

## **Table of Contents**

- ***Armenia ordered to pay damages to 17 Jehovah's Witnesses***
  - ***Two new imprisonments as Strasbourg again fines government***
  - ***Jailings of conscientious objectors resume***
  - ***Armenian public television retracts false statements about Jehovah's Witnesses***
  - ***After Strasbourg punishment, will government resolve alternative service issue "forever"?***
  - ***The European Court renders two judgments further protecting the rights of conscientious objectors***
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## **Armenia ordered to pay damages to 17 Jehovah's Witnesses**

JW (03.12.2012) - On November 27, 2012, the European Court of Human Rights ruled that the government of Armenia must pay 112,000 euros (\$145,226) in damages and legal fees to 17 conscientious objectors for human rights violations.

In 2005, 17 young men who are Jehovah's Witnesses were performing alternative civilian service. However, when they realized that it was under the control and supervision of the military, they could no longer continue to serve in good conscience and subsequently left their places of service. They were thereafter arrested and prosecuted. Some were held in pretrial detention for several months, and 11 were eventually sentenced to prison terms from two to three years.

The European Court ruled that these criminal prosecutions and detentions were illegal because in 2005, there was no law in Armenia that made it a crime to abandon alternative civilian service. The Court held that Armenia violated the Witnesses' right to liberty and security as protected under Article 5 of the European Convention on Human Rights. Although the government later dropped the criminal charges against the 17, Armenia refused to compensate them for the unlawful criminal prosecutions and detentions. Therefore, the Court ordered Armenia to pay compensation for moral damages and legal fees.

This judgment comes in the wake of three other European Court rulings against Armenia on the issue of neutrality. In all four cases, the Armenian authorities mistreated conscientious objectors who are Jehovah's Witnesses and unjustly dealt with them as if they were dangerous criminals.

"The judgment rendered by the European Court helps to rectify the injustices suffered by these Jehovah's Witnesses," states André Carbonneau, an attorney for the applicants. "This line of victories against Armenia in the European Court sends an unmistakable message to other countries within the Council of Europe as well as countries such as Eritrea, South Korea, and countries in Central Asia regarding the right of Jehovah's Witnesses to refuse military service."

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## **Two new imprisonments as Strasbourg again fines government**

Forum 18 (03.12.2012) - A judge has today (3 December) postponed the handing down of a sentence in the criminal trial of conscientious objector Vartkes Sahakyan, Jehovah's Witnesses told Forum 18 News Service. Judge David Balayan said he was postponing the decision to allow him time to study the latest finding against Armenia in the European Court of Human Rights (ECtHR) on conscientious objector cases. Yet despite the latest ECtHR fine imposed on the Armenian government, prosecutions continue. Two further conscientious objectors were imprisoned in November after losing their second appeals, bringing the number of prisoners to 31. All are serving sentences of two to three years' imprisonment. A further 15 already convicted are likely to be imprisoned if their appeals fail.

Judge Balayan of Davatashen-Ajapnyak Court in the north of the capital Yerevan told Sahakyan that he was postponing his verdict in the case until he had a chance to read the 27 November ECtHR judgment in Armenian translation.

On 27 November, the Strasbourg-based ECtHR – in its fourth decision against Armenia in conscientious objector cases – found that Armenia had violated the rights of 17 Jehovah's Witness conscientious objectors. Forum 18 notes that for the first time in such cases, Armenia's European Court Judge, Alvina Gyulumyan, did not dissent from the judgment.

Jehovah's Witnesses told Forum 18 that every prisoner convicted since the ECtHR's landmark July 2011 judgment in favour of former conscientious objector prisoner Vahan Bayatyan will lodge a similar case to Strasbourg. Fourteen have already done so, with a further ten preparing applications.

"Nothing else has moved the Armenian government to improve the situation, so we are hoping repeated European Court judgments will," one Jehovah's Witness who was involved in the recent case told Forum 18 on 3 December.

### ***No civilian alternative service***

Although Armenia committed itself on joining the Council of Europe to introduce a civilian, non-military alternative service by January 2004, it failed to do so. The Alternative Service Law - adopted in 2003 and amended in 2004 and 2006 - leaves alternative service under Defence Ministry oversight, making it unacceptable for most conscientious objectors.

Like all the other Jehovah's Witness conscientious objectors, Sahakyan is on trial under Criminal Code Article 327, Part 1, which punishes evasion of the call-up to military or alternative service. The maximum sentence under this article was increased to three years' imprisonment in December 2005.

Armenia has repeatedly claimed that the current situation is in full compliance with its international human rights commitments. On 31 January 2012, in response to a joint letter of concern over imprisoned conscientious objectors from four United Nations human rights rapporteurs, the Armenian authorities insisted to the United Nations that "Armenia has fully complied with its commitments within three years of accession as promised". It dismissed the ECtHR findings against it.

