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Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Overview

The Constitution of the Republic of Azerbaijan provides the following directives regarding service in the armed forces:

Article 76. Defense of Homeland.

Defense of Homeland shall be the duty of every citizen. Citizens shall serve in the armed forces according to the order specified by the Law. If serving in the armed forces runs counter to a Person's convictions then active military service can be replaced by an alternative one in the cases specified by the Law. (Azerbaijan 1995)

A 30 December 2014 article from the Azeri Press Agency (APA), an Azerbaijan-based independent information agency (APA n.d.), indicates that there is a "law on military duty and military service" and that according to the Chairman of the Parliament's Defence and Security Committee, this law, amended on 30 December 2014, includes "improvement of military registration" and "articles on persons not to be recruited into the army and those ineligible for military service" (APA 30 Dec. 2014). Translated excerpts of this law are attached to this response.

Sources indicate that Azerbaijan requires men between the ages of 18-35 to perform military service (Radio Free Europe 21 Feb. 2012; US 16 May 2016). Sources indicate that the duration of compulsory military service is 18 months, and 12 months for "university graduates" (ibid.; EBCO n.d.b).

The European Bureau for Conscientious Objection (EBCO), an umbrella organisation for national associations for conscientious objectors which serves to lobby "European governments and institutions for the full recognition of the right to conscientious objection to military service" (EBCO n.d.a), indicates that conscription is enforced in Azerbaijan (EBCO Oct. 2015, 35). Sources report that President Ilham Aliyev issued conscription orders in September 2014 (Trend 10 Sept. 2014); in May 2015 (APA 29 May 2015); and in March 2016 (Report News Agency 1 Apr. 2016). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In its annual report on conscientious objection to military service, EBCO states that according to the Military Balance 2015 [1], information on the number of conscripts in the Azerbaijani military was not known in 2015 (EBCO Oct. 2015, 39). Further and corroborating information on the numbers of conscripts in the Azerbaijani military could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Registration for Military Service

A 2014 APA article states,

[a]ccording to article 28.6 annexed to the law [on military duty and military service], military cards are given to citizens drafted to active military duty, ... citizens registered as [ineligible] for active military service in both peacetime and wartime, [and those] transferred from active military duty to reserve under the decision of the military commissariat (APA 30 Dec. 2014).

For further information, see the translation of Article 28.6 of the Law of the Republic of Azerbaijan on Military Duty and Military Service attached to this response.

In its Country Reports on Human Rights Practices for 2015, the US Department of State reports that in Azerbaijan, men of draft age are legally required to register with military authorities before traveling abroad (US 13 Apr. 2016, 24). Further and corroborating information on procedures and documents required to register for military service could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Alternative Service for Conscientious Objectors

In a submission to the UN Human Rights Committee in 2014, Azerbaijan notes that the constitution allows for alternative civilian service for those whose beliefs do not allow them to serve in the military in "cases prescribed by the law," however, such a law "has not been adopted so far" (Azerbaijan 22 Dec. 2014, 38). In the same submission, Azerbaijan indicates that, given the absence of legislation regulating alternative service, conscientious objectors are conscripted (ibid.). Amnesty International (AI) states that "while Azerbaijan's [c]onstitution provides for alternative service, no appropriate legislation has been enacted to ensure the enforcement of the right to conscientious objection" (AI 14 May 2013). Similarly, the US Commission on International Religious Freedom's (USCIRF) Annual Report 2015 indicates that when Azerbaijan became a member of the Council of Europe in 2001, it promised to adopt a law on alternative service within two years, but that this law has not been enacted (US 30 Apr. 2015, 141). EBCO states that in Azerbaijan "there is no right to conscientious objection" (EBCO, n.d.b) and that there is no alternative civilian service available (ibid. Oct. 2015, 38). Azerbaijan's submission to the UN Human Rights Committee in 2014 notes that "in accordance with established practice in [the]

Armed Forces," conscientious objectors are appointed to positions that are "not related to arms or military equipment within the Military Unit" (22 Dec. 2014, 38).

An article in News.az, a Baku-based online agency that seeks to raise awareness of Azerbaijan in the world (News.az n.d.), quotes a member of the parliamentary Security and Defence Committee, as telling journalists that "alternative service [can] not be considered until [there is] resolution of the conflict with Armenia over Nagorno-Karabakh," and that "there [is] no need to make changes to the rules for conscription" (News.az 16 Feb. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Deferral and Exemptions

3.1 Deferral

Country Reports 2014 indicates that there is no legal recognition ofment of military service for graduate or undergraduate studies, but that military draft boards "commonly granted suchments upon presentation of proof of enrollment" (US 25 June 2015, 24). However, article 18 of the Law on Military Duty and Military Service states the following:

Article 18. Deferment from the conscription

18.1. Deferment from compulsory conscription is given with the decision of regional, city, and state call-up commission under the following bases:

...

