



# REPORT

## PROBLEMS OF HUMAN RIGHTS PROTECTION IN THE ARMED FORCES OF THE REPUBLIC OF ARMENIA

**Authors:**

**RUSTAM MAKHMUDYAN**

**ARTUR SAKUNTS**

**ARMINE SADIKYAN**

**RUBEN SARGSYAN**

*This report was funded by a U.S. State Department grant. The views, interpretations and conclusions in this report are those of the authors and may not necessarily reflect the views of the U.S. Department of State.*

**2013**

## TABLE OF CONTENTS

<b>1. FOREWORD</b> .....	<b>3</b>
<b>2. ISSUES EXISTING IN THE RA ARMED FORCES ACCORDING TO PRIORITY AND PREVALENCE</b> -----	<b>4</b>
• Legal and sociological analysis	
<b>3. EFFECTIVE LEGAL PROTECTION IN THE RA ARMED FORCE</b> -----	<b>11</b>
• Appealing opportunities and effectiveness according to sociological survey data	
<b>4. EFFECTIVENESS OF PENALTIES AND INCENTIVES IN THE RA ARMED FORCES</b> -----	<b>13</b>
• Concept and System of Penalties: Effectiveness of Application of Types of Penalties	
• Most Common Penalties in the RA Armed Forces under Social Survey Data	
• Concept, Types and Effectiveness of Incentives	
<b>5. THE PROBLEMS OF MEDICAL SERVICE AND AID IN THE RA ARMED FORCES</b> -----	<b>17</b>
• The Quality and Problems of Medical Service and Aid in the RA Armed Forces, the Professional Quality of Persons Providing Medical Aid according to the survey results	
• Problems of accessibility of acts made on health state and appealing them	
• Food, water quality and sanitary-hygienic conditions in the RA Armed Forces according to survey results	
<b>6. CONCLUSIONS AND RECOMMENDATIONS</b> .....	<b>21</b>

## 1. INTRODUCTION

In parallel with official claims suggesting implementation of reforms in the field of Armed Forces in the Republic of Armenia, human rights violations still continue in the Armed Forces. Pursuant to the provision that Armed Forces are under civil oversight as envisaged in Article 8.2 of the RA Constitution, **Helsinki Citizens' Assembly Vanadzor has conducted its regular monitoring while adhering to its mission aimed to improve the human rights situation in the Armed Forces.**

The report presents such problems as legislation and its implementation in relation to military discipline, penalties and rewards given to servicemen, effective legal protection, appealing mechanisms, their effectiveness, quality medical care and service. The aforementioned problems were mainly presented based on the findings of sociological surveys, RA domestic legislation, international legal documents.

Unlike other similar surveys, this report was compiled based on the data presented by already demobilized/discharged servicemen: people, who have not any longer been in statutory relations with the officers, and have freely presented their opinions on the problems and shared their recent impressions on military service.

The sociological surveys were conducted among male citizens of 19-30 age group, who used to reside or currently residing in a number of rural and urban communities of the Armenia (Lori, Shirak, Tavoush regions and the city of Yerevan), and who underwent mandatory term military service in the RA Armed Forces and were demobilized during 2012.<sup>1</sup>

The goal of the monitoring is to determine the effectiveness of implementation of Disciplinary Rule Book of the RA Armed Forces adopted in March of 2012.

Certain methodology has been developed for the conduction of the monitoring, which is comprised of 2 stages: 1) study, 2) information sources and analysis of data obtained through those sources.

The sociological surveys were conducted among 778 servicemen demobilized during 2012, 336 persons out of them were interviewed in Yerevan, while 442 of them in the regions of Armenia, namely, 178 out of the respondents were from Lori, 187 from Shirak and 77 from Tavoush regions.

---

<sup>1</sup>Here we mean persons, who were drafted no later than in 2010 and naturally were demobilized after two years, which makes it in 2012, however, there are cases when the respondents, who were demobilized earlier under circumstances stipulated by legislation and therefore, the period of conscription is not restricted to only 2010, but it also includes 2011 and 2012 spring and autumn call-ups.

## **2. ISSUES EXISTING IN THE RA ARMED FORCES ACCORDING TO PRIORITY AND PREVALENCE**

### **Legal and sociological analysis**

According to Article 2 of the RA Disciplinary Rule Book of the Armed Forces, the military discipline for every serviceman is the strict and accurate observance of their duties and the order prescribed by the Constitution of the Republic of Armenia, the Law in question, other laws and codes applicable to the armed forces, as well as by the orders of commanders (military chiefs) within their competence.

The military discipline is based on the following principles: legality, respect for human rights and freedoms, publicity, promotion, inevitability of disciplinary responsibility and individualization, as well as military, legal and moral education of servicemen.

The military discipline is ensured by each serviceman recognizing his personal responsibility for the defense of the Republic of Armenia, his observance of his soldier's duty and obligations as well as accurate and timely execution of orders of his commanders (military chiefs) issued within their competence.

According to the data of the study conducted by the organization, the discharged servicemen highlighted among others the following reasons for their reluctance to do their military service: the long service period (19.9%), considering service time as a senseless waste of time (19%), likelihood of getting wounded or dying in armed clashes (18.2%), non-statutory relations, violence, acts of violence and other similar causes (13.3%), inadequate hygienic and sanitary living conditions and poor quality food (11.7%), lack of adequate medical care (7.2%), inadequate, irresponsible and short-sighted policy of the authorities towards the armed forces (5.9%).

