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ARMENIA: Appeal court upholds conscientious objector's jail term

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

On 7 February, Yerevan's Criminal Court of Appeal rejected 20-year-old Baptist conscientious objector Davit Nazaretyan's appeal against a two-year jail term imposed in October 2023 for refusing military service. The judges ignored European Court of Human Rights judgments, including against Armenia. Nazaretyan's applications for alternative civilian service were repeatedly denied. He is considering a further appeal and will not be required to go to jail until any further appeal is heard. The last known jailed conscientious objector was freed in 2021.

On 7 February, a panel of three judges at Yerevan's Criminal Court of Appeal rejected Davit Nazaretyan's appeal against his two-year jail term imposed in October 2023 for refusing military service on grounds of conscience. He is considering a further appeal to the Cassation Court in Yerevan. The 20-year-old Baptist will not be required to go to jail until any further appeal is heard.

Nzaretyan is the only conscientious objector known to be currently facing jail under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription").

Despite Baptist conscientious objector Nazaretyan's repeated requests from June 2022 onwards for alternative civilian service, officials of the Conscription Service and of the Alternative Service Commission refused his application. On 25 October 2023, Yerevan's Kentron District Court handed him a two-year jail term for "Avoidance of mandatory military or alternative service or conscription" (see below).

"The Criminal Court of Appeal left last October's decision unchanged," Nazaretyan's pastor Mikhail Shubin told Forum 18 from Yerevan after the 7 February 2024 hearing. "He has one month to appeal. When he gets the decision in writing he will decide whether to appeal further" (see below)

Human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation in Yerevan attended the appeal hearing. "This is very, very sad," she told Forum 18 from Yerevan after the decision was announced. She said Nazaretyan was "very sincere" in setting out his position in court. "Davit set out very clearly that he does not consider himself guilty of any crime, that he has been in the church since childhood and that he is ready to perform alternative service" (see below).

"I am a Christian and I read the Bible," Nazaretyan told Forum 18 from Yerevan on 7 November 2023. "Jesus Christ teaches us not to kill and he followed this also. We have to love one another, even our enemies, and not kill people." He added that Jesus Christ also instructed his followers not to swear oaths. "If I was given alternative civilian service now, I would do it" (see below).

"The judges seemed to be prejudiced against the religious community," Sargsyan said of the appeal hearing. "The court didn't take into consideration any of Davit's arguments about his right to alternative service, the decisions in similar cases of the European Court of Human Rights or anything else" (see below).

Sargsyan of the Eurasia Partnership Foundation noted that the prosecution did not attend the 7 February 2024 hearing. "The Court in its questioning of Davit stressed the expert opinion of the Theology Faculty of Yerevan State University, treating its opinion with some respect." The Theology Faculty, led by an Armenian Apostolic Church Bishop, claimed that: "The creed of the Baptist Church and the analysis of the presented case materials allow us to state that Nazaretyan's freedom of thought, conscience and religion would not be restricted by military service" (see below).

Nzaretyan's Baptist pastor strongly disputes this claim by another religious community about his and his Church's beliefs (see below).

Bishop Anushavan and a lecturer at the Theology Faculty repeatedly did not respond to Forum 18's requests in November 2023 and on 8 February 2024 for comment. So Forum 18 was unable to find out why they offer views on beliefs they do not understand, and why they also offer views on a legally binding human rights obligation – the freedom of thought, conscience and belief – which they also do not understand (see below).

Forum 18 asked the three Appeal Court judges – Marine Melkonyan, Armen Bektashyan and Anna Matevosyan – on the afternoon of 8 February why they had not taken their decision in Nazaretyan's case in the light of the jurisprudence (including in Armenian cases) of the European Court of Human Rights on the right to conscientious objection to military service, as part of the right to freedom of religion or belief. Forum 18 has not yet received any reply (see below).

Vahe Sarkisyan, head of Yerevan Garrison Military Prosecutor's Office, defended the decision to bring the criminal case against Nazaretyan. "We have to respond if documents are sent to us," he told Forum 18. "But it was the court which took the decision [to sentence him], not the Prosecutor's Office." He refused to answer any other questions by phone (see below).

Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs, who sits on the Alternative Service Commission, rejected suggestions that the Alternative Service Commission discriminated against conscientious objectors who are not Jehovah's Witnesses. "We gave alternative service to a Molokan about five years ago," he claimed to Forum 18 (see below).

Forum 18 asked the office of the Human Rights Defender Anahit Manasyan on 7 February about Nazaretyan's case and what it is doing (if anything) to support him and others who cannot perform military service on grounds of conscience. An official said an appropriate colleague would respond with a comment. Forum 18 has received no reply (see below).

