

The Rights of Conscripts in Eastern Europe, Central Asia, and the South Caucasus: A Review of Legislation and Practice



A Review of Legislation
and Practice

2021



The Rights of Conscripts in Eastern Europe, Central Asia, and the South Caucasus: A Review of Legislation and Practice



2021

DCAF Geneva Centre
for Security Sector
Governance



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

About DCAF

DCAF - Geneva Centre for Security Sector Governance is dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, respect for human rights, and gender equality. Since its founding in 2000, DCAF has contributed to making peace and development more sustainable by assisting partner states, and international actors supporting these states, to improve the governance of their security sector through inclusive and participatory reforms. It creates innovative knowledge products, promotes norms and good practices, provides legal and policy advice and supports capacity-building of both state and non-state security sector stakeholders.

Copyright

Published in Switzerland in 2021 by DCAF - Geneva Centre for Security Sector Governance

DCAF Geneva

P.O. Box 1360

CH-1211 Geneva 1

Switzerland

Tel: +41 22 730 94 00

info@dcaf.ch

ww.dcaf.ch

Twitter @DCAF_Geneva

DCAF encourages the use, translation, and dissemination of this publication. We do, however ask that you acknowledge and cite materials and do not alter the content.

Cite as: [G. Jasutis, ed. *The Rights of Conscripts in Eastern Europe, Central Asia, and the South Caucasus: A Review of Legislation and Practice* (Geneva: DCAF, 2021).

Copy-editor: Sauven SA

Design & layout: DTP Studio

ISBN: 978-92-9222-603-9



About this publication

This legislative review was carried out in 2020, taking into account the norms of the legislation adopted before November 2020.

The review was conducted in the following countries:

Azerbaijan

Armenia

Belarus

Georgia

Kazakhstan

Kyrgyzstan

Moldova

Tajikistan

Turkmenistan

Ukraine

Uzbekistan



Disclaimer

The statements and opinions expressed in this publication are those of the authors alone and do not necessarily reflect the views of DCAF.

About the authors

Authors:

Eldar Elman oglu Zeynalov

Director, Human Rights Center of Azerbaijan, Azerbaijan

Email: eldar.hrca@gmail.com

A review of the legislation of Azerbaijan

Ejmin Shahbazian

Researcher, Armenia

Email: ejminsh@gmail.com

A review of the legislation of Armenia

Elena Tonkacheva

Chairman of the Board, Center for Legal Transformation, Belarus

Email: tonkacheva@gmail.com

A review of the legislation of Belarus

Victoria Fedorova

Legal Initiative, Belarus

Email: gomellawyer@gmail.com

A review of the legislation of Belarus

Agit Mirzoev

Chairman of the Board, Center for Participation and Development, Georgia

Email: mirzoevagit@gmail.com

A review of the legislation of Georgia

Anara Ibraeva

Candidate of Law, Kadir-Kasiet, Kazakhstan

Email: dignityast@gmail.com

A review of the legislation of Kazakhstan

Gulshayr Abdirasulova

Expert, Kylym Shamy Human Rights Center, Kyrgyzstan

Email: g.abdirasulova@gmail.com

A review of the legislation of Kyrgyzstan

Alexandru Postica

Researcher, Institute for Legal, Political and Sociological Research and Director, Human Rights Program, Promo LEX Association, Moldova

Email: alex_postica@yahoo.co.uk
A review of the legislation of Moldova

Dilrabo Samadova

Executive Director, Office of Civil Liberties, Tajikistan
Email: dsamadova@gmail.com
A review of the legislation of Tajikistan

Elizaveta Chmykh, Rebecca Mikova, Richard Steyne

DCAF experts
Email: e.chmykh@dcaf.ch , r.mikova@dcaf.ch , r.steyne@dcaf.ch
A review of the legislation of Turkmenistan

Alexandra Matveychuk

Email: avalaina@gmail.com
Chairman of the Board, Center for Civil Liberties, Ukraine
A review of the legislation of Ukraine

Azimov Saidbek Ibragimovich

Email: saidbek87@mail.ru
Head of the Secretariat of the Commissioner of the Oliy Majlis of Uzbekistan for Human Rights (Ombudsman), Uzbekistan
A review of the legislation of Uzbekistan

Editors:

dr. Grazvydas Jasutis

Email: g.jasutis@dcaf.ch
Project Coordinator
Operations, Europe and Central Asia
DCAF - Geneva Centre for Security Sector Governance

Elizaveta Chmykh

Email: e.chmykh@dcaf.ch
Project Assistant
Operations, Europe and Central Asia
DCAF - Geneva Centre for Security Sector Governance



Table of contents

1. Introductory remarks	1
2. Armenia	10
3. Azerbaijan	23
4. Belarus	40
5. Georgia	52
6. Kazakhstan	62
7. Kyrgyzstan	72
8. Moldova	91
9. Tajikistan	100
10. Turkmenistan	116
11. Ukraine	134
12. Uzbekistan	144

Introductory remarks

Since the end of the cold war, many states in Europe have abolished compulsory military service, but the practice of military conscription remains widespread across Eastern Europe, the South Caucasus, and Central Asia. This is the case in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, all of whom rely on a conscripts-based system. Despite this, little research has been conducted into the legal protection of military conscripts, perhaps the most vulnerable section of the military community. As the Assistant Director of DCAF – the Geneva Centre for Security Sector Governance, it therefore brings me great pleasure to present this publication, prepared by my colleagues within the Europe and Central Asia division and regional experts.

The compilation demonstrates DCAF's firm commitment to advancing the protection and enforcement of the human rights and fundamental freedoms of conscripts. Ultimately, it is hoped that this review will support the efforts of interested parties both at the national and international level to take the necessary measures to ensure that conscripts are able to enjoy their full rights as citizens.



Darko Stančić

Assistant Director and Head of Europe & Central Asia Division, DCAF – Geneva Centre for Security Sector Governance

Literature review

In recent years, many states have transformed their military from conscription-based to a volunteer professional force. This reflects the nature of modern military engagements, as well as the contemporary security environment, both of which require highly trained military personnel, and often involve deployments in the context of peacekeeping or humanitarian missions.¹

Historically, literature on conscription can be divided between those who support it on the basis that it can be used as a vehicle for social cohesion and nation-building, versus those who contend that the demands of the modern security environment instead require professional armies. In recent years, this debate has been supplemented by those concerned with an increase in geopolitical contestation and falling military recruitment (particularly in Europe) and who therefore support the re-introduction of conscription. Those purporting the economic benefits of a decrease in defence spending (known as the ‘peace dividend’) since the end of the Cold War, and who fear a militarization of society resulting from conscription, lobby for volunteer professional armies. Notwithstanding these debates, many countries, particularly in Eastern Europe, South Caucasus and Central Asia (hereinafter EESCCA), still use conscription.² Despite this, contemporary debates on conscription generally address the issue from an economic, realpolitik, ethical or moral standpoint. This has resulted in a lack of research on legal protections for conscripted personnel.

Several exceptions exist, including the ‘Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel’, produced by DCAF and the ODIHR in 2008, and which addresses conscripts throughout.³ M. Sassoli and A. McChesney’s 2002

-
- 1 DCAF. Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel. Introduction. P.11. Available from: <https://www.dcaf.ch/sites/default/files/publications/documents/HandbookHumanRightsArmedForces-080409.pdf>.
 - 2 These include Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Indeed, premised on perceived changes in the geopolitical landscape, some countries in the Euro-Atlantic sphere, including Sweden and France, have begun reintroducing hybrid forms of mandatory national service. Lithuania reinstated the conscription in 2015 and Latvia seriously considered to reintroduce the conscripted personnel in 2017. In the meantime Estonia has retained the conscripts since its independence.
 - 3 DCAF. Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel. Introduction. P.11. Available from: <https://www.dcaf.ch/sites/default/files/publications/documents/HandbookHumanRightsArmedForces-080409.pdf>. See also: Ян Ли (Ian Leigh), «Права человека и основные свободы военнослужащих: Европейский суд по правам человека», Рабочий документ ДКВС № 165, 2005, стр. 4.

study 'Conscripts' rights and military justice training manual', in which they provide practical guideline for training military justice personnel on how to protect conscript rights⁴. Jason Britt's 2009 study addresses the constitutionality of conscription during peacetime;⁵ and Rita J. Simon's and Mohammed A. Abdel-Moneim's 'Handbook on Military Conscription' the legal aspects of military mobilization policies.⁶ In addition, Peter Rowe's 2006 study on human rights law in the armed forces considers aspects of human rights law relevant to the armed forces, including with regard to conscripts.⁷

In the context of EESCCA—the focus of this study—very few scholars have addressed the issue. Notable exceptions include Peter D. Waisberg's 2004 analysis of Russian legislation on alternative civilian service;⁸ and Cathy Smith's study on human rights violations in the Russian Military.⁹

The above demonstrates that little research has been conducted on the human rights of conscripts. To this end, the gap between legal provisions and reality – that is, whether the norms and standards enshrined in a country's constitution and law regarding conscription are respected in practice – have never been systemically explored. Currently, the only actors working on this area in the researched geographical space are several international, regional and non-governmental organisations, to which this literature review will now turn.

These organisations contribute to the debate by investigating, reporting, and in some cases providing recommendations, on alleged violations of conscript rights, both in relation to international conventions and national legislation. They include most prominently the Council of Europe, the Organisation for Security and Cooperation (OSCE), the bodies and representatives of the United Nations, such as the Human Rights Council, Committee, and reports by their Special Rapporteurs; as well as numerous non-

See also: W. McDermott & K. Piaget. 2016. 'Ombuds Institutions for the Armed Forces: Selected Case Studies'.

4 M. Sassoli, A. McChesney. 2002. Conscripts' rights and military justice training manual. Centre for Recruits' and Servicemen's Rights Protection of the Republic of Moldova.

5 J. Britt. 2009. 'Unwilling Warriors: An Examination of the Power to Conscript in Peacetime.' Available from: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1042&context=njl-sp>.

6 R. J. Simon, M. Alaa Abdel-Moneim. 2011. A Handbook of Military Conscription and Composition the World over. Available from: <https://www.amazon.fr/Handbook-Military-Conscription-Composition-World/dp/0739167510>.

7 P. Rowe. 2006. 'The Impact of Human Rights Law on Armed Forces.' Cambridge: Cambridge University Press.

8 P. Waisberg. 2004. The Duty to Serve and the Right to Choose: The Contested Nature of Alternative Civilian Service in the Russian Federation. Available from: <https://journals.openedition.org/pipss/224>.

9 C. Smith. Violations of Human Rights in the Russian Military. Available from: <https://www.du.edu/korbel/hrhw/researchdigest/russia/military.pdf>.

governmental institutions, such as Human Rights Watch and Amnesty International.

The Council of Europe (COE) advocate for the rights of conscripts, including through the provision of recommendations for member states, and country-based reports on conscription practices. In 2010, the Committee of Ministers adopted 'Recommendation CM/Rec (2010) 4 on the human rights of members of the armed forces', which emphasised the vulnerabilities and needs of conscript soldiers.¹⁰ In 2013, the Parliamentary Assembly of the Council of Europe (PACE) assessed changes to national legislation in Armenia on alternative service.¹¹ In addition, the COE also provide updates on the execution by national authorities of judgements by the European Court of Human Rights (ECHR) on cases concerning violations of conscript rights. These include non-combatant deaths of a military conscript in Russia¹² and Armenia¹³, amongst others.

The Organisation for Security and Cooperation in Europe (OSCE), through its country field offices and Conflict Prevention Center (CPC) based in Vienna, as well as its Office for Democratic Institutions and Human Rights (ODIHR), have works to protect conscript rights. The OSCE Code of Conduct on Politico-Military Aspects of Security, a key reference material for good governance of the security sector, attempts to regulate the role of armed forces in democratic society, and addresses the rights of military personnel, including conscripts.¹⁴ In addition, through its various fields offices, the OSCE works together with national authorities and civil society to raise awareness on the rights of conscripts. These include awareness raising events on army conscription practices in Armenia,¹⁵ and support to establish the Legal Advice Centre, which provides free consultations to Armenian citizens on issues related to military service and conscription.¹⁶ In partnership with the Armenian Refugees Supporting League and

10 Council of Europe. Human rights of members of the armed forces. Recommendation CM/Rec (2010) 4 of the Committee of Ministers and explanatory memorandum. Available from: <https://policehuman-rightsresources.org/content/uploads/2016/06/CoE-Guidelines-on-Human-Rights-of-members-of-the-armed-forces.pdf?x68217>.

11 Human Rights Watch. World Report 2015: Armenia. Available from: <https://www.hrw.org/world-report/2015/country-chapters/armenia>.

12 Council of Europe. Updated Action Report on the execution of the judgment of the European Court of Human Rights in case no. 39583/05 *Perevedentsev v. Russia* (judgment of 24 April 2014, final on 13 October 2014). Available from: <https://rm.coe.int/0900001680738260>.

13 Council of Europe. See the following reports: <https://rm.coe.int/09000016809cda07>; <https://rm.coe.int/090000168097afc3>; <https://rm.coe.int/090000168073e011>.

14 For example, see para 28, which obliges OSCE participating states to reflect in laws and other relevant documents the rights and duties of armed forces personnel, including through '...introducing exemptions from or alternatives to military service'. See: <https://www.osce.org/fsc/41355?download=true>.

15 OSCE. 2008. OSCE Office helps clarify army conscription procedures in Armenia. Available from: <https://www.osce.org/yerevan/49420>.

16 OSCE. 2015. Providing information support to conscripts. Available from: <https://www.osce.org/yerevan/136281>.

the Armenian Constitutional Right Protective Center, the OSCE also created guidance material on how to monitor the rights of refugees in relation to military service.¹⁷ ODIHR have also addressed conscript rights, both through its 'Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel', and other studies exploring, for example, the inclusion and situation of women in the armed forces in the OSCE region.¹⁸

The United Nations, through its many bodies, instruments and procedures, also addresses violations of conscript rights. This work is primarily carried out by the Human Rights Council (HRC) and the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR compiles analytical reports on conscientious objection to military service.¹⁹ The last publicly available survey report addressed new developments, best practices and remaining challenges to conscientious objectors, and included reference to remaining challenges in many countries within the post-soviet space.²⁰ Pursuant to resolution 20/2 of the Human Rights Council on Conscientious objection to military service,²¹ OHCHR invited various non-governmental stakeholders to contribute to the report, including the War Resisters' International (WRI),²² Friends World Committee for Consultation (FWCC),²³ The Quaker,²⁴ Amnesty International,²⁵ Office of the General

-
- 17 Armenian Refugees Supporting League and Armenian Constitutional Right Protective Center. 2001. Monitoring of Implementation of Rights of Refugees in Relations to Military Conscription and Army Service in the Republic of Armenia. Available from: <https://www.osce.org/yerevan/36160?download=true>.
 - 18 ODIHR. 2018. Baseline Study Report: Women in the Armed Forces in the OSCE Region. Available from: <https://www.osce.org/odihr/women-armed-forces-baseline-study?download=true>.
 - 19 OHCHR. Conscientious objection to military service. Available from: <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/ConscientiousObjection.aspx>.
 - 20 OHCHR. 2017. Conscientious objection to military service: Analytical report of the Office of the United Nations High Commissioner for Human Rights. Available from: <https://www.undocs.org/A/HRC/35/4>.
 - 21 Human Rights Council. 2012. Report of the Human Rights Council on its twentieth session. Available from: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-2_en.pdf.
 - 22 War Resisters' International. 2018. Application procedures for obtaining the status of conscientious objector to military service across different countries. Available from: https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/WRI_2.pdf.
 - 23 OHCHR. Submission for the UN High Commissioner for Human Rights Report on 'different approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards' as mandated by Human Rights Council Resolution 36/18. Available from: <https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/IFOR.doc>.
 - 24 OHCHR. Application Procedures Enabling the Exercise of the Right to Conscientious Objection to Military Service Available from: <https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/QUNO.docx>.
 - 25 Amnesty International. 2019. Greece: Application Procedures for Obtaining the Status of Conscientious Objectors to Military Service in Accordance with Human Rights Standards Submission to the Office of the High Commissioner on Human Rights Pursuant to HRC Resolution 36/18. Available from: <https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/AI.pdf>.

Council for Jehovah's Witnesses,²⁶ European Organisation of Military Associations and Trade Unions (EUROMIL),²⁷ European Bureau for Conscientious Objection (EBCO)²⁸ and The Movement of Conscientious Objectors (MCO).²⁹ Under the 'Right to Refuse' Programme, the WRI also provides information on allegations of imprisonment of conscientious objectors, information on national conscript practices, and organizes International Conscientious Objection days each year.³⁰ In 2014, the FWCC via the Quaker United Nation Office published a report addressing the violations of right to conscientious objections.³¹ The International Fellowship of Reconciliation also advocates for the inclusion of military service in the definition of forced labour, under the 1926 ILO Convention, and has contributed to various OHCHR studies.³²

The OHCHR also works to protect conscript rights through its Human Rights Committee, a body of independent experts mandated to monitor the implementation of the International Covenant on Civil and Political Rights by its State Parties. In recent years, the Human Rights Committee has commented on alleged violations of freedom of thought, conscience and religion and of the double jeopardy principle relating to imprisonment of contentious objectors in Turkmenistan.³³ In 2016, the Human Rights

-
- 26 World Headquarters of Jehovah's Witnesses. Information of Conscientious Objection to Military Service involving Jehovah's Witnesses. Parts 1 and 2. Available from: https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/JehovahsWitnesses_1.docx; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/JehovahsWitnesses_2.pdf.
 - 27 EUROMIL. 2018. Information concerning approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in selected European countries. Available from: <https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/EUROMIL.pdf>.
 - 28 OHCHR. Reference: Your letter of 12 October 2018 concerning resolution 36/18 of the Human Rights Council on 'Conscientious objection to military service'. Available from: <https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/EBCO.pdf>.
 - 29 See also: https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_1.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_2.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_3.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_4.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_5.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_6.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_7.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_8.pdf; https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/MCO_9.pdf.
 - 30 War Resisters' International. Right to Refuse to Kill. Available from: <https://wri-irg.org/en/taxonomy/term/1>.
 - 31 Quaker United Nations Office. Application Procedures Enabling the Exercise of the Right to Conscientious Objection to Military Service. Available from: https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/QUNO.docx&action=default&DefaultItemOpen=1.
 - 32 International Fellowship of Reconciliation. Submission to the Study by the Office of the High Commissioner for Human Rights on human rights with regard to young people, as mandated in Human Rights Council Resolution 35/14. Available from: https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Youth/IFOR.doc&action=default&DefaultItemOpen=1.
 - 33 See: Views adopted by the Human Rights Committee on 15 October 2014, appendix I; No. 2218/2012,

Committee recommended that Azerbaijan adopt legislation necessary to protect the right to conscientious objection to military service,³⁴ and made similar remarks regarding Kazakhstan,³⁵ Kyrgyzstan,³⁶ Tajikistan,³⁷ Turkmenistan,³⁸ and Ukraine.³⁹

Alongside the Human Rights Committee, UN Special Rapporteurs⁴⁰ also conduct ad-hoc investigations and report on violations of conscript rights in EESCCA. The Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment normally addresses cases of forced-detention, non-combatant deaths, and service conditions of conscripted personnel. The Special Rapporteur on freedom of religion or belief normally addresses violations of conscripts rights stemming from the alleged refusal of national authorities to exempt certain persons from conscription based on 'conscientious objections'.⁴¹ This was the case in 2003, when in the context of the Human Rights Committee's concluding remarks on the annual report of the Russian Federation (UN Doc. CCPR/CO/79/RUS of November 6, 2003) on the implementation of the International Covenant on Civil and Political Rights, the Special Rapporteur on freedom of religion or belief recommended that States reduce the length of alternative civilian service for conscientious objectors to that of military service or to reduce the difference of their duration.⁴² In 2015, the then Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, reported to the Human Rights Council on progress made in preventing torture and ill treatment of conscripts in Tajikistan.⁴³

Human Rights Watch (HRW) published numerous reports on conscription practices in the Russian Federation, Azerbaijan, Tajikistan and Armenia, addressing issues including

Abdullayev v. Turkmenistan; Views adopted on 25 March 2015, appendices I and II; No. 2219/2012, Nasyrlyayev v. Turkmenistan; Views adopted on 15 July 2016, annex; No. 2220/2012, Aminov v. Turkmenistan, Views adopted on 14 July 2016, annex; No. 2224/2012, Matyakubov v. Turkmenistan; Views adopted on 14 July 2016, annex; and No. 2225/2012, Nurjanov v. Turkmenistan, Views adopted on 15 July 2016, annexes I and II.

34 UN Treaty Body Database, para. 35. Available from: https://tbinternet.ohchr.org/_layouts/15/treaty-bodyexternal/Download.aspx?symbolno=CCPR/C/AZE/CO/4%20&Lang=En. n. 35.

35 See CCPR/C/KGZ/CO/2, para. 23.

36 See CCPR/C/KGZ/CO/2, para. 23.

37 See CCPR/C/TJK/CO/2, para. 21; see also CCPR/CO/84/TJK, para. 20.

38 See CCPR/C/TKM/CO/2, paras. 40-41.

39 See CCPR/C/UKR/CO/7, para. 19.

40 UN Special Rapporteurs are individuals mandated by the Human Rights Council to investigate human rights abuses within the scope of the 'special procedure' mechanism.

41 OHCHR. Available from: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/IstandardsI3k.aspx>.

42 Concluding observations of the Human Rights Committee: Russian Federation (UN Doc. CCPR/CO/79/RUS of November 6, 2003).

43 Human Rights Council. 2015. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Available from: <https://www.refworld.org/pd-fid/550826644.pdf>.

the right to refuse service, treatment of disabled conscripts and general conditions of service for conscripted personnel.⁴⁴

As a region in which a proportionally high number of states still use conscription, several non-governmental organisations work on conscript rights. Many of these are active in Russia, such as The Committee of Soldiers' Mothers of Russia (CSMR).⁴⁵ Together with other NGOs, including the Russian Coalition for a Democratic Alternative Civil Service and Soldiers' Mothers of Saint-Petersburg⁴⁶, CSMR advocates for better legal protections and remedial options for conscripted personnel. In 2004, the CSMR and other NGOs came together to produce a report entitled 'Violations of Conscripts Rights'.⁴⁷ Their work has formed the basis upon which a number of studies have been conducted, including Eric Engelman's 2003 analysis of CSMR's advocacy efforts,⁴⁸ and Amy and Amin Caiazza 2002 study on the CSMR.⁴⁹ In recent years, a number of Ukrainian NGOs including the Kharkiv Human Rights Protection Group and the Ukrainian Helsinki Union for Human Rights have commented on conscription.⁵⁰ The Organisation of Soldiers' Mothers of Ukraine (OSNU) advocates more generally for conscript rights, lobbying in particular for an improvement in general service conditions.⁵¹

A number of other NGOs across the region work on conscript rights. For instance, the Association PROMO-Lex works with human rights in Moldova, including the rights of military service men, with a dedicated 'Programme on Human Rights'. In Belarus, the

-
- 44 D. Lohman. 2002. 'Conscription through Detention in Russia's Armed Forces.' Human Rights Watch 14 (8); J. Buchanan, D. Lohman. 2003. 'To Serve without Health? Inadequate Nutrition and Health Care in the Russian Armed Forces.' Human Rights Watch 15 (40); Letter to Armenian President Kocharian. Available from: <https://www.hrw.org/news/1999/01/28/letter-armenian-president-kocharian>. Also see: <https://www.hrw.org/report/2004/10/19/wrongs-passage/inhuman-and-degrading-treatment-new-recruits-russian-armed-forces>; <https://www.hrw.org/news/2019/11/01/crimea-conscription-violates-international-law#>; <https://www.hrw.org/news/2019/01/26/advancing-access-justice-people-disabilities-armenia>; <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>; <https://www.hrw.org/report/2013/09/01/tightening-screws/azerbaijans-crackdown-civil-society-and-dissent>; <https://www.amnesty.org/en/latest/news/2013/01/azerbaijan-opposition-leader-ambushed-amid-pre-election-clampdown/>, <https://www.hrw.org/news/2012/10/25/tajikistan-rights-group-forced-close>.
- 45 The Committee of Soldiers' Mothers of Russia (CSMR). Available from: <https://www.rightlivelivelihoodaward.org/laureates/the-committee-of-soldiers-mothers-of-russia-csmr/>.
- 46 Правозащитная организация «Солдатские матери Санкт-Петербурга». Available from: <https://soldiersmothers.ru/>.
- 47 Human Rights House. 2014. Report on the violations of conscripts' rights in 2004. Available from: <https://humanrightshouse.org/articles/report-on-the-violations-of-conscripts-rights-in-2004/>.
- 48 Engleman, Eric. 2003. 'Russian Soldiers' Mothers Work Together.' Johnson's Russia List.
- 49 'Mothers and Soldiers' (2002), A. and A. Caiazza. 2002. 'Mothers and Soldiers'.
- 50 Kharkiv Human Rights Protection Group. 2017. Russia breaches international law forcing Crimeans to serve in occupying army. Available from: <http://khpg.org/en/index.php?id=1491741696>.
- 51 S. Phillips. 2008. 'Women's Social Activism in the New Ukraine: Development and the Politics of Differentiation.' Indiana University Press. P. 74.

Center of Law Transformations in Minsk and a civil campaign ‘For AGS in Belarus’⁵² work to provide conscripting with an alternative civil service, instead of the military one.

In the South Caucasus, several NGOs work on conscript rights. In Armenia, these include the Helsinki Citizens’ Assembly-Vanadzor,⁵³ the Women for Peace Initiative,⁵⁴ Zinvor⁵⁵ and Peace Dialogue,⁵⁶ among others. A number of similar organisations exist in Azerbaijan and Georgia.⁵⁷ In Central Asia, the Office for Civil Freedoms, based in Tajikistan, works to defend and promote the rights of conscripts, and releases regular reports on military detention facilities and the situation of human rights in the armed forces.⁵⁸ In Kyrgyzstan, the NGO Kylum Shamy, and the Centre for Social Innovation and Development also work on conscript rights.⁵⁹

As the aforementioned has demonstrated, while an array of organisations work to protect the human rights of conscripted personnel, no comparative study on the rights of conscripts across EESCCA exists. Instead, related information is dispersed, often technical in nature, and where available, rarely accessible in the languages spoken across these regions. It is for these reasons that the decision to produce this study was made, and why its authors adopted a research methodology based on a comparative analysis of national legislation in EESCCA, in terms of conformance with international

52 AGC: Альтернативная Гражданская Служба. Определены порядок приема на альтернативную службу и условия ее прохождения. Available from: <http://ags.by/>.

53 Helsinki Citizens’ Assembly-Vanadzor. 2020. Violation of conscript T.M.’s rights and freedoms continues. Available from: <https://hcav.am/en/t-m-06-03-2020/>.

54 K. Simonian. 2018. Mothers Of Dozens Of Armenian Soldiers Killed In Karabakh Back Peace Campaign By PM’s Wife. Available from: <https://www.azatutyun.am/a/29491679.html>.

55 News.am. 2019. Mothers of fallen soldiers hold protests in front of Armenian Government building. Available from: <https://news.am/eng/news/534238.html>.

56 Peace Dialogue. 2017. Promotion of Human Rights Mechanisms among the Future Conscripts in the Armenian Military Forces. Available from: https://peacedialogue.am/en/2017/08/29/promotion_hr_eng/.

57 These include the Georgian NGO Civil Council on Defense and Security (CCDS), who have contributed to study on the protection of conscript rights in Georgia. See ‘Ombuds Institutions for the Armed Forces: Selected Case Studies, eds. William McDermott & Kim Piaget (2016). Chapter 4, Tamar Pataraiia, ‘The Public Defender of Georgia’. Available at: <https://www.dcaf.ch/sites/default/files/publications/documents/Ombuds-Case-Studies.pdf>. In Azerbaijan, the youth movement NIDA have protested against the non-combatant deaths of Azeri military conscripts and continue to advocate more generally for conscript rights. <http://www.nidavh.org/>. Other former Azeri NGOs, including the Institute for Peace and Security, and the Soldier’s Mothers Association of Azerbaijan, worked on conscript rights.

58 Report to the Universal Periodic Review on situation with human rights of the armed forces personnel in Tajikistan. Report period 2011-2015. Available from: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2459&file=EnglishTranslation>.

59 For the Center for Social Innovation and Development, see contribution by Director, Aida Alymbaeva, in: ‘Ombuds Institutions for the Armed Forces: Selected Case Studies, eds. William McDermott & Kim Piaget (2016). Chapter 5, Aida Alymbaeva, ‘The Akyikatchy of the Kyrgyz Republic’. Kylum Shamy regularly contribute to reports by the UN Human Rights Committee and the OSCE. For example, see: <https://www.ecoi.net/en/document/1206251.html>, <https://ombudsman.kg/files/docs/reports/2016/observance-of-the-rights-of-recruits.pdf> and <https://www.osce.org/bishkek/235046>.

best practice, both in theory and in practice.

This review is composed of eleven case studies that explore in detail the legal acts and regulatory mechanisms in place to protect the rights of conscripts in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Each case study concludes with recommendations on how to improve the human rights protection of conscripts.

A REVIEW OF THE LEGISLATION OF ARMENIA

Introduction

Armenia is a landlocked country located in the South Caucasus. Owing to its geopolitical context, the country is heavily militarized; state authorities are focused on ensuring the proper deployment and administration of the army, in which conscripts play a major role in forming and maintaining new military recruits.⁶⁰

According to Article 14 of the Constitution of Armenia, the country's defence, security, and territorial integrity is ensured by the Armed Forces of Armenia). Following the 2015 constitutional referendum, Armenia changed its governance system from a semi-presidential system to a parliamentary republic.⁶¹ The government is formed by the appointment of the Prime Minister with the approval of his cabinet. The Prime Minister is the Commander-in-Chief of the Armed Forces, and the Ministry of Defence is responsible for managing and overseeing the Armed Forces. Military command is carried out by the General Staff, headed by the Chief of Staff.

The Armed Forces comprises two branches: the Army and the unified branch of the Air Defence and Air Force. As a landlocked country, Armenia does not possess a navy.

In accordance with the constitution, the Armed Forces is a conscript force; however, the public policy adopted by the government within the last decade has contributed to an increase in the number of professional officers. Exact figures on conscripts are considered state secrets, and therefore not publicly disclosed.

The period of obligatory military service is 24 months and begins on the day of reporting to the military commissariat for departure to the place of service. In 2003, the law 'On

60 Hetq.am. 2020. Armenia is World's Second Most Militarized Country, Says German Research Organization. Available from: <https://hetq.am/en/article/125041?fbclid=IwAR21PKJJ594TUzZ-TWVZ7huT3EcWJb1KCmisv7m8veOQQQCIFTyUXIUnGvJw>. [Accessed 20 December 2020]

61 Armenian Weekly. 2015. Constitutional Amendments Approved in Armenia's Referendum. Available from: <https://armenianweekly.com/2015/12/07/constitutional-amendments-approved/>. [Accessed 24 December 2020]

Alternative Service' was adopted, which gives conscientious objectors the option of applying for alternative service, although the term for alternative service is longer, at 36 months. Citizens who have completed military service are registered as non-commissioned or commissioned Reserve Forces (as opposed to Active Forces either deployed or in training), within the rank and file. Reservists can be called up for training in peacetime and their obligations continue up to the age of 55.

This article provides an overview of the legal framework regulating the rights of conscripts, the conscription process, shortcomings in laws and in practice, human rights violations of conscripts, and oversight by state bodies and civil society.

A review of the legal system

Enlistment is carried out twice a year (usually in January and May) and is executed by military commissariats.⁶² The military commissariat system is established by the government and is divided into three bodies: a republican commission, a regional commission, and local military commissariats.

Local commissariats are the first point of contact for conscripts and are responsible for the following:

- ❖ organizing preliminary health examinations of citizens subject to conscription;
- ❖ deciding whether to conscript citizens who lack grounds for exemption from compulsory military service or deferment from compulsory military service in accordance with the law 'On Military Service and the Status of Servicemen'; and
- ❖ communicating documentation on, for example, the existence of grounds for exemption or deferment of a draftee to the regional commission.

By law, male citizens over the age of 18 are required to be drafted into service by their local commissariat before the age of 27. The same applies to dual citizens with certain exceptions.⁶³ Male citizens who have completed military training during their studies at a higher education institution must be drafted before the age of 35.

62 The list of all military commissariat can be found on the website of the RA Ministry of Defense. Available from: <https://www.mil.am/hy/military-enlistment>.

63 One of the applicable exceptions is that if the person has already served in another country's military services. Dual citizens are in any case considered Reservists and can be called upon in case of mobilization. In practice, military commissariats are less strict with dual citizens in extending exemptions.

Individuals are obliged to present themselves for enlistment within the established time frames. As the institution responsible for issuing passports, social security numbers, and documents certifying the legal status of individuals staying within the territory of Armenia, the police provide military commissariats with information necessary to follow-up with draftees. In order for an individual to have a social security number, they must register their address, meaning that the military commissariats are able to send notices and summons to eligible citizens.

Moreover, educational institutions (public, private, and higher educational institutions alike) and employers are obliged to cooperate with the military commissariats (that is, to present information about the draftee). If a draftee does not respond to a notice or summons, representatives from military commissariats visit the draftees registered address, or place of work or education. If the draftee cannot be located, the military commissariat is authorized to question their relatives to ascertain their whereabouts. If the draftee still cannot be located, a criminal case is opened, with those convicted of evading the draft deprived of the opportunity to work as a civil servant.

Up until 2019, draft evaders over the age of 27 were given the opportunity to qualify for an exemption from mandatory military service in accordance with the law 'On Citizens Who Failed to Complete Compulsory Military Service through Violation of the Established Procedure'.⁶⁴ The law granted an exemption from prosecution if the draft evader paid a fine. In 2019, 995 citizens were granted exemptions through this procedure.⁶⁵ Although discussions to extend the procedure were held during the 2020 National Assembly, no such bill has been introduced yet.

There are three main legal sources regulating the status of military service members and, by extension, the rights and obligations of conscripts:⁶⁶

- ❖ legal statutes;
- ❖ government decrees; and
- ❖ the decisions of the Ministry of Defence.

Legal statutes regulating this field can be divided into three categories.

64 RA Law on Citizens who Failed to Complete Compulsory Military Service through Violation of the Established Procedure. 2003. Available from: <http://www.irtek.am/views/act.aspx?aid=23485>. [Accessed 20 December 2020]

65 Hetq.am. 2020. Armenia: Paying Millions to Legally Avoid Military Service. Available from: <https://hetq.am/en/article/112763>. [Accessed 20 December 2020]

66 Conscripts and professional forces are both considered servicemen when deployed, the law sometimes specifies professional forces by using the term 'contractual servicemen'. In all other instances, the term 'servicemen' refers to both conscripts and professional forces.

The following laws regulate the rights and responsibilities of state bodies and special legal regimes:

- ❖ The law 'On Defence' (adopted on 15 November 2017, last amended on October 2020) regulates the legal basis for the organization of the defence of Armenia; state authorities and territorial and local self-government bodies in the field of defence; the rights and responsibilities of citizens in the defence of Armenia; and legal relations related to military mobilization.⁶⁷
- ❖ The law 'On the Status of Military Units and Military Institutions' (adopted on 2 June 2015, last amended on 2 December 2019) regulates the establishment of military units under the auspices of the Ministry of Defence including institutions related to medicine, education, science, culture, news, and sport and their legal status.⁶⁸
- ❖ The law 'On the Legal Regime of Martial Law' (adopted on 5 December 2006, last amended on 29 October 2020) defines the grounds for declaring martial law, including an armed attack on the territory of Armenia, an imminent threat of such an attack or a declaration of war by the National Assembly (NA), and the subsequent restriction of citizens' rights.⁶⁹
- ❖ The law 'On the Legal Regime of the State of Emergency' (adopted on 21 March 2012, last amended on 7 May 2020) defines the grounds for declaring a state of emergency, including an imminent threat to the constitutional order, attempts to seize power, or armed riots, as well as the subsequent restriction of citizens' rights.⁷⁰

The following laws regulate the rights and responsibilities of service members:

- ❖ The law 'On Military Service and the Status of Servicemen' (adopted on 15 November 2017, last amended on 21 November 2020) regulates the rights and obligations of servicemen, both conscripts and contractual forces.⁷¹

67 RA Law on Defense. 2017. Available from: <http://www.irtek.am/views/act.aspx?aid=150214>. [Accessed 20 December 2020]

68 RA Law on the Status of Military Units and Military Institutions. 2015. Available from: <http://www.irtek.am/views/act.aspx?aid=81227>. [Accessed 20 December 2020]

69 RA Law on Legal Regime of Martial Law. 2006. Available from: <http://www.irtek.am/views/act.aspx?aid=37625>. [Accessed 20 December 2020]

70 RA Law on Legal Regime of State of Emergency. 2012. Available from: <http://www.irtek.am/views/act.aspx?aid=65018>. [Accessed 20 December 2020]

71 RA Law on Military Service and Status of Servicemen. 2017. Available from: <http://www.irtek.am/views/act.aspx?aid=150211>. [Accessed 20 December 2020]

- ❖ The law ‘On the Material Responsibilities of Servicemen’ (adopted on 17 December 2003, last amended on 12 December 2013) defines the conditions and responsibilities for the damage caused by service members to materials that are the property of a military unit, as well as the procedure and amount of compensation required for such damage.⁷²
- ❖ The law ‘On Alternative Services’ (adopted on 17 December 2003, last amended on 9 July 2018) defines the grounds for the replacement of compulsory military service with alternative services and the procedure for organizing and conducting conscription for alternative services.⁷³

The following laws regulate internal and disciplinary relations:

- ❖ The law ‘On Approving the Code of Garrison and Guard Services of the Armed Forces of the Republic of Armenia’ (adopted on 3 December 1996, last amended on 1 March 2017) defines the procedure, organization, and conduct of ‘guard services’, and the rights and responsibilities of service members performing such services.⁷⁴
- ❖ The law ‘On the Disciplinary Code of the Armed Forces of the Republic of Armenia’ (adopted on 21 March 2012, last amended on 27 December 2019) defines the principles of military discipline, the responsibilities of service members related to the maintenance of military discipline, the types of incentives and disciplinary sanctions, and the procedure and conditions for their application.⁷⁵
- ❖ The law ‘On the Approval of the Code of Internal Service of the Armed Forces of the Republic of Armenia’ (adopted on 3 December 1996, last amended on 6 October 2020) defines the internal order and chain of command of the Armed Forces.⁷⁶

72 RA Law on Material Responsibility of Servicemen. 2003. Available from: <http://www.irtek.am/views/act.aspx?aid=23484>. [Accessed 20 December 2020]

73 RA Law on Alternative Services. 2003. Available from: <http://www.irtek.am/views/act.aspx?aid=23483>. [Accessed 20 December 2020]

74 RA Law on Approving the Code of Garrison and Guard Services of the Armed Forces of the Republic of Armenia. 1996. Available from: <http://www.irtek.am/views/act.aspx?aid=150110>. [Accessed 20 December 2020]

75 RA Law on Disciplinary Code of the Armed Forces of the Republic of Armenia. 2012. Available from: <http://www.irtek.am/views/act.aspx?aid=150121>. [Accessed 20 December 2020]

76 RA Law on Approval of the Code of Internal Service of the Armed Forces of the Republic of Armenia. 1996. Available from: <http://www.irtek.am/views/act.aspx?aid=150112>. [Accessed 20 December 2020]

Legal guarantees during conscription and military service

In addition to legal statutes, governmental decrees and decisions of the Ministry of Defence specify procedures or other details not regulated by the statutes. Of note, for example, Government Decree No. 405-N of 12 April 2018 defines the procedure for a citizen's health check-up and medical examination, the bodies responsible for such an examination, and the form of the examination reports, while Government Decree No. 451-N of 12 April 2018 regulates deferment procedures related to educational achievements and academic excellence.

