

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	339
Land:	Aserbajdsjan
Kilde:	Conscience and Peace Tax International
Titel:	UPR Submission Azerbaijan
Udgivet:	marts 2023
Optaget på baggrundsmaterialet:	16. april 2024

Executive Summary

This submission was prepared in March 2023 on the basis of the latest information available at that date. It focusses on:

Azerbaijan's continued delay in bringing in legislative provision for conscientious objection to military service ;

The continued liability of conscientious objectors to imprisonment for their refusal to perform military service;

Juvenile recruitment

Delay in bringing in legislation

5. Article 76 of the 1995 Constitution, as amended in 2002 reads: "If serving in the armed forces runs counter to a person's convictions, then in the cases specified in the legislation it is permitted to replace military service by alternative service."

6. Upon accession to the Council of Europe (CoE) in 2000, Azerbaijan undertook to produce implementing legislation by January 2003, but failed to do so. A draft law on alternative service was eventually sent for review to the Council of Europe in 2006, and was returned with suggestions.

7. In February 2008 the CoE's Commissioner for Human Rights complained that no further action had been taken, and noting that "the issue has not received the treatment it deserves", urged "a speedy adoption of a law establishing an alternative civilian service."ⁱ

8. The Parliamentary Assembly of the CoE recommended that "the law on alternative civilian service should be adopted without further delay, in line with Azerbaijan's accession commitment".ⁱⁱ

9. Until 2010 there were repeated reports that a draft was under consideration, however in February 2011 it was reported that it had been removed from the programme of work for the first half of that year.ⁱⁱⁱ

10. The CoE's Venice Commission and its European Commission against Racism and Intolerance (ECRI), subsequently repeatedly criticised Azerbaijan's failure to introduce alternative service. In March 2016, ECRI, noting the continuing sentencing of conscientious objectors. "strongly recommends that the authorities fulfil the undertaking given upon accession to the CoE to enact legislation on alternatives to military service." Azerbaijan's response was "due to the war with Armenia, Azerbaijan has not been able to enact a separate law on alternative service".

11. Following up on 3rd April 2019, ECRI noted "that the Azerbaijani authorities have not taken any initiative to enact legislation on alternatives to military service. (...) therefore (...) this recommendation has not been implemented". On 30th March 2020, a senior ruling party politician, made a brief remark to parliament that an Alternative Service Law should be adopted. However Forum 18 report that in November 2021 when they asked an adviser in the Presidential Administration's Human Rights Protection Unit, whether any law is being prepared they were told "At the moment this is not under discussion."^{iv}

13. Meanwhile amendments to the Religion Law and corresponding sections of the Criminal Code which were adopted by the Parliament in 2009 have the opposite purpose, namely to further penalise conscientious objectors and their religious communities. Article 4 of the amended Law criminalises “refusing or declining to fulfil obligations determined by the law for his/her religious beliefs”. It also states that “substituting the fulfilment of one responsibility by another may only be allowed in cases provided for by the legislation of the Republic of Azerbaijan”. This appears to confirm that conscientious objectors to military service cannot exercise their constitutional right to perform a substitute civilian service. Article 12 of the Law enables the banning of religious organisations for “inciting people to refuse to execute duties required by the law”.^v These restrictions were maintained in a revised version of the Law in June 2021.

Treatment of conscientious objectors

14. In the absence of specific legislation, conscientious objectors regularly declare themselves when required to register for military service, citing the constitutional provisions. An Azerbaijani government source in 2002 quoted a figure of no fewer than 2,000 “youths evading the army on religious grounds”, by which he referred to members of the Jehovah’s Witnesses, Hare Krishna, and some Protestant churches. It was suggested that such persons should be liable to criminal prosecution.

15. The general experience has continued to be that after a degree of harassment by the military recruitment authorities objectors have not been forced into military service. However following prosecutions started against two Jehovah’s Witness conscientious objectors in 2002, there came the case of Mahir Bagirov. After his baptism in April 1999; Bagirov tried in vain to be removed from the military reserve to which he had automatically been inducted as a medical graduate and for which he had taken the oath of allegiance. According to his lawyer, “As a result of his study of the Bible, in good conscience he felt that he could no longer take up arms or support the military in any way. Therefore, he sought from the Ministry of Defence removal of his name from the list of reserve officers and registration as a conscientious objector. The Ministry have adamantly refused to comply.” Called up in May 2004 and ordered to report to a military unit he lodged a suit at Baku’s Khatai district court, arguing that the insistence that he perform military service was illegal and in violation of Article 76 part 2 of the constitution. After the appeal court rejected his suit on 16 September Bagirov took his case to the Supreme Court, which ruled in February 2005 that the lack of a law on alternative service meant this right does not exist.^{vi}

16. On 17th October 2019 the European Court of Human Rights (ECtHR) issued a judgement in the case of *Mushfiq Mammadov and others v. Azerbaijan* regarding five further Jehovah’s Witnesses who had between 2006 and 2012 been convicted under Article 321.1 of the Criminal Code, which sets a penalty of up to two years’ imprisonment for evading military service.

