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AZERBAIJAN: Strasbourg Court rules long pre-trial detention "excessive"

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

The European Court of Human Rights in Strasbourg has ruled in three cases in 2020 that Azerbaijan violated the rights of 13 individuals by subjecting them to excessively long pre-trial detention, and ordered compensation. Five of these had been detained for exercising freedom of religion or belief. Imam Taleh Bagirov – who was tortured in pre-trial detention – and Zakir Mustafayev are still serving jail terms.

In three separate decisions so far in 2020 – the most recent two on 4 June - the European Court of Human Rights (ECtHR) in Strasbourg ruled that Azerbaijan violated the rights of 13 individuals by subjecting them to excessively long pre-trial detention and ordered compensation to each. Of those ordered compensated, five had been detained for exercising freedom of religion or belief.

The telephone of Chingiz Asgarov, the Azerbaijani government's Agent at the ECtHR, went unanswered each time Forum 18 called (see below).

The General Prosecutor's Office in the capital Baku has not yet responded to Forum 18's questions as to whether prosecutors are going to stop asking courts to authorise the long detention of people in pre-trial detention, and whether the General Prosecutor's Office has already given prosecutors such instructions (see below).

The five ordered compensated for excessively long pre-trial detention as they awaited punishment for exercising the right to freedom of religion or belief are:

- Shia Muslim and leader of the Muslim Unity Movement Imam Taleh Bagirov, held in pre-trial detention for seven months in 2013;
- Shia Muslim Zakir Mustafayev of the Muslim Unity Movement, held in pre-trial detention for nearly ten months from 2015;
- Sunni Muslim Ismayil Mammadov, held in the then NSM prison in Baku for five months in 2014;
- Sunni Muslim Eldaniz Hajiyev, held in the then NSM prison in Baku for five months in 2014;
- Sunni Muslim Revan Sabzaliyev, held in the then NSM prison in Baku for nearly four months in 2014 (see below).

Of these five, Mustafayev and Bagirov are still serving jail terms. No officials have been arrested or put on trial for inflicting torture on Bagirov and others arrested with him (see below).

The 13 men had appealed to the Strasbourg Court at various dates between 2011 and 2017 under Article 5 of the European Convention on Human Rights and Fundamental Freedoms. This declares that arrested individuals are "entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

In two of the three cases – involving a total of ten men – the government itself "acknowledged the excessive length of pre-trial detention" and offered compensation of 3,000 Euros (5,700 Azerbaijani Manats, 32,000 Norwegian Kroner or 3,400 US Dollars) to each. The Court accepted this, even though the victims believe the compensation is too low and wanted the Court to continue hearing the cases. The Court rejected their request (see below).

Khalid Agaliyev, a lawyer who has taken up freedom of religion or belief cases, welcomed the ECtHR finding that Azerbaijan had violated the individuals' rights, "even if belatedly". But he noted that despite many ECtHR judgments against Azerbaijan, "we don't see any follow-up from these judgments" (see below).

Asabali Mustafayev, a lawyer who assisted on Mammadov and Hajiyev's cases, said they did not agree with the Court's decision to close the cases. "We wanted the Court to continue the cases and rule on the substance, the legality of their detention – whether these

men should have been arrested and prosecuted at all" (see below).

In the case of Sabzaliyev, the government should have paid compensation by 16 April, three months after the ECtHR decision. However, as of 19 June he still had not received it. "They're dragging their feet," the lawyer Mustafayev told Forum 18 from Sumgait. "They're promising it this month" (see below).

Meanwhile, amendments to the Criminal Code – which entered into force on 1 June - have introduced an alternative punishment for producing, selling and distributing religious materials without state permission under Article 167-2.

In addition to the previous punishments of fines or a jail term, individuals acting alone can now be punished with a restricted freedom sentence of up to two years for a first conviction, or a restricted freedom sentence of between two and four years for members of a group or those already convicted (see below).

"They want to demonstrate that they are ready to soften approaches," one human rights defender told Forum 18 from Baku, but questioned why people should be punished at all for publishing or distributing materials about religion without state approval (see below).

Will ECtHR decisions lead to change?

Khalid Agaliyev, a lawyer who has taken up freedom of religion or belief cases, welcomed the ECtHR finding that Azerbaijan had violated the individuals' rights by detaining them for an excessive time, "even if belatedly". He told Forum 18 from Baku on 18 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."

