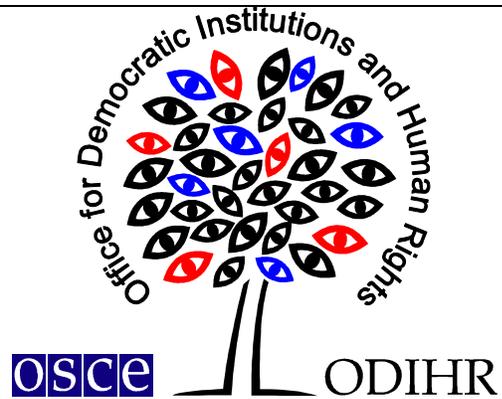


Warsaw, 8 September 2011

Opinion-Nr.: FOR-ARM/188/2011 (LH)

www.legislationline.org



OPINION

ON THE DRAFT LAW OF THE REPUBLIC OF ARMENIA ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE LAW ON ALTERNATIVE SERVICE

**Based on an unofficial English translation of the draft Law provided by the
OSCE Office in Yerevan**

*This Opinion has benefited from contributions made by the
OSCE/ODIHR Advisory Council on Freedom of Religion and Belief*

TABLE OF CONTENTS

- 1. INTRODUCTION**
- 2. SCOPE OF REVIEW**
- 3. EXECUTIVE SUMMARY**
- 4. ANALYSIS AND RECOMMENDATIONS**
 - 4.1 International Human Rights Standards on Conscientious Objection to Military Service**
 - 4.2 Analysis of the draft Law**

Annex 1: Draft Law of the Republic of Armenia on Making Amendments and Supplements to the Law on Alternative Service

1. INTRODUCTION

1. *On 11 July 2011, the Standing Committee on Defence, National Security and Internal Affairs of the National Assembly of the Republic of Armenia addressed the OSCE Office in Yerevan with a letter asking that the draft Law on Making Amendments and Supplements to the Law on Alternative Service be submitted to the OSCE/ODIHR for a legal assessment of its conformity with relevant international standards.*
2. *As per established procedure, the OSCE Office in Yerevan thereupon forwarded the said request to the OSCE/ODIHR, along with a translation into English language of the relevant documentation. This Opinion was prepared by the OSCE/ODIHR Legislative Support Unit together with the OSCE/ODIHR Advisory Council on Freedom of Religion and Belief, a consultative body of the OSCE/ODIHR with internationally acknowledged expertise in the field of freedom of religion or belief. The Opinion is presented in response to the above-mentioned request.*

2. SCOPE OF REVIEW

3. The scope of the Opinion covers only the above-mentioned *draft Law on Making Amendments and Supplements to the Law on Alternative Service* (hereinafter, “draft Law”) and, where necessary, the *Law on Alternative Service* itself. Thus limited, the Opinion does not constitute a full and comprehensive review of all framework legislation which may be relevant to regulating alternative service in the Republic of Armenia.
4. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international standards and good practices related to general human rights issues, as found in international agreements and commitments ratified and entered into by the Republic of Armenia.
5. This Opinion is based on an unofficial translation of the draft Law provided by the OSCE Office in Yerevan, which has been attached to this document as Annex 1. Errors from translation may result.
6. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to this or other legislation related to alternative service that the OSCE/ODIHR may make in the future.

3. EXECUTIVE SUMMARY

7. The draft Law contains amendments which would enhance the compliance of the current Law on Alternative Service with international standards on the right to conscientious objection to military service. In order to ensure the Law’s full conformity with international standards, it is recommended as follows:

3.1 Key Recommendations

- A. to ensure that the alternative labour service is not under military control [par. 14]
- B. to allow conscripted servicemen to seek a replacement of their military service with alternative service on grounds of conscientious objection [par. 16]
- C. to consider reducing the duration of alternative service [par. 17].

3.2 Additional Recommendations

- D. as regards the replacement of military service with alternative service or *vice-versa*, to consider introducing a scheme which would allow for the computation of the period of completed initial service into the term of the replacing service [pars. 15-16]
- E. to ensure that the Republican Commission which handles applications for alternative service is under civilian control [par. 18].