It is quite noteworthy that reasons for reluctance to join the army are more related to domestic problems rather than to possible violations of the cease-fire. Thus, one-third (32.2%) of respondent dischargees would not join the army for reasons related to service conditions (non-statutory relations, inadequate hygienic and sanitary living conditions and poor quality food, lack of adequate medical care). About 39% of respondent dischargees mentioned the lack of properly coordinated and implemented essence and content of military service (long service period, senseless waste of time) as the core reason for their reluctance. According to the dischargees, their friends and relatives are reluctant to join the army for the same reasons with a different priority, namely due to domestic problems (33%), lack of properly coordinated and implemented essence and content of military service (29.3%), likelihood of getting wounded or dying in armed clashes (28.3%).

The respondents brought several reasons for early discharge, particularly birth of the 2<sup>nd</sup> child and developing an illness during the service. Thus, almost 15% of the respondents mentioned about early discharge due to developing an illness during the service. Yet, the public is unaware of any actions taken by the Military Police

under the Ministry of Defense of the RA, the Investigatory Service and the RA Military Prosecutor's Office upon tracking the cause-and-effect relation of illnesses developed in the army. If the military service lacks adequate conditions, such consequences are obviously quite inevitable, and the next question concerns the responsibility the competent officials were subjected to if such conditions were not provided.

Furthermore, another issue of concern is the survey result suggesting that over 5% of the respondents served in the armed forces of the RA for a period exceeding 24 months. Based on such survey results, we can conclude that they were expressly subjected to violation of human rights. Particularly, servicemen discharged both during the spring and the autumn conscription complained that commanders of military units failed to discharge the persons who had served 2 years in the army. Moreover, along with such arguments by the respondents, a number of parents of servicemen communicated their verbal complaints on the same issue to the organization.

The law enforcement experience shows that most commanders of military units explain such practices by their compliance with the order of the RA Minister of Defense and discharge the serviceman in several stages and under a specific schedule. While such explanations of commanders during previous conscriptions sometimes lacked any legal confirmation, during recent conscriptions the commanders indeed complied with the order of the RA Minister of Defense that enabled them to keep servicemen 'legally' in the military unit for a period exceeding 24 months. Such unlawful action results in the poor discipline and can have the following legal interpretation. In particular, it is quite obvious that such discharge procedure contradicts firstly the RA Constitution and the requirements of the effective legislation, and interpretations by military commander or other senior officers are unlawful and unfounded. Thus, according to Article 4(4)(1) of the RA Law on Military Service, **the length of the compulsory military service for the ranks is 24 months**. This norm makes it clear that the legislative authority fixed the terms quite accurately; however, the Law also provides for some exceptions stipulating the service terms extension procedure: *As necessary, the terms of the compulsory military service may be extended by up to 2 months by a governmental decree*. Meanwhile, the commanders extended the service terms of servicemen by a month by their own initiative even without such a decision. This means that the departments of the armed forces ignore the requirement of Article 14(1), RA Constitution: *'Everyone shall be equal before the law. Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited'*.

The previous Ombudsman of the RA also featured this issue in his annual reports and submitted official letters to the RA Minister of Defense suggesting him reviewing his Order № 2044 of October 14, 2009 to bring it in compliance with the RA Constitution and Article 4 of the RA Law on Military Service. In this respect, there is

much to be done by the competent department of the RA armed forces to take a right approach to the distribution of conscripts and ensure a well-balanced proportional distribution plan.

In some cases, a dischargee serviceman (with his military service term completed) commits an offence at a time when he is no longer considered a serviceman. However, the law enforcement agencies, on behalf of the RA Military Prosecutor's Office frequently ignore such facts and bring such persons to responsibility. Certainly, in this regard, there is much to be done by courts of law, but such legal acts are passed considering the division of courts and prosecutor's office. The most vivid and painful example of the issue in question is the criminal case (2012) of Hayk Movsisyan<sup>2</sup> that has recently received a strong public resonance. The matter is that serviceman Hayk Movsisyan was considered unfit for military service by the decision of the Central Military and Medical Commission of the RA Ministry of Defense but still continued his service. Later, through active efforts of the Military Prosecutor's Office, H. Movsisyan was charged with self-harming for permanently avoiding military service and was sentenced to three years of imprisonment by the first instance court of general jurisdiction of Syunik marz (region). Unfortunately, only 3 days later Hayk Movsisyan committed a suicide by hanging himself at the penitentiary institution. Only after this case the General Prosecutor's Office applied to the Court of Appeal; the ruling of the first instance court was reversed by a Decree of the RA Criminal Court of Appeal of April 16, 2013, and a sentence of acquittal was passed particularly based on the fact that before considering anyone a proper subject of military service and bringing him to criminal responsibility, besides the terms found in Article 23 of the RA Criminal Code (availability of a natural person, attained the age prescribed by law and legal capacity) in each case, it must be found and established that he is fit for military service and there were no grounds for his unfitness for military service at the time of committing the alleged action.

At the same time, the Court of Appeal argues that it is not in all cases that the serviceman who became unfit for military service and discharged to the reserve is not considered a proper subject of criminal responsibility if he commits an action against his conscription in the military service.