Forum 18 was unable to find out what actions the Azerbaijani government (if any) is planning in response to the findings of the ECtHR in Strasbourg that it had held the 13 men in excessively long pre-trial detention. ECtHR judgments require governments not only to pay any compensation awarded but to rectify the conditions which led to the human rights violations.

The telephone of Chingiz Asgarov, the Azerbaijani government's Agent at the ECtHR and - since May - the Deputy Chair of Azerbaijan's Supreme Court, went unanswered each time Forum 18 called on 22 June.

Forum 18 asked Gunay Salimzade, head of the Press Service at the General Prosecutor's Office, in writing on 22 June:

- whether prosecutors are going to stop asking courts to authorise the long detention of people in pre-trial detention;
- and whether the General Prosecutors Office has already given prosecutors such instructions.

Forum 18 received no response from the General Prosecutor's Office by the end of the working day in Baku on 22 June.

Individuals and communities have brought more than 60 cases to the ECtHR against Azerbaijan since 2004 over its persistent and repeated violations of the right to freedom of religion or belief. (http://www.forum18.org/archive.php?article_id=2490)

The ECtHR found in October 2019 that the Azerbaijani government violated the rights of five Jehovah's Witnesses who were punished for refusing to perform compulsory military service on grounds of conscience. Four of them had been jailed and one given a suspended sentence and fined. Despite this, Azerbaijan has so far failed to introduce a civilian alternative to compulsory military service. (http://www.forum18.org/archive.php?article_id=2567) The five young men have not yet received compensation, which should have been paid by 17 April 2020. Jehovah's Witnesses told Forum 18 that the delay is probably because of the coronavirus pandemic.

Delayed compensation, no compensation

In October 2018, after a long legal battle within Azerbaijan, two Jehovah's Witnesses finally received compensation for their pre-trial detention of nearly a year in the then National Security Ministry prison in Baku in 2015 (http://www.forum18.org/archive.php?article_id=2440). The two women were arrested for offering a religious book to a neighbour (see below). The Supreme Court finally exonerated the two women in February 2017.

The women were held at the then NSM prison in a "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 told Forum 18. "The smell of sewage in this 'cage' was suffocating." (http://www.forum18.org/archive.php?article_id=2140)

Jeyhun Jafarov, a translator of Islamic works and broadcaster on Islamic themes, received no compensation for more than a year in pre-trial detention.

The then NSM secret police arrested Jafarov in March 2015 on treason charges, which he rejected. He complained to the ECtHR about being arrested and tortured (Application No. 46446/15). A Baku court ordered his transfer to house arrest in September 2016 and later the criminal case was closed with no trial (http://www.forum18.org/archive.php?article_id=2309). The ECtHR asked the government questions about the case on 12 March 2018. Jafarov withdrew his application on 2 July 2018 and the ECtHR struck out the case on 17 January 2019 (http://www.forum18.org/archive.php?article_id=2490).

Length of pre-trial detention "excessive"

In two separate cases on 4 June, the European Court of Human Rights in Strasbourg ruled that Azerbaijan violated the rights of ten individuals by subjecting them to excessively long pre-trial detention and ordered compensation to each. Of those detained, four had been detained for exercising freedom of religion or belief.

The ten men include:

- Shia Muslim Zakir Mustafayev of the Muslim Unity Movement, held in pre-trial detention for nearly ten months;
- Shia Muslim and leader of the Muslim Unity Movement Taleh Bagirov (also known as Bagirzade), held in pre-trial detention for seven months;
- Sunni Muslim Ismayil Mammadov, held in pre-trial detention for five months;
- and Sunni Muslim Eldaniz Hajiyev, held in pre-trial detention for five months.

The two decisions followed a similar ECtHR decision on 16 January 2020 relating to the excessive time in pre-trial detention of three former prisoners (one of whom died before the decision was handed down). One of the three was Sunni Muslim Revan Sabzaliyev, held in pre-trial detention for nearly four months.

Armed officers from the police and the then National Security Ministry (NSM) secret police raided Hajiyev's home in Baku in April 2014 as Muslims were meeting to study the works of the late Turkish Sunni Muslim theologian Said Nursi. Officers seized religious literature and arrested Hajiyev, Mammadov and Sabzaliyev.

The three spent up to five months in detention in the then NSM secret police Investigation Prison in Baku before being transferred to house arrest in September 2014 (http://www.forum18.org/archive.php?article_id=1999).

