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ARMENIA: Conscientious objector "could be taken to jail at any time"

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

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. His application for alternative service had been rejected. "Davit could be taken to jail at any time," his pastor, Mikhail Shubin, told Forum 18 from Yerevan. "I am very disappointed by this decision," human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation told Forum 18. "It is important to follow this particular case as well as the system more generally."

On 16 July, just a week before his 21st birthday, Baptist conscientious objector Davit Nazaretyan received by post the Cassation Court's rejection of his final appeal against his two-year jail term. The decision is now final, so the authorities can enforce the prison sentence. "Davit could be taken to jail at any time," his pastor, Mikhail Shubin, told Forum 18 from the capital Yerevan.

"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 in January 2023 (see below).

The last known jailed conscientious objector, Maksim Telegin (a Molokan who had been refused alternative civilian service), was freed from a one-year jail term in 2021. In 2013, Armenia introduced a genuinely civilian service for conscientious objectors to military service. Yet conscientious objectors to military service, including Molokan young men, are still in 2024 being denied their right to alternative civilian service (https://www.forum18.org/archive.php?article_id=2921).

As of 18 July 2024, Nazaretyan had 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 (see below).

Human rights defender Tatevik Gharibyan of the Eurasia Partnership Foundation notes that "as soon as the court sends the enforcement act related to the decision, police will attend the convict's place of residence and transport them to the penitentiary institution". She says courts generally issue such enforcement acts soon after issuing their decisions (see below).

Arsen Topchyan, the Investigator who initiated criminal proceedings against Nazaretyan in August 2022, refused to comment to Forum 18 on Nazaretyan's jail sentence becoming final (see below).

"I am very disappointed by this decision on Davit Nazaretyan," human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation told Forum 18. "It is important to follow this particular case as well as the system more generally. We need a holistic advocacy campaign on the issue of alternative civilian service" (see below).

The office of the Human Rights Defender Anahit Manasyan refused to put Forum 18 through to her on 18 July. Other officials in her office insisted that the alternative service system is working well. Forum 18 asked in writing about Nazaretyan's case and what it is doing (if anything) to support him and others who cannot perform military service on grounds of conscience. Officials promised to respond (see below).

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 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. 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.

Yet some conscientious objectors to military service, including Molokan young men, have been jailed since 2013 and are still in 2024 being denied their right to alternative civilian service (https://www.forum18.org/archive.php?article_id=2921).

Conscientious objectors who are refused alternative civilian 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.

Final appeal rejected

Davit Tigrani Nazaretyan (born 23 July 2003) submitted his final appeal against his two-year jail term - imposed in October 2023 (https://www.forum18.org/archive.php?article_id=2873) for refusing military service on grounds of conscience - to the Cassation Court in Yerevan. His Baptist Church also submitted an appeal in his support.

On 10 July 2024, without a hearing, the Cassation Court rejected Nazaretyan's appeal. The five-page decision – seen by Forum 18 – is signed by Hamlet Asatryan, Chair of the Cassation Court's Criminal Division, and three other judges from the same Division.

The Cassation Court used standard wording in refusing to consider Nazaretyan's appeal. It stated that cases the Court takes up cover issues such as inconsistencies in the application of the law or the need for the Court to issue a precedent that would clarify how laws should be implemented.

"This was a standard rejection and was to be expected," human rights defender Tatevik Gharibyan of the Eurasia Partnership Foundation – who has studied the decision - told Forum 18 from Yerevan on 17 July. "The Court accepts cases and takes them up only in very rare and exceptional cases, with 99 per cent of cases rejected. This is one of the systematic problems with the Cassation Court."

On 5 April 2023, the Cassation Court overturned the conviction of Molokan conscientious objector Ivan Mikhailov and sent the case back to the lower court (https://www.forum18.org/archive.php?article_id=2891). Gharibyan described the Court's decision to take up the Mikhailov case as "an exception".

The Cassation Court mailed the written decision to Nazaretyan on 12 July 2024 and he received it on 16 July.

