

- ARMENIAN REFUGEES SUPPORTING LEAGUE
- ARMENIAN CONSTITUTIONAL RIGHT PROTECTIVE CENTER

**MONITORING
OF IMPELEMENTATION OF RIGHTS OF REFUGEES IN RELATION TO
MILITARY CONSCRIPTION AND ARMY SERVICE
IN THE REPUBLIC OF ARMENIA**

R E P O R T

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THE MONITORING

The problem of refugee service in the armed forces of the Republic of Armenia has been tense virtually all along. In the earlier period, the issue was mostly an ethical one, but in recent years, after the Law on Refugees was adopted in 1999, it became a legislative concern.

Both before the adoption of the Law, when military conscription was carried out massively, at times using force and persecution of refugees, and after its adoption, when military conscription formally became a matter of voluntary service and violation cases sharply declined, we continue to receive information from refugees proving that there is still tension in this area.

We decided to scrutinize the facts of violation. In the light of protecting the rights of refugees in relation to military service, this report is the first paper as such in Armenia. It presents not only an overview of the monitoring, but also information on the relevant legislation of Armenia and fragments of interviews with refugees and relevant officials, which would illustrate the existing situation.

The Armenian Refugees Supporting League and the Armenian Constitutional Right Protective Center thank the following organizations and agencies for their support and cooperation in carrying out the monitoring:

- OSCE Office in Yerevan;
- OSCE/ODIHR in Warsaw;
- Polish Helsinki Foundation for Human Rights;
- Office of the UNHCR Representative in Armenia;
- The Military Prosecutor's Office of the Republic of Armenia;
- The Ministry of Defense of the Republic of Armenia;
- The Department for Migration and Refugees at the Government of the Republic of Armenia; and
- The Human Rights Commission to the President of the Republic of Armenia.

All the participants in the project, coming from the aforementioned two non-governmental organizations, have displayed a great sense of responsibility in the monitoring with the aspiration of human rights becoming a norm in the society and their protection facilitating the development of democracy in the Republic of Armenia.

Nina Baghdasaryan
Project Coordinator

INFORMATION ON REFUGEES LIVING IN THE REPUBLIC OF ARMENIA

The bulk of refugees in Armenia are ethnic Armenians who used to live in the neighboring Soviet Republic of Azerbaijan and were forcibly deported from there in 1988-1992 in connection with the Nagorno-Karabagh conflict. Over half a million of deported Armenians found shelter in various Republics of the Soviet Union: 360 thousand ended up in Armenia, the historical motherland of Armenians.

The settling of refugees in Armenia disastrously coincided with an extremely difficult period in the life of the country: a destructive earthquake, the break-up of the USSR, a transformation of the public system, an economic and energy crisis, unemployment, poverty, etc. In this critical situation, notwithstanding the efforts of governmental and international agencies, the refugees who did not have basic social and economic conditions for a living became the most vulnerable layer of the population.

The Government of Armenia proclaimed a policy of integration and naturalization of refugees from Azerbaijan. The reason is that even once the Karabakh conflict is resolved, refugees' return to their former places of residence is unrealistic.

Nevertheless, rapid naturalization was obstructed by certain problems connected with the slow pace of handling of social and economic problems affecting refugees in Armenia. Currently, over 100 thousand of refugees from Azerbaijan have left Armenia temporarily or permanently in search for a better living.

In pursuit of its integration and naturalization policy for refugees, the Armenian government adopted a decision on simplifying the procedure of granting Armenian citizenship to refugees from Azerbaijan. Currently, over 40 thousand refugees have adopted Armenian citizenship. Refugees residing in rural areas received land and livestock along with the local population.

The governmental body that tackles refugee related problems is the **Department for Migration and Refugees at the Government of the Republic of Armenia**.

Since 1993, after Armenia acceded to the 1951 UN Convention on the Status of Refugees and its 1967 Protocol, the Office of the UNHCR Representative in Armenia has been carrying out its programs of support to and housing for Armenian refugees.

The following legislation regulates the legal status of refugees in the Republic of Armenia:

1. *The Constitution of the Republic of Armenia* adopted in 1995, as the basic law of the Republic of Armenia defining the legal status of everybody in the country.
2. *The 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol*, to which Armenia acceded in 1993.
3. *The Republic of Armenia Law on the Legal Status of Foreign Citizens in the Republic of Armenia* adopted in 1994, which regulates the status of foreign citizens and persons without citizenship in the Republic of Armenia, such as refugees from Azerbaijan who are in the Republic of Armenia following the break-up of the Soviet Union.

4. *The Republic of Armenia Law on Citizenship in the Republic of Armenia* adopted in November of 1995, whereby Armenia encourages persons without citizenship to acquire citizenship of the Republic of Armenia.

5. *The Republic of Armenia Law on Refugees* adopted in March of 1999, which directly defines the procedure of granting refugee status and the refugee rights in the Republic of Armenia.

All of the aforementioned legislative acts are designated to protect the rights of refugees and other persons forcefully displaced to Armenia.

According to official data of the Ministry of Statistics, State Registry, and Analysis of the Republic of Armenia, 311 thousand registered refugees remained in Armenia as of January 1, 1998.

INTRODUCTION

Within the framework of the monitoring project “Implementation of Rights of Refugees in Relation to Military Conscription and Army Service in the Republic of Armenia” from August to November of 2001, the Armenian Refugees Supporting League and the Armenian Constitutional Right Protective Center with the support of the OSCE Office in Yerevan, OSCE/ODIHR and the Polish Helsinki Foundation for Human Rights, carried out a monitoring and document collection on facts of violation of the rights of refugees in connection with their military conscription to the armed forces of the Republic of Armenia.

The goal of the project is to facilitate the implementation of the rights of persons without Armenian citizenship in the Republic of Armenia, namely the rights of refugees in relation to their military conscription and army service in violation of the laws of the Republic of Armenia.

The implementation of the monitoring was important at the given stage of transition from a totalitarian regime to a democratic society, when democratic values, such as the enforcement of laws in a state, successively develop and strengthen.

Until 1999, military conscription of refugees to the armed forces of the Republic of Armenia (hereinafter, the RoA) for immediate service was regulated only by the Constitution of the RoA stipulating that the responsibility of army service is a prerogative of Armenian citizens. After the Law on Refugees was adopted, the issue was finally affirmed by law, while in reality, widely spread violation of the rights continued until the 2000 spring conscription.

The monitoring was based on information received by the NGO from refugees concerning violation of their rights in relation to their conscription for mandatory military service and the obvious inconsistency of the practice of forced military conscription of refugees in Armenia with the provisions of such basic acts of legislation of Armenia, which regulate the rights and responsibilities of foreign citizens and persons without citizenship in Armenia, namely refugees from Azerbaijan.

What has been the practice of military conscription of refugees and how have the provisions of relevant laws of Armenia been enforced in relation to refugees after the adoption of the Law on Refugees in 1999? These questions stimulated us to carry out a monitoring to analyze the international and national legislation on the rights of refugees in relation to military conscription, to review documents of military commissariats and the tools of conscription used by them, to compare them, to explore where relevant governmental and international organizations stand, and at the same time to survey and interview refugees and their close relatives.

We have collected cases containing facts of brutal violation of both the rights of refugees and the Armenian legislation concerning military conscription to the armed forces of the Republic of Armenia. An important pattern has been found: abuse by the officers of military commissariats is facilitated by the virtually complete legal unawareness of conscripted refugees and their parents. Over 80% of the respondents were absolutely unaware that army service is only a right, but not a responsibility for them.

Nevertheless, the majority of refugees **voluntarily** go to the army, having thought it out and filed and signed an application for voluntary service. The reasons are as follows:

- Families have traditionally brought up their children to treat army service as “a duty for each and every man”;
- The sense of responsibility towards Armenia as their motherland; and
- The sense of solidarity with peers, school fellows, or friends, who are citizens of the Republic of Armenia.

