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Submission to the 94th Session of the Human Rights Committee: October 2008 Conscientious Objection to Military Service: AZERBAIJAN

CPTI suggests that in the List of Issues, Azerbaijan be asked what steps it has taken to implement the recommendation made by the Committee on the occasion of its previous report in 2001, that “The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.”¹

Introducing the above recommendation, the Committee had noted “the fact that the law makes no provision for the status of conscientious objector to military service”. In this respect there is no evidence that the situation has changed in the subsequent seven years.

Legislative Background

Paragraph 454 of the State Report recalls Article 2, Part 3 of the “Military Conscription in the Republic of Azerbaijan (Basic Principles) Act”, dating back to 1992, which states that those who “for reasons of belief... cannot be called up to active military service are required to perform alternative service (civilian conscription) for a period of 24 months.” On its own, however, this provision has no practical effect; it does not define the beliefs which will justify release from the obligation to perform military service. On 4th February 2005, the Supreme Court of Azerbaijan found with regard to Jehovah’s Witness conscientious objector, Mahir Bagirov that a similar provision which had subsequently been incorporated as Article 76 of the 1995 Constitution² conferred no right of conscientious objection to military service in the absence of specific implementing legislation.³

¹ CCPR/CO/73/AZE (October 2001), Para. 21.

² The wording after amendment 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.”

³ Corley, F., Forum 18 News Service, (<http://www.forum18.org>) “Azerbaijan: Supreme court claims constitutional right does not exist.”, 10th February 2005.

The history of such implementing legislation is a strange shadow play.

In 1991, the parliament of the Azerbaijani Soviet Socialist Republic had reportedly passed a law on alternative service.⁴ This was never officially published, let alone implemented, and seems to have been allowed to lapse with the dissolution of the Soviet Union and the creation of an independent state of Azerbaijan.

In 1998, a new draft law was brought forward but was rejected by the Parliament.⁵

Upon accession to membership of the Council of Europe in 2000, Azerbaijan undertook to produce legislation on conscientious objection by January 2003, but failed to do so. There were reports early in 2004 that a draft law on alternative service (which is of course not necessarily the same thing) was about to be submitted to Parliament, but this did not materialise.⁶ In 2006, a source in the Council of Europe reported that they were expecting to receive the text of the draft law for examination in the near future.⁷ In May 2008 the head of the Parliamentary Administration was reported by a news agency as stating that a draft had been approved by “international organisations”, but civil society sources complained that the text was still being treated as top secret, and there had been no public consultation about the drafting.⁸ This creates an obvious danger that any draft put before Parliament may not in practice fully meet the applicable international standards, as set out *inter alia* in Resolution 1998/77 of the Commission on Human Rights and Recommendation R(87)8 of the Committee of Ministers of the Council of Europe.

An Azerbaijani member of the Parliamentary Assembly of the Council of Europe was quoted in a press interview on 24th July 2008 as stating that the introduction of this draft law was the only outstanding item from the “accession criteria” set out by the Council of Europe, but that nevertheless the implementation of the law would be conditional upon the return of Nagorny Karabakh to Azerbaijani control.⁹ The implicit use of a restriction on the human rights of one’s own citizens as a bargaining counter in a dispute over sovereignty would seem to have a rather twisted logic.

Treatment of conscientious objectors

In the absence of specific legislation, conscientious objectors are regularly declaring themselves when required to register for military service, citing the constitutional provisions. Azerbaijan is one of many states where the numbers liable to obligatory military service greatly exceeds the actual capacity of the armed forces, and in practice most objectors are not called up. According to the CIA World Factbook, over 90,000 men each year reach the age of liability for seventeen (some other sources say eighteen) months’ military service.¹⁰ However the entire active strength of the

⁴ Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998. (<http://wri-irg.org/co/rtba/azerbaijan.htm>).

⁵ Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p9.

⁶ Ibid

⁷ Corley, F., Forum 18 News Service (<http://www.forum18.org>), “Azerbaijan - Criminal trial resumes for Jehovah’s Witness”, 7th July 2006.