18.1.3. to continue education (Azerbaijan 2011).

Freedom Now, a U.S.-based non-profit organization that "works to free individual prisoners of conscience" (Freedom Now n.d.a), notes thatments for military service are "made available for men [who are] enrolled in higher education programs" (ibid. n.d.b). In contrast, an article in Today.az, an Azerbaijan-based English news portal (Today.az n.d.), indicates that a clause onral of military service for students pursuing graduate studies was excluded when a "law on science" was altered, quoting the "parliamentary committee chairman on the issues of science and education" as stating that "it is inappropriate to allow for postponing military service while the country is under war conditions and [a] peace agreement is not signed" (ibid. 17 May 2016). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

For further information onral, including on other grounds forral than education, see the translation of Chapter V of the law of the Republic of Azerbaijan on Military Duty and Military Service, attached to this Response. Information on implementation of grounds forral could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.2 Exemptions

Regarding the possibility of paying a fee for exemption from conscription, in correspondence with the Research Directorate, a representative of the International Fellowship of Reconciliation (IFOR), a global network of non-violence organizations (IFOR n.d.), who regularly provides briefings to the UN Human Rights Committee on issues of military service and conscientious objection, indicated that he has not heard of such an option (IFOR representative 24 May 2016).

Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

For further information on grounds for exemption, see the translation of Chapter V, Article 23 of the Law of the Republic of Azerbaijan on Military Duty and Military Service, attached to this Response.

Information on implementation of the law regarding exemptions, and procedures surrounding exemptions could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.3 Corruption

Country Reports 2015 states that in 2015 "there was a widespread belief that a bribe could [result in] a waiver of the military service obligation" and for a smaller bribe one could "buy assignments to easier military duties" (US 13 Apr. 2016, 28). In February 2015, Turan Information Agency, a Baku-based independent news agency (Turan n.d.), reports that a Deputy Chief doctor of the Sabirabad Central District hospital, who is also the head of the military medical commission tasked with conscription, was arrested for corruption, including allegedly taking bribes for deeming men unfit for military service (Turan 4 Feb. 2015). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Evasion of Military Service

The Criminal Code of the Republic of Azerbaijan (2000) states the following regarding the evasion of military service:

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 -

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

321.2. The same act committed in wartime -

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

...

Article 335. Evasion from military service by causing harm to health or in different way

335.1. Evasion of a military man from military service by causing any harm to health or feigned illness, forgery of documents, or other deceit, as well as refusal from implementing duties of military service -

is punished by restriction on military service for the term up to one year or maintenance to disciplinary military unit for the term up to two years.

335.2. The same acts committed in wartime or fighting conditions -

is punished by imprisonment for the term from three up to five years. (Azerbaijan 2000).

The law of the Republic of Azerbaijan "On Freedom of Religious Belief" further states:

Article 4. Legal Equality of Persons Irrespective of their Religious Beliefs

...

No one shall have the right to refuse or decline to fulfil obligations determined by the law for his/her religious beliefs. Changing performing one duty by another for religious motives is permitted only in cases stipulated by the legislation of the Republic of Azerbaijan" (ibid. 1992).

4.1 Response to Evasion of Military Service by Authorities

EBCO states that conscientious objectors in Azerbaijan are "prosecuted, imprisoned and ill-treated" (EBCO n.d.b). Similarly, according to the European Association of Jehovah's Christian Witnesses (EAJCW), a charity "that assists the adherents of the faith of the Jehovah's Witnesses in various areas of the world" (EAJCW 17 Dec. 2015, 2), "Azerbaijan continues to harass, prosecute, and imprison" conscientious objectors (EAJCW 17 Dec. 2015, 13)[2]. Without providing further information, the IFOR representative indicated that there is "a trickle of cases of imprisonment and repeated imprisonment of conscientious objectors" but that the practice seems "haphazard" (IFOR 24 May 2016).

Information on the ability of the Azerbaijani authorities to track military service evaders and statistical information on the number of people convicted for draft evasion could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4.2 Cases of Enforcement of Penalties for Military Service Evasion

Sources report the following cases whereby people have been punished for evasion of military service:

Bakhtiyar Hajiyeu, an activist and former parliamentary candidate, was sentenced to two years in prison for draft evasion on 18 May 2011 (The New York Times 18 May 2011; IWPR 19 May 2011; Freedom Now n.d.b). Sources indicate that he had told authorities that he wanted to perform alternative service (ibid.; EBCO n.d.b). Freedom Now indicates that his appeals were rejected, that his requests for parole were denied on three occasions, and that he was released early by order of the Supreme Court for good behaviour on 4 June 2012, after serving 15 months in prison (Freedom Now n.d.b). Sources further indicate that he was beaten and threatened with rape (ibid.; EBCO n.d.b). Sources indicate that he was arrested because of his involvement in the organization of an anti-government protest (Freedom Now n.d.b) or "on charges ... [that were] politically motivated" (IWPR 19 May 2011).

Sources report that Fakhraddin Mirzayev was sentenced to one year in prison (EAJCW 17 Dec. 2015, 14; US 30 Apr. 2013, 4). According to USCIRF, the Jehovah's Witness was given the sentence in September 2012 (ibid.). The EAJCW notes that he was convicted under article 321.1 of the Criminal Code (EAJCW 17 Dec. 2015, 14). The Norwegian Helsinki Committee, a Norway-based human rights organization (Norwegian Helsinki Committee n.d.), indicates that he lost two appeals, but was amnestied as part of a large prisoner amnesty in May 2013 (ibid. 2015, 54).

Sources indicate that Kamran Mirzayev received a nine month prison sentence for military service evasion on 12 March 2013 (ibid.; EAJCW 17 Dec. 2015, 14). According to the Norwegian Helsinki Committee, Mirzayev was a Jehovah's Witness (Norwegian Helsinki Committee 2015, 54). The same source notes that his appeal was rejected but that he was released on 20 June 2013 (ibid.). According to EAJCW, his release was part of a "general amnesty" (EAJCW 17 Dec. 2015, 14).

According to the Norwegian Helsinki Committee, Kamran Shikhaliyev [Shikhaliev], a Jehovah's Witness, was conscripted against his will in October 2013 (Norwegian Helsinki Committee 2015, 54). The US International Religious Freedom Report 2014 states that he was sentenced to a year of service in a military disciplinary unit (US 14 Oct. 2015, 7). According to the same source, he lost his court appeal of the sentence in August 2014 (ibid.). According to Forum 18 News Service (Forum 18), a Christian initiative that "provides original reporting and analysis on violations of freedom of thought, conscience and belief" (Forum 18 n.d.), Shikhaliev was maltreated after his forced conscription, and "forcibly conscripted and then punished" for evading military service (ibid. 19 Nov. 2015). The same source indicates that Shikhaliev was convicted first in 2014, and again on 18 August 2015, and his appeals were rejected (ibid.). The IFOR representative also noted that Shikhaliev received a sentence of one year in a disciplinary military unit for evasion of military service under article 335.1 of the Criminal Code in April 2014, and received a repeated sentence in 2015 (IFOR 24 May 2015).

AI reports that Jabbar Savalan, a university student and political activist who had earlier been imprisoned on "fabricated drug charges," was conscripted on 30 April 2012, without a medical examination or the required 10 day notification of conscription (AI 3 May 2012). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In December 2014, Turan Information Agency reported that, in spite of having been declared unfit for military service, Miraga Abbasov, a political activist, was arrested for 25 days on charges of resisting arrest and evading military service (Turan 19 Dec. 2014). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4.3 Penalties for Desertion

The Criminal Code of the Republic of Azerbaijan states the following:

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 -

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 -

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 -

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. (Azerbaijan 2000)

Information on statistics on conviction for desertion, or cases of desertion and treatment of deserters could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Military Balance is an "annual assessment of global military capabilities and defence economics" (IISS n.d.a), produced by the International Institute for Strategic Studies (IISS), an independent organisation focused on promoting "the adoption of sound policies to further global peace and security" (IISS n.d.b).

[2] Based on their beliefs, Jehovah's Witnesses "do not go to war" (Jehovah's Witnesses n.d.)

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Internet sites, including: Agence France Presse; Azerbaijan - Ministry of Justice; Azerbaijan.az; Azernews; Azerbaijan International; Azerbaijannews; Azerbaijantoday; AZTV; BBC; Council of Europe - European Court of Human Rights; "Doctrine" Journalists' Military Research Centre; ecoi.net; Eurasianet; European Union - PRADO; Factiva; Freedom House; Human Rights Quarterly; Human Rights Watch; International Crisis Group; IRIN; Jane's Intelligence Review; Journal of Refugee Studies; Keesing's Document Checker; Metbuat; Milli Majlis [Parliament]; News.az; Norway - Landinfo; Post-Soviet Armies Newsletter; Radio France Internationale; Transparency International; United Nations - Development Program, Office of the High Commissioner for Human Rights, UNHCR, Refworld, Reliefweb; War Resisters' International.

Attachment

Azerbaijan. 2011. The Law of the Republic of Azerbaijan on Military Job and Military Service. Excerpts translated by the Translation Agency of Ontario. [Accessed 20 May 2016]

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