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ARMENIA: Conscientious objector's two-year jail term

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

On 25 October, a Yerevan court handed Baptist conscientious objector Davit Nazaretyan a two-year jail sentence for "Avoidance of mandatory military or alternative service or conscription", despite his repeated requests for alternative civilian service. "Of course it's bad, but the law demands it," said religious affairs official Vardan Astsatryan. Nazaretyan plans to appeal, and is at home until it is heard. Multiple officials have not explained to Forum 18 why international human rights obligations to respect the rights of conscientious objectors to military service should not apply in Nazaretyan's case.

Despite his repeated requests for alternative civilian service, officials of the Conscription Service and of the Alternative Service Commission refused Baptist conscientious objector Davit 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". He is planning to appeal, and is at home in Yerevan until any appeal is heard.

Armenia's legally-binding international human rights obligations require states to respect the right to conscientiously object to military service as part of the freedom of religion and belief. For example, the United Nations (UN) Working Group on Arbitrary Detention stated in 2022: "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, as part of the right to freedom of religion or belief (see below).

"Davit asked for alternative civilian service," Baptist Pastor Mikhail Shubin – who attended the trial with other Baptists - told Forum 18. "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?" (see below).

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. The assistant pointed out that Nazaretyan has the right to appeal and noted that the verdict has not yet come into legal force (see below).

"I am a Christian and I read the Bible," Nazaretyan told Forum 18. "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).

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 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 (see below).

In early 2023, while the criminal investigation was already underway, officials summoned Nazaretyan to the Alternative Service Commission. This is a state body made up of deputy ministers from a range of ministries, as well as Vardan Astsatryan of the government's 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 (see below).

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 (see below).

Asked why the Commission rejected Nazaretyan's application, Astsatryan of the government's 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 (see below).

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. The Theology Faculty is led by Bishop Anushavan Jamkochyan of the Armenian Apostolic Church.

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" (see below).

The Theology Faculty also claimed: "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).

However, Nazaretyan's Baptist Pastor, Mikhail 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 from Yerevan. "We support Davit in his decision" (see below).

Bishop Anushavan and a lecturer at the Theology Faculty did not respond to Forum 18's requests 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).

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 from a group which does not understand Armenia's obligations (see below).

As Investigator Topchyan refused to discuss the case, 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 (see below).

Anna Barsegyan of Yerevan Garrison Military Prosecutor's Office, who led the case, including in court, did not answer Forum 18's questions as to why she brought the criminal case against Nazaretyan when he cannot serve in the armed forces because of his conscientious beliefs, when alternative civilian service exists in Armenia, and when he repeatedly asked to be allowed to perform alternative civilian service (see below).

Human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation in Yerevan has reviewed documents in Nazaretyan's case. "We haven't heard of such cases for a long while, and it is disappointing to see the position of the Alternative Service Commission and the court on this matter," she told Forum 18 from Yerevan on 8 November.

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. Armenia jailed more than 450 Jehovah's Witnesses and one Molokan Christian. All had refused a military-controlled alternative service that did not meet Armenia's legally-binding international human rights obligations (https://www.forum18.org/archive.php?article_id=1774).

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. Since 2013 hundreds of young men have undertaken alternative civilian service, without any reported problems.

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.

"My religion does not allow me to carry weapons"

Davit Tigrani Nazaretyan (born 23 July 2003) 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.

"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."

During the winter 2021 call-up Nazaretyan was still in education and call-up was deferred until 2022, according to the subsequent court decision. When called up in summer 2022, he went on 24 June 2022 to Yerevan's No. 2 Regional Division of the Conscription Service and stated that because of his religious principles, he wanted to opt for alternative civilian service. In his written application, he declared: "I, Davit Nazaretyan, inform you that my religion does not allow me to carry weapons, so I ask you to send me to alternative service."

But in his response of 27 June, Serop Armenakyan, the head of Yerevan's No. 2 Regional Division, said that Nazaretyan's application for alternative civilian service would not be considered as it should have been lodged before the call-up period, by 1 June 2022.

Forum 18 was unable to ask Armenakyan why he had refused to accept Nazaretyan's application for alternative civilian service. The duty officer at Yerevan's No. 2 Regional Division told Forum 18 that Armenakyan was out of the office on 9 November 2023. 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.

On 27 June 2022, Nazaretyan submitted a further statement to the No. 2 Regional Division: "I am informing you that I, Davit Nazaretyan, want to switch to alternative service, but I was informed that the deadline for submitting applications has already passed. I refuse to receive the Armed Forces conscription notice, at the same time I am informed that after the end of the conscription period, the materials regarding me will be sent to investigative bodies."

Nzaretyan applied for alternative civilian service several more times in 2022, but each time military officials rejected the application, claiming it was not well-founded.

Criminal case launched

Individuals who refuse or avoid military service or alternative service in peacetime can be prosecuted under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription"). Part 1 carries a prison term of two to five years.

On 12 August 2022, Arsen Topchyan, Acting Investigator of the Fourth Garrison Investigation Department of the Main Military Investigation Department of the Investigative Committee, initiated criminal proceedings against Nazaretyan under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription").

On 4 October 2022, Anna Barsegyan of Yerevan Garrison Military Prosecutor's Office formally charged Nazaretyan. Three days later, Investigator Topchyan banned Nazaretyan from leaving the country as a "preventative measure".

Through colleagues at Yerevan Garrison Military Prosecutor's Office, Prosecutor Barsegyan told Forum 18 that she would not answer questions on Nazaretyan's case by phone and that questions should be sent in writing.

Forum 18 asked Prosecutor Barsegyan in writing in the middle of the working day in Yerevan of 9 November: Why she brought the criminal case against Nazaretyan when he cannot serve in the armed forces because of his conscientious beliefs, when alternative civilian service exists in Armenia, and when he repeatedly asked to be allowed to perform alternative civilian service. Forum 18 received no response by the end of the working day in Yerevan of 9 November.

Alternative Service Commission rejects alternative service application

In early 2023, while the criminal investigation was already underway, officials summoned Davit Nazaretyan to the Alternative Service Commission. This is a state body made up of deputy ministers from a range of ministries, as well as Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs.

On 23 January, the Commission interviewed more than ten applicants for alternative civilian service, including Nazaretyan.

However, in its 23 January decision, it rejected Nazaretyan's appeal for alternative civilian service as "the applicant failed to prove that his duty to perform mandatory military service is in serious conflict with his conscience or deep and real religious belief or other beliefs," according to the subsequent court verdict.

"I was summoned to the Committee with about 10 other young men, all of them Jehovah's Witnesses," Nazaretyan told Forum 18. "The Jehovah's Witnesses were taken for questioning in groups of three or four and were in there for about two minutes. I went in on my own and was questioned for 10 or 15 minutes about my family background, when I started attending church, and my reasons for rejecting military service. All the Jehovah's Witnesses were given alternative service, but not me."

Following the 23 January meeting, the 30 January written rejection of Nazaretyan's application (seen by Forum 18) came from Grigor Minasyan of the Justice Ministry.

The Deputy Minister of Territorial Management and Infrastructure, Vache Terteryan, chairs the Alternative Service Commission. He wrote to Nazaretyan on 2 February (in a letter seen by Forum 18) rejecting his application for alternative civilian service.

Officials at the Territorial Management and Infrastructure Ministry said Deputy Minister Terteryan was unavailable on 8 November. They referred Forum 18 to Arkady Cherchinyan, head of the Ministry's Administrative Control Department, who they said was in charge of alternative service issues at the Ministry. He told Forum 18 the same day that he had not participated in the 23 January meetings with applicants for alternative civilian service and refused to discuss anything.

Asked on 8 November why the Commission rejected Nazaretyan's application, Astsatryan of the government's 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. "There's nothing strange about him not being given alternative service. But he had the right to challenge the refusal in court. He should have gone to court to defend his right."

Human rights defender Isabella Sargsyan questions whether the 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.