4. ANALYSIS AND RECOMMENDATIONS

4.1 International Human Rights Standards on Conscientious Objection to Military Service

8. As a component of the freedom of thought, conscience and religion, the right to conscientious objection to military service is safeguarded by a growing body of international law. Although not directly spelled out in the text of major international treaties such as the United Nations International Covenant on Civil and Political Rights (hereinafter, “ICCPR”)¹ or the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR)², this right has been expressly recognized by the monitoring and interpretative bodies of the respective treaties. Thus, the United Nations Human Rights Committee has authoritatively stated, with respect to the ICCPR, that,

“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 [ICCPR], inasmuch 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”.³

¹ Adopted by UN General Assembly resolution 2200A (XXI) on 16 December 1966, acceded to by the Republic of Armenia on 23 June 1993.

² Signed on 4 November 1950, entered into force on 3 September 1953, ratified by the Republic of Armenia on 26 April 2002.

³ Paragraph 11 of the U.N. Human Rights Committee, General Comment No. 22(48), adopted by the UN Human Rights Committee on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/ Rev.1 at 35 (1994).

9. Similarly, the Grand Chamber of the European Court of Human Rights (hereinafter, “ECtHR”) has stated in a recent judgment against Armenia that,

“opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9”.⁴

10. The ECtHR has further stated, in the same judgment, that,

“the imposition of a penalty on the [conscientious objector], in circumstances where no allowances were made for the exigencies of his conscience and beliefs, [cannot] be considered a measure necessary in a democratic society”, particularly “taking into account that there [exist] viable and effective alternatives capable of accommodating the competing interests, as demonstrated by the experience of the overwhelming majority of the European States”.⁵

11. The right to conscientious objection to military service is further reflected in many Resolutions and Recommendations of the Council of Europe Parliamentary Assembly⁶ and Committee of Ministers,⁷ in the Charter of Fundamental Rights of the European Union,⁸ as well as in OSCE documents.⁹

12. It has thus become firmly established that international law recognizes conscientious objection to military service as a characteristic expression of freedom of religion or belief. As such, it is considered a right that generates positive obligations on the part of state authorities – which must safeguard its efficient and effective exercise in practice and ensure that it is subject only to those limitations that are strictly necessary in a democratic society. A crucial element of the state’s respective positive obligations is the adoption of an adequate legal framework to guarantee the right to conscientious objection.

4.2 Analysis of the draft Law

13. The draft Law introduces a series of amendments to the Law on Alternative Service (adopted on 17 December 2003) with the stated aim of “reduc[ing] the number of complaints by beneficiaries, as well as increasing the law’s compliance with international standards in the area of regulation”.¹⁰ It can be stated from the outset that the amendments put forward, if adopted, will indeed enhance the law’s conformity with international standards on conscientious

⁴ *Bayatyan v. Armenia*, ECtHR GC Judgment of 7 July 2011 (Application no. 23459/03), para 110.

⁵ *Ibidem*, para 124.

⁶ See PACE Resolution 337 (1967) and PACE Recommendation 478(1967), Recommendation 816(1977), Recommendation 1518(2001) and Recommendation 1742(2006).

⁷ See CoE Committee of Ministers Recommendation no. R(87)8 and Recommendation CM/Rec(2010)4.

⁸ Article 10 of the Charter of Fundamental Rights of the European Union.

⁹ See paragraph 18 of the OSCE Copenhagen Document (1990), and pages 22-23 of the OSCE/ODIHR *Guidelines for Review of Legislation Pertaining to Religion of Belief* (2004).

¹⁰ Section 6 of the “Substantiation” note annexed to the draft Law on Making Amendments and Supplements to the Law on Alternative Service.

objection to military service. At the same time, as detailed below, several other issues will still need to be addressed before the Law on Alternative Service can be said to be fully in line with international standards.