The main statute regulating the rights and obligations of conscripts is the law 'On Military Service and the Status of Servicemen'. In general, conscripts possess the same constitutional and legal rights as ordinary citizens, but with certain limitations as envisaged by the law. For example, while performing military service, conscripts cannot take on other paid work; form or join political parties, trade unions, or religious associations; organize or participate in strikes; or, if a member of a religious association, carry out propaganda activities.

Section XI of the law 'On Military Service and the Status of Servicemen' stipulates the financial and social guarantees of service members. It specifies matters related to payments made to reserve forces when they are mobilized; financial aid, benefits, and pensions for service members; free healthcare for service members and members of their family; housing rights (for contractual service members only); free public transportation; leave; and guarantees for continuing education (in the event of incurring certain disabilities while serving).

The most frequent violations of the rights of conscripts and military personnel

Key shortcomings in the current regulations include legal loopholes regarding deferment, exemption, leave, and appeal procedures while serving. More specifically,

legal acts regulating deferment and exemption owing to medical conditions are lacking. For example, the Central Medical Commission does not have legislative guidelines on how to conduct medical examinations for conscripts. As a result, conscripts face difficulties in appealing against the decisions and reports of the commission in court.⁷⁷ Furthermore, the law does not provide guidelines for the immediate exemption or deferment of conscripts whose medical conditions worsen shortly after being drafted.

In Administrative Case No. 5/0017/05/19, based on Seryozha Khachatryan's claim of 14 March 2019, the plaintiff suffered from knee complications, described as a 'slight impairment of function' in his medical report; however, while the medical results were being disputed, Seryozha was drafted and began military service. This is particularly concerning as, according to the law 'On the Basis of Administration and Administrative Procedure',⁷⁸ an appealed decision of a state body is subject to suspension until the dispute is resolved; in principle, the decisions of the Central Medical Commission fall under the purview of this law, but the laws do not clearly set out such delineations.

Another issue concerns the lack of regulation for periods of leave and replacement opportunities for service members engaged in active conflict. This became a topic of public discussion following the 2020 conflict, in which some soldiers were granted leave after two weeks of serving on the front lines by their commanding officer, while others were deprived of this opportunity, some maintaining their position for more than 40 days, without any official recourse to ask for leave or replacement.⁷⁹

Human rights challenges facing conscripts primarily concern violations of the right to life - with allegations of torture, suicide,⁸⁰ and murder⁸¹ - as well as the prevention of non-statutory relations and bullying in the army, and poor living standards in some

-
- 77 Peace Dialogue NGO. 2019. The Final Report on the Monitoring of the Activities of the RA MoD within the Framework of the HRAP 2017-2019. pp.45-50. Available from: https://peacedialogue.am/en/wp-content/uploads/sites/2/2019/11/Monitoring_report_eng_final.pdf. [Accessed 20 December 2020]. The author has also conducted interview with the Project Director of this report, Mr. Edgar Khachatryan, discussing legal and in practice shortcomings of exemption and deferment process. Mr. Khachatryan is also a member of the National Platform of Democratic Oversight of Security Sector.
- 78 RA Law on Basis of Administration and Administrative Procedure, Article 74. 2004. Available from: <http://www.parliament.am/legislation.php?sel=show&ID=1937&lang=rus>. [Accessed 20 December 2020]
- 79 BBC News. 2020. Armenia-Azerbaijan: Why did Nagorno-Karabakh spark a conflict? Available from: <https://www.bbc.com/news/world-europe-54324772>. [Accessed 20 December 2020]
- 80 Aravot.am. 2013. The Suicide as a Phenomenon in the Military. Available from: <https://www.aravot.am/2013/07/08/263143/>. [Accessed 24 December 2020]
- 81 Safe Soldiers Initiative. 2016. Statistics on Murders in the Military. Available from: <https://safesoldiers.am/4542.html>. [Accessed 24 December 2020]

military bases.⁸² Non-combat-related deaths peaked in February 2020, with 12 deaths⁸³ registered.⁸⁴

Regulations regarding access to information in the field of defence and, more specifically, with respect to conscripts, play an important role in the identification and prevention of violations of the rights of conscripts. The two main statutes regulating the field of access to information are the law 'On Freedom of Information'⁸⁵ and the law 'On State and Official Secrets', both of which are considered outdated and vague in their assignment of responsibilities for the disclosure of secret information.⁸⁶ The law 'On Freedom of Information' has not been amended since its adoption in 2003, and is limited in its scope of application, with many state institutions disregarding its legal requirements regarding the publishing of information labelled as a state or official secret. The law 'On State and Official Secrets' provides the government with the power to classify a wide variety of information as state secrets. In addition to these, the Government Decree on the Approval of the List of Information Considered State Secret⁸⁷ classifies information on the number, composition, and combat readiness of troops – as well as the situation regarding military operations of the Armed Forces – as state secrets.

Oversight by state bodies

Following the 2018 Velvet Revolution,⁸⁸ noticeable changes have occurred regarding the acceptance and implementation of good governance principles, including oversight of the security sector. This is evidenced by the creation – and expansion – of the mandates of various state bodies responsible for good governance. The oversight functions of the

82 1in.am. 2018. We May Never know the Full Extent of Corruption in the Military-April War. Available from: <https://www.1in.am/2533443.html>. [Accessed 20 December 2020]

83 JamNews. 2020. Deaths of military personnel continue in Armenian army under unclear circumstances. Available from: <https://jam-news.net/deaths-of-military-personnel-continue-in-armenian-army-under-unclear-circumstances/>. [Accessed 20 December 2020]

84 It is worth mentioning that following such events the National Assembly initiated discussions with Ministry of Defense, and the Ministry of Defense took a robust action, including changes in leadership positions in the Armed Forces.

85 RA Law on Freedom of Information. 2003. Available from: <https://www.arlis.am/documentview.aspx?DocID=1372>. [Accessed 20 December 2020]

86 RA Law on State and Official Secret. 1996. Available from: <https://www.arlis.am/documentview.aspx?docID=26193>. [Accessed 20 December 2020]

87 RA Government decree on Approval of List of Information Considered State Secret. 1998. Available from: <https://www.arlis.am/documentview.aspx?docid=6572>. [Accessed 24 December 2020]

88 BBC News. 2018. Why Armenia 'Velvet Revolution' won without a bullet fired. Available from: <https://www.bbc.com/news/world-europe-43948181>. [Accessed 24 December 2020]

NA have improved, while collaboration between civil society⁸⁹ and the state (both the executive and legislative branches) has become more open and systematic.

The Human Rights Defenders (HRDO) Office is among the most engaged – and independent – state institutions responsible for receiving complaints from conscripts concerning alleged human rights violations. The HRDO also provides policy recommendations to executive authorities and defence and security forces, and conducts field visits to military units and positions. In 2019, an expert council on the protection of human rights in the Armed Forces was formed within the HRDO, which focuses on the provision of expert support to the Human Rights Defender in dealing with applications regarding service members.⁹⁰

The Human Rights Defender publishes and submits to the NA annual reports on the state of the protection of human rights and freedoms, as well as a separate report on activities aimed at preventing torture and other forms of ill-treatment. The annual reports analyse and identify issues, and propose solutions. The reports contain separate sections on human rights violations in the Armed Forces.⁹¹

In its 2019 report, the HRDO provided an in-depth summary of issues concerning the protection of human rights during the enlistment and mobilization of conscripts; the application of deferment and exemption rights based on medical examinations; and issues concerning the continuation of education, the right to medical assistance, the right to life and the prohibition of violence, women in the army, and social protection for service members.⁹²

In 2018, the government formed the Security Council,⁹³ a body that formulates long-term defence and security strategies and policies.⁹⁴

89 Includes both individuals and civil society organizations; mainly non-governmental organizations.

90 Information regarding HRDO's structure, committees, and reports can be found on its website. Available from: <https://www.ombuds.am/am/site/SoldiersAdjunctDefender>. [Accessed 24 December 2020]

91 Ibid. Available from: https://www.ombuds.am/en_us/site/SpecialReports. [Accessed 24 December 2020]

92 RA Human Rights Defenders' Office. 2019. 2019 Annual Report. Available from: <https://www.ombuds.am/images/files/15b2661f76d10eb07746d7d4d4dec84f.pdf>. [Accessed 20 December 2020]

93 Information regarding RA Security Council can be found on its website. Available from: <https://www.seco.am/?lang=en>. [Accessed 20 December 2020]. Security Council consists of nine members as follows: Prime Minister, two Deputy Prime Ministers, the Council's Secretary, Minister of Defense, Minister of Foreign Affairs, Director of the National Security Service, Chief of the Police of Armenia, and Chief of the General Staff of the Armed Forces. The speaker of the Parliament has been invited to participate in the SC sessions.

94 Ibid. Security Council is responsible for crafting the defense policy, implementing and reviewing the defense strategy, and approving the following documents: Armed Forces Development Plan, Other Troops Development Plan, Armed Forces Deployment Plan, The Military Mobilization Plan, The Armed Forces Engagement Plan, The Defense Operational Equipment Plan of the Territory of RA, The National Civil Defense Plan, the list of the Armed Forces and other Troops' Supreme Command Staff

After a considerable amount of work in cooperation with ministries, independent experts, and representatives from the NA, the Security Council prepared a new national security strategy, subsequently approved by the government.⁹⁵ The new national security strategy includes a section devoted to ensuring the protection of human rights and the upholding of the rule of law.

In recent years, the NA has become more engaged with the issue of human rights in the military, as shown by the inclusion of human rights in its agendas. Members of parliament also regularly echo concerns raised by civil society to the NA, breaking a long-time taboo of speaking publicly about systematic problems within the Armed Forces.

While members of parliament do not have a legal mandate to enter military bases, such visits are regularly conducted by members of the NA's Standing Committee on Defence and Security (SCDS) and the Standing Committee on Human Rights and Public Affairs, sometimes without notice, to military bases, mobilization centres for conscripts, and military commissariats. Unannounced visits are made in response to identified problems or reports of human rights violations. Given that such visits are not considered as official parliamentary oversight tools, no written reports are produced on them. As such, the NA committees share their findings only through in-person meetings with ministers, or other relevant heads of departments and high-ranking members of the Armed Forces.

According to the Rules of Procedure of the NA, upon the request of at least a quarter of the total number of members of parliament, the NA can form an inquiry committee to clarify facts about issues falling under its jurisdiction.⁹⁶ The powers of an inquiry committee in the areas of defence and security may only be exercised by the SCDS. As such, in 2019, the SCDS formed the Inquiry Committee for Examining the Circumstances of the Military Activities of April 2016 (hereinafter, the Inquiry Committee) to assess the capacities of the Ministry of Defence and the Armed Forces of Armenia during the Four-Day War in April 2016, the participants of which were mainly conscripts.⁹⁷ Although the Four-Day War was the main focus of the Inquiry Committee, the investigation also

Positions, Senior Officer Staff Positions, and the list of Corresponding Senior Officer Military Ranking.

95 The Government of the Republic of Armenia. 2020. RA National Security Strategy. Available from: https://www.primeminister.am/u_files/file/Different/AA-Razmavarutyun-Final.pdf. [Accessed 24 December 2020]

96 Rules of Procedure of The National Assembly, Article 20. Available from: <http://www.parliament.am/legislation.php?sel=show&ID=5711&lang=eng>. [Accessed 24 December 2020]

97 The list of RA NA standing, ad hoc, and inquiry committees can be found on the website of the RA Parliament. Available from: <http://www.parliament.am/committees.php?do=show&ID=111210&lang=arm&enc=utf8>. [Accessed 20 December 2020]

identified underlying problems with the Armed Forces prior to the war. Consequently, the findings of the Inquiry Committee touch upon military professionalism, corruption among high-ranking officials, and the observance of human rights in the military.

While the constitution and the NA rules and procedures do not stipulate specific mechanisms and privileges for inquiry committees in terms of guaranteed access to confidential and secret information or obligatory summons for former officials, the work of the Inquiry Committee has generally been viewed positively. The Inquiry Committee conducted 30 sessions and 20 hearings, all of which were recorded, and examined 3,025 pages.

Service members were interviewed by the Inquiry Committee in addition to high-ranking members.⁹⁸ The final report on the findings of the Inquiry Committee was expected to be published in September 2020, but its release was delayed because of the 2020 Conflict. It is understood to include confidential information, which will be made available to the public, and is likely to be a key document in understanding the systematic shortcomings of the Armed Forces, especially in the field of the protection of the human rights of service members.

Civil society engagement in the protection of human rights

In collaboration with the Secretary of the Security Council, and with support from the OSCE, the Standing Committee on Defence and Security established the National Platform of Democratic Oversight of Security Sector (hereinafter, the platform) on 27 February 2020. The platform focuses on human rights and the army, and information access, including issues related to information classification; oversight mechanisms; anti-corruption measures; access to justice; raising public awareness of the concepts, principles, and mechanisms of democratic oversight of security; and the involvement of civil society in oversight processes. It is hoped that the platform will help to coordinate intergovernmental efforts with representatives of security sector institutions including

98 Prominent figures and high ranking officials who participated in the hearings are: Serzh Sargsyan (third President of RA), Karen Karapetyan (former Prime Minister of RA), Eduard Nalbandyan (former Minister of Foreign Affairs of RA), Arshak Karapetyan (advisor to the RA Prime Minister, former Head of Investigative Department of RA Armed Forces), Levon Mnatsakanyan (former Minister of Defense of Nagorno Karabagh (NK) / Artsakh), Arayik Poghosyan (former Head of Investigative Department of NK's Armed Forces), Artak Davtyan (Chief of the General Staff of the Armenian Armed Forces), and Seyran Ohanyan (former Defense Minister of RA).

the Ministry of Defence, the Special Investigation Service, the General Prosecutor's Office, the Human Rights Defender's Office, the Investigative Committee, and civil society. The platform envisages introducing a package of legislative and policy reforms including guidelines, revisions of security sector educational programmes, and codes of conduct and ethics for a variety of institutions and academia.⁹⁹ The platform's general meetings have been coordinated by the Security Council Office.¹⁰⁰ The 2020-21 working programme of the platform envisages three working groups, one of which will deal specifically with matters related to defence and human rights in the Armed Forces.

Recommendations

The above analysis of the legal framework and the response of state authorities to issues related to protecting the human rights of conscripts indicate that progress has been made. Nevertheless, challenges remain, including a lack of transparency on the part of state bodies regarding human rights violations within the Armed Forces; ambiguity or a lack of regulation regarding certain provisions for the enlistment process of conscripts, particularly exemption, deferment, leave, and the right to appeal; and insufficient investigation into the causes of non-combat-related deaths (suicide and murder), and the non-disclosure of such information by state bodies.

In order to tackle these issues, state authorities may consider the following recommendations:

- ❖ Enlistment and conscript rights: Enhanced monitoring mechanisms should be introduced to identify problems related to the enlistment process. In this regard, state authorities may consider introducing and implementing human rights action plans aimed at addressing problems concerning deferment and exemption rights based on the medical examinations of conscripts, the continuation of education, the right to medical assistance, the right to life, and the prohibition of violence. State authorities should consider including additional specifications in regulations, such as medical examination guidelines, the right to receive the medical report of medical examiners and to suspend enlistment or extend the deferment period if conscripts appeal against such reports; and the right to leave

99 Security Sector includes: the Police, National Security Services, Ministry of Emergency Situations, Ministry of Defense and the Armed Forces together.

100 Due to the COVID-19 pandemic, some of the meetings took place virtually.

or rotation in case of prolonged engagement in active conflicts. Finally, efforts should be made to raise the awareness of commanding officers, service members, and conscripts (draftees) of their right to report human rights violations to state bodies, such as the HRDO and the NA, through educational activities within military educational complexes.

- ❖ **Transparency:** State authorities should consider making amendments to the law ‘On the Freedom of Information’ and the law ‘On State and Official Secrets’, including stipulating the obligations of disclosure to state bodies and narrowing their broad margin of authority in qualifying information as ‘secret’. These amendments would facilitate the process of overseeing and monitoring human rights protection in the Armed Forces by state bodies and civil society. Furthermore, state authorities should also consider introducing amendments to the Government Decree on the Approval of the List of Information Considered State Secret to provide for a separate and applicable mechanism for accessing information regarding conscripts.
- ❖ **Oversight:** The HRDO and the NA have enhanced their oversight role in recent years. Nevertheless, the HRDO annual reports presented to the NA should aim to achieve tangible results that translate into specific amendments in laws and public policies. In addition, a legal mandate for carrying out announced visits by members of parliament and permission for inquiry committees to access confidential information should be provided for in relevant laws. Reporting obligations must be allocated to responsible officials making such visits, which should include a separate section on the level of human rights protection afforded to conscripts.
- ❖ **Cooperation with civil society:** To build on work already undertaken, state authorities should continue to institutionalize collaboration with civil society via the National Platform of Democratic Oversight of the Security Sector.

A review of the legislation of Azerbaijan

Introduction

This review analyses the legislation of Azerbaijan regulating the procedure for conscription and performing compulsory military service. It also examines how these procedures are applied in practice.

The review's recommendations are aimed at addressing challenges regarding the protection of the rights of conscripts and service members performing compulsory military service.

A review of the legal system

The legal system regulating conscription and military service in Azerbaijan includes the Constitution (basic law) of Azerbaijan, international treaties to which the country is a party, as well as laws and other regulatory legal acts. According to Article 149 of the constitution, only officially published regulatory acts are considered binding. Article 151 states that, in the event of a discrepancy between regulatory legal acts in Azerbaijan's legal system (excluding the Constitution of Azerbaijan and acts adopted by referendum) and international treaties to which Azerbaijan is a party, the latter takes precedent.

The legislation of Azerbaijan on conscription and military service has been repeatedly revised since Azerbaijan's independence in 1991 owing to the gradual abandonment of Soviet legal norms, the adoption of the constitution (1995), as well as the ratification of universal (UN) and regional (Council of Europe ((CoE)) and Commonwealth of Independent States ((CIS)) human rights conventions.

Notably, the Nakhichevan Autonomous Republic (NAR) has the status of an autonomous

state and is a ‘democratic, legal, secular autonomous republic within Azerbaijan’.¹⁰¹ By virtue of its status, the NAR has its own constitution, which reflects the Constitution of Azerbaijan, and its own authorities. It does not, however, have its own armed forces: the Special Separate Combined Arms Army deployed on its territory forms part of the Armed Forces of Azerbaijan and is subordinate to the Commander-in-Chief. Its activities are regulated by the legislation of Azerbaijan.

The main regulatory legal acts on conscription and military service in Azerbaijan¹⁰²

Article 76 of the Constitution of Azerbaijan states that the ‘defence of the Motherland shall be the duty of every citizen. Citizens shall perform military service in the manner prescribed by law. If the convictions of citizens are contrary to the performance of active military service, then, in cases established by law, citizens shall be allowed to replace active military service with alternative service.’

In accordance with Article 109 of the constitution, the President of Azerbaijan’s powers include conscription for military service and discharge from it, as well as call-up for and discharge from general or partial mobilization. As the Commander-in-Chief of the Armed Forces, the president also exercises several other powers related to military service.

With regard to military service, the constitution defines the permissibility of ‘compulsion to work in connection with the execution of orders of authorized persons during military service’, while guaranteeing the receipt of monetary rewards (Article 35). At the same time, service members and civilians serving in the Armed Forces and other armed formations of Azerbaijan do not have the right to strike (Article 36). The right of military personnel to participate in elections may also be limited by law (Article 56). The Constitution also allows for the possibility of partially and temporarily restricting human and civil rights and freedoms when declaring war or martial law, or during mobilization (Article 71).

The primary legislation of Azerbaijan concerning conscription and compulsory military

101 Constitution of the Nakhichevan Autonomous Republic (1998), Article 1, Part I.

102 The Ministry of Justice of the Republic of Azerbaijan. Unified Electronic Internet Database of Regulatory Legal Acts (in Azerbaijani language). Available from: <http://www.e-qanun.az/>. [Accessed 19 February 2021]

service includes the following laws:

- ❖ The law 'On Defence' (26 November 1993) describes the system of political, economic, legal, military, and social measures for the defence of Azerbaijan, including conscription and mobilization.
- ❖ The law 'On the Armed Forces of the Republic of Azerbaijan' (29 October 2017) defines the legal basis, purpose, tasks, and organization of the activities of the Armed Forces of Azerbaijan.
- ❖ The law 'On Military Duty and Military Service' (23 December 2011) defines the legal basis for military duty and performing military service.
- ❖ The law 'On Mobilization Readiness and Mobilization' (5 January 2006) defines legal regulations for mobilization and preparing for mobilization.
- ❖ The law 'On the Status of Servicemen' (25 December 1991) defines the rights and obligations of servicemen, as well as guarantees of their implementation and liability.

Military service in various parts of the Armed Forces of Azerbaijan is regulated in accordance with the laws 'On the Border Service of the Republic of Azerbaijan' (6 January 1994), 'On the Status of Internal Troops' (8 February 1994), 'On Performing Service in Emergency Situations' (22 June 2010), and 'On the Participation of the Republic of Azerbaijan in Peacekeeping Operations' (11 May 2010).

A host of other by-laws also address conscription and military service, including the 'Regulation on the Initial Military Training of Young People' (29 May 1998), 'Rules for the Military Registration of Conscripts and Persons Subject to Military Service' (26 September 2012), the 'Regulation on Military Medical Examinations' (29 February 2008), and the 'Regulation on Performing Military Service' (3 October 1997). The Charter of the Internal Service of the Armed Forces, the Disciplinary Charter of the Armed Forces of the Republic of Azerbaijan, and the Charter of the Garrison and Guard Service of the Armed Forces of the Republic of Azerbaijan'(23 September 1994), as well as the Regulation on the Procedure for Performing Alternative Service (Labour Service) by Citizens of the Republic of Azerbaijan (31 July 1992), should also be mentioned.

Provisions relating to specific aspects of conscription and performing military service are enshrined in other regulatory legal acts.

Alternative civil service

Alternative civilian service (ACS) is provided for by Article 76, Part II of the Constitution of Azerbaijan, which states that ‘if the convictions of citizens are contrary to the performance of active military service, then, in cases established by law, citizens shall be allowed to replace active military service with alternative service’; however, Azerbaijan has yet to adopt a law on ACS, despite this having become an obligation after joining the Council of Europe. The absence of such a law constitutes a key shortcoming in Azerbaijan’s regulatory framework for conscription.

In 1992, by the decree of the President of Azerbaijan, the Regulation on the Procedure for Performing Alternative Service (Labour Service) by Citizens of the Republic of Azerbaijan was approved. The regulation does not cover the entire range of issues related to the ACS, but provides a restrictive interpretation of the grounds under which citizens may perform ACS; in some ways, it therefore conflicts with the constitution. For example, ‘citizens who are exempt from performing military service on the grounds of their convictions are understood to be citizens with religious convictions professed by religious clergies holding clerical posts and students of religious educational institutions’. Thus, non-religious and religious pacifists are not included in the list of persons able to perform alternative service. Moreover, Article 5 of the regulation limits the performance of ACS to peacetime only, while Article 6 states a two-year term for ACS, which is longer than the term for compulsory military service. To compound these shortcomings, while the regulation is included in the register of regulatory acts currently in force, it is not applied; consequently, citizens of Azerbaijan do not have the option of performing ACS in practice.

Primary military registration and ‘conscript’ status

In accordance with the law, upon reaching the age of 15, male citizens are obliged to undergo initial military registration at the department of the State Service for Mobilization and Conscription for Military Service (SSMCMS) at their place of residence. This excludes those who, in accordance with Article 12 of the law, are not subject to military registration. All remaining citizens are sent a draft notice in January-March of each year.

Those called up by a draft notice with the status of a ‘person of pre-conscription age’ are

examined by doctors of the Commission on Preliminary Military Registration to assess their level of fitness for military service, and to undergo a psychological examination to determine the most appropriate role for them during military service. The commission announces the decision of the initial military registration, and explains the registered person's rights and obligations, along with the rules for preparing for military service. The conscript is then issued with a certificate in the established form.

From the moment of the initial military registration, a citizen must report any change of address to the SSMCMS department. State and municipal bodies, organizations, and officials related to the study or work of the citizen are obliged to do the same.

Before conscription, such persons undertake initial military training, and persons who have reached the age of 17 may receive a military specialty before being drafted into the Armed Forces.

The procedure for conscription

In accordance with the law, male citizens automatically become a conscript upon reaching the age of 18, regardless of whether they have already passed the initial military registration. Conscription for military service is carried out four times a year: 1 January, 1 April, 1 July, and 1 October. Within 30 days of the entry into force of the decree of the President of Azerbaijan, citizens who are 18 years old on the date of conscription, as well as citizens under the age of 35 who have not completed compulsory active military service and who do not have the right to a deferral or exemption from conscription, are drafted. At the same time, those who have performed military service are transferred to the reserve. For the first time since the early 1990s, the conscription period was extended by a month in April 2020 owing to the coronavirus pandemic.

In accordance with Article 12 of the law, after the announcement of the decree on conscription, recruits may register voluntarily at the SSMCSM department at their place of residence. State bodies, local self-governing bodies, and organizations in which conscripts work must recall them from business trips and help the SSMCMS to ensure their timely arrival.

Based on the conscript's situation, they may be granted a deferral from conscription, in accordance with Article 18 of the law. The reasons for such a deferral may include marital status, health status, continued education, participation in parliamentary or municipal elections, or work as a deputy, judge, or ombudsman. In addition, and in

accordance with Article 19(1) of the law, the following persons are not conscripted into the army: an only child with parents with a group I disability, a person with three or more children or a wife with a group I disability, and an only parent with five or more children under the age of eight.

Persons who are under investigation or on trial, or who are serving a criminal sentence in the form of imprisonment, community and corrective labour, are temporarily not drafted into the army. Persons who have served a sentence for an intentional crime are not called up until their conviction is dismissed or expunged.

Valid reasons for the non-appearance of a conscript at the SSMCMS include an illness certified by a medical certificate (Article 12(7)(1) of the law), as well as emergencies or other unavoidable circumstances (Article 12(7)(2) of the law). In the latter case, the circumstances that prevent the conscript from attending must be confirmed by the relevant executive authority at their place of residence.

In accordance with Article 12(8) of the law and Article 30 of the Consular Charter of the Republic of Azerbaijan, for citizens of Azerbaijan living outside the country, the consular departments of the embassies of Azerbaijan perform the functions of the SSMCMS regarding the keeping of military records and ensuring the arrival of conscripts at the SSMCMS office at their place of permanent residence.

Azerbaijan does not recognize dual citizenship; therefore, conscripts who have acquired foreign citizenship, but who have retained their Azerbaijani citizenship, shall, in accordance with Article 12(9) of the law, be subject to conscription for active military service on the usual terms. Failure to report the adoption of foreign citizenship to Azerbaijani authorities within one month, regardless of the conscription, entails criminal liability under Article 318(2) of the Criminal Code of the Republic of Azerbaijan. Failure to respond, without legal grounds, to the regular call-up for active military service, or the draft for mobilization, with the aim of evading military service, is also classified as a criminal offence.

In connection with the 2020 conflict, the SSMCMS began registering those who had completed military service but who expressed a desire to volunteer to serve in the army in combat roles. As of 20 July, more than 25,000 such volunteers subject to military service were registered.¹⁰³ There is no legislative basis for the registration of those who have already completed military service, except for the order of the President of

¹⁰³ Почти 25 тысяч человек хотят пойти добровольцами в армию Азербайджана (Almost 25 Thousand People Want to Volunteer in the Army of Azerbaijan). Available from: <https://www.dw.com/en/top-stories/s-9097> [Accessed 19 February 2021]

Azerbaijan. At the time of writing, no citizens registered in the army had been called up for service.

Places of military service

Citizens of Azerbaijan can perform military service in the Armed Forces of Azerbaijan (National Army, Navy, Air Force and Air Defence Forces), as well as in the Internal Troops of the Ministry of Internal Affairs, the State Security Service, the Border Guard Service, the Ministry for Emergency Situations, or the security regiment of the Ministry of Justice.

The number of structures within the Armed Forces of Azerbaijan, as well as the number of conscripts called up for military service, remains classified. Limitations imposed by international treaties on conventional arms in Europe – including, for example, the Treaty on Conventional Armed Forces in Europe, according to which the number of personnel in the Armed Forces of Azerbaijan should not exceed 70,000 – may, however, serve as a reference point.

The British International Institute for Strategic Studies estimated the number of personnel in the Armed Forces of Azerbaijan in 2019 to be 66,950, including the Ground Forces (56,850), the Air Force and Air Defence (7,900), and the Navy (2,200). The number of personnel in other paramilitary forces was 15,000, including border troops (5,000) and internal troops (at least 10,000).¹⁰⁴

Taking into account the number of conscripts recruited over a year and a half (during 6 conscriptions), as well as members performing extended periods of service and command personnel, the number of conscripts called up annually is approximately 50,000. Such conscripts are used to replenish the rank and file during the course of military service.

¹⁰⁴ IISS (The International Institute for Strategic Studies). 2020. *The Military Balance 2020: The Annual Assessment of Global Military Capabilities and Defense Economics*. Routledge.

Legal guarantees during conscription and military service

Article 15 of the law guarantees that no one under the age of 18 and deemed unfit for service for health reasons shall be conscripted into the army. As such, and in accordance with Article 14(3) and 17(3) of the same law, the decisions of the conscription commission may be appealed to the Central Conscription Commission or to a court of general jurisdiction.

Conscripts may apply to defer their conscription to protect their right to education, family life, health, and to participate in elections. Issues related to deferral applications are resolved through the courts.

Liability for conscription evasion

The Criminal Code of Azerbaijan (hereinafter, the Criminal Code) provides for criminal liability for the failure to respond, without legal grounds, to the regular call-up for active military service, or from the draft for mobilization, with the aim of evading military service. In accordance with Article 321(1) of the Criminal Code, such actions are punishable by imprisonment for up to two years in peacetime, and, in accordance with Article 312(2) for three to six years in wartime.

When adopting the Criminal Code in December 1999, the parliament also defined the term ‘wartime’ as ‘the Republic of Azerbaijan being in a state of war with a foreign state’. In this case, ‘the beginning of a war shall be the day and hour of the declaration of war or the actual beginning of military operations, and the end of the war shall be the day and hour of the actual cessation of military operations.’ The corresponding note to Article 328 of the Criminal Code, however, refers only to the chapter ‘Crimes against Military Service’, the content of which does not apply to conscripts. Thus, the issue of how to apply Article 321(2) of the Criminal Code to cases of conscription evasion in wartime remains unresolved.

Article 5 of the Regulation on the Procedure for Performing Alternative Service (Labour Service) by Citizens of the Republic of Azerbaijan provides for ACS only in peacetime. To this end, state authorities have not yet created a system for ACS in wartime, instead applying Article 321 of the Criminal Code to those who attempt to evade conscription. When imposing punishment, however, the first part (Article 321(1)), relating to peacetime,

is applied.

This apparent contradiction is reflected in the judgement of the European Court of Human Rights (ECHR) in the case of ‘Mushfig Mamedov and others versus Azerbaijan’ (No. 14604/08, 17 October 2019), concerning the criminal prosecution of four Jehovah’s Witnesses for refusing military service and expressing a desire to undertake ACS. All four were prosecuted under Article 321(1) of the Criminal Code, which the ECHR recognized as a violation of freedom of thought, conscience, and religion.

The legal status of citizens after conscription

A citizen acquires the status of a soldier after being called up for military service and taking the military oath. From this point on, the state can impose temporary restrictions on the service member’s civil rights and freedoms. For example, service members are prohibited from forming trade unions, striking, or participating in political activities and are obliged to keep military secrets. In addition, those with the status of soldier may be deprived of liberty for a disciplinary offence or transferred to a disciplinary battalion.

At the same time, service members receive wages and additional benefits, including clothing, food, medical care, and life insurance. In accordance with Article 331 and 332 of the Criminal Code, the following may entail criminal liability: abuses against military personnel, such as insults, beatings, or torture, or the violation of statutory relationships associated with the violation of a person’s honour and dignity or the use of violence.

Service members are subject to Articles 327-353 of the Criminal Code concerning punishment for crimes against military service. By jurisdiction, such cases belong to military courts, which have the same three-tier structure as the general jurisdiction courts except that military courts are tied to nine military garrisons, and not to the regions of Azerbaijan. In addition to crimes related to military service, military courts of first instance also hear cases involving ordinary crimes and administrative offences committed by military personnel.

Military courts of appeal also exist, as does the military division of the Supreme Court of the NAR and the Supreme Court of Azerbaijan. National legislation does not prevent military personnel who have been tried by national courts from filing complaints with the ECHR and the UN. To ensure their independence from the military, military judges do not belong to the Ministry of Defence or receive wages from the judicial system, and, while working in court, are exempt from being conscripted into the army and performing

military training. Similarly, the Military Prosecutor's Office functions separately from the Ministry of Defence.

Complaints mechanisms for military personnel

Soldiers may submit complaints, either in writing or orally, concerning illegal orders and acts committed against them by commanders (superiors), violations of their official rights and privileges, or the failure to fulfil guarantees (§ 108 of the Disciplinary Regulation). The Disciplinary Regulation of Azerbaijan provides an appeal procedure that is different to the procedure for civilians. For example, although it is possible to appeal against punishments, they are enforced immediately; filing a complaint is not sufficient to suspend such a decision (§§ 96, 97). In addition, complaints are submitted to immediate superiors (§ 109), creating a possible conflict of interest as, in practice, such superiors may be inclined to obstruct an investigation or protect the accused to be absolved of responsibility or punishment.

Moreover, a soldier may only file a complaint on his or her own behalf. They are not allowed to file a complaint on behalf of another person or group of persons (§ 112). In the event of an investigation into an incident, however, he or she may contact the person conducting the investigation, even if he or she is not involved in the case (§§ 115, 116).

The complaint is considered by the commander (chief) within three days, after which they can take immediate measures, refuse the complaint, or, if the chief in question does not have sufficient authority to consider the complaint, transfer it through the chain of command. It is forbidden, however, to transfer a complaint for consideration to those persons against whom the complaint is made (§ 117).

If complaints are sent to another department (enterprise) for consideration, the applicant should also be notified. If it is necessary to carry out special checks, request additional materials, or take other measures to consider and resolve complaints received, the commander (chief) can extend the period for resolving the issue by up to 15 days (§ 118). Complainants may be held liable if their complaint is recognized as knowingly false (§120). However, the commander (chief) must bear serious liability if they process a complaint of a subordinate in an unfair or illegal manner (§ 121).

Each military unit holds a special book for registering complaints and recording related decisions. Proposals, statements, and complaints should be numbered, bound, sealed,

and certified by the signature of the unit (ship) commander. The book should be provided to the unit (ship) commander and the persons conducting monthly inspections (§§ 122-124). The commander of a unit (ship, formation) is obliged to perform an internal check at least once every three months for the consideration of submitted complaints (§ 119).

With the aforementioned in mind, complaints procedures regarding soldiers subjected to hazing in non-statutory relationships remain problematic. The soldier cannot complain without going through their immediate superior and, if the superior finds the complaint unfounded, the soldier may be punished. In addition, during the 3- to 15-day period during which the complaint is investigated, the soldier in question receives no protection from possible reprisals from those he or she alleges violated his or her rights. Incorrect consideration of the complaint can be detected by the unit commander after three months.

If the incident is criminal in nature and committed on the territory of military units, military institutions, correctional institutions, or places of detention – then, following the opening of a criminal case, a body formally independent from the Ministry of Defence, the Military Prosecutor’s Office, assumes responsibility for the investigation. In accordance with Article 214(2)(2) of the Criminal Procedure Code, however, the inquest and the decision on opening or terminating the criminal case is made by commanders of military units, heads of military institutions, heads of sentence-serving institutions or places of detention, captains of sea vessels, or other authorized representatives. If arrested, the soldier is detained in a detention room under the control of military authorities. Although the Military Prosecutor’s Office is formally independent from the Ministry of Defence, in several cases it proved ineffective in ensuring compliance with legislative requirements.

The National Preventive Mechanism against Torture

Military units, detention rooms, and disciplinary battalions fall under the scope of control of the Commissioner for Human Rights (Ombudsman) of Azerbaijan. This structure, owing to the conventions ratified by Azerbaijan, performs the function of the National Preventive Mechanism (NPM) for the prevention of torture and ill-treatment. A specially created Preventive Group under the Ombudsman visits military units, disciplinary battalion, detention rooms, and pre-trial detention centres. The information collected is sent to the Military Prosecutor’s Office and other relevant ministries for verification,

after which a formal response is provided.

