ECtHR ruled that Azerbaijan is to pay each of the victims 3,000 Euros, with a total of 391 Euros in costs (<http://hudoc.echr.coe.int/eng?i=001-201088>).

In three separate incidents, police stopped the seven Jehovah's Witnesses as they were sharing their faith door to door and seized religious literature (Famil Nasirov and Amina Mammadova in Baku in March 2010 (http://www.forum18.org/archive.php?article_id=1420); Gulnaz Hasanova, Salatin Iskandarova and Shafiga Mammadova in Agstafa in April 2010 (http://www.forum18.org/archive.php?article_id=1443); and Rahima Huseynova and Aygul Nasirova in Sumgait [Sumqayit] in May 2010). Courts initially fined the individuals for "illegally" distributing banned religious literature. The appeal courts upheld the decisions of the first-instance courts, stating that books that had been distributed were allowed only for internal use of a religious organisation and not to be distributed in public places. Most of these fines were overturned on appeal. The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-177153>) about the case on 30 August 2017.

Famil Nasirov welcomed the ECtHR decision and noted that in practice the situation for Jehovah's Witnesses has improved. "In the past, we faced many difficulties in our country. It was common for police officers to detain us and then interrogate us for 4-5 hours." He added that "this no longer happens and we can now preach more freely".

In another judgment issued on 20 February 2020 (<http://hudoc.echr.coe.int/eng?i=001-201087>), the ECtHR ruled that Azerbaijan had violated the freedom of religion and belief of Jehovah's Witnesses when it banned some of their religious literature (http://www.forum18.org/archive.php?article_id=2546) (Religious Community of Jehovah's Witnesses v. Azerbaijan, Application No. 52884/09).

In June 2008, the State Committee rejected some items of the community's request to import Jehovah's Witness literature. It claimed these works insulted other (mainly Christian) religions and beliefs. The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-173023>) about the case on 23 March 2017.

On 12 December 2019, the ECtHR found that Azerbaijan violated the freedom of religion and belief of Movsum Samadov, Chair of the Islamic Party, in the case *Samadov v. Azerbaijan* (Application No. 48431/11). The ECtHR ruled that Azerbaijan is to pay the victim 4,000 Euros in compensation (<http://hudoc.echr.coe.int/eng?i=001-198888>).

Samadov was arrested in January 2011 five days after a speech was placed on the internet where he harshly criticised the regime of President Ilham Aliyev. In particular he condemned the enforced closure of mosques, attempts to ban the call to prayer from mosques and punishments on women for wearing the hijab. In October 2011, after the case was lodged, a Baku court jailed Samadov for 12 years (http://www.forum18.org/archive.php?article_id=2263). The ECtHR asked the government questions (<http://hudoc.echr.coe.int/eng?i=001-145864>) about the case on 30 June 2014.

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 judgment covered four cases (one involving two applicants) (http://www.forum18.org/archive.php?article_id=2490), which the Court considered together. (END)

Full reports on freedom of thought, conscience and belief in Azerbaijan
(<http://www.forum18.org/archive.php?query=&religion=all&country=23>)

For more background, see Forum 18's Azerbaijan religious freedom survey (http://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 (http://www.forum18.org/archive.php?article_id=1351)

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