However, Armenia's failure to free imprisoned conscientious objectors and introduce a genuinely civilian alternative to military service has repeatedly been condemned by international organisations of which the country is a member. In 2012 alone, condemnation came from the Parliamentary Assembly of the Council of Europe (PACE) and the United Nations Human Rights Committee.

### ***Imprisonment after appeal***

Armenia has changed its policy this year, after discussions with Jehovah's Witnesses representatives. It now imprisons conscientious objectors only after both their appeals fail (in the Appeal Court and the Cassation Court), not after criminal cases are instituted and not after individuals are convicted in a lower court. Forum 18 notes that this has brought down the number of prisoners from about 70 at any one time until late 2011 to 31 today. However, the number of conscientious objectors convicted and sentenced under Criminal Code Article 327, Part 1 is rising. Should their appeals fail it is likely they will be imprisoned.

The two latest prisoners - Anania Grigoryan (who received a 24-month sentence on 28 June) and Artsrun Khachatryan (who received a 30-month sentence on 10 July) - were both imprisoned after losing their cases at the Appeal Court and Cassation Court. Grigoryan was imprisoned at Nubarashen prison near Yerevan on 15 November. Khachatryan was imprisoned in the same prison on 26 November.

The other 29 prisoners are being held at the prisons in Erebuni in Yerevan and Kosh near Ashtarak in western Armenia.

Of the 15 young men already convicted but awaiting appeal hearings, two were sentenced in November. Martiros Yesayan received a 30-month sentence on 8 November. Mushegh Galstyan received a two-year sentence on 15 November.

### ***Latest Strasbourg judgment***

The ECtHR issued its latest judgment on 27 November in the case of Khachatryan and Others v. Armenia (application no. 23978/06). Nineteen Jehovah's Witnesses who accepted the government's alternative service in 2004 changed their minds and left their service in May and June 2005 after realising they were under military control, thus offending their consciences. Criminal proceedings were brought against them and seventeen were held in detention (the other two had to sign statements not to leave the area). Although charges were later dropped and they were released after several months, they complained that they had been detained for an act which had not constituted an offence at the time.

In its judgment, the ECtHR ruled in favour of 17 of the 19, finding that their right to liberty and security, as well as their right to compensation for unlawful detention had been violated. The 17 were each awarded 6,000 Euros (3 million Armenian Drams, 45,000 Norwegian Kroner or 8,000 US Dollars) compensation from the Armenian government. The government was also required to pay a total of 10,000 Euros in costs for all the applicants. Unless either side appeal against the ruling, it will become final three months after it was handed down.

### ***"No official position" from Human Rights Ombudsperson***

Tatevik Khachatryan, the official in the office of Armenia's Human Rights Ombudsperson who handles conscientious objection issues, told Forum 18 on 3 November that Ombudsperson Karen Andriasyan holds "no official position" on the continued imprisonment of conscientious objectors.

Khachatryan could not recall any public statement by Andriasyan on the issue. "He decides what he will speak out on," she told Forum 18.

She repeatedly refused to say whether the Ombudsperson believes that the current conscientious objector prisoners should or should not be imprisoned.

However, she denied that this meant Andriasyan has done nothing to protect the rights of imprisoned conscientious objectors. "He received many individual complaints on this

and has responded to them all properly," Khachatryan insisted. "He has also met Jehovah's Witness representatives and tried to mediate with government officials."

Khachatryan added that Andreyan has given the government his comments on the proposed amendments to the Alternative Service Law. However, she repeatedly refused to say whether the Ombudsperson believes the current Law does or does not meet Armenia's international human rights commitments.

### **"Vague" draft amendments**

The Justice Ministry has long been drafting amendments to the Alternative Service Law, with input from the Defence Ministry and other state agencies. The 2011 draft amendments were the subject of two highly critical legal opinions – by the Organisation for Security and Co-operation in Europe (OSCE) in September 2011 and the Council of Europe's Venice Commission in December 2011.

The Justice Ministry later changed the proposed amendments, giving a new draft to various Armenian organisations in October 2012. Article 14, Part 2 of the draft amendments reads: "Supervision of performance and organisation of alternative labour service is carried out by corresponding state government bodies empowered by the Republic of Armenia." Jehovah's Witnesses complain that this crucial question for them – will the Defence Ministry have any control over alternative labour service – thus remains unresolved.

The draft amendments seen by Forum 18 would reduce by six months the term for those doing "alternative labour service" to 36 months – compared to 30 months for non-combat military service and two years for military service. However, Jehovah's Witnesses say the length is less of a concern. "What is crucial for us is whether the military control the alternative service, and whether the individual is confined to the place of service or not," one Jehovah's Witness told Forum 18 from Yerevan on 3 December. "The draft is vague."

