



Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

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UPR SUBMISSION

ARMENIA

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1. This submission was prepared in October 2009 on the basis of the latest information available to CPTI:

Executive summary:

2. **This submission focusses on the situation regarding military service and conscientious objection to military service in Armenia. Among the human rights concerns it identifies are:**

3. **The arrangements made for conscientious objectors under the 2003 Law on Alternative Service are entirely under the control of the military, and the alternative service made available is not truly civilian in nature.**

4. **The conditions faced by conscientious objectors in performing alternative service are discriminatory and punitive.**

5. **Conscientious objectors are imprisoned in large numbers and on long sentences.**

6. **Following punishment, conscientious objectors may face continuing restrictions of their civil rights.**

7. **Despite Armenia's ratification of the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict, compulsory military training is included in the school curriculum.**

Background

8. Armenia operates a system of obligatory military service. Male citizens between the ages of 18 and 27 are liable to 24 months military service..

9. On accession to the Council of Europe on 1st January 2001, the Armenian Government undertook within three years to bring in legislation recognising the right

of conscientious objection to military service, and meanwhile to release and pardon all conscientious objectors sentenced to prison terms. The first part of this undertaking resulted in the 2003 Alternative Service Act, which came into effect on 1st July 2004; the second part has never been implemented.

10. The first 22 persons to enrol for alternative service in Armenia, all Jehovah's Witnesses, started their placements early in 2005. By the end of the year, however, all 22 had withdrawn, complaining that the placements were not truly civilian in nature and that they were to all intents and purposes treated as unarmed members of the military. It is not known how many persons have completed alternative service; a very large number of conscientious objectors have however refused to accept the service as laid out in the current legislation.

Shortcomings of the 2003 Alternative Service Act

11. The provisions of the 2003 Alternative Service Act fall short of the international standards for the recognition of the right of conscientious objection to military service. They have been repeatedly criticised in resolutions of the Parliamentary Assembly of the Council of Europe, and were singled out for critical comment in a speech by the Secretary General of the Council of Europe at Yerevan State University on 5th November 2007, in which he observed "The last amendments to the law do not seem to solve the problems raised in respect of the length of alternative service and the arrangements for performing it. As amended, the law still fails to offer conscientious objectors any "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character", as provided by the Council of Europe's guidelines on this subject. For Armenia to comply with the undertaking made on accession, the law needs to be "in compliance with European standards", and this is not yet the case."

12. Under Article 14 of the Act, all aspects of the arrangements are under the control of the Ministry of Defence. Applications from conscientious objectors to perform Alternative Service are assessed by the local draft commission.

13. The Act distinguishes "Alternative Military Service" and "Alternative Civilian Service". Those accepted for "Alternative Civilian Service" are referred by the Military Commissariat to the Health and Social Security ministries for placement. The supposedly "civilian" service is however under close military supervision. Order No. 142, issued by the Deputy Defence Minister on 20th December 2004, ordered the Military Commissariat and the Military Police to ensure weekly military supervision of everyone performing "civilian" alternative service, and submit monthly written reports were ordered to be submitted to the Chief of the General Staff. All disciplinary breaches within alternative service are dealt with by the Military Prosecutor's Office. Those performing "civilian" service are even fed military rations. Article 16 of the Act states in Paragraph 2 "Citizens performing alternative service must swear an oath of allegiance before the State symbol of the Republic of Armenia in acceptance of the appropriate responsibilities." and in Paragraph 3) "Those in alternative service must wear a uniform, the appearance and instructions for wearing of which shall be stipulated by the Government of the Republic of Armenia." Apart

from duties of a direct military nature, these are the two aspects of any alternative service arrangements which are most likely to offend the consciences of objectors

14. Had there been a deliberate intention to make the provisions unacceptable to Jehovah's Witnesses, the requirement to swear an oath would have been chosen, as, along with other denominations who adhere to a strict reading of the New Testament, Jehovah's Witnesses are forbidden to do this.

15. It should also be noted that the requirement to wear a uniform specified for those performing alternative service is stipulated in the Act, and is completely separate from the question of the clothing necessary to perform or (eg. in a hospital situation) identify the specific assignment.

Punitive conditions for conscientious objectors

16. The duration of "Military Alternative Service" is set at 36 months; that of "Civilian Alternative Service" at 42 months. These are, respectively, 1.5 and 1.75 times the length of the military service to which the objector would otherwise be liable. Such a discrepancy is discriminatory and punitive. Both the total duration of "Civilian Alternative Service", and the extent (18 months) by which it exceeds that of military service are the longest which currently apply anywhere in the world.

17. During alternative service, conscientious objectors have no freedom of movement; even outside work hours they come under the authority of the director of the establishment to which they have been assigned. There have been reports that this has been used as a further means of imposing arbitrary restrictions, in particular that some Jehovah's Witnesses have not been permitted to leave the establishment to attend religious services, in direct breach of their freedom of religion.