[UPDATE: In a statement sent to Forum 18 after 11 pm Yerevan time on 9 February, the Public Relations Department of the Human Rights Defender says that "no complaint has been submitted to the Human Rights Defender regarding the case of Davit Nazaretyan". It notes that the Law On the Human Rights Defender states that "the Defender does not have the right to intervene in judicial proceedings or the exercise of judges' powers in a specific case. Therefore, discussing the legality of the rendered judgment falls outside the scope of the powers assigned to the Human Rights Defender by law." It insists that "the Defender stresses the importance of exercising the right to freedom of conscience and religion properly", including "issues related to alternative service". Despite talking of "daily activities" to resolve problems, it gives no information about any specific measures to defend the rights of all conscientious objectors to access alternative civilian service.]

The last known convicted conscientious objector, Maksim Telegin, a Molokan from Yerevan who had been refused alternative civilian service, was freed early from his one-year jail term in 2021 after three months. Jehovah's Witnesses told Forum 18 that their young men do not have problems opting for alternative civilian service (see below).

Sargsyan of the Eurasia Partnership Foundation noted that Astsatryan of the Department for Ethnic Minorities and Religious Affairs is the only Commission member with expertise in the area of freedom of religion or belief. "So the Commission seems to follow his recommendation in each case. My experience suggests that government officials - except those who deal with human rights professionally - are not well educated in human rights issues, and often lead by their own perceptions and biases when dealing with matters related to minority rights," Sargsyan noted (see below).

Military service, alternative civilian service

All men in Armenia are subject to conscription between the ages of 18 and 27. Deferments are available in strictly limited circumstances. Military service lasts for 24 months. Those subject to conscription can apply for service without weapons within the armed forces, which lasts 30 months, or for alternative civilian service, which lasts 36 months.

For many years, Armenia jailed those unable to perform military service on grounds of conscience, despite a commitment to the Council of Europe to introduce a civilian alternative to military service by January 2004. In May 2013, amendments to the 2003 Alternative Service Law and to the 2003 Law on Implementing the Criminal Code were passed (https://www.forum18.org/archive.php?article_id=1844), and a fully civilian alternative service was created. By November 2013, the authorities had freed all the then-jailed conscientious objectors (https://www.forum18.org/archive.php?article_id=1901). All were Jehovah's Witnesses.

Jehovah's Witnesses told Forum 18 on 6 February 2024 that their young men do not have problems opting for alternative civilian service. Since 2013 hundreds of their young men have undertaken alternative civilian service.

International standards

The United Nations (UN) Human Rights Committee has stated in its General Comment 22 (<https://www.refworld.org/docid/453883fb22.html>) that conscientious objection to military service comes under International Covenant on Civil and Political Rights (ICCPR) Article 18 ("Freedom of thought, conscience and religion"). General Comment 22 notes that if a religion or belief is official or followed by a majority of the population this "shall not result in any impairment of the enjoyment of any of the rights under the Covenant .. nor in any discrimination against adherents to other religions or non-believers."

In relation to conscientious objection to military service, General Comment 22 also states among other things: "there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service."

This has been reinforced by the UN Office of the High Commissioner for Human Rights (OHCHR) recognising (<https://www.ohchr.org/en/conscientious-objection>) "the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion". The OHCHR has also noted in its Conscientious Objection to Military Service guide (<https://www.ohchr.org/en/publications/special-issue-publications/conscientious-objection-military-service>) that ICCPR Article 18 is "a non-derogable right .. even during times of a public emergency threatening the life of the nation".

In 2022 the UN Working Group on Arbitrary Detention stated (WGAD-HRC50 (<https://www.ohchr.org/sites/default/files/2022-05/WGAD-HRC50.pdf>)) that "the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States". The Working Group also stated: "States should refrain from imprisoning individuals solely on the basis of their conscientious objection to military service, and should release those that have been so imprisoned."

Various judgments (including against Armenia) of the European Court of Human Rights (ECtHR) in Strasbourg have also defined states' obligations to respect and implement the right to conscientious objection to military service (https://www.echr.coe.int/documents/d/echr/FS_Conscientious_objection_ENG), as part of the right to freedom of religion or belief.

Alternative Service Commission "not well educated in human rights issues"

Human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation questions whether the Alternative Service Commission is competent to evaluate who should or should not be given alternative civilian service. "It is meant to be a public body, but in reality it is a fully government body, staffed mainly with deputy ministers not always knowledgeable or sensitive to human rights and minority issues," she told Forum 18 in November 2023 (https://www.forum18.org/archive.php?article_id=2873).