The NPM does not have the authority to conduct expert examinations, and the written and oral evidence collected by it does not constitute evidence that can be used in a court of law. In practice, as evidenced by the reports of the Ombudsman to the Parliament, no complaints provided to the NPM are subsequently confirmed by the Prosecutor's Office or other relevant ministries. The Ombudsman has spoken out only once about arrests for conscientious objection to military service. Significantly, the Global Alliance of National Human Rights Institutions (GANHRI) recently downgraded the rating of the Ombudsman's Office in Azerbaijan.

Public control

The direct monitoring by local civil society organizations of the human rights situation in the Armed Forces of Azerbaijan remains limited. Human rights defenders instead rely on testimonies (often anonymous) from military personnel and their families.

In early 2013, a civil society movement focusing on the protection of the rights of conscripts and military personnel emerged. This coincided with the adoption of the law 'On Public Participation' later that year, which foresaw, among other things, the creation of public councils within central executive authorities, including the Ministry of Defence. Despite this, available information suggests that such councils were never established.

International control

Regional organizations, such as the Council of Europe, the European Commission for Democracy through Law (Venice Commission) and the European Commission against Racism and Intolerance, actively monitor the situation in Azerbaijan concerning the rights of military personnel, particularly with regards to the creation of a system for ACS. As for the UN, its committees focus on both ACS and other aspects of military duty. To this end, the UN Human Rights Committee's concluding observations on the fourth periodic report of Azerbaijan (CCPR/C/AZE/CO/4, 16 November 2016, §§ 34-35) expressed concern about 'the absence of specific legislation giving effect in practice to the constitutional provision ... on alternative service in cases when religious beliefs conflict with military service'. Accordingly, it recommended adopting 'without delay the legislation necessary to give effect in practice to the constitutionally recognized

right to conscientious objection to military service, without limitation on the category of conscientiously held beliefs. ... [I]t should provide for alternative service of a civilian nature for conscientious objectors and repeal all sanctions against them.'

Furthermore, the concluding observations of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the fourth periodic report of Azerbaijan (CAT/C/AZE/CO/4, 27 January 2016, §§ 28-29) expressed concern 'at the reported prevalence of violence and ill-treatment of conscripts in the army, commonly called *Dedovshchina* (hazing or bullying), which has reportedly led to serious injuries, and of unexplained deaths of conscripts, including suicides. ... The State party should initiate prompt and effective investigations into every case of non-field-related deaths, including suicides, of soldiers in the armed services, should prosecute and punish any perpetrators of actions leading to these deaths and should take measures to prevent such incidents in the future.'

The most frequent violations of the rights of conscripts and military personnel

Violations of the right to life and the right to health during military service as a result of 'non-combat losses of personnel' remain a growing concern. According to the Caspian Defense Studies Institute (CDSI), 46 members of the Armed Forces and other security structures of Azerbaijan lost their lives in 2019; of these, only 14 died in skirmishes on the front line (demarcation lines) or from explosive munitions. A further 13 died as a result of accidents, including injuries related to cold weather, electric shocks, road traffic accidents, plane crashes, and careless handling of weapons. Four service members died from illnesses, two committed suicide, and one died as a result of hazing. The cause of death was not reported for the remaining 12 service members. As a result, the responsibility for discovering the circumstances of 'non-combat losses' often falls to bereaved family members, who sometimes seek redress through the ECHR. Decisions made by the ECHR concerning military service in Azerbaijan often resonate in the country as one member of the ECHR Chamber is normally a judge from Azerbaijan, and decisions are generally unanimous.

The number of complaints from citizens deemed unfit for service has decreased significantly in recent years. This is in part explained by the reorganization of the

system for military registration and conscription into the SSMCMS, which is now independent from the Ministry of Defence. The case of A. Mamedov, examined by the ECHR, exemplifies the situation prior to the reorganization of the system for military registration and conscription.¹⁰⁵ Before the applicant's son was conscripted into the army, he was diagnosed with rheumatism by doctors from the district polyclinic. At the request of the Narimanov military registration and enlistment office, he underwent additional medical examinations at the Oil Workers' Hospital, the Institute of Cardiology, and at the military registration and enlistment office. Each examination concluded that he had no illness and was fit for military service. The military registration commission and enlistment office, however, did not make a formal decision about his level of fitness for military service, thereby depriving him of the opportunity to appeal against the conclusion that he was medically fit for military service.

On 7 July 2010, he was enlisted into the army, and on 14 July his father was informed by the military registration and enlistment office of his death. According to the military, he was found unresponsive in bed, and could not be resuscitated at hospital. A medical examination later found that he had various visible injuries (bruises, scratches, sores), none of which were fatal, but all of which could have been the result of physical exercise or attempts at resuscitation. According to medical experts, the cause of death was linked to an acute respiratory disorder that, in their opinion, the deceased suffered prior to being conscripted, but which would have allegedly been undetectable during his previous medical examinations. As for his visible injuries, the military registration commission and enlistment office admitted that they could have been inflicted by other persons. In addition, it later transpired that the medical commission of the military registration and enlistment office had acknowledged that the conscript's level of fitness for military service was 'limited'.

Despite the aforementioned points, the Military Prosecutor's Office refused to initiate criminal proceedings against the conscription commission. The military court, followed by the appeals court, supported the Military Prosecutor's Office decision. In contrast, the ECHR found a violation of Article 2 (the right to life) of the European Convention on Human Rights.

In November 2009, the ECHR considered the case of M. Babayev, who was allegedly subject to 'bullying' resulting in his suicide. The claimant also alleged that the investigation by state authorities into his death was ineffective.¹⁰⁶ Shortly after being

105 'Ali Mamedov versus Azerbaijan' (#36837/11, of February 14, 2019).

106 'Malik Babayev versus Azerbaijan' (#30500/11, June 01, 2017).

conscripted, M. Babayev was found dead, apparently by a self-inflicted gunshot. He was allegedly found with a suicide note. The Military Prosecutor's Office consequently closed the case under Article 125 of the Criminal Code of Azerbaijan, on the basis that the soldier in question had committed suicide because of depression, and that his comrades had not mistreated him. Despite this conclusion, the compliant alleged that the investigation was flawed. In particular, it was alleged that one of the witnesses had provided a false statement: the counterintelligence department had found that he had, in fact, had an argument with the now-deceased conscript, during which he and his sergeant had physically assaulted the conscript. There were also alleged discrepancies regarding the suicide note, which was destroyed before it could be viewed by the parents of the deceased. In addition, the father alleged that the decisions of the investigators were over-ruled by the prosecutors and courts three times.

Having considered the parties' arguments, the ECHR found a violation of Article 2 of the convention. The ECHR notably concluded that any evidence obtained when the commander of the military unit examined the scene of death – which was carried out in the presence of soldiers from same unit – could not constitute an 'effective investigation' for the purposes of Article 2 of the convention, since it was undertaken by persons who could not be regarded as independent (§ 84).

In the case of M. Mamedov and others, the applicants were conscientious objectors to military service from among the local Jehovah's Witnesses community.¹⁰⁷ They were prosecuted and arrested. In their defence, they referred to the Regulation on Alternative Service – a legally binding document, which they argued provided for ACS for conscientious objectors. Despite this, court hearings, up to the Supreme Court, disagreed with their defence.

The ECHR found a violation of Article 9 of the convention (in this case, the right to freedom of conscience and religion). The ECHR's conclusion was significant in that it concluded that the ACS – as based on the regulation of 31 July 1992 – does not ensure a fair balance between the interests of society as a whole and the interests of conscientious objectors (§ 98).

Concerning the implementation of the ECHR's decisions, the victims received compensation. Nevertheless, systematic issues identified by the ECHR as having contributed to the violations remained unaddressed. To compound such problems, while all of the ECHR's decisions are translated into the Azerbaijani language, only 25

107 'Mushfig Mamedov and others versus Azerbaijan' (#14604/08, 45823/11, 76127/13 and 41792/15, October 17, 2019).

decisions taken before 2010 are available on the portal of regulatory legal acts of the Ministry of Justice. As a result, lawyers are often unable to identify existing precedents.

The ‘Terter case’ can be cited when considering the participation of military personnel in the investigation of crimes committed by their subordinate.¹⁰⁸ In May 2017, in the Terter region, military counterintelligence opened an investigation into alleged espionage, in which at least 85 service members from a military unit of the Azerbaijan National Army were implicated. The service members had allegedly been tortured in the presence of military personnel, the unit commander, and four military doctors. At least eight of the 85 service members died as a result. Fifteen people were held criminally liable for these deaths. The case was not heard by the Military Prosecutor’s Office under Article 293(3) of the Criminal Code (the use of torture), meaning that punishments from six to ten years could not be applied. Instead, the suspects were convicted on alternative charges (including causing grievous and less serious damage to health, torment, threat of murder, and abuse of power), with ten of the suspects sentenced to three to six years in prison. The public were not aware of the circumstances of the case until January 2019, when a military court ruled that the verdict should be made available to lawyers. Nevertheless, 25 of the 85 victims remained in custody, having been convicted of espionage, despite the fact that legislation on criminal procedures prohibits the use of evidence in court if obtained in violation of the law. Of the eight service members who died, four were posthumously found guilty, and the remaining four found not guilty.

Recommendations

To better protect the human rights of conscripts and military personnel in Azerbaijan, state authorities may consider:

- ❖ fulfilling the obligation to the Council of Europe to adopt the Law ‘On Alternative Service’ (ACS), and creating an effective ACS system;
- ❖ implementing the ECHR’s decisions in cases related to conscription, and making these decisions available in the state language on the portal of the Ministry of Justice;
- ❖ ensuring thorough investigation into and public disclosure of non-combat losses

108 Verdicts of Terter Military Court #1(098)-187/2018, December 28, 2018 and #1(098)-7/2019, January 31, 2019.

in the defence and security sector, with a focus on suicide, incidents involving firearms, and accidents involving unclear circumstances;

- ❖ ensuring independence when conducting inquiries into crimes committed by military personnel on the territory under the jurisdiction of the military authorities through prohibiting the participation of service members of the same unit in such investigations;
- ❖ creating a Public Council under the Ministry of Defence with a transparent procedure for electing its members; and
- ❖ enhancing the independence of the Ombudsman from state authorities, including through providing the possibility to appeal against the refusal of the prosecutor's office to adequately respond to cases of torture and ill-treatment uncovered by the NPM.

A REVIEW OF THE LEGISLATION OF BELARUS

Introduction

The Armed Forces of the Republic of Belarus are a structural element of the military organization of the state, designed to ensure military security and the armed protection of Belarus, its sovereignty, independence, and territorial integrity.

Service members in Belarus are divided into two categories: service members under contract and service members under conscription. Both categories of service members should enjoy the same human rights as ordinary citizens. In practice, however, problems with the protection of the human rights of conscripts exist. This is exemplified by the case of Alexander Korzhich, a conscript whose body was found on 3 October 2017 in a military unit located in the Minsk region. The case gained widespread public attention and intensified discussions concerning compulsory military service and non-statutory relationships, otherwise referred to as *dedovshina* (hazing), in the Armed Forces. In response, state authorities implemented enhanced checks in various military units, and made various personnel changes.¹⁰⁹

This review examines the main legislative provisions governing military service procedures and the rights and obligations of military personnel, identifies existing challenges concerning the protection of the human rights of conscripts, and provides recommendations for how to address these challenges.

¹⁰⁹ Лукашенко снял с должности начальника учебки в Печях (Lukashenko Dismissed the Head of the Training School in Pechi). Available from: <https://naviny.by/new/20171020/1508513423-lukashenko-snyal-s-dolzhnosti-nachalnika-uchebki-v-pechah>.

A review of the legal system

Article 57 of the Constitution of Belarus establishes that the protection of Belarus is the obligation and sacred duty of all citizens. The procedure for performing military service, along with the grounds and conditions for exemption from military service and for performing alternative service, are determined by law. Fundamental rights guaranteed by the constitution, the International Covenant on Civil and Political Rights, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment apply to service members, regardless of their status.

Legislation governing military service in Belarus consists of the following laws, decrees, and resolutions:

- ❖ the law 'On the Status of Servicemen', No. 100-3 of 4 January 2010;
- ❖ the law 'On the Provision of Pensions to Servicemen, Commanders, and Rank-and-File Personnel of Bodies of Internal Affairs, Bodies, and Units for Emergency Situations and Bodies of Financial Investigation', No. 2050-XII, of 17 December 1992;
- ❖ the law 'On Military Duty and Military Service', No. 1914-XII of 5 November 1992;
- ❖ the law 'On the Armed Forces of the Republic of Belarus', No. 1904-XII of 3 November 1992;
- ❖ the law 'On Alternative Service', No. 276-3 of 4 June 2015;
- ❖ the Decree of the President of Belarus on the Approval of the Regulation on the Procedure for Performing Military Service, No. 186 of 25 April 2005; and
- ❖ the Resolution of the Ministry of Labour and Social Protection of the Republic of Belarus on Some Measures to Implement the Law of the Republic of Belarus of 4 June 2015 'On Alternative Service', No. 24 of 31 May 2016.

In accordance with the law 'On Military Duty and Military Service', conscripts are defined as male citizens who have registered with an enlistment office.¹¹⁰ In the year that male citizens reach the age of 16, initial admission for military registration is carried out at enlistment offices at their place of residence between January and April.¹¹¹

110 The Law of the Republic of Belarus 'On Military Duty and Military Service' No. 1914-XII, of November 5, 1992. Available from: https://www.mil.by/ru/all_about/normative_base/OVOiV5.docx, Article 1. [Accessed 19 February 2021]

111 Ibid, Article 14.

In accordance with Article 15 of the law, citizens are assigned to enlistment offices by commissions created by executive and administrative bodies. These commissions consist of the chairman of the commission (military commissar), members of the commission (employees of the military registration and enlistment office, and doctors participating in the medical examination of conscripts, including a surgeon, therapist, neurologist, psychiatrist, ophthalmologist, otorhinolaryngologist, dentist, and, if necessary, doctors of other medical specialties), and the secretary of the commission (from among the medical staff of public health organizations).¹¹²

The following citizens are subject to conscription for military service or service in the reserve:

- ❖ for compulsory military service and reserve service – male citizens between the ages of 18 and 27 who are on the military register and who do not serve in the reserve;
- ❖ for the military service of officers upon conscription – male citizens under the age of 27 who have completed training in the training programmes for reserve officers at military chairs or departments, passed the final exams, enrolled in the reserve, and acquired the military rank of officer; and
- ❖ for military service upon mobilization – citizens between the ages of 18 and 65 who are or are obliged to be on the military register.¹¹³

By law, citizens who are exempt from military service or reserve service, or who have the right to a deferment from conscription, are not conscripted for military service or service in the reserve. The conscription of citizens for compulsory military service or service in the reserve, and the conscription of citizens for military service as officers, is carried out within the time limits established by the decree of the President of Belarus.¹¹⁴ Thus, the president, by adopting a decree,¹¹⁵ calls up male citizens who have reached the age of 18 on the day of conscription and who do not have the right to a deferral, as well as citizens of conscription age who have lost the right to deferral, for compulsory military service or service in the reserve within the time frame established in the decree.

The conscription of citizens for compulsory military service and service in the reserve

112 Ibid, Article 15.

113 Ibid, Article 30.

114 Ibid, Article 33.

115 Decree of the President of the Republic of Belarus 'On Transfer to the Reserve and Conscription for Compulsory Military Service, Service in Reserve' No. 55, of February 17, 2020. Available from: <http://pravo.by/document/?guid=12551&p0=P32000055&p1=1&p5=0>.

is organized by the head of the local executive and administrative body together with the military commissar. The conscription of citizens for compulsory military service or service in the reserve is carried out by a conscription commission.

To conduct the conscription of citizens for compulsory military service, executive and administrative state bodies create conscription commissions. These commissions differ in composition and purpose from enlistment commissions and are composed of the chairman of the commission (deputy head of the local executive and administrative body); members of the commission (military commissar, deputy head of the department of internal affairs, head or deputy head of the central district (city) healthcare organization, and a doctor supervising the work of medical professions conducting the medical examination of citizens subject to conscription); and the secretary of the commission (from among the staff of state health organizations).¹¹⁶

The local executive and administrative body approve the membership of the conscription commission. Deputies; representatives of committees for labour, employment, and social protection of cities; and departments for labour, employment, and social protection of cities; district executive committees, public associations, and other organizations may also participate in the work of the conscription commission.

Legislation establishes the following term of military service upon conscription:

- ❖ for service members without higher education who are performing compulsory military service - 18 months;
- ❖ for service members with higher education who are performing compulsory military service - 12 months;
- ❖ for service members who have been trained in military chairs or departments under training programmes for junior commanders, who have passed the exams established by the training programmes, and who are performing compulsory military service - 6 months; and
- ❖ for service members performing military service as officers upon conscription - 12 months.¹¹⁷

On 1 July 2016, the law 'On Alternative Service' came into force. It defined ACS as a socially useful activity, performed by citizens of Belarus instead of military service, that is not associated with service in the Armed Forces, other troops, or military formations

116 The Law of the Republic of Belarus 'On Military Duty and Military Service' No. 1914-XII, of November 5, 1992. Available from: https://www.mil.by/ru/all_about/normative_base/OVOiVS.docx, Article 35.

117 Ibid, Article 45.

of Belarus.

Citizens who are subject to conscription for compulsory military service or reserve service and deemed fit and healthy, but who have personally declared that taking the military oath, carrying or using weapons, or directly participating in the production and maintenance of weapons, ammunition, or military equipment contradicts their religious beliefs to the extent that it would be impossible to perform military service, may be eligible for ACS.¹¹⁸ Stating the grounds indicated, a citizen may submit a written application to replace military service with alternative alternative to the conscription commission. The citizen's application is considered at a conscription commission meeting in their presence. Representatives of religious and other organizations, or other citizens, may be invited to the conscription commission meeting to provide explanations on the merits of the application.

If the submitted materials and documents confirm that a citizen has grounds for performing ACS instead of compulsory military service, the conscription commission makes the final decision. In certain cases, the conscription commission may refuse the application for ACS if the conscript fails to appear at the meeting of the conscription commission meeting without a valid reason, if there are insufficient grounds for replacing military service with ACS, or if the information required to make a decision is found to be unreliable. Citizens have the right to appeal against the decision of the conscription commission to the regional conscription commission or to the court.

If the application to perform ACS is approved, the Ministry of Labour and Social Protection of Belarus determines where the citizen will perform such service, as well as the day of their departure to the specified location. Citizens may perform ACS in healthcare organizations, social services, housing and communal services, agriculture and forestry, as well as in organizations involved in land improvement, construction, and the repair of roads and railways. The term of ACS for citizens without higher education is 36 months and, for those with higher education, 24 months.

According to the legislation, the Armed Forces include ground forces, air forces, and air defence forces. The Ministry of Defence does not publish information on the quantitative distribution of conscripts in a particular branch of the Armed Forces. Furthermore, no official statistics are published on the number of conscripts sent to the Armed Forces. Estimates can, nevertheless, be found in the media, which indicate the following:

118 The Law of the Republic of Belarus 'On Alternative Service' No. 276-3, of June 4, 2015. Available from: <http://www.mintrud.gov.by/system/extensions/spaw/uploads/files/Zakon.pdf>, Article 3. [Accessed 19 February 2021]

- ❖ Spring conscription 2020: approximately 10,000;¹¹⁹
- ❖ Autumn conscription 2019: approximately 12,000;¹²⁰
- ❖ Spring conscription 2019: approximately 10,000;¹²¹
- ❖ Autumn conscription 2018: approximately 10,000.¹²²

Thus, it can be safely assumed that, annually, approximately 20,000 citizens perform compulsory military service in the Armed Forces.

The performance of service by conscripted soldiers is governed by the following internal regulations:¹²³

- ❖ the Charter of the Internal Service of the Armed Forces of the Republic of Belarus, which defines the rights and obligations of service members, the procedure for relationships, the obligations of key officials, and the rules for internal order in military units and sub-units;
- ❖ the Charter of the Garrison and Guard Services of the Armed Forces of the Republic of Belarus, which defines the purpose of and procedure for organizing and carrying out garrison and guard services; and
- ❖ the Disciplinary Charter of the Armed Forces of the Republic of Belarus, which defines the content of military discipline, the obligations of service members to comply with it, types of incentives and disciplinary sanctions, the rights of commanders to apply and impose them, and the rights of service members to appeal against the illegal actions of commanders.

119 Призывники получают обмундирование Минобороны планирует призвать весной на службу около 10 тысяч парней (Conscripts Receive Uniforms. The Ministry of Defense Plans to Call about 10 Thousand Guys for Service in the Spring). Available from: <https://sputnik.by/press-center/20200213/1043939417/Minoborony-planiruet-prizvat-vesnoy-na-sluzhbu-okolo-10-tysyach-parney.html> [Accessed 19 February 2021]

120 Около 12 тыс. призывников должны отправиться в армию до 29 ноября парней (About 12 Thousand Conscripts Must Go to the Army by November 29). Available from: <https://www.belta.by/society/view/okolo-12-tys-prizyvnikov-dolzny-otpravitsja-v-armiju-do-29-nojabrja-369660-2019/> [Accessed 19 February 2021]

121 Призыв 2019: более 20 тыс. человек получили отсрочку от призыва — Минобороны (Conscription 2019: More Than 20 Thousand People Received a Deferral from Conscription – Ministry of Defense). Available from: <https://www.belrynok.by/2019/05/15/prizyv-2019-bolee-20-tys-chelovek-po-luchili-otsrochku-ot-prizyva-minoborony/> [Accessed 19 February 2021]

122 Не служившие в армии без веских оснований не смогут поступить на госслужбу. Как меняются правила призыва (Those Who Have not Served in the Army Without Good Reason Will not Be Able to Enter the Civil Service. How Conscription Rules Change). Available from: <https://news.tut.by/society/642956.html> [Accessed 19 February 2021]

123 Decree of the President of the Republic of Belarus 'On Approval of General Military Regulations of the Armed Forces of the Republic of Belarus' No. 355, of June 26, 2001. Available from: http://www.mil.by/ru/all_about/normative_base/Ustav_VSRB_355.docx.

Legislation provides for the grounds for exemption and deferral from conscription. Accordingly, citizens are exempt from compulsory military service if:

- ❖ they are deemed unfit for military service for health reasons, resulting in their exclusion from the military register;
- ❖ their father, mother, brother, or sister were service members who were killed or died or who became persons with a group I or II disability as a result of an injury or illness incurred while performing military service (official duties), or if they are orphans or children without parental care;
- ❖ they have three or more children; or
- ❖ they have performed military service or otherwise performed military service in another state.¹²⁴

A deferral from conscription for military service or service in the reserve may be provided to citizens in the following cases:

- ❖ for health reasons;
- ❖ to continue education;
- ❖ to complete an internship and or a qualifying exam related to the internship;
- ❖ in relation to their marital status;
- ❖ to obtain technical military specialties;
- ❖ in connection with the exercise of deputy powers; or
- ❖ on the basis of decrees of the President of Belarus.¹²⁵

Legal guarantees during conscription and military service

The law 'On the Status of Servicemen' guarantees the protection of the freedom, honour, and dignity of service members; the right to freedom of movement; the right to choose the place of residence and the location in which they will perform military service; the

124 The Law of the Republic of Belarus 'On Military Duty and Military Service' No. 1914-XII, of November 5, 1992. Available from: https://www.mil.by/ru/all_about/normative_base/OVOiVS.docx, Article 31. [Accessed 19 February 2021]

125 Ibid, Article 32.

right to freedom of opinion and to receive, store, and disseminate information; the right to participate in meetings, rallies, street processions, demonstrations, picketing, and other mass events; the right to freedom of association, freedom of religion, and healthcare; and the right to appeal to government agencies and other organizations.

The law also establishes restrictions on some of the rights of service members, including:

- ❖ disclosing state and official secrets, or discussing or criticizing the orders of commanders;¹²⁶
- ❖ participating in strikes to resolve issues related to performing military service, or otherwise failing to perform military service for these reasons;¹²⁷
- ❖ membership in political parties and other public associations pursuing political goals;¹²⁸ and
- ❖ creating religious organizations in military units (religious ceremonies on the territory of a military unit may nevertheless be performed with the permission of the commander of the military unit).¹²⁹

Appropriate conditions for military service, daily activities, and measures implemented by military unit commanders in cooperation with government agencies protect the health of service members by limiting the impact of harmful or dangerous factors related to military service. Service members have the right to receive medical care in healthcare facilities subordinate to government agencies that provide for military service. In the absence of military healthcare facilities at the place of military service, as well as in cases where emergency medical care is required, medical assistance may be provided in other public healthcare organizations.¹³⁰ The life and health of service members is subject to compulsory state insurance at the expense of the state budget.¹³¹

Service members performing military service under contract can receive only part-time education with the permission of the commander of the military unit. Service members performing compulsory military service are prohibited from training in vocational, secondary, or specialized higher education institutions, or educational institutions

126 The Law of the Republic of Belarus 'On the Status of Servicemen' No. 100-3, of January 4, 2010. Available from: https://www.mil.by/ru/all_about/normative_base/O_statuse.docx, Article 7. [Accessed 19 February 2021]

127 Ibid, Article 7.

128 Ibid, Article 8.

129 Ibid, Article 9.

130 Ibid, Article 14.

131 Ibid, Article 15.

and organizations implementing postgraduate educational programmes, with the exception of military educational institutions.¹³² The actions or inactions of military unit officials may be appealed to a higher authority (superior official) and/or to a court in the manner prescribed by law.¹³³

The law 'On the Armed Forces of the Republic of Belarus' stipulates that the Prosecutor General of Belarus and prosecutors subordinate to him supervise the precise and uniform implementation of the legislation of the Armed Forces of the Republic of Belarus.¹³⁴ According to the law 'On the Prosecutor's Office of the Republic of Belarus', the tasks of the Prosecutor's Office include ensuring the rule of law, legality, and order, and the protection of the rights and legitimate interests of citizens and organizations, as well as public and state interests.¹³⁵ The said law gives prosecutors broad powers; nevertheless, in practice, prosecutors generally forward complaints to the authorities whose actions are appealed against, which diminishes the effectiveness of prosecutorial supervision.

The most frequent violations of the rights of conscripts

In general, the following challenges and issues can be identified in the Armed Forces:

- ❖ The right to education: In connection with new legislative reforms, deferral from conscription into the army to obtain secondary or higher education of the first degree is only provided once (that is, after school, a conscript may enter a higher educational institution, a secondary special educational institution, or a college). If the conscript was trained in a secondary specialized educational institution, then he must complete military service before entering a higher educational institution. As such, no deferral system exists to facilitate further education in master's or postgraduate studies.
- ❖ Alternative service: Legislation does not provide for the automatic recognition of

132 Ibid, Article 17.

133 Ibid, Article 22.

134 The Law of the Republic of Belarus 'On the Armed Forces of the Republic of Belarus' No. 1904-XII, of November 3, 1992. Available from: https://www.mil.by/ru/all_about/normative_base/O_VSRB.docx, Article 18. [Accessed 19 February 2021]

135 The Law of the Republic of Belarus 'On the Prosecutor's Office of the Republic of Belarus' No. 220-3, of May 8, 2007. Available from: <http://pravo.by/document/?guid=3871&p0=H10700220>, Article 4. [Accessed 19 February 2021]

the right to replace military service with ACS. The term of ACS is twice the length of military service, while ACS is only provided on the grounds of religious beliefs. According to the Ministry of Labour and Social Protection, from 1 July 2016, when the law 'On Alternative Service' entered into force to February 2019, only 107 decisions were made to allow ACS instead of compulsory military service.¹³⁶

- ❖ Non-statutory relationships (hazing): Monitoring and inspections have demonstrated that incidents that damage the physical and psychological health of service members have taken place to varying degrees in military units in Belarus, as well as cases of extortion involving money or commodities.¹³⁷
- ❖ Suicides: Several cases emphasize the challenges regarding suicide. Hazing was identified as an influencing factor in the suicide of Alexander Korzhich,¹³⁸ for example. In the case of Alexander Orlov,¹³⁹ an investigation into his death revealed that, although he was considered at risk of suicide, no preventive measures were taken by the relevant authorities. According to the Ministry of Defence, three to five cases of suicide are recorded annually.¹⁴⁰

Protection mechanisms

Belarus does not have a national institution for the protection of human rights, nor for the protection of the rights of service members. Nevertheless, several state and non-state bodies deal with these issues, including the Conscript Rights Centre, which is a specialized service providing information and advice to conscripts and military

136 Уже около сотни белорусских парней выбрали альтернативную службу (Already about a Hundred Belarusian Guys Have Chosen an Alternative Service). Available from: <https://www.sb.by/articles/slu-zhba-dobrykh-del5634.html>. [Accessed 19 February 2021]

137 Отчет мониторинга белорусской армии, подготовлен Республиканским общественным объединением «Правовая инициатива» (Report on Monitoring of the Belarusian Army, prepared by the Republican Public Association 'Legal Initiative'). Available from: <http://www.legin.by/documents/report-armydoc>.

138 Весь суд по «делу Коржича» в одном тексте: вопросы без ответов (The Entire Trial on the 'Korzhich Case' in One Text: Unanswered Questions). Available from: <https://euroradio.fm/ru/ves-sud-po-delu-korzhicha-v-odnom-tekste-voprosy-bez-otvetov>.

139 Генеральная прокуратура возбудила новое уголовное дело по факту гибели солдата Орлова (The Prosecutor General's Office Opened a New Criminal Case on the Death of Soldier Orlov). Available from: <http://www.legin.by/posts/144>. [Accessed 19 February 2021]

140 В Беларуси в год происходит три-пять суицидов среди военнослужащих (Three to Five Suicides Take Place Among Servicemen in Belarus per Year). Available from: <https://naviny.by/new/20190723/1563894467-v-belarusi-v-god-proishodit-tri-pyat-suicidov-sredi-voennoslužhashchih>.

personnel.¹⁴¹ Furthermore, the human rights organization Legal Initiative¹⁴² provides legal assistance to service members who have suffered from torture or non-statutory relationships (hazing). The Center for Legal Transformation (Lawtrend) initiated the process that led to the adoption of the law 'On Alternative Civilian Service', including by providing recommendations on amendments to a number of provisions within the law.¹⁴³ While the centre does not currently conduct regular monitoring or consulting activities for conscripts and military personnel, it employs several specialists in this area.

In addition to the above, several organizations provide advisory services to conscripts related to the possibility of obtaining a deferral or exemption from conscription. These include Prizivnik BY,¹⁴⁴ ARMY HELP,¹⁴⁵ and Voennik BY.¹⁴⁶

Recommendations

Based on the above analysis, the following recommendations can be made:

- ❖ The grounds for the provision of alternative military service should be expanded to include 'personal' convictions as well as religious belief.
- ❖ The right to education should be expanded through the cancellation of previously introduced changes concerning the introduction of one-time deferrals.
- ❖ To prevent hazing, torture, and ill-treatment, prompt, comprehensive, and effective investigations should be conducted, and the findings should provide the basis for corrective measures. Investigations into alleged cases of hazing often remain the responsibility of officers, who may themselves be involved in the case. An independent external mechanism should therefore be established to complement existing internal oversight mechanisms.

141 Information about the Центр прав призывника. Available from: <https://povestka.by>. [Accessed 19 February 2021]

142 Information about «Правовая инициатива». Available from: <http://www.legin.by>. [Accessed 19 February 2021]

143 Information about «Центре правовой трансформации». Available from: <https://www.lawtrend.org>. [Accessed 19 February 2021]

144 Information about «Призывник БАЙ». Available from: <https://prizivnik.by>. [Accessed 19 February 2021]

145 Information about 'ARMYHELP'. Available from: <https://armyhelp.by>. [Accessed 19 February 2021]

146 Information about «Военник БАЙ». Available from: <https://voennik.by>. [Accessed 19 February 2021]

- ❖ A twenty-four-hour hotline should be set up to receive messages on violations of the rights of service members, and service members should have the right to use mobile phones.
- ❖ A system of democratic civilian control over the Armed Forces should be established. This could include, for example, public monitoring commissions, including human rights defenders, who are authorized to conduct visits to military units and speak to service members in confidentiality.
- ❖ The leadership of the Ministry of Defence should visit military units regularly and have confidential conversations with conscripts about non-statutory relationships (hazing).
- ❖ Steps should be taken to transition military service to a contract system. Monitoring has shown that contract employees are less likely to use non-statutory relationships and extortion.
- ❖ The system and methods for training soldiers should be updated. According to the results of recent monitoring activities, 44.4 per cent of respondents believed they had not acquired any skills during their service. Such statistics suggest an outdated training system and an insufficient level of motivation and interest of soldiers when performing military service.

A REVIEW OF THE LEGISLATION OF GEORGIA

Introduction

This review analyses the main trends in the field of legal regulation and implementation concerning conscription and the performance of military service in Georgia. It examines the progress made in regulating this field, which it argues was possible owing to close cooperation with international institutions, such as the North Atlantic Treaty Organization (NATO), and identifies existing challenges, including regarding the violation of rights of Georgian military personnel.

The Armed Forces of Georgia were born out of the Georgian civil war, which lasted from 1988 to 1993. Following the cessation of hostilities, the Armed Forces underwent a process of professionalization, including a reduction in the number of conscripts immediately after the stabilization of the country in 1993-95, as it transitioned from Soviet to NATO standards. In 2001, the US Department of Defense and the Georgian Ministry of Defence reached an agreement on the use of specialists from the US private military company 'Military Professional Resources Inc.' (MPRI) with the aim of reorganizing the Georgian Armed Forces in accordance with NATO standards. In 2002-04, the American Training and Equipping programme was implemented in Georgia, followed by the Sustainment and Stability Operations programme. Within the framework of these programmes, several battalions of the Georgian army were retrained, and the command of the Land Forces was overhauled. After the Rose Revolution in 2003, efforts to reform the Georgian Armed Forces intensified, accompanied by an increase in military spending. Since 2003, Georgia has seen a world-record increase in military spending. The military budget increased from USD 30 million (0.7 per cent of GDP) in 2003 to USD 940 million (8.0 per cent of GDP) in 2007 - 30 times more than in 2003. In September 2007, the Government and Parliament of Georgia increased the size of the army from 28,000 to 32,000. On 15 July 2008, the Government and Parliament of Georgia again increased military spending, as well as the size of the army, from

32,000 to 37,000.¹⁴⁷

The recommendations contained in this review are addressed to central executive authorities, and public and international organizations.

A review of the legal system

According to Article 70.2. of the Constitution of Georgia, all Georgian citizens have a duty to protect their country. Accordingly, the procedure for performing military service is determined by law.¹⁴⁸ The form of military service is determined by the law 'On Military Duty and Military Service'.¹⁴⁹ In accordance with Article 9 of the law, persons between the ages of 18 and 27 who are or are required to be on the military register of conscripts, and who do not have grounds for exemption from conscription or deferral from conscription for compulsory military service, are subject to compulsory military service. Article 32(1.a) sets the term of compulsory military service at 12 months.

The law 'On the Status of a Serviceman' defines the status of service members, persons with the status of a service member, and their rights and obligations, as well as basic guarantees of social and legal security for service members, members of their families, and persons dismissed from military service.¹⁵⁰ In accordance with Article 1, persons with the status of service member are defined as service members of the Armed Forces of Georgia, public legal entities in the system of the Ministry of Defence of Georgia and military departments, as well as reservists serving in the military reserve.

According to the law 'On Military Duty and Military Service', military service begins on the day of enrolment in a military unit or military service of the corresponding military institution and is completed on the day of exclusion from the list of military personnel at the end of the established period.

Article 3 of the law establishes that citizens called up for military service take a military oath (Article 3) and are assigned military ranks, placed in barracks, and appointed to

147 A. Андреев, И. Улин. Военные расходы Грузии в период с 2004 по 2014 год. «Зарубежное военное обозрение», № 7 (808), 2014. стр. 26-32 (A. Andreev, I. Ulin. Military Expenditures of Georgia in the Period from 2004 to 2014. 'Zarubezhnoe Voennoe Obozreniye', No. 7 (808), 2014. pp. 26-32)

148 The Constitution of Georgia. Available from: <https://matsne.gov.ge/ru/document/view/30346?publication=35>. [Accessed 19 February 2021]

149 The Law 'On Military Duty and Military Service'. Available from: <https://matsne.gov.ge/ru/document/view/31780?publication=76>. [Accessed 19 February 2021]

150 The Law 'On the Status of a Serviceman' (Nonconsolidated version). Available from: <https://matsne.gov.ge/en/document/view/28156?publication=21>. [Accessed 19 February 2021]

appropriate military posts. In accordance with Article 38(2.a) of the law 'On Military Duty and Military Service', the entry-level military rank of private is assigned to persons called up for compulsory military service. In accordance with Article 14(4) of the law, persons registered for military service up to the age of 27 are considered conscripts.¹⁵¹

The conscription process is coordinated by the Ministry of Regional Development and Infrastructure of Georgia. Departments of the Ministry of Regional Development and Infrastructure of Georgia from municipalities and districts of Tbilisi receive information on the progress and outcomes of the conscription of citizens for compulsory military service.

According to the law 'On Military Duty and Military Service', the military registration of citizens (conscripts or reservists) is carried out at their place of registration; the military registration of a person who does not have a place of registration is conducted at his actual place of residence. In accordance with Article 12(1) of the law, the military registration of citizens (conscripts or reservists) is carried out by the municipality or district.¹⁵²

The procedure for military registration of citizens is determined by the Regulation on the Military Registration of Citizens, approved by the Government of Georgia.¹⁵³

The initial military registration of conscripts is carried out by the corresponding municipality or, if the conscript lives in the capital of Georgia, the district of Tbilisi. The initial military registration of conscripts is drawn up by an individual administrative act of the mayor of the municipality or the governor of the district of Tbilisi (gamgebeli).

The structural unit of the municipality carries out military registrations from 1 January to 30 April. An authorized official of a municipality or district of Tbilisi informs the person of the decision made following his registration for military service, as well as his obligations in connection with registration and conscription for compulsory military service.

