



HELSINKI CITIZENS' ASSEMBLY

VANADZOR



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REPORT

On Human Rights Situation

of Conscripts of Winter (2013) and Summer (2014) Call-ups

VANADZOR

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The Helsinki Citizens' Assembly Vanadzor presents the human rights violations recorded during the regular winter call-up of 2013¹ (December 2013 – January 2014) and the summer call-up of 2014² (May-July).

The report summarizes the information provided by 26 citizens, namely conscripts and their families from 4 RA marzes (regions) and the city of Yerevan, who sought advice with the Organization, and by the responses of the Ministry of Defense to relevant inquiries of the Organization.

The human rights violations throughout the winter call-up of 2013 and summer call-up of 2014 were entirely caused by the inadequate medical examination as citizens with grave health problems were conscribed for regular combatant (line) military service.

We believe that such vicious practices are dictated by the policy of the Ministry of Defense, declared by the RA Defense Minister on the parliamentary hearings on Human Rights in the Armed Forces held by the RA NA Standing Committee on Defense, National Security and Internal Affairs on December 12, 2013. The policy consists in the following: "Conscripts with health problems should be recruited immediately to the military hospitals and referred to military units after receiving relevant treatment there."

This report features the systemic problems repeatedly raised and still unsolved so far and information on certain issues leading to the violation of conscripts' rights.

We also examined the legislation on call-up coordination and assessed the impact of its gaps and drawbacks in terms of violations of conscripts' rights.

¹<http://www.arlis.am/DocumentView.aspx?docID=87088>

<http://yerevannews.am/?p=16792&l=am/hramanagir%D5%9D+dzmerayin+zorakochoivo%D6%82+zoracrman+masin>

² <http://www.lragir.am/index/arm/0/country/view/98450>

<https://www.e-gov.am/gov-decrees/item/24261/>

1. Methodology

The Report is based on the information sources below:

1. Conscripts and their families, RA Defense Department;
2. Medical records on the health status of conscripts;
3. The mass media.

The medical records on the health status of conscripts were reviewed by an expert physician whose opinion formed the basis for the related official letters addressed to the Ministry of Defense. The medical commissions' expert opinions on the conscripts' health were compared against the available medical records issued by civilian medical institutions and the data provided by their parents.

The data on conscripts' health status were compared against the list of diseases specified in Order 410 of the RA Defense Ministry, and the legality of each conscript's fitness for military service was assessed.

2. Conscription Process, Legislation on Health Examination of Pre-Conscripts and Conscripts

The legal acts below cover the regulations of the conscription process and medical examination of conscripts:

RA Law on Conscription³ dated September 16, 1996

This law regulates the military registration of citizens, preparation for military service, compulsory military conscription, military service, relations on coordinating military training in reserve, as well as establishes the regulatory standards for medical examination and grounds for avoiding compulsory military conscription and receiving deferral in the Republic of Armenia.

³ <http://www.arlis.am/>

RA Law on Defense⁴ dated November 27, 2008

According to Article 13 of this Law, the RA Defense Ministry establishes the procedure for compulsory military conscription and training musters, as well as that for medical expert examination of persons liable for military service and military medical examination of servicemen. Under Article 14 of the Law, the General Staff of the armed forces coordinates the compulsory military service conscription and training musters, as well as registration and recruitment of mobilization resources, preparatory military training and military registration.

RA Defense Minister's Order № 410 on Approving the Procedure for Medical Expert Examination of Persons Liable for Military Service and Servicemen dated June 11, 2013 and Revoking the RA Defense Minister's Order № 175 dated February 26, 2010 /hereinafter referred to as the RA Defense Minister's Order № 410/.

The RA Defense Minister's Order № 410 provides as follows:

- Medical expert examination of citizens upon their registration at conscription districts and compulsory military call-up;
- List of diseases and physical defects determining the citizens' fitness for military service by their health status and physical development data during their registration, recruitment, military service, training musters, commander or general staff-directed military trainings and exercises (war games).

⁴ See Ibid.