⁸ Corley, F., Forum 18 News Service (<http://www.forum18.org>), “Azerbaijan - conscientious objector freed”, 14th May, 2008.

⁹ TrendNews “Azerbaijani Delegation in PACE Opposes Fulfillment of Some Obligations Before Council of Europe”, 25th July 2008, quoted in War Resisters International, CO Update No. 40, August 2008 (<http://wri-irg.org/pubs/upd-0808.htm>)

¹⁰ (<https://www.cia.gov/library/publications/the-world-factbook/geos/aj.html>, updated 7th August 2008);

Azerbaijani armed forces is estimated at 66,740.¹¹ 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.¹²

The general experience of such conscientious objectors has continued to be that after a degree of harassment by the military recruitment authorities they have not been forced into military service.¹³ However there have now been some prosecutions under Article 321.1 of the Criminal Code, which sets a penalty of up to two years’ imprisonment for evading military service.

Two prosecutions of Jehovah’s Witness conscientious objectors were launched in 2002, but eventually dropped. These were followed in 2004 by the case of Mahir Bagirov, quoted above. Then on 21st July 2006, a six month suspended sentence was handed down by Sabail District Court, Baku, in the case of Mushfiq Mammedov, who had been held in Bayil investigative prison in Baku from his arrest on 28th April until he was released into house arrest by court order on 26th May.¹⁴ In October 2007, Jehovah’s Witness Samir Husneyov was sentenced by the Geranboy District Court in the west of the country to ten months’ imprisonment for refusing military service. Between January and April 2008 he was held in Penal Colony No. 16 in the Bina district of Baku. Two appeals against his conviction were turned down, but on the second occasion, on 1st May 2008 the Regional Appeal Court in Gyanja ruled that the initial sentence had been excessive and ordered his immediate release. This decision does not however expunge his criminal record.¹⁵

So far no renewed attempt has been made to recruit any of the convicted conscientious objectors, although they are not confident that they are safe from this. Thus there has been to date no instance of a repeated conviction, which would have violated the principle of *ne bis in idem*, according to Paragraph 55 of the Human Rights Committee’s General Comment No. 32 of July 2007, which cited previous decisions of the UN Working Group on Arbitrary Detention..

It should however be noted with regard to these cases that the Working Group on Arbitrary Detention has now gone farther. In its Opinion No.16/2008 on the case of Turkish conscientious objector Halil Savda, issued on 20th July 2008, it took the view that in the absence of any legislation accommodating conscientious objectors *any* imprisonment of a genuine conscientious objector for the refusal of military service could constitute arbitrary detention, as resulting from the exercise of the rights or freedoms guaranteed by article 18 of the Universal Declaration and article 18, paragraph 1 of the ICCPR..¹⁶

¹¹ The Military Balance 2007 (International Institute for Strategic Studies, London), p116.

¹² Stolwijk, op. cit. p.10

¹³ Corley, 14th May 2008, op. cit.

¹⁴ Corley, F., Forum 18 News Service (<http://www.forum18.org>), “Azerbaijan: Jehovah’s Witness conscientious objector sentenced”, 26th July 2006.

¹⁵ Corley, 14th May 2008, op. cit.

¹⁶ The relevant paragraph, no.38, reads:

“The Government of Turkey has not put forward any arguments justifying the absence of any legislation accommodating conscientious objectors, possibly allowing for alternative services as a substitute for military service, as is the case in many other States, and for the necessity of criminal prosecution of conscientious objectors, which might potentially provide justification for a limitation on the right to freedom of religion or belief in terms of article 18, paragraph 3 of the ICCPR for the purpose of protecting public safety, order, health, or morals or the fundamental rights and freedoms of

18th August, 2008.

others. In the view of the Working Group, it has been established that the limitations on Mr. Savda's right to freedom of religion or belief as a genuine conscientious objector is not justified in the present case, and is, thus, in violation of article 18 of the Universal Declaration of Human Rights and of article 18, paragraph 1 of the ICCPR. Accordingly, the criminal prosecution, sentencing and deprivation of liberty of Mr. Savda for holding and manifesting his belief and conscience is arbitrary in terms of category II of the Working Group's categories."