Lt-Col. Sedrak Sedrakian, the head of the legal department of the Defence Ministry, said that the draft amendments are in the hands of First Deputy Justice Minister Grigor Muradian. "They asked our views and we gave them," he told Forum 18 from Yerevan on 3 December. "We wrote that we're not against the amendments, and gave our comments."

Lt-Col. Sedrakian insisted that the alternative labour service will be under the supervision not of the Defence Ministry but the Health and Social Protection Ministries. However, Forum 18 could not find such a provision on the draft amendments it has seen.

Forum 18 was unable to reach anyone at the Justice Ministry in Yerevan on 3 December prepared to comment on the draft amendments or the continued imprisonment of conscientious objectors.

Gevorg Kostanyan, the Armenian government agent to the ECtHR who is the country's military prosecutor, was unavailable each time Forum 18 called on 3 December. His assistant took Forum 18's number but he did not call back.

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## **Jailings of conscientious objectors resume**

Forum 18 (20.09.2012) - On 6 August – a year to the day since the last jailing of a conscientious objector in Armenia – a court sentenced Maksim Khudoyan to 30 months' imprisonment for refusing compulsory military service. Just weeks later, another Jehovah's Witness conscientious objector Gevorg Sahakyan was imprisoned for 24

months. Although courts have continued to hand down prison terms, these are the first to have been applied. Thirteen other conscientious objectors have been sentenced to prison since the beginning of 2012 and are waiting to learn their fate, Jehovah's Witnesses told Forum 18 News Service from the Armenian capital Yerevan on 20 September.

Of all the former Soviet republics which still punish those who cannot serve in the armed forces on grounds of conscience, Armenia has the highest rate of imprisonment for objectors. Turkmenistan, Azerbaijan and Belarus – as well as the unrecognised entity of Nagorno-Karabakh in the south Caucasus – have all imprisoned conscientious objectors in recent years.

The current number of imprisoned Jehovah's Witness conscientious objectors in Armenia is 32. Although this is much reduced from the figure until late 2011 of about 70, Jehovah's Witnesses fear that with the unresolved situation the 16 young men whose prison terms have not yet been enacted could be imprisoned at any time.

### ***Ignoring ECtHR***

Jehovah's Witnesses complained to Forum 18 that the continuing prosecution of their young men "illustrates that the authorities, at least at the lower levels, seem to be completely ignoring the Bayatyan ruling".

In July 2011, in a landmark judgment, the European Court of Human Rights (ECtHR) in Strasbourg found that Armenia had violated the rights to freedom of conscience and belief of Armenian Jehovah's Witness conscientious objector Vahan Bayatyan. It ordered the Armenian government to pay him compensation. The ECtHR handed down two similar judgments against Armenia – in cases brought by Hayk Bukharatyan and Ashot Tsaturyan – in January 2012.

Although Jehovah's Witnesses told Forum 18 that the Armenian government has paid all three victims the compensation due to them, they are concerned that it has not taken steps to remove the violation of the European Convention on Human Rights which caused the country to be fined. Many of the more recent prisoners have lodged further cases with the ECtHR.

### ***Concerns dismissed***

Deputy Justice Minister Ruben Melikyan dismissed suggestions that the continuing sentencing and imprisonment of conscientious objectors violates Armenia's Council of Europe commitments and requirements under the Bayatyan and other ECtHR judgments. "Those cases were lodged back in 2003 and relate to the situation before Armenia's Alternative Service Law was adopted," he insisted to Forum 18 from Yerevan on 19 September.

Told that ECtHR judgments require states to take action to ensure that violations cannot recur and that the Council of Europe and the United Nations have repeatedly told Armenia that the 2003 Alternative Service Law (amended in 2004 and 2006) does not meet Armenia's international human rights obligations, Melikyan repeated his assertion that these judgments only cover the past.

"We don't agree with colleagues [abroad] that the Bayatyan judgment covers today," he told Forum 18. "It is a different situation now."

Also defending the continuing prosecution of conscientious objectors was Sona Truzyan, spokesperson for the General Prosecutor's Office. "The law is the law and we have to enforce it," she told Forum 18 from Yerevan on 20 September. "What is in the law isn't a matter for the General Prosecutor's Office."

### ***32 prisoners***

All the conscientious objector prisoners are Jehovah's Witnesses and are serving sentences of between two and three years' imprisonment. They were all convicted under Criminal Code Article 327, Part 1, which punishes evasion of the call-up to military or alternative service. The maximum sentence under this article was increased to three years' imprisonment in December 2005.

The latest prisoners, Khudoyan and Sahakyan, have both been sent to serve their sentences at the prison in Nubarashen near Yerevan, Jehovah's Witnesses told Forum 18. Khudoyan had been sentenced on 6 August, and Sahakyan on 23 August.