If the nature and specific circumstances of the committed military offence suggest that the action did not target unfitness for military service, the person is subject to criminal responsibility on general basis as he was fit for military service at the moment of committing the alleged action. **For instance**, if the serviceman harms himself

---

<sup>2</sup> <http://hcav.am/events/անդրանիկ-միբոցանիկ-պաշտոնից-ազատման/>, <http://hcav.am/events/hpu-վանաձորի-գրասենյակի-հայտարարութ-12/>, <http://hcav.am/events/hpu-վանաձորի-գրասենյակի-հայտարարութ-13/>, <http://hcav.am/events/ա-սաքու-ն-գ-հ-թ-պ-կ-տ-ի-պ-ա-շ-տ-ն-ն-ա-ն-կ-ո-ւ-թ-յ-ո-ւ-ն-ը/>, <http://hcav.am/events/ո-ր-ո-չ-ե-ց-ի-ն-կ-ծ-ի-կ-ը-չ-ք-ա-ն-դ-ե-լ/>, <http://hcav.am/events/ի-ն-ք-ն-ա-ս-պ-ա-ն-ո-ւ-թ-յ-ո-ւ-ն-ա-ռ-ան-ց-հ-ե-տ-ը-ն-ը-ի-չ-ո-ւ-չ/>, <http://hcav.am/events/ք-ն-ի-չ-ը-հ-ա-կ-ա-ս-ե-լ-է-ի-ն-ք-ն-ի-ր-ե-ն-ք-ա-ն-ո-ւ-մ-ա-հ/>, <http://hcav.am/events/ի-ն-ք-ն-ա-ս-պ-ա-ն-ե-ղ-ա-ծ-զ-ի-ն-վ-ո-ր-ի-մ-ո-ր-ը-ի-ր-ա-վ-ա-հ-ա-ջ/>, <http://hcav.am/events/մ-ի-ն-չ-մ-ա-հ-ա-ն-ա-լ-ը-զ-ի-ն-ծ-ա-ռ-ա-լ-ո-ր-ը-է-ն-թ-ա-ր-կ-վ-ե-լ/>, <http://hcav.am/events/դ-ա-տ-ա-ր-ա-ն-ը-մ-ե-ր-ծ-ե-լ-է-մ-ա-հ-ա-ց-ա-ծ-զ-ի-ն-վ-ո-ր-ի-մ-ո-ր/>, <http://hcav.am/events/մ-ա-մ-ն-վ-ի-ա-ս-ո-ւ-լ-ի-ս-ը-ի-չ-ո-ւ-չ-ի-ք-ի-ն-ու-մ-ա-հ-ա-լ/>, <http://hcav.am/events/ա-ր-թ-ո-ւ-ք-ս-ա-ք-ու-ն-գ-«-հ-ա-լ-կ-մ-ո-վ-ս-ի-ս-յ-ա-ն-ի-դ-ե-պ-ը->, <http://hcav.am/events/լ-ի-չ-ո-ւ-չ-ի-ք-ի-ն-ու-մ-ա-հ-ա-ց-ա-ծ-հ-ա-լ-կ-մ-ո-վ-ս-ի-ս-յ-ա-ն-ի-դ-ե-պ-ը->, <http://hcav.am/events/ի-ն-ք-ն-ա-ս-պ-ա-ն-ի-ս-ո-ւ-լ-ի-ս-ը-ի-չ-ո-ւ-չ-ի-ք-ի-ն-ու-մ-ա-հ-ա-ց-ա-ծ-զ-ի-ն-ծ-ա-ռ-ա-լ-ո-ր-ը-հ-ա-լ-կ-մ-ո-վ-ս-ի-ս-յ-ա-ն-ի-դ-ե-պ-ը->, <http://hcav.am/events/ի-ն-ք-ն-ա-ս-պ-ա-ն-ի-ս-ո-ւ-լ-ի-ս-ը-ի-չ-ո-ւ-չ-ի-ք-ի-ն-ու-մ-ա-հ-ա-ց-ա-ծ-զ-ի-ն-ծ-ա-ռ-ա-լ-ո-ր-ը-հ-ա-լ-կ-մ-ո-վ-ս-ի-ս-յ-ա-ն-ի-դ-ե-պ-ը-է-ն-թ-ա-ր-կ-վ-ե-լ-ը-ի-մ-ո-ւ-մ-ա-հ-ա-լ-կ-մ-ո-վ-ս-ի-ս-յ-ա-ն-ի-դ-ե-պ-ը->

/self-injury/ to avoid military service and consequently becomes unfit for the service and is discharged to the reserve, his action demonstrates the elements of crime as stipulated in Article 363 of the RA Criminal Code. In such cases, there is no circumstance at the moment of committing the action not serving basis for recognizing the serviceman unfit for the service. Therefore, the forensic examination of the person's legal capacity is of primary importance as it does not contradict the conclusion on recognizing the person unfit for military service. At the same time, it was established in this criminal case that at the moment of allegedly committing the action Hayk Movsisyan was explicitly in a state of mind that served basis for recognizing him unfit for military service. Hence, he could not be considered a proper subject of criminal liability.

Furthermore, the Court of Appeal also argued that the action of Hayk Movsisyan contained no other elements of crime as prescribed by Article 363 of the RA Criminal Code.<sup>3</sup>

The participants of the survey on problems faced by servicemen during their military service mentioned 20 options as a primary problems, with legal issues constituting 47.2%, the length of the military service - 14.9%, issues related to the military readiness (professionalism and professional qualities of officers) with unpreparedness of conscripts equaling 14.8%, living conditions and medical care during the military service - 5.7 %.

As for secondary problems, the legal issues again make the highest percentage totaling 50.7%, the length of the military service - 11.9%, issues related to the military readiness of servicemen - 11.3%, and the living conditions and medical care during the military service - 10.5%.

