

15 September 2010

AZERBAIJAN: Nine month jail term for conscientious objector

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

Jehovah's Witness Farid Mammedov's appeal against a nine month jail term for refusing compulsory military service on religious grounds has failed, Forum 18 News Service has learned. Jehovah's Witnesses told Forum 18 that the appeal hearing was short and "completely ignored" the country's international human rights obligations. "The prosecutor merely repeated the arguments made in the lower court that because no mechanism for alternative service exists, the constitutional right is irrelevant," a Jehovah's Witness present at the hearing told Forum 18. In defiance of its commitments to the Council of Europe, Azerbaijan has still not halted its prosecution of conscientious objectors, or introduced a civilian alternative service. Two other convicted conscientious objectors in March 2008 lodged an appeal to the European Court of Human Rights (ECtHR), but no admissibility decision has yet been made on this.

Jehovah's Witness Farid Mammedov was arrested in the court room on 8 September, after the failure of his appeal against a prison term for refusing compulsory military service on religious grounds, Forum 18 News Service has learnt. Mammedov was taken to Baku Investigation Prison in Kurdekhani, from where he will be assigned to a prison camp to serve a nine month prison sentence, human rights defender Eldar Zeynalov told Forum 18 from the Azerbaijani capital Baku on 14 September. Mammedov intends to lodge a further appeal to the Supreme Court.

Mammedov's fellow Jehovah's Witnesses insist to Forum 18 that he is ready and willing to perform an alternative, civilian service, but this does not exist in Azerbaijan. In defiance of its commitments to the Council of Europe, 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.

Adil Gadjeiev of the office of the Human Rights Ombudsperson Elmira Suleymanova told Forum 18 that he no longer handles cases of conscientious objectors, referring Forum 18 to the Ombudsperson's Office department that handles military issues. However, an aide there told Forum 18 on 15 September that the department head Fazail Mammedov was out of the office and no one else could say how many conscientious objectors might have applied for help to the Ombudsperson in recent years and what help the Office might have offered. Forum 18 submitted the questions in writing and is waiting for a response.

Both Gadjeiev and the aide declined to discuss with Forum 18 the prosecution of Farid Mammedov.

Azerbaijan's Council of Europe commitment

Among Azerbaijan's commitments to the Council of Europe ahead of its accession in January 2001 was a commitment "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".

Paragraph 14 of Opinion No. 222 of the Parliamentary Assembly of the Council of Europe, adopted on 28 June 2000, cites letters from the then Azerbaijani President Heydar Aliyev, Prime Minister Artur Rasizade, and other leading national officials, in which Azerbaijan itself takes responsibility for bringing into force within two years of accession an alternative civilian service law, compliant with European standards. The letters also commit Azerbaijan to stop imprisoning conscientious objectors before a civilian alternative service is introduced.

Article 76 of Azerbaijan's Constitution provides that "if beliefs of citizens come into conflict with service in the army then in some cases envisaged by legislation alternative service instead of regular army service is permitted". However, despite this Article and the country's Council of Europe commitments, no mechanism for an alternative to compulsory military service has been introduced. Refusal to perform military service in peacetime is punished under Article 321.1 of the Criminal Code with imprisonment of up to two years.

"Nothing real is happening" on Alternative Service Law

Talatum Guliev, deputy to Safa Mirzoev, chief of staff of the Milli Mejlis (parliament), readily admits that adopting an Alternative Service Law is among Azerbaijan's commitments to the Council of Europe. "Such a law is in the current parliamentary work plan," he told Forum 18 from Baku on 15 September. "It is in this year's plan, was in last year's plan – and the year before. But nothing real is happening." He declined to speculate on why parliament has not adopted such a law ten years after it took on itself the obligation to do so.

Likewise Ilgar Gurbanov, deputy head of the Department of Legislation and Legal Expertise at the powerful Presidential Administration, told Forum 18 on 15 September that despite "discussions" on the topic, "no draft law" is currently in his department. Asked whether Azerbaijan is sincere in its obligation to the Council of Europe to introduce an alternative service law, he told Forum 18: "Of course." Asked why it had not introduced such a law in the ten years since promising to do so, he responded: "I can't say."

Mirzoev – said within Azerbaijan to play an influential role in guiding parliament's work - stated in November 2009 that a draft Law on Alternative Service has been prepared, but will not be presented to the Milli Mejlis until "positive results" are achieved in talks over resolving the Azerbaijani-Armenian conflict over Nagorno-Karabakh. Mirzoev also claimed that the draft Law had been given a "positive" assessment by the Council of Europe. But as human rights defender Zeynalov – who has repeatedly called for civilian alternative service to be introduced – has noted, "they can claim that the Council of Europe's experts were positive, but no-one can check this" (see F18News 3 December 2009 http://www.forum18.org/Archive.php?article_id=1382).

