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NAGORNO-KARABAKH: Second ECtHR finding against Armenia on entity's religious freedom

By Felix Corley, Forum 18 (<https://www.forum18.org>)

On 22 March, the European Court of Human Rights (ECtHR) found that Nagorno-Karabakh had violated the rights of Jehovah's Witnesses by refusing from 2009 to register their community in the entity. The ECtHR ordered Armenia – as exercising "effective control" there - to pay compensation. Jehovah's Witnesses and some Protestant communities are still denied registration. Armenia's Representative to the ECtHR has not stated what steps Armenia will take to end the violations.

For the second time, the European Court of Human Rights (ECtHR) in Strasbourg has ruled that Armenia is responsible for a violation of the right to freedom of religion or belief in the ethnic Armenian-controlled unrecognised entity of Nagorno-Karabakh. A 22 March judgment found that Nagorno-Karabakh had violated the rights of Jehovah's Witnesses by refusing since 2009 to register their community in the entity under the local Religion Law. The Court ordered the Armenian government to pay compensation to the Jehovah's Witness community.

Some Protestant churches have since 2009 similarly been denied registration in the entity. The leader of one such church told Forum 18 on 29 March 2022 from the entity's capital Stepanakert that although the church wants registration, "it is not the time to discuss this", given the acute military situation. "Everyone is helping to defend the country."

Although the registration denials in the ECtHR judgment related to 2009, 2010 and 2012, Jehovah's Witnesses told Forum 18 that they still do not have the compulsory registration in Nagorno-Karabakh. However, neither Protestant nor Jehovah's Witness communities have been raided or fined in recent years (see below).

Denial of legal status denies communities the possibility to as communities rent or buy properties for meetings for worship, employ clergy, or engage in other normal community activities.

The ECtHR rejected Armenia's argument that it had "no jurisdiction" over Nagorno-Karabakh. Among the cases the ECtHR cited to reject Armenia's claim was a July 2021 judgment in the case of Jehovah's Witness conscientious objector Artur Avanesyan, jailed in Nagorno-Karabakh in 2014 (see below).

In its 2021 judgment in Avanesyan's case, the ECtHR rejected Armenia's claim that it had no jurisdiction over Nagorno-Karabakh, pointing out that it exercised "effective control" there. "The obligation to secure the rights and freedoms set out in the [European] Convention [on Human Rights] in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration," the ECtHR declared (see below).

A 9 November 2020 tripartite agreement between Azerbaijan, Armenia and Russia ended a bitter 44-day war between Armenian and Azerbaijani forces over control of Nagorno-Karabakh and surrounding territories which saw an estimated 6,500 people killed and major Azerbaijani advances. Renewed clashes broke out on 25 March 2022.

Ashot Sargsyan, the 63-year-old Head of the Religion and National Minorities Department of the Culture and Youth Ministry, wrote the 2009 "expert opinion" justifying refusal of the Jehovah's Witness application (see below).

Sargsyan claimed to Forum 18 from Stepanakert on 28 March 2022 that "we respect all the rights of all citizens" and said Armenia would pay the compensation. He then refused to discuss the registration denials since 2009, pointing to the heightened state of conflict with Azerbaijan. "We have war now. I am at the General Staff with my gun" (see below).

Yeghishe Kirakosyan, Armenia's Representative to the European Court of Human Rights, was not in the office in Yerevan on 28 March. Forum 18 asked him in writing the same day whether Armenia will pay the compensation to Nagorno-Karabakh's Jehovah's Witness community ordered by the ECtHR and what steps the Armenian authorities will take to ensure that the Nagorno-Karabakh authorities will end the violations of the community's rights (see below).

Despite the 2021 ECtHR judgment that the jailing of Avanesyan for refusing compulsory military service had violated his rights, Nagorno-Karabakh has still not introduced a civilian alternative for those who cannot participate in the military on grounds of conscience. Avanesyan had declared his willingness to conduct such an alternative (see below).

