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ARMENIA: European Court finds conscientious objector was wrongfully convicted and jailed – but what will government do?

By Felix Corley, Forum 18

The European Court of Human Rights has today (7 July) published a Grand Chamber judgment finding that Armenia violated Vahan Bayatyan's right to freedom of thought, conscience and religion. Bayatyan, an Armenian Jehovah's Witness, was imprisoned from September 2002 to July 2003 for refusal on grounds of conscience to perform compulsory military service. Armenia currently has 69 prisoners of conscience – all Jehovah's Witnesses – in jail for refusing conscription. Armenian officials gave only cautious responses to the verdict to Forum 18 News Service, but Jehovah's Witnesses noted to Forum 18 that it should both lead to the prisoners of conscience being freed, and "help our fellow believers who are facing the same issue in Azerbaijan and Turkey". Armenia claims amendments to the Alternative Service Law now in Parliament will take the current alternative service out of the control of the military. But the wording of the amendments is unclear and does not unambiguously state this. Lieutenant Colonel Sasun Simonyan, who was involved in preparing the amendments, told Forum 18 that – as at present - anyone doing alternative service who violated their terms of service would be dealt with by the Military Prosecutor's Office.

Exactly eight years after he brought his case to European Court of Human Rights (ECtHR) in Strasbourg in 2003, the Court's Grand Chamber this morning (7 July) ruled that Vahan Bayatyan had his right to freedom of thought, conscience and religion violated and awarded him compensation. Bayatyan, an Armenian Jehovah's Witness, was imprisoned from September 2002 to July 2003 for refusal on grounds of conscience to perform compulsory military service. Of the 17 judges, only the judge from Armenia, Alvina Gyulumyan, dissented from the decision. There are currently 69 imprisoned conscientious objectors in Armenia – all Jehovah's Witnesses – and the ECtHR judgment directly affects their cases.

Armenian officials gave only cautious responses to the verdict. "If this is the decision of the European Court, the government must pay the compensation," Karine Kalantaryan, spokesperson for the Justice Ministry, told Forum 18 News Service from the Armenian capital Yerevan on 7 July. "The government has always paid compensation handed down in such cases." However, asked about the implications of the judgment for the current prisoners, she referred to Deputy Justice Minister Emil Babayan. His Assistant told Forum 18 the same day that he was out at a conference.

A senior official of the central government apparatus – who asked not to be identified – told Forum 18 that "in the execution of the judgment, the government might review the situation of the imprisoned conscientious objectors", but gave no promises.

Jehovah's Witnesses welcomed the judgment. "This landmark judgment by the Grand Chamber should lead to the eventual release of the 69 Jehovah's Witnesses imprisoned in Armenia, and help our fellow believers who are facing the same issue in Azerbaijan and Turkey," one told Forum 18 from Yerevan on 7 July.

The Armenian government claims amendments to the Alternative Service Law now in Parliament will take the current alternative service out of the control of the military. However, human rights defenders and Jehovah's Witnesses have told Forum 18 of their doubt at this claim, as the wording of the amendments does not clearly establish this.

Rights violated

In today's ECtHR Grand Chamber judgment (Application No. 23459/03), the Court found that Bayatyan's right, under Article 9 of the European Convention on Human Rights and Fundamental Freedoms, to freedom of thought, conscience and religion had been violated. It stated that Bayatyan's "failure to report for military service was a manifestation of his religious beliefs. His conviction for draft evasion therefore amounted to an interference with his freedom to manifest his religion as guaranteed by Article 9" (see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=887947&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>).

This overturns the controversial 2009 judgment that Bayatyan's right to freedom of thought, conscience and religion had not been violated (see commentary by Derek Brett of Conscience and Peace Tax International at http://www.forum18.org/Archive.php?article_id=1377). Bayatyan appealed after that judgment (see F18News 7 December 2010

http://www.forum18.org/Archive.php?article_id=1518).

The ECtHR today noted, among other points, Armenia's formal commitments to respect the right to conscientious objection when it joined the Council of Europe (see below). Considering the case, the ECtHR found that the conviction and imprisonment was "not necessary in a democratic society" and so violated Article 9. Indeed, the Court argued that: "respect on the part of the State towards the beliefs of a minority religious group like the applicant's by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society."

The Court's judgment – which is final and cannot be challenged – orders the Armenian government to pay compensation to Bayatyan within three months of 10,000 Euros (5,305,580 Armenian Drams, 77,500 Norwegian Kroner or 14,253 US Dollars), plus a further 10,000 Euros in costs.

As well as paying compensation and costs, states are required to abide by judgments by also ensuring that the reasons for violations found by the ECtHR are removed. This can include changing legislation.

