



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

The Right to Conscientious Objection in Europe: A Review of the Current Situation

Country Report: AZERBAIJAN

Conscription

Conscription is enshrined in Article 76 of the 1995 Constitution and is further regulated by the 1992 Law on the Armed Forces.

The length of military service is 18 months, and 12 months for university graduates.

All men between the ages of 18 and 35 are liable for military service. Young men are usually called up for medical examination at the age of 16, after which they are called up for military service at 18. There are four call-up periods per year.¹

According to the Law on the Armed Forces, reservist obligations apply during wartime up to the age of 50. During peacetime, men are not called up for reservist duties.²

Ever since 1988 Azerbaijan has been in an undeclared state of war with Armenia about the territory of Nagorny Karabakh. Nagorny Karabakh is on Azerbaijan territory, but it is claimed by Armenia. Since 1994 there is a ceasefire and Nagorny Karabakh is de facto independent, maintaining close contacts with Armenia. However, the situation has remained tense ever since and Azerbaijan conscripts may be deployed to serve in areas near Nagorny Karabakh.

Statistics

The armed forces comprise 67,000 troops. The number of conscripts is not known. Every year, approx. 80,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 76 of the 1995 Constitution. The Article reads (as amended in 2002): "If serving in the armed forces runs counter to a person's convictions, then active military service can be replaced by an alternative service done in the cases specified by law."

The wording of this Article was actually changed during a referendum that was held about the Constitution in 2002. Amongst several changes, Article 76 was changed as well. Previously, the Article read that military service could be replaced by alternative *military* service. The change in the wording at least allows for the option of an alternative civilian service outside the armed forces.³

The right to conscientious objection is also included in the 1992 Law on the Armed Forces. According to Article 2: "in the cases defined by law, citizens who cannot accept an active military service because of their beliefs or other reasons must serve 24 months' alternative service".

However, no further legislation on conscientious objection has ever been introduced. In 1991, when still part of the former Soviet Union, the Azerbaijan Parliament adopted a law on

¹ Until 2001, men could be called up for military service up to the age of 27.

² Netherlands Ministry of Foreign Affairs: Algemeen ambtsbericht Azerbaijan (country report), June 2004.

³ War Resisters' International (2003): The Right to Conscientious Objection to Military Service in selected member states of the Organisation for Security and Cooperation in Europe. Report to the OSCE Supplementary Meeting on Freedom of Religion or Belief 17-18 July 2003, Hofburg, Vienna.

alternative service, but this law was never officially published and it never applied. In 1998, a draft CO law was rejected by Parliament.

Both government and Parliament members have repeatedly taken the position that Azerbaijan cannot afford to introduce a substitute service for COs as long as the situation in Nagorny Karabakh is not resolved and adjacent Azerbaijan territory is not liberated.

Upon accession to the Council of Europe in 2000, Azerbaijan committed itself to introducing legislation on conscientious objection within two years: by January 2003.⁴ The government has failed to meet this deadline. Furthermore, the United Nations Human Rights Committee called upon the Azerbaijan government in 2001 "to ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination".⁵

In 2004, the Parliamentary Defence Committee was preparing a draft law on alternative service. Parliament was in fact supposed to discuss the draft law during the spring and summer of 2004, but it has failed to do so.⁶ By February 2005, it has become clear that the draft law has still not been finalized and very little progress has been made since the first reading of the draft law in the beginning of 2004. No specific date has been set when the law will be further discussed by Parliament.⁷

Meanwhile, in October 2004 the Parliamentary Assembly of the Council Europe adopted a resolution in which it (again) requested the Azerbaijani authorities to introduce an alternative to military service.⁸

Practice

Pending the introduction of a law on conscientious objection, the legal position of COs remains unclear. There is no application procedure whereby one can claim the right to conscientious objection and there is no possibility of performing substitute service.