In accordance with Article 14 of the law, in the event of a request for a report on the military registration of conscripts and conscription for compulsory military service, a municipality or district of Tbilisi submits the report to the Ministry of Regional Development and Infrastructure of Georgia, which then submits it to the Ministry of

151 Ibid, Footnote 2.

152 Ibid.

153 Regulation on Military Registration of Citizens. Available from: <https://matsne.gov.ge/ka/document/view/2864106?publication=0>. [Accessed 19 February 2021]

Defence of Georgia and the government.

Those subject to military registration are obliged to appear at a municipality or district of Tbilisi upon receiving an invitation from an authorized official. In the event of a request from an authorized official of the municipality or district of Tbilisi, a conscript registered with the military must, within two weeks, provide the specified official with information about his marital status, place(s) of work and residence (actual and registration), change of position, and education, as well as other information stipulated by the legislation of Georgia.

In accordance with Article 16 of the law, conscripts are obliged, when changing their place of residence (actual or registration), to appear within two weeks at the new place of residence for military registration and, when moving abroad, to appear at the embassy or representative office of Georgia for military registration within two weeks.

The conscription of citizens for military service to perform military duties is carried out, as a rule, twice a year – in spring and autumn. According to Article 22 of the law, the specific dates for the beginning of the conscription of citizens for military service are determined by a resolution of the government.

In accordance with Article 20, a government resolution forms the basis for conscription for compulsory military service; the draft resolution must take into account the requirements of the Ministry of Defence of Georgia, the Special Penitentiary Service, the Special Service of State Guard, the State Security Service of Georgia, and the Ministry of Internal Affairs of Georgia.

A decision on the conscription of a person for compulsory military service can be made only when they reach the age of 18.¹⁵⁴

The mayors of municipalities or the mayor of Tbilisi are responsible for organizing the conscription of citizens for compulsory military service. The conscription of citizens for compulsory military service is carried out by the municipality or district of Tbilisi, and the call for contract (professional) military service is carried out by the Ministry of Defence of Georgia or the relevant agency.

The law defines the list of persons who are exempt from military service as:

- ❖ persons recognized as unfit for military service for health reasons;
- ❖ persons who have performed military service in the armed forces of another state;

154 Regulation on Military Registration of Citizens, footnote 95.

- ❖ persons convicted of a grave or especially grave crime;
- ❖ persons who have completed non-military or alternative civil service;
- ❖ the only son of a family in which at least one family member was killed in actions related to ensuring the territorial integrity of Georgia or while serving in the army; and
- ❖ members of parliament.

The Prime Minister of Georgia has the power to exempt from conscription those who are deemed especially gifted. Citizens with the status of a person with disabilities, as determined by the legislation of Georgia, are also exempt from military service, in accordance with Article 29. Article 30 of the law also provides for a deferment of conscription.

A citizen who is subject to conscription for compulsory military service must undergo a medical examination at a standing military medical expert commission in a collection and distribution centre. The standing military medical expert commission, after examining the conscript, issues an opinion on their level of fitness for military service.

A local conscription commission of the municipality is created for conscription for compulsory military service. The conscription commission of the municipality or of the Tbilisi district is approved by the mayor of the respective municipality.

The rights, obligations, and procedure for the activities of the conscription commission are defined in Article 25 of the law.¹⁵⁵

Conscripts are obliged to appear at the meeting of the conscription commission after receiving a call-up notice from the mayor of the municipality or governor of the district of Tbilisi, or an official authorized by them, as well as for conscription for mandatory military service.

A conscript who, after being called up by a structural unit of the municipality or after receiving an appropriate call-up notice for conscription for military service, fails to appear on time without a valid reason, is recognized as a person evading military duty and may be held liable in accordance with the Administrative Offences Code (196(1), 197, 197(1), 198).¹⁵⁶

If a doctor, a member of the conscription commission, or another official involved in the

¹⁵⁵ Regulation on Military Registration of Citizens, footnote 95.

¹⁵⁶ Administrative Offences Code of Georgia (Non-consolidated version). Available from: <https://matsne.gov.ge/en/document/view/28216>. [Accessed 19 February 2021]

medical examination of citizens involved in military service registration or preparation assists citizens in evading their military duty, they may be held liable in accordance with Article 45 of the law.¹⁵⁷

According to the law ‘On Military Duty and Military Service’, the Ministry of Internal Affairs of Georgia is obliged, within the limits established by the legislation of Georgia, to search and, if there are sufficient legal grounds, detain citizens who evade conscription or military service, in accordance with Article 6(6) of the law.¹⁵⁸

The number of people called up for military service each year varies. For example, in 2019, the maximum number of people required for compulsory military service was 8,590,¹⁵⁹ most of whom served in the Ministry of Defence of Georgia and units of the Penitentiary Service.

The law ‘On the Status of a Serviceman’ defines the status of service members or persons with the status of a service member, their rights and obligations, and basic guarantees of social and legal security for them, their families, and persons dismissed from military service.¹⁶⁰

The procedure for the fulfilment of military duty is determined in Chapter II of the law ‘On Military Duty and Military Service’.

In addition, the Government of Georgia establishes the rules for military service in special services in separate decrees.

Legal guarantees during conscription and military service

The law ‘On the Status of a Serviceman’ provides social and legal guarantees for service members and their family members.

The special characteristics of the legal status of military personnel are determined

157 Administrative Offences Code of Georgia (Non-consolidated version), footnote 95. Article 196 (3), 196 (6).

158 Ibid., Footnote 95.

159 Decree of the Government of Georgia on the Conscription of Citizens for Compulsory Military Service in the Fall of 2019. Available from: <https://matsne.gov.ge/ka/document/view/4628870?publication=0>. [Accessed 19 February 2021]

160 The Law ‘On the Status of a Serviceman’(Nonconsolidated version). Available from: <https://matsne.gov.ge/en/document/view/28156?publication=21>. [Accessed 19 February 2021]

according to the obligations imposed on them in relation to the armed defence of the state; these obligations include the fulfilment of assigned tasks under any conditions, including in cases when their lives are in danger.

Compensation for the partial restriction of civil rights and freedoms of service members associated with special military service conditions is provided in accordance with the law 'On the Status of Servicemen' and other regulatory legal acts. In accordance with Article 4 of the said law:

- ❖ social and legal support for service members is guaranteed by the state, which provides service members with appropriate living conditions, taking into account the special conditions and nature of military service;
- ❖ all service members, regardless of their position and military rank, are considered equal before the law. Differences in the rights of service members, the conditions of military service, and the procedure for material support are determined by the legislation of Georgia;
- ❖ social and legal protection for service members, persons dismissed from military service, and members of their families are guaranteed by the state; and
- ❖ considering the special conditions of military service, additional social security guarantees for service members are determined by the relevant legislation of Georgia.

The law provides and defines the following rights for service members:

- ❖ the right to participate in state and public activities (Article 5);
- ❖ the right to freedom of speech and information (Article 6);
- ❖ the right to freedom of conscience, religion, and belief (Article 7);
- ❖ the right to the protection of freedom, honour, and dignity (Article 8);
- ❖ the right to freedom of movement (Article 9);
- ❖ the right to exercise labour rights (Article 10);
- ❖ the right to working hours and to rest (Article 11);
- ❖ the right to material support (Article 12);
- ❖ the right of ownership (Article 13);
- ❖ the right to housing (Article 14);

- ❖ the right to the protection of the life and health of service members (Article 16);
- ❖ the right to state insurance for service members and compensation for damage (Article 17);
- ❖ the right to education and participation in cultural life (Article 18); and
- ❖ the right to privileges in relation to transport, trips, and utilities (Article 19).

The above list demonstrates that the legal guarantees of the rights of conscripts and other military personnel are sufficiently represented in the legislation of Georgia. The following therefore considers the implementation of these provisions.

While the activities of civil society organizations (CSOs) are an important element in ensuring that the rights of conscripts are respected, in the context of Georgia, no organizations dedicated to monitoring the rights of conscripts and military personnel currently exist. Today, CSOs working on security and defence issues perform this function only partially. For example, an ‘institutional school’ created within the framework of the ‘Substantial NATO-Georgia Package’ adopted during the NATO summit in Wales works on related issues, but through the provision of educational programmes. The Department for the Protection of Military Personnel under the Public Defender of Georgia also undertakes work in this area, for example, through the publication of the military analytical magazine ‘Arsenal’. In recent years, the Georgian Institute for Geostrategic and Euro-Atlantic Studies has become actively involved in issues related to the rights of conscripts.

In many ways, the lack of engagement of CSOs on issues regarding the rights of conscripts and military personnel can be partly explained by the Georgian army’s move towards NATO standards, which underscore the rights of service members and conscripts, as well as the eradication of non-statutory relationships (hazing) and cruel and inhuman treatment of service members by their colleagues or senior officers.

The most frequent violations of the rights of conscripts and military personnel

The law ‘On the Public Defender of Georgia’ defines the powers of the Ombudsman, which include, among others, monitoring the observance of the rights of military

personnel. During inspections, the Public Defender of Georgia is entitled to:

- ❖ freely enter any state authority and local self-government body, enterprises, organizations, and institutions, including military units, penitentiary institutions, places of detention, and other places where freedom is restricted;
- ❖ demand to receive immediately or within ten days information, documents, and other materials necessary for verification from public authorities, local self-government bodies, public institutions, or officials – as well as from individuals, legal entities, other organizational entities, or associations of persons not considered legal or business entities in connection with cases of discrimination;
- ❖ demand written explanations on the issues under investigation from any officials, public servants, or persons equated to them – as well as from individuals, legal entities, other organizational entities, and associations of persons not considered legal or business entities in connection with cases of discrimination;
- ❖ through state and/or non-state institutions, conduct expert research and/or prepare opinions, and to involve specialists or experts in professional or consulting work; and
- ❖ become familiar with criminal, civil, and administrative cases once the decisions on these cases have come into effect.¹⁶¹

The Office of the Public Defender of Georgia has a Department for the Protection of Human Rights, which operates in the field of defence.¹⁶² The Ombudsman has the power to investigate alleged violations in the field of defence, to consider individual complaints, to monitor, and to issue recommendations.

Among the most common violations of the rights of military personnel are issues related to working conditions and the right to leave. In addition, shortcomings exist in the medical examination procedure for conscripts; while violations of the right to privacy have been noted due to the disclosure of the personal data of conscripts.

In the case of minor disciplinary violations, arbitrary and group punishments persist. As such, there have been several cases concerning the crimes specified in Articles 333 (the abuse of power) and 115 (driving to suicide) of the Criminal Code of Georgia.¹⁶³

161 Law 'On the Public Defender of Georgia'. Available from: <https://matsne.gov.ge/ru/document/view/33034?publication=23>. [Accessed 19 February 2021]

162 Department of the Public Defender of Georgia for the Protection of Human Rights, acting in the field of defense. Available from: <http://www.ombudsman.ge/geo/190408023642departamentis-she-sakheb>. [Accessed 19 February 2021]

163 The Criminal Code of Georgia. Available from: <https://matsne.gov.ge/ru/document/view/16426?publi->

Recommendations

Each year, the Public Defender's parliamentary report identifies human rights violations in the area of defence and makes recommendations to the relevant authorities.¹⁶⁴ The majority of these recommendations do not relate to the scope of legal regulation. Nevertheless, they are often intended to change guidance, orders, and by-laws. While some of these recommendations have been implemented, others have not.

Among the recommendations, the following issues remain relevant:

- ❖ More spacious and well-equipped rooms should be provided for rest, instead of the small cabins currently available in the security departments of the military police.
- ❖ The practice of arbitrary and group punishment in the case of minor disciplinary violations should be eradicated.
- ❖ The restriction on the right of conscripts to use mobile phones in their free time should be lifted, since such devices are often the only means through which they can communicate with family members.
- ❖ Interpreters should be made available in military units where representatives of ethnic minorities serve so they have the opportunity to conduct confidential interviews with their commanders, if necessary.

cation=212. [Accessed 19 February 2021]

164 Annual Parliamentary Reports of the Public Defender. Available from: <http://ombudsman.ge/eng/sa-parlamento-angarishebi>. [Accessed 19 February 2021]

A REVIEW OF THE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

Introduction

According to the Constitution of Kazakhstan, all citizens have a duty to perform military service.¹⁶⁵ Service members enjoy rights and freedoms, subject to restrictions determined by relevant laws.¹⁶⁶ Service members are prohibited from being members of or providing support to political parties and trade unions.¹⁶⁷ Exceptions and restrictions on the rights and freedoms of service members, as well as their special duties and responsibilities, are compensated through the provision of additional rights and benefits.¹⁶⁸

When performing duties, service members remain under the protection of the state. Although legal acts on military service are periodically reviewed, no significant changes have been made since 2017.

This review does not intend to provide a comprehensive analysis of the national conscription system in Kazakhstan, but rather to reveal gaps with regard to the observance of human rights and freedoms.

165 The Constitution of the Republic of Kazakhstan. Article 36.

166 The Law 'On Military Service and the Status of Servicemen'. Article 6.

167 The Constitution of the RK. Article 23, Part 2.

168 The Law 'On Military Service and the Status of Servicemen'. Article 5.

A review of the legal system

Persons liable for military duty and conscripts are subject to military registration at their place of residence.¹⁶⁹ Certain categories of citizens are exempted from the obligation to perform military duty or conscription. These include women without a military specialization; those exempted from military service as provided for by law; those deprived of their liberty; those permanently residing outside Kazakhstan; and those not fit for military service. Those performing military service are subject to registration at military administration bodies, military units, and institutions.

Military registration includes conscription registration, a medical examination, and a decision made by the medical commission of military medical examination. Registration is carried out by local executive bodies (hereinafter, akimats), together with military command and control bodies. The registration commission, approved annually by the akim (the head of local executive authorities), includes the akim, representatives of the military administration, the police, and a deputy head of a health department and its secretary. The military registration system aims to ensure that all pre-conscript male citizens who are eligible for military duty are placed on the military register the year they turn 17.

Pre-conscripts and conscripts must be male citizens of Kazakhstan; they are assigned to enlistment offices where they are subject to conscription for compulsory military service.¹⁷⁰ Pre-conscripts are obliged to prepare for military service until they are registered.¹⁷¹

Military service is conducted on a conscription and contract basis.¹⁷² Citizens called up

169 According to Paragraph 22 of Article 1 of the Law of the Republic of Kazakhstan 'On Military Service and the Status of Servicemen', 'persons liable for military duty shall be citizens of the Republic of Kazakhstan who are in the military register and in reserve up to the age limit of staying on the military register'.

170 The Law of the Republic of Kazakhstan 'On Military Service and the Status of Servicemen'. Article 1, Paragraphs 5 and 6 (respectively).

171 'Preparation for military service' includes initial military training (hereinafter referred to as MT), in additional educational programs, in military-technical and other specialties, and in the programs of reserve officers and sergeants. General military training (for civil defense and manning the Armed Forces in wartime) for men shall be from 16 to 60 years old, and for women (without children or having children over 10 years.) shall be from 18 to 45 years old.

172 According to Paragraph 16 of Article 1 of the Law of the Republic of Kazakhstan 'On Military Service and the Status of Servicemen', 'military service shall be a special type of public service by servicemen of the Armed Forces, other troops and military formations aimed at directly ensuring military security related to armed protection of sovereignty, territorial integrity and inviolability of the State Border of the Republic of Kazakhstan'; and Article 18 of the Law of the Republic of Kazakhstan 'On Military Service and the Status of Servicemen'.

for military training must perform military service duties.

The performance of military service in peacetime and in wartime includes training in military educational institutions, conscription, voluntary admission to service under a contract, the awarding of ranks, appointment and relocation, rotation, dismissal, certification, the provision of leave, passing reserve training, and other activities.¹⁷³

Those conscripted into military service perform compulsory service for 12 months, undergo full-time training at the departments of educational institutions of law enforcement and special agencies, and undertake military training in the organizations of the Ministry of Defence.

The procedure for conscription

The conscription of citizens for compulsory military service is intended as a set of measures aimed at ensuring the recruitment of personnel for the Armed Forces, other troops, and military formations.

Akimats provide for military registration and preparation for military service, conscription for military service and mobilization, and military reserve training.¹⁷⁴ The Ministry of Defence conducts conscription into the civil defence system and during periods of mobilization.¹⁷⁵ The Minister of Internal Affairs ensures the participation of the National Guard in the organization of conscription and in the dismissal of military conscripts from the ranks of the National Guard.¹⁷⁶

Conscription for compulsory military service is carried out twice a year by the decree of the president.¹⁷⁷

Four categories of citizens are subject to conscription: citizens between the ages of 18 and 27, who do not have the right to a deferral or exemption from conscription, to meet the number of military personnel required;¹⁷⁸ at the request of authorized bodies

173 The Rules for Performing Military Service in the Armed Forces, Other Troops and Military Formations of the Republic of Kazakhstan. Paragraph 3.

174 The Law 'On Defense and Armed Forces of the Republic of Kazakhstan'. Article 9, Paragraph 4.

175 The Law 'On Civil Defense'. Article 14, Paragraph 2.

176 The Law 'On National Guard of the Republic of Kazakhstan'. Article 12, Paragraph 6.

177 The powers of the President of the Republic of Kazakhstan on 'making a decision on the conscription of citizens ...' – Article 5, Part 2, Paragraph 11 of the Law of the Republic of Kazakhstan 'On Defense and Armed Forces of the Republic of Kazakhstan', the government – in Article 31 of the Law of the Republic of Kazakhstan 'On Military Service and the Status of Servicemen'.

178 The Law of the Republic of Kazakhstan 'On Military Service and the Status of Servicemen'. Article 31.

in peacetime, reserve officers up to the age of 29 who are fit for service; those liable for military duty at military camps (including training, testing, and special camps); and other citizens in periods of mobilization and on the basis of a presidential decree.

Citizens are considered as 'conscripts' from the day the head of the military administration body issues a conscription order. The heads of organizations are obliged to recall citizens subject to conscription from business trips and to organize the notification and arrival at the enlistment office for a medical examination.

Conscription commissions

The purpose of forming (for the period of conscription) conscription commissions (by the decision of the akimats) is to conduct conscription. Conscription commissions are composed of four persons and may also include additional representatives of other state bodies and public associations, as long as the total number of persons on the conscription commission is an odd number.¹⁷⁹ Regional conscription committees (including those for cities of republican subordination and the capital) also include a deputy head of the local body of the Committee for National Security of the Republic of Kazakhstan (CNS).¹⁸⁰

Medical commissions conduct an examination of pre-conscripts; conscripts; those liable for military duty (called up for military reserve training); citizens entering service under a contract; and citizens entering military educational institutions, military departments, or specialized organizations of the Ministry of Defence. The rules determine the order and composition of the commissions.¹⁸¹

179 Consists of the chairman - deputy akim, members - the head of the local military administration, a representative of the territorial police unit, the deputy head of the local health authority (chief physician) - the chairman of the medical commission, and a secretary.

180 Article 56, Paragraph 42-1, Paragraph 44 of the Law of the Republic of Kazakhstan 'On the State Border of the Republic of Kazakhstan', CNS of the Republic of Kazakhstan: 'participates in the work of conscription commissions for the period of conscription of citizens for military service'; 'on the basis of the summary data provided by the local military administration bodies of the Republic of Kazakhstan, monitors and selects the conscript contingent for the needs of the Border Service of the Committee for National Security of the Republic of Kazakhstan'.

181 Order of the Ministry of Defense of the Republic of Kazakhstan 'On Approval of the Rules for Conducting Military Medical Examination and the Regulation on the Bodies of Military Medical Examination in the Armed Forces of the Republic of Kazakhstan'.

The types of troops in which conscripts perform military service

The Government of Kazakhstan determines the categories and the number of persons for conscription into military service.

The Armed Forces include military command and control bodies, branches of the Armed Forces, troops, special troops, logistics troops, and territorial troops; military educational institutions; military scientific institutions; and other organizations. Special Forces of the Armed Forces are military units and subdivisions of engineering, geo-information and hydrometeorological support, reconnaissance, radiation, chemical and biological protection, communications, electronic warfare, information warfare, and military police (who perform special tasks to support the combat activities of the Armed Forces).¹⁸²

Other troops and military formations include the border service, the aviation service, the border academy, the military counterintelligence and military police of the CNS and other units of the CNS, the Special Forces of the State Security Service, the National Guard, military investigative bodies of the Ministry of Internal Affairs, command and control bodies and military civil defence units authorized to provide civil protection, and bodies of the Military Prosecutor's Office.¹⁸³

In 2018, 35,000 persons were conscripted; in 2019, more than 30,000;¹⁸⁴ and, in 2020, 34,358.¹⁸⁵

182 The Law of the Republic of Kazakhstan 'On Defense and Armed Forces of the Republic of Kazakhstan'. Article 19.

183 The Law of the Republic of Kazakhstan 'On Defense and Armed Forces of the Republic of Kazakhstan'. Article 1, Paragraph 15.

184 Kursiv.kz. 2020. Сколько казахстанцев призовут на воинскую службу. Available from: <https://kursiv.kz/news/obschestvo/2020-02/skolko-kazakhstancev-prizovut-na-voinskuyu-sluzhbu>.

185 Decree of the Government of the RK #266, of February 12, 2020.

Legal guarantees during conscription and military service

The right to deferral¹⁸⁶ and exemption from conscription to military service

Deferrals are granted to citizens based on the decision of the district conscription commission on three grounds: family circumstances, continuing education, and for health reasons, as well as for 'other reasons' established by law.¹⁸⁷ A deferral from call-up for military reserve training is not granted during periods of mobilization, nor during periods of martial law or wartime, except in cases of deferrals owing to health reasons.

Citizens have the right to refuse a deferral (with the exception of a deferral for health reasons) through an application and notarized document from the person concerned or state authorities responsible for social protection.

The following persons are exempt from conscription for military service:

- ❖ those recognized as unfit for military service for health reasons (unless their circumstances have changed and the grounds for exemption are no longer valid);
- ❖ those not called up for compulsory military service upon reaching the age of 27;
- ❖ those with relatives who were killed or died or became persons with a group 1 or 2 disability while performing military service;
- ❖ those who have performed military (or alternative) service in another state;
- ❖ those who performed service in special state bodies, with the exception of those mentioned in Paragraph 9 of Article 51 of the law 'On Special State Bodies of the Republic of Kazakhstan';

186 Ibid.: 'Deferral shall be the postponement of the term for conscription of citizens to military service on the grounds provided for by this Law'.

187 A deferral from conscription (for other reasons) shall be provided to:
1) teachers; 2) doctors for the entire period of work in healthcare; 3) Members of the Parliament of the Republic of Kazakhstan, local representative bodies for their term of office; 4) persons in respect of whom an inquiry, preliminary investigation or criminal cases are being considered by the courts, before the end of these procedures; 4-1) members of flight crews of civil aircraft, engineers, mechanics and technicians of civil aviation with relevant education, for the entire period of work in civil aviation; 5) crew members of ships with relevant education for the entire period of work in water transport; 6) persons undergoing initial vocational training in educational institutions of law enforcement agencies.

- ❖ those with a scientific degree;
- ❖ clergymen belonging to registered religious associations; and
- ❖ citizens with a criminal record (exempt only in peacetime).

The following persons are exempt from conscription for reserve training:

- ❖ persons working in state bodies in positions related to ensuring defence, security, and law and order;
- ❖ persons working in state, civil, and experimental aviation;
- ❖ persons working in agriculture and in organizations responsible for the repair of agricultural machinery during sowing and harvesting periods;
- ❖ persons working full-time as teachers in educational institutions for the duration of the academic year in question;
- ❖ persons who are full-time students in educational institutions;
- ❖ women liable for military duty;
- ❖ persons liable for military duty within two years of the date they retired (these persons are not exempt from special reserve trainings);
- ❖ persons with three or more children under 18 years old;
- ❖ persons subject to an ongoing inquiry, preliminary investigation, or criminal case (in court); and
- ❖ persons liable for military duty who are elected (appointed) as Members of the Parliament of Kazakhstan or to local representative bodies.

Responsibility for violations of legislation in the field of military duty, military service, and defence

Service members can incur four types of liability in connection with the performance of military service: criminal,¹⁸⁸ administrative,¹⁸⁹ civil, and disciplinary. Service members may appeal against decisions subjecting them to such liability.

Seven types of penalties exist for the violation of discipline by service members or

188 The Criminal Code of the RK. Articles 437-466.

189 The Code of Administrative Offences of the RK. Articles 642-652.

cadets performing compulsory military service, including being denied their next leave from a military unit or from a ship to the shore, or being deprived of a badge of distinction.¹⁹⁰ Conscript officers may also be demoted to the rank of ‘junior sergeant’. The procedure for disciplinary action is established by general military regulations.

The most frequent violations of the rights of conscripts and military personnel

The UN Human Rights Committee in 2016 recommended that Kazakhstan accept conscientious objection to military service. The Committee noted that Kazakhstan has failed to implement its previous recommendation¹⁹¹ to amend its legislation to recognize a person’s right to conscientious objection to military service and to provide for alternative military service (Art. 18).¹⁹² Accordingly, the UN Human Rights Committee urged Kazakhstan to ensure the legal recognition of conscientious objection to military service, and to provide for alternative service of a civilian nature for conscientious objectors.

Mechanism for protecting the rights of conscripts

Legal protection is provided for the military, with relevant cases considered by the courts.¹⁹³ Accordingly, service members have the right to appeal against decisions and actions to higher officials, within three months of the day they became aware of the violation of their rights.¹⁹⁴

Public control in closed institutions is conducted through the National Preventive Mechanism (NPM), which, according to the ‘Ombudsman +’ formula, provides the

190 Article 53 of the Law: admonition, reprimand, severe reprimand, warning about incomplete official compliance, downgrading, demoting from a grade, dismissal for negative reasons (does not apply to conscripts).

191 See CCPR/C/KAZ/CO/1, para. 23.

192 The Concluding observations of the UN Human Rights Committee on the second periodic report of Kazakhstan of 2016. Paragraphs 45 and 46.

193 The Law ‘On Defense and Armed Forces of the Republic of Kazakhstan’. Article 27, Paragraph 2.

194 The Law ‘On Military Service and the Status of Servicemen’. Article 6, Paragraph 3-1.

Ombudsman with the right to visit guardhouses for the purpose of torture prevention, but not to other places under the authority of the Ministry of Defence.¹⁹⁵

Recommendations

The following recommendations can be made based on the above review:

- ❖ For conscripted personnel and those called up for reserve training, the place of work (position) and wages should be retained.¹⁹⁶
- ❖ The mechanisms available for the protection of the rights of conscripts should be accessible to all and function effectively.
- ❖ Alternative military service should be introduced by implementing the standards of Article 18 of the International Covenant on Civil and Political Rights (ICCPR) on conscientious objection to compulsory military service.¹⁹⁷
- ❖ A complete list of institutions and departments where citizens are called up for military service should be published.
- ❖ Legislation should include clauses on 'arbitrary detention' (for example, subsequent refusal to perform service is permissible at any time without threat of detention).
- ❖ A ban on slavery should be introduced to conform with Paragraph 3c) of Article 8 of the ICCPR.¹⁹⁸
- ❖ The law should provide for the representation of pre-conscripts who are classed as children and who are obligated to appear for conscription registration.¹⁹⁹
- ❖ Special protection measures should be introduced for vulnerable groups of

195 According to Article 4 of the Optional Protocol to the Convention against Torture, 'a place of detention shall be any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'.

196 Decree of the Government on Amendments to the Rules for the Organization and Conduct of the Conscription of Citizens of the Republic of Kazakhstan for Military Service.

197 OSCE. 2008. Руководство по правам человека и основным свободам в/с. Стр.33. Available from: <https://www.osce.org/files/f/documents/O/f/31394.pdf>. [Accessed 19 February 2021]

198 'For the purpose of this paragraph the term 'forced or compulsory labour' shall not include: Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors'.

199 The Law 'On the Rights of the Child of the Republic of Kazakhstan'. Article 1, Paragraph 2.

conscripts, in particular, 'children-uhlans'.²⁰⁰

- ❖ Paragraph 47 of Article 5 of the law 'On Education' should be reconsidered with respect to the non-application of state education powers to military educational institutions.
- ❖ An independent military ombudsmen institution should be introduced.
- ❖ Independent studies and monitoring in connection with the death of service members should be conducted.
- ❖ The range of institutions under the mandate of NPM, where military service is performed, should be expanded.
- ❖ The Rome Statute should be ratified.

²⁰⁰ There are 4 republican schools 'Zhas Uhlán' under the jurisdiction of the Ministry of Defense of the Republic of Kazakhstan, where 1 700 pupils of 10-11 grades study, pupils studying in these schools are called 'uhlan'.

A REVIEW OF THE LEGISLATION OF KYRGYZSTAN

Introduction

The National Development Strategy of Kyrgyzstan for 2018-2040 emphasizes the development of patriotism among young people by creating a system for the military-patriotic education of citizens, beginning at preschool institutions and continuing through to military training.

By establishing restrictions and responsibilities for citizens undertaking military service, the state assumes responsibility for providing appropriate conditions for service, for protecting the fundamental rights and freedoms of conscripts and those performing military service and, in case of the violation of these rights, for ensuring their recovery and rehabilitation.

This review analyses the main gaps in the legislation of the Kyrgyzstan governing the procedures for the conscription of citizens to compulsory military service and its performance. It also identifies challenges related to ensuring the human rights and freedoms of conscripts and those performing military service. The results of the analysis and subsequent recommendations are aimed at further improving national legislation and practice concerning the protection of human rights and freedoms of conscripts and those performing military service.

The first section of the review presents the main provisions of legal acts governing conscription and the performance of compulsory military service. The second section is devoted to the legal regulation of the organization and conduct of conscription for compulsory military service. The third section examines the legal guarantees in place for ensuring and protecting the rights of service members subject to compulsory military service. The fourth section identifies cases in which the rights of service members performing compulsory military service have been violated, as well as

recommendations for improving the situation. Each section highlights gaps in legislation and their implementation.²⁰¹

Based on the results of this analysis, it is possible to identify several problems associated with conscription and the performance of compulsory military service. These include:

- ❖ the absence of a legal definition and status of a ‘conscript’ and a ‘service member performing compulsory military service’, as well as sufficient legal provisions for protecting the rights and freedoms of service members subject to compulsory military service;
- ❖ the lack of effective mechanisms and tools to protect the rights of conscripts and service members subject to compulsory military service, and insufficient support for the medical examination of conscripts;
- ❖ violations of the fundamental rights and freedoms of those performing compulsory military service, in particular the right to freedom from cruel treatment, the right to file complaints, the right to safe conditions when performing military service, and the right to adequate medical care; and
- ❖ the lack of proper, effective, and comprehensive investigations into and responses to alleged violations.

It should also be noted that this review was developed during the period when state authorities in Kyrgyzstan implemented an emergency situation regime throughout the country, and a state of emergency in certain territories, in response to the coronavirus pandemic.²⁰² While spring conscription was delayed²⁰³ until 7 May 2020, the length of the conscription period was not extended.²⁰⁴

201 All regulatory legal acts were taken from the Toktom Information Legal Database (<https://online.toktom.kg/>), last amended as of the date of this review.

202 COVID-19.

203 By Decree of the President of the Kyrgyz Republic УП No. 64, of April 5, 2020, the Decree of the President of the Kyrgyz Republic on transfer to the reserve and the next conscription for compulsory military and alternative service in March-May 2020 УП No. 37, of February 18, 2020, was suspended. The basis is Paragraph 6 Article 31 of the Law of the Kyrgyz Republic ‘On Universal Military Duty of Citizens of the Kyrgyz Republic, on Military and Alternative Services’ No. 43, of February 9, 2009, according to which the dismissal of military personnel from military service is suspended in the event of imposition of a state of emergency situation or martial law for the period of its validity.

204 The transfer to the reserve and the next conscription for compulsory military service was resumed by the Decree of the President of the Kyrgyz Republic УП No. 82, of May 7, 2020.

A review of the legal system

The main regulatory legal acts of Kyrgyzstan that establish the legal framework and regulate the procedure for the conscription of citizens for compulsory military service and the performance of military service by service members include:

- ❖ the Constitution of Kyrgyzstan of 27 June 2010;²⁰⁵
- ❖ the law ‘On Universal Military Duty of Citizens of the Kyrgyz Republic, on Military and Alternative Services’, No. 43 of 9 February 2009 (hereinafter, the law ‘On Universal Military Duty’);²⁰⁶
- ❖ the law ‘On the Status of Servicemen’, No. 930-XII of 1 July 1992;²⁰⁷
- ❖ the law ‘On Compulsory State Insurance of Life and Health of Servicemen and Those Liable for Military Service, Called up for Training and Special Reserve Training, and Persons Equated to Them’, No. 164 of 21 August 2004);²⁰⁸
- ❖ the Disciplinary Charter of the Armed Forces of the Kyrgyz Republic, adopted by the Law of the Kyrgyz Republic, No. 116 of 7 August 1998;²⁰⁹
- ❖ the Charter of the Internal Service of the Armed Forces of the Kyrgyz Republic, adopted by the Law of the Kyrgyz Republic, No. 117 of 7 August 1998;²¹⁰
- ❖ the Charter of the Garrison and Guard Services of the Armed Forces of the Kyrgyz Republic, adopted by the Law of the Kyrgyz Republic, No. 118 of 7 August 1998;²¹¹
- ❖ the Regulation on the Preparation and Conduct of Conscription of Citizens of the Kyrgyz Republic, approved by the Decree of the Government of the Kyrgyz Republic, No. 770 of 18 December 2009;²¹²

205 Adopted by referendum (popular vote) on June 27, 2010. As amended by the Law of the Kyrgyz Republic No. 218, of December 28, 2016.

206 As amended by the Laws of the Kyrgyz Republic No. 79, of June 9, 2012 ... No. 94, of July 18, 2019.

207 As amended by the Laws of the Kyrgyz Republic No. 1388-XII, of January 12, 1994 ... No. 82, August 2, 2018.

208 As amended by the Laws of the Kyrgyz Republic No. 51, of June 22, 2011 ... No. 197 (2), of December 1, 2017.

209 As amended by the Laws of the Kyrgyz Republic No. 108 of June 21, 2002 ... No. 203, November 10, 2011.

210 As amended by the Laws of the Kyrgyz Republic No. 126, of August 13, 2004 ... No. 82, of August 2, 2018.

211 As amended by the Law of the Kyrgyz Republic No. 173, of July 30, 2013.

212 As amended by Decrees of the Government of the Kyrgyz Republic No. 52, of February 6, 2013... No. 8, of January 14, 2020.

- ❖ the Regulation on Medical Examination in the Armed Forces, Other Military Formations, and State Bodies of the Kyrgyz Republic, Where the Law Provides for Military Service (for peacetime and wartime), approved by the Decree of the Government of the Kyrgyz Republic, No. 771 of 18 December 2009;²¹³
- ❖ the Regulation on the Procedure for Performing Compulsory Military Service by Soldiers, Sergeants and Foremen of the Armed Forces, Other Military Formations and State Bodies of the Kyrgyz Republic, Where the Law Provides for Military Service, approved by the Decree of the Government of the Kyrgyz Republic, No. 800 of 25 December 2009;²¹⁴
- ❖ the Regulation on the Military Prosecutor's Office, approved by the Decree of the Government of the Kyrgyz Republic, No. 279 of 4 May 1994;²¹⁵ and
- ❖ the Programme of State Guarantees for Providing Citizens in the Kyrgyz Republic with Healthcare, approved by the Decree of the Government of the Kyrgyz Republic, No. 790 of 20 November 2015.²¹⁶

While the above-mentioned laws regularly refer to 'service members performing compulsory military service', they do not provide a legal definition for this concept. The law 'On Universal Military Duty', however, defines 'compulsory military service' as military service performed by citizens following their compulsory conscription into the Armed Forces and other military formations of Kyrgyzstan in the manner determined by this law. According to Article 17 of the same law, male citizens aged between 18 to 25, who do not have the right to a deferral from conscription or the right to exemption from conscription, or who have lost the right to a deferral from conscription, are subject to conscription for compulsory military service.

Based on the meaning and content of the law 'On Universal Military Duty', it can be inferred that 'service members performing compulsory military service' are male citizens of Kyrgyzstan called up for military service between the ages of 18 to 25, who do not have the right to a deferral from conscription or to be exempted from conscription, or those who have lost the right to a deferral from conscription.

213 As amended by Decrees of the Government of the Kyrgyz Republic No. 586, of October 8, 2014 ... No. 160, of March 17, 2020.

214 As amended by Decrees of the Government of the Kyrgyz Republic No. 87, of February 25, 2016 ... No. 117, of March 14, 2019.

215 As amended by Decrees of the Government of the Kyrgyz Republic No. 418, of October 9, 1995 ... No. 52, of February 2, 2010.

216 As amended by Decrees of the Government of the Kyrgyz Republic No. 302, of June 6, 2016 ... No. 724, of December 30, 2019.

Furthermore, the law 'On Universal Military Duty' defines 'conscription' as the performance of military duties by citizens, and the 'conscription of citizens for military service' as a set of measures aimed at ensuring the recruitment of personnel for the Armed Forces, other military formations, and public bodies of Kyrgyzstan, where the law provides for compulsory military service.

Male citizens between the ages of 18 and 25 who are registered with the district (city) military registration and enlistment offices and who are subject to conscription for compulsory military and alternative services are considered conscripts; however, according to Article 13 of this law, citizens who have undergone a medical examination during the initial military registration are also, upon the decision of the commission, registered as conscripts. This conflicts with the basic provisions of the law, which define those between the ages of 16 to 18 as pre-conscripts. Moreover, since citizens are subject to initial military registration in the year that they turn 16, 'conscripts' or 'pre-conscripts' may also be persons under the age of 16.