Sargsyan noted that Vardan Astsatryan of the Department for Ethnic Minorities and Religious Affairs is the only Commission member with expertise in the area of freedom of religion or belief.

"So the Commission seems to follow his recommendation in each case. My experience suggests that government officials - except those who deal with human rights professionally – are not well educated in human rights issues, and often lead by their own perceptions and biases when dealing with matters related to minority rights," Sargsyan noted.

Appeal rejected

Davit Nazaretyan submitted his appeal against his two-year jail term imposed in October 2023 (https://www.forum18.org/archive.php?article_id=2873) for refusing military service on grounds of conscience to Yerevan's Criminal Court of Appeal. On 7 February 2024, a panel of three judges – Marine Melkonyan, Armen Bektashyan and Anna Matevosyan - rejected Nazaretyan's appeal.

Nzaretyan will have one month from receiving the appeal court decision in writing to lodge a further appeal to the Cassation Court in Yerevan. He is considering a further appeal, and will not be required to go to jail until any further appeal is heard.

"The court left last November's decision unchanged," Nazaretyan's pastor Mikhail Shubin told Forum 18 from Yerevan after the hearing. "He has one month to appeal. When he gets the decision in writing he will decide whether to appeal further." The pastor added that about a dozen church members attended the appeal hearing in Nazaretyan's support.

Human rights defender Sargsyan of the Eurasia Partnership Foundation in Yerevan also attended the appeal hearing. "This is very, very sad," she told Forum 18 from Yerevan after the decision was announced. "Davit set out very clearly that he does not consider himself guilty of any crime, that he has been in the church since childhood and that he is ready to perform alternative service. He was very sincere."

Sargsyan said the whole hearing was over in about 40 minutes, including 10 minutes while the judges withdrew to consider their decision. "It was all very rapid. The Judges didn't get into the essence of the case. The judges seemed to be prejudiced against the religious community," she added. "The court didn't take into consideration any of Davit's arguments about his right to alternative service, the decisions in similar cases of the European Court of Human Rights or anything else."

Sargsyan noted that the prosecution did not attend the 7 February 2024 hearing. "The Court in its questioning of Davit stressed the expert opinion of the Theology Faculty of Yerevan State University, treating its opinion with some respect." The Theology Faculty, led by an Armenian Apostolic Church Bishop, claimed that: "The creed of the Baptist Church and the analysis of the presented case materials allow us to state that Nazaretyan's freedom of thought, conscience and religion would not be restricted by military service" (see below).

Nzaretyan's Baptist pastor strongly disputes this claim by another religious community about his and his Church's beliefs (see

below).

Forum 18 asked the three Appeal Court judges – Melkonyan, Bektashyan and Matevosyan – on the afternoon of 8 February in writing why they had not taken their decision in Nazaretyan's case in the light of the jurisprudence (including in Armenian cases) of the European Court of Human Rights on the right to conscientious objection to military service (https://www.echr.coe.int/documents/d/echr/guide_art_9_eng), as part of the right to freedom of religion or belief. Forum 18 had received no reply by the end of the working day in Yerevan of 8 February.

Vahe Sarkisyan, head of Yerevan Garrison Military Prosecutor's Office, would not discuss with Forum 18 why no prosecutor had been sent to the appeal hearing.

Forum 18 asked the office of the Human Rights Defender Anahit Manasyan on 7 February about Nazaretyan's case and what it is doing (if anything) to support him and others who cannot perform military service on grounds of conscience. An official said an appropriate colleague would respond with a comment. Forum 18 had received no reply by the end of the working day in Yerevan of 8 February.

2021 one-year jail sentence for Molokan

Davit Tigrani Nazaretyan (born 23 July 2003) is the only conscientious objector known to be currently facing jail under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription").

At least two Molokans have faced criminal prosecution in recent years for refusing to serve in the armed forces on grounds of conscience. Molokans are followers of a Christian church which emerged in the Russian Empire in the late 18th century, and which is often compared to Protestant churches. Molokans conscientiously object to military service in any country they live in.

Conscientious objector, Ivan Nikolai Mikhailov (born 28 July 1998), is a Molokan from Dilijan. The Alternative Service Commission refused him alternative civilian service on 7 August 2018, according to the Justice Minister's order of 15 August 2018, seen by Forum 18. Judge Samvel Mardanyan at Tavush Regional Court handed him a two-year jail term on 11 November 2019, according to court records. On 11 February 2021, the Criminal Court of Appeal rejected his first appeal. However, on 5 April 2023, the Cassation Court overturned the conviction (meaning that he was never sent to prison as the sentence never came into force) and sent Mikhailov's case back to Tavush Regional Court for a new trial. On 6 October 2023, Judge Sasun Mkhitarian closed the criminal case because of the statute of limitations. The Judge finally removed the restrictions on Mikhailov's movements.