17. Mushfiq Mammadov^{vii} had received a six month suspended sentence on 21st July 2006, having previously been held in investigative prison from 28th April until 28th May,

18. Samir Husneyov^{viii} was sentenced to ten months’ imprisonment starting in January 2008. Two appeals against his conviction were turned down, but on the second on 1st May 2008, the Court ruled that the initial sentence had been excessive and ordered his immediate release. This decision did not however expunge his criminal record.

19. Farid Hasan Mammadov^{ix} (no relation of Mushfiq) had been called up in February 2006 but had applied for exemption on grounds of his religious convictions. Nothing seems to have happened until July 2010, when having stated in writing his refusal to perform military service, he had presented himself to the recruitment office and repeated his refusal orally, following which he was sentenced to nine months’ imprisonment. This sentence was confirmed on appeal, and by the

Supreme Court on 25th January, 2011. He completed his sentence in June 2011.

20. Fakhraddin Mirzayev^x had been called up in March 2012, and in September was sentenced to a year's imprisonment, a sentence again confirmed by the Appeal Court and, in June 2013 by the Supreme Court (he had meanwhile been freed under an amnesty).

21. Kamran Mirzayev^{xi} had been called up in August 2012, had announced his conscientious objection and in March 2013 had been sentenced to nine months' imprisonment. His conviction had been upheld on appeal, and in his case the Supreme Court had ruled in February 2015 that without implementing legislation the constitutional guarantees were not valid.

22. The Court held that there had been a violation of Article 9 of the Convention, finding that the criminal prosecutions and convictions of the applicants on account of their refusal to perform military service had stemmed from the fact that there was no alternative service system under which individuals could benefit from conscientious objector status. The Court further noted that the case highlighted an issue relating to the lack of legislation on civilian service as an alternative to military service in Azerbaijan.

23. A further ECtHR judgement on 7th October 2021 found similar violations in the cases of Emil Mehdiyev^{xii} and Vahid Abilov^{xiii}

24. In December 2017 and January 2018, Mehdiyev had explained his conscientious objection to military service, orally and in writing to the Barda District Department of the State Service for Mobilisation and Conscription (SSMC), and requested alternative civilian service. He was told that this option had been suspended in 1992. In July 2018, he was sentenced to one year's probation. His appeal was rejected, and in 10th April 2019, the Supreme Court upheld the lower court ruling.

25. Abilov presented to the Aghdam District Department of the SSMC written statements of his conscientious objection in May 2017 and January 2018, and in March 2018 explained his reasons for refusing military service Application no. based on his religious beliefs to an investigator from the Prosecutor's Office. Nevertheless, in September 2018, he was sentenced to one year's probation. The verdict was upheld on appeal and in April 2019, the Supreme Court denied his appeal.

26. In a number of more recent cases; threats of prosecution do not seem to have been followed up, For example In July 2019, Kanan and Fuad Hasanaliyev were told that "alternative service in one of the military units" had been arranged for them. The brothers explained that they could not perform alternative service under military control and refused to sign a document warning them that they could be liable for evading the military. Passed fit for service, they were taken at the end of the month to a military unit where a day-long stand-off took place, the brothers repeating their refusal in the face of a series of threats, and finally being released, but told that the SSMC would initiate charges against them. In February 2020, they were told that their case files would be forwarded to the Prosecutor's Office for criminal charges to be issued. They were summoned to the SSMC again in November but were not given any further information about the threatened prosecution.

27. Likewise, between September 2019 and June 2021 Jalal Gasimov underwent at least four medical examinations, at which he was subjected to severe psychological pressure and threats to send his case files to the Prosecutor's Office for criminal charges to be issued because of his refusal. The saga continued, but it has not been reported that any prosecution has been initiated.

28. On 13th February 2020, Fakhraddin Mirzayev, first imprisoned as a conscientious objector in 2012 and one of those covered by the first EctHR decision, was summoned to the SSMC where he was informed that his case had been sent to the Prosecutor's Office for criminal charges to be issued against him for his continued refusal of military service. He, too, was sent for additional

medical examinations, but in the event, not summoned to the Prosecutor's Office. In November 2020, he was declared unfit for military service and was issued a military card.

29. Rashad Niftaliyev, who was first threatened with criminal prosecution in 2008, was again summoned on 15th May 2020, when he underwent a medical examination. Despite oral and written statements explaining his conscientious objection to military service, officials ordered him to report for military service on 1st July 2020. The State Service on Mobilisation and Conscription wrote to him on 23rd February 2021 alleging that he was evading military service and that if he failed to report on 10th March 2021, measures would be taken to prosecute him. He did not report, but no prosecution has been reported.

