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AZERBAIJAN: UN Working Group on Arbitrary Detention condemns prisoners of consciences' jailings

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

The UN Working Group on Arbitrary Detention has found that two female Jehovah's Witness prisoners of conscience on trial in Azerbaijan, Irina Zakharchenko and Valida Jabrayilova, are being punished for exercising freedom of religion or belief and called for them to be freed and compensated, Forum 18 News Service has learned. The Working Group also condemned the use of conscientious objection to military service as an excuse to detain the two women. A Judge has prevented the Working Group's opinion being attached to the case file, but lawyers are calling for the court to act on the Working Group's opinion. The secret police cell where one was held for 10 months has been described by her as a "cage" with no privacy, where the smell of sewage was "suffocating". Jehovah's Witnesses are concerned for the women's health as their detention "has damaged their health", stating that "the pointless delay in proceedings amount to further mistreatment." The trial is due to resume at 12 noon on 28 January.

Judge Akram Qahramanov, who is leading the criminal trial of two female Jehovah's Witness prisoners of conscience in Azerbaijan's capital Baku, has postponed the case yet again, Jehovah's Witnesses told Forum 18 News Service. The hearing – over whether the two should be released to house arrest because of their poor health – was postponed because one was too ill to attend. The trial is due to resume at 12 noon on 28 January.

Irina Zakharchenko, a 55-year-old disabled widow who is in poor health, and 38-year-old Valida Jabrayilova were arrested by the then-National Security Ministry (NSM) secret police in February 2015. They face a fine or imprisonment of between two and five years if convicted of offering religious literature to others without state permission (see F18News 18 December 2015 http://www.forum18.org/archive.php?article_id=2135). (The NSM is now the State Security Service SSS.)

The UN Working Group on Arbitrary Detention found in December 2015 that the two women are 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.

"The delay further harms the women, as the postponement denied their lawyers the opportunity to argue motions for their release," Jehovah's Witnesses told Forum 18 on 19 January 2016. "Since it is the 11-month detention that has damaged their health, the unnecessary requirement of Irina Zakharchenko's presence in court and the pointless delay in proceedings amount to further mistreatment."

Forum 18 was unable to seek comment from officials on the trial of prisoners of conscience Zakharchenko and Jabrayilova on 20 January, as it is a public holiday commemorating the indiscriminate killing in Baku of at least 200 people by Soviet forces in 1990.

Torture hearing also postponed

The postponement of the trial of the two women came the same day that a Judge in another Baku court postponed yet again the complaint of 31-year-old Shia Muslim theologian and prisoner of conscience Taleh Bagirov (also known as Bagirzade). He was arrested along with at least 13 others during an armed raid by the authorities on Muslims praying in the village of Nardaran on 26 November 2015, during which at least seven people were killed (see F18News 1 December 2015 http://www.forum18.org/archive.php?article_id=2127).

Prisoner of conscience Bagirov is complaining about torture in prison – including a broken nose – as well as denial of access to his lawyer and contact with relatives. The hearing has been rescheduled for 22 January (see F18News 27 January 2016 http://www.forum18.org/archive.php?article_id=2143).

Bagirov was last previously tortured by the authorities a week before consideration of Azerbaijan's record under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by the UN Committee Against Torture (see F18News 12 November 2015 http://www.forum18.org/archive.php?article_id=2120). The Committee made 22 critical

recommendations in its Concluding Observations, five of which were described as "a matter of urgency", including that Azerbaijan should "apply a zero-tolerance approach to the continuing problem of torture, and to the practice of impunity" (see CAT/C/AZE/CO/4

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAZE%2fCO%2f4&Lang=en).

Under the Convention against Torture, Azerbaijan is obliged to arrest any person suspected on good grounds of having committed torture and try them under criminal law which makes "these offences punishable by appropriate penalties which take into account their grave nature" (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=2081).

A wide-ranging state crackdown continues on people exercising human rights Azerbaijan's government has solemn international obligations to protect, including the arrest and jailing as prisoners of conscience of many lawyers, journalists, human rights defenders and public figures the government dislikes.

The many prisoners of conscience include Muslims and Jehovah's Witnesses exercising their freedom of religion or belief (see eg. F18News 16 December 2015 http://www.forum18.org/archive.php?article_id=2134), and a conscientious objector to military service (see eg. F18News 19 November 2015 http://www.forum18.org/archive.php?article_id=2123). The UN Working Group also condemned Azerbaijan's failure to provide a civilian alternative service for conscientious objectors to military service (see below.)

UN Working Group on Arbitrary Detention condemns jailings

Following the two women's arrests, Jehovah's Witnesses brought the case of prisoners of conscience Zakharchenko and Jabrayilova to the UN Working Group on Arbitrary Detention. As well as detailing in their complaint the lack of legal basis and due process in the arrest and detention of the two prisoners of conscience, Jehovah's Witnesses also commented on government suggestions that it had to give permission for people to exercise their freedom of religion or belief.

They noted that former UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir had in her 2010 annual report reiterated that "governments should widely inform the population, including appropriate law enforcement agencies, about the principle that registration does not constitute a precondition for practicing ones religion or belief" (A/65/207).

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 Working Group condemned the arrest and continued detention of the two prisoners of conscience. 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.

UN Human Rights Committee also demands Zakharchenko's release

In response to a separate appeal in Zakharchenko's case, lodged on 27 November 2015 because of her critical state of health, 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.

The Committee 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).

Postponed again

On 14 January 2016, Judge Qahramanov of Baku's Pirallahi District Court again postponed the trial of prisoners of conscience Zakharchenko and Jabrayilova. He claimed that he could not hold the hearing without Zakharchenko, whose poor health did not allow her to appear in court.

