

16 December 2022

AZERBAIJAN: Conscientious objector's jail term changed to suspended sentence

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

After 12 weeks in jail, a Ganca court changed the nine-month jail term for Jehovah's Witness conscientious objector Seymur Mammadov to a one-year suspended sentence. Another, Royal Karimov, was released after three months' forced detention in a military unit. Both had declared readiness to perform an alternative civilian service. The Human Rights Ombudsperson's Office failed to respond on what action it would take (if any) to ensure that Azerbaijan introduces a civilian alternative service for those unable to serve in the army on grounds of conscience.

After nearly 12 weeks in jail following his 22 September conviction for refusing military service on grounds of conscience, an appeal court in the north-western city of Ganca overturned Seymur Mammadov's nine-month jail term on 12 December. The judges instead handed down a one-year suspended sentence and he was released in the courtroom.

The 22-year-old Jehovah's Witness Mammadov had repeatedly expressed readiness to perform a civilian alternative service. "We're not to blame," an officer at Goranboy District State Service for Mobilisation and Conscription insisted to Forum 18 in September after his conviction. "There is no alternative service." He declined to discuss Mammadov's case further (see below).

Mammadov's jailing on 22 September came almost exactly a year after the European Court of Human Rights (ECtHR) in Strasbourg ordered Azerbaijan in October 2021 to pay compensation to two young men convicted earlier for refusing compulsory military service on grounds of conscience (see below).

Another Jehovah's Witness, Royal Karimov, was seized and handed over to the army on 25 July – two days after his 18th birthday - despite telling conscription officials in Gadabay, the police and personnel in the military unit that he cannot perform military service on grounds of conscience but is ready to perform a civilian alternative service. He was finally released from the military unit in Ganca on 1 November, more than three months later (see below).

Gadabay District State Service for Mobilisation and Conscription refused to discuss with Forum 18 in September why Karimov had been forcibly taken to a military unit (see below).

Jehovah's Witnesses are conscientious objectors to military service and do not undertake any kind of activity supporting any country's military. But they are willing to undertake an alternative, totally civilian form of service, as is the right of all conscientious objectors to military service under international human rights law (https://www.quno.org/sites/default/files/resources/QUNO%20Conscientious%20Objection%20-%20International%20Standards_Revised%202021_FINAL.pdf).

More than ten Jehovah's Witness young men have faced summonses, often repeated medical examinations and restrictions (including bans on leaving Azerbaijan) after telling the State Service for Mobilisation and Conscription that they cannot perform compulsory military service and that they are willing to perform an alternative, civilian service. At least one, who did not know he was banned from leaving Azerbaijan, was stopped on the border with Georgia in 2019 and sent back. He is still banned from leaving Azerbaijan (see below).

The State Service for Mobilisation and Conscription has threatened to send details of the conscientious objectors to Prosecutor's Offices with the apparent intention to see them face criminal prosecution (see below).

Despite a pledge in January 2001 to the Council of Europe to introduce a civilian alternative service for those unable to perform military service on grounds of conscience, and repeated calls by the United Nations and other international bodies, Azerbaijan has failed to do so (see below).

Forum 18 asked the Human Rights Ombudsperson's Office in Baku what action it would take (if any) to defend Mammadov's rights and what action it would take (if any) to ensure that Azerbaijan introduces a civilian alternative service for those unable to serve in

the army on grounds of conscience. Its response said that under the Law on the Ombudsperson it is not allowed to investigate the decisions of Judges. It did not respond on the second question (see below).

(In 2018 the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions downgraded the Azerbaijani Ombudsperson's Office to B status (https://www.forum18.org/archive.php?article_id=2408) because it "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".)

Regime ignores repeated calls for alternative to military service

Military service of 18 months (12 months for those with higher education) is compulsory for all young men. Article 76, Part 2 of Azerbaijan's Constitution declares: "If the beliefs of citizens come into conflict with service in the army then in some cases envisaged by law alternative service instead of regular army service is permitted." However, no mechanism exists to enact this provision.

Ahead of its accession to the Council of Europe in January 2001, Azerbaijan promised (https://www.forum18.org/archive.php?article_id=2429) "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".

Azerbaijan has never done this, and conscientious objectors to military service have been repeatedly prosecuted and even jailed under Criminal Code Article 321.1. This states (https://www.forum18.org/archive.php?article_id=2429): "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]".

United Nations (UN) human rights bodies, as well as the Council of Europe's Venice Commission and its European Commission against Racism and Intolerance (ECRI), have repeatedly criticised Azerbaijan's failure to introduce a civilian alternative (https://www.forum18.org/archive.php?article_id=2429) to compulsory military service.