14. Art. 1 of the draft Law proposes amendments to Art. 14 of the Law on Alternative Service which would seemingly remove the supervision by the public administration body authorized by the Government (presumably, the Ministry of Defence) over the performance of the alternative service. The supervision, or control, over the performance of the alternative *labour* service would be handed over to a “committee composed of representatives of the state bodies authorized by the Republic of Armenia Government (hereinafter, authorized bodies) in the sphere of defense, health, labour and social services”. These amendments are welcome in so far as they aim to ensure that the control over the alternative *labour* service – which would presumably be the choice of conscientious objectors to military service – will be exercised not by the military, but rather by a mixed committee which will comprise also representatives of civilian bodies. At the same time, the draft Law does not specify the composition and working modalities of this Committee, which is left to the “heads of authorized bodies” to decide by joint order. It is recommended that the composition and working procedures of the Committee provide for a practical and effective participation of the civilian element, so as to ensure that the alternative labour service does not continue to remain under military control. An effective detachment from military command and control shall help transform the alternative labour service into a genuinely civilian service that could be a feasible option for conscientious objectors.
15. Art. 2 of the draft Law proposes an amendment to Art. 15 of the Law on Alternative Service, which would enable alternative servicemen to apply for a replacement of the alternative service with the compulsory military service, at any time of their alternative service. This amendment would remove the six-month limitation, prescribed by the law currently in force, for lodging an application to replace alternative service with military service. Read in conjunction with Art. 15 par. 2 of the existing Law on Alternative Service, which provides that “the term for their alternative service shall not be included in the term for compulsory military service”, it means that a person nearing completion of the alternative service – which lasts 36 months in the case of alternative military service and 42 months in the case of alternative labour service¹¹ – who decides to switch to military service, would then have to complete a full military service term without any regard for the time spent in alternative service. This provision appears unduly harsh, and may indeed prevent some alternative servicemen from switching from alternative to military service, after the completion of a significant portion of their alternative service. It is recommended that a scheme be considered which would allow for the already completed alternative service time to be calculated into (i.e., deducted from) the term of the up-coming military service. Of course, the period of alternative service need not be computed on a par with that of the military service, but it should nonetheless be calculated through a formula which is proportionate and not excessive.
16. At the same time, it is strongly recommended that a similar option be offered to those conscripted servicemen who, while undergoing military service,

¹¹ See Art. 5 of the Law on Alternative Service.

realize that such service insurmountably conflicts with their deeply-held religious or other conscientious beliefs. The law currently in force prohibits the replacement of the military service with alternative service *after* conscription.¹² However, this prohibition conflicts with international standards, which provide that the right to conscientious objection should be exercisable at any time before, during or after conscription or performance of military service,¹³ given that persons performing military service, including professional members of the armed forces, may also *develop* conscientious objections.¹⁴ It is therefore recommended that the draft law also introduce an amendment which would enable conscripted servicemen to petition for a replacement of their commenced military service with alternative service. In the case of such a replacement, similarly to what was mentioned in the preceding paragraph, the term of the completed military service should be proportionately computed into (i.e., deducted from) the duration of the alternative service.

17. The duration of the alternative service in Armenia is also worthy of attention. The draft Law leaves un-amended the provisions of the Law on Alternative Service, which prescribe a term of 36 months for alternative military service and 42 months for alternative labour service.¹⁵ Considered in conjunction with the 2-year term of the regular military service in Armenia, and particularly in comparison with the length of alternative service in other democratic states, the 42-month term of the alternative labour service appears unnecessarily protracted and could even be perceived as punitive in duration. In this context, it bears recalling that the UN Human Rights Committee has called upon States to “ensure that the length of service alternative to military service does not have a punitive character”.¹⁶ It is therefore recommended that the Armenian authorities consider reducing the duration of alternative service.
18. Some questions remain concerning the Republican Commission which considers applications for alternative service. The text of the existing Law on Alternative Service does not specify the composition of this Commission, and only provides that its establishment, rules of procedure and composition shall be defined by the Government.¹⁷ According to international standards, the assessment of applications for alternative service based on conscientious objection should be under the control of civilian authorities, and not solely under the control of the Ministry of Defense or military authorities.¹⁸ Therefore, and if this is not already the case, the Republican Commission

¹² See Art. 3 par. 2 of the Law on Alternative Service.

¹³ UNCHR, Summary of cases transmitted to Governments and replies received, [E/CN.4/2006/5/Add.1](#), 27 March 2006, para 138, at page 36.

¹⁴ See Resolution 1995/83 and Resolution 1998/77 of the UN Commission on Human Rights; see also Recommendation CM/Rec(2010)4 of the Council of Europe Committee of Ministers.

¹⁵ See Art. 5 of the Law on Alternative Service.

¹⁶ [Concluding observations](#) adopted by the Human Rights Committee on 25 April 2005 (CCPR/CO/83/GRC) further to the initial periodic report submitted by Greece (CCPR/C/GRC/2004/1), paragraph 15. See also CCPR/CO/83/GRC at paragraph 15, cited by Special Rapporteur, UNCHR Summary of cases transmitted to Governments and replies received, [E/CN.4/2006/5/Add.1](#), 27 March 2006, at page 5.