Sargsyan of the Eurasia Partnership Foundation noted that Vardan Astsatryan of the government's 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 maintained.

"Review" of Nazaretyan's beliefs

Investigator Arsen Topchyan handed documents on Nazaretyan's case to the Theology Faculty of Yerevan State University and asked it to review the case and Nazaretyan's religious views. The Theology Faculty is led by Bishop Anushavan Jamkochyan of the

Armenian Apostolic Church, according to its page on the University website.

"The dogmatic theology they teach at the Theology Faculty is mostly of the Armenian Apostolic Church," human rights defender Sargsyan told Forum 18. "Obviously it can't be impartial."

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. "I won't say anything by phone," he told Forum 18 from Yerevan on 8 November. "I don't have the right."

Forum 18 was also not able to ask Investigator Topchyan 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.

On 17 April, the Theology Faculty issued its conclusion, claiming 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 conclusion added: "If we take into account the fact that he presents himself as a follower of the Evangelical Baptist Church and considers himself a 'Christian', then we can state that hatred of weapons is not characteristic of Christianity, otherwise the Christian world system as a religio-political entity cannot be established." It concluded: "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, Baptist Pastor Mikhail 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 from Yerevan on 9 November. "We support Davit in his decision."

Bishop Anushavan and a lecturer at the Theology Faculty did not respond to Forum 18's requests 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.

As Investigator Topchyan would not discuss the case with Forum 18, it remains unclear why he sought views on the implementation of Armenia's legally binding human rights obligations from a group which does not understand Armenia's obligations.

The criminal case against Nazaretyan was halted in early 2023 but soon resumed. On 12 June 2023, the case was sent to Yerevan's Kentron District Court, where it was assigned to Judge Gagik Pogosyan.

Trial, 2-year jail term

Davit Nazaretyan's trial began under Judge Gagik Pogosyan at Yerevan's Kentron District Court with a preliminary hearing on 4 July. Anna Barsegyan led the prosecution case in court. Nazaretyan did not have a lawyer. "I didn't think the case would be too difficult," he told Forum 18. The trial lasted for three hearings, though for one of them the hearing was cancelled as the Prosecutor did not turn up.

Nzaretyan's parents and the Church's Pastor Mikhail Shubin attended each of the hearings to support Nazaretyan. Also attending the final hearing was fellow Baptist conscientious objector Gagik Mirzoyan.

(Mirzoyan, who is from what was the Armenian-controlled Nagorno-Karabakh Region, was forcibly taken to a military unit there in December 2004 and beaten after refusing to swear the oath and bear arms. In July 2005 he was given a suspended sentence. But he was then jailed from September 2005 to September 2006. After being freed, he was transferred to a military unit, where he was - eventually - able to serve without swearing the oath and without bearing arms. He was released from service in January 2008 (https://www.forum18.org/archive.php?article_id=1656). He fled Nagorno-Karabakh with almost all the Armenian population in September 2023.)

At the final hearing in Nazaretyan's trial on 25 October, Judge Pogosyan found him guilty under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription"). He sentenced him to two years' imprisonment, the minimum under Part 1 of the Article. The decision would come into force only after any appeal to the Criminal Court of Appeal is heard, for which Nazaretyan has one month from receiving the written verdict.

In the meantime, the Judge kept in place the ban on Nazaretyan leaving the country. The two-year jail term would run from the time Nazaretyan is taken into custody.

Judge Pogosyan's assistant refused to put Forum 18 through to the Judge. "Everything is written in the verdict," the assistant – who did not give his name - told Forum 18 from the court on 8 November. The assistant pointed out that Nazaretyan has the right to appeal and noted that the verdict has not yet come into legal force.

"Davit asked for alternative civilian service," Pastor Shubin told Forum 18. "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?"

Asked his view of Nazaretyan's two-year jail term given that he had repeatedly applied for alternative service, Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs told Forum 18: "Of course it's bad, but the law demands it."

Nazaretyan told Forum 18 he will appeal against the conviction and jail term and is looking for a lawyer for the appeal. (END)

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