Of the 30 other prisoners sentenced in 2010 and 2011, 20 are being held at Erebuni Prison in Yerevan. Eight are being held at Kosh Prison, while two are in Artik Prison. The longest-serving prisoner is Samvel Prutyanyan, given a 30-month sentence on 23 March 2010, who is in the final days of his sentence.

### ***16 awaiting imprisonment***

Between 14 March and 13 September, 16 Jehovah's Witness young men were found guilty under Article 327, Part 1 and sentenced to prison terms of between 24 and 30 months. On 12 September Davit Arakelyan was given a 24-month sentence. On 13 September alone, Vahe Sargsyan, Gevorg Arakelyan and Tigran Boyajyan were each given 24-month sentences, while Vahe Ter-Galstanyan was given a 30-month sentence.

All have appealed against their sentences. While the appeal process drags on, they have not been imprisoned.

Truzyan of the General Prosecutor's Office was unable to explain why the 16 young men have not been imprisoned when in the two August cases – and in earlier years – such immediate jailings were routine. She promised to respond to Forum 18's written questions about this sent on 20 September.

### ***More sentences?***

Jehovah's Witnesses told Forum 18 on 20 September that the cases of a further 23 young men who have refused military service and military-controlled alternative service are now with investigators or are already in the courts.

### ***Double condemnation***

Armenia's failure to free imprisoned conscientious objectors and introduce a genuinely civilian alternative to military service has repeatedly been condemned by international organisations of which the country is a member. In 2012 alone, condemnation came from the Parliamentary Assembly of the Council of Europe (PACE) and the United Nations Human Rights Committee. These recommendations from the two organisations "have been ignored", Jehovah's Witnesses lamented to Forum 18.

In its 14 March report on how Armenia is honouring its Council of Europe commitments, PACE complained that the process of bringing the Alternative Service Law into line with Armenia's commitments "has taken an excessively long time, especially given that persons that refuse both military and alternative service are being arrested and sentenced to prison, in contradiction with Armenia's commitments to the Council of Europe".

PACE's Monitoring Committee noted that the European Court of Human Rights (ECtHR) in Strasbourg has already found against the country in alternative service cases. It called on Armenia to "adopt without delay the necessary amendments to the Law on Alternative Service, taking into account the Venice Commission's comments on them; freeze the

prosecution of conscientious objectors pending the adoption of the new law and refrain from requesting pre-trial detention for the persons concerned; use all legal means available to the authorities to release those convicted - or in pre-trial detention - for refusing to serve in the absence of a proper civilian alternative service on conscientious grounds".

After considering Armenia's record under the International Covenant on Civil and Political Rights on 16 and 17 July, the UN Human Rights Committee adopted its conclusions on Armenia on 25 July (CCPR/C/ARM/CO/2-3). It expressed concern that despite amendments, the Alternative Service Law "still does not guarantee conscientious objectors a genuine alternative service of a clearly civilian nature. The Committee is also concerned that conscientious objectors, overwhelmingly Jehovah's Witnesses, are still imprisoned when they refuse to perform the military service and the existing alternative military service."

The Committee called on Armenia to "put in place a real alternative to military service, which is genuinely non-military, accessible to all conscientious objectors and neither punitive nor discriminatory in nature, cost or duration". It also called for the release of all those imprisoned for refusing either military service or the current alternative service.

### ***New Law?***

Deputy Justice Minister Melikyan told Forum 18 that the new version of the Alternative Service Law is close to completion. He said the draft was approved by the government in the summer and was then looked at again as "technical issues needed to be reconsidered". He said it is about to be sent to Parliament. He was unable to say when the text would be publicly available.

The 2011 draft of amendments to the Alternative Service Law was the subject of two highly critical legal opinions - by the Organisation for Security and Co-operation in Europe (OSCE) in September 2011 and the Council of Europe's Venice Commission in December 2011.

"The draft Law has been changed to make it more appropriate and to incorporate points made by the Venice Commission," Melikyan maintained. "We will implement it."

Melikyan claimed that the new Law will remove any military control over alternative service, a concern expressed by the OSCE, the Venice Commission, human rights defenders and Jehovah's Witnesses.

However, he said the new Law would only allow members of religious communities whose faith is accepted as pacifist to be allowed to do alternative service under the new Law. "It won't be a Law that allows anyone to do alternative service."

Told that international human rights commitments require Armenia to allow any individuals who have conscientious objections to participating in the military to do alternative service, Melikyan rejected this. "We can't allow this. Armenia faces serious threats to its security."

### ***Ending imprisonment?***

Melikyan also insisted that those currently imprisoned will also have the opportunity to resolve their situation once the Law is adopted. "They will be able to apply to the courts to have their judgment changed to allow them to be transferred to alternative service."

