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AZERBAIJAN: Conscientious objector's criminal conviction – more to follow?

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

18-year-old Jehovah's Witness Emil Mehdiyev repeatedly expressed willingness to perform a civilian alternative to compulsory military service. Instead he was given a criminal conviction, a one-year suspended prison term, and will be under probation for one year. Seven similar criminal cases against other young men are with Prosecutor's Offices.

Emil Mehdiyev, an 18-year-old Jehovah's Witness, has appealed to Ganca Appeal Court against his criminal conviction for refusing compulsory military service on grounds of conscience. The Court received the appeal on 27 August and is yet to set a date for the hearing.

The lower court sentenced Mehdiyev to a one-year suspended prison sentence. During the year, he will be under the control of the probation service and will not be allowed to change his place of residence or travel abroad without permission. He will also have a criminal record.

Jehovah's Witnesses say Prosecutor Rahman Ibrahimov called in court for Mehdiyev to be jailed for one year, though he denied this to Forum 18 (see below).

Although Barda District Court convicted Mehdiyev on 6 July, the Judge refused – with no explanation - to issue the verdict in writing until August (see below).

Seven similar criminal cases against other Jehovah's Witness young men for refusing military service have already been handed to Prosecutor's Offices, Jehovah's Witnesses told Forum 18. At least a further six Jehovah's Witness young men have been summoned to military service, with examinations by medical commissions.

The government's Human Rights Ombudsperson's Office in Baku refused to discuss with Forum 18 what it has done (if anything) to end the punishment of conscientious objectors like Mehdiyev and to push for the country to introduce a civilian alternative to compulsory military service (see below).

Azerbaijan promised the Council of Europe on accession in 2001 that it would adopt a law on alternative service "in compliance with European standards" by January 2003. It has never adopted such a law (see below).

Council of Europe and United Nations bodies have repeatedly condemned Azerbaijan's long failure to introduce a civilian alternative to compulsory military service and its continuing punishment of those unable to perform compulsory military service on grounds of conscience (see below).

The new prosecutions come as the European Court of Human Rights in Strasbourg is expected to deliver decisions over five Jehovah's Witness conscientious objectors convicted in Azerbaijan between 2007 and 2013. Four of these were jailed. The Court completed its correspondence with the Azerbaijani government over the cases in 2017 (see below).

No action from Ombudsperson's Office

Forum 18 tried to find out what (if anything) the government's Human Rights Ombudsperson's Office has done to pressure the government to end the punishment of conscientious objectors such as Emil Mehdiyev and to introduce a civilian alternative to compulsory military service.

No one was available to talk, the Ombudsperson's Office told Forum 18 from Baku on 29 August, so Forum 18 had to send its questions in writing. No reply had been received by the end of the working day in Baku.

The only known case of a conscientious objector the Ombudsperson's Office has taken up was over a threatened prosecution in Baku

in 2004. "Following the intervention of the Ombudsman the requirements of the legislation were explained to military policemen, the complainant was set free and his right to freedom was restored," its annual report for 2004 noted.

No subsequent Ombudsperson's Office annual report mentions any of the prosecutions of conscientious objectors, or any action to propose the introduction of an alternative civilian service.

The Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions downgraded Azerbaijan's Human Rights Ombudsperson's Office from A to B status, a decision that took effect from 8 August.

The Sub-Committee noted that the Ombudsperson's Office "has not adequately spoken out in a manner that effectively promotes protection for all human rights, including in response to credible allegations of human rights violations having been committed by government authorities. The failure to do so demonstrates a lack of sufficient independence."

Request for alternative service ignored

The Conscription Office called up Jehovah's Witness Emil Vilayat oglu Mehdiyev (born 12 December 1999) in December 2017, when he reached the age of 18. Although he lives in the capital Baku, he was called up by the Conscription Office in Barda, the town in north-western Azerbaijan where he is registered.

More than once, Mehdiyev told the Conscription Office of his willingness to perform a civilian alternative to military service in view of his faith, according to the subsequent court decision.

On 5 January 2018, the Conscription Office told Mehdiyev he was to report for service in the Interior Ministry's Internal Troops. When he attended the Conscription Office Mehdiyev repeated his position that he was willing to perform alternative service but could not perform military service.