There is another category of conscripted refugees, who “have to” go to the army because of the following:

- An atmosphere of psychological pressure, as young refugees, when they are still in school, are **ascribed** to a conscription unit of the district, i.e., they are admitted to registration (this practice continues until today);
- Psychological pressure on refugees receiving a notification suggesting to appear to the military commissariat for military conscription;
- The sense of “law-obedience” of refugees that are unaware of their rights and responsibilities. The refugees who have reached the age of conscription and who receive such notification report to the military commissariat, where they “law-obediently” sign an application for voluntary service proposed to them by an officer (according to the survey, this category of refugees is absolutely unaware of the laws of the Republic of Armenia in this area, and therefore, unaware of the absence of any laws stipulating that they are obliged to serve in the Armenian army);
- The sense of “responsibility”. If the young refugees and their parents try to show some resistance, they are accused as “Armenians who have been given ownership of land and livestock” and are therefore morally obliged to serve in the army. As a result, the young refugees and their parents sign the application;
- The sense of fear. If the refugees and their parents insist on their resistance, local authorities and the staff of the military commissariats appear in their houses first to try to reach agreement, but then, to threaten to take away their livestock unless the son goes to the army and signs an application for voluntary military service.

During the monitoring, we did not manage to obtain written confirmation of cases of explicit violence, because the refugees that had already completed military service, as well as the parents of refugees still in the army refused to present any written or tape-recorded allegation on how they and their children had been subject to unlawful actions and the application of physical force or the use of the military police to deliver them to the assembly point. In their minds, they believe that this painful stage in their lives is already history, and that one should not “dig in the past.” The son has already finished the army service; new complaints will not do any good. They are afraid that it may work against them. As for the parents of refugees currently performing military service, they did not wish to present any written evidence either, as they were afraid it may negatively affect their son in the army.

MONITORING METHODS

While monitoring refugees to get a broader understanding of the situation in a number of regions of Armenia, we have searched and carried out selection, including interviewing and surveying of some refugees that have completed military service in the armed forces of the Republic of Armenia in the period from 1998 to 2001. Moreover, we have collected specific facts on cases of violation of law by forcefully conscripting refugees to the armed forces of the Republic of Armenia. The monitoring covered places in which refugees dwell in concentrated groups, including refugee hostels in the City of Yerevan and the Vardenis, Krasnoselsk, Martuni, and Kotayk regions of the Gegharkunik Marz of the Republic of Armenia. We have visited over 250 families of refugees, some of which (namely 75 individuals) agreed to give interviews and to provide case materials they possess. Facts and evidence on 8 cases of brutal violation of legislation were collected (the originals of documents are stored in archives). We interviewed refugees we have reached the age of conscription, their parents and neighbors. At the final stage of working on the project, we spoke with representatives of the Military Prosecutor's Office, the Ministry of Defense, district military commissariats, the Head of the Department for Migration and Refugees and the Protection Officer of the UNHCR representation in Armenia, to get an understanding of where they stand in relation to the matter. In addition to this, an inquiry was made with the Human Rights Commission to the President of the Republic of Armenia. One must note that all of the aforementioned agencies have been kind to us and have provided information possessed by their relevant organizations.

This Report also contains a legal opinion on the legislation of the Republic of Armenia and the compliance of national legislation with international norms. An attempt has been made to clarify what legal basis exists to conscript refugees to the army. The facts collected during the process have been subject to an overall sociological review.

The Report was prepared on the basis of materials and interviews, which were examined at meetings of the project participants.

The results of the monitoring concerning violation of refugees' rights in relation to forced military conscription will be submitted to international legal organizations, the OSCE Office in Yerevan, the Legal Affairs Committee of the National Assembly, the Government of Armenia, and other entities in order to protect the rights of refugees who do not wish to exercise their right to military service in the armed forces of the Republic of Armenia, as granted to them by the Law on Refugees.

CHAPTER I PROBLEM OVERVIEW

In the last decade of the 20-th century, Armenia received 360,000 Armenian refugees deported from Azerbaijan by force as a result of the Karabakh conflict. The period during which refugees adapted to the Republic of Armenia coincided with **warfare** in Armenia, as well as the period of **shaping the Armenian National Army**, when law-enforcement bodies were supporting the massive conscription of all those evading military service. Parallel to this, young refugees who have reached the conscription age would also be called up to the army under the argument that “refugees are ethnic Armenians, and therefore, they are *de facto* citizens of the Republic of Armenia” (as it is also stated in a booklet published by the UNHCR). Being under pressure, the bulk of such young refugees signed statements of voluntary consent to army service. To jump ahead, one must note that the state did not have any legal grounds to prosecute refugees for either skipping army service or being deserters (nevertheless, one case of such prosecution was found during the monitoring process, and facts thereof will be presented later in this Report), because they were not citizens of Armenia and did not have to go into the army, which allowed some parents to insist on the rights of their children and to protect them from arbitrariness, notwithstanding the moral and psychological pressure.

The process was particularly aggressive in the period when the legal status of refugees in the Republic of Armenia, i.e. their rights and responsibilities, were not defined under legislation. The absence of a law on refugees throughout 11 years of their stay in Armenia facilitated this situation; as a consequence, massive military conscription of refugees, on equal footings with Armenian citizens, was carried out on various levels all over Armenia by officials acting on the basis of an **oral instruction** from high-level military authorities. Thus, starting from 1991, i.e. the day Armenia established its independence, virtually all of the young refugees who have reached the conscription age, with rare exceptions, were conscripted to and served in the army.

One must note that during 2000-2001, the importance of this problem somewhat declined, because the young refugees partially got adapted to Armenia over the course of 10 years, and army service effectively became voluntary for many of them. However, this cannot be a criterion for judging that refugees’ rights in this matter are not violated. Dozens of parents of refugees are categorically against their children being conscripted to the army.

Having joined the 1951 UN Convention on the Status of Refugees in 1993, Armenia pledged to follow the international norms to protect rights of refugees and to develop its national legislation on refugees correspondingly. However, until recently, Armenia did not have legislation on refugees, which would define and regulate the relationship between refugees and the state: this kept refugees from attaining required legal protection in many areas of life.

The absence of a legal framework regulating the rights and responsibilities of refugees and the state would lead to an arbitrary interpretation of other pieces of legislation regarding refugees, and explicit arbitrariness in matters of army service (military commissariats would consider the existence of a permanent Armenian *propiska* in the Soviet passports as equal to Armenian citizenship, and a basis for

military conscription of refugees) allowed different agencies to speculate this matter for their interests.

The Law on Refugees adopted by the National Assembly on 3 March 1999 stipulated details related to this issue and became a basis for changing the “tradition” of massive military conscription of refugees. For the first time ever, Article 18 of the Law enshrined a general provision concerning **the right of refugees** to serve in the army of the Republic of Armenia **if they wish so**, without any reference to an obligation.

Nevertheless, the state automatically continues to assign refugees to army recruitment stations by means of delivering notification to such refugees, to conscript all the young refugees to the army, using their ignorance of the law, and to suggest or, if necessary, to force them to sign a statement on voluntary army service: this is a violation of the Constitution of the Republic of Armenia and the Law on Refugees.

CHAPTER II IMPLEMENTATION OF MONITORING

A. REVIEW OF LEGISLATION

“Everyone shall have the right to recognition everywhere
as a person before the law.”

(International Covenant on Civil and Political Rights)

In July 1995, the Constitution of the Republic of Armenia was adopted, enshrining in its Article 47 that “Every citizen must, in the manner established by law, take part in the defense of the Republic of Armenia”.

To compare terms, one must note that a number of other articles that refer to both citizens and persons with another status do not use the term “citizen”, and the text of Article 48 of the Constitution, for example, reads: “Every one must uphold the Constitution and the laws...”.

This provision is absolutely clear (because according to its Article 6 the Constitution is directly applicable and has superior legal force), which means that army service is not an obligation for persons who do not have Armenian citizenship, including refugees.

Nevertheless, the issue was not covered, notwithstanding that since 17 June 1994, a Law on the Legal Status of Foreign Citizens in the Republic of Armenia had been in place, Article 4 of which stipulated that the Law applies to foreign citizens and persons without citizenship, who are within the territory of the Republic of Armenia, unless the national legislation stipulates otherwise. If we also consider that back then, the legal status of refugees in Armenia had not yet been clearly defined, and that they were non-citizens of Armenia, one could claim that the provisions of the Law on the Legal Status of Foreign Citizens in the Republic of Armenia applied also to refugees as to persons without Armenian citizenship. According to Article 25 of the Law on the Rights and Responsibilities of Foreign Citizens in the Republic of Armenia, “foreign citizens do not have the obligation to serve in the armed forces of the Republic of Armenia.”