As for tertiary problems, the legal issues make 60.3%, the length of the military service - 6.9 %, issues related to the military readiness of servicemen - 9.7%, and the living conditions and medical care during the military service - 12%.

*Regardless of the priority, legal issues prove to be the major unresolved problem in the armed forces.*

Likewise, by their prevalence, the legal issues make 55.9% of the most prevalent primary issues, while issues related to the military readiness of servicemen make 11%, the length of the military service -9.5%, and the living conditions and medical care during the military service - 8.3 %.

As for secondary problems by prevalence, the legal issues make 61.4%, the length of the military service - 6.7%, issues related to the military readiness of servicemen - 9.5%, and the living conditions and medical care during the military service - 12.5%.

---

<sup>3</sup> For details see the case № CC/0389/01/11

As for tertiary problems by prevalence, the legal issues make 58.9%, length of the military service - 7.2%, issues related to the military readiness of servicemen - 12.2%, and the living conditions and medical care during the military service - 11.5%.

The combination of the problems faced by servicemen in the armed forces by their priority and prevalence reveals that within the first 3 problems the respondent dischargees mentioned the length of the military service, the mortality incidences in the armed forces /murders, suicides/ and the lack of professionalism and professional qualities of the officers.

It is quite noteworthy that irrespective of their priority, the problems broken down by prevalence do not include the length of military service as an issue of major concern for the servicemen. It is widely held among the dischargees that the most critical problems both by priority and prevalence are directly related to violations of the legal regulatory norms of the military service. In this context, it is noteworthy that the dischargees highlighted both the professional capacities of military officers and the issues related to facilitating the preparation of the conscripts to military service.

As for the list of actions to make changes in the armed forces, the dischargees attach a great importance to resolution of legal issues to improve the situation in the armed forces.

Thus, 27.5% of proposals by the dischargees feature legal issues as primary issues to be resolved.

It is quite remarkable that the dischargees do not attach equal importance to the issue of preparing the conscripts for their military service, along with improving the professional capacities of the officers (11.1%).

The second direction of proposals features improvement of the conditions of military service /living conditions and medical security/ (8.9%). The dischargees consider it right to review the length of military service (15.3%) and also add the number of military leaves available (16.2%). The respondent dischargees also proposed to reform the armed forces, i.e. forming a regular professional army (3.5%) and material and technical equipment of the army (3.9%).

As for the secondary and tertiary changes, the dischargees mostly prioritize the issues related to improvement of conditions in the military forces, improvement of professional qualities and level of professionalism among the officers and shifting to a regular professional army.

Regardless of priority, among the proposals to solve the problems in the armed forces, the dischargees highlight the improvement of professional capacities of military officers and change of their attitudes to the conscripts, review of the length of military service, formation of a regular professional army and improvement of service conditions.



***The Code of the Garrison and Guard Services of the Armed Forces of the Republic of Armenia***<sup>4</sup> provides for a position of legal assistant to the garrison commander, responsible for the compliance of activities by the garrison commander and other officials with the orders and directives of superior chiefs as well as the with the existing legislation.

The legal assistant must ensure compliance with the requirements in the laws of the Republic of Armenia, military oath, charters and other regulatory acts by taking measures to develop legal culture practices among the garrison personnel regulating their service activities with the help of legal assistants to military unit commanders through summarizing their work experience. To this end, the assistant must interpret for the officials the compliance of their decrees or draft decrees with the existing legislation, as well as explain to the servicemen and worker-servicemen of the garrison military units and members of their families issues related to protection of their legal rights, contribute to the legal provision to coordinate and take actions on military discipline of the garrison, guard services and order.

By analyzing such regulatory legal acts, one can conclude that the military units must have a position of a legal assistant. Besides, relevant actions to reinforce discipline must be taken. Nevertheless, nowadays, we constantly associate the garrison activities with measures to affect people.

Hence, the National Assembly of the Republic of Armenia has not managed to adopt an effective Disciplinary Rule Book so far.

The Law on the Code of Armed Forces of the Republic of Armenia adopted by the RA National Assembly on March 21, 2012 predominantly includes obligations and thus explicitly contradicts the constitutional principle of unity of human rights, freedoms and duties.

Despite the parliamentary hearings at the RA National Assembly on amending the draft Code and human rights proposals submitted by various NGOs, the law still fails to meet the minimal standards of human rights.<sup>5</sup>

**To sum up, we can argue that development of effective legal mechanisms for protection of the rights of servicemen virtually guarantees discipline in the armed forces of the RA.**

As for respondents' opinion on changes in servicemen's human rights situation in the course of their service, half of them, i.e. 51.9% believed that such situation had remained unchanged by the end of the military service. Only 38.8% of respondents believed that the situation had improved.

---

<sup>4</sup> ***RA Law on Approving the Code of the Garrison and Guard Services of the Armed Forces of the Republic of Armenia*** was adopted by the National Assembly of the Republic of Armenia on December 3, 1996. Over 17 years have passed since adoption of this Law; therefore, the Code needs to be replaced by a new one. For instance, the outdated term *worker-serviceman* still persists in the Code.

<sup>5</sup> See the opinion of OSCE/ODIHR

file:///C:/Users/User/Desktop/Opinion%20on%20draft%20Law%20Disc%20Rulebook%20Armed%20Forces%2017%20Jan%202011%20(1).pdf

Half of the number of respondent dischargees would not join the army if they had such an opportunity. Likewise, about 53% of respondents would not like their relatives or friends to join the army. It is also noteworthy that about 63.1% of respondents considered non-statutory relations prevailing in the armed forces. Half of the respondents believe that the conditions of the military service have remained unchanged. Only one third (31.5%) of respondents believed that such conditions improved, while 8.6% believed that they deteriorated. That is to say, over 64% of respondents considered the conditions unchanged and worsened.