Gadjiev told Forum 18 in September 2009 that the Ombudsperson's Office wrote to the Milli Mejlis in 2008 urging it to adopt an Alternative Service Law as soon as possible (see F18News 3 December 2009 http://www.forum18.org/Archive.php?article_id=1382).

Nine months' imprisonment

The 22-year-old Farid Mammedov was found guilty on 16 July at Baku's Nasimi District Court under Criminal Code Article 321.1 and sentenced to nine months' imprisonment. "Interestingly, the trial court stated in its ruling that the prison sentence would not be enforced until the verdict is 'brought to execution'," Jehovah's Witnesses noted. This allowed Mammedov to remain free as he prepared for the Appeal Court hearing.

In the wake of the July court decision, Mammedov was optimistic that higher courts would overturn the decision and uphold his right to do a civilian alternative service in line with his religious beliefs. "I am not a criminal," he insisted.

However, on 8 September, the collegium chaired by Judge Mirpasha Huseynov upheld the nine-month sentence, the Baku Appeal Court website recorded.

Jehovah's Witnesses told Forum 18 that the 8 September appeal hearing was short and "completely ignored" the country's international human rights obligations, including under the European Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which Azerbaijan has ratified.

"The prosecutor merely repeated the arguments made in the lower court that because no mechanism for alternative service exists, the constitutional right is irrelevant," a Jehovah's Witness present at the hearing told Forum 18 from Baku on 15 September.

On the afternoon of the hearing, only Mammedov's lawyer and a monitor from the Organisation for Security and Co-operation in Europe's (OSCE) Office in Baku – only after the monitor's identity was confirmed - were initially allowed in, the Jehovah's Witness who was present told Forum 18. "Although the judge said the hearing was open, security guards prevented about 15 of Farid's friends and supporters entering the courtroom," he said. However, after the lawyer asked the judge to stop security guards from preventing access were Mammedov's supporters allowed in.

"No legal basis for the provision of deferment to call-up"?

Farid Mammedov has made no secret of his desire to perform civilian rather than military service. In 2006 he wrote to Ombudsperson Suleymanova to complain that the military commissariat of Baku's Nasimi District had refused to accept his request to perform alternative service, or to defer his call-up. After consulting the military commissariat, Suleymanova responded to him to say that "it is clear that you have no legal basis for the provision of deferment to call-up to urgent military service". She failed to tell him why he could not perform alternative service in line with the Constitution as he had requested (see F18News 26 July 2006 http://www.forum18.org/Archive.php?article_id=818).

Another appeal expected

Another Jehovah's Witness conscientious objector, Mushfiq Mammedov (no relation of Farid), was sentenced under the same Criminal Code Article in July 2006, when he was given a suspended six month prison term (see F18News 26 July 2006 http://www.forum18.org/Archive.php?article_id=818).

He was tried on the same charges again in October 2009, by which time he was aged 26. At the end of his second trial, taking account of the two months he had spent in pre-trial detention, the judge handed down a fine of 250 Manats (1,737 Norwegian Kroner, 206 Euros or 312 US Dollars).

In December 2009 Baku Appeal Court upheld the conviction, which Mushfiq Mammedov is now preparing to appeal to Azerbaijan's Supreme Court. Jehovah's Witnesses told Forum 18 that he paid the fine "under protest". "This was not an admission of guilt as he does not consider himself guilty of any offence and will be seeking reimbursement of the fine in his appeal."

Mushfiq Mammedov's second conviction on the same charge came despite the fact that Article 64 of Azerbaijan's Constitution and Article 8.2 of the Criminal Code do not allow criminal charges to be brought against someone twice for the same crime (see F18News 15 December 2009 http://www.forum18.org/Archive.php?article_id=1387).

Mammedov argues that Azerbaijan's Constitution and the country's commitment to the Council of Europe require it to introduce a civilian alternative to compulsory military service.

Appeal to the European Court of Human Rights

Jehovah's Witness Samir Huseynov was sentenced for conscientious objection to ten months' imprisonment in October 2007 under Criminal Code Article 321.1. He was freed in May 2008 (see F18News 14 May 2008 http://www.forum18.org/Archive.php?article_id=1129).

Mushfiq Mammedov and Huseynov lodged a joint application (No. 14604/08) on 7 March 2008 to the European Court of Human Rights (ECtHR) in Strasbourg (see F18News 3 December 2009 http://www.forum18.org/Archive.php?article_id=1382). No admissibility decision has yet been made on this. (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1192.

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.

A personal commentary on the European Court of Human Rights (ECtHR) and conscientious objection to military service is at http://www.forum18.org/Archive.php?article_id=1377.

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://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=azerba>.

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

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY