

1 February 2012

ARMENIA: After Strasbourg punishment, will government resolve alternative service issue "for ever"?

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

On 10 January the European Court of Human Rights (ECtHR) again ordered Armenia to pay compensation to two Jehovah's Witness conscientious objector former prisoners for violating their rights to religious freedom. The punishment followed two critical Opinions from the Council of Europe's Venice Commission and the Organisation for Security and Co-operation in Europe (OSCE) of the 2011 proposed amendments to the Alternative Service Law. They say these do not go far enough to bring in a fully-civilian alternative to military service which is not punitive in length. But Deputy Justice Minister Ruben Melikyan told Forum 18 News Service that a government Working Group is already preparing new amendments to the Alternative Service Law "fully taking into account the OSCE and Venice Commission views" and the ECtHR rulings. He said it would be adopted "this year". However, he said until it is adopted, the courts cannot free the 57 imprisoned conscientious objectors nor halt the prosecution of a further 14.

Armenia's new Deputy Justice Minister Ruben Melikyan has told Forum 18 News Service that a government Working Group is already preparing new amendments to the Alternative Service Law. His comments come three weeks after Armenia was again fined by the European Court of Human Rights (ECtHR) in Strasbourg for violating the rights to religious freedom of two Jehovah's Witness conscientious objector former prisoners. His comments also follow legal Opinions on the 2011 proposed amendments, now in Parliament, which were criticised by both the Council of Europe's Venice Commission and the Organisation for Security and Co-operation in Europe (OSCE). They called on Armenia to ensure that revisions to the Law bring in a fully-civilian alternative to military service which is not punitive in length.

The new amendments are being prepared "fully taking into account the OSCE and Venice Commission views" and the ECtHR rulings, Melikyan insisted to Forum 18 from the capital Yerevan on 1 February. He said it is too early to make the text public, as it is still being prepared.

Melikyan, a Deputy Justice Minister since 18 January, told Forum 18 the amendments would be presented to Parliament "within a short period" and pledged that this would "resolve the issue for ever". He was unable to say if they could be adopted by Parliament before parliamentary elections due in May, but insisted they would be adopted "this year".

Melikyan declined to say what would happen to the amendments approved by the government in 2011 and now in Parliament, which were the subject of the OSCE and Venice Commission Opinions.

However, Melikyan told Forum 18 the courts cannot free the 57 current imprisoned conscientious objectors to military service nor halt the prosecution of 14 others until amendments to the Law have been adopted. He added that the President cannot pardon them either. "We want to give them more than a pardon, as pardoning them would not clear them of guilt. The decision should be more friendly to them." Melikyan insisted this will happen "this year".

Military control

The alternative service now on offer in Armenia is under military control, and thus unacceptable to those who cannot serve in the armed forces on conscientious grounds. All the current prisoners are Jehovah's Witness young men, who insist they would be prepared to perform a civilian-controlled alternative service. They are serving sentences of between 18 and 36 months' imprisonment. In the past, as well as Jehovah's Witnesses, a Molokan (a form of Protestant) conscientious objector was also imprisoned (see F18News 7 July 2011 http://www.forum18.org/Archive.php?article_id=1591).

Stepan Danielyan, head of the Yerevan-based Collaboration for Democracy human rights group which has long called for a change to the Law, welcomed the ECtHR judgments. "But it's easier for our government to pay the compensation than to amend the law," he told Forum 18 from Yerevan on 31 January. "Our government doesn't know what to do now."

Danielyan said the issue is little discussed in the media and lamented that "no-one in Armenia" is interested in resolving it. He said he doubted if any changes will occur before parliamentary elections, due in May.

Jehovah's Witnesses also welcomed the ECtHR judgments, maintaining that they come "at the right time". However, they complain that the Armenian authorities "continue to ignore" the Strasbourg Court's rulings, especially with the imprisonment of five more conscientious objectors and further prosecutions. "We hope the Armenian authorities will now reconsider their position and release the 57 young men that are currently incarcerated as conscientious objectors," a lawyer representing the young men told Forum 18 from Yerevan.

Jehovah's Witnesses said they had heard nothing about any new draft Law being prepared, but said they hoped the government is ready to change the Law to allow a fully civilian alternative service. "We hope at last the Armenian Government will start implementing these Strasbourg judgments in domestic law and will allow these young men to work productively for their country rather than languishing in prison."

No other official comment

Apart from Melikyan of the Justice Ministry, no other Ministry or agency was prepared to comment to Forum 18. The Foreign Ministry told Forum 18 it was not an issue for it. The Press Department of the Defence Ministry referred Forum 18 to the Ministry's Defence Policy Department. Officials there referred Forum 18 to Major Alexander Avetisyan, but his telephone went unanswered each time Forum 18 called on 1 February.

Officials at the Military Prosecutor's Office told Forum 18 on 1 February that Gevorg Kostanyan, Armenia's Military Prosecutor and Armenia's former representative to the ECtHR in Strasbourg, was in a meeting and unavailable. He had taken part in December 2011 discussions of last year's draft Law with the Council of Europe's Venice Commission.

The office of Armenia's Ombudsperson for Human Rights, Karen Andreasyan, promised to comment. But Forum 18 had received no response to its written questions by the end of the working day on 1 February.

Vahakn Kevorkyan, an expert on the staff of Parliament's Defence, National Security and Internal Affairs Committee, told Forum 18 on 31 January that his Committee had not received the "final text" of the December 2011 Venice Commission Opinion. "What they published was only the provisional Opinion", he claimed. But he too insisted that its views, as well as the new ECtHR rulings, will be taken into account when considering the proposed amendments. He doubted whether any action would take place before the May elections.

Kevorkyan made no mention of the new amendments being prepared in the government's Working Group.

Imprisonment violated freedom of religion or belief

The ECtHR in Strasbourg ruled on 10 January that Armenia had violated the rights of two Jehovah's Witnesses by imprisoning them in 2003. Both had refused to conduct military service on grounds of religious conscience and both received two-year prison sentences, though they were both released on parole after less than six months. In the cases of Hayk Bukharatyan (Application No. 37819/03

(<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=898114&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>) and Ashot Tsaturyan (Application No. 37821/03

(<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=898116&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>), the Court found that their rights to freedom of religion or belief under Article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) had been violated.

Jehovah's Witnesses point out that Armenia imprisoned the two young men "despite its previous commitment to the Council of Europe, in January 2001, to institute a genuine civilian alternative service for conscientious objectors and, in the meantime, to pardon all those already convicted".

The judgments draw on a landmark judgment by the Strasbourg court on 7 July 2011 that the rights of fellow Armenian Jehovah's Witness conscientious objector Vahan Bayatyan had been violated by his imprisonment. The judgment concluded, for the first time in the history of the ECtHR, that the right to conscientious objection to military service is fully protected under ECHR Article 9, which guarantees the right to freedom of conscience, thought and religion (see F18News 7 July 2011 http://www.forum18.org/Archive.php?article_id=1591).

Compensation, but no action to remove violations' cause

In the 10 January rulings, Bukharatyan and Tsaturyan were each awarded a total of 10,000 Euros from the Armenian government (5,108,390 Armenian Drams, 76,486 Norwegian Kroner or 13,205 US Dollars), 6,000 Euros in compensation and 4,000 Euros in costs. Only one of the seven judges – Alvina Gyulumyan from Armenia – dissented from the decisions. She had also been the sole dissenter from the judgment in Bayatyan's case.

Unless either side challenges the January rulings, they will become final three months later. The Armenian government would then have a further three months to pay the compensation and costs of the two men.

Deputy Justice Minister Melikyan said his Ministry is still studying the two January rulings and has not yet decided whether to challenge them.