In accordance with the decree of the President of Kyrgyzstan, the conscription of citizens for compulsory military service is carried out across the country by district military registration and enlistment offices twice each year, from March to May and from September to November.²¹⁷ In order to implement the decree of the president, a decree of the Government of Kyrgyzstan²¹⁸ is adopted, which approves the composition of the Republican Conscription Commission and provides appropriate instructions to the State Committee for Defence Affairs of the Kyrgyz Republic (SCDA),²¹⁹ the Ministry of Health, and the Ministry of Internal Affairs on the organization and conduct of conscription. In turn, the agencies and ministries issue an order to implement this decree. After the publication of the SCDA's order, the orders of district military registration and enlistment offices on the conscription of citizens to service are announced.²²⁰ While these decrees

217 Article 15 of the Law of the Kyrgyz Republic 'On Universal Military Duty of Citizens of the Kyrgyz Republic, on Military and Alternative Services' No. 43, of February 9, 2009. As amended by the Laws of the Kyrgyz Republic No. 79, of June 9, 2012 ... No. 94, of July 18, 2019.

218 Note: The Decree of the President of the Kyrgyz Republic, the Decree of the Government of the Kyrgyz Republic are issued twice annually before the start of the conscription. So, for example, on February 18, 2020, a Presidential Decree was adopted, and on February 21, 2020, a Government Decree was adopted.

219 The State Committee for Defense Affairs is a state public whose tasks include, among other things, ensuring the activities of military registration and enlistment offices, organization of military registration, preparation of citizens for military service, conscription of citizens of the Kyrgyz Republic for military, alternative services and military (mobilization) reserve training and mobilization, creation and accumulation of a military-trained reserve on military-registration specialties.

220 Clause 75 of the Regulation on the Preparation and Conduct of the Conscription of Citizens of the Kyrgyz Republic, approved by Decree of the Government of the Kyrgyz Republic No. 770, of December 18, 2009. [as amended by Decrees of the Government of the Kyrgyz Republic No. 52, of February 6, 2013 ... No. 8, of January 14, 2020].

must be adopted well in advance of the conscription date, currently, legislation does not provide details on when such acts should be adopted.

The adoption of the above-mentioned acts give rise to the obligations of citizens established by the law 'On Universal Military Duty'. Thus, according to Paragraph 2 of Article 15 of the law, citizens must appear at the enlistment office in which they are registered following the announcement of the presidential decree, following an order from a district military commissar on conscription, or after receiving a call-up notice. The exact terms of the appearance of citizens at the enlistment offices are determined by orders of the district military commissars. According to Article 17 of the law, after the publication of the presidential decree, citizens must appear at the district military registration and enlistment offices at their place of residence. These provisions, however, remain difficult to enforce.

Furthermore, in accordance with Paragraph 3 of Article 17 of the law 'On Universal Military Duty', after receiving a call-up notice from the district military registration and enlistment office, citizens are obliged to appear at the conscription commission. The notice is then signed by officials of the district military registration and enlistment office and handed over to the citizen, his parents, or spouse; to the heads of the place at which the citizens works or studies; or to other persons responsible for military registration. The notice must indicate the purpose of the call-up, the terms of appearance, and the legal consequences if the citizen fails to comply with its requirements. The notice is then signed by the district military commissar or his deputy.²²¹ The legislation does not, however, specify the number of days before the term indicated in the call-up notice the conscript should receive the notice. Since all citizens should have sufficient time to prepare for enlistment, further clarity in this regard should be provided.

As noted, male citizens between the ages of 18 and 25, who do not have the right to a deferral from conscription, the right to exemption from conscription, or who have lost the right to deferral from conscription, are subject to conscription for military service.²²² At the same time, the Regulation on Conscription establishes that male citizens who are 18 years old on the day of conscription are to be called up.²²³ However, neither the

221 See *ibid*, Paragraph 74.

222 Clause 1 of Article 17 of the Law of the Kyrgyz Republic 'On Universal Military Duty of Citizens of the Kyrgyz Republic, on Military and Alternative Services' No. 43, as of February 9, 2009. As amended by the Laws of the Kyrgyz Republic No. 79, of June 9, 2012 ... No. 94, of July 18, 2019.

223 Clause 66 of the first part of Chapter 6 of the Regulation on the Preparation and Conduct of Conscription of Citizens of the Kyrgyz Republic, approved by Decree of the Government of the Kyrgyz Republic No. 770, of December 18, 2009. As amended by Decrees of the Government of the Kyrgyz Republic No. 52, of February 6, 2013 ... No. 8, of January 14, 2020.

law 'On Universal Military Duty' nor the regulation specify the day of conscription or indicate the legal act that is the basis for determining the day of conscription.

The procedure for conscription

The procedure for organizing and carrying out the conscription of citizens for compulsory military service is determined by the Regulation on Conscription.²²⁴ To carry out the conscription of citizens, conscription commissions are created upon the order of the heads of state administrations of districts,. These commissions are composed of a chairman (the district (city) military commissar) and members of the commission, including a representative of the local state administration or local self-government body, a representative of the city (district) department of internal affairs, a senior doctor of the conscription commission, and a secretary. The presence of all members of the conscription commission is mandatory while it is active.

Conscripts perform service in the military units of the Armed Forces of the Kyrgyz Republic - comprising military command bodies (including the SCDA), ground formations, units and institutions, the Air Defence Forces, the National Guard, and the Border Service - as well as in military formation units, which include the Ministry of Emergency Situations, the Department for the Protection of Correctional Institutions and Escort of Convicts and Persons in Custody of the State Penitentiary Service under the Government of the Kyrgyz Republic (DPE SPS), the State Committee for National Security, and Internal Troops of the Ministry of Internal Affairs.

District conscription commissions are responsible for organizing the medical examination of conscripts. According to the results of the examination and the level fitness for military service - and taking into account the education and specialty of the citizen, as well as their marital status - district conscription commissions make a decision on each conscript, which is recorded in the protocol book and announced to the conscript. A copy of the decision of the conscription commission on the written application of the citizen must be handed over to the respective citizen. If a citizen disagrees with the decision of the conscription commission, they may appeal to the Republican Conscription Commission. The decision of the Republican Conscription

²²⁴ The Regulation on the Preparation and Conduct of Conscription of Citizens of the Kyrgyz Republic, approved by Decree of the Government of the Kyrgyz Republic No. 770, of December 18, 2009. As amended by Decrees of the Government of the Kyrgyz Republic No. 52, of February 6, 2013 ... No. 8, of January 14, 2020.

Commission can also be appealed in court.²²⁵

In addition to the above-mentioned legislative gaps, several issues exist concerning implementation. A key concern remains the provision of appropriate equipment for doctors responsible for conducting medical examinations, as well as a lack of specialist doctors in certain regions. This is despite the fact that the Regulation on Medical Examination establishes an extensive list of medical practitioners required for a proper medical examination, including a surgeon, a therapist, a neuropathologist, a psychiatrist, an ophthalmologist, an otolaryngologist, a dentist, and, if necessary, doctors of other specialties.

In addition, according to the Programme of State Guarantees, citizens who are subject to conscription for compulsory military service and who receive a referral from the military medical commission should receive free-of-charge the necessary laboratory and diagnostic tests, including a general blood and urine test, a chest fluorography, and an electrocardiogram (ECG). However, in practice, conscripts are still sometimes asked to pay for such tests and, as no fixed price list exists, the cost can differ from one medical institution to another. Another issue concerning medical examinations relates to the maximum number of persons that may be examined each day. In accordance with the Regulation on Medical Examination, 50 examinations may be performed each day (during peacetime); however, during the initial stage of conscription, some medical commissions examine up to 80 persons a day. Given that the standards of the Ministry of Health allocate 15 to 18 minutes per examination, questions remain as to whether such medical commissions can reliably conduct upwards of 80 examinations in a day.

Another concern relates to the process for sending conscripts to assembly points. Following the announcement of the decision of the conscription commission on conscription to the Armed Forces, conscripts are provided with relevant documents and information on their expected time of arrival at the city's military registration and enlistment offices, which is scheduled for no later than one day before their dispatch to military units. In addition, they are also provided with a list of documents which they are required to carry.²²⁶ However, in practice, following the announcement of the decision of the conscription commission, some conscripts remain at the military registration

225 Clause 3 of Article 15 of the Law of the Kyrgyz Republic 'On Universal Military Duty of Citizens of the Kyrgyz Republic, on Military and Alternative Services' No. 43, of February 9, 2009. As amended by the Laws of the Kyrgyz Republic No. 79, of June 9, 2012 ... No. 94, of July 18, 2019.

226 Clause 113 of the first part of Chapter 7 of the Regulation on the Preparation and Conduct of the Conscription of Citizens of the Kyrgyz Republic, approved by Decree of the Government of the Kyrgyz Republic No. 770, of December 18, 2009. As amended by Decrees of the Government of the Kyrgyz Republic No. 52, of February 6, 2013 ... No. 8, of January 14, 2020.

and enlistment office until they are sent to the assembly point. This is problematic as it means that district military commissars are currently obliged, if necessary, to provide conscripts waiting to be sent to assembly points with food and funds for travel. In instances where conscripts remain on the premises of military registration and enlistment offices for extended periods, conscripts or their parents are often forced to bear such costs. To this end, provisions should be made to ensure that food and travel costs are incurred at the expense of the state, not that of the district military commissars.

An additional issue concerns the location in which the passports of conscripts are stored following their dispatch to military units. Until April 2017, the Regulation on Conscription established that, after being sent to military units, the personal files of conscripts, including identity documents, are returned from assembly points to the district military registration and enlistment offices. According to recently introduced amendments, however, the passports of conscripts at the time of departure from assembly points are transferred for temporary storage to representatives of military units, meaning that the identity documents of conscripts are held by unit commanders.

Finally, concerns exist regarding the publishing of the numbers of service members performing compulsory military service. In accordance with the law, the term of compulsory military service is 12 months, calculated from the day citizens are sent from an assembly point to their place of service.²²⁷ The number of citizens subject to conscription for compulsory military service is determined by the SCDA in agreement with the General Staff of the Armed Forces of the Kyrgyz Republic, based on the availability of draft resources in the district military registration and enlistment offices. Their distribution across different military formations and units is then determined by the SCDA on the basis of applications received from the commanders of the SCDA units.²²⁸ However, while legislation does not prohibit the disclosure of information on the number of service members performing compulsory military service, such information is not available in the public domain.

227 Article 17.29 of the Law of the Kyrgyz Republic 'On Universal Military Duty of Citizens of the Kyrgyz Republic, on Military and Alternative Services' No. 43, of February 9, 2009. As amended by the Laws of the Kyrgyz Republic No. 79, of June 9, 2012 ... No. 94, of July 18, 2019.

228 Clause 60 of Chapter 5, clause 68 of the first part of Chapter 6 of the Regulation on the Preparation and Conduct of the Conscription of Citizens of the Kyrgyz Republic, approved by Decree of the Government of the Kyrgyz Republic No. 770, of December 18, 2009. As amended by Decrees of the Government of the Kyrgyz Republic No. 52, of February 6, 2013 ... No. 8, of January 14, 2020

Legal guarantees during conscription and military service

As mentioned, legislation does not provide a legal definition of the concept of ‘service members performing compulsory military service’, although this term is referred to in its provisions. According to the law ‘On Universal Military Duty’, citizens of the Kyrgyz Republic acquire service member status from the day of their conscription (admission on a voluntary basis and under a contract) for military service or call-up for reserve training. However, the law ‘On Universal Military Duty’ defines ‘compulsory military service’ as the military service of citizens based on their compulsory conscription; consequently, the provision on acquiring service member status does not apply to service members performing compulsory military service, as they enter service on a compulsory basis. It is therefore necessary to clarify the status of ‘service members performing compulsory military service’ since, according to Article 1 of the law ‘On Universal Military Duty’, only those with service member status are provided with the rights and freedoms guaranteed by the state, as well as the duties and responsibilities of service members established by the Constitution and legislative and other acts issued on its basis.

The procedure for citizens performing compulsory military service is regulated by internal charters and other regulatory legal acts, including:

- ❖ the Charter of Internal Service of the Armed Forces of the Kyrgyz Republic;
- ❖ the Disciplinary Charter of the Armed Forces of the Kyrgyz Republic, which contains provisions for ensuring military discipline, granting rewards, taking disciplinary measures, and submitting and considering proposals, applications, and complaints; and
- ❖ the Charter of the Garrison and Guard Services of the Armed Forces of the Kyrgyz Republic, which details the procedure for organizing and carrying out garrison and guard services.

The Regulation on the Procedure for Performing Compulsory Military Service also regulates appointments to positions, and the assignment of military ranks, business trips, and leave.

Of note, the law ‘On Universal Military Duty’, the Regulation on Conscription, the Regulation on Medical Examination, and the Regulation on the Procedure for Performing Compulsory Military Service do not contain provisions on the rights of conscripts and service members subject to compulsory military service, with the exception of the right

to alternative service. The law 'On the Status of Servicemen', however, contains the rights and freedoms of citizens enjoyed by service members with certain restrictions owing to the nature of military service. To this end, no one is permitted to deprive service members and their family members of any rights and freedoms, or to restrict their rights, except as stipulated by the Constitution and laws.²²⁹ The law also provides additional benefits to service members performing compulsory military service, including the free use of city and road transportation (except for taxis) in rural areas; the right to retain the living quarters occupied before being called up for service, and not to be excluded from the waiting lists for receiving living quarters; the right to study in general education schools at the place of their military service during the evening; the right to free postage of letters and postage of their own clothes; and the right to receive cash benefits for children.

In terms of medical support, the Programme of State Guarantees establishes that in cases where service members performing compulsory military service cannot be provided with qualified medical care in departmental healthcare organizations during the period of military service, they have the right to receive free medical and health care as outpatients and in hospitals. In addition, upon providing a certificate of the decision of the medical and control commission of the healthcare organization, they are also exempted from contributing to the cost of the care.²³⁰

The Charter of Internal Service features a separate chapter on the rights, duties, and responsibilities of service members,²³¹ but does not provide detailed information. As such, it notes that service members enjoy the rights and freedoms established for citizens of Kyrgyzstan, with restrictions determined by the nature of military service. The content and scope of such rights, duties, and responsibilities depend on whether they are on duty. Furthermore, it provides only a general list of rights, including that no one can restrict the rights of service members guaranteed by the Constitution and legislation; the state guarantees the social and legal protection of service members; takes measures to create adequate and decent standards of living and improve the conditions of service; and entrusts the protection of the rights of service members to state authorities and local self-government bodies, courts, law enforcement agencies,

229 Article 1 of the Law of the Kyrgyz Republic 'On the Status of Servicemen' No. 930-XII, of July 1, 1992. As amended by the Laws of the Kyrgyz Republic N 1388-XII, of January 12, 1994 ... N 82, of August 2, 2018

230 Note: The certificate should be issued by the social protection authorities or *ajil okmotu* (village administration), the commander of the military unit.

231 Chapter 1 of the Charter of the Internal Service of the Armed Forces of the Kyrgyz Republic, adopted by the Law of the Kyrgyz Republic No. 117, of August 7, 1998. As amended by the Laws of the Kyrgyz Republic No. 126, of August 13, 2004 ... No. 82, of August 2, 2018.

military administration bodies, and commanders. However, the Charter of Internal Service does not contain specific guarantees or mechanisms to ensure that these rights are upheld. The rights of the service member of compulsory military service held in the guardhouse and the conditions of their detention are regulated by the Charter of the Garrison and Guard Services.

It should be noted that the restrictions placed on the rights of service members performing compulsory military service continue to conflict with the Constitution. According to the Constitution, laws abolishing or diminishing the rights and freedoms of a person and a citizen may not be adopted. Human and civil rights and freedoms may only be limited by the Constitution and laws to protect national security, public order, the health and morality of the population, and the rights and freedoms of others. Furthermore, such restrictions should be proportionate to the stated objectives.²³²

The following guarantees of prohibition established by the Constitution may not be subject to any restrictions:²³³

- ❖ the use of the death penalty, torture, and other inhuman, cruel, or degrading treatment or punishment;
- ❖ conducting medical, biological, psychological experiments on people without their voluntary consent, expressed and duly certified;
- ❖ slavery and human trafficking;
- ❖ imprisonment on the sole ground that the person is unable to fulfil the contractual obligation;
- ❖ criminal prosecution for the dissemination of information discrediting the honour and dignity of a person;
- ❖ coercion to express opinions, religious, or other beliefs or to renounce them; and
- ❖ coercion to determine and indicate their ethnicity.

The following rights established by the Constitution may not be subject to limitations:²³⁴

- ❖ the right to humane treatment and respect for human dignity for those deprived of their liberty;

232 Articles 16, 17, 20 of the Constitution of the Kyrgyz Republic, adopted by referendum (popular vote) on June 27, 2010. As amended by the Law of the Kyrgyz Republic No. 218, of December 28, 2016.

233 Ibid., Article 20, Paragraph 4.

234 Ibid., Article 20, Paragraph 5.

- ❖ the right to ask for pardon or commutation of punishment;
- ❖ the right to the reconsideration of a case by a higher court;
- ❖ the right to freedom of thought and opinion;
- ❖ the right to freely choose and have religious and other convictions;
- ❖ the right to freely determine and indicate their ethnicity;
- ❖ the right to compensation by the state for damage caused by illegal actions of state authorities, local self-government bodies, and their officials in the performance of official duties; and
- ❖ the right to judicial protection.

The Disciplinary Charter contains a chapter ‘On Proposals, Applications, and Complaints’, according to which each soldier has the right to file a complaint about illegal actions against his commanders (chiefs) or other service members, the violation of rights and benefits established by laws, or dissatisfaction with his due allowance. A service member has the right to file a complaint in person or to authorize another person to do so. A service member who files a complaint is not released from the execution of orders and his official duties. It is forbidden to file group complaints or to file a complaint while on combat alert, in the ranks (with the exception of complaints filed during the survey of military personnel), on guard, or while performing official duties or during training classes.

Complaints may be made orally or in writing. In the latter case, they must be signed by the service member, indicating the surname, first name, and patronymic and containing information about his place of residence or service. Anonymous complaints are not subject to consideration.

The ‘Criminal Code of the Kyrgyz Republic’²³⁵ establishes liability and punishment for crimes against civil and other human rights, for bullying a person holding the status of a soldier, for cruel treatment against them, for the illegal deprivation of his freedom or his forcible use in the pursuit of personal interests, as well as for extortion or seizing of items of military allowance, committed by a person who holds the status of a soldier and who is not subordinate to the victim;²³⁶ for abuse of power; for torture; for driving to

235 The Criminal Code of the Kyrgyz Republic No. 19, of February 2, 2017, enacted by the Law of the Kyrgyz Republic No. 10, of January 24, 2017 as of January 1, 2019. As amended by the Laws of the Kyrgyz Republic No. 62, of May 15, 2019 ... No. 34, of April 3, 2020.

236 Article 366 ‘Violation of the Statutory Rules of Relationships Between Servicemen in the Absence of Subordinate Relations Between Them’ of the Criminal Code of the Kyrgyz Republic No. 19, of Febru-

suicide; and for violation of a person's Procedural guarantees for ensuring the rights of victims, witnesses, family members and close relatives as guaranteed by the Criminal Procedural Code.²³⁷

The Military Prosecutor's Office supervises the execution of regulatory legal acts by military administration bodies, military units, formations, military educational institutions, institutions, and other military formations. The Military Prosecutor's Office carries out criminal prosecution and participates in court proceedings in the case and in the manner prescribed by law. One of the responsibilities of the Military Prosecutor's Office is to ensure legal protection against any unlawful actions that infringe on the rights and freedoms of military personnel.²³⁸

Judicial authorities establish human rights violations, resolve issues related to the payment of compensation, and bring persons to justice. Judicial power may be exercised through constitutional, civil, criminal, administrative, and other forms of legal proceedings.²³⁹ Furthermore, the Regulation on the State Committee for Defence Affairs of the Kyrgyz Republic (SCDA) establishes the provision of legal protection for military personnel of the Armed Forces of the Kyrgyz Republic as one of the tasks of the SCDA.²⁴⁰ The regulation does not, however, contain specific mechanisms for ensuring this provision is implemented.

The Akyikatchy (Ombudsman) of the Kyrgyz Republic²⁴¹ has parliamentary control over the observance of constitutional human and civil rights and freedoms on the territory of Kyrgyzstan and within its jurisdiction. The rights and powers of the Akyikatchy (Ombudsman) are broad and cover all areas where human rights may be violated, from applying to the judiciary for the protection of human rights, to visits to places of detention and places where freedom is restricted. The Akyikatchy also provides opinions

ary 2, 2017, introduced by the Law of the Kyrgyz Republic No. 10, of January 24, 2017 as of January 1, 2019. As amended by the Laws of the Kyrgyz Republic No. 62, of May 15, 2019 ... No. 34, of April 3, 2020.

237 The Criminal Procedure Code of the Kyrgyz Republic No. 20, of February 2, 2017, enacted by the Law of the Kyrgyz Republic No. 10, of January 24, 2017 as of January 1, 2019. As amended by the Laws of the Kyrgyz Republic No. 62, of May 15, 2019, No. 21, of February 28, 2020.

238 Article 2 of the Regulation on the Military Prosecutor's Office, approved by Decree of the Government of the Kyrgyz Republic No. 279, of May 4, 1994. As amended by Decrees of the Government of the Kyrgyz Republic No. 418, of October 9, 1995 ... No. 52, of February 2, 2010.

239 Article 93 of the Constitution of the Kyrgyz Republic, adopted by a referendum (popular vote) on June 27, 2010. As amended by the Law of the Kyrgyz Republic No. 218, of December 28, 2016.

240 Approved by Decree of the Government of the Kyrgyz Republic No. 28, of January 26, 2016. As amended by Decree of the Government of the Kyrgyz Republic Resolution No. 460, of October 8, 2018.

241 Law of the Kyrgyz Republic 'On the Ombudsman (Akyikatchy) of the Kyrgyz Republic' No. 136, of July 31, 2002. As amended by the Laws of the Kyrgyz Republic No. 97, of July 6, 2007 ... No. 114, of July 7, 2014.

on draft regulatory legal acts. The decisions of the the Akyikatchy (Ombudsman) in relation to violations of human rights and freedoms are binding. The annual report – submitted to parliament by 1 April – is an important tool for the protection of human rights and freedoms. If necessary, the Ombudsman can submit a special report on particular issues regarding human and civil rights and freedoms. Parliament adopts a resolution on the annual and special reports of the Akyikatchy (Ombudsman) of the Kyrgyz Republic.

Monitoring the conditions of performing compulsory military service in military units and in places for the restriction or deprivation of liberty, as well as the prevention of torture and ill-treatment, are included in the mandate of the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NCPT), which has the right to conduct preventive visits to places for the deprivation and restriction of liberty any day and at any time without prior notice. As with the Akyikatchy (Ombudsman) of the Kyrgyz Republic, the NCPT provides responses to the relevant state bodies on issues related to torture and ill-treatment, and submits an annual report to parliament, after which a resolution is adopted.

In its annual reports to parliament, the NCPT has repeatedly raised the issue of the development of an Action Plan for the implementation of the principles of the Istanbul Protocol and Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the activities of the medical service of the General Staff of the Armed Forces of the Kyrgyz Republic, as well as all ‘parallel’ medical services of subordinate public bodies and institutions.²⁴²

In this regard, major progress was made towards effectively documenting cases of torture and ill-treatment after the approval of the Practical Manual on the Effective Documentation of Violence, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Ministry of Health of the Kyrgyz Republic in December 2014.²⁴³ In addition to the manual, the following forms were approved:

- ❖ the Medical Examination Form upon application (admission) regarding violence, torture and ill-treatment, along with instructions on how to complete it;
- ❖ the Conclusion Form of the Forensic Medical Examination for documenting cases

242 Ежегодные доклады Национального центра КР по предупреждению пыток и других жестоких бесчеловечных или унижающих достоинство видов обращения и наказания за 2017, 2018, 2019 гг. (Annual Reports of the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for 2017, 2018, 2019). Available from: <http://npm.kg/ru/analitika-i-dokumenty/ezhegodnye-doklady/>.

243 Order of the Ministry of Health of the KR No. 649, of January 9, 2014.

of torture and ill-treatment, along with instructions on how to complete it;

- ❖ the Conclusion Form of the Forensic Psychiatric and Comprehensive Psychological and Psychiatric Examination of victims of alleged torture, ill-treatment, and violence, along with instructions on how to complete it; and
- ❖ the Unified Registration and Reporting Form, which allows for statistical research to ascertain the number of people who have suffered from illegal actions, including torture.

The manual is provided to all medical workers of healthcare facilities, regardless of the form of ownership and departmental subordination. In accordance with the manual, any medical worker is obliged to provide qualified medical assistance to victims of violence, to notify internal affairs bodies and the prosecutor's office of the facts of the application of the victim and to provide medical assistance to the victim, with their consent, within 24 hours, and to draw up a standardized examination form and other reporting and registration documentation in accordance with the requirements of international standards. Conclusions based on the results of the documentation are considered as strong evidence in court proceedings.

The order of the Ministry of Health, however, applies only to medical institutions subordinate to it. The medical services of the Armed Forces of the Kyrgyz Republic, including the DPE SPS, the Ministry of Emergency Situations, the State Committee for National Security, and the Internal Troops of the Ministry of Internal Affairs are not directly subordinate to the Ministry of Health. In this regard, the NCPT has recommended transferring parallel medical services to the Ministry of Health of the Kyrgyz Republic.²⁴⁴

Civil society organizations also work in Kyrgyzstan to prevent violations and protect the rights of the service members performing compulsory military service, including the Kylym Shamy Human Rights Center (KSHRC). In 2014, Kylym Shamy prepared a toolkit for monitoring military units, which is currently used by the Akyikatchy (Ombudsman) and the NCPT. The results of the activities were included in the annual reports of the Akyikatchy (Ombudsman) and the NCPT for 2015, and also formed the basis for the Programme of the General Staff of the Armed Forces 'On the Prevention of Death and Injury Among the Personnel of the Armed Forces of the Kyrgyz Republic, as well as

244 Ежегодные доклады Национального центра КР по предупреждению пыток и других жестоких бесчеловечных или унижающих достоинство видов обращения и наказания за 2017, 2018, 2019 гг. (Annual Reports of the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for 2017, 2018, 2019.). Available from: <http://npm.kg/ru/analitika-i-dokumenty/ezhegodnye-doklady/>.

Ensuring Safe Conditions for Military Service'.²⁴⁵ In 2016, the results of the work became the basis for the preparation of special reports of the Akyikatchi (Ombudsman) on the rights of conscripts²⁴⁶ and the rights of service members,²⁴⁷ which were submitted to parliament. Kylum Shamy also provides legal assistance and aid to victims of violence and hazing in the army, and advice on the rights and freedoms of service members, as well as on rehabilitation and compensation.

With regards to regional organizations, the OSCE Regional Office in Bishkek provides assistance and financial support for the monitoring of military units and activities aimed at promoting respect for the rights of service members of compulsory military service. In 2019-20, the office supported the NCPT in carrying out preventive visits.

The most frequent violations of the rights of conscripts and military personnel

Based on this analysis, it is possible to identify the following main gaps in the legislation on ensuring the rights and freedoms of conscripts and service members of compulsory military service:

- ❖ the lack of a legal definition and clarity on the status of 'a conscript' and 'a service member performing compulsory military service', as well as provisions on the rights and freedoms of conscripts in the laws;
- ❖ insufficient mechanisms and tools for protection of the rights of service members of compulsory military service and conscripts; and
- ❖ insufficient support for the medical examination of conscripts.

245 Отчет «Соблюдение прав военнослужащих Кыргызской Республики. Результаты мониторинга -2015». (Report 'Respect for the Rights of Servicemen of the Kyrgyz Republic. Monitoring Results - 2015'). Available from: <http://ksh.kg/wp-content/uploads/2016/08/otchet.pdf>.

246 Специальный Доклад Акыйкатчы (Омбудсмена) Кыргызской Республики «Соблюдение прав граждан во время призывного процесса», 2016 год. (Special Report of the Akyikatchy (Ombudsman) of the Kyrgyz Republic 'Respect for the Rights of Citizens during the Conscription Process', 2016.). Available from: <http://ombudsman.kg/files/docs/reports/2016/observance-of-the-rights-of-recruits.pdf>.

247 Специальный доклад Акыйкатчы (Омбудсмена) Кыргызской Республики «Соблюдение прав военнослужащих Кыргызской Республики», 2016 год. (Special Report of the Akyikatchy (Ombudsman) of the Kyrgyz Republic 'Respect for the Rights of Citizens during the Conscription Process', 2016.). Available from: <http://ombudsman.kg/files/docs/reports/2016/observance-of-the-rights-of-the-military-personnel.pdf>.

In addition, human rights organizations and national human rights institutions have identified the following violations:

- ❖ a failure to comply with legislation on the provision of free medical care by hospitals and local clinics to service members;
- ❖ the lack of a unified approach to medical examinations of injuries;
- ❖ the uneven application of the principles of the Istanbul Protocol and the Practical Manual for the Effective Documentation of Torture and Ill-Treatment;
- ❖ the lack of availability of contacts details for the Akyikatchy (Ombudsman) and the NCPT.

Recommendations

The following recommendations can be made to improve the situation and ensure human rights and freedoms during conscription and while performing compulsory military service:

- ❖ Gaps and discrepancies identified in the legislation of Kyrgyzstan governing the procedure for conducting conscription should be eliminated.
- ❖ Provisions on human rights guaranteed by the Constitution should be introduced into the legislation of Kyrgyzstan governing the procedure for conscription and performing compulsory military service.
- ❖ An Action Plan should be developed to integrate the principles of the Istanbul Protocol and the Practical Manual for the Effective Documentation of Torture and Ill-Treatment into the activities of the medical service of the General Staff of the Armed Forces of the Kyrgyz Republic, as well as all 'parallel' medical services of subordinate public bodies and institutions.
- ❖ Amendments should be included in the law 'On Compulsory State Insurance of Life and Health of Servicemen and Those Liable for Military Service, Called up for Training and Special Reserve Training, and Persons Equated to Them' on the amount of insurance paid to relatives of service members, even if their death was the result of suicide.
- ❖ The General Prosecutor's Office should conduct comprehensive investigations into the deaths of service members.

- ❖ The practice of joint monitoring of the observance of the rights of conscripts and service members performing compulsory military service should be resumed.
- ❖ The capacity of medical workers of the Armed Forces of the Kyrgyz Republic to combat injuries, torture, and non-statutory relationships (hazing) among the service members performing compulsory military service should be strengthened.
- ❖ An analysis of the implementation of the recommendations of the Akyikatchy (Ombudsman) and the NCPT aimed at ensuring the rights of service members of performing compulsory military service should be carried out.

A REVIEW OF THE LEGISLATION OF MOLDOVA

Introduction

The military strategy of Moldova, along with the Action Plan for its implementation for 2018-2022, describes military security as an integral part of national security.²⁴⁸ In accordance with this strategy, several objectives have been identified, including optimizing the potential for the Armed Forces to respond to military and hybrid challenges related to the security environment. The Government Decision on the Approval of the Military Strategy also notes that enhancing the professionalism of the Armed Forces remains a key goal, which will require, among other things, the consolidation of the recruitment system and improvements to the selection process for the Armed Forces.²⁴⁹

On 27 June 2018, the Government of Moldova also approved the Professional Army 2018-2021 Programme,²⁵⁰ which aims to quantify resources intended for defence and to allocate them proportionally and efficiently. It is perhaps the first significant strategic document that emphasizes the importance of strengthening human resources management. The programme's second priority is the structural reform of the National Army.

The programme was due to be completed by 2021, with the professionalization of the army forces as one of its first goals.²⁵¹ Despite these ambitions, owing to successive

248 Решение Правительства № 961 от 03.10.2018 об утверждении военной стратегии и Плана действий по ее реализации на 2018-2022 годы (Decision of the Government on the Approval of the Military Strategy and the Action Plan for its Implementation for 2018-2022 No. 961, of 03.10.2018). Available from: https://www.legis.md/cautare/getResults?doc_id=109141&lang=ru.

249 The Government Decision on the Approval of the Military Strategy No. 961, of October 03, 2018. Article 26, Part 2.

250 See Decree of the Government of the Republic of Moldova on the Approval of the Professional Army 2018-2021 Program No. 601, of July 27, 2018.

251 Overall, Paragraph 24 of the Decision provides for the achievement of the following results:
1) military service in the National Army is carried out by contract servicemen;
2) the level of motivation of the military and civilian composition of the National Army is high;
3) the military profession is valued and attractive in society;

political crises over the last two years in Moldova,²⁵² few steps have been taken towards changing the conscription system.

A review of the legal system

The Armed Forces of the Republic of Moldova were created by the Decree of the President of Moldova, No. 193 of 3 September 1991, which is based on the Declaration of Independence of the Republic of Moldova and was issued to ensure the protection of the sovereignty of the country and its territorial integrity.²⁵³

Subsequently, on 6 October 1995, the resident of Moldova issued the Decree on the Approval of the Military Charter of the Armed Forces of the Republic of Moldova, No. 322.²⁵⁴ The decree applies to the service members and border guards of the Ministry of National Security; carabineer troops (internal troops) of the Ministry of Internal Affairs; service members of the Department of Civil Protection and Emergencies; and service members of the Security Service of the President of Moldova.

At present, military service in Moldova is regulated by the law 'On the Preparation of Citizens for the Defence of the Motherland', No. 1245 of 18 July 2002,²⁵⁵ the Constitution of Moldova,²⁵⁶ and other regulatory acts on defence.

Military service is defined as a special form of public service, which involves fulfilling the constitutional obligation to prepare for the defence of the Moldova by citizens within the Armed Forces. Military service is compulsory for all male citizens of Moldova, while military service is a constitutional obligation of citizens. Female citizens of Moldova may

4) the optimal response potential of the National Army to military and hybrid challenges of the security environment is ensured;

5) the National Army's contribution to international missions and peacekeeping operations is growing;

6) the capacity of the National Army to assist civilian authorities in crisis management is ensured.

252 BBC. The crisis in Moldova: who has the power and what is the role of Russia. Explaining in 100 and 500 words. Available from: <https://www.bbc.com/russian/features-48585157>.

253 Decree of the President of Moldova Nr. 193. On the creation of the Armed Forces of the Republic of Moldova. Available from: <http://lex.justice.md/index.php?action=view&view=additional&id=289448&lang=2>.

254 Decree of the President of the Republic of Moldova No. 322, from 06-10-1995, on the approval of general military regulations Armed Forces of the Republic of Moldova. Available from: https://www.legis.md/cautare/getResults?doc_id=17860&lang=ru.

255 Law of the Republic of Moldova on preparing citizens for the defense of the Motherland. Available from: https://www.legis.md/cautare/getResults?doc_id=29185&lang=ru.

256 Law of the Republic of Moldova on preparing citizens for the defense of the Motherland. Available from: https://www.legis.md/cautare/getResults?doc_id=29185&lang=ru.

perform military service under contract if they have the necessary special training.²⁵⁷

Military duty for men includes performing military service and participating in other forms of training to defend Moldova. Other forms of preparation of citizens for the defence of Moldova include pre-conscription training for youth, training at military departments, training in civil protection units and voluntary sanitary squads of the Red Cross, and training in the centres of the reserve Armed Forces.

Territorial commissions for admission and enrolment to military and civil service are created for organizing the admission of citizens to military and civil service, second-level administrative territorial units, and autonomous territorial units with a special status. There are 32 district units in Moldova, two municipalities, and the autonomous territorial unit of Gagauzia.²⁵⁸ Thus, citizens admitted to military registration – before being called up for military or civilian service, or enrolled in the reserve – are classed as conscripts. Citizens performing military service are referred to as service members and citizens enrolled in the reserve as reservists.

Military service is compulsory for all male citizens of Moldova and is conducted in the following forms: contract military service; compulsory military service; reduced military service; and military service for reservists called up for military training or mobilization.

The specialized bodies of military registration are military centres and points for registration, conscription, and recruitment. At the local level, the military registration of recruits and reservists is organized and maintained by mayors (praetors), public institutions, and economic entities, in accordance with the law.

The military registration of citizens includes the military registration of conscripts and the military registration of reservists.

Male citizens of Moldova are required to appear at the military centre the year they turn 16 to be accepted for military registration. When enrolling for military registration, the conscription commission organizes and conducts a medical examination, psychological testing, and a professional selection of citizens to determine their level of fitness for military service and preliminary distribution according to the branches and components of the Armed Forces; it also makes decisions on the admission of citizens for military registration.²⁵⁹

257 See Article 4 of Law No. 1245.

258 See Appendices 1 and 2 of the Law 'On the Administrative-Territorial Structure of the Republic of Moldova'. Available from: https://www.legis.md/cautare/getResults?doc_id=62949&lang=ru.

259 Law No. 1245. Article 4.

Citizens accepted for military registration are issued with a conscription certificate and then provided with an explanation of their rights and obligations, the rules of military registration, and the procedure for performing military service.

The timely recruitment of citizens for military service is carried out on the basis of the decree of the President of Moldova and the decree of the government by local public administration bodies in conjunction with military centres. Military service enrolment is carried out twice a year: from April to July and from October to January. Male citizens of Moldova who have reached the age of 18 are admitted to military service.

The term of military service is 12 months.²⁶⁰ Citizens may be called up for military service up to the age of 27. Citizens who are not accepted into military service before the age of 27 are transferred to the reserve of the Armed Forces.

Conscription commissions select conscripts for military service and distribute them across the various components of the Armed Forces. Selection and distribution take place in accordance with the provisions of the Regulation on the Enrolment of Citizens into Military Service on a Compulsory or Short-Term Basis, approved by the government.

In addition to the possibility of deferring conscription, a citizen who is deemed unfit for military service in peacetime for health reasons, who has completed a full course of study at a military faculty or department, or who has a criminal record and has been rehabilitated in the manner prescribed by law is exempted from military service. A citizen released from military service on the grounds of conscience, or whose father, mother, brother, or sister has died during military service, is also exempt from compulsory military service.²⁶¹

Compulsory military service is performed in the National Army, the Carabineer Troops, or the Border Guard Service.

