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ARMENIA: New legal amendments to end conscientious objector jailings?

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

Nine and a half years, and about 275 prisoners of conscience, after Armenia should have by January 2004 introduced a civilian alternative to compulsory military service, human rights defenders and conscientious objectors are hoping this Council of Europe commitment will be met. The change comes in new amendments to the Alternative Service Law, and to the Law on Implementing the Criminal Code, which come into force on 8 June. "Our main concern was that alternative civilian service should not be under military control," Jehovah's Witness lawyer Artur Ispiryan told Forum 18 News Service. "This appears to have been resolved." Ispiryan and human rights defenders Stepan Danielyan of Collaboration for Democracy and Avetik Ishkhanyan of the Armenian Helsinki Committee stress that how the legal changes are implemented will be crucial. "This will need close monitoring", Ishkhanyan told Forum 18. Concerns include the Defence Ministry's role in decisions on applications for alternative service, unclear wording of some articles, and the length of alternative service.

Nine and a half years, and about 275 prisoners of conscience, after Armenia should have by January 2004 introduced a civilian alternative to compulsory military service, human rights defenders and conscientious objectors are hoping this Council of Europe commitment will finally be met. The change comes in new amendments to the 2003 Alternative Service Law and to the 2003 Law on Implementing the Criminal Code. "Our main concern was that alternative civilian service should not be under military control," Jehovah's Witness lawyer Artur Ispiryan told Forum 18 News Service from the Armenian capital Yerevan on 5 June. "This appears to have been resolved."

But both he and human rights defenders Stepan Danielyan of Collaboration for Democracy and Avetik Ishkhanyan of the Armenian Helsinki Committee point to other possible concerns. These include the Defence Ministry's role in decisions on applications for alternative service, unclear wording of some articles, and the length of alternative service.

All three stress that how the legal changes are implemented will be crucial. "All will depend on where young conscientious objectors are sent to serve, and how they will react to the provisions on offer," Ishkhanyan told Forum 18 from Yerevan on 5 June. "This will need close monitoring."

The amendments to the Law on Implementing the Criminal Code should allow the 33 young men imprisoned for refusing military service, the six more who have been convicted and await imprisonment, the further six whose trials have begun and the 29 young men who are being investigated for prosecution to apply to be transferred to alternative civilian service, Forum 18 notes.

What are the changes?

The main changes introduced by the amendments to the Alternative Service Law and the Law on Implementing the Criminal Code are:

- Two types of alternative service

The Alternative Service Law in Article 5, as previously, allows two types of alternative service. Both apply only to young men:

a.) "Alternative military service" for 30 months which is not connected with bearing, keeping, maintaining or using weapons;

and b.) "Alternative labour service" for 36 months not connected with the armed forces.

Article 3.1 makes alternative labour service open to all young men with a conscientious objection to military service, whether they are religious or not, Ishkhanyan of the Armenian Helsinki Committee told Forum 18.

Armenia previously required all young men to perform two years' military service. Since the Alternative Service Law entered into force in 2004, those called up could instead apply for alternative service under military control, which lasted up to 42 months. This

did not meet Council of Europe commitments or satisfy many conscientious objectors (see F18News 3 December 2012 http://www.forum18.org/archive.php?article_id=1774).

The reduction in length from 42 months of alternative service under military control to the 36 months of alternative labour service is welcomed by Danielyan of Collaboration for Democracy, Ishkhanyan of the Armenian Helsinki Committee and Ispiryan of the Jehovah's Witnesses. But they note that this is 50 per cent longer than military service. "I believe this should be at most six months more than military service," Ishkhanyan told Forum 18.

- Applications

To apply for alternative service, an applicant must in person go to their local Military Commissariat and submit a written application within a specified time period. Within 30 days of the application being registered, the Regional Military Commissariat shall ascertain under the Conscription Law whether the applicant can be either exempted from military service or given deferred military service. If not, the application must be sent to the government's Alternative Service Committee.

Article 3.2, as previously, does not allow individuals once they are performing either military or alternative service to change their minds and transfer to the other. "We haven't had such a case of an individual performing military service changing their views and wanting to transfer to alternative service," Jehovah's Witness lawyer Ispiryan told Forum 18. "But this could be an issue."

- Decisions

Decisions on alternative service applications are made by the "Alternative Service Committee". Under Article 4 this is a standing committee made up of one representative each from: the Territorial Administration Ministry; the Healthcare Ministry; the Labour and Social Affairs Ministry; the Education and Science Ministry; the Police; the Defence Ministry; and the Department for Ethnic Minorities and Religious Affairs.

