

20 August 2024

ARMENIA: Conscientious objector begins two-year jail term

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

On 20 August, Yerevan police took 21-year-old Baptist conscientious objector Davit Nazaretyan to the city's Nubarashen Prison to begin his two-year jail term for refusing military service on grounds of conscience. Nina Karapetyants of the Helsinki Association for Human Rights described Nubarashen as "the worst prison" in Armenia. "There are no proper conditions for exercise or for taking a shower." The office of Human Rights Defender Anahit Manasyan did not respond to questions on what it might do to defend Nazaretyan's rights.

Police arrived this morning, 20 August, at the home in Yerevan of 21-year-old Baptist conscientious objector Davit Nazaretyan. They arrested him and took him initially to Nubarashen Prison in southern Yerevan. He has now begun his two-year jail term, a month after the Cassation Court rejected his final appeal. The Alternative Service Commission had rejected his application in January 2023.

"Unfortunately we knew this would happen," Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs told Forum 18. "The law gives two possibilities – go to the army or, unfortunately, jail." The law also gives the possibility of alternative civilian service, which Nazaretyan applied for and which the Alternative Service Commission, on which Astsatryan sits, rejected (see below).

Nina Karapetyants of the Helsinki Association for Human Rights describes Nubarashen as "the worst prison" in Armenia. "There are no proper conditions for exercise or for taking a shower," she told Forum 18. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment describes conditions there as "generally very poor" and in some parts "unacceptable" (see below).

[UPDATE 9 September 2024: Prison authorities in early September transferred Nazaretyan to Sevan open prison, where conditions are better than in Nubarashen prison (see below).]

Maksim Telegin is a Molokan and the last known convicted conscientious objector, jailed in 2021. He said the first seven days – when he was held in quarantine on his own – were "very difficult". He was then taken to a cell with several other prisoners before being transferred to a labour camp near Sevan. It remains unclear whether Nazaretyan will remain in Nubarashen or be transferred to another prison (see below).

Jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service violate Armenia's legally-binding international human rights obligations (see below).

The Eurasia Partnership Foundation is aware that lawyers for another Armenian non-governmental organisation are preparing a case on Nazaretyan's behalf to the European Court of Human Rights (ECtHR) in Strasbourg. "It will not make much change to Davit's case because the Strasbourg court's decisions are released quite late, but it might be a precedent," the Eurasia Partnership Foundation told Forum 18 (see below).

The Court has issued many rulings in favour of individuals – including from Armenia – who were denied the right not to serve in the armed forces on grounds of conscience (see below).

Nzaretyan is the only conscientious objector known to be currently jailed or facing jail under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription"). At least two Molokans have faced criminal prosecution in recent years for refusing to serve in the armed forces on grounds of conscience (see below).

On 20 August, Forum 18 asked the office of Human Rights Defender Anahit Manasyan:

- what she and her office have done to defend Nazaretyan's right not to serve in the armed forces on grounds of conscience in accordance with the law;

- what she and her office have done to protect him from punishment for trying to exercise this right;
- and what she and her office will do or are doing now to protect his human rights.

Forum 18 also asked Manasyan's office what are the "daily activities" to protect the right not to serve in the armed forces on grounds of conscience it wrote to Forum 18 about earlier.

Forum 18 had received no response by the end of the working day in Yerevan of 20 August (see below).

For many years, Armenia jailed everyone 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, and a fully civilian alternative service was created. The overwhelming majority of successful applicants for civilian alternative service are Jehovah's Witnesses (see below).

Yet the Alternative Service Commission still does not allow all applications for alternative civilian service from conscientious objectors to military service, who still – against Armenia's legally-binding international human rights obligations - face the possibility of being jailed for their beliefs. Officials have refused to explain why non-Jehovah's Witness applicants for civilian alternative service are normally refused (see below).

A typical rejection order signed by the Justice Minister (for example in the case of Molokan conscientious objector Ivan Mikhailov in August 2018) claims that "the applicant failed to justify that his duty to perform mandatory military service is in serious and weighty conflict with his conscience or with his deep and genuine religious faith or other beliefs". Molokans are a traditionally pacifist Christian community which emerged in the 18th century. Yet, "the Commission does not give alternative service to Molokans", a member of the Molokan community told Forum 18 (see below).

Human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation, who has been following Nazaretyan's case, noted to Forum 18 in November 2023 (https://www.forum18.org/archive.php?article_id=2873): "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."

