

Human Right Matter (Germany)
Office for Civil Freedoms (Tajikistan)
Saint Petersburg Regional Human Rights Organization “Soldiers Mothers of
Saint-Petersburg” (Russian Federation)
Human Rights Group “Citizen. Army. Law” (Moscow, Russia)

Report to the Universal Periodic Review on situation with human rights of the
armed forces personnel in Tajikistan

Report period: 2011-2015

A. Follow up 2011-2015

On October 3rd, 2011 member States provided in total recommendations, which most of them have repeated. Regretful that none of those recommendations were related to a situation of human rights of armed forces personnel in Tajik armed forces. Nevertheless, both Germany and Italy raised their concerns in regards to violations of human rights of conscripts during recruitment and right to alternative service as a guarantee of right to conscience under article 18 of the International Covenant on Civil and Political Rights (ICCPR).

1. Arbitrary arrests and detention of conscripts

Arbitrary arrests and inhuman treatment of conscripts, violations of medical examination procedure and non-transparent decision-making process of conscription commission remain typical violations committed by representatives of military commissariats within recruitment period. Victims of forcibly conscriptions become not only young people, but also their parents and human rights defenders, who try to prevent such arrests and detention. Military representatives use all types of method to bring young people to the military commissariats including beating, insulting and blackmailing. Almost 50 % of young soldiers serving in military units have been forcibly recruited.

As consequences of such violations have been dramatic, in 2014 the President ordered all military institutions and law enforcement bodies to eliminate all forms of illegal conscription. Such statement has positively influenced the situation. It did not change the situation completely, but decreased the number of cases of arbitrary arrests and forcible deployments of young people to military bases.

2. Alternative service is not guaranteed

Although the law of Tajikistan “On General Military Duty and Military Service” stipulates that everyone has a right to alternative service, regrettably, no one can enjoy this right as there is no law, which would proclaim how this right can be implemented. Absence of special law on alternative service makes enjoyment of the right to conscientious objection impossible. Even when citizens intend to use the article in the law on general military duty, this action is considered by the Government as military service evasion.

The Human Rights Committee and the Special Rapporteur on freedom of religion or belief reiterated their concern about lack of recognition of the right to conscientious objection and recommended the Government to take all necessary measures to recognize the right of conscientious objectors to be exempted from the military service.¹

¹ Human Rights Committee, Concluding observations on the second periodic report of Tajikistan, CCPR/C/TJK/CO/2, 22 August 2013; Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir – Mission to Tajikistan, A/HRC/7/10/Add.2, 27 November 2007

B. Jurisdiction of the military court over civilians

1. Jurisdiction over conscripts who have not yet obtained a status of armed forces personnel

Citizens become subject of the jurisdiction of the military courts, though they have not received a status of armed forces personnel. Under article 2 of the law of Tajikistan “On status of armed forces personnel” the following categories of citizens are armed forces personnel:

- officers;
- officers, ensign, cadets of military educational institutions, corporal and soldiers;
- conscripts, who are called up to military training.

When a conscription commission makes a decision about fitness of a young person to serve in military, a conscript receives summon from military commissariats to come to military commissariats on certain date and time for military training and deployment to military units. As soon as a conscript comes to the military training he is recognized as armed forces personnel. Pursuant to article 60 of the constitutional law on courts, the military courts consider cases related to complaints brought by **armed forces personnel** and **citizens attending military trainings** against actions and decisions of military administrative bodies and military officials, which violate rights and freedoms of armed forces personnel and citizens attending military trainings. Only two aforementioned groups of citizens are allowed to bring a complaint to the military courts. However, in reality the military courts consider cases brought by citizens who are still civilians.

The Office for Civil Freedoms², a Tajik human rights organization, brought several cases to the civilian courts on behalf of citizens, who had been called – up to the military service, but who still had not obtained armed forces personnel status and even had not got a decision of the conscription commission. The civilian courts did not consider those cases and redirected them to the military courts stating that conscription was an entirely military matter and they were not competent to consider such cases. Representatives of military judiciary and military prosecutor office believe that the military courts have jurisdiction over these cases as they relate to the military service. This statement is not legislatively approved, as a citizen becomes a subject of a military court only depending on his status.