Told that the PACE and the United Nations - among others - had called for all imprisoned conscientious objectors to be freed immediately and that they should not therefore have to seek such release themselves, Melikyan responded: "Well, if they don't go to court the Prosecutor's Office will go to court to seek their release on their behalf."

Aram Vardevanyan, head of the Legal Department of Armenia's Human Rights Ombudsperson's Office, said that the continuing imprisonment of conscientious objectors is a violation of their human rights. "We share the concern that they are still in prison," he told Forum 18 from Yerevan on 19 September.

Vardevanyan insists that the 2011 draft amendments to the Alternative Service Law "are old and have been left behind". But he said the Ombudsperson's Office does not know when it will receive the text of the proposed new draft from the Justice Ministry.

### **Scepticism**

Human rights defenders are sceptical about the proposed new Alternative Service Law, echoing PACE's concerns about the "excessively long time" over adopting it. "The Justice Ministry talks a lot but does nothing," Artur Sakunts, head of the Helsinki Citizen's Assembly Vanadzor Office, told Forum 18 on 19 September. He laments the long-running failure to introduce fully civilian alternative service and free those imprisoned.

Stepan Danielyan, head of the Yerevan-based Collaboration for Democracy human rights group which has long called for a change to the Alternative Service Law, worries that public opinion might be growing more hostile to allowing young men to conduct a civilian alternative service. "Fear is growing in society that there will be a new war," he told Forum 18 from Yerevan on 20 September. "This is having an effect on society."

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## **Armenian public television retracts false statements about Jehovah's Witnesses**

JW Official Website (05.06.2012) — On June 5, 2012, viewers of the "Haylur" news programs observed something rarely presented to the Armenian public: a retraction of false statements made about Jehovah's Witnesses.

As part of a settlement agreement signed on May 15, 2012, Armenian Public Television and its representatives broadcasted a retraction of statements that falsely associated a young man charged with brutally murdering his elderly parents in Sevan, Armenia with the religious community of Jehovah's Witnesses. Since neither the young man nor his parents were ever Jehovah's Witnesses, the misrepresentation was offensive to and considered insulting by Jehovah's Witnesses.

According to the terms of the signed settlement agreement, the Armenian Public Television station, H1, broadcasted the retraction once during the first 20 minutes of each of their primetime news programs at 5:00 p.m. and at 9:00 p.m. on Tuesday, June 5, 2012. The retraction is also being posted on the media outlet's official website ([www.1tv.am](http://www.1tv.am)), listing it among the top five news stories during the period of June 5, 2012, through June 14, 2012.

Jehovah's Witnesses worldwide are noting this positive outcome. "No one wants false statements broadcast about them, and we are no exception," states David Semonian, a spokesman at the world headquarters of Jehovah's Witnesses in New York. "It is important that the Armenian public hear the truth about Jehovah's Witnesses, and we are pleased that Armenian Public Television has taken steps to set the matter straight for the viewing public in Armenia."

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## **After Strasbourg punishment, will government resolve alternative service issue "forever"?**

By Felix Corley

Forum 18 News Service (01.02.12) - Armenia's new Deputy Justice Minister Ruben Melikyan has told Forum 18 News Service that a government Working Group is already preparing new amendments to the Alternative Service Law. His comments come three weeks after Armenia was again fined by the European Court of Human Rights (ECtHR) in Strasbourg for violating the rights to religious freedom of two Jehovah's Witness conscientious objector former prisoners. His comments also follow Opinions on the 2011 proposed amendments now in parliament which were criticised by both the Council of Europe's Venice Commission and the Organisation for Security and Co-operation in Europe (OSCE). They called on Armenia to ensure that revisions to the Law bring in a fully-civilian alternative to military service which is not punitive in length.

The new amendments are being prepared "fully taking into account the OSCE and Venice Commission views" and the ECtHR rulings, Melikyan insisted to Forum 18 from the Armenian capital Yerevan on 1 February. He said it is too early to make public the text, as it is still being prepared.

Melikyan, a Deputy Justice Minister since 18 January, told Forum 18 the amendments would be presented to parliament "within a short period" and pledged that this would "resolve the issue for ever". He was unable to say if they could be adopted by parliament before parliamentary elections due in May, but insisted they would be adopted "this year".

Melikyan declined to say what would happen to the amendments approved by the government in 2011 and now in parliament, which were the subject of the OSCE and Venice Commission Opinions.

However, Melikyan told Forum 18 the courts cannot free the 57 current imprisoned conscientious objectors to military service nor halt the prosecution of 14 others until amendments to the Law have been adopted. He added that the president cannot pardon them either. "We want to give them more than a pardon, as pardoning them would not clear them of guilt. The decision should be more friendly to them." Melikyan insisted this will happen "this year".

