

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	84
Land:	Aserbajdsjan
Kilde:	Migrationsverket
Titel:	Azerbajdzjan: Straff vid vapenvägran, desertering eller för att ej hörsammat inkallelse till militärtjänst
Udgivet:	4. marts 2010
Optaget på baggrundsmaterialet:	10. januar 2011

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda av Migrationsverkets landinformationsenhet under en begränsad tid. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Refererade dokument bör läsas i sitt sammanhang.

Azerbajdzjan: Straff vid vapenvägran, desertering eller för att ej hör sammat inkallelse till militärtjänst

Fråga:

Jag har svårt att hitta information om vilka straff man i Azerbajdzjan riskerar att få ifall man vapenvägrar eller deserterar/ej hör sammar kallelse till militärtjänst.

Svar:

Alla män mellan 18 och 35 ska göra militärtjänst mellan 18 och 12 månader och det finns inga möjligheter att göra vapenfri tjänst (ICG, 2008).

Även om rätten till vapenvägran finns med i konstitutionen saknas tillämpad lagstiftning (QCEA, 2008; Council of Europe, 2008).

QCEA 2008 hävdar att personer från vissa religiösa grupper oftast inte kallas till militärtjänst, men att detta inte gäller icke-religiösa vapenvägrare. I QCEAs rapport från 2005 tas dock domar upp mot även religiösa vapenvägrare.

Forum 18 rapporterar 2009 om domar mot religiösa vapenvägrare – böter eller fängelsestraff – och enligt US State Dep. 2009 ger avsaknaden till vapenfri tjänst problem för Jehovas vittnen.

Hur många som dömts och fängslats för vapenvägran är okänt (QCEA, 2008; QCEA, 2005; IRB, 2003).

Militärtjänstvägrare straffas med upp till två års fängelse enligt artikel 321 i strafflagen och desertörer från tre till sju år enligt artikel 334. Är det första gången kan straffet dras tillbaka. Vid krig ökar straffet: militärtjänstvägran kan ge tre till sex års fängelse och desertering fem till tio år (QCEA, 2005; Criminal Code of the Azerbaijan Republic, 2000).

Källor

Vapenfri tjänst och vapenvägran

“The army is a conscript one, in which all men between eighteen and 35 are required to serve.⁴⁷ Callups take place four times a year. Service is one year for those with higher education, eighteen months for those with secondary education and not less than that for reserve officers.⁴⁸ There is for practical purposes no law to implement the constitutional right to perform alternative service, according to the government because of the ongoing Nagorno-Karabakh conflict.⁴⁹ Personnel may vote in elections and run for office but are forbidden to strike, engage in business activity or belong to a political party or professional union.⁵⁰”

Källa: International Crisis Group (ICG) (2008-10-29)
Azerbaijan: Defence Sector Management and Reform, ,
Europe Briefing N°50, available at:
<http://www.unhcr.org/refworld/docid/49096ef62.html>

“The government had not developed an alternative service option for fulfilling one's mandatory military service requirement at year's end. The lack of such an option remained a problem for several members of Jehovah's Witnesses, who conscientiously objected to serving in the military.”

Källa: United States Department of State (2009-02-25)
2008 Country Reports on Human Rights Practices -
Azerbaijan,
<http://www.unhcr.org/refworld/docid/49a8f1aac.html>

“Three European countries have not introduced any legislation on conscientious objection: Azerbaijan, Belarus and Turkey. [...] In Azerbaijan and Belarus, the right to conscientious objection was included in the constitution during the 1990s, but no further legislation on conscientious objection has ever been introduced, although in Azerbaijan, a draft law on conscientious objection is still “under preparation”.⁴”

“[4 In 2008, the Azeri government has still not adopted a draft “Law on Alternative Service”. There is no great expectation that this will change:

<http://www.today.az/news/society/43247.html>

(22.5.2008)]”

“In Armenia, Azerbaijan and Georgia, certain religious COs have not been called up for service pending the introduction of a CO law, but these informal provisions did not apply to non-religious COs.”

