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REPORT

ON THE IMPLEMENTATION OF THE RA LAW ON ARMENIAN NATIONALS NOT HAVING DONE COMPULSORY MILITARY SERVICE BY BREACHING THE ESTABLISHED PROCEDURE

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Introduction

a/ Methodology

On 17 December 2003 the RA National Assembly adopted a unique legal act, the *RA Law on Armenian Nationals not having Done Compulsory Military Service by Breaching the Established Procedure* (hereinafter: the Law), which was outright 'alien' to the current RA legal system. The RA legislative body considered the adoption of the Law as a necessity stemming from the interests of the State. Without going into overly lengthy detail about the necessity of the adoption of the Law, this report will focus primarily on the analysis of the problems related to its implementation. In particularly,

1. Examination of the implementation aspects of the Law and its legal controversies and gaps;
2. Detection of implementation hurdles and problems on the basis of individual cases;
3. Proposal of mechanisms for the solution of the discussed contradictions and the problems stemming from them.

In the framework of our study and research, meetings and interviews have been held with:

1. Staff of the Human Rights' Defender, with a view to examining the complaints related to the Law, as well as the office database;
2. Experts in the Standing Committee on Defence, National Security and Internal Affairs of the RA National Assembly with regard to questions about the travaux preparatoire as well as the purpose of the Law;
3. Human rights watchdogs, such as the Armenian Centre for the Protection of Human Rights after Sakharov with a view to examining the cases of protection of the rights of concrete individuals as well as violations of the Law recorded by them. The information provided by these organisations has largely shaped the cases that are the subject-matter of this report;
4. The state and legal department as well as the legal department of the RA Government staff, with a view to examining the process of adoption of the RA Government decisions on exemption or deferral for compulsory military service.
5. The legal department of the RA Ministry of Defence, with a view to examining the legal understanding of the Law and the steering orders and instructions related to its application in the defence agency;

6. The department for general offences in the RA General Prosecutor's Office, with a view to examining the discontinuance of criminal prosecutions against nationals not having done compulsory military service, as well as interrelations between the interagency commission and the prosecutor's office;
7. The Judiciary Department, with a view to examining the current judicial practice.

b/ Introduction of mediation's mechanisms

Thousands of Armenian nationals, who for various reasons have found themselves abroad have been reluctant to return to Armenia in the face of the threat of criminal liability. Evasion of military service has become a serious problem not only for them (due to non-acquisition of an RA passport or non-extension of its validity their status is quite unclear) but also for their family members who have thus been unable to fully exercise a number of their civil law rights (for example, the family member of conscription evaders would be unable to register with the Armenian consulate abroad; a conscription evader would also be barred from giving his consent at the time of issuing a birth certificate for his child or selling common property, etc).

Incapable of obtaining a residence permit, they have automatically become irregular migrants and have, consequently, been exposed to employment-related or other abuses. A special procedure had to be introduced in the RA legislation to make their "return" possible. This is the reason why the urgency and importance of the adoption of the Law became indisputable. It was also fully beneficial since the adoption of the Law implied payment of large fees.

The introduction of the elements of "mediation" has, for the first time in the Armenian legal practice, attempted to solve the problem of subjecting Armenian nationals having evaded compulsory military service between 1992 and 2004 to criminal liability by absolving them from criminal prosecution. The "mediation" has been widely applied in the criminal law practice of a number of developed countries. It is an agreement between the "criminal" and the prosecutor with a view to discontinuing the criminal prosecution which is usually validated by the court (sometimes with the involvement of independent intermediaries – mediators –).

In the context of the Law, the role of the court will be unsubstantial due to the fact that any possibility of the exercise of discretionary powers or adoption of alternative decisions by the prosecutor has come to nought. Therefore, there was no sense in foreseeing additional supervisory leverage. Furthermore, reconciliation, according to the Law, is achieved between the military service evader and the inter-agency commission with no participation of the prosecutor, while the problem of exemption from criminal prosecution is but its 'mechanical' corollary[1].

By opting for reconciliation, the person having evaded compulsory military service assumes an obligation to pay a certain amount of money to be exempt from criminal liability. The "fee" prescribed by the Law is a unique type of penalty, the payment of which makes it possible to discontinue the criminal proceedings against a person.

On the one hand, this bilateral agreement solves the problem of criminal prosecution of persons having evaded compulsory military service. On the other hand, as a result of the concluded agreement certain amount of money is to be deposited on a special account opened by the State to be subsequently used for defence needs. This mutually advantageous process is also meant to restore social justice and the principle of everyone's equality before the law, thereby making persons having evaded compulsory military service participate in the defence of the Republic of Armenia.

In sum, the analysis of the Law has allowed to single out the following prerequisites for its implementation:

- A person having evaded military service shall be a RA national. This question is clearly of utmost importance when the person acquires the nationality of another country before the age of 18.
- He has breached the procedure for being conscripted into compulsory military service in the period between the 1992 autumn conscription and 31 October 2007.
- In the above period he has attained the age of 27 (35 for reserve officers) or before attaining the age of 27 (35) there have been grounds for exempting him or deferral from compulsory military service laid down by the RA Law on Liability for Military Service.
- Manifestation of his will to the effect that the Law applies to him. It should be clarified the extent to which the timing of the manifestation of the conscription-evader's will is principled: is it

[1] It should nevertheless be noted that in the past there used to be instances when criminal prosecution against conscription evaders excluded from the personal scope of the Law, has been discontinued by the prosecutor's office due to a situational change.

possible that he manifests his will to come under the scope of the law after he is caught by law enforcers.

- Approval of submitted applications first by the interagency commission and later by the state commission. It is necessary to find out whether the powers of the interagency commission are limited to the confirmation of the fact or whether 'alternative' decisions may be adopted by way of voting. How possible and lawful is the manifestation of a biased attitude by the commission?
- Payment of the prescribed amount: attention should be paid to the alternatives for the deadlines and the manner of payment of fees.
- Discontinuance of the criminal prosecution: whether following the final approval of the state commission, the closure of the criminal case by the prosecutor's office is a "mechanical" process or whether, in case of a reasonable doubt as to the facts and circumstances of the case it is possible not to disregard the above decision and refuse to discontinue the criminal prosecution giving preference to further investigation.

1. Scope of Application of the Law

The Law regulates relations within a particular time-span (from the 1992 autumn conscription to 31 October 2007) with regard to persons having special status (persons not conscripted to military service (conscription evaders) and aged 27, or 35 in case of reserve officers, or with regard to Armenian nationals who before attaining 27(35) have obtained grounds for exemption or deferral from compulsory military service in conformity with the RA Law on Liability for Military Service).

A. Nature of the Obligation to be Conscripted into Provisional Military Service

Terms such as "*persons not conscripted into military service*', which, in brackets, is stressed as "*having evaded conscription"* as well as "*nationals not having done compulsory military service*" create scope for the defence agency to engage into overbroad interpretations of the scope of the Law on the basis of whether or not the given person has '*actually*' served in the army. According to the above agency, the regulation of the Law encompasses all the nationals of the country (past and present) who have not served in the RA military forces or have not been exempt or granted deferral from military service on the grounds prescribed by the Law. In other words, not doing military service is equal to its evasion irrespective of whether or not the person has been included in the military register, whether or not he has received a notification to present himself before the military commissariat, and whether or not he is an Armenian national.