"I am very disappointed by this decision on Davit Nazaretyan," human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation in Yerevan told Forum 18. "It is important to follow this particular case as well as the system more generally. We need a holistic advocacy campaign on the issue of alternative civilian service."

The office of the Human Rights Defender Anahit Manasyan refused to put Forum 18 through to her on 18 July. Other officials in her office insisted that the alternative service system is working well. Forum 18 asked in writing about Nazaretyan's case and what it is doing (if anything) to support him and others who cannot perform military service on grounds of conscience. Officials promised to respond.

The Public Relations Department of the Human Rights Defender told Forum 18 in February (https://www.forum18.org/archive.php?article_id=2891) that the Law On the Human Rights Defender states that "the Defender does not have the right to intervene in judicial proceedings or the exercise of judges' powers in a specific case. Therefore, discussing the legality of the rendered judgment falls outside the scope of the powers assigned to the Human Rights Defender by law."

The Public Relations Department insisted in February (https://www.forum18.org/archive.php?article_id=2891) that "the Defender stresses the importance of exercising the right to freedom of conscience and religion properly", including "issues related to alternative service". Despite talking of "daily activities" to resolve problems, it gave no information about any specific measures to defend the rights of all conscientious objectors to access alternative civilian service.

Article 388 of the Criminal Procedure Code specifies that Cassation Court decisions are final on publication.

"Without a hearing, there was no opportunity to lodge arguments"

Arsen Topchyan, Acting Investigator of the Fourth Garrison Investigation Department of the Main Military Investigation Department of the Investigative Committee, initiated criminal proceedings against Davit Nazaretyan (https://www.forum18.org/archive.php?article_id=2873) in August 2022.

Topchyan refused to comment to Forum 18 on 18 July 2024 on Nazaretyan's jail sentence becoming final.

"Without a hearing [in July 2024 in the Cassation Court], there was no opportunity to lodge arguments," Nazaretyan's pastor Mikhail Shubin told Forum 18 from Yerevan on 17 July.

"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 from Yerevan on 17 July. "But laws must be observed."

Astsatryan is a member of the Alternative Service Commission which rejected conscientious objector Nazaretyan's application for alternative civilian service (https://www.forum18.org/archive.php?article_id=2873) in January 2023. In November 2023 he claimed to Forum 18 (https://www.forum18.org/archive.php?article_id=2873): "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 of the Eurasia Partnership Foundation in November 2023 questioned whether the Commission is competent (https://www.forum18.org/archive.php?article_id=2873) 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 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 (https://www.forum18.org/archive.php?article_id=2873).

Nzaretyan is considering an appeal to the European Court of Human Rights (ECtHR) in Strasbourg. "Given how long decisions from there take, it will not help Davit," Pastor Shubin told Forum 18. "But it could help others in the same situation."

"Davit could be taken to jail at any time"

The Cassation Court decision in Davit Nazaretyan's case was final when it was issued. This means the authorities can now arrest and jail him in accordance with the two-year jail sentence (https://www.forum18.org/archive.php?article_id=2873).

"Davit could be taken to jail at any time," his pastor, Mikhail Shubin, told Forum 18. He said there is no indication so far of when

that might be.

There are no specific terms on when a sentenced individual is transported to prison. "However, as soon as the court sends the enforcement act related to the decision, police will attend the convict's place of residence and transport them to the penitentiary institution," human rights defender Tatevik Gharibyan told Forum 18. She says courts generally issue such enforcement acts soon after issuing their decisions.

Pastor Shubin said Nazaretyan had not yet received the enforcement act as of 18 July.

"My religion does not allow me to carry weapons"

Davit Nazaretyan 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.

Despite his repeated requests for alternative civilian service (https://www.forum18.org/archive.php?article_id=2873), officials of the Conscription Service and of the Alternative Service Commission refused Nazaretyan's application. On 25 October 2023, Judge Gagik Pogosyan of Yerevan's Kentron District Court handed him a two-year jail term for "Avoidance of mandatory military or alternative service or conscription".