Arrested to begin jail term

Police arrived on the morning of 20 August at the home in Yerevan of Baptist conscientious objector Davit Tigrani Nazaretyan (born 23 July 2003). They arrested him and took him initially to Nubarashen prison in southern Yerevan, his Pastor Mikhail Shubin told Forum 18 from Yerevan the same day.

Nazaretyan has now begun his two-year jail term, a month after the Cassation Court rejected his final appeal. He was able to take his Bible with him, Pastor Shubin said. It remains unclear whether Nazaretyan will remain in Nubarashen or be transferred to another prison. "There they will decide where he is sent next."

"Unfortunately we knew this would happen," Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs told Forum 18 on 20 August. "The law gives two possibilities – go to the army or, unfortunately, jail." (The law also gives the possibility of alternative civilian service, which Nazaretyan applied for unsuccessfully.)

Astsatryan is a member of the government's Alternative Service Commission which rejected Nazaretyan's alternative service application (https://www.forum18.org/archive.php?article_id=2873).

"We offered him alternative service within the army without weapons," Astsatryan insisted. "Had I found that his conscience was hurt through this [serving in the military], I would have helped him. But I didn't see it. The six members of the Commission didn't see it. We asked him many questions and gave him the chance to answer."

Nina Karapetyants of the Helsinki Association for Human Rights described Nubarashen as "the worst prison" in Armenia. "There are no proper conditions for exercise or for taking a shower," she told Forum 18 from Yerevan on 20 August. "Conditions are not even close to human rights parameters. It is bad not only for prisoners but for staff also."

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited prisons and other places of detention in Armenia in September 2023. It noted in its preliminary observations on 1 March 2024 (<https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-publishes-its-preliminary-observation-on-the-visit-to-armenia>) that "conditions were generally very poor at Nubarashen Prison (and unacceptable on the first floor of the main detention building and in Block 6)".

Maksim Telegin is a Molokan and the last known convicted conscientious objector, jailed in 2021 (see below). He says other prisoners and even staff treated him well in prison. "All of them asked me why I had been jailed and they supported me," he told Forum 18 on 20 August 2024. "Even the staff were surprised that I had been jailed."

Telegin said the first seven days – when he was held in quarantine on his own – were "very difficult". He was then taken to a cell with several other prisoners before being transferred to a labour camp near Sevan.

Conscientious objector Nazaretyan's initial address in prison:

Armenia

0094, Yerevan

Erebuni District

2 Nubarashen Road

Nubarashen Prison

[UPDATE 9 September 2024: Prison authorities in early September transferred Nazaretyan to Sevan open prison, where conditions are better than in Nubarashen prison. On arrival at Sevan prison he was placed in quarantine for two weeks.

Nazaretyan's new prison address:

Armenia

Kotayk marz

Hrazdan

Sevan Prison]

Appeal to the European Court of Human Rights

The Eurasia Partnership Foundation in Yerevan is aware that lawyers for another Armenian non-governmental organisation are preparing a case on Davit Nazaretyan's behalf to the European Court of Human Rights (ECtHR) in Strasbourg.

"It will not make much change to Davit's case because the Strasbourg court's decisions are released quite late, but it might be a precedent," the Eurasia Partnership Foundation told Forum 18 on 20 August.

The Court has issued many rulings in favour of individuals – including from Armenia – who were denied the right not to serve in the armed forces on grounds of conscience (see below).

"Jesus Christ teaches us not to kill"

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.

"I am a Christian and I read the Bible," Nazaretyan told Forum 18 from Yerevan in November 2023 (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."

The Alternative Service Commission rejected Nazaretyan's application in January 2023. Vardan Asatsryan 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 Asatsryan 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 Asatsryan claimed again that Nazaretyan had not been able to explain this to the Commission.

On 25 October 2023, Yerevan's Kentron District Court handed the then 20-year-old a two-year jail term

(https://www.forum18.org/archive.php?article_id=2873) under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription").

On 7 February 2024, a panel of three judges at Yerevan's Criminal Court of Appeal rejected Nazaretyan's first appeal (https://www.forum18.org/archive.php?article_id=2891).