At the end of 1995, the Law on Citizenship of the Republic of Armenia was adopted, which defined foreign citizens as persons who do not have citizenship of the Republic of Armenia, but have citizenship of another state, while persons without citizenship were defined as persons that do not have citizenship of the Republic of Armenia and do not have proof of having citizenship of another country.

On 14 November 1998, a new Law on Military Duty was adopted in Armenia. Article 1 of the Law (“Subject-matter Regulated by the Law”) stipulates: “This Law regulates relations connected with military registration, training for military service, conscription, military service, and the organization and implementation of training for reserve citizens of the Republic of Armenia.” The text continues using the word “citizens” only. Moreover, the definition of the term “military servant” in Article 19

reads that “a military servant is a citizen performing state service in the armed and other forces...” Article 20 of the Law, concerning types of service, mentions in its paragraph 3 that “non-citizens of Armenia have the possibility of serving in the armed forces of Armenia on the basis of a contract on voluntary grounds”, i.e., on the basis of a written contract with the Ministry of Defense of the Republic of Armenia. Moreover, it should be noted that this Article also speaks of “citizens”. Paragraph 4 of Article 20 stipulates that military service of citizens of foreign states in the army of the Republic of Armenia shall be regulated by international treaties. Since the refugees were deported from a country, which is far from accession to such international treaties, and international standards on the status of refugees do not mention army service at all; therefore, this issue is not covered under the Law on Military Duty.

The question about mandatory army service was somewhat clarified when the Law on Refugees was adopted on March 27 of 1999. According to Article 18 of this Law, “a refugee **has the right** to serve in the Armed forces of the Republic of Armenia in the manner stipulated by law.” Therefore, this provision does not mention an obligation to serve in the army, but rather, a right and a prerogative. Moreover, the legislation of the Republic of Armenia does not regulate the procedure of voluntary service in the armed forces of the Republic of Armenia, the contracting, and the terms and conditions of such service. Notwithstanding the adoption of this Law and the aforementioned provision therein, refugees were still being conscripted to military service by force up until spring 2000 recruitment “according to an oral instruction by the Minister of Defense V. Sargsyan.”

To compare, we reviewed the Law of the Russian Federation on Refugees and the Law of the Russian Federation on the Legal Status of Foreign Citizens in the Russian Federation. The Russian Law on Refugees does not mention at all military service in the sections on either the rights or the responsibilities of refugees. The Russian Law on the Legal Status of Foreign Citizens in the Russian Federation defines a refugee as a foreign citizen recognized as a refugee in the Russian Federation, while Article 5 (“Relation to Military Service; Work in Military Sections and Institutions”) reads: “According to international treaties of the Russian Federation, foreign citizens, as well as persons with citizenship of a foreign state and citizenship of the Russian Federation shall not perform military service and shall not be recruited for employment in the armed forces of the Russian Federation, other forces, military units and agencies as civilian personnel, unless otherwise provided for in the international treaties of the Russian Federation”.

In general terms, the following set of fundamental documents of law defines the rights of refugees in the Republic of Armenia in relation to military service.

- According to the Constitution of the Republic of Armenia, which defines the legal status of all persons within its territory, only **citizens of Armenia** shall be conscripted to the military:

“Every citizen must, in the manner established by law, take part in the defense of the Republic of Armenia”.

Article 47

- according to the Republic of Armenia Law on the Legal Status of Foreign Citizens in the Republic of Armenia, foreign citizens are not bound to military service in the Armed forces of the Republic of Armenia:

A foreign citizen in the Republic of Armenia does not have obligation to serve in the armed forces of the Republic of Armenia.

Article 25

- the Republic of Armenia Law on Military Duty does not mention an obligation of refugees to serve in the army of the Republic of Armenia:

Military duty is the constitutional duty of citizens to take part in the defense of the Republic of Armenia.

Article 3

Citizens of other countries may serve in the armed forces of Armenia on the basis of a contract.

Article 20

- the Republic of Armenia Law on Refugees does not refer to such obligations of refugees, either; the general wording mentions the **right** of refugees to serve in the army of the Republic of Armenia if they desire so:

A refugee has the right to obtain citizenship of the Republic of Armenia, to serve in the armed forces of the Republic of Armenia in the manner stipulated by the legislation of the Republic of Armenia.

Article 18

Obviously, this whole set of basic laws contains provisions stating that military conscription, as a prerogative of the state, applies only to the citizens of the state and is an obligation for its citizens only.

B. ANALYSIS OF SURVEYS AND INTERVIEWS

Since this report proposes the thesis that in Armenia there are cases of violation of the Constitution of our country, we monitoring team carried out focused interviews with conscripted refugees (and their parents), representatives of the Ministry of Defense, the Military Prosecutor’s Office, all 4 of the regional military commissariats, the Head of the Department for Migration and Refugees, and the Protection Officer of the UNHCR representation in Armenia.

Surveys

The interviews were carried out in Yerevan and in the Vardenis and Chambarak (Krasnoselsk) regions of the Gegharkunik marz. Other information

obtained during conversations over the course of surveys expanded the geographic coverage of the survey, which encouraged us to add the Kotayk and Martuni regions to this process.

The interviews were recorded on dictaphones and/or simultaneously recorded on a questionnaire. In 8 of the cases, the respondents agreed to provide official and unofficial documents concerning what happened after they were conscripted to the National Army of the Republic of Armenia. This included press data, written requests by the parents of the refugees, notification lists, official replies to their complaints, and other documents.

However, when the survey was carried out, the interviewers came across major difficulties: the vast majority of the respondents provided only oral information and did not permit us to use their study in any form (openly or anonymously), stating that army service is now in their past, but may currently bring about some undesirable consequences. Some other got actively involved and told us about everything that had happened to them, but did not agree to officially participate in the survey (they did not want their surnames and stories to be quoted in any report or elsewhere). These stories have been presented in aggregated format, as per notes taken by interviewers.

Ultimately, a conditional group of 75 was selected out of 250; these 75 agreed to fill in questionnaires and to answer interviewers' questions. Since the project was not aimed at conducting a comprehensive and scientifically substantiated examination of the problem on national level resulting in corresponding calculations and quantitative characteristics, the focus was on studying the unique documentary materials and multilaterally and broadly interpreting the data obtained in the process, i.e. on a qualitative analysis of the existing information.

An initial review of the value of obtained data enabled us to define two main conditional groups of respondents and to underline the main factor underpinning the classification.

The first group included respondents who **did not know anything about “their right to voluntary service in the armed forces of the Republic of Armenia”** at the time of their conscription. The second group included those who knew about **about their right not to serve in the armed forces of Armenia” at the time of conscription. Those in the second group knew about their rights in relation to army service at the time of their conscription**

In general, the respondents in the first group had not made any attempts to avoid military service and had not resisted to the staff of the military commissariats. Most of them considered their service in the National Army lawful. When asked whether they knew of their right to not serve in the Armed forces of the Republic of Armenia, 80% of the respondents answered that they either did not know or learned about it only after completing the service. In this case, the rights of the refugees were flagrantly violated from the very first moment when refugees, who had not yet reached the conscription age, received army service notification as early as in school and were registered as persons eligible for military service. The young fellows would be taken into the army literally from their homes, workplaces, or from the airport. In one of the cases, the staff of the Vardenis Military Commissariat grabbed a 10-th grade student literally from beyond a school-desk (the case of refugee Pavel Karapetyan living in the Khachakhpyur village). This was done on the eve of school

graduation exams; therefore, Pavel was never able to finish school. Currently, Pavel Karapetyan is passing military service in an army section in the City of Meghri. The parents sent a letter to us, requesting our support in at least a one-month early release of their son from the army (he has already spent a year and a half there), so that he can manage to take graduation exams in June, two years after his class peers graduated.

In this group, the interviewer asked: “After conscription, was it suggested that you sign a request on your voluntary service in the National Army of the Republic of Armenia?” 17% answered that they did indeed sign a paper, but did not have the opportunity of reading it or learning about its contents, as they thought it is only a necessary fragment of the conscription procedure.

To illustrate the point, let us review several cases of refugee conscription into the army.