The last known convicted conscientious objector, Maksim Mikhaïli Telegin (born 15 November 1998), a Molokan from Yerevan who had been refused alternative civilian service in 2016, was jailed for one year by Judge Tatevik Grigoryan at Yerevan City Court on 23 March 2021, according to court records. He was taken into custody to begin his prison term on 10 May 2021, but was freed early from his jail term in August 2021 after an amnesty reduced his prison term by nine months, he told Forum 18.

Telegin had applied for alternative civilian service on 23 August 2016, explaining that he is a Molokan and that his faith does not allow him to take up weapons. The Alternative Service Commission rejected his application, claiming that he "did not justify that his duty to undergo compulsory military service is in serious and weighty conflict with his conscience or deep and true religious belief or other beliefs", according to the 2021 court verdict. The Commission claimed he sought alternative civilian service "for reasons of personal interest or convenience".

Vardan Astsatryan, head of the Department for Ethnic Minorities and Religious Affairs, was one of the five Commission members who unanimously rejected Telegin's application for alternative civilian service.

On 14 June 2018, the Administrative Court rejected Telegin's challenge to the Alternative Service Commission rejection.

Military prosecutors had already launched a criminal case against Telegin under Article 327, Part 1 of the then Criminal Code. (A new Criminal Code came into force on 1 July 2022.) On 12 July 2019, Yerevan Garrison Military Prosecutor's Office finally sent the case to court. In 2020 the judge in the case was removed and Judge Grigoryan took over the case.

Telegin set out in court his objection to serving in the military. "Defendant Maksim Telegin testified during the trial that his religion forbids taking up arms and swearing an oath, so he cannot go to military service," the 2021 verdict – seen by Forum 18 - notes. "He himself is guided by the Gospel, where it says that it is forbidden to carry weapons or to take an oath. He stated that since he is a faithful Christian, he cannot violate the message in the Gospel."

Astsatryan of the Department for Ethnic Minorities and Religious Affairs would not discuss Telegin's case. But he insisted that decisions to accept or reject applications for alternative civilian service are taken by the Alternative Service Commission which listens to the cases presented to it.

Astsatryan rejected suggestions that the Commission discriminated against conscientious objectors who are not Jehovah's Witnesses.

"We gave alternative service to a Molokan about five years ago," he told Forum 18 on 8 February 2024. He was unable to give the young man's name or say exactly when he was given alternative civilian service.

Vahe Sarkisyan, head of Yerevan Garrison Military Prosecutor's Office, refused to discuss with Forum 18 on 8 February 2024 why his office had brought the criminal case against Telegin.

"My religion does not allow me to carry weapons"

Davit Nazaretyan lives in the capital Yerevan and is a member of a Council of Churches Baptist congregation in Arinj, a town next to Yerevan. The congregation – which chooses not to seek state registration - is led by Pastor Mikhail Shubin.

Despite his repeated requests for alternative civilian service (https://www.forum18.org/archive.php?article_id=2873), officials of the Conscription Service and of the Alternative Service Commission refused Nazaretyan's application. On 25 October, Judge Gagik Pogosyan of Yerevan's Kentron District Court handed the 20-year-old a two-year jail term for "Avoidance of mandatory military or alternative service or conscription".

"Davit asked for alternative civilian service," Baptist Pastor Shubin – who attended the trial and the appeal hearing with other Baptists - told Forum 18 (https://www.forum18.org/archive.php?article_id=2873). "If the law allows this, why didn't they give it to him? If an individual's conscientious views do not allow him to carry weapons or swear the oath, why didn't they give him alternative service?"

Judge Pogosyan's assistant refused to put Forum 18 through to the Judge to find out why he jailed an individual who could not serve in the military on grounds of conscience and who is ready to perform alternative civilian service. "Everything is written in the verdict," the assistant – who did not give his name - told Forum 18.

"I am a Christian and I read the Bible," Nazaretyan told Forum 18 (https://www.forum18.org/archive.php?article_id=2873). "Jesus Christ teaches us not to kill and he followed this also. We have to love one another, even our enemies, and not kill people." He added that Jesus Christ also instructed his followers not to swear oaths. "If I was given alternative civilian service now, I would do it."