At Baku's Yasamal District Court on 7 October 2015, Ismayil Mammadov was jailed for 5 years, 5 months; his brother Zakariyya Mammadov, with Shahin Hasanov, was jailed for 5 years; Eldeniz Hajiyev was jailed for 4 years, 5 months; and Revan Sabzaliyev was jailed for 1 year, 7 months.

The five were punished for participation in an "illegal" religious group under Criminal Code Article 168, as well as for distributing religious literature which had not undergone the state's strict pre-publication religious censorship. (http://www.forum18.org/archive.php?article_id=2109)

On 19 April 2016, at their much-delayed appeal, Judge Mammadov reduced the prison terms on Ismayil Mammadov and Hajiyev to 2 years, 6 months each. The Judge reduced Sabzaliyev's prison term to one year. The Judge also changed the remainder of Hasanov and Zakariyya Mammadov's sentences from prison terms to suspended sentences.

As Sabzaliyev had already served the reduced prison term (his time in pre-trial detention at the NSM secret police Investigation Prison counted towards his punishment), he was freed in the court room. (http://www.forum18.org/archive.php?article_id=2173)

Mammadov lodged his case to the ECtHR on 31 October 2014 (Application No. 71584/14).

Sabzaliyev lodged his case to the ECtHR on 6 November 2014 (Application No. 73334/14).

Hajiyev lodged his case to the ECtHR on 27 November 2014 (Application No. 74567/14).

Shia Muslim theologian and preacher Taleh Bagirov led prayers at the Hazrat Abulfaz Aga Mosque in the village of Mastaga on the Absheron peninsula near Baku. He and his driver Anar Melikov were arrested on 31 March 2013. While in the hands of Baku's Sabunchu District Police, both say they were beaten.

Bagirov was held in pre-trial detention for seven months until he was finally brought to trial at Baku's Sabunchu District Court. He

was given a two-year strict regime prison sentence on 1 November 2013 (http://www.forum18.org/archive.php?article_id=1894). He was found guilty of possessing just over one gram of heroin, an accusation his supporters insist was fabricated to punish him for his religious and political activity. Four months were later added to his sentence for allegedly having a mobile phone with him in prison (http://www.forum18.org/archive.php?article_id=1985).

The Azerbaijani authorities moved quickly to crush the Muslim Unity Movement, which Bagirov leads, after its launch in 2015. The Movement has both religious and political goals and aims to unify the Islamic and secular opposition to the regime of President Ilham Aliyev.

Bagirov was among many Muslims arrested during an armed raid on a home in Nardaran in November 2015 as they were holding Friday prayers (http://www.forum18.org/archive.php?article_id=2127).

The first 18 – including Bagirov and the deputy head of the Muslim Unity Movement Abbas Huseynov – were sentenced at Baku's Serious Crimes Court on 25 January 2017. The charges – which the accused strongly disputed - included terrorism, an attempt to seize power violently, illegal firearms possession, and murder. Bagirov and Huseynov received the longest prison terms of 20 years each (http://www.forum18.org/archive.php?article_id=2254).

In February 2018, a Baku Court convicted Bagirov for having micro-discs of the Koran and religious music in his prison cell. It added two and a half months to his existing 20-year prison term (http://www.forum18.org/archive.php?article_id=2353).

Shia Muslim Zakir Mustafayev of the Muslim Unity Movement was among those also arrested in the raid on the Nardaran home in November 2015. He was tried with Bagirov and the 16 others and sentenced on 25 January 2017 to 14.5 years' imprisonment (http://www.forum18.org/archive.php?article_id=2254).

Of the 18 men convicted in the case in January 2017, 17 told the court that they had been tortured after their arrests to extract confessions and "testimony" against others (http://www.forum18.org/archive.php?article_id=2254). Despite Azerbaijan's binding international human rights obligations, no officials have been arrested or put on criminal trial for torturing people.

Bagirov was also subjected to "severe torture" and a broken nose while in detention at the Interior Ministry's Main Directorate for the Struggle with Organised Crime in December 2015 (http://www.forum18.org/archive.php?article_id=2143). No officials were arrested or put on criminal trial for this torture.

Bagirov lodged his case to the ECtHR – related to his first arrest and pre-trial detention in 2013 - on 7 October 2013 (Application No. 12541/13).

Mustafayev lodged his case to the ECtHR on 15 October 2016 (Application No. 62872/16).

