



This article was published by F18News on: 3 December 2009

AZERBAIJAN: Officials deny Alternative Service commitment, as victim challenges sentence

By Felix Corley, Forum 18 News Service <<http://www.forum18.org>>

Sentenced in 2006 for refusing compulsory military service on grounds of religious faith, Jehovah's Witness Mushfiq Mammedov was sentenced again on exactly the same charges in October 2009 and fined, a decision he is challenging in Baku's Appeal Court. The judge's assistant told Forum 18 News Service that the hearing, which began on 2 December, is due to resume on 9 December. Jehovah's Witnesses pointed out to Forum 18 that Azerbaijan's Constitution and Criminal Code do not allow criminal charges to be brought against someone twice for the same crime. Meanwhile, despite Azerbaijan's commitment to the Council of Europe to have already adopted a Law on Alternative Service, a senior parliamentary official has said the draft will not be presented to Parliament until the conflict over Nagorno-Karabakh is resolved. Andres Herkel, co-rapporteur of the Council of Europe Parliamentary Assembly, told Forum 18 that "this can't be a universal excuse for Azerbaijan not to fulfil its obligations and standards on human rights and basic freedoms".

Jehovah's Witness Mushfiq Mammedov has appealed against his criminal conviction handed down in October for refusing compulsory military service on grounds of religious faith. The initial hearing of his appeal took place on 2 December at Baku's Appeal Court under Judge Rahman Mirzaev and is set to conclude when the substance of his appeal is examined at the next hearing on the afternoon of 9 December, the judge's assistant told Forum 18 News Service from Baku on 2 December. This is the second time Mammedov has been convicted on the same charge.

This latest prosecution of a conscientious objector came amid renewed controversy over Azerbaijan's failure to comply with its Council of Europe commitment to introduce a civilian alternative to military service by January 2003.

Debate was sparked by comments to journalists on 20 November by Safa Mirzoev, chief of staff of the Milli Meclis (parliament), that the draft Law on Alternative Service has been prepared but will not be presented to the Milli Mejlis until the conflict with ethnic Armenians over Nagorno-Karabakh is resolved. Mirzoev also claimed that the draft Law had been given a "positive" assessment by the Council of Europe. (Mirzoev had made similar remarks in December 2008.)

Mirzoev's office repeatedly told Forum 18 in late November and early December that he was too busy to discuss the issue. But Mehman Gayubov of the Milli Meclis press office told Forum 18 on 2 December that, as an official of the Milli Meclis administration, Mirzoev was giving his own opinion. "He doesn't represent the government or deputies." Gayubov said that deputies had discussed the proposed Law some years ago but insisted that the Milli Meclis "cannot adopt" such a Law. "Society wouldn't understand this." He denied that introducing an alternative civilian service is a Council of Europe commitment.

Forum 18 has been unable to find out whether Mirzoev's comments also represent the view of the government and the powerful Presidential Administration. Elshad Babaev of the Military Department of the Presidential Administration declined to comment on Mirzoev's remarks but confirmed to Forum 18 that Azerbaijan does have a commitment to the Council of Europe to introduce alternative service in law and practice and conceded that this has not yet happened.

"We want to do what we promised," Babaev told Forum 18 on 26 November in comments he stressed were his personal view. "But you should take into account that Azerbaijan has very specific issues over the Nagorno-Karabakh issue." Told that the essential situation of the Nagorno-Karabakh conflict has remained unchanged since the 1994 ceasefire and is no different to the situation in 2000 when Azerbaijan agreed its commitments to the Council of Europe, Babaev responded: "We had hoped that the conflict would have been resolved before the commitment was achieved."

Babaev told Forum 18 that the issue of the Alternative Service Law is being handled by the Presidential Administration's Department for Work with Law-Enforcement Agencies. However, its head Fuad Aleskerov was repeatedly unavailable between late November and early December. Equally unavailable was Shahin Aliiev, head of the Department for Legislation and Legal Expertise.

Azerbaijan's defiance of Council of Europe

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 despite 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.

Among its 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".

Despite repeated pressure from the Council of Europe, Azerbaijan has failed to meet this obligation. Andres Herkel, one of the two rapporteurs of the Council of Europe Parliamentary Assembly for the monitoring of Azerbaijan, says he can understand concerns in Azerbaijan about an Alternative Service Law when the Karabakh conflict remains unresolved. "But this can't be a universal excuse for Azerbaijan not to fulfil its obligations and standards on human rights and basic freedoms," Herkel told Forum 18 from the Estonian capital Tallinn on 2 December. "This has been used many times on my visits to Azerbaijan."

Herkel said he had not seen the text of the proposed Alternative Service Law or the Council of Europe assessment. But he urged Azerbaijan to work with the Council of Europe on adopting the Law as soon as possible "in an honest way of fulfilment. Co-operation with international organisations can only be fruitful when there is a real will to change."

