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ARMENIA: Only some conscientious objectors allowed alternative service

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

Armenia's Alternative Service Commission has repeatedly refused most applications for alternative civilian service from traditionally pacifist Molokans. They then – like Baptist conscientious objector to military service Davit Nazaretyan - face the possibility of being jailed for their beliefs. No official has been willing to explain to Forum 18 why such discriminatory treatment happens. Jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service violates Armenia's legally-binding international human rights obligations.

On 16 July, one week before his 21st birthday, Baptist conscientious objector Davit Nazaretyan received the Cassation Court's rejection of his final appeal against his two-year jail term. The Alternative Service Commission had rejected his application in January 2023. "Davit could be taken to jail at any time," his pastor, Mikhail Shubin, told Forum 18 from Yerevan. As of 23 July, Nazaretyan has not yet received the enforcement act which the Cassation Court is due to issue and which would lead to arrest and jailing, Pastor Shubin added.

Jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service violate Armenia's legally-binding international human rights obligations (see below).

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"). At least two Molokans have faced criminal prosecution in recent years for refusing to serve in the armed forces on grounds of conscience (see below).

For many years, Armenia jailed everyone 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, and a fully civilian alternative service was created. The overwhelming majority of successful applicants for civilian alternative service are Jehovah's Witnesses (see below).

Yet the Alternative Service Commission still does not allow all applications for alternative civilian service from conscientious objectors to military service, who still – against Armenia's legally-binding international human rights obligations - face the possibility of being jailed for their beliefs. Officials have refused to explain why non-Jehovah's Witness applicants for civilian alternative service are normally refused (see below).

A typical rejection order signed by the Justice Minister (for example in the case of Molokan conscientious objector Ivan Mikhailov in August 2018) claims that "the applicant failed to justify that his duty to perform mandatory military service is in serious and weighty conflict with his conscience or with his deep and genuine religious faith or other beliefs". Molokans are a traditionally pacifist Christian community which emerged in the 18th century. Yet, "the Commission does not give alternative service to Molokans", a member of the Molokan community told Forum 18 (see below).

Some Jehovah's Witness young men are not able to make their case for alternative civilian service clearly, an individual close to the process told Forum 18. These Jehovah's Witness young men then come back to the Alternative Service Commission six months later. Almost all are then able to present their case to be exempted from military service on conscientious grounds clearly and the Commission grants them alternative service. Yet Molokans whose applications are rejected are not allowed to present their case to the Alternative Service Commission a second time. Forum 18 has not been able to find out on what basis the Commission allows some but not all applicants for alternative civilian service a second chance to present their case (see below).

Human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation noted to Forum 18: "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" (see below).

Officials at the office of the Human Rights Defender Anahit Manasyan told Forum 18 that it could not speak to her directly, citing "procedural rules". They also claimed that it conducts "daily activities" to find solutions to "issues related to alternative service". Yet it has not answered Forum 18's questions about what results had followed these "daily activities".

The Human Rights Defenders' office also did not explain what, if any, action it is taking to end Armenia's repeated violations of its legally-binding international human rights obligations by jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service (see below).

"This is a multilayered problem that needs to be solved," Edgar Khachatryan, head of Peace Dialogue NGO, told Forum 18 from Vanadzor. "We need to start from legal changes to make the Alternative Service Law clearer so as not to give space to arbitrary interpretation. We also need to change attitudes among officials, including giving Alternative Service Commission members training to understand human rights."

Khachatryan also welcomes a possible future decision in Davit Nazaretyan's case from the European Court of Human Rights (ECtHR) in Strasbourg, but acknowledged that this could take some years (see below).

Criminal convictions, jail terms

On 16 July, one week before his 21st birthday, Baptist conscientious objector Davit Nazaretyan received the Cassation Court's rejection of his final appeal against his two-year jail term. The Alternative Service Commission had rejected his application in January 2023. "Davit could be taken to jail at any time," his pastor, Mikhail Shubin, told Forum 18 from Yerevan (https://www.forum18.org/archive.php?article_id=2920).

As of 23 July, Nazaretyan has not yet received the enforcement act which the Cassation Court is due to issue and which would lead to arrest and jailing, Pastor Shubin added.

"I am very disappointed by this decision," human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation told Forum 18.

"It is bad of course that he has to go to jail," Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs told Forum 18. "But laws must be observed." Astsatryan is a member of the government's Alternative Service Commission which rejected Nazaretyan's alternative service application (https://www.forum18.org/archive.php?article_id=2873).

Jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service violates Armenia's legally-binding international human rights obligations (see below).

Nazaretyan 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.