Registration denials

Nagorno-Karabakh adopted a new Religion Law (https://www.forum18.org/archive.php?article_id=1236) in December 2008, which remains in force. The Law included a ban on unregistered religious activity; state censorship of religious literature; the requirement for 100 adult citizens to register a religious community; an undefined "monopoly" given to the Armenian Apostolic Church over preaching and spreading its faith while restricting other faiths to similarly undefined "rallying their own faithful"; and the vague formulation of restrictions, making the intended implementation of many articles uncertain.

The Law gave religious communities six months to register or re-register after it came into force in January 2009.

Nagorno-Karabakh's Jehovah's Witness community sought registration under the Religion Law at least three times, firstly on 22 June 2009. On 6 July 2009, officials handed the community an "expert opinion" prepared by Ashot Sargsyan (https://www.forum18.org/archive.php?article_id=1371), then Head of the government's Department for Ethnic Minority and Religious Affairs.

Sargsyan claimed that Jehovah's Witness "ministers (preachers) use a number of methods of psychological influence on believers" and that the activity of certain "active members" in Nagorno-Karabakh "since 1993 (especially during the war years) has amounted to weakening and disrupting the defence of the country at war" because of their refusal to participate in any military activity.

The State Registry Department of the Justice Ministry then rejected the registration application on 3 August 2009 on the basis of the "expert opinion".

The Jehovah's Witness community challenged the denial of registration in the local courts but without success (https://www.forum18.org/archive.php?article_id=1371). During one hearing, Sargsyan told the court: "No one accepts Jehovah's Witnesses as a [religious] organisation but as a sect, fake organisation." He added: "The State Registry Department refused to register Jehovah's Witnesses based on our conclusion, and I consider that that was right."

Case goes to European Court of Human Rights (ECtHR)

In July 2010, Nagorno-Karabakh's Jehovah's Witness community submitted its case over the denial of registration to the ECtHR in Strasbourg (Application No. 41817/10 (<https://hudoc.echr.coe.int/eng?i=001-216366>)). It had to lodge its case against Armenia as Nagorno-Karabakh – as an unrecognised entity – cannot join the Council of Europe and is thus not subject directly to the jurisdiction of the ECtHR.

At the same time the community pursued a second registration application, again in vain. A third application in 2012 was also unsuccessful.

Particularly in 2010, officials raided and fined Jehovah's Witness communities in several towns, as well as communities of Protestants (https://www.forum18.org/archive.php?article_id=1437), for meeting for worship without registration.

Neither Protestant nor Jehovah's Witness communities have been raided or fined in recent years.

ECtHR finds registration denial a violation

In March 2018 the ECtHR asked the Armenian government about the case. After considering the case in private on 1 March 2022, the ECtHR issued its judgment (Application No. 41817/10 (<https://hudoc.echr.coe.int/eng?i=001-216366>)) on 22 March.

The ECtHR found that Armenia had violated the right of Nagorno-Karabakh's Jehovah's Witness community by failing to ensure that it was not arbitrarily denied registration.

"Relying on a number of cases decided by the International Court of Justice, [the Armenian government] argued, in particular, that States providing support to unrecognised entities could not be held responsible for specific actions undertaken by agents of the local administrations of those unrecognised entities." The ECtHR did not accept this, citing a number of earlier judgments.

These included a July 2021 judgment in the case of Jehovah's Witness conscientious objector Artur Avanesyan, jailed in Nagorno-Karabakh in 2014 (see below).

"The Court reiterates that a refusal by the domestic authorities to grant legal-entity status to an association, religious or otherwise, of individuals amounts to an interference with the exercise of the right to freedom of association," the judgment declared. It rejected

Armenia's contention that denial of registration had not affected the community's rights, pointing to the "instances of interference with the community life", including with the 2010 fines.

The ECtHR said Sargsyan "openly showed his negative predisposition towards the applicant". It added that his 2009 "expert opinion" used to deny registration was "based on conjecture uncorroborated by fact".

"The Court observes that the expert opinion did not mention the name of a single individual who had allegedly fallen victim to the techniques of psychological manipulation indicated," the judgment noted. "Nor was there any specific evidence to support the allegation that Jehovah's Witnesses were engaged in improper proselytism within the meaning of the Court's case-law."