CASE 1: “Documents got on fire. Serve again!” This was the title of a press article on a refugee conscripted to the army, who is still in a difficult situation. We managed to find the “hero” of the article Nerses Nazaryan and to interview him. During our conversation, it became clear that in 1998, Nerses was detained in the Yerevan Airport and transferred to the Martuni region for military service, without any medical examination whatsoever. Nerses stated that as early as in the airport, he had to sign a request on voluntary service, because he was told that he is wanted by the authorities for evading military service, and that he has got no other choice: either army service or arrest, with a follow-up prison sentence. Fourteen days after Nazaryan was conscripted, he appeared in the military hospital; a week thereafter, he was qualified as “eligible for non-combatant service due to health concerns”, and was released home. He never received an army ticket. After six months, Nerses Nazaryan was called up from Yerevan (as he was actually living in Yerevan at the time) to the Martuni Military commissariat, where he was told that on November 21 of 1998, he was once again being conscripted to the Army, i.e., a second conscription. In response to his questions he was told that the reason for the second conscription was rather simple: unfortunately, Nerses’s army ticket had been burnt, and he would have to go into the army again. According to Nerses, they applied physical force (hit him on the face) to force him to sign the request on voluntary conscription again, and to appear in the military commissariat on a due date to be sent to a distribution unit. (This happened in November of 1998, before the Law on Refugees was adopted.) Nerses Nazaryan did not appear in the military commissariat on a due date. Nazaryan states that in 2000 he was notified of military conscription again. He did not go to the Martuni Military Commissariat. Nerses Nazaryan made an inquiry with the Migration and Refugee Department: “Do refugees have to serve in the army?” The head of the relevant division in the Refugee Department A. Harutyunyan answered that according to the Law, army service for refugees is voluntary. Nazaryan submitted this answer to the Martuni Military commissariat. He also made an inquiry with the Military Prosecutor’s Office. The officer that met him took a look at his passport (refugees that had not yet adopted citizenship had Soviet passports back then, which was used together with a birth certificate) and said that he is subject to conscription because the passport specified a “permanent registration” (in villages all the refugees have registration even though they are not citizens of Armenia). In August of 2001, Nazaryan had to hide with relatives for a whole week, because on August 25 of 2001,

as he told us, the officers of the military commissariat came to take him again. On November 13 and 14, Nazaryan himself appeared in the Martuni Military commissariat in order to clarify what happened with his army ticket. “I was told to write up a voluntary request for army service. Later, you will go to the army, we will release you in some months, and issue your army ticket.” Nerses has not yet submitted such a request; instead, he has decided to exercise his right not to serve.

CASE 2. The mother of Hayk Hayrapetyan, a refugee conscripted to the army, told us about how the military police detained her son in May of 2000 in the “Zvartnotz” airport, when he arrived in Yerevan from Volgograd. The mother protested, and the staff of the military police explained that Hayk was searched by the authorities. The son was released only after the mother agreed to pledge that she and her son would go to the military commissariat the next day. Hayrapetyan, who did not know of the legal provision concerning voluntary nature of service, would perhaps agree to take military service for two years if he had not had a serious disease that made him fly back home. After the family learned about the provisions of the Law on Refugees, they made written inquiries with various agencies, complaining about the unlawful conscription in their case. One must mention the uncertain written reply received from the Advisor to the President of Armenia, Chief Military Inspector D. G. Dalibalyan dated 19 June 2000, where he wrote that the refugee conscription issue was being looked into by Armenian lawmakers and that they would inform the family of any decision to be made.

The letter is dated 12 June 2000, i.e. one year and three months after the Law on Refugees had been adopted. Indeed, Dalibalyan’s answer arouses bewilderment about how such a high-level military official was not aware of the then-adopted Law on Refugees.

CASE 3. The Yefremyan family living in the Vardenis region (Geghamasar village) found itself in a difficult situation. On November 3 of 2000, on the basis of a notification from the military commissariat, Vitalik Yefremyan’s mother and father took their son to this office for army service.

The parents were very surprised when their son came back in three days. He told them that he got sent back as a refugee: at the Republican center where they assemble the young men, all the refugees were taken into a separate room, where they tried to convince the refugees to sign requests. After they refused to do so, they were all released, and nobody made sure that they got home (the center is in Yerevan, and the Geghamasar village is about 180 km away from Yerevan). Later, the Yefremyan family was visited by officers of the local military commissariat and a representative of the administration of the City of Vardenis. They were called to the Village Council, where their written consent to their son’s army service was requested. The parents refused.

The father’s story:

Question: Did they impose psychological pressure on you?

Answer: The Military Commissar himself and his deputy came to get my written consent to my son’s army service. “Look, you will regret later, but it will be late!” he said. I was not sure what he meant by saying “it will be late”.

Question: When else did they put pressure on you?

Answer: The first time was in the Military Commissariat, and then, in the village council.

The mother's story: *"I work in the village council, I am a charwoman there. I walked into the room and saw Yengoyan sitting. I asked him why he had called me in. He said it is about my child. He asked why my son did not go to the army. I said that I sent my son properly, but he got sent back. He said that I had to voluntarily sign a paper stating that my son was going to go to the army. I said that cannot happen, because I am not my son's enemy. If there is a procedure, and if there is a law, then they may take him. If not, let my son stay. He then added: "You got your own land, your own livestock, you have a house, now be careful not to lose it all!" I said: "Take it away if you can! It is my ownership, and I have ownership rights on it!"*

The issue is still pending. In April of 2001, Vitalik Yefremyan received a new notification calling him into the military commissariat for army duty.

All three of the aforementioned cases concerned refugees in the first group. To fill in the details, one must add some examples about cases when refugees and their parents, who found out either before or after conscription that army service for refugees is voluntary, still thought army service natural and inevitable. Here are some examples:

Slavik Sargsyan, father of a refugee currently serving in the army, Kakhaken village, Vardenis region

Slavik, how many sons do you have that have reached the conscription age?

One. And he is now in the army.

What year was your son conscripted?

In the fall, on 22 October 1999. He has been in the army for two years now.

Did you know your son did not have to go to the army?

No, I did not. He said that he will get done with it if he has to...

Did he know that he had the alternative of not going?

Who knew about it back then! There was nothing. They said that even if you are 30 years old, you still have to serve in the Armenian army.

When did you find out?

Well, just from some conversations. Back then, we did not know.

Weren't you told in the military commissariat that a refugee may wish not to go?

I have heard that no matter if you go or not, if it is necessary sooner or later you will have to go irrespective of the age.

Who said that?

They [the people out there] said so...

Did you submit or sign any paper for your son to go to the army voluntarily?

They sent us a notification, and so, he went.

Who brought the notification?

The chairman of the village council gave it to us.

Didn't he tell you that army service is voluntary?

What is “voluntary”? He said: “You got the paper, it means you have to go, that is the rule.”

When is your son coming back?

The service is over on October 22; he will come back when they let him.

Slavik, have you heard recently that if a refugee reaches conscription age and is called up to the army, he has the right not to go?

I have, people said so. But I also heard from people that even if one is married and has children, no matter where one is, one must “fulfill a duty” to Armenia, and then, one is free to go anywhere one wants.

Slavik, if you were told that your son may go voluntarily, would you allow him to do so?

Yes...

Here is another case:

Jasmine Georgiyevna Abagyan,
Artanish village of the Chambarak region.

They called him [my son] into the army with a notification, then they took him. I did not know that only citizens of Armenia must serve in the Armenian army, I did not know about these rules. If I had known, I would, just like any other mother, make use of these rules. You know, I would want him to serve in the army, but if there were an alternative... Well, he is already done with it... My brothers also served in the army: so, ...

The Law on Refugees states that a refugee has the right to serve in the armed forces. At the time of his conscription, did you know about the right to voluntary service?

No, I didn't. I knew that my son was 18 years old and had to go into the army. When a boy turns 18, he must go into the army.

And nobody told you anything?

No, they did not. I recently heard that there are rules like that, but... We have a neighbor in the village, whose son must also go to the army. She told me about these rights of refugees, and that refugees do not have to serve. My two sons have already done it, so... If not my children, someone else would still have to serve. What can you do about it, this is fate. Like always, they sent a notification telling him to go to the military commissariat. They properly took my sons; both of my sons properly served in the army, and came back healthy and alive.

When were they in the army? When were they conscripted?

April 22 of 1999. He came back from the army in June of 2001. I have a younger one that recently said: “Even if refugees did not have the right to go into the army, I would still go into the army voluntarily. If you are a man, you must serve in the army.”