On 10 July 2024, without a hearing, the Cassation Court rejected Nazaretyan's final appeal (https://www.forum18.org/archive.php?article_id=2920) against his two-year jail term. He received the Cassation Court's rejection of his appeal on 16 July 2024, one week before his 21st birthday. "I am very disappointed by this decision," human rights defender Isabella Sargsyan of the Eurasia Partnership Foundation told Forum 18 after his final appeal was rejected.

Jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service violates Armenia's legally-binding international human rights obligations (see below).

Other conscientious objectors

Davit Nazaretyan is the only conscientious objector known to be currently jailed or facing jail under Criminal Code Article 461, Part 1 ("Avoidance of mandatory military or alternative service or conscription").

At least two Molokans have faced criminal prosecution in recent years for refusing to serve in the armed forces on grounds of conscience.

Conscientious objector Ivan Nikolai Mikhailov (https://www.forum18.org/archive.php?article_id=2891) (born 28 July 1998), a Molokan from Dilijan who had been refused alternative civilian service in 2018, was handed a two-year jail term by Tavush Regional Court on 11 November 2019. On 11 February 2021, the Criminal Court of Appeal rejected his first appeal. However, on 5 April 2023, the Cassation Court overturned the conviction (meaning that he was never sent to prison as the sentence never came into force) and sent Mikhailov's case back to Tavush Regional Court for a new trial. On 6 October 2023, a Judge closed the criminal case because of the statute of limitations. The Judge finally removed the restrictions on Mikhailov's movements.

The last known convicted conscientious objector, Maksim Mikhaili Telegin (https://www.forum18.org/archive.php?article_id=2891) (born 15 November 1998), a Molokan from Yerevan who had been refused alternative civilian service in 2016, was jailed for one year at Yerevan City Court on 23 March 2021. He was taken into custody to begin his prison term on 10 May 2021, but was freed early from his jail term in August 2021 after an amnesty reduced his prison term by nine months.

Does Human Rights Defender defend human rights?

Officials at the office of the Human Rights Defender Anahit Manasyan earlier told Forum 18 that it could not speak to her directly, citing "procedural rules".

On 20 August, Forum 18 asked the office of Human Rights Defender Manasyan:

- what she and her office have done to defend Nazaretyan's right not to serve in the armed forces on grounds of conscience in accordance with the law;
- what she and her office have done to protect him from punishment for trying to exercise this right;
- and what she and her office will do or are doing now to protect his human rights.

Forum 18 also asked Manasyan's office what are the "daily activities" to protect the right not to serve in the armed forces on grounds of conscience it wrote to Forum 18 about earlier.

Forum 18 had received no response from the Human Rights Defender's office by the end of the working day in Yerevan of 20 August.

The Human Rights Defender's office had claimed to Forum 18 in February (https://www.forum18.org/archive.php?article_id=2891) that it conducts "daily activities" to find solutions to "issues related to alternative service".

In its reply, the Human Rights Defender's office did not specify what the claimed "daily activities" were. "The Human Rights Defender conducts discussions and cooperates with the competent state authorities related to the issues of alternative military service," her office told Forum 18. "Regarding written or oral applications addressed to the Defender, appropriate actions are carried out within the scope of the Defender's powers, which are summarised in the Annual Report or other reports of the Human Rights Defender."

Asked what action (if any) Human Rights Defender Manasyan would take to defend the rights of conscientious objector Davit Nazaretyan after the Cassation Court rejected his final appeal against his two-year jail term, her office noted that no one had appealed to her over his case. Her office claimed (https://www.forum18.org/archive.php?article_id=2891) it had conducted research into his case, and found that he had been sentenced to a jail term and banned from leaving the country while appeals were pending. Her office did not appear to know that the Cassation Court had already rejected his final appeal.

The Human Rights Defender's office also did not explain what, if any, action it is taking to end Armenia's repeated violations of its legally-binding international human rights obligations by jailing conscientious objectors to military service and not respecting their right to a genuinely civilian alternative service.

The Human Rights Defender's office also insisted that Manasyan "refers to the above-mentioned issues from systemic perspective, outlines the importance of the proper realisation of the right to freedom of thought, conscience, and religion". It claimed (https://www.forum18.org/archive.php?article_id=2891) that she is "also conducting analysis of the mentioned issues".

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 Armenian men between the ages of 18 and 27 are subject to military conscription. Call-ups take place twice a year, and deferments of service are available in strictly limited circumstances. Military service lasts for 24 months.

