



Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

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UPR SUBMISSION

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Executive summary:

CPTI (Conscience and Peace Tax International) is concerned that Azerbaijan has to date still not introduced legislation to implement the constitutional provision allowing for conscientious objection to obligatory military service.

In the absence of any information on the progress in drafting proposals there are also concerns that any legislation eventually brought in 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.

Legislative Background

1. 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 Constitution¹ conferred no right of conscientious objection to military service in the absence of specific implementing legislation.²

2. There is a long history of aborted attempts to produce such implementing legislation. In 1991, the parliament of the Azerbaijani Soviet Socialist Republic had

¹ 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.”

² Corley, F., Forum 18 News Service, (<http://www.forum18.org>) “Azerbaijan: Supreme court claims constitutional right does not exist.”, 10th February 2005.

reportedly passed a law on alternative service.³ 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.⁴

3. 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.⁵ 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.⁶ 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.⁷

Treatment of conscientious objectors

4. 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.⁸ However the entire active strength of the Azerbaijani armed forces is estimated at 66,740.⁹ 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.¹⁰

5. The general experience of such conscientious objectors has continued to be that after a degree of harrassment by the military recruitment authorities they have not been forced into military service.¹¹ 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.

³ Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998. (<http://wri-irg.org/co/rtba/azerbaijan.htm>).

⁴ Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p9.

⁵ Ibid

⁶ Corley, F., Forum 18 News Service (<http://www.forum18.org>), “Azerbaijan - Criminal trial resumes for Jehovah’s Witness”, 7th July 2006.

⁷ Corley, F., Forum 18 News Service (<http://www.forum18.org>), “Azerbaijan - conscientious objector freed”, 14th May, 2008.

⁸ (<https://www.cia.gov/library/publications/the-world-factbook/geos/aj.html>, updated 7th August 2008);

⁹ The Military Balance 2007 (International Institute for Strategic Studies, London), p116.

¹⁰ Stolwijk, op. cit. p.10

¹¹ Corley, 14th May 2008, op. cit.

6. 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.¹² 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.¹³

¹² Corley, F., Forum 18 News Service (<http://www.forum18.org>), "Azerbaijan: Jehovah's Witness conscientious objector sentenced", 26th July 2006.

¹³ Corley, 14th May 2008, op. cit.