Moreover, conscription commissions are considered by the military courts as

² Office of Civil Freedoms was found in 2013 as a national non-governmental organisation. Its priorities are defending and promoting of rights and liberties of soldiers and recruits, as well as strengthening of public control over the field of security. The Office of Civil Freedoms continues activities of AMPARO Young Lawyers’ Association that was closed down by a court decision in 2012.

military administration institutions, though in accordance with the law of Tajikistan “On general military duties and military service” the conscription commissions are established by the local administration, and members of the commissions are representatives of civilian institutions, except one of them who is from military commissariats. The problem is that the conscription commissions are operating within military commissariats. It causes the following problems: 1. The conscription commissions are recognized de facto as military organs, which means that if a conscript wants to bring a complaint against a commission’s decision, his complaint will be considered by the military court, though a conscription commission is not a military body de jure, and a conscript does not belong to the armed forces personnel until he comes to military commissariat for military training; thus, he should not go through the military courts; 2. Transparency and accountability of the conscription commissions are under the risk, because military commissariats are closed institutions, which make impossible mere access to the commissions for relatives, advocates and civil society representatives. 3. Members of the commissions and doctors of medical examination are under full control and pressure of the military commissariats.

2. Armed forces personnel and civilians under military courts jurisdiction

Pursuant to the Constitutional Law on the Courts, military courts at the garrison level function as courts of first instance and the Military Chamber of the Supreme Court forms a part of the ordinary court system. According to articles 59 and 61 of the constitutional law on courts, military courts consider over civil, administrative and family cases, provided one of the parties is a member of the military. Military courts have jurisdiction to examine criminal cases. However, the law does not clearly states if one of the parties is a civilian or is a member of military.

The UN Human Rights Committee found that a trial conducted by the military court of Tajikistan over a civilian had been recognized a violation of the article 14 paragraph 1 of the International Covenant on Civil and Political Rights.³ The Special Rapporteur on the independence of judges and lawyers after his country visit in 2006 recommended that “military courts should not have jurisdiction over cases other than those related to military crimes, nor should they be competent to conduct proceedings in which one of the parties is a civilian”.⁴ In 2013, the UN Human Rights Committee recommended Tajikistan without further delay to prohibit military courts from exercising jurisdiction over civilians.

In July 2015, the Tajik Parliament adopted amendments to the constitutional law on courts, but provisions related to military courts remained unchanged.

C. Hazing (*dedovshina*) and inhuman treatment in the Armed Forces of Tajikistan

³ Kurbanova v. Tajikistan, CCPR/C/79/D/1096/2002, 6 November 2003

⁴ Special Rapporteur on the independence of judges and lawyers – Mission to Tajikistan, E/CN.4/2006/52/Add.4

The Tajik Army inherited a soviet method of maintaining military discipline, and it is practiced both by officers and older soldiers (*dedi*) in the form of hazing (*dedovshina*). It is a common practice to use collective punishments of soldiers, insulting and beating in cases of failure to fulfill some tasks, such as cleaning bathrooms, washing shirts, getting money from parents or relatives and other types of illegal tasks.⁵ Moreover, rituals are a very common way of building relationship with new-coming soldiers. In 2012, the reports prepared by YLA “Amparo” showed that there were at least 6 types of rituals practiced in military units.⁶ One of these rituals was a “flower blossom”. In the “flower blossom”, young soldiers squeeze their fingers in the form of unopened bud. *Ded* strikes hardly at the fingertips with a hard blunt object; often it is a soldier's belt buckles. A young soldier has to reveal his fingers very slowly indicating that the flower blooms. Consequences of such inhuman behavior are physical and mental disorders of soldiers, and even death.

Tajikistan failed to provide both thorough investigation of cases of inhuman treatment towards military personnel in military units and adequate compensation to victims and family members.

From the middle of 2014 to July 2015, there were 5 cases of inhuman treatment and 5 cases of death of soldiers at the Tajik military bases. This is only the cases which have been presented by the advocates of the Office for Civil Freedoms. All soldiers had been subjected to systematic beating and insulting. None of soldiers complained about past beatings because they had a fear to be cruelly hazed. These cases have not been immediately recognized as consequences of hazing. Only after parents and advocates complained and disseminated the pictures and information about the deaths of the victims, military prosecutor offices started conducting thorough investigation and filed criminal cases against the perpetrators.

Recommendations

1. To provide appropriate compensations to the victims of arbitrary conscription, hazing and inhuman treatment at the military bases, and to the family members in cases of soldiers' deaths.⁷
2. To eliminate all forms of torture and inhuman treatment at the military bases and to provide appropriate medical and psychological rehabilitation for the victims of such treatment.

⁵ Report on observance of human right of armed forces personnel in Tajik armed forces. Monitoring was conducted by the Young Lawyers Association “Amparo”, 2012

⁶ After this report, a director of Amparo has been invited to the military prosecutor office to justify all findings. Lately, it was found that new rituals were invented and used in military units.

⁷ Special Rapporteur on Torture, Juan E. Méndez, has visited Tajikistan in 2013 and recommended to establish appropriate enforcement mechanisms in legislation to ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest rehabilitation possible; and ensure that there are effective mechanisms in practice to protect complainants from reprisal. A/HRC/22/53/Add.1

3. To prohibit military courts from exercising jurisdiction over civilians.