Graduates of civilian higher educational institutions, who are under the age of 27 and who did not fulfil their military duty before completing their studies, perform short-term military service in training centres of the Armed Forces or special concentrations organized by military centres. Graduates can choose to perform alternative civil service for a period of six months.²⁶²

Approximately 2,400 to 2,600 conscripts are called up for military service per year. Thus, according to the decrees on the results of conscription for military service, the

260 Ibid., Article 18.

261 Ibid., Article 32.

262 Ibid., Article 34.

following were enrolled for military service in April-July 2020: compulsory military service in the National Army – up to 1,210 conscripts; and reduced military service in the National Army – up to 10 conscripts.²⁶³

The following were enrolled for military service for conscription in October 2019-January 2020: compulsory military service in the National Army – up to 1,037 conscripts; compulsory military service in the General Inspectorate of the Carabineers – up to 190 conscripts; and reduced military service in the National Army – up to 10 conscripts.²⁶⁴

The following were enrolled for military service for conscription in April-July 2019: compulsory military service in the National Army – up to 1 200 conscripts; compulsory military service in the Carabineer Troops – up to 240 conscripts; and reduced military service in the National Army – up to 10 conscripts.²⁶⁵

Thus, in 2019, a total of 2,687 were called up for military service, of which 2,237 were sent to the National Army, 430 to the Carabineer Troops, and 20 to the National Army under the reduced military service regime.

The law ‘On the Preparation of Citizens for the Defence of the Motherland’, No. 1245-XV of 18 July 2002 regulates the performance of military service. Chapter III of the law provides for the following aspects: the performance of military service, military oath, the performance of military service duties, terms of military service, military ranks, military positions, military uniforms and insignia, the age limit for military service, and dismissal from military service.

In addition, the government-issued Decree on the Approval of the Regulation on the Procedure for the Performance of Military Service in the Armed Forces, No. 941 of 17 August 2006 describes in detail all of the stages of service of soldiers performing compulsory military service.²⁶⁶ Other more detailed aspects are governed by internal regulations, although these are not publicly available.

According to the law ‘On the Status of Servicemen’, No. 162-XVI of 22 July 2005, service members enjoy the rights and freedoms established for citizens of Moldova by the Constitution, current legislation, and international agreements, with restrictions owing

263 Government Decree on the Results of Conscription for Military Service in October 2019 – January 2020 and Conscription for Military Service in April – July 2020 No. 282, of 05/13/2020.

264 Government Decree on the Results of Conscription for Military Service in April 2019 – July 2019 and Conscription for Military Service in October 2019 – January 2020 No. 455, of 09/25/2020.

265 Government Decree on the Results of Conscription for Military Service in October 2018 – January 2019 and Conscription for Military Service in April – July 2020 No. 177, of March 03, 2019.

266 Decree of the Government of the Republic of Moldova on the approval of the Regulations on the procedure for the performance of military service in the Armed Forces. Available from: https://www.legis.md/cautare/getResults?doc_id=25417&lang=ru.

to the specifics of military service.

Service members may protect their rights, freedoms, and legitimate interests by applying to courts or other bodies in accordance with the applicable law. Unlawful decisions and actions (inactions) of 2 heads or commanders (chiefs) may be appealed by service members in the manner prescribed by military regulations and current legislation.²⁶⁷ Insults to the honour or dignity of service members, damage to their professional reputation, violence or the threat of violence, or encroachments on their life and health during the performance of military service duties, as well as other actions (inactions) that infringe on the rights of service members, entail liability in accordance with the current legislation.

Service members exercise their electoral rights in accordance with applicable law. In addition, in their free time, service members have the right to practice in a state-recognized religious group and to participate in religious rituals. Service members also have the right to practice religious worship freely if this does not contradict the standards of public order and morality or interfere with the performance of military service duties. In the course of performing military service duties, service members are prohibited from promoting one attitude to religion over another.

The time spent by a soldier in military service is counted towards his or her total length of service and the non-insurance periods equivalent to the insurance period, which gives him or her the right to receive a service allowance for the duration of their military service and a state social insurance pension, regardless of the length of the interval between dismissal from military service and hiring (admission to work).

In addition, contract service members have the right to continue their education in higher educational institutions in the field of military affairs or through other forms of advanced training. Among other rights of service members that are provided for by the law are the right to healthcare and medical assistance, to food and clothing, to travel, to financial security, and to housing and benefits.

Legal guarantees during conscription and military service

The status of service members is a set of rights and obligations of citizens performing

²⁶⁷ Law No. 162, Paragraph 2.

military service. A service member on duty is a representative of the state and remains under state protection at all times.

The status of service members is based on the following principles: legality; equality before the law and public authorities regardless of the service member's military rank and position; and ensuring the legal and social protection of service members and members of their family.

Service members have the same range of rights that are applicable to all citizens of Moldova, with the exception of certain freedoms that are not applicable for the period of performing military service and acts that the military command has appealed against. In other respects, service members have the same rights to appeal in a general manner against acts or actions that contradict their rights or freedoms. In addition, when a civil or administrative claim is considered by the court, the court has the right to suspend the proceedings if the plaintiff or defendant is in the active unit of the Armed Forces or other troops and military formations of Moldova.²⁶⁸

The Military Inspection of the Ministry of Defence of the Republic of Moldova is an internal body that performs oversight and monitoring of the rights of soldiers of compulsory military service. Other specialized bodies, such as military police or a military prosecutor's office, do not exist. With the adoption of the new law 'On the Prosecutor's Office', No. 3 of 25 February 2016, the Military Prosecutor's Office, which was exclusively engaged in the examination of cases in which military personnel appeared, was abolished. Thus, all powers related to conducting case proceedings were transferred to the territorial bodies of the Prosecutor's Office, with the exception of torture: the Prosecutor's Office for Combating Organized Crime and Special Cases prosecutes torture cases, including in military units.

Currently, no specialized body exists to deal with the protection of the rights and freedoms of service members performing compulsory military service. At the same time, the Office of the People's Advocate (Ombudsman), as part of its activities to prevent torture, conducted 56 preventive visits and one monitoring visit to places of detention in 2019. The Department for the Prevention of Torture of the Office of the People's Advocate also visited one military unit during the same year.²⁶⁹

268 The Civil Procedure Code. Article 261.

269 See: Report on the Observance, p. 46. Available from: http://ombudsman.md/wp-content/uploads/2020/09/Report-on-the-observance_engleza-.pdf.

The most frequent violations of the rights of conscripts and military personnel

As mentioned above, the only independent monitoring body is the Office of the People's Advocate. Since 2019, there has been only one high-profile case concerning the ill-treatment of a soldier of the 2nd Military Brigade in Chisinau. In June 2019, photos and messages were posted on Facebook.

Following an investigation by the People's Advocate, it was established that, on the evening of 1 June 2019, a conscripted soldier was physically assaulted. The Chisinau Prosecutor's Office was informed about the facts of the case, and an officer admitted the offence committed. In June 2019, a criminal case was opened under Article 368 of the Criminal Code and submitted to court.

The People's Advocate noted that conscripted soldiers are often subjected to acts of cruel treatment or humiliation for the purpose of disciplinary punishment, which can qualify as a criminal case under Article 166(1) of the Criminal Code of the Republic of Moldova. The People's Advocate also noted that there are no timely mechanisms to protect service members from such cases of arbitrary behaviour.

As for individual institutions or organizations specialized in protecting the rights of soldiers performing compulsory military service, none currently issue dedicated reports on the matter.

Recommendations

Moldova has signed both the International Covenant on Civil and Political Rights and several international and regional treaties on human rights. When the implementation of international obligations was last assessed, the state did not receive specific recommendations on the rights of soldiers performing compulsory military service. Nevertheless, there are a number of problematic areas, primarily related to material conditions for the performance military service, inconsistent payments given the economic situation in the country, and individual cases of violations of military regulations or of discrimination against soldiers.

In addition, as no organization currently monitor the rights of conscripts, there is little understanding or public awareness of certain systemic problems. Despite this, the problems identified by the People's Advocate (Ombudsman) regarding certain practices related to disciplinary punishments likely demonstrate that the cruel treatment of soldiers performing compulsory military service does occur.

For these reasons, the following recommendations for the improvement of the protection of the rights and fundamental freedoms of conscripts can be made:

- ❖ Consider establishing a military ombudsman, independent of the military command structure, responsible for oversight of the defence sector, including the protection of the rights and fundamental freedoms of conscripts.
- ❖ Provide targeted training programmes for civil society in order to raise awareness of the issue of conscripts' rights, and develop the capacity of civil society to monitor human rights violations in the armed forces.
- ❖ Strengthen mechanisms for the protection of the rights of conscripts, in particular as regard complaints procedures.

A REVIEW OF THE LEGISLATION OF TAJIKISTAN

Introduction

All citizens have a sacred duty to protect Tajikistan and the interests of the state, and to strengthen its independence, security, and defence capacity.²⁷⁰ In accordance with the legislation, military personnel have human and civil rights and freedoms with certain restrictions as established by the regulatory legal acts of Tajikistan.²⁷¹

Military personnel (including those called up for military service) are responsible for the armed protection of Tajikistan; their duties are associated with the need to fulfil the tasks assigned to them in any conditions, including when their life is in danger.

The procedure for performing military service is determined by relevant laws. Since the country's independence, the Majlisi Oli (parliament) has adopted several new laws regulating both the conscription process and conscripts performing military service. The conscription of citizens for military service is an important part of measures aimed at protecting the national interests of the state.

Since 2017, a number of regulatory legal acts and internal documents have been adopted in the country to promote the strengthening of military discipline and the prevention of crime among service members. Among other things, special attention is paid to the statutory relationships of military personnel and the prevention of extremism, terrorism, corruption, and involvement in smuggling crimes.

This review analyses the legislation of Tajikistan relevant to the conscription of citizens for military service, as well as performing military service by military personnel called up for military service.

²⁷⁰ The Constitution of the Republic of Tajikistan. Article 42.

²⁷¹ The Law of the Republic of Tajikistan 'On the Status of Military Personnel'. Article 2.

A review of the legal system

The legislation of Tajikistan regulating military service consists of several laws establishing activities related to primary military service registration (pre-conscripts), conscription for military service (conscripts), and performing military service (conscripted soldiers performing conscript service). Despite the development of legislation, and the timely introduction of necessary amendments and additions to the legislation, certain problems and shortcomings remain.

According to Chapter III, Paragraph 25 of the ‘Guidelines for the Preparation and Conduct of the Conscription of Citizens for Military Service in the Republic of Tajikistan and the Transfer of Soldiers and Sergeants to the Reserve’, a person registered with the military service is classed as a ‘conscript’. The purpose of this initial registration is not to call up citizens for military service, but to determine the number of conscripts and their level of fitness for military service. For those put on the initial military registration, military service begins two years thereafter – the year they reach the age of 18. The registration allows the state to identify the number of citizens who can be recruited to the armed forces, as well as their specialty and level of fitness. This initial registration does not constitute conscription, which has different elements and legal implications. A conscript is instead a citizen who is called up for military service, namely a male citizen between the ages of 18 and 27, who is subject to conscription.²⁷²

Initial military registration is included in the system of pre-conscription preparatory measures – a fundamental provision since the duties of a conscript differ significantly from the duties of a citizen undergoing initial registration. A person undergoing initial registration is referred to as a ‘pre-conscript’. The term pre-conscript is mentioned in the Regulation on the Pre-Conscription and Conscription Preparation of Citizens, approved by the Resolution of the Council of Ministers of the Republic of Tajikistan, No. 497 of 17 October 1994.

It should also be noted that the legislation of Tajikistan does not include the concept of ‘volunteer’. The main legislative act regulating the conscription process and military service is the law ‘On Universal Military Duty and Military Service’. As the name of the law implies, military service is compulsory and universal in Tajikistan. Citizens enter military service by conscription, as soldiers and sergeants, or, on a voluntary basis, as warrant officers or officers. Conscription means that citizens are sent for military

272 The Law of the Republic of Tajikistan ‘On Universal Military Duty and Military Service’. Article 19.

service upon reaching the age of 18 if they have been deemed fit and have not been granted a deferral or exemption from military service. The legislation does not provide for any additional benefits for persons who voluntarily express a desire to serve in the Armed Forces of the Republic of Tajikistan, before receiving a call-up notice. All conscripts have the same legal status, regardless of whether they responded to a call-up notice or volunteered to serve of their own accord.

Universal military duty

All citizens of Tajikistan are obliged to fulfil their military duty to serve in the armed forces. The term of military service in Tajikistan is 24 months or, if the conscript has a higher education, 12 months.

- ❖ Military duty includes:
- ❖ military registration;
- ❖ compulsory training for military service;
- ❖ conscription (enrolment) to military service;
- ❖ performing military service;
- ❖ staying in the reserve, including the call-up for military training and performing military training during the period of stay in the reserve; and
- ❖ military training in wartime.

Military registration

Military registration is the first step of the general conscription process. The initial military registration of male citizens is carried out the year they reach the age of 16, from 1 January to 31 March. A commission is created to carry out the military registration of citizens, which should include:

- ❖ the district (city) military commissar or their deputy - the chairman of the commission;
- ❖ the secretary of the commission; and
- ❖ doctors conducting medical examinations of citizens in connection with their

military registration.

After interviewing the conscript and reviewing their documents and medical examination results, the commission assigns one of the following categories:

- ❖ fit for military service;
- ❖ fit for military service with minor limitations;
- ❖ limited fitness for military service (unfit for military service in peacetime and fit for non-combatant service in wartime);
- ❖ temporarily unfit for military service; or
- ❖ unfit for military service (with exclusion from military registration).²⁷³

Citizens subject to military registration are accepted for work or study only after they have been registered for military service at their place of residence. Citizens registered for military service are referred to as 'conscripts'.²⁷⁴

The procedure for conscription

The conscription of citizens is carried out twice a year in spring and autumn: from 1 April to 31 May, and from 1 October to 30 November. Conscription begins on the basis of an order of the President of Tajikistan.

According to official data, over 600,000 citizens are between the ages of 18 and 27 years – the age of conscription – in Tajikistan, of which 15,000 to 16,000 are called up for military service annually.²⁷⁵

In general, those from socially vulnerable segments of the population and low-income families are drafted, while those with economic means often find means through which they can avoid military service. Legal methods include admission to a university, continuing education in higher postgraduate educational institutions, employment in educational and medical institutions in rural areas, and starting a family at a young age or having two or more children.

273 Appendix to the Regulation on the Military Medical Expert Examination No. 290, of July 4, 2002.

274 The Guidelines for the Preparation and Conduct of the Conscription of Citizens of the Republic of Tajikistan for Military Service and Transfer of Military Personnel Performing Military Service by Conscription to the Reserve No. 185, of August 15, 2001. Clause 25.

275 News.tj. Рукия Курбонова возглавила республиканскую призывную комиссию. Available from: <http://news.tj/ru/news/rukiya-kurbonova-vozglavila-respublikanskuyu-prizyvnyuyu-komissiyu>

Human rights activists and journalists point to cases of corruption during the conscription process. Each year, employees of military registration and enlistment offices and other civil servants responsible for conscription are prosecuted for committing corruption-related crimes during conscription.²⁷⁶ These crimes are investigated by the prosecutor's office, and statistics are maintained by the Military Collegium of the Supreme Court; however, complete statistics are not publicly available owing to the law 'On State Secrets'.

Conscription commission

In accordance with Article 24 of the law 'On Universal Military Duty and Military Service', a conscription commission is created for organizing and conducting the conscription of citizens to military service in each district, city, and province by the decision of the chairman of the district or city. The commission should include:

- ❖ the deputy chairman of a district, city, or province – chairman of the commission;
- ❖ the military commissar of a district, city, or province – deputy chairman of the commission;
- ❖ a secretary of the conscription commission;
- ❖ a doctor who supervises the work on the medical examination of citizens subject to conscription for military service;
- ❖ a representative of a district or city internal affairs body; and

276 More information on the prosecution of corruption-related crimes can be found on the following links: <https://fergana.news/news/118953/>; [Accessed 19 February 2021] <https://tj.sputniknews.ru/country/20190607/1029103964/tajikistan-zaderzhan-sotrudnik-voenkomat-vymogatelstvo.html>; [Accessed 19 February 2021] <https://today.tj/tadzhikistan/12905-v-tadzhikistane-sotrudnik-voenkoma-podozrevaetsya-v-poluchenii-vzyatki.html>; [Accessed 19 February 2021] <https://akhbor-rus.com/-p1520-173.htm>; [Accessed 19 February 2021] <https://tajikta.tj/ru/news/v-tadzhikistane-sotrudnik-voenkomata-zaderzhan-po-podozreniyu-v-poluchenii-vzyatki>. [Accessed 19 February 2021] Articles on arbitrary detention and beatings during conscription: <https://rus.ozodi.org/a/30565903.html>; [Accessed 19 February 2021] <https://www.currenttime.tv/a/military-manhunt-tajikistan/30210184.html>; [Accessed 19 February 2021] <https://cabar.asia/ru/praktika-oblav-v-tadzhikistane-kakoj-dolzha-byt-armiya-v-21-veke/>; [Accessed 19 February 2021] <https://www.currenttime.tv/a/tajikistan-army-asia/30266856.html>; [Accessed 19 February 2021] <https://www.fergananews.com/articles/10285>; [Accessed 19 February 2021] <https://rus.ozodi.org/a/parents-detained-to-force-sons-back-to-serve-in-army-1/30191687.html>. [Accessed 19 February 2021]

- ❖ a representative of the district or city education management body.

When making a decision on sending a citizen to military service, the conscription commission determines the type of service and the service branch of the Armed Forces, including other troops or military formations, where the citizen will perform military service.

The decisions of the conscription commission are based on the laws of Tajikistan. Its decision should not contradict the conclusion of a specialist doctor who carried out a medical examination of a citizen to assess his physical fitness for military service.

The decision of the conscription commission is made by a majority of votes in the presence of the conscript, who is given, upon request, an extract from the minutes of the meeting of the conscription commission indicating the decision taken.

The decision of the conscription commission may be appealed by a citizen within ten days to a higher conscription commission or to a court.

Conscripts perform military service in the following types of troops:

- ❖ Ground Forces, Mobile Forces, Air Force and Air Defence Forces of the Ministry of Defence;
- ❖ Border Troops under the State Committee for National Security;
- ❖ National Guard;
- ❖ Internal Troops under the Ministry of Internal Affairs;
- ❖ Committee for Emergency Situations; and
- ❖ Escort Guard Regiment under the Ministry of Justice.

Legal guarantees during conscription and military service

The right to a deferral and exemption from conscription for military service

The law 'On Universal Military Duty and Military Service' provides seven grounds for exemption and 14 grounds for deferment from conscription for military service.²⁷⁷

Exemption from Conscription for Military Service

According to Article 20 of the law 'On Universal Military Duty and Military Service', the following citizens are exempted from military service:

- ❖ Those recognized as unfit or partially fit for military service for health reasons: the first ground for exemption from conscription includes citizens who, due to their health status, cannot serve in the ranks of the Armed Forces. To determine the category of health-related fitness for military service, a medical examination is carried out in accordance with the Regulation on Military Medical Expert Examination, approved by the Decree of the Government of Tajikistan, No. 290 of 4 July 2002.
- ❖ Those performing or having performed military or alternative service: citizens who are performing or have performed military or alternative service are exempted from conscription for military service. In this case, the conscript should provide the following documents to obtain exemption:
 - their military record book if the conscript has already performed military service;
 - their leave card and military record book if the conscript is performing military service.
- ❖ Those who have performed military service in another state: according to

²⁷⁷ The Law of the Republic of Tajikistan 'On Universal Military Duty and Military Service'. Article 20.

Article 20 of the law 'On Universal Military Duty and Military Service', citizens who have performed military service in another state are also exempted from military service. This issue is regulated by national legislation and international agreements of Tajikistan. Currently, there is only one international agreement – the agreement between the Russian Federation and Tajikistan on the Regulation of Issues of Dual Citizenship of 7 September 1995, which regulates military service issues in case of dual citizenship. Article 3 of this agreement determines that citizens perform military duties on the territory of the country where they permanently reside at the time of conscription. In addition, this agreement determines that persons who have completed military service in accordance with the legislation of one of the countries are not subject to conscription for military service in accordance with the legislation of another country. At the same time, legislation does not determine the state in which the conscript must undergo military service; rather, if the conscript has already performed military service in another state, he must submit a military record book to the military registration and enlistment office of the place of residence.

- ❖ Those who have a 'candidate of science' or 'doctor of science' degree: persons with a scientific degree include:
 - a 'candidate of science' with a higher education, who has achieved the minimum grades necessary to be awarded with a PhD, and who has defended their dissertation; and
 - a 'doctor of science' who has a PhD degree in the relevant field of science and has publicly defended his doctoral dissertation.
- ❖ Those who have an unexpended or outstanding conviction for committing a particularly serious or serious crime: Article 18 of the 'Criminal Code of the Republic of Tajikistan' provides a definition of serious and particularly serious crimes, which includes intentional acts for which the maximum punishment provided for by the Criminal Code does not exceed 12 years of imprisonment.
- ❖ A person's conviction can be either expunged or removed, as a rule, after a certain period has expired. The terms provided for in the 'Criminal Code of the Republic of Tajikistan' are different for different categories of crimes.
- ❖ Citizens whose father, mother, brother, or sister was killed or died while performing military service and holding the rank of sergeant, warrant officer, or officer on a voluntary basis, or during military training: in this case, it is necessary to

provide a notice (certificate) to the conscription commission from the city military registration and enlistment office where the deceased was registered.

- ❖ Those who are the only son (adopted son) in the family: if the conscript is the only son (adopted son), he should provide documentation proving this fact to the military registration and enlistment office.

Deferral from conscription for military service

A deferral from conscription is the temporary exemption of citizens from conscription based on the decision of the conscription commission.

Circumstances giving the right to a deferral from conscription are:

- ❖ deferrals for marital status;
- ❖ deferrals for continuing education;
- ❖ deferrals for health reasons;
- ❖ deferrals owing to professional activities;
- ❖ deferrals to citizens against whom a criminal case has been initiated or to those serving a sentence following a court verdict.

Liability of a citizen in connection with the violation of the law on military service

Administrative Liability

The 'Code of the Republic of Tajikistan on Administrative Offences' provides for the following administrative penalties in the field of military service:

- ❖ Failure to appear to the military registration and enlistment office (Article 683 of the 'Code of the Republic of Tajikistan on Administrative Offences') for initial registration without a valid reason entails the imposition of a fine of five to seven

settlement indicators.²⁷⁸

- ❖ The failure of a conscript to respond to a call-up notice to attend the military registration and enlistment office for military service without a valid reason, in the absence of signs of a crime, entails the imposition of a fine in the amount of seven to ten settlement indicators.
- ❖ In the event that a conscript commits these actions again within one year of the application of administrative penalties, a fine is imposed in the amount of ten to twelve settlement indicators.
- ❖ The late provision of documents (house registers, registration cards, military registration documents, military record books, initial registration certificates) necessary for maintaining the military register of persons subject to conscription and youths of conscription age (Article 687 of the 'Code of the Republic of Tajikistan on Administrative Offences') entails the imposition of a fine in the amount of two to three settlement indicators. Repeated action within one year of the application of administrative penalties entails the imposition of a fine in the amount of three to five settlement indicators.
- ❖ A violation of the rules of military registration (Article 689 of the 'Code of the Republic of Tajikistan on Administrative Offences') by persons subject to conscription and youths of conscription age, established by the legislation of Tajikistan, as well as failing to report changes to their place of residence or work, or their position, to military registration and enlistment offices on time, entails a warning or a fine in the amount of one to two settlement indicators. The repeated commission of this offence within a year of the application of administrative penalties entails the imposition of a fine in the amount of five settlement indicators.
- ❖ Intentional damage or the loss of military registration documents (military record book, certificate of initial registration) (Article 690 of the 'Code of the Republic of Tajikistan on Administrative Offences') entails the imposition of a fine in the amount of five to seven settlement indicators.
- ❖ Evasion from passing a medical examination (Article 691 of the 'Code of the Republic of Tajikistan on Administrative Offences') following a call-up notice entails the imposition of a fine in the amount of one to two settlement indicators.

²⁷⁸ In accordance with the Law of the Republic of Tajikistan 'On the State Budget of the Republic of Tajikistan for 2020', as of January 1, 2020, the settlement indicator accounts for 58 TJS, which is approximately 5.5 US dollars.

Criminal liability

The evasion of military and alternative service (Article 343 of the ‘Criminal Code of the Republic of Tajikistan’), of regular call-up to active military service – as well as the evasion of military training or verification of military training – by a person subject to conscription, in the absence of legal grounds for exemption, is punishable by a fine of between 500 and 1,000 settlement indicators²⁷⁹ or imprisonment for up to two years.

The evasion of alternative service by persons exempted from military service is punishable by community service for a period of 180 to 240 hours or a fine in the amount of 300 to 800 settlement indicators. The evasion of conscription for military service or alternative service committed by causing harm to his own health, or by forging documents or other forms of deception, is punished with imprisonment for a term of two to five years.

A conscript is, however, exempt from criminal liability if, before the case is sent to court, they appear at the conscription centre.

The evasion of conscription for military service is defined as the failure to respond to a call-up notice to attend the military registration and enlistment office to be assigned to a military unit for military service, within the specified period, without a valid reason.

Valid reasons for the failure to attend the military registration and enlistment office following a call-up notice include the illness or injury of a person associated with the loss of ability to work; the death of a close relative (father, mother, wife, child, etc.); natural disaster-related obstacles or other circumstances beyond the citizen’s control; and other circumstances defined by the court as a valid reasons.

Alternative Civilian Service

Pursuant to Article 26 of the Constitution of the Republic of Tajikistan, everyone shall have the right to be free to determine his position towards religion, to profess any religion individually or jointly with others or no religion, and to take part in religious customs and ceremonies.

²⁷⁹ In accordance with the Law of the Republic of Tajikistan ‘On the State Budget of the Republic of Tajikistan for 2020’, as of January 1, 2020, the settlement indicator accounts for 58 TJS, which is approximately 5.5 US dollars

Article 10 of the Constitution of the Republic of Tajikistan determines that international legal documents recognized by Tajikistan shall be a component of the legal system of the republic. In case of inconsistency between the laws of the republic and recognized international legal documents, the provisions of international legal documents apply.

After Tajikistan submitted a national report to the UN Human Rights Committee in 2006, the Committee made the following observations and recommendations:

- ❖ The Committee is concerned that the state party does not recognize the right to conscientious objection to compulsory military service (Article 18 of the International Covenant on Civil and Political Rights (ICCPR)).
- ❖ The state party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service.
- ❖ The right to alternative service is declared in the legislation of Tajikistan, but in practice the implementation of this right is impossible owing to the absence of a special law to regulate relations associated with the performance of alternative service. The absence of a legal and regulatory framework governing the procedure for performing alternative service restricts a person's right to conscientious objection to military service.

The most frequent violations of the rights of conscripts and military personnel

The law establishes that, before being sent to military service, conscripts must undergo at least two stages of assessment of their mental and physical condition. After passing each stage, they must be allowed home before receiving a request to attend the next stage of the examination, and subsequently sent to military service. However, owing to the reluctance of young people to serve in the army because of the service conditions and allegations of abuse in the army, these procedures are not always followed.

In some cases, young people end up on the conscription commission as a result of illegal actions of employees of a military registration and enlistment office, which are frequently referred to as 'round-ups' (oblava). The concept of a 'round-up' does not

exist in the legislation Republic of Tajikistan.²⁸⁰

A 'round-up' is the detention of a citizen, without the prior receipt of a call-up notice, by military registration and enlistment offices, representatives of jamoats (communes), and police officers in public places to enforce military registration and enlistment. In addition, during the 'round-up', representatives of the bodies responsible for the conscription often force entry into the dwellings of conscripts to deliver the conscript to the conscription commission.

The freedom of movement of conscripts is limited until the conscription commission makes a decision regarding their registration. If a conscript is considered fit for military service, and is not granted a deferral or exemption, then he is sent to the provincial assembly point. After passing the commission at the assembly point, the conscript is sent to military service. Persons detained in public places who have the right to be exempted or deferred from conscription are released from military registration and enlistment offices. As the freedom of movement of conscripts is limited, if they disagree with the decision of the conscription commission, they cannot appeal it since they cannot physically reach the judicial authorities.

Article 18 of the Constitution of the Republic of Tajikistan establishes that no one shall be subjected to torture, cruel, and inhuman treatment. In addition, in March 2012, amendments and additions were introduced to the Criminal Code of Tajikistan; in particular, a new Article, 143(1), was introduced, which defines the concept of 'torture', as well as the punishment for this act. Despite joining international treaties, as well as declaring the prohibition of torture at the national legislative level, human rights defenders in Tajikistan believe that torture in the country remains a problem.

The access of human rights defenders and the public to the conscription commissions is hampered by the fact that the conscription commissions, although they are a civilian body, are located in military departments of military registration and enlistment offices, which are military facilities and have closed access. There is no open access for human rights defenders to military units; five to six military units are monitored per year jointly by the Office of Civil Freedoms and the Ombudsman of Tajikistan.

280 More detailed information can be obtained from the following link: <https://alternativeservice.info/istorii/pro-zhizn/dilrabo-samadova-ob-armii-tadzhikistana-lyudi-davno-pereimenovali-prizyviv-v-%C2%A-Boblavu%C2%BB.html>. [Accessed 19 February 2021]

Recommendations

The following measures should be taken to improve legislation on the protection of the human rights and fundamental freedoms of conscripts:

- ❖ The term of service should be reduced from 24 to 12 months to improve the implementation of the conscription plan (in terms of the number of conscripts) and to significantly reduce the practice of non-statutory relationships (hazing) based on terms of service.
- ❖ Legislation should include benefits for persons subject to conscription and those who have performed military service. Benefits should take the form of:
 - exemption from or the provision of benefits for payment of utilities to family members of a service member during military service; and
 - if the conscript is the father of a child, social benefits, in the amount of the minimum wage, to provide for the child during the father's absence.
- ❖ Legislation should provide for the option of alternative civil service.
- ❖ Conditions should be created to enable the participation of representatives of the public (committees of the parents of soldiers) in the composition of the conscription commission;
- ❖ An independent medical examination should be introduced, where conscripts can apply in case of disagreement on the decision of the district/city or provincial conscription commission.
- ❖ A mechanism for the independent monitoring of and visits to military units by national human rights institutions.

The following measures should be taken to improve practices:

- ❖ In the event of a complaint about non-regulation relationships (hazing), the mandatory transfer of witnesses and victims to other military units should be provided.
- ❖ Cases of desertion and the unauthorized abandonment of military units with regard to the forced abandonment of the unit should be investigated effectively.
- ❖ When identifying cases of non-statutory relationships (hazing) involving senior conscripts, disciplinary action should also be taken against the officer corps responsible for the prevention of violations in military units.

- ❖ Commanders should be held liable for unlawful orders that fall outside the scope of the statutory obligations of soldiers, as well as for illegal punishments, such as collective punishment.
- ❖ Soldiers should be sent to perform military service closer to their place of residence.
- ❖ Soldiers should be permitted to use personal cell phones during their free time and weekends.

The following measures should be taken to strengthen civilian control over the Armed Forces:

- ❖ A department should be created at the institution of the Commissioner for Human Rights of the Republic of Tajikistan to protect the rights of conscripts and military personnel.
- ❖ The Commissioner for Human Rights of the Republic of Tajikistan should conduct independent monitoring and pay unannounced visits to military units.
- ❖ The annual report prepared by the Commissioner for Human Rights of the Republic of Tajikistan should describe the situation regarding the rights of military personnel and human rights.
- ❖ Members of the Parliamentary Commission for Defence Affairs, public associations, media, trade unions, and committees for parents of soldiers should be provided with access to military units.
- ❖ The Ministry of Defence of the Republic of Tajikistan should strengthen cooperation with civil society, the media, and trade unions to increase transparency.

The following measures should be taken to prevent non-statutory relationships (hazing):

- ❖ Effective investigations should be conducted to uncover the facts of non-statutory relationships (hazing).
- ❖ Disciplinary action should be taken against commanders in all cases stipulated by the regulations.
- ❖ A physical examination of soldiers for injuries should be conducted systematically by the military prosecutor's office, the medical personnel of the military unit, as well as the officers of the military unit.

The following measures should be taken to further human rights education:

- ❖ Develop human rights education in the field of military service, and include relevant modules in military training programmes.
- ❖ Develop and provide training materials, booklets, and reference books on military service to conscripts and service members.
- ❖ Ensure that newly recruited soldiers receive training on human rights, including freedom from torture and ill-treatment, and be properly informed of their rights and the definition of hazing.
- ❖ Provide officers with training in the field of human rights education, as well as mechanisms for responding to and preventing non-relationships (hazing), and the procedure for handling complaints.

A REVIEW OF THE LEGISLATION OF TURKMENISTAN

Introduction

On 16 September 2020, the President and Supreme Commander-in-Chief of the Armed Forces of Turkmenistan, Gurbanguly Berdimuhamedov, signed the Decree on the Dismissal of Conscripted Military Personnel from the Armed Forces, Other Troops and Military Bodies of Turkmenistan and the Next Call-up of Citizens of Turkmenistan for Military Service, No. 722.²⁸¹ Pursuant to the decree, all male citizens of Turkmenistan – except those with justifiable reasons for exemption – are called up for compulsory military service between October and December 2020. Under the Criminal Code of Turkmenistan, those who refuse to perform compulsory military service and who do not have valid grounds for exemption may be subject to up to two years' imprisonment.

Compulsory military service in Turkmenistan is regulated by the law 'On Military Duty and Military Service' originally adopted on 25 September 2010 (last amended on 14 March 2020). Prior to the adoption of this law, conscripts still formed the bulk of the Armed Forces of Turkmenistan. Turkmenistan's longstanding policy of neutrality – as recognized in a UN General Assembly resolution passed in December 1995 – is a key explanatory factor in understanding its refusal to join regional military structures – such as the Commonwealth of Independent States, the Shanghai Cooperation Organisation, and the Collective Security and Treaty Organization – and, therefore, its reliance on conscription. As a result of this stance, Turkmenistan has received less technical military assistance and, consequently, had fewer incentives to transform its Armed Forces into a professional-based system. This is reflected in Article 58 of the 2016 Constitution, which describes the defence of the country as a 'sacred duty' of every citizen, noting that

281 Президент Туркменистана подписал указ об очередном призыве на военную службу. 17.09.2020. Военная Жизнь. Available from: <https://www.milligosun.gov.tm/habar/turkmenistany-n-prezidenti-harby-gullukdan-bosatmak-we-harby-gulluga-cagyrmak-boyunca-permana-gol-cekdi-MRpEpC-FLIV>.

military service is compulsory for all men.²⁸² Sources suggest that compulsory military service may be extended to three years, owing to growing instability in neighbouring Afghanistan and the failure to fulfil conscription quotas.²⁸³

Considering the vital importance placed on conscription for ensuring national security in Turkmenistan, as well as limited incentives to professionalize its army, it is necessary for the international community to comprehensively assess Turkmenistan's system of compulsory military service. Despite this topic gaining renewed attention in recent years – primarily owing to the refusal of Turkmenistan to provide alternatives to military service – no systematic analysis of its national system of conscription has been conducted.²⁸⁴

In early 2020, DCAF produced a study exploring security sector reforms in different spheres of Turkmenistan's security and defence establishment.²⁸⁵ This marked the first effort by the international community to comprehensively map the key security actors in Turkmenistan, and to assess their competencies and the role that oversight bodies play in the broader national security architecture. Others who have examined the Turkmen security sector posit that it retains many elements of its Soviet past, such as militarized law enforcement apparatuses, underdeveloped oversight mechanisms, and a weak civil society.²⁸⁶ For example, in 2010, Denison analysed the progress of security sector reform in Turkmenistan, noting that '[Turkmenistan's] strategic posture of self-imposed isolation ... has had significant ramifications for the shape and content of the [Turkmen] domestic security sector.'²⁸⁷ In a later study, he concluded that Turkmenistan's security system generally abstains from engagement with external actors.²⁸⁸ A short overview of national security bodies can be found in Vilmer's 2010 study, which also addressed defence budgets and military modernization processes.²⁸⁹ In the context of border protection, Kudinov provided a valuable overview of the powers

282 Изменения и дополнения внесенные Конституционным законом Туркменистана от 25.09.2020 г. № 297-VI вводятся в действие с 1 января 2021 года. (Amendments and Additions Introduced by the Constitutional Law of Turkmenistan No. 297-VI, of September 25, 2020 shall Come into Effect from January 1, 2021) <http://minjust.gov.tm/mcenter-single-ru/6>.

283 Interview with Turkmen security expert. 30 Nov 2020

284 United Nations. 2012. Conscientious objection to military service. Available from: https://www.ohchr.org/Documents/Publications/ConscientiousObjection_en.pdf.

285 Jasutis G., Steyne R., Chmykh E. 2020. Mapping study on the security sector of Turkmenistan. Geneva Centre for Security Sector Governance. Available: <https://www.dcaf.ch/mapping-study-security-sector-turkmenistan>.

286 Burghart, D., Sabonis-Helf, T. (eds.), 2018. Central Asia in the Era of Sovereignty: The Return of Tamerlane? Lexington Books, p.380.

287 Denison, M., 2010. Security Sector Reform in Central Asia: Exploring Needs and Possibilities, p.49.

288 Ibid.

289 Vilmer, J-B., 2010. Turkmenistan. CHRS.

of the president of Turkmenistan, and of the legislative and executive branches of government.²⁹⁰ Turkmenistan's policy of neutrality and its security concerns have been researched by Giulnara Djamieva, Merzekhanov, and Tiulpakov.²⁹¹ Kazantsev focused on contemporary security challenges in Turkmenistan, addressing factors that might drive state fragility, including inter-tribal conflict and so-called 'Afghanization'.²⁹² Other scholars have analysed bilateral relations between Russia and Turkmenistan, concluding that its policy of neutrality and isolationist defence and security posture has limited its reliance on Russia for military and economic aid and support.²⁹³ Timm, who briefly addressed the military capabilities of Turkmenistan's armed forces, contends that the limited procurement of arms from Russia reflects Turkmenistan's attempt to remain independent, and thus to distribute its procurement of weapons among regional powers.²⁹⁴

With the above in mind, this review is the first to examine the system of military conscription in Turkmenistan. It is composed of three parts: the first describes the system of conscription used in Turkmenistan; the second examines the legal protections afforded to conscripts; and the third details cases of violations of conscript rights, and the responses of Turkmen authorities. The review concludes by presenting potential areas for improvement as regard the protection of the human rights and fundamental freedoms of conscripts.