To summarize case materials, some of them mentioned that refugees went into the Armed forces of Armenia regardless of their awareness of their rights. In these cases, the decisions of the refugees and their parents were motivated by the following:

“Army service is a manly task, and every young man should go through it to become a real man.”

The second group comprised refugees **who knew their rights at the time of conscription**. A detailed and thorough analysis of their cases helped us understand the general pattern and exceptions to it, to understand the general logic and the pattern of behavior of refugees and their family members, as well as of the staff of military commissariats and other related authorities.

One can claim with certainty that the behavior of the military officers pre-determines a number of factors affecting the behavior of young refugees and their family members. We know only one case in which an officer of the military commissariat gave advance notice to the father of a young refugee of his right, as a refugee, to not serve in the armed forces of Armenia, or the right to serve voluntarily. Here is a fragment of our conversation with the father of Suren Verdyan, Sevan Verdyan of the Kakhaken village of the Vardenis region:

Sevan, how many sons do you have that are older than Suren?

One of them is older than Suren.

When was the younger one taken into the army?

In November of 2000.

Who told you about these rights?

Araik Safaryan.

I.e., an officer of the military commissariat told you that a refugee has the right to serve on voluntary basis and you sent your son into the army voluntarily?

That's right.

So actually, they did inform you.

Yes, they did.

Did you know anything before that?

No, I did not.

What year was this?

November of 2000.

In November of 2000, you were told that you may send your son into the army voluntarily. Did you write a request?

Yes, I personally wrote it, and I personally sent my son into the army.

Were you forced, or did you write on your own good will?

I wrote it, and I got my son to go.

You might have as well kept him home.

Two of them had done it, so I thought, why shouldn't this one do it? I thought he should also do it, to avoid becoming retarded.

This case could be considered unique, and actually, the only one of that kind, because none of the cases showed any sign of officials and military authorities taking their own initiative to inform refugees about the law. Running a few steps forward, we should note that in their interview with our organization employees of the Ministry of Defense claimed with absolute certainty that conscription age refugees were always notified of their rights. We believe this should be questioned.

If to set aside cases when refugees - knowing or not knowing the legislation of Armenia concerning refugee conscription to the armed forces - voluntarily went to the Armenian army, then in all the other cases the refugees were subject to strong pressure from both the military commissariats and the local administration, as the latter was also involved in the process.

As a result of this pressure, refugees that have reached the conscription age were left with two options to solve the problem:

1. forced conscription into the armed forces of Armenia, or
2. psychological resistance to the officers of the military commissariats.

According to the questionnaires of the 28 respondents in the second group, 13 of them tried to protect their rights and wrote to the Ministry of Defense, the General Headquarters and the Military Prosecutor's Office. Seven individuals submitted complaints to the UNHCR representative office in Armenia. The materials we gathered show that the refugees that managed to exercise their rights later informed their neighbors and relatives of the same, helping them out in similar situations.

Here are two other examples.

CASE 1: Suren Tzapovyan, Kakhaken village, Vardenis region

The story is based on the materials of interviews with:

- 1) village peers of Suren, 2) the father of Suren's friend, and 3) Suren himself.

The father left the family, but was officially not divorced; then, he died. They do not have either a house or land. The mother is a second degree disabled; and the brother is a third degree disabled since childhood. The first notification was received in April of 2001, but Suren did not go to the military commissariat. The second notification came in on June 15 of 2001, telling him to appear in the military commissariat on June 17 for army service. On June 15, Suren passed a medical examination. On the 17-th of June, he went there and refused to go to the army. At first, he had to prove that he has the right not to go to the army, because he had disabled people in his family, and that he was the only one capable of work, and if he goes to the army, nobody will be taking care of the disabled family members. He was also afraid that his mentally ill brother, who beats up their mother when he bursts in anger, might as well kill her. Then, they required that he present a paper certifying his father's death. He was not able to submit it, because he did not know where the father had been after the unofficial divorce and where he had died. The military office did not let Suren have the documents, including the mother's and Suren's passports; they said they would not give the documents unless he agreed to go to the army. The neighbors and the father of Suren's friend helped him protect his rights as a refugee. They insisted that the head of the conscription division of the Vardenis military commissariat let him read the paper stating that refugees may serve voluntarily, while previously the officers of the military commissariat were insisting that Suren was being fooled and that a document like the one described never existed. Before Suren was notified of military duty, he already knew of his right not to go to the army, because two days before that, he had learnt about it during an accidental conversation with other refugees while in Yerevan. For a whole month, he had to pay for transport to get to the military commissariat to prove that he had the right not to go to the army

as a refugee. Suren decided to stand up for his rights, because he was positive that refugees do not have army duty. He personally walked into the Military Commissar's room and asked for the documents back. At home, they were being visited by the officers of the military commissariat and the village council, who were putting pressure on and shouting at him. Nevertheless, Suren managed to protect his rights. The military commissar told him: "I wanted to fool you, but I couldn't." Afterwards, the officers of the military commissariat told him that if he wishes to move to Russia, for example, he will have to adopt citizenship, get a new passport and then move there. But first he has to do his army service. They also said that "army is for men." Suren answered that the army is for men, but his family is more important for him and that he does not want to receive citizenship. He was afraid that in November, he would get another notification calling him up to the army, so he proposed to leave a letter with them, stating that he refuses voluntary army service. However, the military commissariat left the issue open.

CASE 2: Vanya Eduardovich Zalyan, born in 1984. The following story is taken from the father's written testimony.

"In 2000, when my son Vanya Zalyan was a 9-th grade student in school number 167, he was called to the Central Military Commissariat for army registration purposes. However, he also got a notification telling him to come there in 2002. This pushed me to write to everyone I could possibly write to. Having studied Article 18 of the Law on Refugees, I already knew that refugees have the right to voluntary service.

I wrote to the district prosecutor, the staff of the President, the Military Advisor to the President of Armenia and the Ministry of Defense. After many painful experiences and ordeals, I finally got an answer from the Republican Military Commissariat telling me that refugees have the right to choose either to serve or not to serve in the army. My son was taken off of the military office records only after I got this letter. Now, my refugee son is already 17 years old. I do not know whether he will be called into the army in 2002, when he turns 18, which is the conscription eligibility age."

To comment on this story, one could say that registration for army purposes when a young boy is still in school already constitutes a method of psychological pressure; the timely resistance by Vanya Zalyan's father was the only way to delay the next step of the military officers (a notification calling Vanya into the army) for some time.

Discussions with relevant government entities.

Where do the officials stand?

a) Military Prosecutor's Office

Respondent: Sergey Poghosyan, Assistant to the Military Prosecutor

1. *During the last three years, and especially during the last three months, have any refugees that have reached the conscription age or their parents approached you in connection with the issue of unlawful military conscription?*

Response: In the past, many complaints have been received, but the situation for the years you inquire about is the following:

1999 – the total number of complaints received from the population of Armenia was 1,300, but we have not recorded information on how many of them were received from refugees.

2000 – out of the total 800 complaints, 19 were received from refugees.

2001 – no complaints from refugees (1 complaint currently under review).

2. *Have criminal cases been filed? Have any administrative sanctions been taken against officers of the military commissariat for such violation of law? How did you review refugee related cases? Did you take any decisions (such as creation of a committee, making inquiries to the relevant military commissariat, or instructing the latter that their actions were unlawful and forbidden, or providing written clarification to refugees)?*

Response: The Military Prosecutor's Office has always responded to complaints. Appropriate decisions were simply taken in relation to criminal proceedings instituted. No administrative sanctions were taken against the staff of military commissariats. However, after the adoption of the Law on Refugees, all the military commissariats were instructed not to conscript refugees.

The Military Prosecutor's Office is an agency implementing control. We work in the frameworks of the Law on the Prosecutor's Office. We work by means of reacting to complaints. In general, we work with those already in the army, rather than those in the process of conscription. Before conscription, refugees are handled by the civil prosecutors.

3. *In how many cases were the rights of refugees restored and the refugees released of army service after the Military Prosecutor's Office became involved?*

In 2000, all 19 of the refugees' complaints were reviewed, and all 19 of the refugees concerned were exempted of army service.

4. *Have you been guided by any written or oral instructions from higher authorities so long as refugee conscription has been concerned?*

There was no concrete answer.

5. *Do you have any facts or information about refugees dying in the army during the last three years? I would like to study these cases.*

We have no information on refugees dying in the army. As for copies of the cases you inquire about, we will let you have copies of the files of the 19 refugee cases.