3. Regulation of Fitness for Military Service and Legal Framework Deficiencies

The RA Defense Minister's Order № 175 dated February 26, 2010 /hereinafter referred to as the RA Defense Minister's Order №175/ provided for the types of regular combatant (line) military service, regular non-combatant (non-line) military service and limited service to be determined by the conscript's health status. The RA Defense Minister's Order № 410 only provided for the types of combatant military service and limited service to be determined by the conscript's health status.

As reiterated in our previous reports,⁵ neither the Order above, nor any other legal act established the framework for combatant, non-combatant and limited military service types. Actually, no legal act has been adopted to define the scope of limited military service so far.

It is also noteworthy that the RA Defense Ministry provided contradictory responses to our inquiries on the availability of any regulatory act on combatant and "non-combatant" military service.⁶

Likewise, there is no regulatory legal act available, if any, on the limited military service as provided for under the new Order 410. The Organization constantly highlights the resolution of this issue, since the citizens recognized as fit for "non-combatant" service or "limited combatant" service allegedly do combatant military service, which leads not only to a deterioration of their health, but also to the improper performance of their military duties, violation of statutory relations and even the servicemen's death in some cases.

The new procedure established under the RA Defense Minister's Order 410 went as far as to remove the phrase "non-combatant service." It can be assumed from the above that

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⁶ REPORT on Conscription Process and Situation of Conscripts' Rights during the Spring Call-Up of 2013, pp. 4-5, APPENDICES 1.1-1.5

conscripts declared fit for non-combatant service are declared fit for limited military service. That is to say that the types of non-combatant and limited military service under the previous procedure came to be replaced with limited military service involving health deterioration of persons with grave health problems who used to be declared fit for non-combatant military service.

The RA Defense Minister's Order 410 also fails to specify any severity criteria of a number of diseases; as a result, a disease of the same severity might be considered as grounds for both exempting conscripts from service and for declaring them fit. Such ambiguity is a violation of the principle of legal certainty and may lead to subjective and discretionary approaches and corruption risks.

Hence, the RA Defense Minister's Order 410, in terms of its contents, actually causes violation of the conscripts' rights and discriminatory approach to determining their fitness for military service.

The RA Defense Minister's Order 410 still fails to resolve the issue of determining the fitness for military service of conscripts with several diseases.

As mentioned in the Report on Human Rights Situation in the RA Armed Forces in 2013,⁷ the RA Defense Minister's Order 175 was applied in a certain period of the spring call-up /namely May-July/ till June 11, 2013 and was replaced by the RA Defense Minister's Order 410 effective since June 11, 2013 throughout the rest of the call-up. Hence, some of the conscripts underwent medical expert examination in compliance with the RA Defense Minister's Order 175, and the others underwent the examination above in compliance with the RA Defense Minister's Order 410. In response to the inquiry, the RA Defense Ministry stated as follow: "The RA Defense Minister's Order 410 was approved on April 8, 2013 and registered at the RA Ministry of Justice on May 13, 2013, and the call-up started from June

⁷ <http://hcav.am/wp-content/uploads/2014/05/%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%812.pdf>

11 of the same year. This means that all the conscripts of the spring call-up of 2013 were examined and relevant decisions on their military service were made in compliance with the RA Defense Ministry Order 410 of April 8, 2013." It follows from the above that the Defense Ministry considers the spring call-up of 2013 to be held only under Order 410.

However, the Organization has some information suggesting that some conscripts and servicemen actually underwent medical examination during the spring call-up of 2013 both under the Order 175 and Order 410. Moreover, some of them underwent medical examination in compliance with the new RA Defense Minister's Order 410 when it had not become effective yet, in particular:

1. Conscript A. B. underwent medical examination under the RA Defense Minister's Order 410 within February 25-June 1, 2013;
2. Conscript M. B. underwent medical examination under the RA Defense Minister's Order 410 within April 30-May 20, 2013;
3. Conscript M. Gh. underwent medical examination under the RA Defense Minister's Order 410 within May 2-June 7, 2013;
4. Conscript S. T. underwent medical examination under the RA Defense Minister's Order 175 within March 12-May 2, 2013 and was considered fit for military service by decree of the Central Military and Medical Commission of May 8, 2013;
5. Conscript S. K. underwent medical examination under the RA Defense Minister's Order 410 within April 10-April 12, 2013 and was considered fit for military service by decree of the Central Military and Medical Commission of May 23, 2013;
6. Conscript G. Z. underwent medical examination under the RA Defense Minister's Order 410 within April 2-June 1, 2013 and was considered fit for military service by decree of the Central Military and Medical Commission of May 23, 2013;
7. Conscript A. A. underwent medical examination under the RA Defense Minister's Order 410 within April 2-April 22, 2013 and was considered fit for military service by decree of the Central Military and Medical Commission of May 30, 2013;

8. Conscript G. M. underwent medical examination under the RA Defense Minister's Order 410 within April 2-April 9, 2013.

It follows that the conscripts above underwent medical examination and were considered fit or unfit for military service under a non-existent and non-effective legal act that constituted not only an infringement of the provisions under Article 46⁸ of the RA Law on Legal Acts, but also a gross violation of the rights of the citizens above.

At the same time, it should be noted that the Organization has repeatedly presented its stance below both to the RA Ministry of Defense and the RA NA Standing Committee on Defense, National Security and Internal Affairs: **the RA Defense Minister's previous Order 175 and effective Order 410 contain regulations restricting the rights of citizens, and therefore must be stipulated only by law rather than by a sub-legal act** (Article 83.5(1, 2), RA Constitution, RA Law on Legal Acts Article 9(4)).

We also highlighted this issue in our Report on Human Rights Situation in the RA Armed Forces in 2013; nevertheless, in its comments⁹ on the Report, the RA Defense Ministry found it unnecessary to replace the Order by a law since it was a medical document, and it was impossible to respond quickly and make the necessary changes in compliance with the changing criteria.

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- ⁸ 1. Legal acts shall become effective only upon their adoption and also at the moment of their adoption as prescribed under this Law.
2. Normative legal acts shall become effective within the terms set therein.
Normative legal acts may become effective no sooner than the day following their official publication in line with this Law, unless otherwise directly provided in this Law.
Normative legal acts, that restrict the rights or freedoms of legal or physical persons, or assign responsibilities or extend the scope of responsibilities, or stipulate and change obligations or establish and change procedures for the performance of such obligations, as well as procedures for control or supervision of the actions of legal or physical persons or those deteriorating their legal situation shall become effective on the 10th day following their official publication, unless the normative legal acts in question specify any longer terms or unless otherwise directly provided in this Law.
3. Unless published and effective by the procedure under this Law, the normative legal acts shall have no legal force (have no legal consequences and do not form a legal basis for regulation of legal relations).

⁹ http://hcav.am/wp-content/uploads/2014/10/M_2014-04.06_202-1.pdf

The RA Defense Minister's Order 410 was issued in compliance with the requirements of the Article 13(2)(2) of the RA Law on Defense for regulating the process of health expert examination of the persons liable for military service and servicemen.

While the Order was really issued by the legal norms subordination principle, it still contains some provisions directly regulating the restrictions of the rights of conscripts and servicemen, particularly the types of combatant and limited military service. Under the Article 83.5(1, 2) of the RA Constitution and Article 9(4) of the RA Law on Legal Acts, it is exceptionally the RA laws that establish the **conditions and procedures** for the exercise and protection of the rights of physical and legal persons, as well as the restrictions of their rights and **obligations**. That is to say, the RA Defense Minister's Order 410 establishes the procedure for the health expert examination of the persons liable for military service and servicemen, concerning their rights, and the type of their fitness for military service, determining the scope of their responsibilities. Hence, the Order above directly imposes regulations that can be introduced only by the force of law. Therefore, the above reasoning of the RA Defense Ministry contradicts the principles of both the RA Constitution and of the RA Law on Legal Acts.

4. Outline of Human Rights Violations throughout Winter Call-up of 2013 and Summer Call-up of 2014

General Information

Throughout the winter call-up of 2013 and summer call-up of 2014, 26 conscripts from various marzes (regions) of Armenia, including Gegharkunik, Lori, Kotayk, Vayots Dzor and city of Yerevan, sought legal advice with the Organization.