Conscientious objector Ivan Nikolai Mikhailov (https://www.forum18.org/archive.php?article_id=2891) (born 28 July 1998), a Molokan from Dilijan who had been refused alternative civilian service in 2018, was handed a two-year jail term by Tavush Regional Court on 11 November 2019. 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, a Judge 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 Mikhaili Telegin (https://www.forum18.org/archive.php?article_id=2891) (born 15 November 1998), a Molokan from Yerevan who had been refused alternative civilian service in 2016, was jailed for one year at Yerevan City Court on 23 March 2021. 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.

International standards

The United Nations (UN) Human Rights Committee has stated in its General Comment 22 (<https://www.refworld.org/legal/general/hrc/1993/en/13375>) 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.

Military service, alternative civilian service

All Armenian men between the ages of 18 and 27 are subject to military conscription. Call-ups take place twice a year, and deferments of service are available in strictly limited circumstances. Military service lasts for 24 months.

Those subject to conscription who object to military service with weapons can legally apply for either:

- alternative military service in the armed forces without weapons, having sworn the military oath. This lasts for 30 months;
- or for alternative civilian service, which is not within or controlled by the armed forces and does not involve swearing the military oath. This lasts for 36 months.

Conscientious objectors who are refused alternative civilian service and who refuse to do alternative military service can be prosecuted under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription"). This carries a jail term of two to five years.

For many years, Armenia jailed everyone 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.

Alternative Service Commission

Young men's applications to be allowed to do alternative civilian service are considered by the Alternative Service Commission (https://www.forum18.org/archive.php?article_id=1844). This is a state body chaired by a Deputy Minister of Territorial Management and Infrastructure, Vache Terteryan, and made up of deputy ministers from five other ministries, as well as Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs.

The Alternative Service Commission meets twice a year, typically considering the cases of about 20 applicants at each six-monthly session. Applicants can be accompanied by a lawyer. The Commission appears to seek information on applicants before the sessions, including by looking at their social media accounts.

After each session, the Commission issues decisions, listing which applicants have been accepted and which rejected. The Justice Ministry published such decisions on its website in 2018 and 2019. Later decisions do not appear to be public.

Jehovah's Witnesses told Forum 18 in February 2024 (https://www.forum18.org/archive.php?article_id=2891) 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.

However, applications for alternative civilian service from conscientious objectors who are followers of other beliefs are only rarely

accepted. Molokans, for example, are a traditionally pacifist Christian religious community which emerged in the 18th century. Like Jehovah's Witness young men before 2013, Molokan young men were also jailed (https://www.forum18.org/archive.php?article_id=949) before Alternative Civilian Service was introduced.

As noted above, Molokan conscientious objectors to military service still – against Armenia's legally-binding international human rights obligations - risk being jailed for their beliefs.

A typical rejection order signed by the Justice Minister (for example in the case of Molokan conscientious objector Ivan Mikhailov (https://www.forum18.org/archive.php?article_id=2891) in August 2018) notes that "the applicant failed to justify that his duty to perform mandatory military service is in serious and weighty conflict with his conscience or with his deep and genuine religious faith or other beliefs".

"The Commission does not give alternative service to Molokans," a member of the Molokan community told Forum 18 from Yerevan on 17 July. "The last Molokan to be granted alternative service was in about 2015."

"A compromise not in accordance with the law"

Molokans whose alternative civilian service application is rejected by the Alternative Service Commission are forced to choose between either being prosecuted and possibly jailed, or doing a form of military service. Such young men are normally forced to serve in the military for 24 months.

"Most of our young men therefore have to serve in the military, though without weapons and without swearing the oath," the Molokan added. "They don't complain, but many would undertake alternative civilian service if they could." The Molokan noted that allowing those who object to serving with weapons and swearing the oath to serve without either is "a compromise not in accordance with the [Armenian] law".

Such service within the military is also not, under Armenia's legally-binding international human rights obligations, an adequate way of allowing conscientious objectors to military service (https://www.forum18.org/archive.php?article_id=1844) to exercise their right to a genuinely civilian alternative service.

The Molokan added that on some occasions, those who had applied for alternative civilian service would be found not to be medically fit for military service. "In those cases they would be given a deferment for five years. We had once such case a month ago." Human rights defender Isabella Sargsyan describes such instances as "a quick fix".

Some applicants given second chance, others not

The Alternative Service Commission approves applications from Jehovah's Witness young men who can explain clearly their objection to serving in the military. Some Jehovah's Witness young men, however, are not able to make their case clearly, an individual close to the process told Forum 18.

These Jehovah's Witness young men then come back to the Alternative Service Commission six months later. Almost all are then able to present their case to be exempted from military service on conscientious grounds clearly and the Commission grants them alternative service.

Molokans whose applications are rejected are not allowed to present their case to the Alternative Service Commission a second time. "The Commission issues the decision once and for all," a Molokan told Forum 18. "Further applications are rejected without being considered."

Neither Alternative Service Commission member Vardan Astsatryan (of the Department for Ethnic Minorities and Religious Affairs), nor Alternative Service Commission chair Vache Terteryan answered his phone on 23 July. So Forum 18 was unable to ask them on what basis the Commission allows some but not all applicants for alternative civilian service a second chance to present their case.