Other Council of Europe member states which currently imprison conscientious objectors are Azerbaijan (see F18News 22 February 2011 http://www.forum18.org/Archive.php?article_id=1544), and Turkey (see F18News 17 March 2010 http://www.forum18.org/Archive.php?article_id=1423). Today's ECtHR judgment – in a comment that may have implications for the laws and official actions of both states - noted that "the overwhelming majority" of Council of Europe member states have "already recognised in their law and practice the right to conscientious objection".

Armenia's Council of Europe commitment

On its accession to the Council of Europe in January 2001, Armenia formally pledged to: "adopt, within three years of accession [i.e. by 25 January 2004], a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service".

The current Alternative Service Law was adopted in 2003 (coming into force on 1 July 2004), but despite amendments in 2004 and 2006, it still fails to meet Armenia's Council of Europe commitment to allow a choice of "alternative civilian service" to be possible. Jehovah's Witnesses and a Molokan who initially accepted the Law's "alternative service" quickly abandoned it when it became clear that the "alternative" was controlled and overseen by the military. They were soon imprisoned, and Armenia has failed follow its Council of Europe commitment to pardon – and therefore release – its prisoners of conscience who object to compulsory military service (see F18News 7 December 2010 http://www.forum18.org/Archive.php?article_id=1518).

69 imprisoned conscientious objectors

As of the beginning of July, 69 young men – all Jehovah's Witnesses – were imprisoned for refusing both military service and the military-controlled alternative service, Jehovah's Witnesses told Forum 18. All were sentenced under Article 327, Part 1 of the Criminal Code, which punishes evasion of the call-up to military or alternative service. The maximum sentence under this article was increased to three years' imprisonment in December 2005.

Of the current 69 prisoners, four are serving maximum sentences of 36 months, 35 are serving 30-month sentences, one is serving a 27-month sentence, 28 are serving 24-month sentences, one is serving an 18-month sentence and one a 12-month sentence. Seven of the prisoners were sentenced in 2011, with the most recent two trials in April. The 69 prisoners are serving their sentences in prisons in Artik, Erebuni, Kosh and Nubarashen.

The number of conscientious objector prisoners has hovered around 70 for several years, almost all of them Jehovah's Witnesses. One Molokan (an early Russian Protestant-style Christian community), Pavel Karavanov, was also imprisoned as a conscientious objector, being freed in 2006 (see F18News 2 May 2007 http://www.forum18.org/Archive.php?article_id=949).

Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, met three of the imprisoned Jehovah's Witnesses in Artik prison in the north-western region of Shirak during his January 2011 visit to Armenia. In his report published on 9 May he called for the conscientious objectors to be freed from prison, and for a genuine civilian alternative service to be introduced (see report via http://www.coe.int/t/commissioner/News/2011/110509Armenia_en.asp).

The prisoners are being treated well, Jehovah's Witnesses told Forum 18. They have access to their religious literature and hold meetings, but are only allowed a pastoral visit from a minister once a month on the second Tuesday of each month. "We would like that to be weekly at the minimum."

Applications for transfer to community service rejected

In Spring 2011, some of the Jehovah's Witness prisoners were offered the opportunity to apply to transfer to community service for the remaining two-thirds of their sentence. However, none of those who did so were accepted, Jehovah's Witnesses told Forum 18.

In a typical case, Taron Pirapyan, sentenced to 30 months' imprisonment in March 2010 and serving his sentence in Kosh Labour Camp, applied for such a transfer to community service. On 30 April 2011, in a document seen by Forum 18, L. Bagdasaryan, Head of the Kosh camp's Administrative Commission, recommended this transfer, pointing out his good conduct and low risk.

However, at a meeting of the Independent Parole Commission in Yerevan on 18 May, Pirapyan and two other Jehovah's Witnesses were among prisoners at Kosh to have their applications rejected, according to the record of the meeting signed by Commission Chair G. Hambartsumyan and seen by Forum 18.

Will new legal amendments allow civilian alternative service?

The government's proposed amendments to the 2003 Alternative Service Law were prepared by Sedrak Sedrakyan and Lieutenant Colonel Sasun Simonyan of the Defence Ministry's Legal Directorate and subsequently approved also by the Justice Ministry, officials of both ministries confirmed to Forum 18. They were then approved by the government on 14 April and, on 22 April, sent to the National Assembly, Artak Asatryan, Acting Head of the Government's State and Legal Affairs Department, confirmed to Forum 18 from Yerevan on 6 July.

In its justification for the amendments, the government noted that "the relevant stakeholders" – the conscientious objectors – cannot avail themselves of the current alternative service because it is under military control. It also points to lack of clarity over what documents those who have completed alternative service should receive, and claims that it is too difficult for those performing alternative service to change their mind and transfer to military service.