Compensation, but no consideration of why men arrested

The ECtHR in Strasbourg ordered Azerbaijan to pay each of the 13 men whose rights it had violated 3,000 Euros (5,700 Azerbaijani Manats, 32,000 Norwegian Kroner or 3,400 US Dollars) in compensation within three months of the decisions being handed down. The decisions were final on the day they were issued and the victims could not challenge them.

In the case of Sabzaliyev, the government should have paid compensation by 16 April, three months after the ECtHR decision. However, as of 19 June he still had not received it. "They're dragging their feet," a lawyer familiar with the case, Asabali Mustafayev, told Forum 18 from Sumgait on 19 June. "They're promising it this month."

The 13 men had appealed to the Strasbourg Court in separate cases at various dates between 2011 and 2017 under Article 5 of the European Convention on Human Rights and Fundamental Freedoms. This declares that arrested individuals are "entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

In two of the three combined cases – involving a total of ten men – the government itself "acknowledged the excessive length of pre-trial detention" and offered 3,000 Euros compensation to each. The Court accepted this, even though the victims believe the compensation is too low and wanted the Court to continue hearing the cases. The Court rejected their request.

The 13 men had appealed to the Strasbourg Court under Article 5 of the European Convention on Human Rights and Fundamental Freedoms, which declares: "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be .. entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

Asabali Mustafayev, the lawyer who assisted on Mammadov and Hajiyev's ECtHR cases, said they did not agree with the Court's decision to close the cases. "This angers us," he told Forum 18. "It's not just about the level of compensation offered, but about the government continuing its persecution of Muslims who study Said Nursi's works."

"The government will simply continue its policy if we just agreed [to the settlement] and they pay," the lawyer added. "We wanted the Court to continue the cases and rule on the substance, the legality of their detention – whether these men should have been arrested and prosecuted at all."

Mustafayev pointed to other earlier arrests of Muslims who study Nursi's works, as well as fines on more than ten people following a burial they had attended in the northern Quba Region three years ago. Even now, these Muslims are too afraid to gather for religious meetings, the lawyer noted.

Alternative punishment for unapproved religious literature

On 1 May, the Milli Majlis (Parliament) in Baku approved amendments to numerous Articles of the Criminal Code. President Ilham Aliyev signed the amendments into law on 22 May, according to the presidential website. The amendments entered into force on 1 June.

The amendments introduced an alternative punishment of a restricted freedom sentence under Criminal Code Article 167-2. The Article – adopted originally in December 2011 (http://www.forum18.org/archive.php?article_id=2429) - punishes: "Production, sale and distribution of religious literature (on paper and electronic devices), audio and video materials, religious items and other informational materials of religious nature with the aim of import, sale and distribution without appropriate authorisation".

Punishments for first time offenders acting alone are now a fine of between 5,000 and 7,000 Manats, up to two years' restricted freedom or up to two years' imprisonment. Such a "crime" by a group of people "according to a prior conspiracy", by an organised group, by an individual for a second time or by an official would attract a fine of between 7,000 and 9,000 Manats, between two and four years' restricted freedom or imprisonment of between two and five years.

"Interestingly, they kind of soften the punishments although statements of officials on these issues were quite harsh and there was a call for even more severe punishments," one human rights defender told Forum 18 from Baku in late April before final parliamentary approval. "They want to demonstrate that they are ready to soften approaches."

However, the human rights defender questioned why people should be punished at all for publishing or distributing materials about religion without state approval.

In January 2016, after nearly a year in pre-trial detention, two Jehovah's Witnesses Irina Zakharchenko and Valida Jabrayilova were convicted under Criminal Code Article 167-2.2.1 and given a large fine. At the same time the fine was waived and the women freed (http://www.forum18.org/archive.php?article_id=2144). They were not initially compensated for their wrongful imprisonment, as the United Nations Working Group on Arbitrary Detention had demanded.

Zakharchenko and Jabrayilova appealed against their conviction for distributing religious literature without state permission. In March 2016, Baku Appeal Court left the sentence unchanged. In February 2017, the Supreme Court in Baku acquitted the two women of their convictions.

In October 2018, after a long legal battle within Azerbaijan, Zakharchenko and Jabrayilova finally received compensation for their pre-trial detention (http://www.forum18.org/archive.php?article_id=2440) (see above).

Four Sunni Muslims from Baku were jailed in July 2015 under Criminal Code Article 167-2 for selling religious books without state permission (http://www.forum18.org/archive.php?article_id=2086). (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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