

**United Nations Human Rights Council
Universal Periodic Review
Azerbaijan**

Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.



United Nations Human Rights Council Universal Periodic Review of Member-State Azerbaijan¹

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Azerbaijan as a contribution to the Universal Period Review of UN member-state Azerbaijan.

1. Background²

Once part of the Ottoman Empire, Azerbaijan became a state within the Soviet Union in 1922. It was not until 1991 that Azerbaijan became an independent nation from the Soviet Union. Although originally set up as a parliamentary democracy with strong presidential powers, the president has exercised disproportionate powers over the government ever since a military coup occurred in 1993. Elections are neither free nor fair, and corruption is commonplace. Neither the judiciary nor the parliament experience independence within the government. Despite its atheist Soviet era, Azerbaijan experienced a religious renaissance in the aftermath of the fall of the Soviet Union. Nonetheless, despite the 96 percent of the population that claims Islam as their religion, religious observance remains very low.³

2. Legal Framework

Constitutional Framework

According to the Constitution of the Azerbaijan Republic, which was passed in 1995, Azerbaijan is a secular republic (Article 6), in which religion is “separated from the State” (Article 18). Articles 18 and 25 further protect the equality of religions. Article 48 of the Constitution explicitly guarantees freedom of religion and conscience:

Every Person Shall have the right to freedom of Consciousness and Religion.

Everybody shall have the right to independently define his/her attitude towards Religion, to profess Religion alone or together with other, or to profess no Religion at all, to express and spread convictions.

Free conduct of religious rites if it doesn't violate public order or public morality shall be authorized.

Violation of the freedom of Religion and self-expression shall not be justified.

Thus, the constitution of Azerbaijan firmly establishes protections for the freedom of religion in Azerbaijan. Unfortunately, the state has failed to implement these protections in law or practice.

International Commitments

In 1992, Azerbaijan acceded to the International Covenant on Civil and Political Rights, in which Article 18 guarantees the freedom of religion or belief. Additionally, as a member of the United Nations, Azerbaijan has agreed to the principles expressed in the Universal Declaration of Human Rights, which also protects the fundamental right to freedom of religion or belief, including the rights to choose one's own faith. Azerbaijan is also a signatory to the European Covenant on Human Rights. Article 9 of the ECHR reads:

¹ We are indebted to reports by the U.S. Department of State and RELIGIOUS FREEDOM IN THE WORLD (Paul A. Marshall ed., 2008).

² RELIGIOUS FREEDOM IN THE WORLD (Paul A. Marshall ed., 2008), p. 79-80.

³ U.S. Department of State International Religious Freedom Report, 2007.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁴

As a member of the Organization for Security and Cooperation in Europe, Azerbaijan is also party to the Helsinki Final Act of 1975, which states that "participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion."⁵

1992 Religious Law⁶

In the wake of a declaration of independence from the Soviet Union, the Government passed a Religion Law in 1992. The 1992 religious law granted religious freedom to all and even placed restrictions on state interference.⁷

Amendments to Religious Policy

However, beginning in 1996, a series of amendments to the 1992 Religion Law created a much stricter policy, which allowed the government to exercise greater oversight and control of the practice and propagation of religion. The implementation of this law is discussed below.⁸

Considering New Law

Despite some considerations of changing the controversial Religion Law, the State Committee for the Affairs of Religious Organisations ("SCARO") has indicated that no such law is pending nor is such a law needed.⁹

3. Implementation

Even though the constitution thoroughly and explicitly provides for the necessary protections of religious freedom, the government of Azerbaijan treats religion as a threat to its security and authority. Fears of both radical religious groups and foreign influence on religious groups have caused the government to enact a strict Religion Law, which seeks to control religion through a burdensome and overly restrictive registration process.

Registration

The use of registration to control the activities and rights of religious persons has significantly imposed on the freedom of religion in Azerbaijan. The seven-step application is overly burdensome and entails long delays during the approval process.¹⁰ Registration is required to obtain a bank account, to rent property,

⁴ Article 9, European Convention on Human Rights.

⁵ Article VII, Helsinki Final Act of 1975.

⁶ The Law of the Republic of Azerbaijan "On Freedom of Religious Belief." (will be referred to as Religion Law)

⁷ RELIGIOUS FREEDOM IN THE WORLD (Paul A. Marshall ed., 2008).

⁸ RELIGIOUS FREEDOM IN THE WORLD (Paul A. Marshall ed., 2008).

⁹ In May 2008, Jeyhun Mamedov, a senior official of the SCARO stated, "There will be no new Religion Law." [...] "This is what we have been told from above." Opposition parliamentary deputy Fazil Gazanfaroglu Mustafaevev indicated that the SCARO did not want a new Religion Law. Forum 18, Felix Corley, "AZERBAIJAN: 'No New Religion Law,' official states," 30 June 2008.