### ***Military control***

The alternative service now on offer in Armenia is under military control, and thus unacceptable to those who cannot serve in the armed forces on conscientious grounds. All the current prisoners are Jehovah's Witness young men, who insist they would be prepared to perform a civilian-controlled alternative service. They are serving sentences of between 18 and 36 months' imprisonment. In the past, as well as Jehovah's Witnesses, a Molokan conscientious objector was also imprisoned.

Welcoming the ECtHR judgments was Stepan Danielyan, head of Collaboration for Democracy, a Yerevan-based human rights group which has long called for a change to the Law. "But it's easier for our government to pay the compensation than to amend the law," he told Forum 18 from Yerevan on 31 January. "Our government doesn't know what to do now."

Danielyan said the issue is being little discussed in the media and lamented that "no-one in Armenia" is interested in resolving it. He said he doubted if any changes will occur before parliamentary elections, due in May.

Jehovah's Witnesses also welcome the ECtHR judgments, maintaining that they come "at the right time". However, they complain that the Armenian authorities "continue to ignore" the Strasbourg Court's rulings, especially with the imprisonment of five more conscientious objectors and further prosecutions. "We hope the Armenian authorities will now reconsider their position and release the 57 young men that are currently incarcerated as conscientious objectors," a lawyer representing the young men told Forum 18 from Yerevan.

Jehovah's Witnesses said they had heard nothing about any new draft Law being prepared, but said they hoped the government is ready to change the Law to allow a fully civilian alternative service. "We hope at last the Armenian Government will start implementing these Strasbourg judgments in domestic law and will allow these young men to work productively for their country rather than languishing in prison."

### ***No other official comment***

Apart from Melikyan of the Justice Ministry, no other Ministry or agency was prepared to comment to Forum 18. The Foreign Ministry told Forum 18 it was not an issue for it. The Press Department of the Defence Ministry referred Forum 18 to the Ministry's Defence Policy Department. Officials there referred Forum 18 to Major Alexander Avetisyan, but his telephone went unanswered each time Forum 18 called on 1 February.

Officials at the Military Prosecutor's Office told Forum 18 on 1 February that Gevorg Kostanyan, Armenia's Military Prosecutor and Armenia's former representative to the ECtHR in Strasbourg, was in a meeting and unavailable. He had taken part in December 2011 discussions of last year's draft Law with the Council of Europe's Venice Commission.

The office of Armenia's Ombudsperson for Human Rights Karen Andreasyan promised to comment, but Forum 18 had received no response to its written questions by the end of the working day on 1 February.

Vahakn Kevorkyan, an expert on the staff of Parliament's Defence, National Security and Internal Affairs Committee, told Forum 18 on 31 January that his Committee had not received the "final text" of the December 2011 Venice Commission Opinion. "What they published was only the provisional Opinion," he claimed. But he too insisted that its views, as well as the new ECtHR rulings, will be taken into account when considering the proposed amendments. He doubted whether any action would take place before the May elections.

Kevorkyan made no mention of the new amendments being prepared in the government's Working Group.

### ***Imprisonment violated religious freedom rights***

The ECtHR in Strasbourg ruled on 10 January that Armenia had violated the rights of two Jehovah's Witnesses by imprisoning them in 2003. Both had refused to conduct military service on grounds of religious conscience and both received two-year prison sentences, though they were both released on parole after less than six months. In the cases of Hayk Bukharatyan (Application No. 37819/03) and Ashot Tsaturyan (Application No. 37821/03), the Court found that their rights to freedom of religion or belief under Article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) had been violated.

Jehovah's Witnesses point out that Armenia imprisoned the two young men "despite its previous commitment to the Council of Europe, in January 2001, to institute a genuine

civilian alternative service for conscientious objectors and, in the meantime, to pardon all those already convicted".

The judgments draw on a landmark judgment by the Strasbourg court on 7 July 2011 that the rights of fellow Armenian Jehovah's Witness conscientious objector Vahan Bayatyan had been violated by his imprisonment. The judgment concluded, for the first time in the history of the ECtHR, that the right to conscientious objection to military service is fully protected under ECHR Article 9, which guarantees the right to freedom of conscience, thought and religion.

In the 10 January rulings, Bukharatyan and Tsaturyan were each awarded a total of 10,000 Euros from the Armenian government (5,108,390 Armenian Drams, 76,486 Norwegian Kroner or 13,205 US Dollars), 6,000 Euros in compensation and 4,000 Euros in costs. Only one of the seven judges – Alvina Gyulumyan from Armenia – dissented from the decisions. She had also been the sole dissenter from the judgment in Bayatyan's case.

Unless either side challenges the January rulings, they will become final three months later. The Armenian government would then have a further three months to pay the compensation and costs of the two men.

Deputy Justice Minister Melikyan said his Ministry is still studying the two January rulings and has not yet decided whether to challenge them.