6. *Did you ever prosecute refugees for army desertion?*

During the last three years, we haven't had any such cases, because according to the Law on Refugees, refugees are not obliged to serve in the army, and therefore,

cannot be prosecuted for avoiding army service. As for army desertion, refugees that are in the army voluntarily and leave service on their own decision will be subject to responsibility, because they have already taken the oath.

7. Is the legislative framework in Armenia sufficiently clear in terms of refugee service in the army? What do you think about this?

The Constitution and the Law on Military Duty clearly state that citizens of Armenia shall be conscripted to the army, but the Law on Refugees is not clear enough, which is why officials of military agencies may perceive it in different ways and present it to refugees correspondingly, for their own benefit. The law needs to be clarified. When I was studying the legislation of a Western country, I was surprised to see that it covered every detail very thoroughly and specifically, and took about 100 pages. Our legislators only take one or two provisions, without even completing expression of their thought.

The provisions of the Law must be detailed out in other specific acts and a conscription procedure.

5. Where do you stand in relation to refugee conscription?

Response: First of all, one must obey the laws, and the law is what guides us in all matters.

S. Poghosyan, and later, Military Prosecutor G. Jangiryan asked us the following questions: why refugees do not adopt citizenship, because if they do, they can be lawfully conscripted into the army (then they answered their own question, saying that refugees are in a difficult social situation and do not want to give up their status, because it gives them access to either humanitarian aid or other countries). They also asked why refugees that received ownership of land and livestock do not feel responsible to go into army service, who will defend the country at the time of war, and so on.

When we asked for the list of the 19 complainants released by the Military Prosecutor's Office and copies of their files, the representative of the Military Prosecutor's Office agreed to provide these papers.

The reply No. 2409 dated December 4, 2001, which was sent to the OSCE, is quoted below:

“...according to the Republic of Armenia Law on Military Duty, military service is the responsibility of Armenian citizens only. The vast majority of refugees displaced from Azerbaijan are Armenians, and therefore, in some instances they request in writing to be conscripted to the army.

We studied the complaints on forced conscription, which refugees had sent to the Military Prosecutor's Office: refugees conscripted with violation of law were exempted of forthcoming military service.

Taking into account that implementation of the project referred to in the letter would require data on refugee conscription to the army, we are submitting a list of complaints received by the Military Prosecutor's Office in the period from 1999 to 2001.

- 1999 – no complaints

- 2000 – 19 complaints (the list is provided herewith)
- 2001 – no complaints as of December 10

LIST

According to the list of 19 complainants released from military duty:

6 are from Masis;

8 are from Yerevan (Center, Arabkir, Erebouni, Shengavit, and Nor-Nork districts)

4 are from Kotayk (City of Abovyan and 3 villages)

1 is with no address (so it is marked in the list)

Our comments:

1. The conversation shows that senior representatives of the Military Prosecutor’s Office are definitely subjective in relation to the conscription of refugees, as the ethnic proximity between refugees from Azerbaijan and the local population is seen as sufficient to oblige the young refugees to serve in the armed forces of Armenia. Such a stand in relation to ordinary refugees may be considered as a factor of psychological pressure.

2. The complaints geographically cover only three regions (the capital and the two regions closest to it), which makes it clear that people in these three regions know the rights of refugees better than people in other provinces; being close to the capital helps them in timely delivery of complaints and the follow-up on the case review. However, this does not mean that violations are not taking place elsewhere in Armenia. The reasons are the following: the regions are distant, people lack awareness on their rights, refugees are not active, and the non-governmental sector is weak.

3. A lawyer’s comments on the letter received from the Military Prosecutor’s Office: “The response is vague, and we can just conclude that all 19 were released.”

b) Migration and Refugee Department in the Government of the Republic of Armenia

Respondent: Gagik Yeganyan, Head of the Department

1. During the last three years, and especially during the last three months, have conscription age refugees or their parents approached you in connection with unlawful military conscription?

Response: In this period, we have received 1,500 complaints, but I cannot tell how many of them were regarding conscription, because we do not maintain separate records on complaints concerning conscription. We do not have any statistics on complaints by refugees and their parents.

2. What actions have you taken to echo the complaints? Have you made clarification inquiries with other relevant agencies?

Response: The number of violation cases has been declining since March of 1999, when the Law on Refugees was adopted. There is some progress. During the last six months, we have not received any complaints. However, if refugees do come to us, we get involved. But I must say that law enforcement control is not our job, it is rather that of the Military Prosecutor’s Office. When refugees come to us about

this matter, we give them a letter stating that according to the Law on Refugees, refugees are not obliged to serve in the armed forces of Armenia, but may do so voluntarily. In 1999, when Sadako Agata (the then UN High Commissioner for Refugees) came to Armenia, I presented her the problem of unlawful refugee conscription into the army. She raised this issue at a meeting with Vazgen Sargsyan (the then Prime Minister of Armenia, who had long been the Minister of Defense of Armenia before he became the Prime Minister), and he promised to eliminate this practice.

3. *Has your Department ever taken any actions to eliminate this practice?*

Response: I have been lobbying the Government. I finally got the Head of Staff to adopt a protocol decision stating that refugees do not have to submit letters from the military commissariats (certifying they have been registered with them) as a part of required paperwork.

4. *The Law on Refugees mentions the right of refugees to serve in the armed forces of Armenia, but mentions no such responsibilities, which makes the matter somewhat unclear for middle level officials and refugees, who live in distant regions of the country and cannot either get any clarification on this issue or obtain complete legal advice. Our pilot surveys and interviews with young refugees and their families revealed case-specific and more general facts of refugee unawareness of the laws regarding military conscription and adoption of citizenship. We also came across forced conscription and application of physical or psychological pressure. We found cases in which refugees were pressured in relation to adoption of citizenship: they appealed to us in cases when they weren't able to get their pensions, humanitarian aid, documents, etc., unless they adopted citizenship. In either case, the rights of refugees are violated. Don't you think the law should be amended or clarified in terms of responsibilities, because the absence of clarity brings about the problems mentioned above?*

Response: The Law does not need amending; it is already very good and very clear. There is no pressure in terms of either going into the army or adopting citizenship. Refugees know their rights very well. You made up the story about pressure on refugees to adopt citizenship, and that otherwise, they will not get their pensions. You simply don't know that in the villages the pensions are distributed by social workers rather than the community head and it does not matter to the social workers who gets the pension and who does not. Give me some facts and names of people that don't pay out the pensions, and I will fire them right away. But tell me, why don't the refugees adopt citizenship? Because they do not want to lose their privileges? It does not matter, because we cannot provide housing to such a large number of refugee families. 13 years have passed, and they still don't want to adopt citizenship, as they would rather leave Armenia as refugees. The refugees from Azerbaijan are ethnic Armenians; the state has given to them ownership of land and livestock, but they don't want to go to the army. And what if war breaks out?

Besides, the problem of refugees is slowly dying out in Armenia.

5. *Where do you finally stand in relation to refugee conscription to the military?*

Response: The law should be obeyed.

Our comments

1. The last two points made by Gagik Yeganyan need no comments. It is just enough to mention the \$55 million worth housing program the Department elaborated to take care of the housing needs of 13,000 families of refugees without permanent shelter.
2. The protocol decision of the Government allowed many refugees who had reached the conscription age and older refugees who were not under the obligation to serve in the military of Armenia to avoid military registration and, thus, the potential threat of being conscripted to the armed forces of Armenia while seeking necessary documents with the passport desks of the Ministry of Interior of Armenia (such as refugee certificates, travel documents and *propiska*).
3. As for the 4-th question, when Yeganyan denied our opinion, which was based on stories of refugees on how the non-payment of pensions and other tools are used to force them to adopt citizenship (and later, go into the army), and suggested that we give him names of people so that he can fire them for violation of law (even though he is not authorized to fire employees of other agencies), it becomes obvious that the authorities are working side by side in the areas in question, and **one agency uses the others to attain its objectives**.

c) Ministry of Defense

Respondent: Sedrak Sedrakyan – Head of Legal Department of the Staff of the Minister of Defense of the Republic of Armenia

1. *During the last three years and especially during the last three months have refugees of conscription age or their parents approached you in connection with unlawful military conscription?*

Response: Yes, there have been some complaints. But we do not have separate records on complaints, therefore I cannot tell you how many complaints we have had.