“For example, in Armenia, Azerbaijan, Belarus, Georgia, Turkey and the Ukraine hundreds of draft evaders are believed to have been criminally prosecuted in recent years. These draft evaders mostly remain anonymous for human rights observers and other monitoring agencies. Consequently, it is difficult to assess how many imprisoned draft evaders may be considered as conscientious objectors.”

Källa: Quaker Council for European Affairs. QCEA (2008-06-30) The Right to Conscientious Objection in Europe. Executive Summary 2008(Lifos 20635)

“B. Conscientious objection to military service

81. One of the commitments of Azerbaijan upon accession to the Council of Europe in 2001 was to establish an alternative to military service by 2004. To this day, such a legislative framework has not yet been shaped up. A draft law concerning an alternative to the military service was sent for review to the Council of Europe and was sent back to the authorities more than a year ago on 23 October 2006. Obviously, the general atmosphere in the wider

region, a recent past of wars and atrocities and ongoing tensions with some neighbours have had the consequence that the issue has not received the treatment it deserves. The Commissioner urges a speedy adoption of a law establishing an alternative civilian service."

Källa: Council of Europe - Commissioner for Human Rights (2008-02-20) Azerbaijan: "Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his Visit to Azerbaijan, 3 - 7 September 2007 [CommDH(2008)2]", http://www.ecoi.net/file_upload/1227_1204049099_aserbaisdchan.pdf

"Azerbaijan has repeatedly assured the Council of Europe that it is drafting legislation to implement the civilian alternative to military service specified in its constitution, but this has still failed to appear; meanwhile it intermittently imprisons conscientious objectors. Samir Huseynov, a Jehovah's Witness, was freed in May 2008 after serving seven months of a ten month sentence (see F18News 14 May 2008 http://www.forum18.org/Archive.php?article_id=1129. More recently, Mushfiq Mammedov, also a Jehovah's Witness, was fined in October 2009 after refusing military service."

Källa: Forum 18 (2009-11-19) COMMENTARY: The European Court of Human Rights - Out of step on conscientious objection, http://www.forum18.org/Archive.php?article_id=1377

- Utförlig beskrivning av vapenvägran i konstitutionen och i lagstiftningen samt dess tillämpning. Enligt QCEA kallas oftast inte religiösa vapenvägrare (framförallt Jehovas vittnen) till militärtjänst, men det finns fällande domar även mot dessa. Även om inte fall av icke-religiösa vapenvägrare kommit upp i domstol tror QCEAs inte detta skulle accepteras.

Se: Conscientious objection - Legal basis, Practice

Källa: Quaker Council for European Affairs (2005) The Right to Conscientious Objection in Europe, <http://www.wri-irg.org/co/rtba/azerbaijan.htm>

Desertering / Inte hörsammar inkallelse till militärtjänst

“Draft evasion

Evading military service is punishable under Article 321 of the Criminal Code with up to 2 years' imprisonment during peacetime. Desertion is punishable under Article 334 with 3 to 7 years' imprisonment during peacetime. First time offenders may be freed from criminal liability. During wartime, higher sentences apply.[14]”

“Draft evasion is widespread in Azerbaijan. Military service is unpopular as the armed forces are known for their poor conditions and human rights violations. Since 1994 more than 5,000 soldiers have reportedly died from bullying, accidents, disease and malnutrition.[15]”

“Detailed figures on prosecution and imprisonment of draft evaders and deserters are hard to obtain. Available figures, however, suggest that draft evaders are prosecuted regularly. The Azerbaijan Ministry of Justice stated in 2002 that there were 2,611 draft evaders and deserters in prison.[16] According to the UNHCR, draft evaders and deserters are prosecuted at random and proceedings often depend on individual commanders in charge.[17]”

“In 2000, the Parliamentary Assembly of the Council of Europe called upon the Azerbaijan government to "pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions".[18]”

“It remains unclear if the government has taken such steps. In recent years there are no known cases of Jehovah's Witnesses or members of other religious organisations being imprisoned for refusing military service. However, some of the draft evaders that have been prosecuted and imprisoned may be considered to be COs.”

“In fact, the Monitoring Committee of the Council of Europe stated in 2002 that "no available information enables the

rapporteurs to believe that steps were taken towards the pardoning of conscientious objectors".[19] In addition, according to a report issued by the Council of Europe in 2001, COs serve prison sentences or serve in disciplinary battalions.[20]"

Källa: Quaker Council for European Affairs (2005) The Right to Conscientious Objection in Europe, <http://www.wri-irg.org/co/rtba/azerbaijan.htm>

"According to Taisiya Gordeeva of the NGO, Soldier's Mothers Association of Azerbaijan, some 2,600 individuals were in prison for evading military service in 2002 (Eurasianet.org 13 Dec. 2002). War Resisters International also reported this figure and noted that "nothing is known about [the detainees'] reasons of avoiding military service" (WRI 31 Oct. 2002)."

"In November 2002, Rafiq Aliyev of the Azerbaijani Committee for Work with Religious Structures stated that 2,000 draft-aged members of the Jehovah's Witness, Krishna and Protestant faiths were to be designated military evaders should they fail to respond to the military draft (ANS 1 Nov. 2002). WRI noted, however, that there were no cases of imprisoned conscientious objectors as of 31 October 2002 (31 Oct. 2002), and the Research Directorate did not find reports of arrests occurring after Aliyev's announcement. A draft alternative service law was reportedly scheduled for implementation in 2002 (WRI 31 Oct. 2002; Azernews 3-9 Oct. 2001; Zerkalo 31 July 2002); however, its passage into law was not reported among the sources consulted."

"Incidents of individuals paying authorities to avoid criminal charges for draft evasion were not found among the sources consulted by the Research Directorate. Taisiya Gordeeva told Radio Free Europe/Radio Liberty (RFE/RL) that, although military conscripts are required to serve at least two years, it is possible for those with the means "to buy their way out of conscription" (11 Nov. 2002). The act of purchasing release from military service obligations was also mentioned in a Zerkalo article concerning the introduction of alternative service legislation in 2002 (31 July 2002)."

Källa: Immigration and Refugee Board of Canada (2003-03-31) Azerbaijan: Consequences of military service evasion; possibility of making payments to avoid criminal charges, <http://www.unhcr.org/refworld/docid/3f7d4d57e.html>

“Article 321. Evasion serving in military

321.1. Evasion without the lawful grounds from next appeal on military service or from an appeal on mobilization, with a purpose of evasion from serving in military â “

is punished by imprisonment for the term up to two years.

321.2. The same act committed in wartime â “

is punished by imprisonment for the term from three up to six years.”

[...]

“Article 334. Desertion

334.1. Desertion, that is autocratic absence of a military man from military unit or places of service, or not returning (absence) to a place of service for over three months, as well as autocratic absence from military unit or places of service, or not returning (absence) to a place of service with a view of evasion from serving in military, irrespective of duration â “

is punished by imprisonment for the term from three up to seven years.

334.2. Desertion with a weapon, supplies or explosives entrusted on service, without purpose of their plunder, as well as desertion committed by group of persons â “

is punished by imprisonment for the term from five up to eight years.”

334.3. The acts provided by articles 334.1 and 334.2 of the present Code, committed in wartime or fighting conditions â “

is punished by imprisonment for the term from five up to ten years.

NOTE: The person who for the first time has committed acts, provided by articles 334.1 of the present Code, can be released from a criminal liability if of these acts was committed on consequence of confluence of heavy circumstances.”

Källa: Criminal Code of the Azerbaijan Republic
[Azerbaijan], 1 September 2000,
<http://www.unhcr.org/refworld/docid/4417f82d4.html>

- *"Legislation and administrative practice concerning conscription, draft evasion and desertion; right to alternative service is established in constitution, but has not been transposed into law; possibility of draft evasion by means of bribery; returnee from Germany and convert to Christianity would be considered an outsider in the army and thus face risk of ill-treatment and torture by other soldiers and of being commissioned to "dangerous units" (expert opinion, in German)[Texten hämtad från Ecol]*"

Källa: Transkaukasus Institut (2006-08-20) Azerbaijan:
"Stellungnahme vom 20.8.2006 an VG Ansbach - AN 15 K
06.30435 –",
[http://www.ecoi.net/file_upload/6_1180447405_8660aze.p
df](http://www.ecoi.net/file_upload/6_1180447405_8660aze.pdf)