23 of the conscripts above had problems with inadequate medical examination, 2 of them sought clarification for receiving deferral from military service and 1 conscript – for the deferral to continue his studies.

As we can see from the above, most of the conscripts' problems concern their health examination and determination of their fitness for military service.

11 out of the 26 applicants sought only verbal advice on the procedures for medical examination /9 persons/ and on the grounds for deferral or exemption from military service based on family status /2 persons/. As for the issues of the other 15 applicants, the Organization drafted 19 official letters /3 letters for 1 person and 2 letters for 2 persons/.

18 out of the 19 official letters were addressed to the RA Defense Ministry with the request to review the legality of considering the persons with health problems fit for military service and on conducting re-examination; and the other letter was addressed to the RA Prime Minister on granting deferral for the conscript to continue his studies.

The Organization received replies only to 16 out of the 19 official letters above within the terms prescribed by law.¹⁰ As for the other 3, the replies arrived with a delay of up to 10 days.

Apart from the terms, we would like to address the contents of the replies received from the RA Defense Ministry. As a rule, they contain the reformulation of the facts provided in our letters and relevant decrees rather than the actions or studies of the issues highlighted therein.

¹⁰ <http://www.arlis.am/>

One of the conscripts who sought assistance with the Organization and received written advice throughout the winter call-up of 2013 and the summer call-up of 2014 was considered as unfit for military service and registered in the reserve, 7 conscripts received deferrals, with 1 of them – a deferral with the right to continue his studies, and the other 6 – on the grounds for their state of health, including:

- 3 conscripts were granted deferral for 6 months. At the time of their legal support, 2 of them received their deferrals for the first time and did not seek legal advice with the Organization later (upon the expiry of the deferral). As for the other conscript, he was granted a 6-month deferral in January of 2014, then recognized as fit for service and conscribed. He started his military service at one of the military units of the RA Armed Forces and has not contacted the Organization so far;
- a conscript received a deferral of 5 month in January of 2014 and another one - for another 10 months in June of the same year. In both cases, the Organization provided the conscripts with legal support;
- a conscript received a deferral of a year in July of 2014 ;
- a conscript received a deferral of 10 months in July of 2014. He had received two more deferrals before (for a year during the autumn call-up of 2012 and for 6 months for the winter call-up of 2013-2014). The conscript sought advice with the Organization during the summer call-up of 2014.

2 of the conscripts with health problems, who have already started their military service, pass most of it in military hospitals. Based on the applications of their parents, the Organization continues protecting their human rights. A parent of one of such conscripts stated that despite their son's health problems, they already reconciled with the thought that they were unable to change anything. Besides, according to him, they had to stop seeking protection of their son's rights as he might face problems during his military service otherwise.

The conscripts' parents usually turn down our proposals to settle the issues in a court of law and support their decision by their wish to avoid potential problems.

The winter call-up of 2013 and the summer call-up of 2014 again showed issues related to the coordination of the call-ups. The most common issue concerned holding the conscripts' medical examination under a certain schedule that would make it possible to avoid long queues and crowding. The other issue concerns the lacking practices of providing the conscripts with the copies of their medical examination records. While this issue has been raised repeatedly, in its comments to the Report on the Human Rights Situation in the RA Armed Forces in 2013, the RA Ministry of Defense stated as follows: *“As for providing everybody with their medical records, it will cause difficulties in the territorial registration and enlistment offices due to the lack of copying devices and other necessary supplies.”*

It follows from the above, that the Ministry of Defense confirms violation of the rights of the citizens, in this case, of conscripts to receive information on their state of health.¹¹ In this case, the lack of the copying devices and other necessary supplies can by no means reason the ongoing practices, since the commission can make and provide a copy of the diagnosis in writing.

It is quite noteworthy that the copy of the medical examination act is the main document serving a basis for conscripts and their families to support their applications and complains for the protection of their rights.

We also provided our proposal on the legal regulation of this issue to the RA Defense Ministry and the RA NA Standing Committee on Defense, National Security and Internal Affairs, but the issue still remained unresolved in the RA Defense Minister's Order 410.

