



# Conscience and Peace Tax International

**Internacional de Conciencia e Impuestos para la Paz**

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**Submission to the 103rd Session of the Human Rights Committee: October 2011  
for the attention of the Country Report Task Force on  
ARMENIA**

**Conscientious objection to military service and related issues**

prepared August 2011

After considering the Initial Report of Armenia under the International Covenant on Civil and Political Rights, the Human Rights Committee regretted “the lack of legal provision for alternatives to military service in case of conscientious objection.” They also deplored “the conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against their family members.”<sup>1</sup>

As stated in Paragraph 436 of Armenia's Joint Second and Third Periodic Report a “Law on alternative service” was adopted on 12 December 2003,<sup>2</sup> following a commitment made on accession to the Council of Europe. The account given there is not however entirely accurate; the Law concerned has not been accepted by the Council of Europe as honouring the commitment made, which was to bring in a law “in compliance with European standards” Even after the amendments of 2004 and 2006 the alternative service offered is not of a clearly civilian nature, and the conditions, particularly the duration, are of a punitive nature. Further amendments under consideration at the time of writing do not remedy these shortcomings. Moreover, Armenia continues to imprison large numbers of conscientious objectors, overwhelmingly Jehovah's Witnesses, who refuse to perform both military service and the not genuinely civilian alternative.

This submission also touches on the implications for conscientious objection of the inclusion of compulsory military training in the school curriculum.

<sup>1</sup> CCPR/C/79/Add.100, 19<sup>th</sup> November, 1998, para 18

<sup>2</sup> CCPR/C/ARM/2-3, 22<sup>nd</sup> November, 2010, para 436.

## Background: Armenia's Commitments to the Council of Europe

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

The Parliamentary Assembly of the Council of Europe (CoE), in recommending the admission of Armenia to membership of the CoE, recorded:

“The Parliamentary Assembly takes note of the letters from the President of Armenia, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in the parliament, and notes that Armenia undertakes to honour the following commitments: ... to adopt, within three years of accession, 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.”<sup>3</sup>

Armenia duly acceded to CoE membership on 1<sup>st</sup> January 2001. A Law on Alternative Service was passed on 12<sup>th</sup> December 2003, and came into effect on 1<sup>st</sup> July 2004. The first 23 persons to enrol for alternative service in Armenia started their placements early in 2005. By the end of the year, however, all 23 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. 22 of the 23 were Jehovah's Witnesses, the other, Pavel Karavanov, was a Molokan, a member of a Russian protestant church founded in the 18<sup>th</sup> Century, whose members are known for their pacifism, and had been excused military service in imperial days. Karavanov remains the only non- Jehovah's Witness conscientious objector in Armenia to have come to CPTI's attention.

Despite Armenia's claim that the Law on Alternative Service fulfils its accession criteria to the Council of Europe, it is clear that this Law does not meet the requirement of complying with European or international standards, and it has not been accepted by the Council of Europe itself.

In a resolution passed on 23<sup>rd</sup> 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”.

The Law was also singled out for critical comment in a speech by the Secretary General of the Council of Europe at Yerevan State University on 5<sup>th</sup> 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."

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.

Meanwhile, the second part of the undertaking, namely to pardon all conscientious objectors, has never been implemented.

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3 PACE Opinion No.221 of 28<sup>th</sup> June, 2000, para 13.

## Shortcomings of the 2003 Alternative Service Act

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.

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 20<sup>th</sup> 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

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.

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

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. It will be recalled that in *Foin v France* the Human Rights Committee found that any discrepancy in length between military and alternative service must be justified in the individual case on “reasonable and objective criteria”<sup>4</sup>

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 were 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.

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4 Human Rights Committee, View on Communication 666/1995, ICCPR, A/55/40 vol II (3<sup>rd</sup> November 1999) 30 at para. 10.3

## Imprisonment of conscientious objectors

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.”

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.

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.”

Not only did Armenia fail to implement its undertaking to pardon those conscientious objectors who had been sentenced before it was admitted to the Council of Europe, it even continued to imprison those who refused military service while the Alternative Service Law was in preparation. Despite the wording of the undertaking no-one was allowed to postpone call-up in order to take advantage of the Alternative Service Law when it came into effect.

On 7<sup>th</sup> July 2011, the Grand Chamber of the European Court of Human Rights decided by a majority of 16 to 1 (only the Armenian judge dissenting) to overturn an earlier decision of the Court's Third Section and find that the imprisonment of Vahan Bayatyan, who had in April 2001 refused on grounds of conscience to perform military service while stating his willingness to perform alternative civilian service, was a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights and Fundamental Freedoms. Two applications with similar facts, filed early in 2004 (*Tsaturyan v. Armenia* and *Bukharatyan v. Armenia*) are believed to be still pending before the Court.