For example:

A. V. *(born in 1981), whose parents were divorced, on the basis of his father's application dated 1996 was illegally removed from the register in Byurakan community by the head of community and, in view of the fact that he lived with his mother and did not have a permanent place of residence, was unable to re-register and, consequently, was not included in the military register.* ***A.V.****, in his unspecified status of homeless lived in different places without even having a passport. The fact is that as of today he has not done his military service. Neither have any criminal proceedings been instituted against him.*

In another case, ***B.S****. was included in the military register at the age of 16 in the military commissariat of Vardenis. However, due to unspecified reasons (as a result of losing his personal file or negligence or intention of an employee of the military commissariat) he has not been called up. Neither have criminal proceedings been instituted against him. After attaining 27,* ***B.S****. presented himself to the military commissariat and demanded his serviceman's card explaining that he had not received a notification to present himself to the military commissariat and has, for the whole period of time, been in the place where he was registered waiting for his conscription.*

The explanation of the defence agency in such cases is that in conformity with Article 46 of the RA Constitution, participation in the defence of the RA is all RA nationals' duty and that the latter

themselves should be proactive in performing this duty of theirs. In this sense, after reaching the age of 18 and before reaching 27 the RA national himself is under a duty to present himself to the military commissariat of his place of registration and check why he is not being called up. “Inaction” is in fact viewed as evasion of military service. Bodies implementing the Law are thus guided by the philosophy that it is first and foremost the citizen who should be concerned with due performance of his duties in a timely manner bearing in mind the negative consequences of their non-performance. In support of the approach adopted by the defence agency, it should be noted that the RA national is obliged to notify of a change of address which will enable the defence agency to perform its administrative functions.

On the other hand, the RA citizen’s duty to participate in the defence of the country is performed in the manner prescribed by law. In conformity with Article 11(6) of the RA Law on Liability for Military Service, *'following the announcement of conscription into compulsory military service all conscripts ... are obliged to present themselves to the military commissariat where they are registered in the period mentioned in the notification.*' A question arises as to whether the notification is the only document stipulating the duty to present oneself to the military commissariat.

It is necessary to verify for every single case the reasons why a person does not apply for registration, to take steps to rectify the situation (the lost file). In particular, if a conscript’s file has been lost due to negligence on the part of an employee of the military commissariat and he has not been conscripted, it is necessary to start disciplinary proceedings, as well as establish the *mens rea* of the conscript.

In order to partially avoid this kind of situations, military commissariats not only issue written notifications but make actual visits to the conscript’s place of registration to verify whether or not the person resides in the place in question, and, in case of his absence, try to find out his actual address. As a result, note is being made and attached to the conscript’s personal file.

The state body bears the main responsibility for ensuring due performance by any citizen of his duty to participate in the defence of the country. In case of shortcomings it is necessary to verify the *mens rea* in the actions of the conscript.

B. Impact of Personal Factors

The general rule is that an Armenian national not having done compulsory military service and having reached the age of 27 may pay 100 x the minimum salary for each evaded conscription as a result of which the criminal case instituted against him will be closed, he will be given a serviceman's card and be registered in the reserve.

Article 2 of the Law, which is entitled 'Rates of Mandatory Fees' establishes a taxonomy of persons 'benefiting' from the Law. The Law lays down inexplicable rates for each group to the extent of stipulating 0 payment if a person has 3 children.

- **Health Factor**

Paragraph 2(1) of the above Article *lays down a right to pay a fee in the amount of 30 x the minimum salary for nationals, who have not done compulsory military service and have subsequently obtained grounds for exemption from it, as well as nationals who have been recognised as unfit for military service by the state conscription commission due to health condition by being removed from the military register*. Of interest are the cases when the examination has been unable to reveal the time when the person first suffered from an illness – before or after the age of 18.

For example:

***D.A**., born on 6 May 1987 was attached to the military commissariat of Erebuni. In 2005 a notification was issued requiring that **D.A**. presented himself to the military commissariat. The notification was returned by post as nobody actually resided at the registered address. The military commissariat sent the conscript's file to the prosecutor's office of Erebuni and Noubarashen communities which instituted criminal proceedings against him on the basis of Article 327(1) of the RA Criminal Code. On 10 July 2007 **D.A.** was identified and arrested. He declared that he was suffering a condition - the first stage of epilepsy (in other words, frequent fits and express mental derangement) in which case the conscript must be declared unfit and his name must be removed from the register. The medical examination confirmed the fact of illness. In conformity with the above provision of the Law he was required to pay the fee for 5 evaded drafts for the criminal case against him to be closed. He refused to pay explaining that he had had this condition since early childhood and that this had made him subject to exemption from military service from the very start. It is not possible for the medical examination to establish when the condition had started – before 18 or after, since the illness has an incubation period and it is well possible for the symptoms to appear at a much later stage.*

The prosecutor's office insisted that in conformity with the well-known constitutional principle, the unproved suspicions are interpreted in favour of the defendant and in such cases the continuation of criminal proceedings is not permissible. It should however be noted that the fact that the person in

question had failed to present himself to the commissariat at the age of 18 and to notify the state body of his illness was ignored.

- **Academic (Educational) Factor**

a) Another ground for exemption from compulsory military service is the fact of having an academic degree (a scientific candidate's or a PhD) and being engaged in professional, scientific or academic activities. In this case, the conscription-evader will have to pay a fee in the amount of 50 x the minimum salary for each evaded conscription up until the award of his academic degree and engagement in professional, scientific or academic activities. It should be noted that there are practical hurdles to the implementation of this provisions due to lack of a unified understanding of academic degree and, for this reason, persons having evaded conscription are normally "forced" to pay 100 x the minimum salary, i.e. the entire amount of the fee.

b) Paragraph 4 of the above Article provides for the right to pay a fee in the amount of 150 x the minimum salary for those liable for military service that have not done and that have later been granted conscription deferral with a view to continue their studies. In other words, anyone having evaded the conscription may subsequently be admitted to a university and obtain deferral, which allows to pay the fee prescribed by the Law for the evaded years and be exempt from criminal liability.

Paragraph 14 of the RA Law on Liability for Military Service lays down an exhaustive list of persons who are entitled to deferral from military service with a view to continuing their studies. They are students in full-time programmes in state higher education establishments (including in clinical studies, internship and master's programmes), as well as full-time students in secondary vocational education establishments, government-sponsored full-time post-graduate students in state academic establishments, students in higher education establishments in foreign universities, those doing their clinical studies, internships or master's degrees as well as those auditing in judicial schools included in the RA Government lists.

It should, however, be noted that in practice it is impossible to imagine that conscription evaders have any chances to gain admission to the above universities given the fact that according to the RA legislation all male applicants are required to submit a copy of their serviceman's card or its temporary

replacement or else a letter from the military commissariat. Our report has demonstrated that in practice there is not a single case of the application of the above norm.