Over the years, numerous COs have, for religious reasons, refused military service and have applied for an alternative service outside the armed forces. They are mostly members of the Jehovah's Witnesses and other religious organisations who forbid their members to bear arms.

Pending the introduction of a CO law, most of these religious COs are apparently not called up for military service. According to a spokesman of the Government Committee for Religious Structures in November 2002, approx. 2,000 religious COs had not been called up for service in previous years.⁹

According to the Azerbaijan Ombudsman in 2004, religious COs who refuse military service for reasons of conscience should state this to the military authorities. Consequently, they would usually not be called up for service.¹⁰

Nevertheless, the legal position of COs remains unclear. In 2002 the Azerbaijan authorities were actually preparing to start criminal proceedings against religious COs who had refused military service in previous years.¹¹ In 2002, the military authorities actually lodged criminal proceedings against two Jehovah's Witnesses who had refused military service. Their cases

⁴ Council of Europe, Parliamentary Assembly, Opinion No. 222 (2000), Azerbaijan's application for membership of the Council of Europe.

⁵ United Nations Human Rights Committee: Concluding observations on the periodic report of Azerbaijan (CCPR/CO/73/AZE), 2001.

⁶ 'Draft law on alternative military service under consideration', www.azernews.net 15 January 2004. 'Parliament News', www.azernews.net 13 May 2004.

⁷ Spokesman of the Azerbaijani Parliament, quoted in: Felix Corley: Jehovah's Witness seeks right to alternative service, Forum 18 News Service, 6 October 2004. Spokesman of the Azerbaijani Parliament, quoted in: Felix Corley: Supreme Court claims constitutional right doesn't exist, Forum 18 News Service, 10 February 2005.

⁸ Council of Europe, Parliamentary Assembly, Resolution 1398 (2004), Implementation of Recommendation 1358 (2004) on the functioning of democratic institutions of Azerbaijan, 5 October 2004.

⁹ Rafiq Aliyev (Head of the Government Committee for Religious Structures), quoted in: 'Azeri religious official says youths evading army on religious grounds', ANS TV, Baku, 2 November 2002 (BBC Monitoring Service). Aliyev was referring to members of the Jehovah's Witnesses, Hare Krishna and Protestant groups.

¹⁰ Corley (6 October 2004).

¹¹ ANS TV (2002).

were eventually dropped, which was apparently due to the constitutional changes made in 2002.¹²

In 2004 there is a new case of a Jehovah's Witness who is being prosecuted for refusing military service. Mahir Bagirov was called up for service in May 2004, but he refused and applied for a substitute service. He made an appeal against his call-up to Baku Khatai district court and to the Constitutional Court, but his appeal was rejected on both occasions. After that, he made an appeal to the Supreme Court. In February 2005, the Supreme Court turned down his appeal and ruled that the constitutional right to conscientious objection does not apply as long as no law on alternative service has been introduced. Consequently, Bagirov may now be arrested by the military and be forced to perform military service.¹³

There are no known cases of COs who have applied for an alternative service on non-religious grounds. As the Azerbaijan authorities have so far treated the issue of conscientious objection primarily in a religious context, it seems unlikely that their applications would be treated liberally. Consequently, the only way in which non-religious COs can avoid military service is by bribing draft officials or by evading call-up.

Draft evasion

Evading military service is punishable under Article 321 of the Criminal Code with up to 2 years' imprisonment during peacetime. Desertion is punishable under Article 334 with 3 to 7 years' imprisonment during peacetime. First time offenders may be freed from criminal liability. During wartime, higher sentences apply.¹⁴

Draft evasion is widespread in Azerbaijan. Military service is unpopular as the armed forces are known for their poor conditions and human rights violations. Since 1994 more than 5,000 soldiers have reportedly died from bullying, accidents, disease and malnutrition.¹⁵