*Bayatyan v Armenia* was a landmark decision in the European jurisprudence, following a line similar to that taken by the Human Rights Committee in *Yoon & Choi v Republic of Korea* and *Yung et al v Republic of Korea*, namely that conscientious objection to military service was held to constitute a manifestation of religion or belief, and the State had not shown legitimate grounds for limiting this. (In the subsequent case of *Jeong et al v Republic of Korea* the Human Rights Committee has gone further, stating that conscientious objection to military service inheres in the freedom of thought conscience and religion.)

Crucially, the Court addressed the wording on the issue in Article 4 of the European Convention, almost identical to that in Article 8 of the ICCPR, and found that “the *Travaux préparatoires* confirm that the sole purpose of sub-paragraph (b) of Article 4 § 3 is to provide a further elucidation of the notion “forced or compulsory labour”. In itself it neither recognises nor excludes a right to conscientious objection and should therefore not have a delimiting effect on the rights guaranteed by Article 9.” (para 100) It noted that in state practice “at the material time there was already a virtually general consensus on the question in Europe and beyond.” (para 108). On this basis, “and in line with the “living instrument” approach,” the Court ruled unequivocally

“that ... Article 9 should no longer be read in conjunction with Article 4 § 3 (b).”(para 109).

This judgement did not however address some of the more egregious features of Bayatyan's situation; the fact that his sentence had been increased on appeal, partly on the grounds that “not only does [the applicant] not accept his guilt, but he does not regret having committed the crime” and “taking into account the nature, motives and degree of social danger of the crime”, and his allegation that the appeal proceedings were conducted in a manner designed to put pressure on him to change his religion. These complaints had been summarily dismissed at the admissibility stage. Nor, as the facts dated from before there was any alternative in Armenia to armed military service, does it directly address the shortcomings of the current situation of conscientious objectors in the country, although there is continuing relevance in the Court's comment that “respect on the part of the State towards the beliefs of a minority religious group like the applicant's by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society.” (para 126)

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.<sup>5</sup> The first group of conscientious objectors to abandon alternative service Since then the numbers of imprisonments have sharply increased. Moreover, the maximum sentence under Article 327.1 has been increased to 36 months. By May 2007, the Jehovah's Witnesses reported that 72 of their young men were imprisoned in Armenia, having refused both military service and the nominal civilian service.<sup>6</sup> The number imprisoned at any one time has subsequently remained more or less constant, sentences ranging from 12 months to 36 months. Full details have not been traced of those imprisoned in earlier years, but an appendix lists those known to have completed their sentences since September 2009, or still in detention at the time of writing.

The number of imprisoned conscientious objectors at any one time in Armenia is among the two or three highest totals to be found in any state in the world, and the sentences handed down are among the longest.

The Parliamentary Assembly of the Council of Europe, in its 2007 resolution, stated that: “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.” and urged the Armenian authorities “to pardon the young conscientious objectors currently serving prison sentences”.

Most recently, 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 report published on 9 May he called for the conscientious objectors to be freed from prison, and for a genuine civilian alternative service to be introduced.<sup>7</sup>

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5 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

6 Corley, F. “Armenia: 72 religious prisoners of conscience is a new record”, Forum 18 News Service ([www.forum18.org](http://www.forum18.org)), 2<sup>nd</sup> May 2007.

7 Corley, F. “Armenia:European Court finds conscientious objector was wrongly convicted and jailed, but what will government do?”, Forum 18 News Service ([www.f18news.org](http://www.f18news.org)), 7<sup>th</sup> July 2011.

### Continuing restrictions of civil rights

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.<sup>8</sup>

### Military training in schools

According to the Child Soldiers Global Report 2008,<sup>9</sup> 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. 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. In September 2005 Armenia ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, but it has yet to report to the Committee on the Rights of the Child under the Optional Protocol.

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<sup>8</sup> General Counsel of the Jehovah's Witnesses, 2005, op cit.

<sup>9</sup> Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008 (London, 2008), p51.

**Suggestion for the list of issues:**

**CPTI suggests that Armenia be asked:**

- a) how many conscientious objectors to military service have since the introduction of the 2003 Law on Alternative Service completed the 42 month “civilian” alternative service.**
- b) what steps it is taking to bring the Law on Alternative Service into compliance with international standards, in particular by ensuring it provides a truly civilian alternative all aspects of which are completely outside the control of the military authorities, and which is equivalent in duration and other conditions to military service.**
- c) what action Armenia is taking following the recommendation of the Council of Europe Commissioner on Human Rights in May and the European Court of Human Rights judgement in the case of *Bayatyan* in July to reconsider its policy of jailing conscientious objectors, to pardon those who have been convicted, and to ensure that they suffer no lasting impediments in obtaining official documentation.**
- d) whether weapons training remains part of the secondary school curriculum, as reported in the Child Soldiers Global Report 2008, and whether pupils may, on their own request or that of their parents, be excused this on grounds of conscientious objection.**