Adil Gadjeiev, who handles alternative service cases at the Human Rights Ombudsperson's Office, recognises that adopting the Alternative Service Law is a Council of Europe commitment. He told Forum 18 that the Ombudsperson's Office wrote to the Milli Mejlis in 2008 urging it to do so as soon as possible.

Eldar Zeynalov of the Human Rights Centre of Azerbaijan has repeatedly called on the government to meet this obligation, stressing that this should be for all conscientious objectors, whether their objections are based on a religious faith or not. He pointed out to Forum 18 that the arrest of Mammedov for refusing military service in August 2009 came just weeks after the United Nations Human Rights Committee also called on Azerbaijan to adopt an Alternative Service Law.

Zeynalov remains sceptical of Mirzoev's claim that the Council of Europe gave a positive assessment of the draft Alternative Service Law. "The problem is that both the draft Law and the Council of Europe's comments on it remain top secret," he lamented to Forum 18. "They can claim that the Council of Europe's experts were positive, but no-one can check this." He calls on the Azerbaijani government to make public both the draft Law and the Council of Europe's assessment.

Mammedov's prosecution

Mammedov was arrested by police in Baku's Sabail District in the evening of 19 August without a warrant, human rights defender Zeynalov told Forum 18. A warrant was only obtained the following evening and his pre-trial detention was authorised by a court. Mammedov was initially denied access to a lawyer. He was then transferred to the Investigation Isolation prison at Kurdakhani north of Baku.

At first prison officials refused to pass on food brought for Mammedov by his mother. But after Mammedov's family lodged a complaint to the Human Rights Ombudsperson Elmira Suleymanova about this and about what they regarded as an unlawful search of his home, Suleymanova visited him in the Kurdakhani prison. "The problems for him there were then over," Gadjeiev of the Ombudsperson's Office told Forum 18 on 30 September. However, he declined to question Mammedov's then detention. "All is being done according to the court decision."

Mammedov was held in detention until his trial on 16 October at Sabail District Court. Judge Elnur Hasanov found him guilty of violating Article 321.1 of the Criminal Code. However, according to the court verdict seen by Forum 18, the judge cited unidentified "special circumstances" and, under Article 62 of the Criminal Code, which allows a milder alternative punishment under mitigating circumstances, reduced the punishment from a prison sentence to a fine of 700 Manats (4,865 Norwegian Kroner, 577 Euros or 873 US Dollars).

Judge Hasanov then reduced the fine under Article 69.4 of the Criminal Code to take account of the pre-trial detention from 19 August to 16 October. Mammedov's punishment was thus reduced to 250 Manats (1,737 Norwegian Kroner, 206 Euros or 312 US Dollars) and he was freed in the courtroom. The verdict stressed that he has a criminal record. He was given 20 days to appeal.

Human rights defender Zeynalov told Forum 18 he believes the more lenient punishment than that prescribed in the Criminal Code was a "useful compromise" for the government. "The judge's position was very strange, although I welcome the decision not to imprison Mammedov." But he calls for Mammedov's punishment to be removed entirely.

Earlier prosecutions

Mammedov, who is now 26, has now been sentenced twice for refusing military service. He was found guilty by Baku's Sabail District Court on 21 July 2006 under Criminal Code Article 321.1 and given a suspended sentence of six months. Jehovah's Witnesses told Forum 18 that he and his family were subsequently harassed by the Prosecutor's Office and the Police, who long threatened to prosecute him again (see F18News 23 July 2008 <http://www.forum18.org/Archive.php?article_id=1162>).

The Jehovah's Witnesses pointed out to Forum 18 that his 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.

Among other conscientious objector cases in recent years, Jehovah's Witness Samir Huseynov was sentenced 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>).

Mammedov and Huseynov lodged a joint application (No. 14604/08) on 7 March 2008 to the European Court of Human Rights (ECHR) in Strasbourg (to whose jurisdiction Azerbaijan, as a Council of Europe member, is subject). No admissibility decision has yet been taken on the case. "The case is currently pending for examination and will be dealt with by the Court as soon as practically possible," the Court told Forum 18 on 3 December.

However, human rights defenders have been alarmed by an October 2009 ECHR verdict in the case of an Armenian Jehovah's Witness conscientious objector, Vahan Bayatyan. In its verdict, the ECHR claimed that his imprisonment for refusal to perform military service on grounds of conscience did not constitute an unlawful interference with his right to freedom of thought, conscience and religion. Human rights defenders fear this will set a precedent for future ECHR jurisprudence on conscientious objection to military service (see F18News 19 November 2009 <http://www.forum18.org/Archive.php?article_id=1377>). (END)

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>.

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 printer-friendly map of Azerbaijan is available at <<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=azerba>>.

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