Since almost half of the respondents would again join the army, it follows that the 50/50 proportion of reluctance and willingness to join the army can be changed by only promoting the protection of servicemen's rights.

**Thus, the problems in the RA armed forces are caused by the underlying reasons below:**

- 1. Imperfect legislation;**
- 2. Inadequate professional level of military officers;**
- 3. Improper treatment or servicemen;**
- 4. Inadequate service conditions /living conditions, medical care/.**

### **3. EFFECTIVE LEGAL PROTECTION IN THE ARMED FORCES OF THE RA**

#### **1. Appealing opportunities and effectiveness according to sociological survey data**

Over 40% of the respondents found that they could freely appeal orders of their commanders and challenge their lawfulness. The same percentage of the respondents found the appeal mechanisms quite effective. Hence, half or the respondents considered the appeal mechanisms available.

While only one among six respondents appealed their commanders' decrees or orders, 70% of them mentioned rare appeals. The dischargees who had turned to their unit or military commanders make a much larger number, almost half of the respondents. While almost 80% of the respondents found that the issues raised in their appeals were solved fully or partially, it is quite noteworthy that 56-57% of respondents found such mechanisms ineffective.

At the same time, almost 80% of respondents who had ever turned to their commanders found that their issues were resolved fully or partially.

One can assume that most respondents had their problems solved easier by turning directly to their commanders without any appeals as compared to those who appealed.

As a rule, complaints are brought verbally mostly to the superior commander. It is quite noteworthy that 1 respondent among 6 also complained directly to the commander or official in question, while 1 respondent among 9 turned to an influential acquaintance. Likewise, they were usually informed on the outcomes of their appeals verbally.

Considering that almost half of the respondents are aware of the appeal mechanisms, one can assume that to resolve their concerns, they mostly do not use such mechanism, but rather use the option of turning directly to the commander. The reasons underlying such practices become more clear by answers of servicemen to the questions why they were reluctant to turn with any issue to the commander of their military unit. It follows that one respondent among seven considered that turning to the superior commander with any issue might make his situation even worse.

*Upon analyzing the survey results, we hereby record 2 concerns over the violation of servicemen's rights in the armed forces of the RA, namely non-statutory relations among soldiers and officers (55,6%) and denial of military leave (19.8%).*

Servicemen mostly apply to their military unit commanders for military leaves. Therefore, the issues raised by servicemen give no rise to either disproportionate or lawful actions by commanders. In case of getting no solution to their problems, servicemen do not turn to any other appeal mechanism.

**To sum up, it follows that the servicemen are mostly concerned with their relations with officers; complaints against officers make quite a small number since servicemen have no ensured protection from the commanders who allegedly violated their rights. The servicemen mostly apply to their commanders for their military leave.**

Certainly, we are not in position to make any definite conclusions. However, it is quite obvious that the use of only verbal form of application by the servicemen was caused by the 'established order', since the commanders had already determined the lawfulness of such decisions by expediency not always considered as a basis for legality.

It is quite alarming that even less than half of the respondent servicemen discharged in 2012 claimed awareness of the codes and regulations of the armed forces; respondents who had some idea of such regulations and codes constituted about 39%.

Only one dischargee among three got to know such regulations and codes at special trainings held in military units.

#### **4. EFFECTIVENESS OF PENALTIES AND INCENTIVES IN THE RA ARMED FORCES**

##### **1. Concept and System of Penalties: Effectiveness of Application of Types of Penalties**

The Disciplinary Rule Book of the Armed Forces of the Republic of Armenia stipulates the rights and duties of servicemen that do not directly derive from the RA Constitution norms. Thus, **under Article 8 of the Code**, the content and extent of servicemen's rights, duties and responsibility depend on the fact whether they perform military service duties.

The content of Article 18 of the Code appears absolutely incomprehensible. Accordingly, *the serviceman with issues related to his services shall apply to his direct supervisor and only after obtaining his permission to the senior commander. As for private matters, the serviceman shall also first apply to his direct supervisor and in case of special necessity to the senior official. As for recommendations, applications and complaints (appeals), the serviceman shall comply with the provisions of the Disciplinary Rule Book of the Armed Forces of the Republic of Armenia.*

Considering that everybody is free to apply at his own discretion to a relevant authority to restore his/her violated rights, Part 1 of the Article in question fails to comply with this principle. As for Part 2, it should be mentioned that the Disciplinary Rule Book of the RA Armed Forces lacks any provisions regulating the procedure to consider the recommendations, applications and complaints of the servicemen, and therefore, this provision of the Code will actually remain inapplicable.

Under Article 23, the RA Law on the Disciplinary Rule Book of the Armed Forces, the compulsory servicemen under the ranks and the junior warrant officers may be subject to the penalties below:

- 1) Reprimand;
- 2) Severe reprimand;
- 3) Deprivation of a regular military leave from the military unit placement for up to 1 month;
- 4) Assigning an extra work order; up to 5 work orders (only for the ranks);
- 5) Delaying the main vacation by a period of 1-3 months;
- 6) Referral to the disciplinary battalion for a period of 10 days – up to 1 month;
- 7) Deprivation of a departmental badge;
- 8) Downgrade by 1 grade;
- 9) Disrate by 1 rank;
- 10) Suspend the terms for reaching a regular military rank for a period of 1 month-6 months.