Danielyan of Collaboration for Democracy, Ishkhanyan of the Armenian Helsinki Committee and Ispiryan of the Jehovah's Witnesses raise questions over the composition of the Alternative Service Committee and the vagueness over the way it is supposed to operate. "What if the Defence Ministry representative ends up having the decisive voice?" Danielyan pointed out.

Article 8 states that applicants must be notified in advance of the time and location of the meeting at which their application will be decided on, and they can attend this meeting. The Alternative Service Committee can require the applicant to be present.

"Religious studies experts, psychologists and other professionals, representatives of the locations where alternative service is performed, religious and social organisations, and others persons can", under Article 18.2, "be invited to the Alternative Service Committee's meeting." However, there is no indication of the basis on which such invitations shall be issued. For example, Article 18.2 might allow a religious leader of one faith to have an input into a decision on the application of someone from a different faith. "The role of such individuals and what input they might give remains unclear," Ispiryan notes.

Applications must under Article 8.1 be decided upon by the Alternative Service Committee within one month. Decisions are valid if voted for by two thirds of participating members, if more than half of the seven Committee members are present. Such decisions must be sent to the applicant and the relevant Regional Military Commissariat within 10 days.

The Alternative Service Committee also decides on the type of alternative labour service to be performed by successful applicants. Possible types of work are decided on by the government, but no indication is given of which part of the government makes this decision.

- Grounds for decisions

The Alternative Service Committee can under Article 9 reject alternative service applications if:

- 1) The citizen who applied for alternative service has been invited twice to the meeting of the Regional Conscription Committee and failed to appear for unjustifiable reasons, or;
- 2) The applicant has submitted false information;
- 3) The application is obviously groundless."

"It remains unclear on what basis the Alternative Service Committee will take its decisions," Danielyan of Collaboration for Democracy told Forum 18. "It is difficult to foresee how this provision will be applied," Jehovah's Witness lawyer Ispiryan told Forum 18. "Conscientious convictions are hard to prove."

- Appeals

The amendments to the Alternative Service Law do not lay down any appeal procedure or conditions. They merely state in Article 8.1.4 that "if the Alternative Service Committee makes a decision to reject the application, it must state the basis for doing so and the procedure for appealing against the decision".

- Alternative labour service conditions

Article 14 states that alternative labour service is performed in state agencies, Article 14.3 stating that there will be "no military supervision", Article 14.2 indicating that "supervision of the performance and organisation of alternative labour service is carried out by state agencies".

Jehovah's Witness lawyer Ispiryan particularly welcomes the declaration that there can be no military supervision of alternative labour service, which was introduced into the Alternative Service Law amendments between the first and second readings.

However, Article 17.1 states that under Article 13 alternative labour service workers "appear before the Military Commissariat to depart for alternative service", travelling to the alternative service location at their own expense. The location of this should, under Article 17.4, be no more than 30 kilometres (19 miles) away or expenses will be reimbursed.

But Article 14.2 states that "the head of the organisation where the alternative labour service is carried out .. decides his type of work, the regulations and conditions, and within three days notifies this in writing to the Military Commissariat". Article 14.3 states that "an alternative labour worker can be transferred to another organisation or another place of service upon agreement or initiative of the Alternative Service Committee".

Article 18.1 lays down that: "the Director of the place of alternative labour service familiarises the worker with the rules of internal discipline of the organisation and the details of the work to be performed". Article 18.2 requires the Director "to ensure the same working conditions for the alternative labour worker, as they would be required to provide for a contracted or employed worker who does the same kind of work."

Article 21.3 states that: "Alternative labour workers shall be held responsible for unauthorised leave of absence from the place of service in the same way prescribed by law for compulsory military service servicemen".

- Current prisoners of conscience allowed to apply for transfer

Changes to the Law on Implementing the Criminal Code allow people convicted of conscientious objection who are serving their sentence, or have been paroled, or whose sentence was not applied conditionally, to apply before 1 August 2013 to perform alternative service. If this is granted their criminal records will be removed.

Prisoners must apply to the administration of their prison. Time they have already served counts towards the total required length of alternative service. "The prison administration tells them within seven days if the transfer is approved or not," Jehovah's Witness lawyer Ispiryan told Forum 18. "But it does not make clear who takes the decision."

He also notes that a prisoner nearing the end of a two-year sentence might choose not to apply for alternative service, as they would then have to conduct just over a year of alternative civilian service to reach the new specified length of such service of three years.

"It is a bit unfair that prison time counts exactly the same as alternative service time," Ispiryan told Forum 18. "But each individual will decide for themselves whether to apply for a transfer. This is of course a personal decision."

- Past criminal records removed

The amendments to the Law on Implementing the Criminal Code allow individuals convicted for conscientious objection to military service to apply to have their criminal records expunged.

Compensation?