- **Family Situation**

a) Paragraph 5 of the above Article, consonant with Article 13 of the RA Law on Liability for Military Service, lists the grounds for granting deferral due to family situation (persons having a disabled mother or father who do not have another child who is either disabled or doing his military service, two children, a motherless child or a wife suffering from first or second-class disability, etc). Nationals who have evaded military service and have later obtained the above grounds may pay 30 x the minimum salary for each evaded conscription, be exempt from criminal liability and obtain deferral from military service up until the age of 27. However, the problematic aspect is the verification of the actual existence of grounds related to the family situation of a conscript before he reaches 27 when the said conscript resides outside the country. Currently, officials in charge of the process voice their concerns with regard to forged documents submitted in conformity with this provision and the absence of sufficient legal mechanisms for their checks.
b) The analysis of personal or family factors also reveals a concern with regard to illogical differences between rates of envisaged fees. The philosophy of the Law does not provide any explanation whatsoever to the fact of not envisaging any fee for exempting persons not having done compulsory military service and later having 3 or more children or 2 motherless children, as provided in paragraph 6 of the above Article.

- **Existence of an RA Government Decision;**

Of interest is the implementation of paragraphs 3 and 8 of Article 2 of the Law, which are related to persons not having done and later being exempt or granted leave from compulsory military service on the basis of Governmental decisions.

a) *Any national liable for military service may, prior to the adoption of the RA Government decision on exemption from military service, pay 50 x the minimum salary for each evaded conscription and be exempt from criminal liability***.**

This provision gives rise to numerous questions:

- Which criteria govern the RA Government in adopting decisions on exemption from compulsory military service?
- Is the fact that the RA Government, by its decision, exempts nationals who have evaded compulsory military service from it well-grounded and lawful?

In conformity with Article 12(c) of the RA Law on Liability for Military Service, the RA Government has a discretionary right to exempt certain nationals from compulsory military service. This norm of the Law does not, however, lay down any specific criteria or refer to any legal act containing such that must govern the Government in its decisions to exempt Armenian nationals from compulsory military service. And even the great multitude of like-worded decisions do not contain any grounds for exemption from compulsory military service.

For instance:

The RA Government Decision No 392 dated 7 May 2001
In conformity with Article 12(1)(c) of the RA Law on Liability for Military Service, the Government of the Republic of Armenia has decided:

1. To release A. P. from compulsory military service.
2. This Decision becomes effective on 7 May 2001.

Or:

The RA Government Decision No 249-A dated 13 March 2008
In conformity with Article 12(1)(c) of the RA Law on Liability for Military Service, the Government of the Republic of Armenia has decided:

To release D. K. from compulsory military service.

According to the current legislation the right to exemption from military service, which may also extend to persons having evaded military service, belongs exclusively to the RA Government. When exercising this right, the RA Government is not 'bound' by any other legal requirement and can even refuse to grant exemption from military service to another person with similar status.

b) No less controversial is the process of granting deferral from military service in accordance with the RA Government's decision and, thus, the implementation of Article 2(8) of the Law.

Nationals who have not done military service and who have been later granted conscription deferral on other grounds may, for each evaded conscription, be excused from criminal liability by paying 200 x the minimum salary.

The legal analysis of this provisions is directly related to the practice of application of Article 16(2) of the RA Law on Liability for Military Service. On the basis of this norm the RA Government has a right to grant conscription deferral to specific categories of nationals or individual nationals on the basis of individual decisions. There are no obstacles for either the exemption or extension entitlement from military service even if the given person has evaded military service.

Following the adoption of the RA Government Decision No 1394-N dated 20 August 2002 on Approving the Procedure for Conscription Deferral for the RA Nationals Admitted to Higher Education Establishments or Academic Institutions in Foreign Countries, an attempt has been made to regulate the process of obtaining deferral from military service by RA nationals studying in foreign universities. By this Decision, the RA Government must, without any exception, grant conscription deferral to students studying in foreign countries for the entire period of an academic programme, in condition if the students in question or their legal representatives conclude bail contracts with the authorised public administration body in the field of education with the property on bail costing not less than 8.5 million AMD.

The deferral is normally granted to persons under 27. And since nationals having completed their studies have to face the problem of military service on their return they tend to continue evading military service by not returning to Armenia. The current practice shows that nationals under this category return after having attained the age of 27. If they had attained 27 by 31 October 2007, they would naturally prefer to be absolved from both criminal liability and military service on a different ground by paying 100 x the minimum salary.

Another process that is shrouded in mist is that of granting leave from military service to students of religious establishments and their later exemption from military service. In conformity with the RA Government Decision No 15 dated 13 January 2000 only students of the religious lyceum of the Mother See of Holy Echmiadzin, Vazgen religious school of Ararat Patriarchal See and the religious school of Shirak See have a right to leave from compulsory military service, while students in other Armenian religious establishments or those abroad (especially in Saint James school in Jerusalem, etc)

and other religious servants have to take a deferral from or be exempt from military service by individual RA Government decisions[2]. As a result of similar gaps in our legislation it is well possible that some Armenian nationals may become infringers of the Law.

- **Dual Citizenship**

Nationals that have not done compulsory military service and have later obtained nationality of another country, if they have reached the age of 27 before 31 October 2007, may be absolved from criminal liability only after paying 100 x the minimum salary for each evaded conscription.

The applicability of this legal norm is connected with the problem of clearly defining a person's, especially, child's nationality.
According to the general rule laid down by the RA Law on Citizenship, children of up to 14 years acquire the nationality of their parents. In a similar vein, a child of up to 14 years born of parents who have lost the RA nationality loses it too if s/he acquires the nationality of another country. On the other hand, parents who are nationals of two different countries decide the nationality of their children of up to 14 years by their mutual consent.

One of the principles of the law on nationality is also giving due weight to the views of the child. The RA Law on Nationality lies down that 'if parents change their nationality, the nationality of children between 14 and 18 is changed only with the children's consent.' It should be noted that in some cases the defence agency has been guided by Article 3.1(2) of the RA Law on Liability for Military Service, according to which "an RA national having acquired the nationality of another country is not exempt from compulsory military service irrespective of whether or not he has served in another country" without taking into account when and at what age the person has acquired the nationality of another country, thereby breaching a number of provisions of the RA Law on Nationality. For example, a boy moved to Belarus together with his family at the age of 9. There the parents and their minor son acquired the Belarusian nationality having denounced the Armenian nationality. Despite this fact the defence agency has regarded him as an RA national and conscripted into the RA army.

[2] The RA Decisions N 1305-N dated 22 August 2002, N 2087-! Dated 26 December 2002, N 1021-N dated 14 August 2003, N 467-A dated 21 April 2005, etc.

There have also been cases when a person permanently residing in the RA is regarded as an RA citizen despite the fact that he is a subject of another country and has never applied to the Armenian authorities for acquiring RA nationality.