Jehovah's Witnesses told Forum 18 that they see no reason why a hearing to decide on prisoner of conscience Jabrayilova's request to be transferred from prison needs to be delayed. She has her own lawyers and is available to attend court.

Prisoner of conscience Zakharchenko's lawyer Konul Talibova intends to ask the Court to comply with the UN Working Group's call for her to be released from prison and compensated. "The postponement of the hearing to deal with a motion for release on the ground that she has health problems and hence cannot be physically present in person is somewhat disingenuous in these circumstances," Jehovah's Witnesses told Forum 18.

The defence team for both prisoners of conscience have already asked the Court to free both women in line with the Working Group's opinion, but have been denied the opportunity to do this in person (see below).

Long-running trial

Prisoners of conscience Zakharchenko and Jabrayilova have been in pre-trial detention since their arrest in February 2015 and are being tried under Criminal Code Article 167-2.2.1. Article 167-2 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", and Article 167-2.2.1 applies this "crime" to an "organised group" with a punishment of a fine or imprisonment for two to five years. Both prisoners of conscience deny any guilt in exercising their right to freedom of religion or belief.

The criminal trial began with a preliminary hearing on 10 December 2015. The next hearing – on 17 December - was open and was attended by a number of local Jehovah's Witnesses and immediate relatives of both women (see F18News 18 December 2015 http://www.forum18.org/archive.php?article_id=2135). The prisoners of conscience were represented by their own lawyers, plus a state-appointed defence lawyer for Zakharchenko.

Prisoner of conscience Zakharchenko's state-appointed lawyer asked for a copy of the religious publication she is accused of distributing, a booklet called "Teach Your Children". The judge refused to satisfy this application, arguing that the problem was not in the publication, but in distributing it without proper permission.

Prisoner of conscience Jabrayilova's own lawyer, Yashar Musayev, applied for her to be able to sit beside him rather than in the courtroom's metal cage. Judge Qahramanov refused this, claiming it would violate security rules.

"Exhausted and manifestly under considerable emotional stress"

Prisoner of conscience Zakharchenko's own lawyer Talibova applied for the prisoner of conscience to be transferred to house arrest, referring to the UN Human Rights Committee's 3 December request for her urgent release from prison. Judge Qahramanov refused to attach the Committee's letter to the case file, claiming this was because it was a copy rather than the original.

But Talibova did succeed in getting prisoner of conscience Zakharchenko transferred on 2 January 2016 to a prison hospital, Jehovah's Witnesses told Forum 18. They are pleased Zakharchenko is receiving some medical treatment in the prison hospital, but expressed continued concern over Jabrayilova as she is "exhausted and manifestly under considerable emotional stress".

The next trial hearing was held on 7 January, but lasted for only about 10 minutes. The trial was then adjourned to the morning of 14 January.

The alleged reason for the 7 January adjournment was that Zakharchenko was not present and Judge Qahramanov did not want to proceed without her. The adjournment meant that the prisoners of consciences' lawyers were unable to file for the women to be freed and compensated, based on the UN Working Group's opinion. So the defence team had to lodge the application to Pirallahi District Court by post.

Smell of sewage in cage cell "suffocating"

Prisoner of conscience Jabrayilova described conditions in the then-NSM secret police Investigation Prison as bad. The two women were held there from February until 4 December 2015 (see F18News 4 December 2015 http://www.forum18.org/archive.php?article_id=2135). "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," Jehovah's Witnesses note. "The smell of sewage in this 'cage' was suffocating."

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).

Officials constantly demanded money. Prisoners who shared the cell stated that they had been asked to pay bribes of 30,000 Manats (about 166,430 Norwegian Kroner, 17,230 Euros, or 18,800 US Dollars) to get out.

Jabayilova noted that conditions at the Justice Ministry's Kurdakhani Investigation Prison, to which they were transferred in early December 2015, were much better than at the secret police Investigation Prison. The Justice Ministry Investigation Prison is in Kurdakhani, in Sabunchu District in north-eastern Baku. Its address is:

AZ-1104, Baki shahari

Sabunchu rayonu

Zabrat-2 qasabasi

Baki Istintaq tacridxanasi

Azerbaijan

Conscientious objection excuse condemned

The Working Group's December 2015 opinion also condemned Azerbaijan's use of conscientious objection to military service as an excuse to detain the two prisoners of conscience, as well as the absence of any alternative civilian service provision.

"The Government's argument that because the State 'has not adopted legislation on alternative service, legal action has been taken against some followers of this community refusing to serve in the army' is irrelevant to the deprivation of liberty of Ms. Zakharchenko and Ms. Jabrayilova," the Working Group notes.

"In this regard, the Working Group also notes that more than six years ago, the Human Rights Committee expressed concern that no legal provision in Azerbaijan regulates the status of conscientious objectors to military service. Accordingly, in 2009, the Committee recommended Azerbaijan to adopt 'at an early date' a 'law exempting conscientious objectors from compulsory military service and providing for alternative civilian service' [see CCPR/C/AZE/CO/3 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/AZE/CO/3&Lang=En]."

Also in 2009, the Human Rights Committee called on Azerbaijan to "take steps to ensure full respect for the right of freedom of religion or belief and ensure that its legislation and practices conform fully to the requirements of article 18 of the Covenant".

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".

One conscientious objector, 20-year-old Kamran Shikhaliyev, is serving a one-year sentence in a military disciplinary unit in Salyan Region south of Baku. This is his second consecutive sentence on the same charges (see F18News 19 November 2015 http://www.forum18.org/archive.php?article_id=2123).

There are no signs that the government has any intention of keeping this promise and it has repeatedly prosecuted Jehovah's Witnesses for refusing to do compulsory military service. This has resulted in cases brought to the European Court of Human Rights (ECtHR) in Strasbourg (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=1690). (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 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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