

7 December 2010

ARMENIA: 73 religious prisoners, but will proposed amendments help?

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

As of 1 December, 73 Jehovah's Witness young men were serving prison sentences for refusing military service or military-controlled alternative service on grounds of conscience, Jehovah's Witnesses told Forum 18 News Service. All but one are serving terms of between two and three years' imprisonment. Six or seven more await trial. Lieutenant-Colonel Sasun Simonyan, Deputy Head of the Defence Ministry's Legal Directorate, told Forum 18 that amendments to the 2003 Law on Alternative Service his Ministry prepared are now with the Justice Ministry for review. He claimed the so-far unpublished amendments would ensure civilian control over alternative service. But he then said the Defence Ministry would be one of three ministries exercising control and if those doing the service commit criminal offences, they would be investigated by the Military Prosecutor's Office. "For the alternative service to be acceptable, there must be zero involvement of the Defence Ministry," Avetik Ishkhanyan, head of the Armenian Helsinki Committee, told Forum 18. "It sounds like this will be a step forward, but may not fully resolve the problem."

73 conscientious objectors to military service – all of them Jehovah's Witnesses – are in prison for terms of up to three years, so human rights defenders and Jehovah's Witnesses in Armenia remain cautious about proposed amendments to the Law on Alternative Service which have been prepared by the Defence Ministry, they have told Forum 18 News Service. Lieutenant-Colonel Sasun Simonyan, deputy head of the Ministry's Legal Directorate, who has been preparing the amendments, insisted to Forum 18 from the capital Yerevan on 6 December that if the amendments are approved, those conducting alternative service would be under civilian control. However, he refused to explain why the Defence Ministry would be one of three ministries overseeing those conducting alternative service or why, if those doing the service commit criminal offences, they would be investigated by the Military Prosecutor's Office.

Lt. Col. Simonyan also told Forum 18 that the length of service for those opting for the work alternative to military service would remain unchanged in the amendments at 42 months. Military service is 24 months, while non-combat service within the armed forces is 36 months.

The proposed amendments to the Law on Alternative Service come at the same time as Armenia's Justice Ministry has drawn up proposed amendments to the Religion Law, the Criminal Code, the Code of Administrative Offences and the Charity Law introducing new restrictions and punishments. These have already aroused concern among human rights defenders and religious communities (see F18News 8 December 2010 http://www.forum18.org/Archive.php?article_id=1519).

Current Law "does not provide for a genuine civilian service"

On its accession to the Council of Europe in January 2001, Armenia pledged to adopt a law on alternative service within three years and beforehand to free all conscientious objectors from prison. The Alternative Service Law was adopted in 2003 (coming into force on 1 July 2004), but it soon became clear that the alternative service offered was under military control and therefore unacceptable to the conscientious objectors. Despite amendments in 2004 and 2006, the Law still fails to meet Armenia's Council of Europe commitment.

Armenia's Alternative Service Law "does not provide for a genuine civilian service as the service is still managed and supervised by the Ministry of Defence," the Council of Europe's Human Rights Commissioner Thomas Hammarberg declared bluntly in April 2008 in a report on his fact-finding visit to Armenia the previous October. He also called for all imprisoned conscientious objectors to be freed (see F18News 11 December 2008 http://www.forum18.org/Archive.php?article_id=1228).

Statistics compiled by local Jehovah's Witnesses reveal that in the past two years, more than 70 of their young men have been in prison for refusing military service or military-controlled alternative service at any one time. One Molokan (an early Russian Protestant-style Christian community), Pavel Karavanov, was also imprisoned as a conscientious objector, being freed in 2006.

Despite repeated Council of Europe insistence that a genuine civilian alternative service needs to be introduced, Karine Soudjian, head of the Human Rights Department in the Foreign Ministry, insisted to Forum 18 in December 2008 that the Alternative Service

Law has "no contradiction" with Armenia's international human rights obligations, including to the Council of Europe. She dismissed concerns about the imprisoned conscientious objectors: "This is not a human rights issue" (see F18News 11 December 2008 http://www.forum18.org/Archive.php?article_id=1228).

73 current prisoners

All 73 Jehovah's Witness prisoners as of 1 December 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 73 prisoners, the most recent, Vahagn Alikhanyan, was sentenced on 24 September. A total of 72 are serving sentences of between two and three years' imprisonment, Jehovah's Witnesses told Forum 18 from Yerevan on 6 December. Only one – Artur Hayrapetyan – is serving a one year prison term. "He was first given a suspended sentence, but the prosecutor appealed against it," Jehovah's Witness lawyer Lyova Markaryan told Forum 18. "The sentence was then changed in August to one year's imprisonment." The 73 are being held in prisons in Artik, Erebuni, Kosh and Nubarashen.

Markaryan added that six or seven other young men are awaiting trial on the same charges.

What is in the proposed amendments?

Lt. Col. Simonyan of the Defence Ministry told Forum 18 that the proposed amendments to the Alternative Service Law would mean that those opting for alternative service would be under the ultimate control of three ministries, the Social Security Ministry and Health Ministry, in whose institutions they would be assigned to work, and the Defence Ministry. "Control from the Defence Ministry would be enacted by its civilian, not military staff – we have them too," he insisted. He refused to explain why the Defence Ministry would be involved in control if the service is genuinely civilian.

Lt. Col. Simonyan said that during their service in a Social Security Ministry or Health Ministry institution, those doing the alternative service would be under the head of the institution where they were working. The institution head would also deal with any violations of work discipline, he added.