The review relies primarily on open-source research, including legal acts, media articles, and reports by international organizations. In this way, the review aims to provide, to the extent possible, a comprehensive and accurate overview of conscription in Turkmenistan.

290 Кудинов В., 2016. Особенности конституционно-правового регулирования полномочий главы государства, органов законодательной и исполнительной власти в республике Туркменистан в сфере защиты и охраны государственной границы. Южный университет (ИУБиП). (Kudinov V., 2016. Peculiarities of the Constitutional and Legal Regulation of the Powers of the Head of State, Legislative and Executive Authorities in the Republic of Turkmenistan in the Field of Defence and Protection of the State Border. Southern University (IUBiP)).

291 Djamieva G., 2018. Dissertations for history PhD candidacy, Dushanbe. Мирзеханов В., Тулпаков М., Доктрина позитивного нейтралитета и внешнеполитические приоритеты постсоветской Туркмении. (Mirzekhanov V., Tulpakov M., Doctrine of Positive Neutrality and Foreign Policy Priorities of Post-Soviet Turkmenistan).

292 Russian International Affairs Council. 2017. Evolution of Post-Soviet Space: Past, Present, And Future. [online] Available from: <https://russiancouncil.ru/upload/iblock/5f5/evolutionofpostsovietspace.pdf> [Accessed 21 April 2020].

293 Pannier, B., 2019. Is Turkmenistan being pulled into Russia's orbit? [online] Available from: <https://www.rferl.org/a/iqshloq-ovozi-turkmenistan-pulled-into-russia-s-orbit/29713898.html> [Accessed 21 April 2020].

294 Burghart, D., Sabonis-Helf, T., 2018. Central Asia in the Era of Sovereignty: The Return of Tamerlane? Lexington Books, p.380.

A review of the legal system

Article 58 of the Constitution of Turkmenistan (2016) states that the ‘defence of the Motherland is the sacred duty of every citizen [and that] [m]ale citizens carry out military service in the manner prescribed by law’.²⁹⁵ Military service is defined as a special type of public service performed by citizens in the Armed Forces of Turkmenistan, in the border troops of the State Border Service of Turkmenistan, in the internal troops of the Ministry of Internal Affairs of Turkmenistan, or in the bodies of the National Security Committee of Turkmenistan.²⁹⁶ In accordance with the law ‘On Military Duty and Military Service’, enlistment into the Armed Forces, as well as dismissal from it, is included among the constitutional competences attributed to the presidential office. As Commander-in-Chief of the Armed Forces, the president also exercises several other powers related to military service. For instance, he is empowered to sign decrees to begin and end conscription periods, and to determine the procedure for military registration and for the military service of Turkmenistan.²⁹⁷ He also oversees secondary educational institutions responsible for the provision of educational programmes for the training of males who have not yet reached the age at which they are eligible to be conscripted.

According to national legislation, the Armed Forces in Turkmenistan includes ground forces, air defence forces, and maritime forces. The Ministry of Defence of Turkmenistan does not publish information on the number of conscripts serving in these branches, nor on the total number serving within the Turkmen Armed Forces. Open-source information indicates that, as of 2010, the male population of Turkmenistan aged between 16 and 49 totalled 1,381,000, of which 1,067,000 were eligible for military service. Reports indicate that each year approximately 53,800 men reach draft age.²⁹⁸

A number of legal acts establish the system for conscription in Turkmenistan and regulate the procedure for the enlistment of citizens into military service, as well as their duties and responsibilities. These include:

295 The Constitution of Turkmenistan (1992), Article 41. Available from: Изменения и дополнения внесенные Конституционным законом Туркменистана от 25.09.2020 г. № 297-VI вводятся в действие с 1 января 2021 года. (Amendments and Additions Introduced by the Constitutional Law of Turkmenistan No. 297-VI, of September 25, 2020 shall Enter into Effect from January 1, 2021) <http://minjust.gov.tm/mcenter-single-ru/6>.

296 Ibid. Article 1 (6).

297 Article 7 (3) of the law ‘On military duty and military service’.

298 Каспийский Вестник. Вооруженные силы нейтрального Туркменистана. Available from: <http://casp-geo.ru/vooruzhennye-sily-nejtralnogo-turkm/>.

- ❖ the Constitution of Turkmenistan (2016);²⁹⁹
- ❖ the law ‘On Military Duty and Military Service’;³⁰⁰
- ❖ the Disciplinary Charter of the Armed Forces of Turkmenistan, approved by Decree No. 1905 of the President of Turkmenistan;³⁰¹
- ❖ the law ‘On the Status of Military Personnel’ (2017);³⁰²
- ❖ the Criminal Code of Turkmenistan (1997);³⁰³
- ❖ Regulations on the Procedure for Military Service;³⁰⁴ and
- ❖ Regulations on the Procedure for Military Registration.³⁰⁵

The procedure for conscription

The procedure for conscription is determined by the law. According to Article 31(2) of the law ‘On Military Duty and Military Service’, any citizen undertaking military service is defined as a conscript.

All males between the ages of 18 and 30, unless eligible for exemption or deferral, are required to undertake compulsory military service, as well as female citizens undergoing specialized education related to military service.³⁰⁶ Citizens of Turkmenistan permanently residing outside of Turkmenistan who have expressed a desire to complete military service have the option of doing so in the manner determined by the regulations on military conscription, and in accordance with the regulating authorities. According to Article 10 of the Constitution of Turkmenistan, dual citizenship is not recognized. In addition, according to the second paragraph of Article 5 of the law ‘On

299 Изменения и дополнения внесенные Конституционным законом Туркменистана от 25.09.2020 г. № 297-VI вводятся в действие с 1 января 2021 года. (Amendments and Additions Introduced by the Constitutional Law of Turkmenistan No. 297-VI, of September 25, 2020 shall Enter into Effect from January 1, 2021) <http://minjust.gov.tm/mcenter-single-ru/6>.

300 The Law ‘On military duty and military service’. Available from: <http://www.turkmenbusiness.org/content/zakon-turkmenistana-o-voinskoi-obyazannosti-i-voennoi-sluzhbe>.

301 Not publically available.

302 The Law ‘On status of military personnel’ (2017). Available from: <https://www.parahat.info/law/parahat-info-law-02bf>.

303 The Criminal Code of Turkmenistan (1997). Available from: https://online.zakon.kz/document/?doc_id=31295286#pos=333;-57.

304 Not publicly available.

305 Not publicly available.

306 Article 15 of the law ‘On military duty and military service’.

the Citizenship of Turkmenistan', citizenship of another state is not recognized for those already holding a citizenship of Turkmenistan. If a citizen of Turkmenistan has a citizenship of another state, then based on the legislation of Turkmenistan, they are still considered exclusively as a citizen of Turkmenistan. This suggests that those temporarily living outside of Turkmenistan, regardless of whether they hold another nationality, are obliged to register themselves at military commissariats and undertake military service (assuming that they are not entitled to an exemption or deferral, and are of conscription age). According to Article 26 of the law 'On Military Duty and Military Service', the embassies and consulates of Turkmenistan abroad are responsible for ensuring that such persons attend military commissariats.

Primary registration and military conscription are carried out by military commissariats. In areas in which there are no military commissariats, primary military registration is carried out by district executive authorities (etraps).³⁰⁷ There are 50 etraps in Turkmenistan, divided across six velayats, that carry out primary military registration.³⁰⁸ A decree of the President of Turkmenistan establishes the time limits within which conscription will be carried out by the etrap or the commissariat. Thus, the President of Turkmenistan, by adopting a decree, decides to call up for military service all male citizens that have reached the age of 18 by the day of conscription and who are not entitled to a deferral, or who have lost their right to deferral, within the time frame established in the respective decree. After a male citizen reaches the age of 17, he may submit a personal application expressing his desire to begin military service. Upon communicating his decision to the military commissariat or etrap, and upon reaching the age of 18, he will be invited to join the service.³⁰⁹

The primary registration period for male citizens usually begins on the 1 January and ends on 31 March for those citizens that have reached the age of 16. The primary military registration for female citizens (once they have received a military specialization in their studies), as well as for persons who have received Turkmen citizenship, is carried out by the military commissariat throughout the year. The commissariat for the registration of citizens is approved by a resolution of the hyakim of the etrap.³¹⁰ The collection, storage, use, and dissemination of information contained in military registration documents is

307 Article 8 of the law 'On military duty and military service'.

308 Velayat is the main administrative-territorial unit in Turkmenistan, an analogue of the governor or region. Every velayat is divided into several etraps that are districts.

309 'On military duty and military service', Article 15.

310 Hyakim is the head of the velayat (the main administrative-territorial unit) in Turkmenistan, an analogue of the governor. Heads of etraps (districts) and mayors of Turkmen cities are also called hyakims.

carried out in accordance with the legislation of Turkmenistan.

According to the law 'On the Status of Military Personnel', citizens acquire the status of a conscript or 'military service member' on the day they leave the military commissariat office. A soldier is deprived of the status of a conscript on the day of their release from military service, after which they are removed from the personnel list of the respective military unit and then, upon an order from the military unit, removed from the registration list at the relevant military commissariat or etrap.³¹¹

Exemption and deferral from conscription

Legislation provides grounds for exemption and deferral from conscription if the person in question:³¹²

- ❖ is recognized as unfit for military service for health reasons;
- ❖ has already undergone military service;
- ❖ has completed military or alternative service in the armed forces of another state;
- ❖ has a brother who died during the performance of his military duties;
- ❖ is serving a sentence of correctional labour or imprisonment;
- ❖ has been convicted twice for committing a minor crime or convicted for committing a relatively serious, serious, or very serious crime;
- ❖ has been subject to an investigation, with a criminal case pending (until the case is resolved);
- ❖ is responsible for the primary care of a father, mother, wife, sibling, sibling, grandfather, grandmother or adoptive parent, if there are no other persons obligated by law to provide care for such persons, and also provided that the latter are not fully supported by the state;
- ❖ is a single parent (father or mother) with two or more children under the age of 16, or a person with a disability who does not have other persons who are legally obliged to provide them with care;
- ❖ has two or more children;

311 'On status of military personnel', Article 4.

312 'On military duty and military service', Article 16.

- ❖ was elected khalk vekili, a deputy of the Mejlis of Turkmenistan, for a term in office; or
- ❖ has a higher pedagogical education and is working under the direction of a state body in a pedagogical position in a rural secondary educational institution – for the period of work.

Notably, deferrals from compulsory military service are granted for up to one year for those citizens recognized as temporarily unfit for military service owing to health reasons.

Deferral from conscription on the above-mentioned grounds can be granted for a period of three years, after which a citizen who has received a deferral is automatically enrolled into the reserve of the Armed Forces of Turkmenistan, and undergoes a periodic (once every three years) medical examination until the age of 30.

The President of Turkmenistan has the right to grant a deferral or an exemption from conscription to military service to other categories of citizens or individual citizens not specified in Articles 16 or 17, upon the signature of a decree.³¹³

Terms of conscription

Conscription of citizens for military service is carried out twice a year: from 1 April 1 to 30 June and from 1 October to 31 December, based on the decrees of the President of Turkmenistan.³¹⁴ The most recent decree was published in September 2020 and announced the beginning of the autumn conscription period between October and December 2020.³¹⁵

The terms of military service are established as follows:

- ❖ for conscripts – 24 months;
- ❖ for conscripts who serve on ships and in coastal combat support units – 30 months; and

313 'On military duty and military service', Article 16 (4) and Article 17 (4).

314 'On military duty and military service', Article 18.

315 Президент Туркменистана подписал Указ об очередном призыве на военную службу. 2020. (The President of Turkmenistan Signed a Decree on the Next Conscription for Military Service). Available from: <http://tdh.gov.tm/news/articles.aspx&article24165&cat11>.

❖ for conscripts with higher education – 18 months.³¹⁶

The beginning of military service is defined as the day of enrolment of a conscript in the list of personnel of a military unit. The end of military service is defined as the day of exclusion of a conscript from this list. In addition, the duration spent undertaking military training is included in the total duration of the conscript's military service.³¹⁷

The responsibilities of conscripts

The responsibilities of conscripts are described in Article 27 of the law 'On the Status of Military Personnel' and apply to all military personnel. The article stipulates the main responsibilities of military personnel as the '[p]rotection of the state sovereignty and territorial integrity of Turkmenistan, ensuring the security of the state, repelling a military attack, as well as performing tasks in accordance with the international obligations of Turkmenistan.' Clauses 3 and 4 of Article 28 on the official and special duties of military personnel suggest that active military personnel may also conduct special duties, including the mitigation of the consequences of natural disasters, as well as other emergency situations. The character of these special duties and the procedure for their implementation are established by the military regulations of the Armed Forces and other legal acts of Turkmenistan.³¹⁸ In addition, for the performance of special duties, military personnel may be endowed with additional rights (to use weapons or force, to submit mandatory requirements, to demand obedience from strictly defined persons, and others), which are established by the legal acts of Turkmenistan and the military regulations of the Armed Forces of Turkmenistan.³¹⁹

316 'On military duty and military service', Article 33.

317 Ibid. Article 33 (4).

318 'On Status of Military Personnel', Article 28 (3 and 4).

319 Ibid.

Legal guarantees during conscription and military service

Legal guarantees during military service

All the fundamental rights guaranteed by the Constitution, the International Covenant on Civil and Political Rights, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment apply to conscripts in Turkmenistan as it is a state party to these international legal documents.³²⁰

The law 'On Military Duty and Military Service' guarantees that no one under 18 years of age and deemed unfit for service for health reasons will be conscripted into the army. The decisions of the conscription commission may be appealed against to the Central Drafting Commission or to a court of general jurisdiction.

The right of conscripts to education, family life, participation in elections, and health are protected by a system of deferrals and exemptions from conscription. The law 'On the Status of Military Personnel' is applied to all military personnel. It guarantees the protection of freedom, honour, and dignity of military personnel; the right to freedom of movement and choice of residence; the right to freedom of opinion; the right to receive, store, and disseminate information; the right to participate in meetings, rallies, street processions, demonstrations, picketing, and other mass events; the right to freedom of association and freedom of religion; the right to health protection; and the right to send appeals to government agencies and other organizations.³²¹

The same law also establishes certain restrictions on the rights of military personnel, including the following:

- ❖ When exercising the right to freedom of expression and beliefs, conscripts are not entitled to divulge state and official secrets, or to discuss or criticize commander's orders.
- ❖ Conscripts are not allowed to create religious organizations in military units.³²²

320 According to the 'Status of Ratification' page of OHCHR, Turkmenistan is a state party to 11 international Human Rights Treaties. Available from: <https://indicators.ohchr.org/>.

321 'On the Status of Military Personnel', Articles 6 to 12.

322 Ibid. Article 8.

- ❖ The participation of military personnel in strikes is prohibited.
- ❖ Those called up for military service are obliged to suspend their membership in political parties and other public associations pursuing political goals.

This law stipulates that the involvement of military personnel in the performance of work that is not of a strictly military character is allowed in cases established by the legislation of Turkmenistan. At the same time, those conscripts performing such tasks are provided with additional benefits.³²³

The protection of the health of conscripts is ensured by the creation of appropriate conditions for military service by the commanders of military units in cooperation with state bodies. Military personnel have the right to receive medical care in healthcare organizations subordinate to state bodies. In the absence of military healthcare organizations at the place of military service, as well as when it is necessary to provide emergency medical care, medical assistance is provided in other state healthcare organizations.³²⁴ Medical care, if directly related to the performance of military duties, is provided free of charge for both the conscript and his family members.

The conduct of conscripts is governed by the following internal regulations:

- ❖ the Disciplinary Charter of the Armed Forces of Turkmenistan, which defines the content of military discipline, the obligations of conscripts to comply with it, types of incentives and disciplinary sanctions, the rights of commanders in applying these sanctions, as well as the rights of conscripts to appeal against the illegal actions of commanders;
- ❖ Regulations on the procedure for military service; and
- ❖ Regulations on the procedure for military registration.³²⁵

Violations of the law of Turkmenistan on military service provide for two types of responsibility. Any person who violates the obligation of military registration is brought to administrative responsibility, and any person who has evaded military service is brought to criminal responsibility.³²⁶ In addition, the Criminal Code of Turkmenistan stipulates that conscripts may be subject to additional measures, such as punishment in the form of restrictions on military service and detention in a military correctional unit – both specific types of punishment applied only to military personnel.

323 Ibid. Article 11 (9).

324 Ibid. Article 17.

325 These documents are not publicly available.

326 'On status of military personnel', Article 29.

Neither of the two primary laws governing military service and conscription identify the procedure through which military personnel may defend their rights in court or in the presence of another authority. Despite this, Article 22 discusses the right of military personnel to appeal against illegal actions. It also provides military personnel with the opportunity to protect their rights and legitimate interests by going to court in the manner established by the laws of Turkmenistan. Unlawful decisions and actions of military commanders and control bodies may be appealed in the manner prescribed by the military regulations of the Armed Forces of Turkmenistan. In addition, personnel undergoing military service by conscription are exempt from paying state taxes when filing an application or complaint to a court on issues related to military service.³²⁷

The most frequent violations of the rights of conscripts and military personnel

Open-source data indicates that most violations of the rights of conscripts in Turkmenistan concern the treatment of conscientious objectors, namely those who refuse to perform military service on the grounds of freedom of thought, conscience, or religion. The right to conscientious objection to military service is based on the freedom of thought, conscience, and religion as originally set out in Article 18 of the Universal Declaration of Human Rights (UDHR). This right was later enshrined in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkmenistan has been a party since 1997.³²⁸

In addition to the treatment of conscientious objectors, sources suggest that Turkmen conscripts have also been subject to ill-treatment, in violation of the prohibition of

³²⁷ Ibid. Article 22.

³²⁸ ICCPR, Article 18(1,2) provides that '1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice'. ACHR, Article 12(1) provides that '1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private'. ACHPR, Article 8 provides that 'Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms'. The Charter of Fundamental Rights of the European Union (proclaimed on 7 December 2000, entered into force 1 December 2009), Article 10.

torture, inhuman, or degrading treatment as provided for in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³²⁹ the UDHR, and the ICCPR, among others.

Finally, reports allege the use of Turkmen conscripts for forced labour in the civilian economy, which, if proven, would contravene its own law 'On Conscription and Military Service', as well as Article 2(a) of the Forced Labour Convention.

Although national authorities have responded to the allegations concerning conscientious objectors by supporting a 2018 recommendation of the UN Human Rights Committee to release all prisoners of conscience, recent reports on the imprisonment of conscientious objectors suggest otherwise.³³⁰ Turkmenistan's Military Prosecutor's Office has also reportedly opened investigations into a several cases resulting in the death of conscripts, while national authorities have noted that, pursuant to its law 'On Conscription and Military Service', 'conscripts may not be given orders and instructions, or be required to perform tasks that are unrelated to military service or would break the law.'³³¹ In addition to this, the recently established national Ombudsman is empowered to investigate allegations concerning violations of the rights of conscripts, although its 2019 report makes no reference to receiving or investigating related complaints.³³²

Torture, ill-treatment, and the right to life

In 2019, numerous reports emerged concerning the ill-treatment of military conscripts, some of which allegedly resulted in fatalities.³³³ In 2017, the UN Human Rights

329 Turkmenistan is party to the Convention against Torture since 1999.

330 See United National Human Rights Council. Universal Periodic Review – Turkmenistan – Third Cycle: Matrix of recommendations. Available from: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TMin-dex.aspx>.

331 Turkmenistan News Gazette. 2019. Five conscripts and a cadet of the Military Institute die in Turkmenistan. Available from: <https://turkmenistannewsgazette.com/five-conscripts-and-a-cadet-of-the-military-institute-die-in-turkmenistan/> and International Labour Organisation (2017) Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017). Available from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3297040.

332 The State News Agency of Turkmenistan, 2019. Report on the work of the Ombudsperson in Turkmenistan in 2019. [online] Available from: <http://tdh.gov.tm/news/en/obd.aspx>.

333 Chronicles of Turkmenistan. 2020. A conscript beaten by 'seniors' dies in the Central Hospital. Available from: <https://en.hronikatm.com/2020/07/a-conscript-beaten-by-seniors-dies-in-the-central-hospital/>.

Chronicles of Turkmenistan. 2020. В Мары скончался солдат-срочник. Семья уверена – причина в дедовщине. (A Conscript Soldier Died in Mary. The Family is Sure - the Reason is Bullying). Available from: <https://www.hronikatm.com/2020/05/conscript/>.

US Department of State. 2019. 2019 Country Reports on Human Rights Practices: Turkmenistan. Available from: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/>

Committee had already reflected on this point, reiterating its concern over the alleged hazing of conscripts in the Turkmen Armed Forces, including an incident that reportedly led to two deaths in 2014.³³⁴ Turkmenistan's Military Prosecutor's Office has reportedly opened investigations into some of these cases, allegedly detaining persons suspected of involvement in an incident on 1 September 2019, which reportedly resulted in the death of a conscript serving at the military unit in the Lebap province.³³⁵ Despite this, no publicly available information exists on the outcomes of these investigations, or on the role played by the Ombudsman in receiving and investigating related complaints.³³⁶

Alongside allegations of ill-treatment and torture, reports suggest that, in an effort to fulfil conscript quotas, Turkmen authorities have begun drafting those previously assessed as medically unfit for military service, or those who are entitled to defer military service under law, such as students studying for their first degree.³³⁷ This would constitute a violation of the law 'On Conscription and Military Service', although the state has not officially responded to the allegations.

The mistreatment of conscientious objectors

Reports continue to emerge both in national and international press concerning the refusal of Turkmenistan to offer alternative civilian service to conscientious objectors. In 2014-2015, sources reported that the president had pardoned all imprisoned conscientious objectors, with Forum 18, an influential civil society organization working on freedom of religion and belief, declaring 'there are no longer any Jehovah's Witnesses convicted and imprisoned in Turkmenistan as conscientious objectors'.³³⁸ Despite this, between January 2018 and September 2020, reports indicated that 25 Jehovah's Witnesses were imprisoned as a result of their refusal to perform compulsory

turkmenistan/ and <https://turkmenistannewsgazette.com/five-conscripts-and-a-cadet-of-the-military-institute-die-in-turkmenistan/>.

334 Human Rights Committee. 2017. Concluding observation on the second periodic report of Turkmenistan. Available from: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TKM/CO/2&Lang=En.

335 Turkmenistan News Gazette. 2019. Five conscripts and a cadet of the Military Institute die in Turkmenistan.

336 Turkmenistan Today. 2019. Turkmenistan Ombudsman's report on the 2019 results. Available from: <http://tdh.gov.tm/news/en/obd.aspx>.

337 Turkmen news. 2019. Turkmen Draft Boards 'Rounding Up Everyone Regardless'. Available from: <https://en.turkmen.news/news/turkmen-military-draft/>.

338 Forum 18 (2015) TURKMENISTAN: Two amnestied prisoners, conscientious objector in hospital, beaten 'Wahhabis'. Available from: http://forum18.org/archive.php?article_id=2039.

military service.³³⁹

The international community has previously expressed its position that this treatment of conscientious objectors constitutes a violation of Turkmenistan's human rights commitments under the International Covenant on Civil and Political Rights. Indeed, since 2014, the UN Human Rights Committee has decided in 14 cases that Turkmenistan violated its obligation under Article 18(1) of the ICCPR.³⁴⁰ In these cases, the Committee repeatedly reiterated that the state should review its legislation with a view to ensuring the effective guarantee of the right to conscientious objection under Article 18(1) by providing, for example, exemption from service or alternative service of a civilian nature.

The issue was first raised in 2009 by the Special Rapporteur on freedom of religion and belief, Asma Jahangir.³⁴¹ It was later reiterated in the second round of the universal periodic review (UPR) in 2013, when the working group of the Human Rights Council recommended that Turkmenistan 'recognize conscientious objection to military service in law and stop prosecuting, imprisoning and repeatedly punishing conscientious objectors.'³⁴² While Turkmenistan rejected the UPR's recommendation to release all prisoners of conscience,³⁴³ it did support its call for the reform of laws and, in particular, the protection of the rights of conscientious objectors.³⁴⁴ Nevertheless, in 2017 the UN Human Rights Committee again expressed its concern over the continued failure of Turkmenistan to recognize the right to conscientious objection to compulsory military service and the repeated prosecution and imprisonment of Jehovah's Witnesses

339 JW.org (2020) Imprisoned for Their Faith. Available from: <https://www.jw.org/en/news/legal/by-region/turkmenistan/jehovahs-witnesses-in-prison/>.

340 HRC. 2019. Juma Nazarov et al. (No. 2302/2013); HRC. 2019. Arslan Dawletow (No. 2316/2013); HRC. 2018. Danatar Durdyev (No. 2268/2013); HRC. 2016. Navruz Tahirovich Nasyrlyayev (No. 2219/2012); HRC. 2016. Matkarim Aminov (No. 2220/2012); HRC. 2016. Dovran Bahramovich Matyakubov (No. 2224/2012); HRC. 2016. Akmurad Nurjanov (No. 2225/2012); HRC. 2016. Shadurdy Uchetov (No. 2226/2012); HRC. 2016. Akmurat Halbayewich Yegendurdyew (No. 2227/2012); HRC. 2016. Navruz Tahirovich Nasyrlyayev (No. 2219/2012); HRC. 2015. Zafar Abdullayev (No. 2218/2012); HRC. 2015. Sunnet Japparow (No. 2223/2012); HRC. 2015. Mahmud Hundaybergenov (No. 2221/2012); HRC. 2015. Ahmet Hundaybergenov (No. 2222/2012).

341 Asma Jahangir. 2009. Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development – Report of the Special Rapporteur on freedom of religion or belief. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/102/10/PDF/G0910210.pdf?OpenElement>.

342 Human Rights Council. 2013. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/16/TKM/1). Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/106/04/PDF/G1310604.pdf?OpenElement>, section XIX, para.10.

343 Human Rights Council. 2013. Report of the Working Group on the Universal Periodic Review – Turkmenistan. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/154/49/PDF/G1315449.pdf?OpenElement>, para. 114.3.

344 Human Rights Council. 2013. Report of the Working Group on the Universal Periodic Review – Turkmenistan. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/154/49/PDF/G1315449.pdf?OpenElement>, para. 113.74.

refusing to perform compulsory military service.³⁴⁵

In 2018, during the third and most recent cycle of the UPR, Turkmenistan rejected recommendations to adopt measures to recognize the right to conscientious objection to compulsory military service,³⁴⁶ but supported a recommendation to release all prisoners of conscience.³⁴⁷ In spite of these developments, Turkmenistan has yet to follow through with these commitments and amend its legislation to exempt conscientious objectors from military service or to offer alternative civilian service.

Forced labour

In addition to the above allegations, there have been concerns over Turkmenistan's alleged use of conscripted personnel to provide forced labour in the civilian economy, which, if proven, would violate the law 'On Conscription and Military Service' and Article 2(a) of the Forced Labour Convention, which states that the activities performed by conscripts should be 'of a purely military character'.³⁴⁸

For example, the Central Asia Labour Rights Monitoring Mission alleges that in November and December 2018, local farmers and military officers colluded to employ conscripts to harvest cotton in the Mary and Dashoguz regions.³⁴⁹ More recently, in September 2020, reports emerged suggesting that conscripts were being used to harvest pistachios, and that 11 had died in a road accident while being transported to pistachio fields in Serhetabat.³⁵⁰ While the government has not directly responded to these allegations, the International Labour Organization (ILO) noted that, in the framework of the UPR on Turkmenistan, various stakeholders had raised allegations referring to the continued

345 Human Rights Committee. 2017. Concluding observation on the second periodic report of Turkmenistan. Available from: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TKM/CO/2&Lang=En.

346 Human Rights Council. 2018. Report of the Working Group on the Universal Periodic Review - Turkmenistan. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/207/39/PDF/G1820739.pdf?OpenElement>, paras. 116.59 and 116.77.

347 See United National Human Rights Council. Universal Periodic Review - Turkmenistan - Third Cycle: Matrix of recommendations. Available from: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TMin-dex.aspx>.

348 E. Chmykh et al. 2020. Legal Handbook on the Rights of Conscripts.

349 Central Asia Labour Rights Monitoring Mission. 2018. Soldiers finish cotton harvest in Turkmenistan. Available from: <http://www.labourcentralasia.org/en/news/soldiers-finish-cotton-harvest-in-turkmenistan/?f=9QpLXdfW>.

350 Central Asia Labour Rights Monitoring Mission. 2020. Turkmen Soldiers Die in Crash on Way to Harvest Pistachios. Available from: <http://www.labourcentralasia.org/en/news/turkmen-soldiers-die-in-crash-on-way-to-harvest-pistachios/?f=9QpLXdfW>.

use of conscripts to provide forced labour in the civilian economy. To this end, in 2017 the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) urged the Government of Turkmenistan to indicate what safeguards exist, both in law and in practice, 'to ensure that services exacted under compulsory military service laws are used only for purely military ends'.³⁵¹

Recommendations

This review has demonstrated that the Constitution and relevant legislative acts of Turkmenistan afford the president extraordinary powers in the area of conscription. The president oversees the call-up of conscripts and their termination, and has the authority to personally grant deferrals or exemptions. This is in part explained by the presidential system used in Turkmenistan, although such powers are not common in other countries using presidential systems.

In general, the rights and fundamental freedoms of conscripts are guaranteed by national legislation and international legal documents to which Turkmenistan is party. Women may also serve in the armed forces under special circumstances. To this end, legislation establishes certain restrictions on the rights of conscripts, which in general confirm to international norms. These include the restriction on the establishment of religious organizations in military units, and the suspension of membership to political parties and other public associations pursuing political goals. Despite this, the failure of the government to provide alternative services continues to be of concern, with international organizations, including the UN, regularly calling upon Turkmenistan to provide such alternatives, as well as to clearly specify what constitutes work of a 'purely military character'.

In accordance with national legislation, conscripts may perform non-military duties in the event of emergencies.

Although Turkmenistan's system of conscription largely conforms with international standards, difficulties in accessing information complicate the ability to assess and monitor the protection of conscript rights in practice. In addition, concerns exist regarding the limited avenues through which military personnel may defend their rights in court or to another competent authority.

³⁵¹ International Labour Organisation (2017) Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017).

Based on these observations, the following measures should be taken to improve the protection of the human rights and fundamental freedoms of conscripts:

- ❖ Implementation of the recommendations of the UN Human Rights Committee on the adoption of a Law on Alternative Service (ACS), and the creation of an effective ACS system, which provides for exemption from compulsory military service or alternative service of a civilian nature on the basis of personal convictions as well as religious beliefs.
- ❖ Provide for the effective implementation of the provisions contained within Article 16 of the Law of Turkmenistan on ‘Military Duty and Military Service’ by ensuring that those deemed medically unfit for military service, or those who are entitled to defer military service under law, such as students studying for their first degree, are not conscripted.
- ❖ Implementation of the recommendations by the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) by ensuring that services exacted under compulsory military service laws are used only for purely military ends.
- ❖ Provide for the timely investigation into cases of non-statutory relationships (hazing), and make available information on the outcomes of such investigations, including as regard the role played by the Ombudsman in receiving and investigating such complaints.

A REVIEW OF THE LEGISLATION OF UKRAINE

Introduction

This review analyses the main shortcomings of the legislation of Ukraine governing the procedure for the conscription of citizens of Ukraine for compulsory military service and its performance. It contains the provisions of national legal acts guaranteeing human rights and freedoms during conscription and while performing compulsory military service, and identifies problems related to their provision and legal protection.

It is important to note that conscription for compulsory military service in Ukraine was planned to be abolished in 2013 owing to the move towards a professional (contract) army. The Decree of the President of Ukraine, No. 562/2013 of 14 October 2013, stated that, by 2014, conscription to the Armed Forces of Ukraine and other military formations (except for the internal troops of the Ministry of Internal Affairs) would no longer be conducted. However, conscription continued in 2013 on a reduced scale to ensure the phased reform of the army and, in 2014, was resumed in accordance with the Decree of the Acting President of Ukraine, No. 447/2014 of 1 May 2014, because of the outbreak of hostilities in eastern Ukraine.

The results of the analysis of this review and recommendations are aimed at further improving national legislation and practice in the field of ensuring the human rights and freedoms of service members performing compulsory military service.

A review of the legal system

The legal provisions that govern the performance of service by conscripted service members include:

- ❖ the law 'On the Statute of the Internal Service of the Armed Forces of Ukraine';

- ❖ the law ‘On the Disciplinary Statute of the Armed Forces of Ukraine’;
- ❖ the law ‘On the Statute of the Garrison and Guard Services of the Armed Forces of Ukraine’;
- ❖ the law ‘On the Drill Statute of the Armed Forces of Ukraine’; and
- ❖ the Decree of the President on the Regulation for the Performance of Military Service by Citizens of Ukraine in the Armed Forces of Ukraine, No. 1153/2008 of 10 December 2008.

The procedure for obtaining conscript status

According to Article 1 of the law ‘On Military Duty and Military Service’, a conscript is a person who has registered with an enlistment office. Article 14 of this law states that the registration with enlistment offices is carried out annually from January to March by district (city) military registration and enlistment offices at the place of residence. It includes pre-conscripts who reach the age of 17 during the year of registration (except for persons who are serving sentences in penitentiary institutions or who have been subjected to compulsory medical measures).

Article 2 of this law provides that, among the established types of military service in Ukraine, conscription citizens perform compulsory military service and military service upon conscription during mobilization for a special period. The performance of military service upon conscription is regulated in detail in the Decree of the President on the Regulation for Performing Military Service by Citizens of Ukraine in the Armed Forces of Ukraine, No. 1153/2008 of 10 December 2008.

The procedure for conscription

According to Article 15 of the law ‘On Military Duty and Military Service’, male citizens of Ukraine who have reached the age of 18 by the day they are sent to military units, and persons under the age of 27 who are physically fit and do not have a right to exemption or deferral from compulsory military service, are called up for compulsory military service.

City (district) and state administrations (executive bodies of city councils), in cooperation with city (district) military registration and enlistment offices, are responsible for

preparing for and managing the process of conscription for compulsory military service.

The procedure for preparing for and managing the process of the conscription of citizens of Ukraine for compulsory military service is determined by the law 'On Military Duty and Military Service' and the regulatory legal acts of the Cabinet of Ministers of Ukraine.

The timing of the conscription (conscriptations) of citizens of Ukraine for compulsory military service is determined by the decree of the President of Ukraine. Such a decree is published at least one month before the end of the year preceding the year of conscription (conscriptations) of citizens of Ukraine for compulsory military service, except for the decree on conscription (conscriptations) of citizens of Ukraine for compulsory military service in a special period, which is published at least one month before the start of the conscription (conscriptations) of citizens of Ukraine for compulsory military service. The number of citizens subject to conscription for compulsory military service, as well as the budget allocated for the next conscription period, is determined by the Cabinet of Ministers of Ukraine.

The Regulation of the Cabinet of Ministers of Ukraine, No. 352 of 21 March 2002, on the Approval of the Regulation for the Preparation and Conduct of the Conscription of Citizens for Compulsory Military Service and the Acceptance of Recruits for Service Under a Contract defines in detail the powers of the military command and control bodies.³⁵² The regulation also defines the duties of Armed Forces officials regarding the preparation of young people for service; the preparation and conduct of conscription of citizens for compulsory military service; basic requirements for the training of pre-conscripts and conscripts for military service; the procedure for the registration of citizens with enlistment offices, maintaining the military register of conscripts, and the interaction of military registration and enlistment offices with public bodies and local self-government bodies regarding the implementation of military registration rules by citizens; and the procedure for the conscription of citizens into compulsory military service and for sending them to military units.

Article 64 of this regulation provides that citizens must be informed of conscription for compulsory military service, as well as their registration at the enlistment office, following the orders of district military commissars. Call-up notices are handed to conscripts through housing maintenance organizations; homeowners; the relevant executive bodies of village, settlement, or city councils where there are no military

352 Cabinet of Ministers of Ukraine, resolution on approval of the Regulations on preparation and conduct of conscription of citizens of Ukraine for military service and the recruitment of conscripts under the contract Available from: <https://zakon.rada.gov.ua/laws/show/352-2002-p> [Accessed 19 February 2021].

registration and enlistment offices; and heads of enterprises, institutions, organizations, and educational institutions.

The types of troops in which conscripts perform military service

Conscripts perform military service in the Armed Forces of Ukraine, the National Guard, the Border Service of Ukraine, and the State Special Transport Service, as well as other armed formations and special-purpose law enforcement agencies, where positions are staffed with conscripts.

According to the Decree of the President of Ukraine, No. 13/2020 of 16 January 2020,³⁵³ the number of Ukrainian citizens subject to conscription for compulsory military service, as well as the budget for carrying out regular conscription in 2020, should be determined by the Cabinet of Ministers of Ukraine.

The Order of the Cabinet of Ministers of Ukraine, No. 179-p, of 26 February 2020,³⁵⁴ determined that 16,460 citizens would be called up for military service in 2020. Of these, 9,000 were to be sent to the Armed Forces of Ukraine, 700 to the State Special Transport Service, 5,460 to the National Guard of Ukraine, and 1,300 to the State Border Service.

