

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



Contact: Abel Campos  
Tel: 03 88 41 26 48

Date: 14/06/2013

**DH-DD(2013)674**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1179 meeting (24-26 September 2013) (DH)

Item reference: Communication from a NGO (The European Association of Jehova's Christian Witnesses) (13/05/13) in the Bayatyan group of cases against Armenia (Application No. 23459/03)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

\*\*\*\*\*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1179 réunion (24-26 septembre 2013) (DH)

Référence du point : Communication d'une ONG (The European Association of Jehova's Christian Witnesses) (13/05/13) dans le groupe d'affaires Bayatyan contre Arménie (Requête n° 23459/03)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

---

DH-DD(2013)674 : Communication from a NGO in Bayatyan group v. Armenia.

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.



10 May 2013

Department for the Execution of Judgments of the ECHR  
Directorate General of Human Rights and Legal Affairs  
Council of Europe  
F-67075 Strasbourg Cedex



Object: *Bayatyan Group of Cases Against Armenia*  
**Application no. 23459/03** (Final Judgment of 7 July 2011)

Dear Registrar,

We are writing pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments. We wish to respond to Communication No. DH-DD(2013)269, 13 March 2013 from Armenia concerning the *Bayatyan v. Armenia* group of cases which will be considered at meeting 1172 DH (4-6 June 2013).

On 2 May 2013 the National Assembly of Armenia adopted amendments to the Law on Alternative Service. Since the regulations for these amendments' have not yet been adopted, we must wait to see how the law is implemented and whether it fully complies with European standards as defined by the Council of Europe.

We would like to draw your attention to the serious prejudice that the 32 imprisoned conscientious objectors who are Jehovah's Witnesses will suffer as a result of an illegal provision in the amendments. Article 24(3) of the RA Law on Alternative Service now states:

"In the cases foreseen by Article 3 sections 12 and 13 of the Law of Republic of Armenia on "The Implementation of the Republic of Armenia Criminal Code" the term of alternative service prescribed by Article 5 of this Law shall be reduced by the term during which the person has been deprived of freedom as a result of serving criminal sentence or subjection to criminal prosecution."

According to this provision, an imprisoned conscientious objector will be released only if he opts to substitute his remaining term of imprisonment with alternative service which has a 36 month term. For example, if a young man has served 22 months of his 24 month prison sentence, he will be required to serve another 14 months in alternative civilian service, even though he only has 2 months left in his prison sentence.

This provision is not lawful. The amendments to the RA Law on Alternative Service concede that the conviction and imprisonment of conscientious objectors after Armenia became a member of the Council of Europe is unlawful. The amendments, therefore, stipulate that the

## **Department for the Execution of Judgments of the ECHR**

### ***Bayatyan v. Armenia*, No. 23459/03**

#### **Page 2**

criminal conviction of all conscientious objectors convicted after 26 April 2002 shall be expunged and their criminal records cleared.

It follows that the 32 imprisoned conscientious objectors to military service have been prosecuted, convicted and imprisoned and are now are entitled to an immediate release from prison and an unconditional acquittal. They should not have to transfer to alternative service. This has been repeatedly called for by the Council of Europe, the United Nations Human Rights Committee, and the Venice Commission. As established in *Khachatryan and Others v. Armenia* (no 23978/06, 27 November 2012) at paragraph 139, they cannot be kept imprisoned based on amendments to the RA Law on Alternative Service that were not in force when they were convicted. There is simply no lawful basis to keep them imprisoned. Many of these imprisoned young men have applications pending before the European Court of Human Rights for false imprisonment.

Furthermore, it is grossly unfair to insist that as a condition to being released, a conscientious objector who has already been punished and served 22 months of his 24 month prison sentence must now accept the new program of alternative service and serve an additional 14 months in alternative service.

The amendment which insists that they only be released if they accept alternative service punishes the manifestation of their freedom of religion, contrary to Article 9 of the European Convention. It is also contrary to PACE Opinion No. 221 in which Armenia committed itself to release and “pardon all conscientious objectors sentenced to prison terms.” (*Bayatyan v. Armenia*, at §§ 50, 127)

Additionally, having already been wrongly prosecuted and imprisoned for refusing military service and “alternative service”, those currently imprisoned cannot be subjected to a repeat call up for military or alternative service. This is prohibited by the double jeopardy clause (*ne bis in idem*) in Article 4 of Protocol No. 7 of the European Convention and Article 14(7) of the International Covenant on Civil and Political Rights.

In this regard, General Comment No. 32, of the United Nations Human Rights Committee states: “Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.” (CCPR/C/GC/32, at § 55)

The United Nations Special Rapporteur on Freedom of Religion or Belief stated in her report on Turkmenistan: (A/HRC/10/8/Add.4, at § 68)

“The Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah’s Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of “*ne bis in idem*”, as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of each country.” [Emphasis added]

**Department for the Execution of Judgments of the ECHR**

***Bayatyan v. Armenia, No. 23459/03***

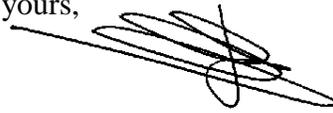
**Page 3**

Thank you in advance for considering the above. We hope that this information will be useful as you monitor the execution of the Grand Chamber's judgment in *Bayatyan v. Armenia*. We would be pleased to provide you with any further information or documents that may be required.

Sincerely yours,



Paul S. Gillies



Marc Hansen

c. Venice Commission