The Law on Military Duty sets out a provision on appealing decisions: first, to the conscription committee, then to local, district-level, and national military commissariats, and third, to courts.

2. *How do you feel about the fact that after the Law on Refugees came into force refugees no longer have to go into the army, according to the Law?*

Response: Since the spring of 1999, our Ministry has been very serious about refugee conscription to the army. This is a very sensitive issue. There are two problems: one the one hand, refugees have permanent registration in Armenia, they enjoy privileges, and so on, but on the other hand, they do not wish to go into the army. Is that right? Ultimately, we are there to protect the interests of the state. In 1999, many complaints were received from refugees, which got us to change our policy. For two years now, refugees have not been conscripted to the army of Armenia. However, there are volunteers.

3. *We know that conscription-age refugees, who have not gone into the army yet and are outside of Armenia, are under search. Is it true that the representatives of the Military Police and the military commissariats meet the planes and, on the basis of arrival lists, separate those searched by the authorities? What is the situation with refugees?*

Response: Starting from the fall of 1999, refugees of conscription age who are outside of Armenia may freely fly back to Armenia. They are no longer searched by the authorities.

During the last three years, we have not had any cases like what you described, because refugees, according to the Law on Refugees, are not obliged to go to the army, and therefore, they are not responsible for avoiding the military. As for army desertion, the refugees that volunteered to go into the army and then left the army on their own are responsible, because they have already taken the oath.

4. *As early as in schools, military commissariats carry out registration of young boys under a certain conscription area, i.e. they register both Armenian citizens and refugees. How would you assess this? If the refugees are not obliged to serve in the army according to the law, then no one should be registering them for military conscription purposes.*

Response: The registration is carried out in order to learn about the number of people of conscription age in Armenia. We have links with local authorities. Based on information received from schools and public utilities departments the local authorities carry out such registration and provide us with annual information on young people of conscription age.

5. *Have you been guided by any written or oral instructions from higher authorities so long as refugee conscription has been concerned?*

No answer.

6. *Is the legislation of Armenia sufficiently clear in terms of refugees' military service? Is it necessary to develop a procedure for refugee conscription? What do you think?*

Response: The Law is clear. There is no need to change it. There is a procedure. Requests on voluntary army service constitute such a procedure.

7. *Where do you finally stand in relation to refugee conscription?*

Response: The Law should be obeyed. It is true that there are some violations, and we do not have any guarantees that there will not be, but we are trying to have all the military commissariats to follow the rules of conduct in this issue.

8. *Would you like to recommend anything to improve the situation with refugee conscription?*

Any change must be in favor of refugees, as the ones that have suffered. They do not have housing, and many of them have nothing at all. In this sense, we are different from them. That is why the state should be doing something good for them.

Comments:

1. From the point of view of enforcing the law, the information contained in one of the answers given by the representative of the Ministry of Defense is in line with the reality: in the survey, refugees and their parents brought up some cases when the young men forwarded to the republican center from the district military commissariats without their consent to voluntary service would be sent back home. However, a refugee that knew his rights had to face psychological pressure from the local military commissariat and the local authorities.
2. The standpoint is similar to that of the Military Prosecutor's Office. The staff of the Ministry of Defense feel the same way as those of the Military Prosecutor's Office in relation to the ethnicity of refugees. They both said that the state has done a lot for the refugees, and that refugees simply ought to go into the armed forces of Armenia. However, Mr. Sedrakyan seemed to forget about this answer by the end of the interview, when he mentioned the difficulties and troubles that refugees have to overcome in Armenia. This obviously conflicts with his opinion on the role of state support, which pre-determines where he personally stands in terms of refugee conscription.

d) Office of the UNHCR Representative in Armenia

Respondent: Ayaki Ito, Protection Officer at the UNHCR

1. During the last three years, and especially during the last three months, have conscription age refugees or their parents approached UNHCR in connection with unlawful military conscription?

Response: In 2001, there was one complaint. In other years, there have been very few complaints. I am not sure that UNHCR had a precise perception of this issue. We intervene in very specific cases only. Usually, we write a letter to protect the refugees, but in most of the cases, our actions are based on the work of NGO and the Military Prosecutor's Office.

2. During our survey, we found cases of violation of the Law on Refugees in terms of refugee conscription to the army of Armenia. What do you think about this? How clearly does the legislation of Armenia define refugee conscription to the army of Armenia?

Response: I have recently arrived in Armenia, and I have not yet studied this issue in detail. It is an important one, though.

I should just mention that under the international law this issue is not that clear. It's not covered by international instruments.

Let us now look at the Armenian domestic legislation.

Article 3 of the Law on Military Duty states that military duty is the constitutional duty of every citizen to take part in the defense of the Republic of Armenia.

Article 18 of the Law on Refugees stipulates that a refugee has the right to obtain citizenship of Armenia and to serve in the armed forces in the procedure set forth in the legislation of Armenia. This shows that a refugee has the right to serve in the armed forces of Armenia only after adoption of citizenship. The wording of this

provision of the Law does not clearly illustrate that a refugee has the right to serve in the army without having been naturalized in Armenia. The Law does not mention obligations.

Article 3 of the Law on Military Duty clearly stipulates that army service is an obligation of citizens only, which means that from the point of view of jurisprudence, Article 18 of the Law on Refugees could not have used the term “obliged to” when mentioning the right of refugees to army service.

Comments:

Quoting Article 18 of the Law on Refugees, which states that the two parts of the sentence: 1) “a refugee has the right to obtain citizenship of the Republic of Armenia”, 2) serve in the armed forces in the procedure established by legislation of the Republic of Armenia,” are connected through “*and*”, clearly shows that refugees obtain the right to serve in the armed forces of the Republic of Armenia only after adoption of citizenship; thus, Mr. Ayaki Ito’s statement is based on the English translation of the Law, which the UNHCR office in Armenia has, in which the two parts of this sentence are connected through “*and*”.

The difference between Armenian and English translation of para. 6 of article 18 of the Law on Refugee does not make difference in the interpretation of article in general. Either in case of existence or absence of the “comma/and” the Law on Refugees by this article provides the *rights* to refugees to serve in the military forces based on his willingness to enjoy this right. This article should not be understood/commented as an *obligation* for refugees because of the absence of the word “obliged” in the text of the para. and presence of the words “have the right”.

e) Human Rights Commission to the President of the Republic of Armenia

In response to our inquiry

According to the response received from P. Hayrikyan, the Human Rights Commission to the President of the Republic of Armenia does not receive any complaints from refugees in connection with this matter.

Comments:

Refugees probably do not know about the existence of this institution or do not consider it as a realistic tool to protect their rights. In any event, none of the 75 refugees surveyed in the project (who had filed complaints with different agencies) knew anything about this Commission.

f) Military Commissariats

We visited the military commissariats after we met the representative of the Ministry of Defense and after he instructed the military commissariats to meet with us. It turned out that refugees’ personal files are just fine.

KOTAYK MILITARY COMMISSARIAT: Khachik Sahakyan, Head of Conscription Division.

He told us that there is no pressure on refugees to file an application on voluntary conscription. He explained registration and notification by the need to maintain records on the existing human resources.

In the Kotayk Regional Military Commissariat, we were pleasantly surprised to discover that files of refugees of conscription age were separated from those of other local youth. 78 personal files of refugees (18-27 years old), marked “refugee”, were on a different shelf, with the refugees’ justification documents (including birth certificates, two required applications on refusal to go into the army of Armenia or expressing willingness to go: 1) a statement by the refugees of conscription age, and 2) a statement by the parents).

Moreover, as an innovative measure, the list of refugees of conscription age had been sent to the Department for Migration and Refugees to check on possible changes in their status. The list is also submitted to the Ministry of Defense, in order to make these refugees exempt of responsibility/sanctions for avoiding conscription.

When we reviewed the 2001 spring conscription, we found out that 7 refugees had filed statements expressing their consent to army service in Armenia. Their parents had also filed similar written statements.

The respondent told us that conscription of young refugees at the age of 16, while they are still in school, is carried out based on their willingness.

The position is that the law must be obeyed.

When we asked whether the respondent would still like refugees to go into the army, he said that yes, it would be desirable. He added that “propaganda is needed, the state is losing a number of potential young soldiers; one must elaborate a procedure for refugee conscription to give them some privileges such as military service within a radius of 35 km from where the family lives, or household electricity consumption and tax breaks.”