Legal guarantees during conscription and military service

Section 2 of the law ‘On the Social and Legal Protection of Servicemen and Members of Their Families’ outlines the rights of service members. In particular, Article 8 of this law defines the fundamental rights of service members, including the following:³⁵⁵

353 Decree of the President of Ukraine On dismissal of conscripts, terms of regular conscription and regular conscription of citizens of Ukraine for conscription in 2020. Available from: <https://www.president.gov.ua/documents/132020-31825> [Accessed 19 February 2021]

354 Order of the Cabinet of Ministers of Ukraine about the statement of number of the citizens of Ukraine who are subject to a call for conscript military service, volume of expenses for carrying out a call in May - July, 2020. Available from: <https://zakon.rada.gov.ua/laws/show/179-2020-r> [Accessed 19 February 2021]

355 Law of Ukraine on social and legal protection of servicemen and members of their families. Available from: <https://zakon.rada.gov.ua/laws/show/2011-12> [Accessed 19 February 2021]

- ❖ The use of service members to perform tasks not related to military service is prohibited and entails liability.
- ❖ The time spent by citizens of Ukraine in military service counts towards their insurance period, work period, work in a specialty, and period of public service.
- ❖ Service members who worked in enterprises, institutions, and organizations before being conscripted, within three months of their dismissal from military service, retain the right to be employed in the same enterprise, institution, or organization, or its successor, for a position no lower than the one they held before conscription.
- ❖ Persons dismissed from compulsory military service, within a month of the date of registration at their place of residence, are provided with material assistance by military registration and enlistment offices, in the manner established by the Cabinet of Ministers of Ukraine, in the amount of the average monthly salary at their last place of work at the expense of state budget funds.
- ❖ Persons dismissed from compulsory military service also enjoy the preferential right to remain at work if the number of staff is reduced as a result of changes in the organization related to production and labour within two years of the date of their dismissal from compulsory military service or conscription military service for persons from officers corps.
- ❖ Service members performing compulsory military service, as well as persons from officer corps conscripted for military service, whose families have lost their breadwinner and do not have other able-bodied members and family members with independent earnings are dismissed from military service ahead of schedule.
- ❖ Service members who were not employed before being called up for compulsory military may appeal to the state, which is then responsible for ensuring their social and professional adaption.

Article 18 of this law also defines social guarantees for family members of service members performing compulsory military service, including preferential hiring rights and employment rights when the number of staff is reduced, as well as the priority assignment of vocational training, advanced training, and professional retraining with full average salary for the period of training.

The mechanism and conditions for the payment of cash support to service members of the Armed Forces of Ukraine and the State Special Transport Service of Ukraine, as well as to certain other persons, were approved in the Order of the Ministry of Defence

of Ukraine, No. 260 of 7 July 2018.³⁵⁶

The most frequent violations of the rights of conscripts and military personnel

Violations of the rights of conscripts and military personnel most often concern issues related to gender equality, alternative civil service (ACS), the legality of conscription to the National Guard of Ukraine, and protection of personal data.

- ❖ **Gender inequality:** According to Article 65 of the Constitution of Ukraine, ‘citizens perform military service in accordance with the law’. At the same time, at the level of by-laws – namely, in the decrees of the President of Ukraine on the regular conscription of Ukrainian citizens for compulsory military service – only males are referenced, meaning that in practice females are not conscripted.
- ❖ **Unreasonable restrictions on alternative (non-military) service:** According to Article 35 of the Constitution of Ukraine, the possibility of replacing military service is provided only if it contradicts the religious beliefs of a citizen. Thus, at the level of the basic law of the state, the grounds for performing alternative (non-military) service are already limited. Furthermore, the Regulation of the Cabinet of Ministers of Ukraine on the Procedure for Performing Alternative (non-military) Service, No. 2066 of 10 November 1999, establishes an exhaustive list of religious organizations, the beliefs of which, according to the government, do not allow the use of weapons. The performance of alternative service is possible only at enterprises, institutions, or organizations determined by the relevant structural unit of the local public administration and in organizations supported by the Ukrainian Red Cross Society.
- ❖ **Discrimination when performing alternative (non-military) service:** According to the annual report of the European Bureau for Conscientious Objection, discrimination against conscientious objectors remains a concern, including in Ukraine.³⁵⁷ The report contains facts of criminal prosecution of objectors who

356 Procedure for payment of cash security to servicemen of the Armed Forces of Ukraine and some other persons. Available from: <https://zakon.rada.gov.ua/laws/show/z0745-18#n21> [Accessed 19 February 2021]

357 Press Release. 2020. Regression and political lack of interest: EBCO criticises failure of European

refused to perform compulsory military service.

- ❖ The controversy over the legality of conscription to the National Guard of Ukraine: According to the law ‘On the National Guard of Ukraine’,³⁵⁸ the National Guard is classified as a military formation with law enforcement functions and forms part of the system of the Ministry of Internal Affairs of Ukraine; its tasks include maintaining public order and protecting the life, health, rights, freedoms, and legitimate interests of citizens. However, service in the National Guard does focus exclusively on ‘protecting the fatherland, independence, and territorial integrity of Ukraine’ as defined by the Constitution of Ukraine. Thus, questions over the legality of conscription to the National Guard continue to arise.
- ❖ The illegal distribution of conscripts’ personal data: On 22 November 2017, the Facebook page of the Lviv military registration enlistment office published the names, patronymics, and surnames, as well as the date of birth and area of residence, of 15,000 conscripts.³⁵⁹ The page was available for seven hours. Representatives of the military registration and enlistment office announced that the page would be re-posted with a revised list of names as some people with the right to a deferral from conscription had mistakenly been included. On 26 February 2018, a ruling of the Lychakivskyi District Court of the city of Lviv was published in the Unified State Register of Judgments, by which the military commissar of the Lviv Regional Military Registration and Enlistment Office of the Operational Command ‘West’ of the Ground Forces of the Army of Ukraine was found guilty of committing an administrative offence under Article 188-39 KYoАП (violation of personal data protection laws).³⁶⁰

Mechanism for the protection of the rights of conscripts

According to Article 19 of the law ‘On the Social and Legal Protection of Servicemen and Members of Their Families’, illegal decisions or actions (inaction) of military command

institutions to implement the right to conscientious objection. Available from: <https://www.ebco-beoc.org/node/464> [Accessed 19 February 2021]

358 Law of Ukraine on the National Guard of Ukraine. Available from: <https://zakon.rada.gov.ua/laws/show/876-18> [Accessed 19 February 2021]

359 Available from: <http://khpg.org/index.php?id=1512467420&w=призов> [Accessed 19 February 2021]

360 Available from: <http://khpg.org/index.php?id=1519819235&w=призов> [Accessed 19 February 2021]

and control bodies and commanders (chiefs) may be appealed by service members in the manner prescribed by laws, charters of the Armed Forces of Ukraine, and other regulatory legal acts.³⁶¹ Article 20 establishes that service members are guaranteed the right to defence in the manner prescribed by the laws of Ukraine, primarily the law 'On Free Legal Aid'.³⁶²

According to Article 44 of the law 'On Military Duty and Military Service', compliance with the legislation on military duty and military service by state bodies, local self-government bodies, military administration bodies, enterprises, institutions, and organizations, as well as their officials, is ensured in the manner prescribed by the Constitution of Ukraine, the laws 'On Democratic Civil Control over the Military Organization and Law Enforcement Agencies of the State' (invalidated in connection with the adoption of the law 'On the National Security of Ukraine'³⁶³) and 'On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights', and other laws.

Article 13 of the law 'On the Commissioner for Human Rights of the Supreme Council of Ukraine' provides the Commissioner with the right to visit military units, guardhouses, and disciplinary battalions without prior notification of the time and purpose of the visit. Article 17 of this law provides that the Commissioner accept and consider applications and has the opportunity to open proceedings in the case of the violation of human and civil rights and freedoms. A special representative of the Commissioner for the protection of the rights of service members has been appointed in the Commissioner's Secretariat.³⁶⁴

According to Article 4 of the law 'On National Security of Ukraine',³⁶⁵ the security and defence sector is subject to democratic civilian control. The civil control system is controlled by the President of Ukraine, the Verkhovna Rada of Ukraine, the National Security and Defence Council of Ukraine, the Cabinet of Ministers of Ukraine, and executive authorities and local authorities, as well as judicial and public control mechanisms.

The Commissioner for the Protection of the Rights of Servicemen is among the

361 Law of Ukraine 'On social and legal protection of servicemen and members of their families'. Available from: <https://zakon.rada.gov.ua/laws/show/2011-12> [Accessed 19 February 2021]

362 Law of Ukraine 'On free legal aid'. Available from: <https://zakon.rada.gov.ua/laws/show/3460-17> [Accessed 19 February 2021]

363 Law of Ukraine 'On the national security of Ukraine'. Available from: <https://zakon.rada.gov.ua/laws/show/2469-19> [Accessed 19 February 2021]

364 For more information visit: <http://www.ombudsman.gov.ua/ua/page/secretariat/representatives-of-the-commissioner/> [Accessed 19 February 2021]

365 Law of Ukraine 'On the national security of Ukraine'. Available from: <https://zakon.rada.gov.ua/laws/show/2469-19>

institutions that deal with the issue of respect for the rights of citizens called up for service.³⁶⁶

Individual violations of the rights of conscripts and military personnel can be found in the reports³⁶⁷ of the UN Human Rights Monitoring Mission in Ukraine, as well as in the reports³⁶⁸ and daily press releases³⁶⁹ of the OSCE Special Monitoring Mission to Ukraine.

Legal assistance to conscripts and military personnel is provided by Ukrainian human rights organizations, in particular, the Kharkiv Human Rights Group. Separate cases are monitored by the Ukrainian NGO Come Back Alive.³⁷⁰ Further, youth organizations in Ukraine implemented the campaign 'Youth are Watching You' – one of the main goals of which was to abolish forced conscription and to create a contract-based system for military service.

Recommendations

Based on the above analysis, the following recommendations can be made:

- ❖ Defence legislation should be improved and regular military training should be conducted to form a reserve, and to reform the territorial defence system as another alternative to conscription; until then, a set of measures should be developed and implemented to ensure the psychological, medical, and other necessary forms of rehabilitation of military personnel and members of their families.
- ❖ The legislation on alternative (non-military) service should be amended to expand the list of grounds for its performance, as well as to improve the procedures for performing alternative service at enterprises, institutions, and organizations.
- ❖ Effective internal investigations should be conducted in accordance with the

366 Government of Ukraine. Representatives of the Commissioner. Available from: <http://www.ombudsman.gov.ua/ua/page/secretariat/representatives-of-the-commissioner/> [Accessed 19 February 2021]

367 Reports available from: <https://www.ohchr.org/RU/Countries/ENACARegion/Pages/UARports.aspx> [Accessed 19 February 2021]

368 Reports on the work of the Special Monitoring Mission in Ukraine. Available from: <https://www.osce.org/ru/special-monitoring-mission-to-ukraine/166326> [Accessed 19 February 2021]

369 News and press releases on OSCE activities around the world. Available from: [https://www.osce.org/uk/press-releases?filters=+im_taxonomy_vid_1:\(896\)](https://www.osce.org/uk/press-releases?filters=+im_taxonomy_vid_1:(896)) [Accessed 19 February 2021]

370 'Come back alive Army Aid' Charitable Foundation. Available from: <https://savelife.in.ua/ru/> [Accessed 19 February 2021]

requirements of the Disciplinary Charter of the Armed Forces of Ukraine and, in the event of offences against service members performing compulsory military service, perpetrators should be held criminally (or otherwise) liable to prevent the practice of hazing in the Armed Forces of Ukraine.

- ❖ The law 'On Military Chaplaincy' should be adopted to finalize the process of creating an appropriate legislative basis for the development of a military chaplaincy in Ukraine to ensure the right of service members and law enforcement officials to freedom of religion.
- ❖ The position of an adviser to the Minister of Defence of Ukraine on gender issues should be introduced to comply with the standards of the North Atlantic Treaty Organization.³⁷¹

371 CWINF Guidance for NATO Gender Mainstream. Available from: <https://www.defensa.gob.es/Galerias/ministerio/organigramadocs/omi/SBD-cwinf-guidance.pdf> [Accessed 19 February 2021]

A REVIEW OF THE LEGISLATION OF UZBEKISTAN

Introduction

Judicial and legal reforms carried out following the independence of Uzbekistan in 1991 increased the role and importance of the judiciary in protecting the rights and legitimate interests of citizens. Since then, several amendments have been made to legislative acts aimed at ensuring the protection of the rights of military personnel, in particular since 2016.

In accordance with Article 125 of the Constitution of the Republic of Uzbekistan, the Armed Forces of the Republic of Uzbekistan are created to protect the state sovereignty and territorial integrity of Uzbekistan, and to ensure peace and the security of its population.³⁷²

National defence, state, and public security are defined as the main priorities for ensuring the country's national security. The preservation of state sovereignty, integrity, and security are achieved through various legal means, including through the establishment of the constitutional obligation of citizens to protect the fatherland. According to Article 52 of the Constitution, the defence of Uzbekistan is a duty and obligation of all citizens: 'The protection of the Republic of Uzbekistan shall be the duty of every citizen of the Republic of Uzbekistan. Citizens shall be obliged to perform military or alternative service in the manner prescribed by law.'³⁷³

Military service is the main way through which to fulfil the constitutional obligation to protect Uzbekistan, which is itself defined as a special type of public service.

Service members play a vital role in addressing challenges related to the defence

372 Article 125 of the Constitution of the Republic of Uzbekistan.

373 Ibid., Article 52.

and security of the state. Military service concerns not only technical issues, such as admission, performance, and the termination of service in the Armed Forces of the Republic of Uzbekistan, but also strategic support for the preservation of the country and the strengthening of its constitutional order.

In 2018, the law ‘On the Defence Doctrine of the Republic of Uzbekistan’ was adopted. The country’s defence doctrine was qualitatively updated in January 2018 to reflect the country’s new foreign policy direction, and the desire to develop and strengthen relations with neighbouring states. For the first time, the doctrine was made publicly available. It defines Uzbekistan’s new principles and approaches to national security in the military sphere, the main tasks of and foundations for the Armed Forces, as well as the direction of further reform and development of the national army.³⁷⁴

This review analyses legislation related to military duty, conscription, and performing military service in Uzbekistan.

A review of the legal system

Conscription and the performance of military service in Uzbekistan are determined by the following regulatory acts:

- ❖ the Constitution of the Republic of Uzbekistan;
- ❖ the law ‘On Universal Military Duty and Military Service’ of 12 December 2002;
- ❖ the law ‘On Reserve Service in the Armed Forces of the Republic of Uzbekistan’ of 25 April 2003;
- ❖ the Decree of the Cabinet of Ministers of the Republic of Uzbekistan ‘On Approval of the Regulation on the Organization of and Procedure for Performing Alternative Service by Citizens of the Republic of Uzbekistan’ of 11 March 2003;
- ❖ the Regulation on the Procedure for Performing Military Service by Citizens of the Republic of Uzbekistan, approved by the Decree of the President of the Republic of Uzbekistan, No. PP-4447 of 12 September 2019;
- ❖ the Charter of the Internal Service of the Armed Forces of the Republic of Uzbekistan; and

³⁷⁴ The law ‘On the Defence Doctrine of the Republic of Uzbekistan’. 2018. Available from: <https://lex.uz/docs/3495906>.

- ❖ the Disciplinary Charter of the Armed Forces of the Republic of Uzbekistan.

In addition, the Regulation on the Procedure for Performing Military Service by Citizens of the Republic of Uzbekistan:

- ❖ determines the procedure for performing military service by citizens of Uzbekistan;
- ❖ ensures the implementation of constitutional rights and obligations to protect the territorial integrity, independence, and security of the country by citizens;
- ❖ regulates relations related to the performance of military service through conscription and under contract by citizens in the Armed Forces of the Republic of Uzbekistan – as well as in state committees, ministries, and agencies, the official activity of which is equivalent to military service in the positions of privates, sergeants, and officers – and by citizens in the reserve of the Armed Forces;
- ❖ determines the procedure for manning the Armed Forces and the rights and obligations of officials to ensure the effective performance of official duties by various categories of military personnel; and
- ❖ ensures the transparency of performing military service and the prospect of professional growth for service members.

In addition, in accordance with the law ‘On Universal Military Duty and Military Service’, the following types of military service are established in Uzbekistan:³⁷⁵

- ❖ Compulsory military service: compulsory service in the Armed Forces in the positions of privates and sergeants by citizens of conscription age, as well as officers who have not previously performed military service, within the time period established by law. The term of compulsory military service is 12 months.
- ❖ Military service in the mobilization conscription reserve: persons fit for military service – including those who do not have the right to a deferral or exemption, but who are not called up for the next term in the Armed Forces – are subject to enrolment in the mobilization conscription reserve.
- ❖ Service in the mobilization conscription reserve is organized on a territorial basis in the form of monthly military reserve training and the payment of cash contributions by conscripts to the Special Account of the Ministry of Defence of the Republic of Uzbekistan. Such persons are enrolled in the mobilization conscription reserve until they reach the age of 27 and may be involved in annual

375 Закон Республики Узбекистан «О всеобщей воинской обязанности и военной службе». Available from: <https://lex.uz/acts/138223>.

military reserve training; in the event of an emergency or military aggression against Uzbekistan, they are called up for active military service. Upon reaching the age of 27, citizens who have served in the mobilization conscription reserve are enrolled in the reserve of the Armed Forces.

- ❖ The monetary contribution and the payment procedure for persons enrolled in service in the mobilization conscription reserve are determined by a separate regulation approved by the President of Uzbekistan. These funds are used to cover costs associated with conducting reserve training for service members of the mobilization conscription reserve; remunerating service members performing compulsory service once they are dismissed from the relevant ministries and agencies that provide for compulsory military service; maintaining the reserve training administration; developing and strengthening material and the technical framework of the Ministry of Defence, including the repair and construction of buildings; supporting employees in defence agencies for registering service members into the mobilization conscription reserve; and procuring weapons, technical military materials, and ammunition for the needs of the Ministry of Defence.³⁷⁶
- ❖ The procedure for organizing and performing service in the mobilization conscription reserve is determined by the Regulation on the Procedure for the Performance of Service by Citizens of the Republic of Uzbekistan in the Mobilization Conscription Reserve, approved by the President of Uzbekistan. Those who are subject to military service in the mobilization conscription reserve receive basic military training.³⁷⁷
- ❖ Contract military service: a type of military service performed by citizens who enter active military service in the Armed Forces on a voluntary basis in accordance with a contract concluded with the state represented by ministries, state committees, and agencies where military service is provided for.
- ❖ Citizens who have chosen military service as a profession perform military service under contract in the positions of privates, sergeants, and officers.
- ❖ Reservists: a type of military service established on the basis of the universal military duty for conscripts from among the ranks of privates, sergeants, and

376 Закон Республики Узбекистан «О всеобщей воинской обязанности и военной службе». Available from: <https://lex.uz/acts/138223>.

377 The Regulation on the Procedure for the Performance of Service by Citizens of the Republic of Uzbekistan in the Mobilization Conscription Reserve. 2003. Available from: <https://www.lex.uz/acts/243353#470072>.

officers who have completed active military service, as well as service in the mobilization conscription reserve, aimed at manning formations, units, and detachments of the Armed Forces to the necessary level in wartime, as well as the deployment of wartime formations.

- ❖ As part of formations and units, reservists can be used for combat purposes both in wartime and in peacetime when there is a threat of military aggression against Uzbekistan or a threat to the security of the country, and when tackling the consequences of natural disasters and emergencies, in accordance with the decree of the President of Uzbekistan.

According to Article 3 of the law ‘On Universal Military Duty and Military Service’, universal military duty includes the preparation of citizens for military service, conscription (admission) to military service, military service by conscription or under contract, service in the reserve, alternative service, compliance with the rules of military registration, and activities to protect the population in emergency situations or in the event of military aggression against Uzbekistan.³⁷⁸

In accordance with this law, citizens of Uzbekistan who are subject to conscription for military service and registered with district (city) enlistment offices are referred to as conscripts.

During peacetime, in accordance with Article 4 of the law, male citizens aged between 18 and 27 years, who are deemed physically fit to perform military service in the Armed Forces, are called up for military service with the rank of private and sergeant, as well as for service in the mobilization conscription reserve.³⁷⁹

The procedure for conscription

The selection (conscription) of persons liable for military service is the responsibility of defence authorities located at the citizen’s place of residence (registration). In accordance with Article 19 of the law ‘On Universal Military Duty and Military Service’, conscription for compulsory military service and service in the mobilization conscription reserve is carried out based on a decree of the President of Uzbekistan each year, from March to April.³⁸⁰

378 The law ‘On Universal Military Duty and Military Service’. Article 3.

379 Ibid., Article 4.

380 Ibid., Article 19.

The decree of the President of Uzbekistan is published in the media at least a month before the start of the conscription period. After the publication of the decree, conscripts, including those on the temporary military register, are required to appear at the enlistment office on the date specified in the call-up notices. Citizens of conscription age who have not performed compulsory military service or service in the mobilization conscription reserve and who are not on the military register, as well as conscripts who have temporarily left their permanent place of residence for another locality and have not been entered in to the corresponding military register, are obliged to appear before the defence authorities at their place of residence.

The heads of enterprises, institutions, organizations, and educational institutions are obliged to recall conscripts from business trips and ensure their timely appearance at the enlistment office. Conscripts who are 18 or over may change their place of military registration up until the publication of the decree of the President of Uzbekistan on regular conscription. After the publication of the decree, conscripts may change the place of military registration only in the following cases:

- ❖ when moving to another locality for work;
- ❖ when moving to a new place of residence; or
- ❖ upon admission to an educational institution and departure for further education.

The existence of the grounds specified in Part Six of Article 19 of the law 'On Universal Military Duty and Military Service' must be confirmed by the relevant documents submitted to the agency on defence affairs.

Acceptable reasons for the failure of citizens to appear at the enlistment offices within the time limit established by the defence authorities include:

- ❖ the illness of a citizen, depriving them of the opportunity to appear at the enlistment office;
- ❖ the death or serious illness of a close relative (father, mother, brother, sister, wife, or child); and
- ❖ obstacles related to a natural disaster or other circumstances beyond the control of the citizen, depriving them of the opportunity to appear at the enlistment office.

The reason for their failure to appear at the enlistment office must be supported by appropriate documents.

In peacetime, the following persons are not be subject to conscription for compulsory

military service:

- ❖ those who received a deferral or an exempt from conscription, in accordance with Articles 21 and 22 of the said law; and
- ❖ those who are subject to an ongoing inquiry or preliminary investigation, or have a criminal case being considered by a court.

Conscription commissions

In addition, under Article 20 of the law ‘On Universal Military Duty and Military Service’, conscription commissions are created to conduct the conscription of citizens for military and alternative service in Karakalpakstan and the regions, cities, and districts of Uzbekistan.

The structure and procedure for the activities of the conscription commissions is determined by the President of Uzbekistan. The composition of the conscription commissions is determined by the Council of Ministers of the Republic of Karakalpakstan, and by hokimiyats (executive authorities) of other regions, cities, and districts, with the obligatory participation of representatives of defence and health authorities in their activities.

The deputy chairman of the Council of Ministers of the Republic of Karakalpakstan, and deputy hokims (chairmen) of other regions, cities, and districts, respectively, are appointed as chairpersons of the local conscription commissions.

Citizens conscripted for military and alternative service undergo a compulsory medical examination, in accordance with the Regulation on Medical Examination in the Armed Forces for Peacetime and Wartime, approved by the President of Uzbekistan.

In accordance with the results of the medical examination of the conscript and an assessment of their moral and professional qualities, as well as the material and social situation of their family members, the district (city) conscription commission will make one of the following decisions:

- ❖ deemed fit for military service and conscription and assigned to a particular type of troop;
- ❖ deemed fit for military service, with restrictions, and assigned to serve in the mobilization conscription reserve;

- ❖ deemed fit for military service and conscription for alternative service;
- ❖ deemed temporarily unfit for military service for health reasons;
- ❖ granted a deferral or exemption from military service on the basis of Articles 21 and 22 of this law;
- ❖ deemed unfit for military service in peacetime for health reasons, with limited fitness in wartime, and enrolled in the reserve;
- ❖ enrolled in the reserve of the Armed Forces upon reaching the age of 27; or
- ❖ deemed unfit for military service with exclusion from the military register.

The conscription commissions of Karakalpakstan, other regions, and the city of Tashkent are responsible for:

- ❖ verifying decisions to grant a deferral or an exemption from conscription;
- ❖ verifying decisions to assign conscripts to a particular military profession, taking into account their physical and general training, experience, abilities, interests, and other personal qualities; and
- ❖ considering citizens' complaints against the decisions of district (city) conscription commissions.

The military medical commissions of the Ministry Defence of the Republic of Uzbekistan organize controlled medical examinations of persons called up for military service and sent to serve in the Armed Forces, as well as those who have expressed disagreement with the results of the medical examination and the decisions of regional or district (city) conscription commissions before they are sent to military units.

The conscription commissions of Karakalpakstan, regions, and the city of Tashkent have the right to consider and cancel the decisions of the district (city) conscription commissions. The decisions of the conscription commissions of Karakalpakstan, regions, the city of Tashkent, and districts and cities can also be appealed in court.

Exemptions from conscription to military service

In accordance with Article 21 of the law 'On Universal Military Duty and Military Service', a deferral from conscription to compulsory military service and service in the mobilization conscription reserve is provided to conscripts upon the decision of the

district (city) conscription commission for family reasons, health reasons, or to enable them to continue education.

A deferral from conscription to compulsory military service and service in the mobilization conscription reserve for family reasons is provided to conscripts with:

- ❖ disabled parents, if the parents do not have another able-bodied adult son who is obliged to support them. The parents' disability shall be determined in accordance with the law;
- ❖ a single able-bodied mother or father with two or more children under the age of 16, who does not have another able-bodied adult son;
- ❖ a (full) brother who, on the day of conscription, is undergoing compulsory military service;
- ❖ a child classed as a minor and brought up without a mother; or
- ❖ a wife who is classed as disabled (first or second group) and who has two or more children classed as minors.

Persons for whom the conscript is their dependent – in connection with the death of parents, their long-term illness, or for other valid reasons – are equated to parents for at least five years.

A deferral from conscription for continuing education is granted to conscripts studying in general education schools, academic lyceums, and vocational colleges, as well as students studying in higher educational institutions on a full-time basis until their graduation.

Full-time and part-time students of higher educational institutions, with their consent, may be enrolled in the mobilization conscription reserve. At the same time, students are also involved in the monthly military reserve training in July-August.

Individuals expelled from educational institutions lose the right to deferral. Conscripts who no longer have grounds for a deferral – as well as persons who do not have the right to a deferral or grounds for exemption from conscription in accordance with the law 'On Universal Military Duty and Military Service', and who, for various reasons, are not called up for military service or for service in the mobilization conscription reserve – are called up at the next conscription to the Armed Forces until the age of 27. In addition, in accordance with Article 21 of the said law, conscripts are also exempted from conscription for military service and service in the mobilization conscription reserve in peacetime if:

- ❖ they are deemed unfit for military service for health reasons;
- ❖ they have a close relative (brother, sister) who was killed or died in connection with military service; or
- ❖ they conduct religious ceremonies in a registered religious organization.³⁸¹

Persons referred to in Paragraph 2 of the article may be called up for military service only with their consent. Citizens who have been brought to criminal responsibility, as well as those who have an outstanding or unexpunged conviction, are also exempted from conscription.

In accordance with the Decree of the President of Uzbekistan on the Regular Conscription of Citizens of the Republic of Uzbekistan for Military Service and Dismissal to the Reserve of the Armed Forces of Servicemen Who Have Served the Established Terms of Service of 26 February 2020, the future conscription of citizens of Uzbekistan for military service will be carried out in enlistment and assembly offices of directorates and departments for defence affairs, and service members who have served the established terms of service in military units will be dismissed to the reserve of the Armed Forces.³⁸²

As part of the reform process, several new commissions have been created in the directorates and departments for defence affairs, including:

- ❖ territorial medical commissions under the departments for defence affairs;
- ❖ recruitment commissions in the departments for defence affairs of districts (cities), consisting of the heads of departments and services of the administrations of military districts, and representatives of the Ministry of Internal Affairs, the Border Guards of the State Security Service, the Ministry of Emergency Situations, and the National Guard;
- ❖ a territorial commission in the departments for defence affairs of the districts under the leadership of the deputy hokim of the district, consisting of the head of the department for defence affairs, the deputy head of the department of internal affairs of the district, and a representative of the territorial administration of the Ministry for Support of Mahalla (neighbourhood) and Family;
- ❖ a military medical commission, consisting of military doctors from military

381 The law 'On Universal Military Duty and Military Service'. Article 29.

382 The Decree of the President of Uzbekistan on the Regular Conscription of Citizens of the Republic of Uzbekistan for Military Service and Dismissal to the Reserve of the Armed Forces of Servicemen Who Have Served the Established Terms of Service of 26 February 2020.

hospitals and doctors from medical institutions of the Ministry of Health; and

- ❖ a Leadership Council chaired by deputies and commanders of military districts, consisting of representatives of the Ministry of Internal Affairs, the Border Guards of the State Security Service, the Ministry of Emergency Situations, and the National Guard, and the head of the department for defence affairs in Karakalpakstan, other regions, and the city of Tashkent.

The following observations can be made following the introduction of this new system:

- ❖ The level of responsibility of those on commissions - including deputies, commanders of military districts, and representatives of the Ministry of Defence, the Ministry of Internal Affairs, the Ministry of Emergency Situations, the Border Guards of the State Security Service, and the National Guard - has increased.
- ❖ By ensuring that the selection process includes individual interviews with prospective conscripts, the quality of conscripts is likely to increase.
- ❖ By reinforcing social protection mechanisms, trust in the conscription system may improve.
- ❖ By abolishing medical commissions with overlapping mandates, the system has become more efficient.

In accordance with Paragraph 17 of the Law 'On the Defence Doctrine of the Republic of Uzbekistan', No. 3PY-458 of 9 January 2018, conscripts perform active military service in rank-and-file positions in the Armed Forces, which includes relevant management bodies, troops, military formations, and institutions of the ministries of defence, internal affairs, emergency situations, and the National Security Service; other ministries, state committees, and agencies; and the National Guard of the Republic of Uzbekistan. Of these, the majority of conscripts are placed in the troops of the Ministry of Defence.³⁸³

The performance of military service by service members of compulsory military service is also governed by the provisions of the Charter of the Internal Service of the Armed Forces of the Republic of Uzbekistan, approved by the Decree of the President of Uzbekistan of 9 October 1996, which defines daily life and activities, the general rights and obligations of service members, the relationship between them, as well as the rules of internal order.

383 The Law 'On the Defence Doctrine of the Republic of Uzbekistan', No. 3PY-458 of 9 January 2018. Paragraph 17.

Legal guarantees during conscription and military service

Article 17 of the law 'On Universal Military Duty and Military Service' provides for a number of guarantees for conscripts. These include:

- ❖ preserving the place of work, position held, and average salary for conscripts undergoing training in technical military specialties in centres under the directorates for defence affairs, with leave granted for the entire period of training, including the time of travel to the place of study (reserve training) and back. For non-working conscripts, these expenses, as well as an allowance in the amount of 35.2 per cent of the minimum wage established by law, are reimbursed by the relevant hokimiyats (executive authorities); and
- ❖ reimbursing the cost of renting housing for the period of training (reserve training) of conscripts, as well as the cost of travel to the place of study (reserve training) and back (if it is necessary to travel to another settlement).

Article 25 of the law 'On Universal Military Duty and Military Service' also provides a number of guarantees for citizens related to conscription or admission to military service. These include:

- ❖ the provision of severance pay to citizens who have been conscripted or entered military service;
- ❖ the exemption of citizens from work (study) for the time necessary to perform duties related to military registration, conscription, or enrolment in military service, while retaining their average salary and scholarships at their place of work (study);
- ❖ the exemption of citizens from work for those entering higher military educational institutions for the time required to pass the entrance exams, with the retention of their positions and average salary at their place of work;
- ❖ the retainment of the place of work and average salary for citizens sent by the bodies of the Ministry of Defence to a dispensary for an inpatient examination, for the entire period of stay in a medical institution, and the reimbursement of costs and travel expenses to the place of examination and back to the place of work (study) (when assigned for inpatient treatment, a temporary disability benefit will also be paid at the place of work in the manner prescribed by law);

and

- ❖ other benefits and guarantees, in accordance with the law, for citizens who have been called up for compulsory military service, as well as those who have entered military service under a contract.

In addition, in accordance with Paragraph 181 of the Regulation on the Procedure for Performing Military Service by Citizens of the Republic of Uzbekistan, military personnel enjoy the full range of social, economic, political, and personal rights and freedoms, and also bear all the duties of citizens of Uzbekistan provided for by the Constitution and laws of Uzbekistan, subject to the restrictions imposed by the conditions of military service. Paragraph 184 of this regulation establishes that military personnel be provided with food, money, clothing, and housing allowances, and enjoy the rights to pension, medical care, and other social guarantees and benefits established by the country's legislation at the expense of the state budget of Uzbekistan. In addition, those serving compulsory military service are provided with food, clothing, and monetary allowances, and enjoy the right to free medical care during their military service.

The Commissioner of the Oliy Majlis (parliament) of the Republic of Uzbekistan for Human Rights (Ombudsman), as well as the organs of the Military Prosecutor's Office, in accordance with the principles of the law 'On the Prosecutor's Office', No. 257-II of 29 August 2001, are entrusted with issues concerning the protection of the rights and freedoms of military personnel, the prevention of offences, as well as the strengthening of law and order. Furthermore, in accordance with the law 'On Appeals of Individuals and Legal Entities', if a service member (conscript) believes that their rights and legitimate interests have been infringed by state bodies or officials, he or she has the right to apply to the relevant competent authorities.

The above-mentioned reforms may also serve to reduce the number of violations of the rights of conscripts as conscription of citizens for military service and service in the mobilization conscription reserve in Uzbekistan is now carried out only once a year. In addition, and in accordance with the Decree of the President of Uzbekistan on Additional Measures to Improve the System of Benefits for Citizens Who Have Performed Compulsory Military Service in the Armed Forces of the Republic of Uzbekistan, No. PP-1765 of 31 May 2012, additional benefits are now provided to those who have performed compulsory military service, including:

- ❖ additional points (equal to 50 per cent of the points they scored in tests) for citizens who have performed compulsory military service in the Armed Forces of the Republic of Uzbekistan, received appropriate recommendations from the

command of military units, and who have been enrolled in the relevant areas of education in higher military educational institutions;

- ❖ additional admission indicators (outside the admission parameters approved for the corresponding academic year) for admission into undergraduate programmes of higher educational institutions (with the exception of higher military educational institutions) for applicants who have performed compulsory military service in the Armed Forces of the Republic of Uzbekistan and who have received relevant recommendations from the command of military units; and
- ❖ recommendations of the command of military units for citizens who have performed compulsory military service in the Armed Forces of the Republic of Uzbekistan for admission to higher educational institutions (valid for three years from the date of their provision). The decree also informed the heads of the Ministry of Defence, the Ministry of Internal Affairs, and the State Security Service of the Republic of Uzbekistan of the need to ensure that their recommendations for service members are based on an objective and unbiased assessment of their performance while performing compulsory military service.

Mechanisms for the protection of the rights of conscripts

The organization of the conscription of citizens for active military service is reviewed annually by the senators of the Senate and deputies of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, members of the Public Council under the Ministry of Defence, and other interested state and civil society organizations. To this end, the composition of the Public Council is approved by the President of Uzbekistan from among citizens of Uzbekistan on the proposal of the Minister of Defence every three years. The main tasks of the Public Council include:

- ❖ organizing the monitoring and comprehensive analysis of public opinion on the most pressing issues concerning state policy in the field of defence and military development affecting the rights, freedoms, and legitimate interests of citizens of Uzbekistan to improve interaction between public associations and other institutions of civil society and the Ministry of Defence;
- ❖ conducting a comprehensive analysis of and exercising public control over the

implementation of adopted state programs aimed at providing service members and their families with social protection, housing, and improved medical services, social and living conditions, and conditions for performing military service, as well as resolving problems related to the social and professional adaptation of service members under contract subject to dismissal, or citizens transferred to the reserve;

- ❖ assisting the Ministry of Defence in the development and organization of public discussion on draft regulatory legal and other acts in the field of defence and military development, as well as regulating the activities of the defence department, excluding issues that concern state secrets; and
- ❖ developing proposals and recommendations to improve the effectiveness of the activities of the Ministry of Defence related to organizing the conscription of citizens for compulsory military service, military service under contract, and service in the mobilization conscription reserve, as well as to ensure a healthy moral and psychological environment, and law and order.

Recommendations

The reform of the system for compulsory military service has contributed to the development of a mobile professional army in Uzbekistan. It continues to serve as a system of mass training for young men to comply with the provisions of the law ‘On Universal Military Duty and Military Service’. At the same time, it functions as an important mechanism for replenishing the ranks of the Armed Forces with young cadres.

A number of recent reforms, in particular, the Decree of the President of the Republic of Uzbekistan on Measures to Further Improve the Procedure for Conscription of Citizens of the Republic of Uzbekistan to Military Service, No. PP-4630 of 6 March 2020, are intended to improve the selection process for assigning conscripts to the Armed Forces. To this end, a phased mechanism has been introduced for recruiting conscripts by conducting interviews with conscripts and assigning them to branches of the Armed Forces, and to branches of troops by representatives of ministries and departments, for compulsory military service.³⁸⁴

384 The Decree of the President of the Republic of Uzbekistan on Measures to Further Improve the Procedure for Conscription of Citizens of the Republic of Uzbekistan to Military Service, No. PP-4630 of 6

The reduction of the period of military service to one year, the introduction of a mobilization conscription reserve service, the organization of annual conscription on a competitive basis, and measures to increase the number of contractual service members in the Armed Forces has improved the system of combat training and education, the attitude to military service in society, and, in general, increased the combat readiness of the Armed Forces of the Republic of Uzbekistan.

Annual conscription on a competitive basis allows for the selection of the most suitable candidates, namely those with sufficient command of general disciplines and good physical conditioning. Tests include a complete medical examination, interview, written test, and physical training checks. Those who achieve the highest results are called up for military service in the ranks of the Armed Forces.

Acknowledging improvements in the system for compulsory military service, the following measures offered by DCAF may still be considered by state authorities:

- ❖ Consider the inclusion of legislative provisions to recognize conscientious objection, including by recognising the right of individuals to conscientious objection on the basis of religious beliefs or personal convictions.
- ❖ Consider reducing the length of alternative service from 24 months to 12 months so that it reflects the duration of compulsory military service.
- ❖ Ensure that newly recruited soldiers receive training on human rights, including freedom from torture and ill-treatment, and be properly informed of their rights and the definition of hazing.

DCAF Geneva Centre
for Security Sector
Governance

DCAF - Geneva Centre for Security
Sector Governance

P.O.Box 1360
CH-1211 Geneva 1
Switzerland

✉ info@dcaf.ch

☎ +41 (0) 22 730 9400

www.dcaf.ch

🐦 @DCAF_Geneva