30. Sometimes the SSMC has imposed travel restrictions, including on Aslan Aliyev who learnt of this when he attempted to visit Georgia in April 2019. Despite repeated attempts, he has been unable to have the restriction lifted, but no other action has been taken against him.

31. Two cases in 2022, however, went beyond threats. On 25th July – two days after his 18th birthday – Royal Karimov was forcibly handed over to the army despite telling conscription officials the police and personnel in the military unit that he could not perform military service on grounds of conscience, but was ready to perform a civilian alternative service. He was finally released on 1st November. Then on 22nd September Seymur Mammadov was sentenced to a nine-month jail term – reduced on appeal on 12th December to a one-year suspended sentence.

Human Rights Committee

32. Azerbaijan most recently reported under the International Covenant on Civil and Political Rights in October 2016. In its Concluding Observations the Human Rights Committee reiterated concerns it had expressed on previous occasions:

“The Committee remains concerned about the absence of specific legislation giving effect in practice to the constitutional provision (art. 76 (3)) on alternative service in cases when religious beliefs conflict with military service (arts. 2 and 18).

“The State party 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.”^{xiv}

33. No individual communications regarding conscientious objection have been submitted to the Committee, although it has on at least occasions in cases concerning Jehovah's Witnesses found violations stemming from their persecution under the Religions Law.

Juvenile recruitment

34. In its Concluding Observations on Azerbaijan Notwithstanding the State party's statement that its legislation does not envisage the involvement of persons under the age of 18 in military service, the Committee is concerned at the lack of an express prohibition on this. Furthermore, the Committee notes that the State party's declaration upon ratification of the Optional Protocol states

that “persons, who are meeting the defined requirements of the military service, may voluntarily enter and be admitted in age of 17 the active military service of the cadets military school”, thus allowing situations in which persons under the age of 18 could be involved in armed conflict.

“(it) urges the State party to enact legislation which expressly prohibits the involvement of persons under the age of 18, including those enrolled in a military school, from being involved in military service (and to) consider withdrawing its declaration under article 3 of the Optional Protocol.”^{xv}

35. Also on the issue of military schools, the Committee expressed concern “that the use of firearms is a mandatory part of the curricula in military schools. (and) recommends that the State party ensure a clear prohibition on training in the use of firearms in military schools for all persons under the age of 18.”^{xvi}

Previous UPR Cycles

36. In what seems a singular omission, given its record, Azerbaijan does not appear to have received any actual recommendations on conscientious objection to military service in the previous UPR cycles, nor has the issue of juvenile recruitment ever been raised. However in the first cycle in February 2009, Slovenia asked in advance, “When does the Government of Azerbaijan plan to introduce legislation to give practical effect to the Constitutional provision allowing conscientious objection to military service?” and repeated this, both in advance and in the Working Group, in 2013 in the Second Cycle. There is no record of a reply on either occasion.

Suggested recommendations

37. That the State Under Review

- without further delay bring in legislation implementing the constitutional provision for alternative service for conscientious objectors, ensuring that such service is entirely civilian in nature and control and is neither discriminators not punitive in comparison to military service
- cease forthwith prosecuting conscientious objectors for their refusal of military service
- pass legislation enabling it to withdraw its declaration on ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and, as recommended by the Committee on the Rights of the Child, prohibit the training in use of firearms by military school cadets aged below 18.

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- ⁱ Council of Europe, Report by the Commissioner for Human Rights, Mr. Thomas Hammerberg, on his visit to Azerbaijan (3rd - 7th September 2007), Strasbourg, 20th February 2008, Chapter 3, III, B.
 - ⁱⁱ Parliamentary Assembly of the Council of Europe, Resolution 1614 (2008), 24 June 2008, para. 24.1.
 - ⁱⁱⁱ Corley, F., "Azerbaijan: Continued defiance of the UN and the Council of Europe" Forum 18 News Service (<http://www.forum18.org>), 22nd February 2011.
 - ^{iv} Corley, F. "Azerbaijan: Alternative service "not under discussion" despite latest ECtHR decision", Forum 18, 5th ..
 - ^v See Corley, F., "Azerbaijan: Religion Law amendments contradict themselves", Forum 18 News Service (<http://www.forum18.org>), 14th May, 2009.
 - ^{vi} Corley, F., "Azerbaijan: Supreme court claims constitutional right does not exist.", Forum 18 News Service, (<http://www.forum18.org>), 10th February 2005.
 - ^{vii} Application no. 14604/08
 - ^{viii} Application no . 45823/11
 - ^{ix} Application no. 76127/13
 - ^x Application no.41792/15
 - ^{xi} Application no.41792/15
 - ^{xii} Application No. 52773/19
 - ^{xiii} Application No. 54768/19
 - ^{xiv} CCPR/C/AZE/CO/4, 16th November 2016, paras 34,35
 - ^{xv} CRC/C/OPAC/AZE/CO/1 8 March 2012, paras 13, 14
 - ^{xvi} Ibid, para 15.