For example:

A.K., *born on 29 December 1981 in Kerch, Ukraine, has been an RF national since 7 November 1994 and was issued a new RF passport on 20 April 2000 by the RF Embassy in Armenia where he had been registered up until 2004. His mother –* ***S.K****. – has also been an RF citizen since 7 November 1994.*

In 1999 A.K. graduated from Yerevan Secondary School No 7 and was admitted to the World Economics Department of Yerevan Slavonic University. Following his graduation on 19 July 2004 he left for Ukraine to reside with his relatives, thus being removed from the records of the RF Embassy in Armenia. In September 2004 ***S.K****. received a notification from the military commissariat of Arabkir district in Yerevan in her son's name requiring that he presented himself to the territorial military commissariat.*

A.K*. was quite incomprehensibly registered in Arabkir territorial military commissariat in Yerevan on 8 April 1999 notwithstanding the fact that he was a national of the RF. His mother went to the military commissariat instead of her son and offered her explanations to the effect that her son was a national of the RF and that at the material time he resided in Ukraine.*

In response to the inquiry made by Arabkir military commissariat to the RA Police Passport and Visa Department, it was provided that ***A.K****. had never had an RA passport. Dissatisfied with all this, the RA military commissary by his letter No 2/2820 dated 2 June 2004 addressed the RA Military Prosecutor's Office to obtain legal explanation with regard to* ***A.K****.'s case. The RA Military Prosecutor's Office by his letter No 1363 dated 15 July 2004 informed that* ***A.K****., following the adoption of the RA Law on Nationality has permanently resided in Armenia, finished his secondary school and continued his education in a university. At the material time he resided in the city of Yerevan. In view of the aforementioned the military prosecutor's office deemed it purposeless to remove him from military registration due to the fact that he was an RA national.*

The mere fact that a person has permanently resided in the territory of Armenia does not make him an RA national. In the above case, the RA nationality was forced upon a person having permanently resided in the RA[3].

In another example:

A.P., *born on 21 March 1983 in Yerevan, has since 16 August 1993 been permanently registered with the Russian Embassy in the RA. On 2 March 2000 he was issued a Russian passport. His mother –* ***A.Z****. – is a Russian national and his father –* ***Kh. P****. – is an Armenian national. When in 1995 the RA adopted the Law on Nationality,* ***A.P.*** *was only 12 years old. He neither adopted the RA nationality nor acquired an RA passport. In such cases the question of the child's nationality should be decided by the parents' consent. Notwithstanding this, at the age of 17* ***A.P.*** *underwent medical examination in the territorial military commissariat and was declared fit for front-line service despite the fact that the relevant staff members had been notified that he was a national of the Russian Federation, a copy of his Russian passport being submitted. Note was made on his*

[3] In conformity with Article 10(2) of the RA Law on the RA Nationality, stateless persons permanently residing in the RA or nationals of other Republics of the former USSR that are not foreign citizens may acquire RA nationality if they apply for it before 31 December 2009.

personal file to the effect that he was a Russian national and the relevant staff members assured him that he would not be disturbed in the future. He, nevertheless, was subjected to the above medical examination.

However, since February 2005 ***A.P.*** *has constantly been contacted and disturbed by phone by the military registration department of the RA Arabkir district military commissariat, requiring that he presented himself to the conscript registration division of the military commissariat and underwent a medical examination. His mother notified the officials in question that her son was a Russian national and that according to Article 18(B) of the RF Law on Nationality (adopted in 1991) he may not be drafted in the territory of another country. On 8 February 2005 she also wrote to the RA Ministry of Defence, while on 17 February 2005 she wrote to the RA General Prosecutor's Office with a request to remove her son from the military register. In June 2005* ***A.P.*** *graduated from the Department of Information Science and Applied Mathematics of Yerevan Armenian-Russian University and did not appear for military service thereby being declared conscription-evader.*

Mention should be made of cases with regard to military registration and conscription of refugees in another example below.

E.M*. is a refugee born on 10 April 1988 in Kushchi hospital of Dashqesan region in Azerbaijan. As a result of the well-known events one of his parents was deported to Armenia on 15 April 1988 a few days after his birth and has resided in Bagratashen village in Armenia thereafter. Immediately after his forced migration his family was issued a refugee family certificate.* ***E.M****.'s birth certificate was issued by Shengavit CRO (civilian registry office) division in Yerevan.*

When ***E.M****. became 16 the RA Migration and Refugees Department (currently RA Migration Agency) issued him a certificate of refugee on 21 April 2005.*

In 2005 ***E.M****. was issued a notification on conscription by Noyemberyan military commissariat in the RA Tavoush region which stated that in conformity with the RA Law on Liability for Military Service* ***E.M****. must be conscripted. Therefore, it was proposed that he presented himself to Noyemberyan policlinics of his conscription district for medical examination.* ***E.M****.'s mother –* ***A.Sh****. – notified the military commissariat that her son had a refugee status and submitted the copies of the necessary documentation.*

However, the military commissar of Noyemberyan by his letter dated 8 February 2006 submitted an inquiry to the RA Migration Agency with regard to ***E.M's*** *status of. On 3 March 2006 the RA Migration Agency notified the military commissar that according to the data of the State Computer Center* ***E.M****. was not registered as refugee. At the same time, according to their interpretation, in conformity withy Article 12 of the RA Law on RA Nationality, E.M. was an RA national since he was born in the RA.*

Inquiries were made to the RA military commissariat which informed that ***E.M.****'s conscription case had been examined by them as well as by the Legal Department of the RA Ministry of Defence and the examination had revealed that '****E.M****. is an RA citizen (and liable for military service) since irrespective of his place of residence in April of 1988 he was issued a birth certificate of a national of the Armenian Soviet Socialist Republic and in conformity with Article 10(1) of the RA Law on Nationality he was recognized as RA national. He is also recognized as RA national in conformity with Article 11(3) and (4) of the same law. Therefore,* ***E.M.*** *is liable for military service in the RA armed forces.'*

*The RA Migration Agency responded that '****E.M****. is a person deported from Azerbaijan. He was not given a refugee status in the manner prescribed by the RA Law on Refugees. To be able to acquire a refugee status he had to submit an application to the Migration Agency of a prescribed form. At the same time, the Agency informed that the refugee status was given to persons who due to reasons envisaged by Article 1 of the RA Law on Refugees are unable to enjoy the protection of the state of their nationality or who not having nationality of any country cannot return to the country of their original permanent residence.'*

*It is ironic that the relevant state bodies did not take into account the fact that the document certifying the fact of **E.M**.'s birth is the one issued by Kushchi hospital of Dashqesan region in Azerbaijan dated 13 April 1988 and that the document certifying his refugee status is the one issued by the RA authorized body and that merely a birth certificate is not sufficient for declaring a person an Armenian national .*

*The RA Passport and Visa Department has informed that **E.M**. had not adopted Armenian nationality and had not been issued an RA passport.*

*Unquestionably, the acts of the territorial military commissariat to the effect of registering, drafting and subjecting **E.M.** to medical examination are illegal since they are not grounded in Article 46 of the RA Constitution, Article 3 of the RA Law on Liability for Military Service and Article 18(3) of the RA Law on Refugees and the First Instance Court of Tavoush region by its decision No 5-87-2007 dated 22 May 2007 granted **E.M**.'s request for invalidating the notification of his conscription. This decision was not appealed and became effective on 6 June 2007*[4].