Servicewomen are not subject to the disciplinary penalties under Part 1 (Para. 3, 4 and 6) of this Article.

##### **2. Most Common Penalties in the RA Armed Forces under Social Survey Data**

The public opinion polls conducted under this survey revealed that 32.6% of respondents had been subjected to penalties and 67.4% had never been.

Furthermore, the most common types of disciplinary penalties are reprimand and severe reprimand (61.8%). It is a matter of concern that 1 respondent among 10 was subject to the penalty of referral to the disciplinary battalion (for a period of 10 days-1 month). And 1 respondent among 6 was subject to a disciplinary penalty of up to 5 extra work orders.

1 respondent among 5 consider the reason underlying the penalties to be interpersonal conflicts; 30.8% of respondents consider such penalties to be imposed for breaking disciplinary rules (poor discipline, falling back from the formation, breaking rules of the appearance, breaking rules of combat duty, breaking garrison rules, using mobile phones, etc) and 25.3 % of respondents mentioned the following reasons: poor service or non-fulfillment of orders.

Over 57% of the survey participants mentioned incentives for their military service.

The combined data suggest that while 1 respondent among 3 was subject to a penalty, more than half of the respondents received some incentives. About 93% of the respondents benefited from their military leaves, i. e. the disciplinary penalties did not affect their right to take their regular lawful leave. At the same time, given such a high percentage of penalties, the affect of such incentives remains unclear, particularly considering that only 3.6% of servicemen with incentives reported elimination of their disciplinary penalties.

9.1% of the respondents mentioned their poor discipline as the cause underlying their penalties, and 1 respondent among 11 mentioned their absence without leave from the military unit. Yet, 1 respondent among 3 mentioned that they indeed left the military unit without permission. It follows that the number of servicemen who left the military unit without permission exceeds by almost 3 times the number of those subjected to disciplinary penalty on these grounds.

The discharges mentioned family reasons and home-sickness as the primary cause for leaving the military unit without permission. 1 respondent among 5 said he wanted to meet his friends. 28.1% of respondents left the military unit for personal needs and entertainment. Only 1.3% of the respondents mentioned pressure and non-statutory treatment by the officers as a reason for their voluntary leaving of the military unit. It is noteworthy that 7.9% of respondents refused to answer this question.

Considering that the respondents were servicemen discharged in 2012 and that the Disciplinary Rule Book of the Armed Forces of the Republic of Armenia was adopted in March, 2012, the disciplinary detention was still in use at the initial stage of their service. Therefore, some of the questions in the questionnaire concern the use, appeal and effectiveness of the disciplinary detention.

Only 8% of the respondents were placed in disciplinary detention during their military service for various reasons. We consider subjecting some of them to such a penalty as a non-proportionate punishment. For instance, such reasons range from voluntary leave of the military unit /30.6%/ and fighting or quarrelling /37.8%/ to abusing alcohol /8.1%/ and poor posture /12.9%/. It should be also noted that some servicemen were also subject to disciplinary detention for resisting the internal service rules /3.2%/.

The combined data suggest that 1 respondent among 3 mentioned his voluntary leave of the military unit, and only 8% of the respondents were placed in disciplinary detention. At the same time, 19 respondents placed in disciplinary detention for voluntary leave of the military unit make only 2% of the general number of respondents. Hence, only 1 serviceman among 10 who left the military unit voluntarily was placed in disciplinary detention.

Another matter of concern is placing 1 serviceman among 8 (out of the respondents) in disciplinary detention for their poor posture, as well as the practice of placing servicemen in disciplinary detention by officers for their resisting the internal service rules. That is to say, the disciplinary detention was a non-proportionate penalty in some cases, namely for 1 serviceman among 6.

When considering the places of disciplinary detention, it becomes clear that only 1 respondent among 5 was placed in detention in the disciplinary battalion.

While most respondents argued that they were placed in disciplinary detention by the competent commanders, in almost 30% of cases, the officers authorizing detention violated the legislative requirement, and such violation shall be investigated by the Military Police of the RA Ministry of Defense.

Only 8% of the respondents appealed the decision of placing them in the disciplinary detention, while 91.9% of the respondents placed in such detention did not appeal the decision, and almost 60% of the complainants applied to the superior commander, 20% - to the court of law and another 20% turned to an 'influential acquaintance or money'.

The disciplinary detention is used inappropriately. Most of the complainants against such detention mentioned that they remained in detention less than expected.

For the complete picture, it is essential to keep in mind that 67.8% of the respondents mentioned a good or very good treatment in disciplinary detention, while over 30% of respondents reported poor or very poor treatment.

One third of the respondents placed in disciplinary detention had not undergone a medical examination, while only almost half of those who had undergone such examination said that it was a detailed one.

### **3. Concept, Types and Effectiveness of Incentives**

Under Article 7(2), the RA Law on the Disciplinary Rule Book of the Armed Forces, the compulsory servicemen of the ranks and junior warrant officers may receive the incentives below:

- 1) Elimination of disciplinary penalty;
- 2) Expression of gratitude;
- 3) Informing the serviceman's family on his compliance with his exemplary performance of his service duties and his awards;
- 4) Awarding departmental letters of commendations;
- 5) Awarding a precious gift or a lump sum;
- 6) Taking a photo of the serviceman at the unfurled banner of the military unit;
- 7) Granting an extra leave;
- 8) Extra leave from the military unit placement;
- 9) Awarding departmental badges;
- 10) Awarding departmental medals;
- 11) Posting the serviceman's picture and recording his name, surname and patronymic in the book of honor of the military unit;
- 12) Award a pre-term military rank;
- 13) Award a higher military rank as compared to the expected one.