Detailed figures on prosecution and imprisonment of draft evaders and deserters are hard to obtain. Available figures, however, suggest that draft evaders are prosecuted regularly. The Azerbaijan Ministry of Justice stated in 2002 that there were 2,611 draft evaders and deserters in prison.¹⁶ According to the UNHCR, draft evaders and deserters are prosecuted at random and proceedings often depend on individual commanders in charge.¹⁷

In 2000, the Parliamentary Assembly of the Council of Europe called upon the Azerbaijan government to "pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions".¹⁸

It remains unclear if the government has taken such steps. In recent years there are no known cases of Jehovah's Witnesses or members of other religious organisations being imprisoned for refusing military service. However, some of the draft evaders that have been prosecuted and imprisoned may be considered to be COs.

In fact, the Monitoring Committee of the Council of Europe stated in 2002 that "no available information enables the rapporteurs to believe that steps were taken towards the pardoning of conscientious objectors".¹⁹ In addition, according to a report issued by the Council of Europe in 2001, COs serve prison sentences or serve in disciplinary battalions.²⁰

¹² War Resisters' International (2003). International Helsinki Federation for Human Rights: Annual Report 2003.

¹³ Corley (10 February 2005) and Corley (6 October 2004).

¹⁴ UNHCR: International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees, Geneva, September 2003.

¹⁵ Human Rights Watch: Annual Report 2002.

¹⁶ International Helsinki Federation for Human Rights: Annual Report 2003.

¹⁷ UNHCR (2003).

¹⁸ Council of Europe, Parliamentary Assembly, Opinion No. 222 (2000), Azerbaijan's application for membership of the Council of Europe.

¹⁹ Council of Europe, Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Document 9545 Revised, 18 September 2002.

²⁰ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

NAGORNY KARABAKH

The self-proclaimed republic of Nagorny Karabakh is closely linked to Armenia and has its own armed forces, which are believed to comprise 18,000 troops. Nagorny Karabakh runs a conscription system.

In February 2002, a new conscription law was introduced. The law is believed to be similar to Armenia's conscription law. All men between the ages of 18 and 27 are liable for military service, which lasts for two years. During wartime or time of emergency, the Ministry of Defence may invoke total mobilization.²¹ Reservist obligations apply and reservists are called up periodically: 30 to 40 thousand reservists reportedly receive periodic training.²²

There are no legal provisions for conscientious objection and there are no possibilities of doing a substitute service outside the armed forces.²³

COs may be prosecuted for refusing military service, which is punishable under Article 327 of the Criminal Code. Nagorny Karabakh in fact adopted the new Criminal Code of Armenia of 2003.

Treatment of COs can be harsh, as is exemplified by the case of a Jehovah's Witness who was sentenced to four years' imprisonment in February 2005, even though he expressed his willingness to perform substitute service outside the armed forces. The sentence was particularly high because of a recent presidential decree extending the state of emergency until 1 January 2006.²⁴

In previous years, COs have also been sentenced to imprisonment. In 2001, three Jehovah's Witnesses were charged with "evasion of military development call-up". Shusvinsky District Court sentenced two of them to custodial sentences of 6 and 8 months, and one to a one year suspended sentence. The court did not take into account that two of them had serious health problems and that, having performed military service in the past, they were refusing only to attend a one-day military refresher course. Two of these COs were reportedly released at the end of the year.²⁵

According to the Minister of Defence, members of other religious groups who forbid their members to bear arms may sometimes be allowed to perform unarmed military service within the armed forces.²⁶

²¹ The length of military service was reportedly reduced in 2002 (Netherlands Ministry of Foreign Affairs 2004).

²² Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

²³ Netherlands Ministry of Foreign Affairs (2004). Defence Minister Ohanyan, quoted in: Felix Corley: "Inhuman" sentence on religious conscientious objector, Forum 18 News Service, 22 February 2005.

²⁴ Corley (22 February 2005).

²⁵ Amnesty International: Concerns in Europe January-June 2001 (EUR 01/003/2001).

²⁶ Corley (22 February 2005)