¹⁰ U.S. Department of State International Religious Freedom Report, 2007.

and to operate as a legal entity.¹¹ Unregistered religious groups are considered illegal and are denied basic rights to associate. They are often targeted for raids, arrests, and destruction of property.¹²

In 2001, SCARO was established by a presidential decree.¹³ SCARO claims that its main responsibility is to create the “appropriate conditions for implementation of freedom of religion principle and belief” as found in Article 48 of the Constitution.¹⁴ However, in operation, SCARO operates as the clearing house for registration applications, censors religious publications, and oversees travel requests for religious training abroad.¹⁵ When asked about the role of the SCARO, Gundux Ismaylov – head of the department for religious affairs in the regions – said, “We have a legal framework for religious communities. If they go out of that framework, we intervene.”¹⁶ Such intervention seems to contradict Article 5 of the Religion Law, which states: “The state shall not instruct religious associations to fulfill any state’s affair and doesn’t interfere with their activities.”¹⁷

State Control of Religion

Under the Religion Law, the government continued the Soviet tradition of an “independent” Caucasian Muslims Board, which is meant to operate as an umbrella organization for Muslim congregations.¹⁸ Article 8 of the Religion Law states that “Islamic religious communities are subordinated by the Caucasian Muslims Board.”¹⁹ In practice, the CMB appoints clerics to mosques and oversees their salaries, monitors sermons, arranges pilgrimages, and oversees Islamic education.²⁰ The CMB is actively trying to create a native Azerbaijan tradition of Islam, purportedly to counteract foreign traditions that the government claims espouse Islamist or extremist points of view.²¹

Religious Discrimination

Fundamentalist Muslims

Despite its majority Muslim population, the Government regularly targets Islamic groups, who are often accused of extremist or fundamentalist views without proof of intention to commit violence or imminent threat to society. While Azerbaijan residents have been linked to a number of terrorist attacks by Islamist groups, including al-Qaeda, the Government has used counter-terrorism measures to crack down on Islamic groups critical of the government. The use of closed-door trials and a non-independent judiciary have further called into question the targeting of Muslims who do not submit to the CMB version of Islam.²² Azerbaijan officials are also fearful of foreign influences on Islamic groups, in particular Iranian influences

¹¹ U.S. Department of State International Religious Freedom Report, 2007.

¹² RELIGIOUS FREEDOM IN THE WORLD (Paul A. Marshall ed., 2008).

¹³ Decree #512 (21 June 2001), source: SCARO website http://dqdk.gov.az/eng/about_e.html

¹⁴ Ibid.

¹⁵ “Azerbaijan: Independent Islam and the State.” International Crisis Group Report, Europe Report No. 191, 25 March 2008.

¹⁶ Ibid.

¹⁷ Article 5, The Law of the Republic of Azerbaijan “On Freedom of Religious Belief.”

¹⁸ “During the Soviet period, all Muslims in Azerbaijan, both Shia and Sunni, were placed under the control of the Spiritual Board of Transcaucasia, founded in 1944 by Stalin. This Board controlled everything that went on in the few mosques that remained open. The Russian Orthodox Church was, as is well known, also placed under the complete control of the State.” Testimony of Eric Rassbach to Helsinki Commission. available at http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewWitness&ContentRecord_id=536&ContentType=D&ContentRecordType=D&ParentType=B&CFID=18849146&CFTOKEN=53. The CMB is the successor to the Spiritual Board of Transcaucasia.

¹⁹ Article 8, The Law of the Republic of Azerbaijan “On Freedom of Religious Belief.”

²⁰ “Azerbaijan: Independent Islam and the State.” International Crisis Group Report, Europe Report No. 191, 25 March 2008.; U.S. Department of State International Religious Freedom Report, 2007.

²¹ Ibid.

²² Ibid.

and Middle Eastern versions of Salafism, what many Azerbaijan officials refer to as “Wahhabi” Islam.²³ The CMB has been more receptive to Islamic influences from Turkey.²⁴

Protestants

Officials regularly deny or delay registration to Protestant Christians, who are relatively new minorities in Azerbaijan. The SCARO has only recognized three of the five main Baptist churches. The Baptist Church in Aliabad has been seeking registration for over 15 years.²⁵ Baptist pastor Hamid Shabanov is currently detained in Zakatala, where his congregation claims prosecutors have fabricated charges and accuse him of supporting a separatist movement.²⁶ Earlier in 2008, Baptist Pastor Zaur Balaev was freed from prison after the international community pressed the Government on what were also considered fabricated charges.²⁷