### ***Bayatyan compensation paid, but no releases and cases continue***

In its July 2011 ruling, the ECtHR awarded Bayatyan compensation of 10,000 Euros and a further 10,000 Euros in costs from the Armenian government.

Jehovah's Witnesses told Forum 18 that the Armenian government paid Bayatyan these sums in August 2011, and also published the ECtHR ruling in Armenian (on the Justice Ministry website) as it was required to do.

So far, however, it has not removed the cause of the original violation to prevent further similar violations of the European Convention as it is required to do. Nor have the current sentenced prisoners been freed or current prosecutions been dropped.

Jehovah's Witnesses told Forum 18 that one court appeal to have a current prosecution halted was rejected, though other courts have deferred or are still considering such appeals. They note that many of the trials are being repeatedly adjourned for a variety of reasons.

Jehovah's Witness lawyers say they will lodge appeals in court to have all the 57 current prisoners freed in the light of the ECtHR rulings. "We hope that they will be freed without them having to lodge their own cases to Strasbourg," they told Forum 18.

### ***Armenia's Council of Europe commitment***

On its accession to the Council of Europe in January 2001, Armenia formally pledged to: "adopt, within three years of accession [i.e. by 25 January 2004], a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force to perform non-armed military service or alternative civilian service".

The current Alternative Service Law was adopted in 2003 (coming into force on 1 July 2004), but despite amendments in 2004 and 2006, it still fails to meet Armenia's Council

of Europe commitment to allow a choice of "alternative civilian service" to be possible. Jehovah's Witnesses and a Molokan who initially accepted the Law's "alternative service" quickly abandoned it when it became clear that the "alternative" was controlled and overseen by the military. They were soon imprisoned, and Armenia has failed to follow its Council of Europe commitment to pardon – and therefore release – its prisoners of conscience who object to compulsory military service.

In recent years as many as 76 conscientious objectors have been imprisoned at any one time. Almost all have been sentenced under Criminal Code Article 327, Part 1, which punishes evasion of the call-up to military or alternative service. The maximum sentence under this article was increased to three years' imprisonment in December 2005.

Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, met three of the imprisoned Jehovah's Witnesses in Artik prison in the north-western region of Shirak during his January 2011 visit to Armenia. In his May 2011 report he called for the conscientious objectors to be freed from prison, and for a genuine civilian alternative service to be introduced.

### ***Government's 2011 proposed amendments***

The government's 2011 proposed amendments to the 2003 Alternative Service Law were prepared by the Defence Ministry's Legal Directorate and subsequently approved also by the Justice Ministry. They were approved by the government in April 2011 and sent to parliament, the National Assembly. The National Assembly assigned the draft to the Defence, National Security and Internal Affairs Committee.

The 2011 draft Law is very short and makes no change to the current Law on the length of alternative military service (36 months) and alternative labour service (42 months). The main new provision is for a Republican Commission to oversee whether applications for alternative service will be accepted or not. The draft Law would also allow those performing alternative service to change their mind and transfer to military service, but not the other way round.

It would also ensure that those who complete alternative service are issued with the military booklet, without which it can be difficult to obtain work.

### ***OSCE review***

On 11 July 2011, the Committee wrote to ask for a legal Opinion on the draft from the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw. The OSCE's opinion, dated 8 September 2011, was submitted to the Committee and also published (available from <http://legislationline.org/countries/country/45>).

The OSCE's key recommendations were: "to ensure that the alternative labour service is not under military control"; "to allow conscripted servicemen to seek a replacement of their military service with alternative service on grounds of conscientious objection"; and "to consider reducing the duration of alternative service".

The Opinion described the proposal to keep alternative service at 42 months (compared to 24 months' military service) as "unnecessarily protracted and could even be perceived as punitive in duration".

On the question of whether those already conscripted can change their mind and opt for alternative service, the OSCE Opinion "strongly recommended" that "conscripted servicemen who, while undergoing military service, realize that such service insurmountably conflicts with their deeply-held religious or other conscientious beliefs" be

allowed to transfer to alternative service. "The law currently in force prohibits the replacement of the military service with alternative service after conscription," it noted.

### ***Venice Commission review***

However, just three weeks after the completion of the OSCE Opinion, Hrair Karapetyan, chair of the parliamentary Committee, wrote to the Council of Europe's Venice Commission seeking a further legal Opinion. He insisted the move was motivated by the willingness of the Armenian authorities to ensure "the maximum compliance with international standards of the legislation of Armenia". As they prepared their opinion, Venice Commission representatives held a series of meetings in Yerevan in mid-November 2011 to discuss the draft Law.