In its July 2011 ruling, the ECtHR awarded Bayatyan compensation of 10,000 Euros and a further 10,000 Euros in costs from the Armenian government (see F18News 7 July 2011 http://www.forum18.org/Archive.php?article_id=1591).

Jehovah's Witnesses told Forum 18 that the Armenian government paid Bayatyan these sums in August 2011, and also published the ECtHR ruling in Armenian (on the Justice Ministry website) as it was required to do.

So far, however, it has not removed the cause of the original violation to prevent further similar violations of the European Convention as it is required to do. Nor have the current sentenced prisoners been freed or current prosecutions been dropped.

No releases and cases continue

Jehovah's Witnesses told Forum 18 that one court appeal to have a current prosecution halted was rejected, though other courts have deferred or are still considering such appeals. They note that many of the trials are being repeatedly adjourned for a variety of reasons.

Jehovah's Witness lawyers say they will lodge appeals in court to have all the 57 current prisoners freed in the light of the ECtHR rulings. "We hope that they will be freed without them having to lodge their own cases to Strasbourg," they told Forum 18.

Armenia's Council of Europe commitment

On its accession to the Council of Europe in January 2001, Armenia formally pledged to: "adopt, within three years of accession [i.e. by 25 January 2004], a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service".

The current Alternative Service Law was adopted in 2003 (coming into force on 1 July 2004), but despite amendments in 2004 and 2006, it still fails to meet Armenia's Council of Europe commitment to allow a choice of "alternative civilian service" to be possible. Jehovah's Witnesses and a Molokan who initially accepted the Law's "alternative service" quickly abandoned it when it became clear that the "alternative" was controlled and overseen by the military. They were soon imprisoned, and Armenia has failed follow its Council of Europe commitment to pardon – and therefore release – its prisoners of conscience who object to compulsory military service.

In recent years as many as 76 conscientious objectors have been imprisoned at any one time. Almost all have been sentenced under Criminal Code Article 327, Part 1, 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 (see F18News 7 July 2011 http://www.forum18.org/Archive.php?article_id=1591).

Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, met three of the imprisoned Jehovah's Witnesses in Artik prison in the north-western region of Shirak during his January 2011 visit to Armenia. In his May 2011 report he called for the conscientious objectors to be freed from prison, and for a genuine civilian alternative service to be introduced ().

Government's 2011 proposed amendments

The government's 2011 proposed amendments to the 2003 Alternative Service Law were prepared by the Defence Ministry's Legal Directorate and subsequently approved also by the Justice Ministry. They were approved by the government in April 2011 and sent to Parliament. The National Assembly assigned the draft to the Defence, National Security and Internal Affairs Committee (see F18News 7 July 2011 http://www.forum18.org/Archive.php?article_id=1591).

The 2011 draft Law is very short and makes no change to the current Law on the length of alternative military service (36 months) and alternative labour service (42 months). The main new provision is for a Republican Commission to oversee whether applications for alternative service will be accepted or not. The draft Law would also allow those performing alternative service to change their mind and transfer to military service, but not the other way round.

It would also ensure that those who complete alternative service are issued with the military booklet, without which it can be difficult to obtain work.

OSCE review

On 11 July 2011, the Committee wrote to ask for a legal Opinion on the draft from the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw. The OSCE's opinion, dated 8 September 2011, was submitted to the Committee and also published (http://www.legislationline.org/download/action/download/id/3525/file/ODIHR%20Opinion%20on%20draft%20amendments%20to%20Law%20on%20Alternative%20Service_8%20Sept%202011_en.pdf).

The OSCE's key recommendations were: "to ensure that the alternative labour service is not under military control"; "to allow conscripted servicemen to seek a replacement of their military service with alternative service on grounds of conscientious objection"; and "to consider reducing the duration of alternative service".