On 7 October 2021, in the latest of several such decisions (https://www.forum18.org/archive.php?article_id=2567), the European Court of Human Rights (ECtHR) in Strasbourg accepted Azerbaijan's admission that it had violated the human rights of two Jehovah's Witness young men who had been convicted in 2018 for refusing compulsory military service on grounds of conscience. Both Emil Mehdiyev and Vahid Abilov had declared a willingness to conduct an alternative civilian service. Both lost their appeals against their suspended jail terms in Azerbaijan's Supreme Court before taking their cases to Strasbourg. The ECtHR ordered that the victims be paid compensation and costs (https://www.forum18.org/archive.php?article_id=2695).

Despite the October 2021 ECtHR decision that the regime had violated the human rights of two more conscientious objectors, Saadat Novruzova of the Presidential Administration's Human Rights Protection Unit told Forum 18 the following month (https://www.forum18.org/archive.php?article_id=2695) that changing the law to introduce a civilian alternative to compulsory military service "is not under discussion".

The 7 October 2021 ECtHR decision reminded Azerbaijan of a similar earlier decision that "calls in principle for legislative action" to satisfy "the obligations incumbent on it of assuring .. the right to benefit from the right to conscientious objection" (https://www.forum18.org/archive.php?article_id=2695).

Forum 18 asked the Human Rights Ombudsperson's Office in Baku in writing on 29 September 2022 what action it will take (if any) to ensure that Azerbaijan introduces a civilian alternative service for those unable to serve in the army on grounds of conscience. Its 10 October response, signed by chief of staff Aydin Safikhanly, did not answer this question.

Refused alternative service, jailed, transferred to suspended sentence

Seymur Afqan oglu Mammadov (born 16 August 2000) is a Jehovah's Witness from the north-western district of Goranboy. Goranboy District State Service for Mobilisation and Conscription summoned him on 4 May and conducted a medical examination.

Mammadov informed officers about his religious position as a conscientious objector to military service who is ready to perform civilian alternative service, as provided for by the Constitution and the decisions of the European Court of Human Rights (see above). Mammadov was subsequently informed that he had been restricted from leaving the country.

"We're not to blame," an officer at Goranboy District State Service for Mobilisation and Conscription insisted to Forum 18 on 29 September (https://www.forum18.org/archive.php?article_id=2776). "There is no alternative service." The officer declined to discuss Mammadov's case further and put the phone down.

On 21 June, Goranboy District Prosecutor's Office summoned Mammadov, where he again explained his religious position. Prosecutors charged him under Criminal Code Article 321.1 ("Evasion without lawful grounds of call-up to military service or of mobilisation"). On 6 August he was informed that his case was being referred to court.

Babek Aliyev of Goranboy District Prosecutor's Office refused to explain why a colleague opened the criminal case against Mammadov. "We are not allowed by law to give information on criminal cases," he told Forum 18 from Goranboy on 29 September.

On 22 September, Judge Taleh Mustafayev of Goranboy District Court sentenced Mammadov under Criminal Code Article 321.1 to nine months' imprisonment (https://www.forum18.org/archive.php?article_id=2776), the Judge's assistant told Forum 18 from the court on 29 September. He insisted that the court had already sent the written verdict to Mammadov "to the place where he is" and that he can appeal if he does not agree with the decision.

Mammadov was arrested in the courtroom at the end of the trial and was taken to Investigation Prison No. 2 in Ganca. "It was a very unexpected decision, especially given the recent [ECtHR] decisions against Azerbaijan," Jehovah's Witnesses told Forum 18 from Baku on 29 September (https://www.forum18.org/archive.php?article_id=2776).

Forum 18 asked the Human Rights Ombudsperson's Office in Baku what action it would take (if any) to defend Mammadov's rights. Its 10 October response, signed by chief of staff Aydin Safikhanly, insisted that the Law on the Ombudsperson does not allow it to investigate the activity of Judges. If the parties are not satisfied with the decision of the Court, they can appeal to a higher Court, it added.

Safikhanly also wrote that, again based on the Law on the Ombudsperson, third parties, including non-governmental organisations, can, with the consent of the plaintiff, file an appeal to the Ombudsperson's Office.

Mammadov lodged an appeal against his conviction to Ganca Appeal Court. On 10 November, the Court held a short preliminary hearing and the judges scheduled the next hearing for 28 November. However, that hearing was adjourned and scheduled for 6 December, so that Mammadov could finish his speech to the court.

Mammadov was brought to Ganca Appeal Court for the final hearing on 12 December. The prosecutor stated that he supported the decision of Goranboy District Court but, given Mammadov's age and positive character references, he requested a two-year suspended sentence, Jehovah's Witnesses told Forum 18. The court partially satisfied the appeal and replaced the nine-month jail term with a one-year suspended sentence. Mammadov was released in the courtroom immediately after the hearing.

Mammadov – who has a criminal record in addition to the suspended sentence - has the possibility to lodge a further appeal to the Supreme Court in Baku.

Released after three months' forcible detention in army

Royal Karimov, a Jehovah's Witness from the western district of Gadabay, turned 18 on 23 July. Two days after his birthday, Gadabay District State Service for Mobilisation and Conscription summoned him. Once there, he explained his position that he could not serve in the army on grounds of conscience but was ready to perform an alternative civilian service. Officers assured him that he could return home after submitting documentation establishing his conscientious objection.