The Venice Commission's Opinion was discussed at its Plenary Session in Venice on 16 and 17 December, where it was approved. Participating in the discussion from Armenia was Military Prosecutor Kostanyan. The Opinion was published on 20 December 2011 (<http://www.venice.coe.int/docs/2011/CDL-AD%282011%29051-e.pdf>). It was handed to the Armenian representation to the Council of Europe the following day, the Venice Commission confirmed to Forum 18.

The Opinion noted, citing information it had received in Yerevan in November 2011, that no-one had applied for the military-controlled alternative service since 2005, which "indicates that the present system does not work effectively".

The Venice Commission also noted from its meetings in Yerevan that the draft Law had been prepared "long before" the July 2011 Bayatyan ECtHR ruling, and "further amendments must be made to address specifically the implications of the judgment".

### ***Alternative service "too long"***

Like the OSCE, the Venice Commission criticised the proposal to retain alternative service at 42 months. "The term for alternative service appears to be too long," the Opinion declared and called on the Armenian authorities to "reconsider the duration of alternative service".

Like the OSCE, the Venice Commission also expressed concern about the role and composition of the Republican Commission overseeing who would or would not be allowed to perform alternative service. It criticised the failure to define the Republican Commission's role and responsibilities. "As concerns the composition of the Republican Commission," it added, "the Venice Commission is of the view that the assessment of applications for alternative service based on conscientious objection should be under the control of civilian authorities, not under the control of the military."

As for the conditions of those conducting alternative service – which the Venice Commission insisted must be fully civilian – the Opinion expresses concern at the proposed requirement that individuals must be at their assigned place of work 24 hours a day, as well as the ban on alternative service individuals undertaking management jobs.

The Venice Commission lamented the lack of clarity over who would have operational supervision over those performing alternative service. "It has to be recalled that any form of control over alternative service should be of civilian nature," it declared, "and in order to alleviate any ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service."

Like the OSCE, the Venice Commission criticised the absence of the possibility for those already conscripted into military service who "realise that such service insurmountably

conflicts with their religious or other conscientious beliefs" to transfer to alternative service. "This prohibition conflicts with relevant international standards," it notes.

However, the Venice Commission welcomed the fact that the draft Law would ensure that those who complete alternative service would be issued with a military booklet, a "crucial document for civil life". "It is recommended that the military booklet state that its holder had been exempted from performing military service, but that no explicit mention be made of the reason for which this exemption had been granted."

### ***New proposals?***

Deputy Justice Minister Melikyan declined to tell Forum 18 what would happen to the 2011 draft Law now in parliament. He stressed that the executive cannot tell the legislature what it should do.

But he said the Working Group – one of whose members is from the Justice Ministry – is currently preparing a new version of the amendments to the Alternative Service Law. He declined to discuss the specific content of the amendments but insisted that "Armenia is going to comply with all the relevant European Court of Human Rights rulings and amend the Law to take account of them." He said he was unable to put a timescale on the work, but said it would be "systematic" and quick.

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## **The European Court renders two judgments further protecting the rights of conscientious objectors**

JW Official Website (12.01.2012) - On January 10, 2012, the European Court of Human Rights (ECHR) released two new judgments protecting the right of conscientious objectors in the cases of Bukharatyan v. Armenia and Tsaturyan v. Armenia, both involving Jehovah's Witnesses. These judgments come on the heels of the Bayatyan v. Armenia judgment announced by the Grand Chamber on July 7, 2011, which concluded, for the first time in the history of the ECHR, that the right to conscientious objection to military service is fully protected under Article 9 of the European Convention on Human Rights.

The two applicants, Hayk Bukharatyan and Ashot Tsaturyan, were sentenced in 2003 to two years of imprisonment by Armenian authorities for refusal to participate in military service, a personal decision motivated by their Bible-trained conscience. Armenia's punitive actions toward Mr. Bukharatyan and Mr. Tsaturyan took place despite its previous commitment to the Council of Europe, in January 2001, to institute a genuine civilian alternative service for conscientious objectors and, in the meantime, to pardon all those already convicted. Mr. Bukharatyan and Mr. Tsaturyan appealed their cases to the ECHR around the same time as Mr. Vahan Bayatyan, stating that their rights were violated under Article 9 of the European Convention. Relying on the Bayatyan judgment, the ECHR concluded that Armenia violated Article 9 of the European Convention when it convicted and imprisoned Mr. Bukharatyan and Mr. Tsaturyan for their conscientious objection to military service.

To date, Armenian authorities continue to ignore the ECHR directives and have recently imprisoned five more conscientious objectors. Shane Brady, the attorney who represents these young men, stated: "These two judgments come at the right time. We hope the Armenian authorities will now reconsider their position and release the 58 young men that are currently incarcerated as conscientious objectors."

**Bukharatyan v. Armenia: See judgment at**

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=898114&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

**Tsaturyan v. Armenia: See judgement at**

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=898116&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

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