

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on freedom of religion or belief and Independent Expert on minority issues.

REFERENCE: AL G/SO 214 (56-23) Minorities (2005-4)
ARM 1/2012

18 October 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief and Independent Expert on minority issues pursuant to Human Rights Council resolutions 14/11 and 16/6.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **continued prosecution, conviction and imprisonment of Jehovah's Witnesses for their conscientious objection to military service.**

According to the information received:

There are more than 40 conscientious objectors in Armenian prisons. Since July 2011, further 29 conscientious objectors have been reportedly convicted and/or prosecuted. Seven of these criminal convictions have allegedly been upheld by the Cassation Court. The detainees are expected to serve 30 months in prison. The remaining 22 cases are pending in the lower courts. There is a fear that once their appeals be exhausted, they will also have to serve their sentences in prison.

The authorities have reportedly refused to release any conscientious objectors from prison in spite of Jehovah's Witnesses repeated requests and appeals. In February 2012, appeals were filed on behalf of 52 conscientious objectors with the domestic courts. The appeals requested the immediate release of the prisoners and the clearance of their criminal records, as per the Bayatyan v. Armenia judgment where the Grand Chamber of the European Court of Human Rights censured Armenia for prosecuting and convicting conscientious objectors (Bayatyan v. Armenia judgment No. 23459103). The Cassation Court allegedly rejected all the 52 appeals and most of the detainees remained in prison. As a

result, on 14 June 2012, applications were filed with the European Court of Human Rights in all 52 cases.

Additionally, there are at least 23 new conscientious objectors who had been called in 2012 to perform military service. On 7 May 2012, an application was submitted on their behalf to the Government of Armenia. The application requested that their call-up be postponed until amendments were made to the Law on Alternative Service to provide genuine alternative civilian service. However, the application was reportedly ignored and criminal prosecutions were launched in some of these cases.

The information received indicates that a Draft Law on Making Amendments and Supplements to the Law on Alternative Service, which would provide for an alternative civilian service, was submitted to the National Assembly on 15 March 2012. Reportedly, the Draft Law has not yet been considered by the Parliament.

We would like to recall that further to the *Bayatyan v. Armenia* judgment, the Grand Chamber of the European Court of Human Rights censured the Government of Armenia in the cases of *Bukharatyan v. Armenia* (judgment No. 37819103) and *Tsaturyan v. Armenia* (judgment No. 37821103, released on 10 January 2012).

We would also like to recall the alleged incidents relating to imprisonment of Jehovah's Witness for their conscientious objection to military service, addressed in earlier communications from the Special Rapporteur on freedom of religion or belief dated 3 April 2004 and 9 June 2005, as well as in a joint communication from the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Independent Expert on Minority Issues; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association dated 22 August 2011.

We take note that on 24 April 2012 the Government of Armenia submitted its Replies to the list of issues (CCPR/C/ARM/Q/2) raised by the United Nations Human Rights Committee (CCPR/C/ARM/2) in connection with the consideration of the second report of Armenia. The report stated that the number of Jehovah's Witnesses detained had decreased from 70 to 40 since 2011, and that amendments to the Criminal Code were planned, by which detainees could be released from criminal liability or punishment if they apply alternative service before 1 August 2012. There is a concern that the allegations described above may contradict the information contained in the replies submitted to the Human Rights Committee.

Serious concern was further expressed that Jehovah's Witnesses continue to be prosecuted, convicted and imprisoned for their conscientious objection to military service.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to provide clarification concerning the prosecution, conviction and imprisonment of Jehovah's Witnesses for their conscientious objection to military service.

We would also like to appeal your Excellency's Government to ensure freedom of religion or belief of Jehovah's Witnesses' conscientious objectors, in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights, which your country ratified on 23 June 1993.

In this connection, we would also like to draw the attention of your Excellency's Government to general comment 22 in which the Human Rights Committee has stated: "11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, in as much as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."

In this respect, we would like to underline that article 4.2 of the International Covenant on Civil and Political Rights, foresees that no derogation can be made from obligations under article 18, even "in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed".

In addition, the General Assembly, in its resolution 65/211, "urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practice freely one's religion, including the right to change one's religion or belief, is violated; (b) To ensure that existing legislation is not implemented in a discriminatory way or does not result in discrimination based on religion or belief, and that no one within their jurisdiction is deprived of the right to life, liberty or security of person

because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights; ” (resolution 65/211, para. 12).

We wish to draw the attention of your Excellency’s Government to international standards relevant to the protection and promotion of the rights of minorities. Article 27 of the ICCPR establishes that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” In this regard the unique features and requirements of each religious practice should be taken into account. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides in art. 1.1 that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Article 2 (1) states that "[p]ersons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination." Article 4.2. requires that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs.”

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of conscientious objectors are respected.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. Has new complaints been lodged on behalf of Jehovah’s Witnesses who have exerted their right to refuse to perform military service?
3. Please provide information concerning the legal grounds for the prosecution, conviction and imprisonment of Jehovah’s Witnesses for their conscientious objection to military service, and how these measures are compatible with international norms and standards.

4. Please provide information about the legal and administrative measures adopted to ensure that the rights of conscientious objectors to military services, including Jehovah's Witnesses, are fully respected, and that genuine alternative service is offered to them.
5. Please provide the number of Jehovah's Witnesses prosecuted, convicted, imprisoned, and call-up for military service in Armenia.
6. Please provide information about the current status in Parliament of the Draft Law on Making Amendments and Supplements to the Law on Alternative Service. Please provide information on how the Draft Law is compatible with international norms and standards. Please provide a copy of the Draft Law.
7. Please provide information on the measures taken to ensure the freedom of religion or belief and the rights of the religious minorities are protected.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Jehovah's Witnesses detained for refusing to perform military service are respected. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

IZSÁK Rita
Independent Expert on minority issues