¹⁷ See Art. 6 par. 3 of the Law on Alternative Service.

¹⁸ See [Concluding observations](#) adopted by the Human Rights Committee on 25 April 2005 (CCPR/CO/83/GRC) further to the initial periodic report submitted by Greece (CCPR/C/GRC/2004/1), paragraph 15.

OSCE/ODIHR Opinion on the draft Law of the Republic of Armenia on Making Amendments and Supplements to the Law on Alternative Service

handling applications for alternative service should be placed under civilian control, and this organizational set-up should ideally be reflected in the text of the Law.

[END OF TEXT]

Draft

K-1136-22.04.2011-PA-010/0

THE REPUBLIC OF ARMENIA LAW

on making Amendments and Supplements to the RA Law on Alternative Service

ARTICLE 1. In Article 14 section 1 of the Republic of Armenia Law on Alternative Service HO-6-N adopted on December 17, 2003, (hereafter, law):

- 1) To remove the phrase “the performance thereof shall be supervised”;
- 2) To insert new sentences with the following substance:

“Control of the process of alternative labor service is exercised by a committee composed of representatives of the state bodies authorized by the Republic of Armenia Government (hereafter, authorized bodies) in the sphere of defence, health, labor and social services. The Committee fulfills its activity by conducting visits at least four times a year to places where alternative labor service is performed, during which examinations take place regarding the conditions of undergoing alternative labor service in the places where alternative labor service is carried out, fulfillment of the requirements of this law, internal rules of the organization where alternative labor service is performed by its head and alternative labor serviceman. The Committee presents an opinion on the results of studies to the heads of authorized bodies. The composition of the Committee and work schedule shall be established by joint order of the heads of authorized bodies.”

ARTICLE 2. To read Article 15 section 1 of the Law as follows:

“Alternative service shall be replaced with compulsory military service if during alternative service the alternative serviceman submits an application to the head of the state body authorized by the Republic of Armenia in the area of defense.”

ARTICLE 3. To add “and they shall be given a military book” after the word “manner” in Article 16 section 8 and Article 17 section 6 of the Law.

ARTICLE 4. The present law comes into effect on the tenth day following its official promulgation.

SUBSTANTIATION

On adopting the Republic of Armenia Draft Law on Making Amendments and Supplements in the Republic of Armenia Law on Alternative Service

1. Necessity of adopting the legal act

The draft law was presented due to the necessity of implementing the requirements of point 38 of the 2010 Action Plan of the RA Government. Recommendations that have been made by international organizations and experts during recent years served as a basis for introducing this draft law.

2. Current situation and the issues

At the moment, no applications are submitted for alternative service and there are no alternative servicemen, as in the opinion of corresponding beneficiaries the law establishes military control, which is in contradiction to their religious beliefs. Issues for clarification have arisen in the law relating to the documents to be provided to alternative servicemen after completion of alternative service. The current law also envisages up to six months' limitation of the term for submitting an application for the replacement of alternative service with military service by an alternative serviceman, which restricts the latter's expression of free will.

3. Policy being implemented in this sphere

State policy in this sphere is aimed at ensuring the rights and interests of those citizens who wish to undergo alternative service, and at the same time, not neglecting the rights and legal interests of those who have completed and undergone mandatory military service.

4. Purpose of regulation and its substance

In the process of controlling the course of alternative service, the participation of civil element was ensured. It has been defined that control over alternative service shall be carried out in compliance with the joint order of the RA Ministers of Defense, Health and Labor and Social Issues by officials of the above mentioned bodies. It is also foreseen that during alternative service, as opposed to the current 6 months and the right defined only for an alternative military servant, an alternative serviceman, who submits an application for replacing alternative service with mandatory military service, shall be sent to continue mandatory military service. In order to make certain clarifications (which is not an innovation, however the absence of the provision has led to some speculations), it is envisaged that those undergoing alternative service shall receive the military book.

5. Institutes and persons involved in the development of the draft

The draft has been developed by the Legal Department of the RA Ministry of Defense. The following persons have participated in the development of the draft:

Sedrak Sedrakyan

Sasun Simonyan

6. Anticipated results

For the most part, adoption of the draft law will reduce the number of complaints by beneficiaries, as well as increasing the law's compliance with international standards in the area of regulation.

7. No further information is available.