¹¹ Article 7, RA Law on Medical Care and Services to the Population



Nevertheless, it should be noted that the practices of the medical examination act provision have changed to some extent; if previously, such papers were denied, now they are available upon request.

Conclusions

The summary of the issues identified by the Organization throughout the winter call-up of 2013 and the summer call-up of 2014 revealed a number of issues still unresolved in this area. Considering the issues identified in the previous report¹² and unresolved so far, we recorded the issues in the areas below.

¹² http://hcav.am/wp-content/uploads/2013/11/%D4%B6%D5%B8%D6%80%D5%A1%D5%AF%D5%B8%D5%B9_2013_%D5%A6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81.pdf

Legislation

1. There is no sub-legislative act to regulate the types of combatant military service and limited military service;
2. The RA Defense Minister's Order 410 fails to clearly specify any severity criteria of a number of diseases;
3. The law fails to regulate the procedure to determine the fitness to military service of conscripts with several combined diseases;
4. A document without legal force was applied during the spring call-up of 2013;
5. Persons with health problems are conscribed to military service due to the lack of any mechanism of appeal of the medical examination opinion throughout the call-up;
6. There is no adequate compensation for transport expenses for the conscripts to undergo Republican Medical Examination.

Enforcement of Legislation

1. As throughout the previous call-ups, this call-up also lacked the compulsory complex medical examination of conscripts in the full extent provided under the law;¹³
2. Conscripts granted one or several deferrals with the same diseases uncured, are drafted to the army without any reasoning and improvement in their state of health during the following call-ups;
3. The potential complications of the conscripts' health given the physical stress typical of the military service are underestimated;
4. Instead of exemption from military service, conscripts are granted more deferrals than provided under the law;
5. The medical re-examination of conscripts is frequently a mere formality;

¹³ http://hcav.am/wp-content/uploads/2012/12/%D5%80%D5%94%D4%B1%D5%8E_%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_%D5%A1%D5%BC%D5%B8%D5%B2%D5%BB%D5%A1%D5%AF%D5%A1%D5%B6_2012.pdf
http://www.hcav.am/attachments_/2df5c_zorakochi_zekuyc.pdf
[http://hcav.am/attachments_/5f854_zekuyc_zorakoch_2008\[1\].pdf](http://hcav.am/attachments_/5f854_zekuyc_zorakoch_2008[1].pdf)

6. The conscripts considered fit for limited military service are drafted into combatant service;
7. The call-up again revealed the ongoing vicious practice of not providing the conscripts with the medical opinion on findings of their health examination, whereas a person is entitled to access such information as prescribed under Article 7 of the RA Law on Medical Assistance and Services to the Population;¹⁴
8. The responses to the official letters on the issues of conscripts are received with violation of the terms prescribed by law and therefore of the requirements of the RA Law on Freedom of Information. In some cases the official letters even remain unanswered */See APPENDIX 1/*.

¹⁴ Everybody shall be entitled to access information on their health, findings of their health examination, their diagnosis and treatment methods, any associated risks, possible medical interventions and their consequences and treatment outcomes,

5. Recommendations

1. Stipulate legal regulations on conscripts' fitness for military service based on their health status;
2. Before adopting a relevant law, make the changes below to the RA Defense Minister's Order № 410:
 - Provide a clear definition of the diseases found in the list of diseases in accordance with their severity;
 - Stipulate mandatory provision of conscripts with their health examination opinion, regardless of their request;
 - Establish the procedure to determine the fitness for military service of conscripts with several combined diseases;
 - Necessarily include in the conscript's health examination opinion the records on potential complications of his health in conditions of the physical stress typical of the military service and instructions on preventing such health deterioration;
3. Ensure legal stipulation of the mechanism of appeal of medical examination act;
4. Ensure the mandatory complex medical examination of conscripts and servicemen, regardless of their complaints;
5. Ensure expert opinions (diagnoses) on the medical examinations of conscripts in compliance with their real state of health;
6. Ensure an independent control mechanism to prevent and exclude drafting the conscripts deemed fit for limited military service.