The defence agency has to pay due attention to the facts related to young men having refugee status, children born of refugees, to the acquisition of the RA nationality by one of the parents, etc.

The approach taken by the defence agency with regard to **A.Kh'**s case is quite exemplary. T*he RA Ministry of Defence, in its statement No 679 dated 10 October 2007 noted that at the time when A.Kh. was issued a refugee certificate (in 2005) his parents had already had refugee status. Only his father had acquired the RA nationality before he reached 18 (in 2006). Furthermore, **A.Kh**. had never applied for RA nationality in line with Article 9(1) of the RA Law on RA Nationality and had never lost his refugee status in line with Article 20(a-f) of the RA Law on Refugees. Therefore, he is subject to being conscripted into the RA armed forces on a voluntary basis only.*

C. Peculiarities of the Applicability of the Law to Reserve Officers

There is growing concern about the practice of the implementation of this Law with regard to officers in the reserve that have not been conscripted into military service. In conformity with the last paragraph of Article 2 of the Law '*the reserve officers that have not been conscripted into compulsory military service (conscription evaders) but have attained the age of 35 may pay 200 x the minimum salary for each evaded draft while reserve officers that have attained 35 and have not been conscripted into compulsory military service (conscription evaders) on the grounds of exemption or leave from compulsory military service prescribed by the RA Law on Liability for Military Service may pay 100 x the minimum salary for each evaded draft before the exemption or obtaining the right to leave*.'

[4] Judgment No 5-87-2007 dated 22 May 2007 of the first instance court in the RA Tavoush region.

At present the military training of officers in the reserve is conducted only in Yerevan State Medical University after Mkh. Heratsi and following their graduation these students are declared reserve officers. As a rule, each year the RA President signs a decree in December and November declaring the conscription of officers of up to 35 years for a two-year service in the first group of reserve doctors. On the basis of this decree the RA Government defines the number of the medical group subject to conscription. In the period between 2000 and 2007 this group comprised approximately 60-85 doctors. It should be mentioned that after 2004 the RA Government decisions have no longer regulated the distribution of medical professions within the predetermined numbers, these powers being transferred to the RA Ministry of Defence. A question arises as to what criteria and how military commissariats take decisions on conscripted doctors within the numbers defined by the RA Government. Studies clearly demonstrate that the lack of legislative regulation of this process and the broad scope of subjectivism by military commissariats raise doubts with regard to the lawfulness of the practice.

Having graduated from Yerevan State Medical University after Mkh. Heratsi, ***R..S****. left for Russia to start his narrow specialisation programme (clinical studies) and, later, to find employment. However, when conscription was declared he was summoned before the military commissariat. He was subsequently included in the list of doctors subject to conscription within the envisaged numbers and as a result of his non-appearance criminal proceedings were instituted against him as a military service evader.*

The practice of military commissariats to arbitrarily declare certain doctors fit for conscription and dismiss other professions under similar circumstances raises a number of questions which beg for urgent solution.

2. Procedural Hurdles/Gaps in the Application of the Law

In conformity with Article 3 of the Law, '*Any citizen that has not done compulsory military service submits an application to the military commissariat where he is registered.*' The submission of the above application marks the start of the procedures regulated by the Law and other legal acts.

- It is first and foremost the inadequate regulation of the submission of applications envisaged by the Law and the RA Government decision No 264 dated 4 March 2004 that engenders red-tape. In particular, the Law does not propose a clear solution to the question of whether or not the representative of the person not having done compulsory military service is allowed, on the basis of a power of attorney or other lawful document certifying to the rights of the representative, to act on behalf of the latter. If yes, is s/he endowed with all the rights, including the submission of the application (with all enclosed documents)? Can s/he act as a representatives at all procedural stages? Can s/he pay the fee envisaged by the Law? Can s/he receive documents confirming the discontinuance of criminal proceedings and the serviceman's card. The Law contains no provision about the representative and, therefore, the application to the military commissariat of the place of registration must be submitted only by 'the national not having done compulsory military service.' Paragraph 2 of Annex 2 of the RA Government Decision No 264 makes an attempt to complement the above provision of the Law[5], '*in conformity with this procedure, the national or his lawful representative submits an application to the military commissariat where he is registered'*. It should be noted that the expression 'lawful representative' is added in the Annex. However, conscription-evaders are adults and do not normally have lawful representatives.

*In 1989 the citizen **H.V.** emigrated from Armenia and has ever since resided in Bulgaria. Having learnt about the adoption of the Law, he authorized his friend residing in Armenia to go to the military commissariat and verify the list of required documents and actions to be taken in accordance with the Law. All the required documents were duly submitted to the military commissariat by **H.V.**'s representative. The representative took every action envisaged by the Law, including the payment of the fee. However, the handover of **H.V.'s** serviceman's card to his representative was delayed for ill-founded reasons and finally refused in writing. The officials in both the Prosecutor's office and the Defence Ministry required that **H.V.** presented himself in person to receive the document. The representative's argument as to the fact that his power of attorney specifically mentioned his right to, among other things, receive **H.V.**'s serviceman's card was ignored and, use being made of one of the shortcomings of the Law, the handover of the card was denied due to his not being **H.V.**'s lawful representative, since in conformity with the RA Government*

[5] Is the procedure and timetable for submitting, discussing and responding to applications of citizens not having done compulsory military service.

Decision No 264 only 'the lawful representative', had a right to submit the application and to demand the above documents.

In the above example, the problem was resolved by a special instruction of the Defence Ministry. However, we believe that the expression 'lawful representative' was included in the legal norm in question with blatant disregard for the relevant articles of the RA Civil Code. It contradicts the logic of the Law, restricts the list of persons who may request a representative (and not a lawful representative) for procedures envisaged by the Law[6].

- There are too many procedural problems related to the timing of the consideration of applications and responding to citizens. In conformity with Article 4 of the Law, applications must be considered and responses provided within a month's period. Applications requiring additional examinations and checks must be considered and responses provided not later than two months. The monthly period for the consideration of applications is concerned also conforms with the timeframe envisaged by the RA Law on Administrative Proceedings and Basics of Administration. The real problem is the extent to which it is justified to add another month by the Law without even mentioning what acts or procedures this extra month is for.

  In order to eliminate the administrative red-tape, it would be more reasonable for the Law (the RA Government decision) to envisage norms on suspending the process, and consequently, the timeframes, so that it becomes possible to take the decision envisaged by the Law with the participation of the competent bodies and after finding out the facts envisaged by the legislative procedures.

  From this point of view, attention should be paid particularly to the legal status of persons who have returned to Armenia and submitted their applications but who have decided to exercise their right under Article 4(3) of the Law to appeal the response to their applications before the court and whose appeal has been delayed for months.

- From the standpoint of the procedural analysis of the Law, a question arises related to the institutes of 'return' and 'refusal' of applications, which are acts with varied legal consequences.