Jehovah's Witnesses

Jehovah's Witnesses have also been targeted for their religious beliefs, in particular their beliefs in proselytism and pacifism. In 2006, Mushfiq Mmmmedov was given a prison sentence of 6-months for refusing to participate in the military. In December 2006, police and other government officials raided a meeting of Jehovah's Witnesses. After kicking down the door, the officials interrogated the members for hours and later deported six foreigners who were accused of proselytism.²⁸

Restrictions on Fundamental Freedoms for Religious Persons

Property Rights

Given its monopoly over registrations, the Government is able to restrict religious groups from obtaining legal status and property rights. The Government has even evicted unregistered groups from religious buildings. In 2004, the Juma mosque was closed and the Imam was evicted for being an unregistered religious group.²⁹ Imam Ilgar Ibrahimoglu Allahverdiev had submitted an application to the SCARO but refused to subject his congregation to the CMB in the name of religious liberty.

Travel

Those wishing to complete their religious training outside of Azerbaijan are required to receive approval from SCARO beforehand, especially if they wish to obtain a clerical position upon return to Azerbaijan.³⁰

Proselytism

Despite constitutional protections for the sharing of faith, proselytism is outlawed in practice. Foreigners are explicitly banned from proselytism, according to Clause 300 of the Administrative Regulations and are punished with either a fine or deportation.³¹ On August 22, Imamzade Mamedova – a Russian citizen and

²³ “Azerbaijan: Independent Islam and the State.” International Crisis Group Report, Europe Report No. 191, 25 March 2008, p. 5.

²⁴ Former head of the SCARO Rafiq Aliyev stated, “Turkish Islam is the only Islamic tendency compatible with the Azerbaijani secular state model.” (“Azerbaijan: Independent Islam and the State.” International Crisis Group Report, Europe Report No. 191, 25 March 2008, p. 8)

²⁵ U.S. Department of State International Religious Freedom Report, 2007.

²⁶ Felix Corley, “AZERBAIJAN: Prosecutors very much want to sentence Hamid,” Forum 18 News Service, 23 July 2008.

²⁷ Felix Corley, “AZERBAIJAN: Shock at second Baptist pastor arrest,” Forum 18 News Service, 21 June 2008.

²⁸ U.S. Department of State International Religious Freedom Report, 2007.

²⁹ Ibid.

³⁰ Ibid.

³¹ SCARO website, http://dqdk.gov.az/eng/pravila_e.html.

a Jehovah's Witness – was deported for participating in “illegal religious propaganda” after she had been detained for three weeks for “talking about God.”³²

Religious Publications

The Expertise Department of the SCARO censors all religious publications, even though the Constitution explicitly states that the government will not participate in censorship.³³ When asked about the practice, a senior official of the SCARO claimed that the committee does not censor but rather “merely checks” and bans certain religious literature.³⁴

Free Speech/Press

On charges of “inciting religious hatred,” a journalist in Baku was sentenced to 3-year prison term in May 2007 for an article arguing that Islamic values had negatively affected the development of the country. The editor received a 4-year term.³⁵

The Religion Law also bans religious associations from participating in politics: “Religious associations shall not partake in the activity of political parties and help them financially.”³⁶ Nonetheless, the head of the CMB regularly expresses his support for the ruling party during elections and has even voiced threats against those who opposed the ruling party.³⁷

4. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Azerbaijan. We respectfully recommend that the UNHRC not only base its evaluation of Azerbaijan on constitutional assurances of religious freedom, but also on the use of legal doctrines to control religious institutions.

Azerbaijan should be encouraged to continue its path towards democracy alongside a more robust judicial system, which is able to ensure rule of law for all, including effective enforcement of laws protecting religious freedom, and judicial decrees.

Azerbaijan should repeal the Religion Law, which claims to protect religious freedom, but does far more to restrict religious freedom than to protect it.

³² Felix Corley, “AZERBAIJAN: Threats and deportation ‘to stop us talking about God’,” Forum 18 News Service, 27 August 2008.

³³ Article 50 states that “State censorship in mass media, including print media, shall be forbidden.”

³⁴ Felix Corley, “AZERBAIJAN: The State Committee doesn’t censor – it ‘merely checks’ and bans literature,” Forum 18 News Service, 6 August 2008.

³⁵ U.S. Department of State International Religious Freedom Report, 2007.

³⁶ Article 5, The Law of the Republic of Azerbaijan “On Freedom of Religious Belief.”

³⁷ “Azerbaijan: Independent Islam and the State.” International Crisis Group Report, Europe Report No. 191, 25 March 2008.