The government said the aim of the amendments was to protect the rights of those wishing to perform alternative service, as well as the rights of those currently doing military service or yet to do it. It said adopting the amendments would reduce the number of complaints and meet Armenia's international obligations.

The proposed amendments were discussed in Parliament's Defence, National Security and Internal Affairs Committee on 6 May, the Parliamentary website noted. The Head of Parliament's Legal Department, A. Danielyan, declared on 18 May that the proposed amendments were in accordance with the Armenian Constitution and the principles of international law. The Defence, National Security and Internal Affairs Committee told Forum 18 from Yerevan on 7 July that the amendments are still being considered by the Committee.

Lt Col Simonyan, deputy head of the Defence Ministry's Legal Directorate who was involved in preparing the amendments, told Forum 18 that the amendments will be considered in parliament after 15 September.

What will amendments change - and leave unchanged?

According to the text published on the parliamentary website, the amendments change only four Articles of the original December 2003 Law.

An addition to Article 14 states: "Alternative service shall be monitored by the Commission composed of representatives of the state government bodies from Defence, Health and Labour and Social Affairs of the Republic of Armenia (hereinafter referred to as the authorised bodies). The Commission carries out its activities in the areas of alternative service by conducting not less than four visits per year to alternative service sites to examine the conditions of labour at alternative service sites, to examine the state of implementation of the internal rules by the head of the alternative service site and by servicemen engaged in alternative service. The Commission submits the results of his findings to the authorised bodies. The composition and rules of procedure are established by the joint order of the principals of the authorised bodies."

The amendments also stipulate that those doing alternative service will still be provided with a military service card, and that they will make it easier for those doing alternative service to transfer to military service.

Lt Col Simonyan stressed that those performing civilian alternative service will still be required to serve 42 months, compared to 24 months for military service and 36 months for non-combat military service.

As Hammarberg of the Council of Europe pointed out in his May report, "the European Committee of Social Rights of the Council of Europe has found that a period of alternative service which is double the duration of military service is excessively lengthy and contrary to Article 1.2 of the European Social Charter. Under this article, alternative service may not exceed one and a half times the length of armed military service."

When Forum 18 read this to Lt Col Simonyan he laughed. Eventually he responded: "This is not within my competence." He also said that what will happen to the currently imprisoned conscientious objectors is also not within his competence.

Alternative service?

Lt Col Simonyan insisted that the alternative service would be under civilian control after the amendments are approved. He gave the example of a hospital as an institution which would control those doing alternative service, and issue them with necessary clothing. However, this is not stated anywhere within the amendments.

Simonyan told Forum 18 that anyone undergoing alternative service who violated the terms of their service would have their case handled by the Military Prosecutor's Office "because the alternative service is replacing military service".

He told Forum 18 in December 2010 that this is because it "is a centralised, national body, while the ordinary Prosecutor's Office is established on a territorial basis" - but would not explain why this is relevant (see F18News 7 December 2010 http://www.forum18.org/Archive.php?article_id=1518).

Currently, the allegedly "civilian" alternative service is supervised by the Military Police under regulations laid down by the Defence Ministry. Conscientious objectors are ordered to wear uniform provided by the military and fed by the military. All breaches of orders or regulations are dealt with by the Military Prosecutor's Office - just as in the new amendments. Conscientious objectors do not see this as a genuinely civilian alternative service (see F18News 2 May 2007 http://www.forum18.org/Archive.php?article_id=949).

Initial reactions

Human rights defenders and Jehovah's Witnesses are unsure how to interpret the proposed amendments. "I am not expert enough to judge, but to my understanding they do not address the main problems with the law - the duration, military supervision and the process by which one can enrol," Larisa Minasyan, head of Armenia's Open Society Foundations, told Forum 18 from Yerevan on 6 July.

Jehovah's Witnesses were equally cautious. "An examination of the draft amendments to the Alternative Service Law does not make it clear whether they fully satisfy our concerns," one told Forum 18. "The key issue is the role of the Defence Ministry. According to the amendments, four Government ministries are involved in overseeing the Law but it is not clear exactly what the role of the Defence Ministry is in the oversight."

Stepan Danielyan of Collaboration for Democracy was more hopeful, regarding the amendments as a "serious step to resolving the problem". However, he noted that the continuing alternative service term of 42 months is "too long". (END)

More coverage of freedom of thought, conscience and belief in Armenia and the unrecognised entity of Nagorno-Karabakh is at <http://www.forum18.org/Archive.php?query=&religion=all&country=21>

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Armenia is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Armenia>.

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