[6] In conformity with Article 33, 34 and 35 of the RA Civil Code, the lawful representative protects the interests of minors and incapacitated persons or those with limited capacity by the court which has nothing to do with the Law in question.

In conformity with paragraph 7 of Annex 2 of the Decision, '*in the event of a negative response to the application of the citizen, a letter of response is sent to the applicant stating the grounds for the refusal*.' Neither the Law nor any legal act regulating process lists the grounds for refusal. It is assumed that these may be the lack of the substantive grounds listed in Article 2 of the Law or 'documents certifying' the existence thereof. However, this analogy cannot be applied to the institute of 'returnability' of applications. The Law does not contain any specific provision which would clearly regulate the process of return of applications, particularly in terms of eliminating the shortcomings in documents within the set time-frame. At present the practice is as follows: applications submitted to the inter-agency commission by military commissariats together with all the necessary documentation undergo checks as to their completeness and validity before being included on the agenda of the commission. In case of shortcomings in applications, they are returned to the military commissariat directly by the chair of the inter-agency commission with a demand to eliminate these shortcomings. Since part of documents submitted by many citizens having evaded compulsory military service are forged, the bodies in charge of the process are allowed to propose that these documents undergo a preliminary graphological examination. However, at present there are no legal and practical mechanisms for such examinations.

Certainly, a number of questions arises with regard to this question:

a/ Is it not necessary to include all cases submitted to the inter-agency commission on the agenda of the commission?

b/ To what extent is it lawful to subject these cases to 'preliminary examinations' or 'observations'? Who is authorized to undertake such examinations and what is the procedure for their conduct?

c/ Does the inter-agency commission take well-reasoned and grounded decisions on the return of cases and why aren't these cases sent straight to applicants?

- In terms of the implementation of the Law, it is important to pay attention to the role of the state commission in the process of consideration of applications of nationals having evaded compulsory military service.

  In conformity with Annex 1 of the RA Government Decision No 264, the state commission is composed exclusively of persons in the highest state offices: the RA Minister of Defence (Chair

of the Commission); the Head of Staff of the RA Armed Forces, the First Deputy to the RA Minister of Defence (Deputy Chair of the Commission); the RA Minister of Health Care; the RA Minister of Education and Science; the Chief of the RA Police; the Head of the Administrative Bodies' Department of the RA Government Staff (Commission Secretary)[7].

The function of that commission is limited to the 'double' approval of all decisions adopted by the inter-agency commission or to returning cases to the same commission for 're-consideration' by making a note on the reasons in the minutes. It may not normally refuse an application. It seems to be a higher-instance body approving the decisions or acts of the inter-agency commission by simultaneously assuming the role of a unique 'safeguard.'

Several questions arise:

a. Is the state commission a superior body exercising oversight over the inter-agency commission?
b. What are the procedures for adopting the decisions of the state commission? Is there a specific procedure established by a concrete legal act guiding the commission in the process of consideration of the submitted applications?
c. What is the voting ratio for the adoption of the decisions of the state commission? If any of its members disagrees with the adopted decision, does s/he have a right to submit a special opinion or comments?
d. Can the decisions of the state commission be appealed by way of an administrative procedure? If yes, which body is competent to review these acts?

The information obtained following the conducted studies allows us to aver that the commission, as such, does not convene sessions. The minutes of sessions are normally written by the Ministry of Defence and 'formally' submitted for the signature of the commission members. There have been only 3-4 instances in the whole period of effectiveness of the Law of a case being sent to the inter-agency commission 'on behalf of' the state commission for re-consideration.

- The final and perhaps most important procedural stage is that of payment of fees prescribed by the Law.

In conformity with Article 5 of the Law, '*within ten days following the receipt of the response of the application, the fees envisaged by the Law must be paid through the banking system to the special account opened for that purpose*'. In conformity with paragraph 7 of the procedure

[7] In conformity with the RA Government Decision No 549-N dated 5 June 2008, the structural subdivisions of the RA Government have been reorganised, as a result of which the Administrative Bodies' Department of the RA Government Staff has been renamed into State and Legal Department.

established by the above decision of the Government, in case of a positive decision with regard to the national's application the applicant is sent a written response specifying the number of the bank account to which the payment must be made and the deadline for the payment. Specifying the deadline in the written response addressed to the national does not stem from the logic of the law, since the flow of time for making the payment starts from the moment the national not having done military service or his authorized representative receives the written response.

For example:
*A written response on behalf of the chair of the inter-agency commission was sent to the citizen **M.P**. on 8 December 2004 to the effect that his application with regard to the question of his registration status in conformity with the RA Law on Nationals not having Done Compulsory Military Service by Breaching the Established Procedure had been considered by the inter-agency commission and its decision approved by the state commission.*

'In conformity with Article 5 of the above Law, you have to pay the fee envisaged by the Law, which amounts to 330 000 AMD within a 10-day period to the ACCOUNT 9000018113010 OF YEREVAN LOCAL TREASURY UNIT/LTU/ No 1; TO BE RECEIVED BY THE RA MINISTRY OF DEFENCE (in the area of residence it is possible to make the payment to the territorial treasury).

*The receipt in 3 copies must be submitted to the inter-agency commission /5 Moscowyan Str., Yerevan/ **before 20 December 2004**.*

In case of non-payment of the fee in due time and non-submission of the receipt to the inter-agency commission, the payment will not be accepted'.

***M.P.** received the response on 18 December 2004 and did not manage to make the payment before the deadline mentioned in the response. The truth is that the calculation of the 10-day period had to start from 18 December of 2004.*

Included among procedural problems is also the provision envisaged by the same paragraph of the procedure, according to which '*in case of non-payment of the fee in due time the payment will not be accepted*.' In practice there have been cases when the payment has not been made due to mistakes with regard to the deadline or the bank account number in the written response, other circumstances that do not depend on the person making the payment or his representative, faulty bank transfers, etc. The legislation has failed to specify a single regulatory norm of a procedural nature enabling the restoration of the missed deadline or correction of any other mistake. A question arises as to who such applications must be addressed to – the military commissariat, the inter-agency commission, the state commission or the prosecutor's office?

In a number of cases the citizen has applied to the territorial commissariat, his case has been submitted to the inter-agency commission, a positive decision has been taken. However, he has failed to pay the fee within a 10-day time-period due to sudden financial difficulties or misunderstandings of the Law or the failure to prepare the relevant amount or simply negligence.

To resolve such problems it is recommended that the following options are adopted:

a/ Introduce some flexibility in this process, in particular by envisaging an extension of the deadline for paying the fee;

b/In case of the payment of part of the fee envisaged by the Law within 10 days, collect the remaining amount by installments;

3. Discontinuance of Criminal Prosecution

- **Applicability of Article 327 of the RA Criminal Code in the Context of the Law**

The primary purpose of the 'institute of reconciliation' was not the regulation of relations between conscription-evaders, the military commissariat, the inter-agency and the state commissions but addressing the question of criminal liability for the offence in Article 327 of the RA Criminal Code.