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 (https://www.forum18.org/archive.php?article_id=2873) and who is ready to perform alternative civilian service.

"Davit asked for alternative civilian service," Baptist Pastor Shubin – who attended the trial and the appeal hearing with other Baptists - told Forum 18 (https://www.forum18.org/archive.php?article_id=2873). "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?"

"I am a Christian and I read the Bible," Nazaretyan told Forum 18 (https://www.forum18.org/archive.php?article_id=2873). "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."

In early 2023, while the criminal investigation was already underway, officials summoned Nazaretyan to the Alternative Service Commission (https://www.forum18.org/archive.php?article_id=2873). On 23 January, it accepted all the Jehovah's Witnesses' applications for alternative civilian service, but rejected Nazaretyan's.

Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs, who is part of the Alternative Service Commission, claimed to Forum 18 (https://www.forum18.org/archive.php?article_id=2873) that the Commission rejected Nazaretyan's application as it had not been convinced by his case. "Why couldn't he present his views convincingly?"

Forum 18 told Astsatryan that in November 2023, Nazaretyan had clearly and logically explained his conscientious reasons (https://www.forum18.org/archive.php?article_id=2873) why he could not serve in the military and his readiness to perform alternative civilian service. Yet Astsatryan claimed again that Nazaretyan had not been able to explain this to the Commission.

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 (https://www.forum18.org/archive.php?article_id=2873). The Theology Faculty is led by Bishop Anushavan Jamkochyan of the Armenian Apostolic Church.

On 17 April 2023 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."

The Theology Faculty also claimed (https://www.forum18.org/archive.php?article_id=2873): "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, Pastor 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 in November 2023 (https://www.forum18.org/archive.php?article_id=2873). "We support Davit in his decision."

Bishop Anushavan and a lecturer at the Theology Faculty repeatedly 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 (https://www.forum18.org/archive.php?article_id=2873), 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.

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 (https://www.forum18.org/archive.php?article_id=2873) from a group which does not understand Armenia's obligations.

Anna Barsegyan of Yerevan Garrison Military Prosecutor's Office, who led the case, including in court, did not in November 2023 answer Forum 18's questions about why she brought the criminal case against Nazaretyan (https://www.forum18.org/archive.php?article_id=2873) when he cannot serve in the armed forces because of his conscientious beliefs.

On 7 February 2024, a panel of three judges at Yerevan's Criminal Court of Appeal rejected conscientious objector Nazaretyan's appeal (https://www.forum18.org/archive.php?article_id=2891) against his two-year jail term imposed in October 2023 for refusing military service on grounds of conscience.

Human rights defender Sargsyan of the Eurasia Partnership Foundation attended the appeal hearing. "This is very, very sad," she told Forum 18 (https://www.forum18.org/archive.php?article_id=2891) after the decision was announced. She said Nazaretyan was "very sincere" in setting out his position in court. "Davit set out very clearly that he does not consider himself guilty of any crime, that he has been in the church since childhood and that he is ready to perform alternative service."

"The court didn't take into consideration any of Davit's arguments about his right to alternative service, the decisions in similar cases of the European Court of Human Rights (https://www.echr.coe.int/documents/d/echr/FS_Conscientious_objection_ENG) (ECtHR) or anything else."

Sargsyan noted that the prosecution did not attend the 7 February 2024 hearing (https://www.forum18.org/archive.php?article_id=2891). "The Court in its questioning of Davit stressed the expert opinion of the Theology Faculty of Yerevan State University, treating its opinion with some respect."

The Theology Faculty, led by an Armenian Apostolic Church Bishop, claimed that: "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". Nazaretyan's Baptist pastor strongly disputes this claim (https://www.forum18.org/archive.php?article_id=2873) by another religious community about his and his Church's beliefs.

The Theology Faculty has not replied to Forum 18's questions. So Forum 18 was unable to find out why they offer views on beliefs they do not understand (https://www.forum18.org/archive.php?article_id=2873), 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. (END)

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