The Opinion described the proposal to keep alternative service at 42 months (compared to 24 months' military service) as "unnecessarily protracted and could even be perceived as punitive in duration".

On the question of whether those already conscripted can change their mind and opt for alternative service, the OSCE Opinion "strongly recommended" that "conscripted servicemen who, while undergoing military service, realize that such service insurmountably conflicts with their deeply-held religious or other conscientious beliefs" be allowed to transfer to alternative service. "The law currently in force prohibits the replacement of the military service with alternative service after conscription," it noted.

Venice Commission review

However, just three weeks after the completion of the OSCE Opinion, Hrair Karapetyan, chair of the parliamentary Committee, wrote to the Council of Europe's Venice Commission seeking another legal Opinion. He insisted this was motivated by the willingness of the Armenian authorities to ensure "the maximum compliance with international standards of the legislation of Armenia". As they prepared their opinion, Venice Commission representatives held a series of meetings in Yerevan in mid-November 2011 to discuss the draft Law.

The Venice Commission's Opinion was discussed at its Plenary Session in Venice on 16 and 17 December, where it was approved. Participating in the discussion from Armenia was Military Prosecutor Kostanyan. The Opinion was published on 20 December 2011 (<http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282011%29051-e>). It was handed to the Armenian representation to the Council of Europe the following day, the Venice Commission confirmed to Forum 18.

The Opinion noted, citing information it had received in Yerevan in November 2011, that no-one had applied for the military-controlled alternative service since 2005, which "indicates that the present system does not work effectively".

The Venice Commission also noted from its meetings in Yerevan that the draft Law had been prepared "long before" the July 2011 Bayatyan ECtHR ruling, and "further amendments must be made to address specifically the implications of the judgment".

Alternative service "too long"

Like the OSCE, the Venice Commission criticised the proposal to retain alternative service at 42 months. "The term for alternative service appears to be too long," the Opinion declared and called on the Armenian authorities to "reconsider the duration of alternative service".

Like the OSCE, the Venice Commission also expressed concern about the role and composition of the Republican Commission overseeing who would or would not be allowed to perform alternative service. It criticised the failure to define the Republican Commission's role and responsibilities. "As concerns the composition of the Republican Commission," it added, "the Venice Commission is of the view that the assessment of applications for alternative service based on conscientious objection should be under the control of civilian authorities, not under the control of the military."

As for the conditions of those conducting alternative service – which the Venice Commission insisted must be fully civilian – the Opinion expresses concern at the proposed requirement that individuals must be at their assigned place of work 24 hours a day, as well as the ban on alternative service individuals undertaking management jobs.

The Venice Commission lamented the lack of clarity over who would have operational supervision over those performing alternative service. "It has to be recalled that any form of control over alternative service should be of civilian nature," it declared, "and in order to alleviate any ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service."

Like the OSCE, the Venice Commission criticised the absence of the possibility for those already conscripted into military service who "realise that such service insurmountably conflicts with their religious or other conscientious beliefs" to transfer to alternative service. "This prohibition conflicts with relevant international standards," it notes.

However, the Venice Commission welcomed the fact that the draft Law would ensure that those who complete alternative service would be issued with a military booklet, a "crucial document for civil life". "It is recommended that the military booklet state that its holder had been exempted from performing military service, but that no explicit mention be made of the reason for which this exemption had been granted."

New proposals?

Deputy Justice Minister Melikyan declined to tell Forum 18 what would happen to the 2011 draft Law now in Parliament. He stressed that the executive cannot tell the legislature what it should do.

But he said the Working Group – one of whose members is from the Justice Ministry – is currently preparing a new version of the amendments to the Alternative Service Law. He declined to discuss the specific content of the amendments but insisted that "Armenia is going to comply with all the relevant European Court of Human Rights rulings and amend the Law to take account of them." He said he was unable to put a timescale on the work, but said it would be "systematic" and quick. (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.

A printer-friendly map of Armenia is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Armenia>.

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