Comments:

The list of refugees was submitted to the Department for Migration and Refugees to check on the refugee status only on November 23 of 2001, i.e., immediately when we informed the military commissariats about our visit, which was three weeks after our meetings with them were permitted by the Ministry of Defense. This shows that the refugee conscription problem might be solved if the situation in the military commissariats were under regular control by non-governmental organizations.

As for changes in the refugee conscription mechanism in the Kotayk region (currently based on their willingness), the Ministry of Defense is for some reason not informed about this.

MARTUNI MILITARY COMMISSARIAT: Military Commissar Rudik Gerasimovich Harutyunyan.

In the Martuni region, there are generally not many refugees. We went to this office because the survey in Yerevan revealed the case of violation concerning Nerses Nazaryan, who was registered in the Martuni region (see the section on **Surveys**). Altogether, the Martuni Military Commissar had only files of two refugees on his table.

When we asked him why refugees are registered and why their personal files are created, he answered: “So that by the time they adopt citizenship, we have the file ready”, and “so that they can be conscripted to the army during warfare.”

When we asked about refugee conscription, he told us that there had been an oral instruction from the Ministry of Defense.

The question concerning Nerses Nazaryan was answered briefly, on the basis of the documents that existed in his file: Nerses Nazaryan was conscripted in May 1998 and sent to the army. In 1998, he was returned to the central summoning unit, and sent on for a medical examination. The medical report states that he is able to serve with some limitations. He was called into the army in the fall of 1998 and the spring of 1990, but he never showed up. They decided to apply criminal prosecution against him. The case was forwarded to the Military Prosecutor's Office. The case was closed only in 2000, because he was a refugee. His army ticket, which was created at the beginning of his service, was destroyed on June 6 of 1998, because Nazaryan had been in the army for 15 days only. According to the Military Commissar, Nerses Nazaryan had not been called into the army thereafter, and no methods of force had been applied in relation to him.

The position of the respondent is that the law must be obeyed.

He mentioned that it is necessary to optimize legislation on this matter. He thanked the interviewer for the literature concerning refugees' rights and said that they have no such literature whatsoever, and therefore, the staff does not get any of the information they need for official use.

The following two regions are on the border with Azerbaijan.

KRASNOSELSK MILITARY COMMISSARIAT: Armen Verdyan, Head of Conscription Division.

Refugee files are separate from others. There were some applications for voluntary service received from both refugees and their parents. The respondent told us that no pressure is exerted to get them to file a statement on voluntary conscription. The registration includes all of the population, including refugees. Registration is an "inventory-taking" of resources. He explained that even if a person is in a given territory temporarily, he must be registered.

The position of the respondent is that the law must be obeyed.

The respondent explained that the refugee resources are needed. He said that at the time of war, anyone, both citizens and refugees, will defend their homes and their villages; that is why there should be a law stipulating that everyone complete army service in the area in which they live. He also mentioned there should be other privileges (related to household electricity consumption and land taxes).

Comments:

When Armen Verdyan spoke of general registration of both citizens of refugees, he was mistaken to quote the Law on Military Duty and Decree No. 280 of the Minister of Defense of the USSR dated 1987 as bases for refugee conscription, since they are currently used as instructions. The aforementioned documents read:

Law on Military Duty, Article 5
1. Military registration is a state system for registration of citizens in the pre-conscription age (16-18 years old), conscription-age (18-27 years old), and in reserve.....
Decree No. 280 of the Minister of Defense of the USSR dated 1987
Only USSR citizens shall be subject to registration. Registration shall not apply to foreign citizens and persons without citizenship.

VARDENIS MILITARY COMMISSARIAT: Hrayr Gasparyan, Head of Conscription Division

He said that after the conscription in May of 2000, they were instructed from above (from the Ministry) not to conscript refugees. He also said that they change their decisions only on the basis of government instructions. Therefore, they had decided that refugees would not be recorded in the alphabetical and protocol registries, but rather, that a separate book would be filed just for refugees. They intend to file a separate book for refugees starting from the 2002 spring conscription.

In 2000, 13 refugees were conscripted voluntarily, and 11 others did not wish to go to the army. Altogether, 26 refugees are currently in the army in the Vardenis region. Each of the files contain statements made by both the refugees and their parents.

The respondent mentioned that the refugees who do not file such written statements are not conscripted to the army, and this includes Suren Tzapovyan (see the section on **Surveys**).

Refugee registration is still carried out, because they are included in the “required schedule of conscription resources.”

The respondent recommended a procedure whereby the heads of communities would provide the Commissariat with lists, which could be checked by the Department for Migration and Refugees information, and then, submitted to the Ministry of Defense to decrease the plan on conscription resources.

The respondent’s position is that there is a law that must be obeyed.

He also believes that if refugees are to be used as a resource, they must receive some privileges in return.

CONCLUSIONS

The international community is greatly focused on democratic reforms in Armenia and enforcement of legality in all the branches of government, including the military sector; consequently, one can notice an obvious trend of at least formally implementing the laws in day-to-day activities. Without a clear mechanism for refugee conscription, the existing practice cannot provide for a full-fledge legal procedure to conscript young refugees to the military. Considering that the problem of refugee conscription from Azerbaijan may potentially last until 2008, it is necessary to elaborate a clear mechanism for conscription and to implement it in practice, which could help further regulate the process and avoid conscription by force. However, this problem we found in our survey would need more detailed and specific studying.

Our discussions with representatives of government agencies made us believe that starting from March of 1999, i.e., after the Law on Refugees was adopted, the number of violation cases has been declining. Personal files of conscription-age refugees are being improved and separated from the general list of conscription-age young men in the region; in reality, the requirement on the number of young men to be conscripted (based on an old assessment of conscription resources) is gradually slackening, and conscription-age refugees and other parts of the population that enjoy privileges are being removed from the required conscription schedule.

Some people mentioned that refugees should be conscripted regardless, because they are a significant part of the population of the country (10%), and because

this tangible resource is needed to defend one's fatherland; nevertheless, almost all of the respondents agreed that their agencies are doing everything possible to ensure a flawless implementation of the laws of the Republic of Armenia. Every one of them reacts to violations they discover and develop new tools to improve practices to attain lawfulness in the process of military conscription in Armenia.

Parallel to this, some others recommended that refugees be conscripted to the army with privileges. For example, they said that refugee could take their army service in a radius of 35 kilometers from where they live or, alternatively, their families could get a 50% discount on their household electricity, telephone, land and other bills. In this case refugees, whose general standard of living is 2.3-fold lower than that of the average local population in Armenia, would be motivated to volunteer into the army.

PROBLEM-SPECIFIC CONCLUSIONS

1. Both before and after the adoption of the Law on Refugees, military conscription of refugees by force has been taking place in Armenia, of course less after the adoption. After the Law on Refugees was adopted, the main tool for influencing refugees of conscription age who are not willing to go to the army, as well as their parents, has been the strong moral and psychological pressure, partially with the help of officials in other local authorities.
2. Interviews with relevant agencies also prove that notwithstanding the existing formal practices in military conscription of refugees, they all are demonstratively of the opinion that refugees, as ethnic Armenians, must go to the army.
3. Our organization has gathered facts on 8 cases of obvious arbitrariness in the period from 1999 to 2001, including cases in which force was applied in relation to refugees who did not want to go into the Armed forces of Armenia. This is not a massive problem in the regions covered by the survey.
4. The refugees that refuse to go to the army are currently not prosecuted and no criminal proceedings are instituted against them.
5. The regions of the country do not get information on rights of refugees.
6. The refugees that live in the villages of the regions are passive in terms of protecting their own rights, which is a fact used by military officials.
7. Regardless of whether they know their rights or not, the vast majority of refugees agree to perform voluntary service; moreover, many of them consider army service a due task for themselves.
8. Continuing registration of refugees in conscription areas is the first step of moral and psychological pressure on refugees.
9. The four military commissariats we visited do not have a unified procedure for maintaining refugee files.

To summarize, one may claim with confidence that the adoption of the Law has brought about radical changes in the situation, and certain rules have emerged in the process of military conscription of refugees. Regular control by non-governmental organizations and international human rights institutions will gradually drive the

military authorities of Armenia to enforce laws to the fullest extent and to guide their relationship with refugees only by the existing laws and the Constitution of the Republic of Armenia.