The Conscription Office handed Mehdiyev's case to Barda District Prosecutor's Office, which opened a case against him under Criminal Code Article 321.1. This 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]" (see Forum 18's Azerbaijan religious freedom survey http://www.forum18.org/archive.php?article_id=2081).

Prosecutors required Mehdiyev to sign a statement that he would not leave Azerbaijan.

One-year suspended sentence

Prosecutor Rahman Ibrahimov handed Mehdiyev's case for trial to Barda District Court. There it was assigned to Judge Maharram Allahverdiyev.

Mehdiyev's trial began on 7 May, but was then adjourned until 23 May. At that hearing his lawyer, Yashar Musayev, submitted a motion to terminate the case, but the Judge rejected this.

Three witnesses were called to the third hearing on 31 May, two from the Conscription Office and one from the hospital. However, one of the Conscription Office witnesses was not present, since he was on vacation. The other two witnesses testified and Musayev and the Prosecutor asked them a few questions.

Then the judge gave Mehdiyev an opportunity to talk. "But it could hardly be called an opportunity, since the judge interrupted him repeatedly, saying that what Emil was reading from the Bible regarding his beliefs was not important," Jehovah's Witnesses told Forum 18. "Nevertheless, this time Judge Allahverdiyev was more respectful compared to the previous hearings."

The third court hearing on 22 June began with the questioning of the third witness, Emin Aghayev, an employee of the Conscription Office. Prosecutor Ibrahimov gave his final address, asking the Court to sentence Mehdiyev to one year's imprisonment.

Two police officers then appeared near the door of the courtroom. One of them had handcuffs in his hand. They stood outside the courtroom, so that Mehdiyev and his lawyer could not see them. "When the judge's secretary saw them, he signalled them to wait," Jehovah's Witnesses told Forum 18. "It was obvious the police officers were called to handcuff and take Mehdiyev away."

Jehovah's Witnesses described this as a "gross violation of the law". They argued that the court should not display its decision before it is announced, "especially when Mehdiyev and his lawyer had not given their final addresses". At that point they believed it was certain Mehdiyev would be imprisoned, regardless of what he and his lawyer would say in their final addresses to the court.

Mehdiyev's lawyer Musayev filed a new motion to terminate the case and asked the court to adjourn the hearing, so that he could prepare for the final address. Judge Allahverdiyev adjourned the hearing to 6 July.

At the final hearing on 6 July, Mehdiyev's lawyer Musayev spoke, before Mehdiyev made his final address. Then the judge left the courtroom to deliberate. "Unlike the previous hearing, there were no guards with handcuffs in the court room or behind the doors," Jehovah's Witnesses told Forum 18.

Judge Allahverdiyev returned after ten minutes. He announced that Mehdiyev was guilty and sentenced him to a suspended one-year prison term. The judge did not list all the conditions of the probationary period. Mehdiyev had to wait to find these out until he received the verdict in writing in August.

The verdict – of which Forum 18 has seen the text – notes that the Probation Service will oversee Mehdiyev for the year and he cannot change his place of residence without approval. The verdict adds that the ban on travelling abroad will be lifted when the verdict enters into legal force, though it appears he still will not be able to travel abroad without permission.

Prosecutor Ibrahimov denied that he had called in court for Mehdiyev to be jailed for one year. "Look at what the court decided," he told Forum 18 from Barda on 29 August. He refused to discuss why Mehdiyev had faced prosecution at all, given his willingness to perform any alternative civilian service. Ibrahimov then put the phone down.

Barda District Court told Forum 18 on 28 August that both Judge Allahverdiyev and his assistant Hatam Hatamkhali were away on holiday. The official said he did not know when the Judge issued the written verdict and would not discuss why it was delayed.

Mehdiyev lodged an appeal against his conviction. The appeal reached Ganca Appeal Court on 27 August, the Court told Forum 18 the following day. It said the case is yet to be assigned to a judge.

Defiance of international human rights obligations

Azerbaijan repeatedly breaks its international human rights obligations. Ahead of its accession in January 2001 to the Council of Europe, the country formally 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".

The Council of Europe's Venice Commission – of which Azerbaijan is a member - has repeatedly criticised the country's failure to meet its commitment to introduce a genuine civilian alternative to compulsory military service (see F18News 16 October 2012 http://www.forum18.org/archive.php?article_id=1755).