56.9% of the respondents mentioned that they had received incentives during their service.

Table 48.2 shows that expression of gratitude makes the highest percentage of incentive (31.1%) followed by informing the serviceman's family on his compliance with his exemplary performance of his service duties and his awards (18.2%), granting an extra leave (9.8%), awarding departmental badges (7.6%), awarding a precious gift or a lump sum (5.1%) and elimination of disciplinary penalty (3.6%), etc.

A considerable portion of discharges (65.8%) accounted their incentive for their excellent service. As for the excellent service, no special criteria have been developed yet.

68.7% of the servicemen granted a vacation, used their entitlement to a regular vacation. 1 respondent among 10 discharges received a vacation as an incentive.

10.6% of the respondents mentioned that they had received their regular and extra vacation by a call or interference of their 'influential acquaintance'. Despite the steps taken by the Ministry of Defense to reduce corruption risks in granting vacations, such risks still persist.

Most of the discharges (96%) without vacation had never turned to their commanders with this issue.



## 5. THE PROBLEMS OF MEDICAL SERVICE AND AID IN THE RA ARMED FORCES

### 1. The Quality and Problems of Medical Service and Aid in the RA Armed Forces, the Professional Quality of Persons Providing Medical Aid according to the survey results

The issues concerning quality medical aid and service can be classified into two groups: 1. In what health conditions the persons were conscripted for military service and 2. What health problems they gained during the military service. One in every sixth surveyed tells about health problems before conscription, and half of the surveyed state about health problems during the military service.

*We may conclude that either medical examination is not carried out properly before conscription in order to reveal the real picture of health conditions of conscripts, or the control over the servicemen's health conditions is not carried out properly.*

It is worth emphasizing that the health conditions of every 3 servicemen is not due to the nature of military service but the health problems they had before military service, which either worsened or appeared during the military service.

According to the causes of health problems or diseases traumas exist most often. They make about 44 % (often or very often) which can arise because of physical violence or violation of security rules. Then a question arises as well: whether or not all traumas are properly recorded in the registry, whether or not official investigation has been carried out, or what is the reason for the traumas which happen frequently, etc.

We are sure that some of the traumas are due to violation of statutory relations – beating or torture. Thus, the best way to allay uncertainties is not to hide the cases of traumas in the military units.

The most frequent health problems are the following three: Acute Respiratory Viral Infections and Acute Respiratory Diseases - 19,7%, Viral Diseases - 17,6%, Traumas - 8,4%. The frequency of each is presented in table 1. Below.

Table 1.

Frequency	Acute Respiratory Viral Infections and Acute Respiratory Diseases	Viral Diseases	Traumas
Very often	9,73%	1,16%	14,49%
Often	14,05%	12,79%	28,99%
Rarely	42,7%	15,70%	21,74%
Once	33,51%	70,35%	34,78%
Total	100	100	100

66 % of the surveyed who had health problems said they had been provided with relevant medical aid: At the same time 34.5 % stated they had not received medical aid which is every third surveyed.

It is interesting that by the diseases types it is mostly for the traumas, viral diseases and Acute Respiratory Viral Infections and Acute Respiratory Diseases that proper medical aid is not provided (correspondingly 32.88 %, 32.75% and 21.20%).

According to the surveyed the main medical aid is provided by the staff of the military unit medical point – 61.2%. Every 5<sup>th</sup> received medical assistance by the hospital doctor. Medical aid is also provided by the nurses /doctor's assistants/ - every 7<sup>th</sup> surveyed.

The staff of the military unit medical point and the nurses have a great role in treating traumas (correspondingly 57.14 % and 34.69 %), unlike other diseases where the role of the staff of the military unit medical point is great (Acute Respiratory Viral Infections, Acute Respiratory Diseases -72.31 % and viral diseases 76.79 % )

We may conclude that those servicemen who have traumas are sent to hospitals less than in other cases.

There are some differences in the assessments on the quality of the medical aid provided. Only 4.1 % of the surveyed assesses bad or very bad, about 79 % assesses it good and very good.

According to types of diseases the quality of the medical aid is assessed as bad and very bad for Acute Respiratory Viral Infections, Acute Respiratory Diseases – 17%, and for traumas – 11%.

The conditions of the military unit medical point are assessed as excellent and good by half of the surveyed. Related to the responses to health problems of servicemen it was recorded that according to 50% of the surveyed they respond immediately, 22.3% say they respond within 2 days, 17 % think after about 11 days. It means that in every six cases they respond to health issues rather late.

By disease types they respond rather late in case of traumas and viral diseases, correspondingly 56% and 54%.

To conclude, we may say the most “vulnerable” are traumas and viral diseases if it concerns the quality of medical service and the urgency of response.

The 68 % of the surveyed assess the work of medical staff, sanitary instructors and nurses as good and 77% assess it as very good. However, one in every 8-9 surveyed assess the work of sanitary instructors and nurses as bad and very bad. About 16 % of the surveyed stated that they did not have sanitary instructors.

The quality of the medical service was assessed as good and very good by the 63% of the surveyed and 22 % believe that the quality of the medical service provided in the military unit is bad and very bad.

The quality of medical aid is assessed better in garrison hospitals – 82 % of the surveyed who has ever been in garrison hospitals assess it as good and very good.