The amendments do not address the issue of compensation for conscientious objectors who have been imprisoned. Twenty former imprisoned conscientious objectors have gained compensation from the government, though only after securing findings in their favour in four separate cases at the European Court of Human Rights (ECtHR) in Strasbourg (see below).

A further 26 Jehovah's Witness conscientious objectors – 23 of them still in prison – lodged their own cases to the ECtHR between December 2011 and December 2012, Jehovah's Witnesses told Forum 18.

Amendments approved

After delaying since joining the Council of Europe in January 2001, Armenia's Justice Ministry finally prepared amendments to provide alternative civilian service in 2012. These were then presented to Parliament (see F18News 3 December 2012 http://www.forum18.org/archive.php?article_id=1774). Justice Minister Hrair Tovmasyan presented the two sets of amendments to Parliament on 27 February 2013. On 18 March, deputies approved both in the first reading with 103 in favour and just one (Deputy Shushan Petrosyan of the ruling Republican Party) against. In the second (and final) reading on 2 May, 65 deputies voted in favour and two against, the parliamentary website notes.

The amendments were signed into law by President Serzh Sarkisyan on 21 May. Both amendments enter into legal force on 8 June, the government's legal database notes.

Alternative civilian service unavailable – up till now

Although Armenia committed itself on joining the Council of Europe to introduce a civilian, non-military alternative service by January 2004, it failed to do so. It also pledged to release all those imprisoned for refusing military service in the interim, but continued with a policy of imprisonment (see eg. F18News 20 September 2012 http://www.forum18.org/archive.php?article_id=1745).

A total of 33 Jehovah's Witnesses are currently serving prison terms under Criminal Code Article 327, Part 1 of between two and three years' imprisonment. The longest serving prisoner is Harutyun Mnatsakanyan, given a three-year prison sentence in August 2010. All are being held in prisons in Kosh, Nubarashen or Erebuni.

Of the approximately 275 young men who have been convicted and imprisoned to punish them for their conscientious objection to military service in the past decade, all but one have been Jehovah's Witnesses, Ishkhanyan notes. The other - Pavel Karavanov - was a Molokan, a member of an early Russian Protestant-style Christian community.

"In the Soviet period Seventh-day Adventists, Molokans and Pentecostals often opposed military service," Danielyan told Forum 18. "After independence in 1991, some of these were forcibly conscripted. But now these communities don't object to military service, though some individuals within them might choose alternative civilian service."

Of all the former Soviet republics which still punish those who cannot serve in the armed forces on grounds of conscience, Armenia has had by far the highest rate of imprisonment for objectors. Turkmenistan, Azerbaijan and Belarus – as well as the unrecognised entity of Nagorno-Karabakh in the south Caucasus - have all imprisoned conscientious objectors in recent years. Council of Europe member Turkey also imprisons conscientious objectors, in defiance of ECtHR judgments (see a personal commentary, by Derek Brett of Conscience and Peace Tax International, on conscientious objection to military service and international law at http://www.forum18.org/Archive.php?article_id=1597).

Strasbourg compensation

In four separate cases, the ECtHR in Strasbourg has found the Armenian government to have violated the rights of conscientious objectors. In a landmark case, the court ruled in July 2011 in favour of former conscientious objector prisoner Vahan Bayatyan. The ECtHR handed down two similar judgments against Armenia – in cases brought by Hayk Bukharatyan and Ashot Tsaturyan - in January 2012 (see F18News 1 February 2012 http://www.forum18.org/Archive.php?article_id=1661).

In November 2012, the ECtHR – in its fourth decision against Armenia in conscientious objector cases – found that Armenia had violated the rights of 17 Jehovah's Witness conscientious objectors. For the first time in such cases, Armenia's European Court Judge, Alvina Gyulumyan, did not dissent from the judgment.

The November 2012 judgment awarded compensation of 6,000 Euros to each of the 17 conscientious objectors. The government was also required to pay a total of 10,000 Euros in costs for all the applicants (see F18News 3 December 2012 http://www.forum18.org/archive.php?article_id=1774).

This judgment became final on 27 February 2013, with compensation payable by 27 May. The government allocated the funds to meet the 112,000 Euro total at its 8 May meeting. It paid the compensation in mid-May, the Justice Ministry and Jehovah's Witnesses both confirmed to Forum 18.

Strasbourg cases to continue?

The 26 conscientious objectors who lodged further cases at the ECtHR in Strasbourg have not been approached by any government official in the wake of the two sets of amendments approved in May, Jehovah's Witness lawyer Ispiryan told Forum 18.

"All 26 were convicted after the court's judgment in the Bayatyan case," he added. "Government officials have made them no offers over reaching a friendly settlement. So the cases are likely to continue." (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 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 is at http://www.forum18.org/Archive.php?article_id=1597.

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.

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