Similarly, the Council of Europe's European Commission against Racism and Intolerance (ECRI) in March 2016 again condemned Azerbaijan's violations of freedom of religion or belief, and other human rights, and noted the continuing sentencing of conscientious objectors. "ECRI strongly recommends that the authorities fulfil the undertaking given upon accession to the Council of Europe to enact legislation on alternatives to military service."

The government claimed in its response to ECRI that "due to the war with Armenia, Azerbaijan has not been able to enact a separate law on alternative service".

In 2018, ECRI began its follow-up procedure on two concerns in Azerbaijan, including the country's failure to introduce an alternative, civilian service.

In November 2016 Concluding Observations on Azerbaijan's report to the United Nations (UN) Human Rights Committee (CCPR/C/AZE/CO/4), the Committee again expressed concern about the lack of a civilian alternative to military service.

The Committee stated that Azerbaijan "should adopt without delay the legislation necessary to give effect in practice to the constitutionally recognized right to conscientious objection to military service, without limitation on the category of conscientiously held beliefs. Moreover, it should provide for alternative service of a civilian nature for conscientious objectors and repeal all sanctions against them."

However, 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.

Awaiting Strasbourg decisions

Five Jehovah's Witnesses punished through the courts between 2007 and 2013 for refusing compulsory military service are awaiting decisions in their appeals to the European Court of Human Rights (ECtHR) in Strasbourg. Azerbaijan is subject to the ECtHR's decisions as a member of the Council of Europe.

All five – four of whom were jailed - were among Jehovah's Witness young men to have been convicted under Criminal Code

Article 321.1 ("Evasion without lawful grounds of call-up to military service or of mobilisation") since Azerbaijan joined the Council of Europe in 2001.

Kamran Mirzayev was jailed for nine months by Goychay Court in March 2013, but was amnestied in June 2013 after serving three months' imprisonment. The Supreme Court rejected his final appeal in February 2015 (see F18News 14 May 2015 http://www.forum18.org/archive.php?article_id=2061).

Kamran Mirzayev lodged a case to the ECtHR on 21 August 2015 (Application No. 41792/15). The ECtHR completed its communications on the case on 13 August 2017.

Samir Huseynov was jailed for ten months by Geranboy District Court in October 2007 and was freed in May 2008 after serving most of his sentence (see F18News 14 May 2008 http://www.forum18.org/archive.php?article_id=1129).

Mushfiq Mammadov was given a suspended six month prison term by Baku's Sabail District Court in July 2006. 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. The Supreme Court rejected his final appeal in December 2010 (see F18News 22 February 2011 http://www.forum18.org/Archive.php?article_id=1544).

Mushfiq Mammadov and Huseynov lodged a case to the ECtHR on 7 March 2008 (Application No. 14604/08) The ECtHR completed its communications on the case on 9 June 2017.

Farid Mammadov was jailed for nine months by Baku's Nasimi District Court in July 2010, but was not imprisoned until September 2010 when his first appeal failed. The Supreme Court rejected his final appeal in January 2011 (see F18News 22 February 2011 http://www.forum18.org/Archive.php?article_id=1544).

Farid Mammadov lodged a case to the ECtHR on 18 July 2011 (Application No. 45823/11). The ECtHR completed its communications on the case on 27 May 2017.

Fakhraddin Mirzayev was jailed for one year by Gyanja's Kapaz District Court in September 2012, but was amnestied in May 2013 after eight months' imprisonment. The Supreme Court rejected his final appeal in June 2013 (see F18News 28 June 2013 http://www.forum18.org/archive.php?article_id=1852).

Fakhraddin Mirzayev lodged a case to the ECtHR on 3 December 2013 (Application No. 76127/13). The ECtHR completed its communications on the case on 27 May 2017.

The Court is likely to rule that the five men's human rights were violated, in line with other recent decisions in conscientious objector cases.

In a case against neighbouring Armenia, the ECtHR ruled in July 2011 (Application no. 23459/03) that the state's refusal to offer Vahan Bayatyan an alternative to compulsory military service and punishment of him for refusing to serve in the armed forces violated his rights under Article 9 ("Freedom of thought, conscience and religion") of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (see F18News 7 July 2011 http://www.forum18.org/archive.php?article_id=1591). (END)

For 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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