*In conformity with Article 327 of the RA Criminal Code***:**

1. Evading from the regular conscription into provisional military or alternative service, military training or mobilization, with no grounds for exemption from service established by the RA legislative procedure:

Is punishable by detention of up to 2 months or by imprisonment of up to 3 years.

2. The same act committed:

1) by causing a bodily injury or simulation of a disease;

2) by forging documentation or by fraud:

is punishable by detention of 1-3 months or by imprisonment of 1-5 years.

3. The act laid down in paragraphs 1 or 2 of this Article committed at the time of martial law, war or battle:

is punishable by imprisonment of 4-8 years.'

From the standpoint of the correct implementation of the Law, it is extremely important to introduce clarity in the link between the Law and Article 327 of the RA Criminal Code which is not 'elucidated' in the Law. The scope of the Law does not encompass cases of evasion of alternative service or military training but is limited to criminal cases instituted for the evasion of provisional compulsory military service.

It is necessary to find out whether the scope of the Law extends to cases in qualifying paragraphs 2 and 3 of Article 327 of the RA Criminal Code. The letter of the Law makes it clear that evasion of provisional compulsory military service must be understood by any means, including those listed in paragraph 2 of Article 327 of the RA Criminal Code (by causing a bodily injury, forged documentation, etc.). Therefore, the 'reconciliation' envisaged by the Law also extends to conscription evaders covered by the qualifying parts of Article 327 of the RA Criminal Code.

Evasion of conscription into military service is a continuing offence. It is deemed completed once the person is detained or gives himself up. One line of reasoning has it that in cases when the person does not give himself up or is not arrested, but grounds eliminating his duty to be conscripted into military

service have arisen, the offence stipulated in Article 327 of the RA Criminal Code is deemed completed. This question is important for calculating the period of limitation for subjecting him to criminal liability.

It is necessary to consider whether a conscription evader may manifest a desire to come within the scope of the Law after being 'caught' by law enforcers. The legal practitioners are not unanimous on this issue.

For example:

In conformity with the intergovernmental agreement on the Peaceful utilization of atomic energy signed between the RA and RF, ***A.P.*** *(born in 1979) left for Moscow in 2001 to start his post-graduate studies in the Russian scientific research institute for the exploitation of NPPs. The defence of his thesis was appointed on 29 June 2005 of which* ***A.P****. sent a written notification to his territorial military commissariat. On 29 November 2004 an ex-deputy minister of the Russian Ministry of Nuclear Energy sent a letter to the RA President requesting extension of* ***A.P's*** *leave. However, on 12 January 2005 the response of the RA Government's Staff was received to the effect that such an extension was possible only in line with the procedure in the RA Government's Decree No 1394-N by Concluding a Contract on Bail Securing the Fulfillment of an Obligation. Taking into consideration the fact that* ***A.P.,*** *through his mother, submitted the relevant documentation to the RA Ministry of Education and Science and from thence to the RA Ministry of Defence, which refused granting it, arguing that the education programme had been completed in November of 2004 and according to Article 14(4) of the RA Law on Liability for Military Service no leave is granted for the defence of a dissertation. The refusal of the RA Ministry of Defence was perhaps by mistake sent to another address and, as a result,* ***A.P*** *was not notified about this decision. On 8 April 2005 a decision was adopted to involve* ***A.P.*** *as a defendant on the basis of Article 327(1) of the RA Criminal Code and detention was chosen as a preventive measure against him by the first instance court of Malatya-Sebastya communities in Yerevan on 12 April 2005. His name appeared among those wanted. On 27 July 2005* ***A.P****. was identified.*

The NGO Armenian Human Rights Protection Center after Sakharov sent petitions to the RA Minister of Defence and the relevant military commissariat requesting to apply Article 2(2)(3) of the Law with regard to the above citizen. As a result of the positive conclusion of the Head of the Legal Department of the RA Ministry of Defence the Law was applied and after paying the amount envisaged for the evaded period his criminal case was closed*.*

In this case the person has manifested his will to be subject to the Law only after detention, something that has not been allowed in another scandalous case against the journalist Arman Babajanyan. Arman Babajanyan had evaded conscription by forging documents and only later, after the offence had been detected, manifested his will to come under the scope of the Law. However, his request was refused by the competent bodies and he was sentenced to imprisonment.

In legal practice the scope of the act of 'reconciliation' is perceived quite broadly by making it applicable even after the adoption of the final judicial act. In this sense, it should be noted that the Law

does not mention those conscription-evaders who had been at the stage of preliminary investigation, had been subjected to criminal liability, had been suffering their punishment or whose criminal records had not been removed by the time the Law entered into force. The problem of such persons must be mentioned in view of the well-known principle of criminal law, according to which a criminal law introducing favourable conditions is retroactive. In conformity with this principle with regard to conscription-evaders who, prior to the entry into force of the Law:

a/ have been at the stage of preliminary investigation, the criminal proceedings must be closed;

b/ have been subjected to criminal liability or have been suffering the punishment, must be released;

c/ have suffered the criminal punishment but whose criminal records have not expired or been removed, remove the criminal records and declare these person as non-convicted.

- **Distribution of Powers Between the Inter-agency Commission and the Prosecutor's Office**

In conformity with Article 6 of the Law, an Armenian national who by breaching the legislation has not been conscripted into compulsory military service and who has later attained the age of 27 or lawfully obtained any of the grounds for exemption or deferral from the military service must, within a month's time following the payment of the fee prescribed by the Law, be handed over the decision of the body in charge of the proceedings on the discontinuance of his criminal prosecution, as well as his serviceman's card and proof of his registration in the reserve.

The RA Government decision has laid down that the criminal prosecution of Armenian nationals not having done compulsory military service is discontinued in the manner prescribed by Article 35(1)(12) of the RA Criminal Procedures Code and Article 74 of the RA Criminal Code. Accordingly, one of the grounds for closure of a criminal case under Article 35(1)(12) of the RA Criminal Procedure Code states that an individual must be absolved from criminal liability if the general provisions of the RA Criminal Code apply, while Article 74 of the RA Criminal Code states that a person having committed a petty or a medium-level crime for the first time in their life may be absolved from criminal liability if it is established that due to changes of the situation this person or the act committed by him/her is no longer dangerous for the public.

In the context of the Law the grounds for the change in the situation are manifested in the following way:

'…In view of the fact that A.A. has fully paid the fee specified by the inter-agency commission in conformity with the RA Law on the Nationals not Having Done Compulsory Military Service by Breaching the Established Procedure and the RA Government Decision No 264-N dated 4 March 2004, the act committed by him has lost the danger for the general public. He is no longer dangerous to the public. Therefore, there has been a change in the situation ….'

To discontinue criminal prosecution of Armenian nationals not having done compulsory military service, the inter-agency commission sends the decision approved by the state commission and the receipt confirming the payment of the specified fee to the prosecutor of the relevant area. For law enforcement bodies the grounds for change in the situation is the fact of the full payment of the specified fee and the positive conclusion of the inter-agency commission on the discontinuance of the criminal prosecution.