Forum 18 was unable to ask Serop Armenakyan of Yerevan's No. 2 Regional Division of the Conscription Service why he had refused to accept Nazaretyan's application for alternative civilian service (https://www.forum18.org/archive.php?article_id=2873) in July 2022. The duty officer told Forum 18 that Armenakyan was out of the office. He insisted that "all here work according to the law". He added that decisions on whether to grant alternative civilian service are taken not by the local office of the Conscription Service but by the Alternative Service Commission.

In early 2023, while the criminal investigation was already underway, officials summoned Nazaretyan to the Alternative Service Commission (https://www.forum18.org/archive.php?article_id=2873). This is a state body made up of deputy ministers from a range of ministries, as well as Vardan Astsatryan of the Department for Ethnic Minorities and Religious Affairs. On 23 January, it accepted all the Jehovah's Witnesses' applications for alternative civilian service, but rejected Nazaretyan's.

Arkady Cherchinyan, head of the Territorial Management and Infrastructure Ministry's Administrative Control Department, who officials said was in charge of alternative service issues at the Ministry, told Forum 18 that he had not participated in the 23 January meetings with applicants for alternative civilian service and refused to discuss anything.

Asked why the Commission rejected Nazaretyan's application, Astsatryan of the Department for Ethnic Minorities and Religious Affairs said he does not remember the name. "If he has these views he should have presented them," he told Forum 18 in November 2023 (https://www.forum18.org/archive.php?article_id=2873).

On 8 February 2024, Astsatryan claimed to Forum 18 that the Commission rejected Nazaretyan's application as it had not been convinced by his case. "Why couldn't he present his views convincingly?"

Forum 18 told Astsatryan that in November 2023, Nazaretyan had clearly and logically explained his conscientious reasons (https://www.forum18.org/archive.php?article_id=2873) why he could not serve in the military and his readiness to perform alternative civilian service. Yet Astsatryan claimed again that Nazaretyan had not been able to explain this to the Commission.

Investigator Arsen Topchyan handed documents on Nazaretyan's case to the Theology Faculty of Yerevan State University and asked it to review his religious views (https://www.forum18.org/archive.php?article_id=2873). The Theology Faculty is led by Bishop Anushavan Jamkochyan of the Armenian Apostolic Church.

On 17 April 2023 the Faculty claimed that the case materials on Nazaretyan's religious affiliation were allegedly "contradictory". Despite admitting that Nazaretyan regularly attends a Baptist Church with his family, the Theological Faculty claimed: "We conclude from all this that Nazaretyan's religious worldview is either not clearly formed, or he himself does not clearly know what

religious affiliation he has. We also do not rule out that his statements are opportunistic."

The Theology Faculty also claimed (https://www.forum18.org/archive.php?article_id=2873): "The creed of the Baptist Church and the analysis of the presented case materials allow us to state that Nazaretyan's freedom of thought, conscience and religion would not be restricted by military service."

However, Pastor Shubin says that he and his Church think that decisions on whether or not church members should serve in the military are "a personal decision for each church member based on their conscience", he told Forum 18 in November 2023 (https://www.forum18.org/archive.php?article_id=2873). "We support Davit in his decision."

Bishop Anushavan and a lecturer at the Theology Faculty repeatedly did not respond to Forum 18's requests in November 2023 and on 8 February 2024 for comment. So Forum 18 was unable to find out why they offer views on beliefs they do not understand (https://www.forum18.org/archive.php?article_id=2873), and why they also offer views on a legally binding human rights obligation – the freedom of thought, conscience and belief – which they also do not understand.

Investigator Topchyan confirmed to Forum 18 that he had been the investigator in Nazaretyan's case. But he refused to explain why he handed case materials to and asked for an assessment of Nazaretyan's religious beliefs from the Theology Faculty, which is led by a member of another religious community. It also remains unclear why he sought views on the implementation of Armenia's legally binding human rights obligations (https://www.forum18.org/archive.php?article_id=2873) from a group which does not understand Armenia's obligations.

As Investigator Topchyan refused to discuss the case in October 2023 and on 8 November 2024 did not answer his phone, Forum 18 was also not able to ask him why he thought Armenia's international human rights obligation to respect the rights of conscientious objectors to military service should not apply in Nazaretyan's case.

Anna Barsegyan of Yerevan Garrison Military Prosecutor's Office, who led the case, including in court, did not in November 2023 answer Forum 18's questions about why she brought the criminal case against Nazaretyan (https://www.forum18.org/archive.php?article_id=2873) when he cannot serve in the armed forces because of his conscientious beliefs. (END)

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