Instead, officers immediately took Karimov to Gadabay District Police (https://www.forum18.org/archive.php?article_id=2776). There he again explained that he could not serve in the army on grounds of conscience but was ready to perform an alternative civilian service. Officers held him overnight at the police station. The following day he was taken to a military unit in Ganca against his will.

After being taken to military unit No. 777 in Ganca, Karimov again explained his position to officers but was not allowed to leave. He continued to be "illegally detained against his will" at the unit, Jehovah's Witnesses told Forum 18 on 29 September.

Forum 18 was unable to find out why officers seized Karimov and forcibly took him to a military unit. The man who answered the telephone at Gadabay District State Service for Mobilisation and Conscription on 29 September refused to discuss anything with Forum 18 (https://www.forum18.org/archive.php?article_id=2776).

The man who answered the telephone of the head of Gadabay District Police on 29 September listened while Forum 18 outlined Karimov's case, then put the phone down before Forum 18 could ask any questions. Subsequent calls went unanswered.

Karimov was given a medical examination in the military unit in Ganca. In October, doctors confirmed that he has flat feet and should therefore be declared unfit for military service. Later in October, the conclusion of the medical commission confirmed this finding.

On 1 November, the military unit released Karimov and he returned home, Jehovah's Witnesses told Forum 18. He was told to report

to Gadabay District State Service for Mobilisation and Conscription by 3 November. When he went there that day, officials told him that the chief was in Baku at a meeting and that he needed to come back to meet personally with the chief.

On 4 November, Karimov called the Gadabay District State Service for Mobilisation and Conscription to see if he should come and if the chief was there. Officials told him that the documents were not yet ready and that they themselves would call him.

Summonses, medical examinations, restrictions, appeals

More than ten Jehovah's Witness young men have faced summonses, often repeated medical examinations and restrictions (including bans on leaving Azerbaijan) after telling the State Service for Mobilisation and Conscription that they cannot perform compulsory military service and that they are willing to perform an alternative civilian service. At least one, who did not know he was banned from leaving Azerbaijan, was stopped on the border with Georgia and sent back.

The State Service for Mobilisation and Conscription has threatened to send details of the conscientious objectors to Prosecutor's Offices with the apparent intention to see them face prosecution under Criminal Code Article 321.1 ("Evasion without lawful grounds of call-up to military service or of mobilisation").

The State Service for Mobilisation and Conscription imposed travel restrictions on Jehovah's Witness Aslan Aliyev because of his conscientious objection to military service. He found out about these restrictions only when he tried to cross into Georgia on 20 April 2019. He has submitted many appeals to have the restrictions removed, most recently on 23 February 2021. On 18 September 2019, Aliyev met the State Service for Mobilisation and Conscription chief, and on 30 September 2021, he met a State Service for Mobilisation and Conscription official. Both stated they were unable to help him.

On 2 November 2021, Aliyev wrote to the Ombudsperson in Baku, Sabina Aliyeva. The Ombudsperson's Office replied that his letter had been forwarded to the State Service for Mobilisation and Conscription, who claimed that they had verbally explained the reasons for the restrictions.

On 9 March 2022, Aliyev wrote to the Chair of the State Committee for Work with Religious Organisations in Baku, Mubariz Qurbanli, but received no reply. The travel restrictions remain in place.

The State Service for Mobilisation and Conscription summoned Jehovah's Witness Rajab Farzaliyev on 5 March 2022. He underwent a medical examination and was found fit for military service. On 10 March, he filed a statement with the State Service for Mobilisation and Conscription explaining his religious beliefs, refusal of military service and request for alternative civilian service. On 12 April, the Prosecutor's Office summoned Farzaliyev, where he met with an investigator.

On 13 April, Farzaliyev filed a statement with the Prosecutor's Office and also verbally explained his religious beliefs and refusal of military service. It is still unclear what will result from the investigation, Jehovah's Witnesses told Forum 18.

The State Service for Mobilisation and Conscription in the south-eastern Saatli District summoned Jehovah's Witness Jalal Qasimov on 23 September 2019. He passed a medical examination and explained his conscientious objection to military service. On 17 January 2020, Qasimov again reported to the State Service for Mobilisation and Conscription, underwent a second medical examination, and was referred for medical examination in the capital Baku.

State Service for Mobilisation and Conscription officials exerted psychological pressure on Qasimov and threatened to send his case files to the Prosecutor's Office for criminal charges. The State Service for Mobilisation and Conscription again summoned Qasimov on 4 September 2020, 21 June 2021, and 29 October 2021, sending him again for medical examinations. They later referred him for an additional examination. (END)

More reports on freedom of thought, conscience and belief in Azerbaijan (<https://www.forum18.org/archive.php?country=23>)

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

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