The ECtHR also stressed that "it is now the Court's settled case-law that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9" of the European Convention on Human Rights ("Freedom of thought, conscience and religion").

The ECtHR noted that, despite Jehovah's Witness attempts, local courts "never examined in substance" the grounds for refusal of registration.

Financial compensation, but will registration denials end?

The ECtHR ordered that Armenia pay Nagorno-Karabakh's Jehovah's Witness community compensation of 4,500 Euros, plus 1,000 Euros in costs, a total of 5,500 Euros (3 million Armenian Drams, 53,000 Norwegian Kroner or 6,000 US Dollars). The compensation is payable in the three months after the court judgment is deemed final (three months from 22 March, unless Armenia challenges the decision).

Ashot Sargsyan, Head of the Religion and National Minorities Department of the Culture and Youth Ministry, wrote the 2009 "expert opinion". He claimed to Forum 18 from Stepanakert on 28 March 2022 that "we respect all the rights of all citizens". He said Armenia would pay the compensation. He then refused to discuss the registration denials since 2009, pointing to the heightened state of conflict with Azerbaijan. "We have war now. I am at the General Staff with my gun".

Yeghishe Kirakosyan, Armenia's Representative to the European Court of Human Rights, was not in the office in Yerevan on 28 March. Forum 18 asked him in writing the same day whether Armenia will pay the compensation to Nagorno-Karabakh's Jehovah's Witness community ordered by the ECtHR and what steps the Armenian authorities will take to ensure that the Nagorno-Karabakh authorities will end the violations of the community's rights. Forum 18 had received no response by the end of the working day in Yerevan of 29 March.

Jailed for refusing compulsory military service

Nagorno-Karabakh has jailed Jehovah's Witnesses for refusing compulsory military service on grounds of conscience. It has also jailed Baptists for refusing to swear the military oath or handle weapons on grounds of conscience (https://www.forum18.org/archive.php?article_id=1463) while serving in the military.

The Military Conscription Office in Askeran called up for military service local Jehovah's Witness Artur Avanesyan (https://www.forum18.org/archive.php?article_id=2014) in January 2014 when he was 18 years old. That same month, he wrote to the Military Conscription Office setting out his inability to conduct military service on grounds of conscience. As alternative civilian service was not available in Nagorno-Karabakh, he offered to do it in Armenia (like most ethnic Armenian residents of Nagorno-Karabakh, he held an Armenian passport).

On the day he sent his letter, Avanesyan moved to the town of Masis near Yerevan in Armenia, as he feared the Military Conscription Office would reject his application and bring a criminal prosecution against him.

In February 2014, Askeran Regional Prosecutor's Office opened a case against Avanesyan under Article 347, Part 1 of Nagorno-Karabakh's 2013 Criminal Code. This punishes: "Evasion from regular military or alternative service call-up, training exercise or mobilisation, without any order defined by Legislation as grounds for exemption, is punished with arrest for a maximum term of two months, or imprisonment for a maximum term of three years."

Following his move to Armenia and anticipating a positive resolution, Avanesyan applied for alternative civilian service in February 2014 with the Military Conscription Office in Masis.

While hoping to appear before Armenia's alternative service board, Avanesyan was instead summoned on 14 July 2014 to report that day to Yerevan's Central District Police Station. When he arrived at the station, police from Nagorno-Karabakh were waiting for him. They arrested him and took him to Nagorno-Karabakh.

Jehovah's Witnesses insisted to Forum 18 (https://www.forum18.org/archive.php?article_id=2014) that Avanesyan's arrest by Nagorno-Karabakh police at Yerevan's Central District Police Station and immediate deportation to Nagorno-Karabakh was illegal.

The next day, Avanesyan was placed in pre-trial detention and brought before Mardakert Court.