Imprisonment of conscientious objectors

18. All cases of imprisonment of conscientious objectors of which details are known by CPTI have occurred under Article 327.1 of the Criminal Code, which reads "Evading a recurring call to emergency military service, or educational or military training, without a legal basis for being relieved of this service, shall incur a fine in the amount of 300 to 500 minimum wages or arrest for up to two months or imprisonment for up to two years."

19. Two distinct categories can be identified. The first, before the Alternative Service Act came into force, were conscientious objectors who were imprisoned for refusing military service because there was no alternative. The second category are objectors who were sentenced after the Act came into force having refused both military service and alternative service under the Act, which they did not consider to address the grounds of their objection. In both categories, all the cases which have so far come to CPTI's attention have concerned Jehovah's Witnesses.

20. Resolution 1361 (2004), passed in January 2004 by the Council of Europe Parliamentary Assembly states: "Armenia undertook on joining the Council of Europe to pardon conscientious objectors serving prison terms. [The Parliamentary

Assembly] expresses its indignation at the fact that 20 or so young people who refuse to perform military service are still in prison. It therefore demands that they be released immediately by presidential pardon pending the entry into force on July 1, 2004, of the law on alternative civilian service.” Armenia is not known to have taken any action to conform with this resolution.

21. A case filed in 2003 by Vahan Bayatyan who in April 2001 refused on grounds of conscience to perform military service while stating his willingness to perform alternative civilian service, and who was in November 2002 sentenced to 30 months imprisonment, came in October 2009 before a chamber of the European Court of Human Rights. Two similar applications filed early in 2004 (*Tsaturyan v. Armenia* and *Bukharatyan v. Armenia*) are currently pending. Some aspects of the *Bayatyan* case having been dismissed on technicalities, the Chamber decided on a narrow reading of the Covenant and the Court's jurisprudence that there had been no violation in this case. This surprising conclusion is the subject of an appeal to the Grand Chamber, meanwhile the fact remains that by trying and sentencing a conscientious objector while the Alternative Service Act was under consideration Armenia was in clear breach of its political commitment to the Council of Europe. Moreover, Armenia is a party to the International Covenant on Civil and Political Rights, under which the jurisprudence is clear that conscientious objection to military service is “a protected form of manifestation of religious belief under article 18, paragraph 1.” This means that “the conviction and sentence [of conscientious objectors] “amounts to a restriction on their ability to manifest their religion or belief”, and that, even in a situation where “under the laws of the State party there is no procedure for recognition of conscientious objections against military service”, not only must the State demonstrate that “in the [individual] case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant.” but “such restriction must not impair the very essence of the right in question”¹

22. Within six months of the coming into force of the Alternative Service Act, three Jehovah's Witnesses were awaiting trial for refusing both military and alternative service.² Since then the numbers of imprisonments have sharply increased. Moreover, the maximum sentence under Article 327.1 has been increased to 36 months; 24 months is now in practice the minimum sentence.

23. As of October 2009, the website of War Resisters International listed a total of 63 currently imprisoned conscientious objectors, serving sentences of between 24 and 36 months. The earliest was about to complete a 36 months sentence handed down in October 2006; the three most recent, Grigor Sarfayan, Raphael Manukyan and Karapet Aghadjanyan had been sentenced to 30 months at different dates in September 2009. The Jehovah's Witnesses themselves, in a press release following the *Bayatyan* decision, gave a figure of 71 objectors currently imprisoned.

¹ Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - Eighty-eighth session - Communications Nos. 1321/2004 and 1322/2004, *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea*, paras 8.3 and 8.4.

² General Counsel of the Jehovah's Witnesses, March 2005 - supplementary response to a questionnaire from OHCHR issued in pursuance of Resolution 2002/45 of the Commission on Human Rights

24. This is among the two or three highest totals of imprisoned conscientious objectors in any state in the world, and the sentences handed down are among the longest.

25. In its January 2007 resolution, the Parliamentary Assembly of the Council of Europe was "disappointed to note that the current law, as amended in 2005 and subsequently in June 2006, still does not offer conscientious objectors any guarantee of "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character", as provided for by Council of Europe standards. It is deeply concerned that, for lack of a genuine form of civilian service, dozens of conscientious objectors, most of whom are Jehovah's Witnesses, continue to be imprisoned, since they prefer prison to an alternative service not of a truly civilian nature."

Continuing restrictions of civil rights

26. No cases have been reported where, after serving a long prison sentence, a conscientious objector has been convicted of continued refusal to perform military service. However after release conscientious objectors find that their civil rights are restricted in other ways. A number have been refused identity documents (internal passports) because they were not given a document of registration by the military commissariat. The identity documents are necessary for such things as employment or marriage. Others, who possessed identity documents, were refused residency registration, a requirement in Armenia.

Military training in schools

27. According to the Child Soldiers Global Report 2008, training in the handling of automatic weapons is compulsory for both sexes in grades 8 and 9 of secondary school, ie. from approximately the age of 16. No provisions are reported which would allow children themselves to opt out of such training, or their parents to withdraw them, on grounds of conscience.

28. The same source also quotes reports of a programme in schools for disadvantaged children in which such weapons training begins as young as 11 years old.