The quality of the medical aid in MoD central clinical or military hospital was assessed good and very good by the 88% of those who were related to it.

If we pay attention to the number of those having dealt with the garrison hospital and MoD central clinical or military hospital, we can see that 40 % of the servicemen with health problems received their treatment in garrison hospital and about 30 % in central clinical or military hospital. This means every third had such a disease for which a more comprehensive treatment was needed.

Though all the research materials and analyses on health problems are related to those serving in the military units, there have been some issues with the serviceman when he was being taken to an isolation cell while being subjected to disciplinary detention before creation of disciplinary battalions.

According to the statute in the isolation cell the serviceman must be subjected to external check-up aiming to record signs on the body, any bruises, scars and scratches. Whereas such actions have rarely been performed.

Referring to the survey results it turned out that 66.7% gave a positive answer and 33.3 % negative answer to the question on whether the serviceman had been subjected to medical examination before the disciplinary detention. Apart from that only 48.8% of the surveyed stated that there had been a thorough medical examination, 20.7% thought that medical examination before disciplinary detention had not been thorough, and 34.5% thought that medical examination had been of formal character.

We are more convinced when the statistical data prove that abolishing the disciplinary detention and creating disciplinary battalions are of formal character. There has not been any concrete changes. That is why we suggest taking steps and providing objective, comprehensive medical examination for servicemen.

The numbers related to the quality of the medical aid and service provided to the servicemen under disciplinary detention is worrying. Compared to the medical aid provided to the servicemen under disciplinary detention, the general medical aid in the armed forces is a little bit of better level. 49% of the surveyed they have not been visited by a doctor while being under disciplinary detention, 24.5 % say the doctor visited them by their own initiative, and 26.5% say the doctor visited based on their health complaints.

## **2. Problems of accessibility of acts made on health state and appealing them**

According to survey results 54 % of the surveyed got familiarized with the medical documents, and many servicemen did not get familiarized with the medical documents.

This comes to justify that almost half of our servicemen are deprived of the opportunity to get familiarized with the acts on their health conditions, which naturally should have its reasons. It turned out that 88% of those who

were not aware of the existence of such documents, 1.5 % were not interested and 10.5 % found it difficult to answer the question.

Based on the mentioned data we can state that lack of accessibility to the medical documents leads to ineffective appeals, since not having the necessary decision the serviceman does not have the chance to assess his health condition even if it is subjective.

It should be noted that in this case, the RA MoD Central Military Medical Commission is a body performing administration as prescribed in Article 2 of the RA law “On Fundamentals of Administration and Administrative Proceeding.” Consequently, it is obliged to pass an administrative act, which should be available to the owner.

Therefore, as an urgent issue, we suggest to a relevant agency making the RA MoD Central Military Medical Commission obliged to hand in the owner a copy of any decision, developing effective appealing mechanisms for those acts, and then during appealing in court applying the RA Administrative Procedure Code.

### **3. Food, water quality and sanitary-hygienic conditions in the RA Armed Forces according to survey results**

The quality of food and water, as well as sanitary-hygienic conditions have great impact on servicemen’s health. The 66-67% of the surveyed assess the quality of food and water as good and very good. This means every third consider the quality of food and water as bad and very bad. Almost the same picture is about the sanitary-hygienic conditions in the barracks. 74 % assess it as good and very good, and 24.5 % as bad and very bad.

## 6. CONCLUSIONS AND RECOMMENDATIONS

Summarizing the data on legislation regulating the discipline, penalties and rewards, appealing mechanisms and effective legal protection, medical aid and service, and the data on application of the legislation, we can formulate the following recommendations which can lead to the solution and provision of servicemen's human rights protection :

Monitoring results indicate a need for a number of amendments in legislation and practice, particularly:

Regarding legislation

1. Include a list of rights of servicemen in the RA Disciplinary Rule Book of the Armed Forces, in accordance with principles of human rights
2. Clarify the rights and obligations of servicemen in disciplinary battalion, to distinguish it from disciplinary detention
3. Eliminate the legal discrepancy and contradiction between the statutes for domestic service, guarding and garrison service, armed forces and discipline
4. Require mandatory provision of a copy of the decision of the Central Military Medical Commission of the RA MoD to the individual in question
5. Stipulate mandatory notification of a serviceman or a close relative on any legal act regarding the serviceman (order, reward, penalty, report, and so on)
6. Set up guarantees for safety and security of a serviceman appealing the actions or inaction of a commander or an officer
7. Require signed confirmation from a person receiving medical assistance regarding the provision of such assistance

Regarding implementation of legislation

1. Rule out cases of military service of more than 24 months
2. Provide adequate human and material resources for Medical aid stations in military units
3. To bring the RA Government decisions on prolonging military service in line with the provisions of the RA Law on "Legal Acts"
4. Ensure that servicemen are aware of their rights and their protection mechanisms
5. Develop staff manuals for conducting social-psychological activities with servicemen and increasing their legal education
6. Ensure that decisions on penalties and rewards are in line with the requirements of the RA Law on "Legal Acts"
7. Stipulate the mechanisms and ways of appealing penalties and rewards in decisions on them and to provide a copy of the decision to the person in question
8. Rule out military recruitment of conscripts with health related problems
9. Ensure immediate demobilization of servicemen with health related issues within time periods defined by law
10. Provide adequate compensation to servicemen demobilized for health-related issues
11. Accurately register all cases of provision of medical assistance in corresponding medical records
12. Publish statistics on provision of penalties, rewards, and medical assistance in the RA Armed Forces