At the end of his trial at Mardakert Court on 30 September 2014, Judge Spartak Grigoryan rejected Avanesyan's insistence that he was innocent of any crime and sentenced him to 30 months' imprisonment (https://www.forum18.org/archive.php?article_id=2014) under Criminal Code Article 347, Part 1. His appeal was rejected in November 2014. The Supreme Court rejected his further appeal the following month.

Avanesyan was sent to serve his sentence in the prison in Shushi, a city then under the control of Nagorno-Karabakh.

Nagorno-Karabakh's then Human Rights Ombudsperson described Avanesyan to Forum 18 in November 2014 (https://www.forum18.org/archive.php?article_id=2014) as "a criminal who must pay the price for his crime".

ECtHR finds jailing of conscientious objector a violation

Avanesyan lodged his case to the ECtHR in Strasbourg in March 2015 (Application No. 12999/15 (<https://hudoc.echr.coe.int/eng?i=001-211259>)). He had to lodge his case against Armenia as Nagorno-Karabakh – as an unrecognised entity – cannot join the Council of Europe and is thus not subject directly to the jurisdiction of the ECtHR.

On 6 September 2016, authorities in Nagorno-Karabakh released Avanesyan from Shushi prison under a general amnesty, Jehovah's Witnesses told Forum 18. He had served 26 months of the 30-month prison sentence.

The ECtHR finally asked questions of the Armenian government in February 2018.

After considering the case in private on 15 June 2021, the ECtHR issued its judgment on 20 July 2021. The judgment became final on 20 October 2021.

The ECtHR found that Armenia had violated Avanesyan's rights by jailing him for refusing to conduct military service.

The ECtHR rejected Armenia's claim that it had no jurisdiction over Nagorno-Karabakh, pointing out that it exercised "effective control" there. "The obligation to secure the rights and freedoms set out in the [European] Convention [on Human Rights] in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration," the ECtHR declared.

The ECtHR found that, while Nagorno-Karabakh had – unlike Armenia - chosen not to introduce a civilian alternative to compulsory military service, "Armenia was responsible for the acts and omissions of the 'NKR' authorities and was under an obligation to secure in that area the rights and freedoms set out in the Convention".

The ECtHR ruled that Avanesyan's rights under Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights had been violated.

The ECtHR ordered that Armenia pay Avanesyan compensation of 9,000 Euros, plus 1,500 Euros in costs, a total of 10,500 Euros (5.6 million Armenian Drams, 100,000 Norwegian Kroner or 11,500 US Dollars). The compensation became payable in the three months after the court judgment was deemed final on 20 October 2021.

Forum 18 was unable to find out from Yeghishe Kirakosyan, Armenia's Representative to the European Court of Human Rights, what steps Armenia will take to ensure that Nagorno-Karabakh protects the rights of conscientious objectors to military service.

No alternative civilian service

Despite urging by local Jehovah's Witnesses and civil society organisations in Nagorno-Karabakh and Armenia, Nagorno-Karabakh has refused to introduce a civilian alternative to compulsory military service. Officials argue that such an alternative service would undermine the entity's need to defend itself.

Since Avanesyan's release from prison in September 2016, no conscientious objectors have been jailed in Nagorno-Karabakh, human rights defenders told Forum 18.

After years of jailing conscientious objectors and judgments against it from the ECtHR, Armenia finally introduced an alternative civilian service (https://www.forum18.org/archive.php?article_id=1844) in May 2013.

Despite judgments against it from the ECtHR, Azerbaijan has rejected calls for it to introduce a civilian alternative to compulsory military service (https://www.forum18.org/archive.php?article_id=2695) and has repeatedly jailed conscientious objectors. Azerbaijan committed to the Council of Europe to introduce such a civilian alternative service by January 2003. (END)

More reports on freedom of thought, conscience and belief in Nagorno-Karabakh
(<https://www.forum18.org/archive.php?country=22>)

A personal commentary by Derek Brett of Conscience and Peace Tax International on conscientious objection to military service and international law in the light of the European Court of Human Rights' July 2011 Bayatyan judgment
(https://www.forum18.org/Archive.php?article_id=1597)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments
(https://www.forum18.org/archive.php?article_id=1351)

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