Those subject to conscription who object to military service with weapons can legally apply for either:

- alternative military service in the armed forces without weapons, having sworn the military oath. This lasts for 30 months;
- or for alternative civilian service, which is not within or controlled by the armed forces and does not involve swearing the military oath. This lasts for 36 months.

Conscientious objectors who are refused alternative civilian service and who refuse to do alternative military 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.

For many years, Armenia jailed everyone 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.

Alternative Service Commission

Young men's applications to be allowed to do alternative civilian service are considered by the Alternative Service Commission (https://www.forum18.org/archive.php?article_id=1844). This is a state body chaired by a Deputy Minister of Territorial Management and Infrastructure, Vache Terteryan, and made up of deputy ministers from five other ministries, as well as Vardan Astsatryan of the government's Department for Ethnic Minorities and Religious Affairs.

The Alternative Service Commission meets twice a year, typically considering the cases of about 20 applicants at each six-monthly session. Applicants can be accompanied by a lawyer. The Commission appears to seek information on applicants before the sessions, including by looking at their social media accounts.

After each session, the Commission issues decisions, listing which applicants have been accepted and which rejected. The Justice Ministry published such decisions on its website in 2018 and 2019. Later decisions do not appear to be public.

Jehovah's Witnesses told Forum 18 in February 2024 (https://www.forum18.org/archive.php?article_id=2891) that their young men do not have problems opting for alternative civilian service. Since 2013, hundreds of their young men have undertaken alternative civilian service.

However, applications for alternative civilian service from conscientious objectors who are followers of other beliefs are only rarely accepted. Molokans, for example, are a traditionally pacifist Christian religious community which emerged in the 18th century. Like Jehovah's Witness young men before 2013, Molokan young men were also jailed (https://www.forum18.org/archive.php?article_id=949) before Alternative Civilian Service was introduced.

As noted above, Molokan conscientious objectors to military service still – against Armenia's legally-binding international human rights obligations - risk being jailed for their beliefs.

A typical rejection order signed by the Justice Minister (for example in the case of Molokan conscientious objector Ivan Mikhailov (https://www.forum18.org/archive.php?article_id=2891) in August 2018) notes that "the applicant failed to justify that his duty to perform mandatory military service is in serious and weighty conflict with his conscience or with his deep and genuine religious faith or other beliefs".

"The Commission does not give alternative service to Molokans," a member of the Molokan community told Forum 18 from Yerevan in July (https://www.forum18.org/archive.php?article_id=2921). "The last Molokan to be granted alternative service was in about 2015."

"A compromise not in accordance with the law"

Molokans whose alternative civilian service application is rejected by the Alternative Service Commission are forced to choose between either being prosecuted and possibly jailed, or doing a form of military service. Such young men are normally forced to serve in the military for 24 months.

"Most of our young men therefore have to serve in the military, though without weapons and without swearing the oath," the Molokan added (https://www.forum18.org/archive.php?article_id=2921). "They don't complain, but many would undertake alternative civilian service if they could." The Molokan noted that allowing those who object to serving with weapons and swearing the oath to serve without either is "a compromise not in accordance with the [Armenian] law".

Such service within the military is also not, under Armenia's legally-binding international human rights obligations, an adequate way of allowing conscientious objectors to military service (https://www.forum18.org/archive.php?article_id=1844) to exercise their right to a genuinely civilian alternative service.

The Molokan added that on some occasions, those who had applied for alternative civilian service would be found not to be medically fit for military service. "In those cases they would be given a deferment for five years. We had once such case a month ago." Human rights defender Isabella Sargsyan describes such instances as "a quick fix".

Some applicants given second chance, others not

The Alternative Service Commission approves applications from Jehovah's Witness young men who can explain clearly their objection to serving in the military. Some Jehovah's Witness young men, however, are not able to make their case clearly, an individual close to the process told Forum 18 (https://www.forum18.org/archive.php?article_id=2921).

These Jehovah's Witness young men then come back to the Alternative Service Commission six months later. Almost all are then able to present their case to be exempted from military service on conscientious grounds clearly and the Commission grants them alternative service.

Molokans whose applications are rejected are not allowed to present their case to the Alternative Service Commission a second time. "The Commission issues the decision once and for all," a Molokan told Forum 18. "Further applications are rejected without being considered." (END)

More reports on freedom of thought, conscience and belief in Armenia (<https://www.forum18.org/archive.php?country=21>)

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