However, should someone performing alternative service commit a crime punishable under the Criminal Code, he said their case would be investigated by the Military Prosecutor's Office. Asked why this would be the case if they are performing a civilian service, Lt. Col. Simonyan responded: "The Military Prosecutor's Office is a centralised, national body, while the ordinary Prosecutor's Office is established on a territorial basis." He refused to explain why this was relevant.

Lt. Col. Simonyan said that those doing alternative service would be fed and clothed by the Government, not by the Defence Ministry. "They will wear sanitary uniforms only, not khaki military uniforms," he explained.

In justifying the continuing differential between alternative and military service (42 months compared to 24 months), Lt. Col. Simonyan insisted to Forum 18 that "the duties of alternative service are different". He refused to clarify, claiming that such differential terms are "widespread" in Europe. "We don't want to violate the rights of conscripts."

When will proposed amendments reach Parliament?

Lt. Col. Simonyan said that the proposed amendments are now with the Justice Ministry for review. "If their review is positive, the amendments will then go to the government for approval before being made public and sent to the National Assembly," he told Forum 18. "If they have any comments – they never reject draft laws outright – it will come back to us for any changes before going to the government." He said he expects this to be decided "within about a week".

While saying that public comments will be possible once the text of the draft amendments is made public, Lt. Col. Simonyan said the amendments "take account" of recommendations from civil society. He insisted to Forum 18 that "no-one" has raised the issue of sending the amendments to the Council of Europe for review before they are sent to Parliament. "Only our National Assembly can do this."

However, Jehovah's Witnesses told Forum 18 that they had raised the issue of seeking a Council of Europe review in a late October meeting with Armenia's Deputy Defence Minister David Tonoyan and Lt. Col. Simonyan, where the forthcoming amendments had been discussed. Moreover, Forum 18 notes that the current proposed legislative amendments on religion were sent by the Justice Ministry to the Council of Europe's Venice Commission for review.

"Wait till we see the text"

Human rights defenders say that until the proposed amendments are published it is not possible to assess whether the government is serious over bringing the Alternative Service Law into compliance with Armenia's Council of Europe obligation to introduce a fully

civilian, non-discriminatory alternative service.

"Wait till we see the text," Avetik Ishkhanyan, head of the Armenian Helsinki Committee, told Forum 18 from Yerevan on 6 December. "For the alternative service to be acceptable, there must be zero involvement of the Defence Ministry. It sounds like this will be a step forward, but may not fully resolve the problem."

Jehovah's Witness representatives are also cautious, stressing that they too have not seen the text of the proposed amendments. "It sounds like there will be something positive, but it will not be clear if it resolves our problems until we see the text." They accept that the Defence Ministry could have a role in initial assessments of whether individuals have a genuine conscientious objection to military service, but insist that any military involvement in any subsequent decisions or alternative service must end.

"It is very important for us whether the Defence Ministry has any oversight role and whether anyone doing alternative service comes under the Military Prosecutor's Office," Markaryan of the Jehovah's Witnesses told Forum 18. "If this is civilian alternative service, why the Defence Ministry and the Military Prosecutor's Office?" He added that for them the length of any genuinely civilian alternative service is not an issue.

Markaryan also stressed that they regard it as important whether those conducting alternative service would be able to join their co-religionists for religious worship and activities away from their place of service.

ECtHR Grand Chamber considers Bayatyan case

Meanwhile, the Grand Chamber of the European Court of Human Rights (ECtHR) in Strasbourg is deliberating over the case of Vahan Bayatyan, a Jehovah's Witness who was imprisoned from September 2002 to July 2003 for refusal on grounds of conscience to perform military service.

He brought a case to the ECtHR in 2003 (Application no. 23459/03) arguing that his rights to freedom of thought, conscience and religion had been violated by his conviction and imprisonment. However, in a controversial judgment on 29 October 2009, the Court ruled that his imprisonment did not constitute an unlawful interference with his right to freedom of thought, conscience and religion. Human rights defenders questioned this judgment (see Commentary by Derek Brett of Conscience and Peace Tax International at http://www.forum18.org/Archive.php?article_id=1377).

Bayatyan appealed against the judgment and on 10 May 2010 the case was referred to the ECtHR's Grand Chamber. At a hearing on 24 November – available as a webcast on the ECtHR website – the Armenian Government's representative to the Court, Gevorg Kostanyan, argued that Bayatyan had been sentenced in accordance with the law prevailing at the time.

Kostanyan denied that rejecting conscientious objection to military service on religious grounds represented a violation of Article 9 of the European Convention on Human Rights, which guarantees freedom of thought, conscience and religion. He claimed that the interpretation of the scope of this Article back in 2001 and 2002 did not include the right to conscientious objection to military service and that the Armenian Government could not have foreseen such a "new interpretation". He said Bayatyan should have foreseen the "consequence" of refusing to perform military service.

Despite the fact that Armenia had failed to adopt an Alternative Service Law "in compliance with European standards" by January 2004, as specified in its Council of Europe accession commitments, Kostanyan claimed that the Government had "accepted its responsibility" and fully complied with the obligation.

Lawyers for Bayatyan rejected the Government's arguments in their statements to the Grand Chamber, repeating their earlier arguments that Armenia had an obligation to uphold individuals' rights to freedom of thought, conscience and religion and should therefore not have convicted and imprisoned him.

The Grand Chamber has given no date for its decision on the case. (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://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=armeni>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY