

# Exam for JUR1530 and JUR5530 - Refugee and Asylum Law

Spring 2008

**Please read the facts and answer the question. Please find enclosed the 1951 Convention on the Status of Refugees' definition of a refugee and the European Convention on Human Rights. Good Luck!**

Nariman Rizayeva is a 32 year old journalist who worked for the newspaper *Realny Azerbaijan* in Baku, Azerbaijan. In 2007, his editor, Eynulla Fatullayev was convicted for fomenting terrorism on account of writing an article in which he accused the government's foreign policy as rendering them vulnerable to attack from Iran and identifying potential targets. He was sentenced to eight and a half years prison. The sentence was upheld by the Baku Appellate Court. The newspaper was shut down by the National Security Ministry which confiscated the staff's computers. Rizayeva became concerned because he was working on an article in which he interviewed members of the Northern Mahdi Army (which had been charged with being linked to Iran's Islamic Revolutionary Guards Corps) and asked them to explain the grounds for their movement. The Northern Mahdi Army was put on trial (closed to the public) for attempting to establish a state ruled by Sharia law, possession of illegal weapons, and cooperating with foreign intelligence. Rizayeva feared that the National Security Ministry would read the article on the hard drive and that he would be charged under Azerbaijan's Law on Combating Terrorism. He believes this to be possible because his interview allowed the Northern Mahdi Army to present arguments advocating for recognition of the legitimacy of their actions. Elcin Qambarov, the lawyer representing the leader of the NMA, Said Sadashbeyli, asserted that the charges are groundless, and that his client had not worked with Iran or sought to undermine Western influence in Azerbaijan:

*"The main charges are that Said Dadashbeyli and members of the community he led, conducted activities with the aim of overthrowing the government, to change the constitutional order of the country by violent means. They are also accused of working with Iranian intelligence. But the prosecutors don't have any evidence, any facts, any witnesses that can prove that Said Dadasbeyli is connected with Iranian intelligence. This is a baseless charge that comes from nowhere."*

The Law defines "terrorism" as such: "The commission of acts or the threat to commit acts involving explosives or arson, or other acts which threaten to cause loss of life of human beings, or damage their health, inflict significant damage to property, or other socially dangerous consequences, if these acts are implemented with the aim of undermining public security, spreading panic among the population or forcing State authorities or international organizations to take decisions that comply with the demands of terrorists." A "terrorist" is defined as a person who takes part in terrorist activity in any form, and "terrorist activities" are defined as including deliberate financing or

provision of assistance to terrorist groups. Rizayeva crossed the border into Armenia and went to UNHCR's offices where he requested the provision of a refugee ID card and recommendation for resettlement.

**You are a legal staff officer at UNHCR and have been asked to write a memo determining whether or not UNHCR should recognize him as a refugee and seek resettlement for him.**

During your interview with him, he reveals that he worked very hard to finish the Northern Mahdi Army story, visiting their training camp in Iran five times and paying for their travel costs to a safe location which he arranged in order to conduct the interview prior to their arrest. He claims that it is important that the world learn about the Northern Mahdi Army and would like to continue to write articles presenting their case so that they can raise international channels for support. Rizayeva alleges that even if he is not prosecuted for terrorism he risks serious harassment by the State.

You call Nina Ognianova, the Europe and Central Asia program coordinator for the Committee to Protect Journalists (CPJ), who states that there is a disturbing trend in which "independent and opposition journalists" have faced harassment. "Azerbaijan has become quickly, in the last 12 months, the leading jailer of journalists in Europe and Central Asia," Ognianova said. "This is a disturbing trend because most of the journalists are imprisoned on politicized charges initiated by public officials." You also send a query to the International Crisis Group, which delivers the following information:

*"Claims that major terrorist acts were foiled in Azerbaijan at the end of 2007 have prompted discussion about the extent to which Islamic extremism is a genuine threat in the oil-rich land. Azerbaijan is a secular state with an overwhelmingly moderate (predominantly Shiite) Muslim population. Since the break-up of the Soviet Union and independence in 1991, independent Sunni and Shiite groups have emerged which refuse the spiritual authority of the official clergy. Some are political, but very few, if any, appear intent on employing violence to overthrow the state. The government, however, expresses concern about these "independents", and tries to control them, including through repression. Its strategy risks radicalising peaceful activists and believers.*

*After 1991 Azerbaijan became a target of religious movements vying for influence. Missionaries and charities from Iran, the Middle East and Turkey, as well as individuals from Russia's north Caucasus came to proselytise. Some reportedly were linked with militant Islamist networks, including al-Qaeda. Many were expelled, and only Turkish groups now continue to work relatively unhindered by the state.*

*Largely inspired and funded by foreign groups, independent religious communities have grown much more rapidly than official mosques. Salafism, largely unheard of in Azerbaijan twenty years ago, has gained a foothold mainly in Baku and the north. Groups of Shiites who refuse to recognise the state-promoted spiritual leadership have also become more numerous, but only a few could be considered political and even fewer militant. Nevertheless, the government is suspicious of all independent expressions of Islam. It tries to control such groups through the State Committee for Work with Religious Organisations (SCWRO) and the Caucasus Board of Muslims (CBM) and generally represses manifestations of independence rapidly. Peaceful followers of groups outside CBM's control are by their own accounts regularly harassed and detained.*

*The government justifies its tough approach by citing a need to combat extremism and prevent terrorism, and it claims significant success. In the early 1990s, the state was relatively weak, and some extremist groups were apparently active. As the state has strengthened, it says it has become much more proficient at arresting and sentencing extremists. Whether those so treated actually had operational links with extremists is doubted by independent observers.*

*The government has employed excessive means to control peaceful religious activities and trials of alleged extremists are often held behind closed doors using evidence collected under duress. Independent religious communities as well as members of the political opposition say the authorities exaggerate the Islamic terrorist threat to gain the West's sympathy and tolerance for its undemocratic proclivities. The government's tactics at least run the danger of pushing otherwise peaceful groups towards jihad; radicalisation, if not yet overt violence, is becoming visible among a minority of the Salafi community. The challenge is to stop any groups bent on violence, while ensuring freedom of religion.*

*The government has taken some steps to strengthen cooperation with believers by improving religious education for young clerics and reforming CBM. It is trying to cultivate a home-grown Islam, based on local values and traditions, to halt encroachment of foreign beliefs, but it should extend its efforts to include non-governmental organisations (NGOs) and independent communities in a broad debate on state and religion. Most importantly, it needs to devise a method of dealing with independent groups that does not criminalise them and is more respectful of religious rights".*