The regional prosecutor, within one week, sends the decision on discontinuing the criminal prosecution of the Armenian national not having done compulsory military service to the relevant military commissariat. In fact, the closure of the criminal case by the prosecutor is a 'mechanical' process as a result of which a number of principles of criminal procedure law are violated. Normally, the process would have to be guided by the concept of attributing the whole responsibility and the solution of questions arising with respect to criminal prosecution to the prosecutor's office with the inter-agency commission merely submitting professional conclusions to the prosecutor's office[8]. In the course of our research we have not encountered a single case when the prosecutor's office had objected to the decision of either the inter-agency or state commissions by maintaining that they had been mistaken in their assessment of the circumstances of the case or choice of the fee rates, and, therefore, dismissed the request for discontinuance of criminal prosecution.

[8] The body bearing primary responsibility for criminal policy is the prosecutor's office and it is this body that must investigate and verify the existence of the grounds for discontinuing the criminal prosecution – change of the situation –which, in this particular instance is not the fee in the prescribed amount but the existence of the substantive grounds prescribed by the Law.

4. OPENNESS IN THE APPLICATION OF THE LAW AND ITS OVERSIGHT

The mechanisms for ensuring openness to and broad public oversight of the Law serve as an important safeguard for its lawful and effective application. Low level of openness in the application and public oversight of the Law can be explained by the following reasons:

a. Lack of public debate at the time of the adoption of the Law: the level of awareness among the general public both at the time of the debates around the draft Law, as well as its enactment and the processes launched by its entry into force.

b. Unclear relations between the bodies involved in the process: the legislative provisions related to the organisation and activities of the inter-agency and state commissions lay down certain 'formal' supervisory relations which, however, have nothing in common with the openness of the process. Even a cursory glance at the composition and internal procedures of commissions considering citizens' applications is sufficient to detect a total absence of public oversight over the process:

- There are no civil society representatives or NGOs among the entities considering and deciding upon citizens' applications;
- The decision-making process and procedure do not have any promise of openness;

c. Lack of reports on the spending of received amounts.

The processes whereby the criminal prosecution of Armenian nationals not having done compulsory military service is discontinued, or the amounts accumulated as a result of the payment of fees are spent, are left entirely outside parliamentary control. As a parenthetical aside, the NA Standing Committee for Defence, National Security and the Interior has made an inquiry with the RA Ministry of Defence on the progress and outcomes of the implementation of the Law (in particular, on how many conscription-evaders have requested that the Law is applied to them, how many of the requests have been satisfied and how many refused, how much money has been transferred to the special account opened for this purpose, how these amounts have been spent, etc.). Information provided by the Ministry of Defence contradicted the information received from the General Prosecutor's Office and did not contain any referral to how the special funding have been used.

There are no oversight mechanisms for tracking the amounts collected as a result of the payment of fees or their targeted usage. In conformity with the Decision No 594-N of the RA Government dated 11 May 2006 on the Procedure for Using the Amounts Paid by Armenian Nationals not Having Done Compulsory Military Service by Breaching the Established Procedure, these '*amounts are used to*

meet the needs of the RA Ministry of Defence in conformity with the formation and usage of the extra-budgetary resources of the RA Ministry of Defence in keeping with the legislation of the Republic of Armenia.' Failure by the relevant officials to provide any information on the amount and use of the fees prescribed by the Law undermines the openness of the process.

Conclusion

The RA Law on Armenian Nationals not Having Done Compulsory Military Service by Breaching the Established Procedure has introduced a compromise whereby state bodies and the Armenian national act as different parties to an agreement whose terms and conditions are defined by the State and whose signing requires an application by the Armenian national (manifestation of his will). The adoption and implementation of the Law as well as the outcomes of the process have proved that the attempt has been successful.

Following the detailed analysis of the Law and detection of its shortcomings, it is important to summarise our recommendations in the following points:

- Ensuring continuity in the process**:** the statement made by A. Tamazyan, Deputy Chief of the RA General Prosecutor has revealed that 23498 criminal cases have been instituted on the grounds of conscription evasion in the period between the 1992 autumn conscription and 31 October 2007 and that the Law has been applied to 1973 cases. Furthermore, the number of persons who had reached 27 by 31 October 2007 is 7401. This means that the Law does not apply to the remaining 16097 persons which explains the need to extend the temporal scope of the Law.
- Harmonisation of the RA Laws on Nationality, Refugees and Liability for Military Service: in particular, special attention must be paid to young people with refugee status, children born of refugees, the fact of one of the parents acquiring the Armenian nationality, of a parent of a minor acquiring the nationality of another country, etc.
- Review of the existing fee rates, in particular the inexplicable zero fee in cases when a person has 3 children;
- Ensuring interoperability between Article 327 of the RA Criminal Code and the Law; extension of the scope of the Law to the qualifying part of Article 327 of the RA Criminal Code;
- Introduction of conceptual changes in the process of discontinuance of criminal prosecution of Armenian nationals not having done compulsory military service which will lead to the enhanced role of the prosecutor's office. In particular, the "mediation" must take place between the prosecutor and "the accused person",' while the inter-agency commission must only

provide conclusions on the cases of Armenian nationals having evaded the conscription. The prosecutor must examine the applicability of the Law and oversee the calculation of the fee.

- Introduction of serious legal criteria and procedural regulation mechanisms for exempting as well as granting deferral from military service by the RA Government to specific categories of nationals.
- Special attention should be given to the process of conscription of reserve officers, in particular, limiting the scope for subjectivism by officials in charge with regard to deciding on the number of the doctors and on the distribution of medical professions within these limits, as well as the conscription processes.
- Ensuring clarity and simplicity in procedures securing the implementation of the Law: in particular, provide for a broad scope for the manifestation of the person's will, which will serve as a basis for the authorised body to extend the scope of the Law to the person in question. Representation of the interests of the principal on the basis of a power of the attorney in the entire process envisaged by the Law, including the possibility of receiving all the documents, and especially, the serviceman's card.
- Observing carefully the deadlines for consideration of applications: in particular, each case of the extension of the deadline and request for additional documentation must be approved exclusively by a well-grounded and lawful decision of the competent body.
- Clear definition of grounds for application of the institutes of suspension, refusal and return of applications.
- Foreseeing alternative ways for the payment of fees prescribed by the Law**:** extension of the deadline for payment, payment in installments:, as well as possibilities for partial payments.
- Improvement in the ways for administrative appeals and resolution of the responses and determination of the status of applicants in this period.
- Necessity for a unified approach in cases when the Law is applied after the person has been 'caught'. The practice has shown cases of contradictory decisions.
- Giving retroactivity to any favourable act of the Law.
- Introduction and development of mechanisms ensuring maximum openness in and sufficient public oversight over the implementation of the Law, in particular, over the consideration and resolution of applications. In particular, to involve NGO members in the inter-agency and state commissions, to ensure openness in the consideration and resolution of applications with the exception of special cases prescribed by the Law.

- Application of mechanisms of accountability with regard to the targeted spending of the amounts paid on the basis of the Law, in particular by ensuring parliamentary oversight over the process.