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

The assistant to Alternative Service Commission chair Vache Terteryan told Forum 18 on 18 July that he was out of the office.

Alternative Service Commission member Vardan Astsatryan, of the government's Department for Ethnic Minorities and Religious Affairs, has repeatedly denied that only Jehovah's Witnesses can do alternative civilian service (https://www.forum18.org/archive.php?article_id=2891). He rejects suggestions that the Commission discriminates against conscientious objectors who are not Jehovah's Witnesses.

Yet Astsatryan said that of the 15 to 20 applicants for alternative service in 2024, all those that were approved were from Jehovah's

Witnesses. He said the only application that was rejected was from a young man he described as a former Jehovah's Witness. "He couldn't set out clearly his justification for opposing military service," Astsatryan claimed to Forum 18 from Yerevan on 17 July.

Asked when the Alternative Service Commission had last approved a non-Jehovah's Witness for alternative service, Astsatryan claimed that "three or four" had been approved. He could not remember the details and referred questions on details to Arkady Cherchinyan, head of the Territorial Management and Infrastructure Ministry's Administrative Control Department who he said is secretary of the Alternative Service Commission.

Cherchinyan denied that he is secretary of the Commission, but insisted that the Commission works effectively. Forum 18 asked him on 18 July why the Commission only very rarely approves applications from non-Jehovah's Witnesses. Forum 18 also asked how many applications had been received at the summer 2024 call-up and, of these, how many had been granted and rejected. He refused to answer any of Forum 18's questions and put the phone down.

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 said (https://www.forum18.org/archive.php?article_id=2873).

Does Human Rights Defender defend human rights?

Officials at the office of the Human Rights Defender Anahit Manasyan told Forum 18 that it could not speak to her directly, citing "procedural rules".

Forum 18 asked the office of the Human Rights Defender in writing on 18 July why non-Jehovah's Witnesses are almost entirely banned from being granted alternative civilian service. The Human Rights Defender's office response – sent on 19 July - did not answer this question and merely set out the provisions of the law.

The Human Rights Defender's office also claimed to Forum 18 on 9 February (https://www.forum18.org/archive.php?article_id=2891) that it conducts "daily activities" to find solutions to "issues related to alternative service". Forum 18 asked on 18 July what results had followed these "daily activities".

In its reply, the Human Rights Defender's office did not specify what the claimed "daily activities" were. "The Human Rights Defender conducts discussions and cooperates with the competent state authorities related to the issues of alternative military service," her office told Forum 18. "Regarding written or oral applications addressed to the Defender, appropriate actions are carried out within the scope of the Defender's powers, which are summarised in the Annual Report or other reports of the Human Rights Defender."

Asked what action (if any) Human Rights Defender Manasyan will take to defend the rights of conscientious objector Davit Nazaretyan after the Cassation Court rejected his final appeal against his two-year jail term, her office noted that no one had appealed to her over his case. Her office claimed it had conducted research into his case, and found that he had been sentenced to a jail term and banned from leaving the country while appeals were pending. Her office did not appear to know that the Cassation Court had already rejected his final appeal.

The Human Rights Defender's office also did not mention that, under Article 32 of the law governing the Human Rights Defender: "The Defender or the representative thereof may be present at public court sessions for observation purposes."

The Human Rights Defender's office also did not explain what, if any, action it is taking to end Armenia's repeated violations of its legally-binding international human rights obligations by jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service.

The Human Rights Defender's office repeated earlier claims that it cannot interfere in cases which are before the courts. "Consequently, the discussion of the issue of legality of the rendered verdict is beyond the scope of powers assigned to the Human Rights Defender by law."

The Human Rights Defender's office also insisted that Manasyan "refers to the above-mentioned issues from systemic perspective,

outlines the importance of the proper realisation of the right to freedom of thought, conscience, and religion". It claimed that she is "also conducting analysis of the mentioned issues".

"Multilayered problem that needs to be solved"

"This is a multilayered problem that needs to be solved," Edgar Khachatryan, head of Peace Dialogue NGO, told Forum 18 from Vanadzor on 18 July. "We need to start from legal changes to make the Alternative Service Law clearer so as not to give space to arbitrary interpretation. We also need to change attitudes among officials, including giving Alternative Service Commission members training to understand human rights."

Khachatryan also welcomes a possible future decision in Davit Nazaretyan's case from the European Court of Human Rights (ECtHR) in Strasbourg, but acknowledged that this could take some years. He recognised that the ECtHR has already adopted decisions (https://www.echr.coe.int/documents/d/echr/FS_Conscientious_objection_ENG) in relation to conscientious objector cases from Armenia, including in July 2011 in the case of Vahan Bayatyan (Application no. 23459/03). (END)

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