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LL.M. Program
ԻՐԱՎԱԳԻՏՈՒԹՅԱՆ ՄԱԳԻՍՏՐՈՍԻ ԾՐԱԳԻՐ

TITLE

The decision not to extend further processing of the established procedure of the RA “Law on citizens who failed to complete compulsory military service through violation of the established procedure” and its legal and economic impact.

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NUMBER OF WORDS

9059

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Introduction

According to the Republic of Armenia (hereinafter the RA) Law on Military Service and the Status of a Serviceman, compulsory military service is the basic form of the constitutional obligation of citizens of the Republic of Armenia to participate in the defense of the country. According to the law, the term of service of ordinary personnel is 24 months.¹ The maximum age limit to perform a compulsory military system is 27 year old for the RA citizens.² If someone fails to implement his obligations then a criminal case is instituted in Armenia and that person is wanted under the Armenian legislation.³ If someone is 27 or older, and has not served in the Armenian army, then "The Law of the Republic of Armenia on citizens who failed to complete compulsory military service through violation of the established procedure (hereinafter the law)" shall be applicable⁴. Such citizens qualify for exemption from compulsory military service or will be granted an extension in conformity with the established procedure if they are over 27 years of age, paying a unilateral fine of 3.600.000 AMD (General procedure). There are other options also applicable per the regulations of the same law. *However, the above-mentioned Law was valid until 31 December 2019 year and the extension of the law will not be processed further. Thus any citizen 27old or older should have applied for this procedure by 31 December 2019. The RA national Assembly decided not to precede this timeframe further.*

If this situation continues further, it will have consequences to the number of people who would have an opportunity to pay the above-mentioned fee and not be subject to criminal prosecution. The decision not to extend further processing of the law will have **legal and economic impacts for the country and for the people who will be affected**. Taking into consideration that there is a shortage in research connected to assessment of the legal and economic costs of the decision not to extend the timeframe of the law this paper is **set out to analyze this decision and its legal and economic consequences**.

¹ See, "The RA Law on military service and status of military service men", Article 5, entered into force on 16.12.2017.

² See, "The RA Law on military service and status of military servicemen", Article 5, entered into force on 16.12.2017.

³ See, See, "The RA Criminal Code" Article 327, entered into force on 01.08.2003.

⁴ See "The Law of the Republic of Armenia on citizens who failed to complete compulsory military service through violation of the established procedure", Article 1, entered into force on 2003.

The main stakeholders of this decision are the people who failed to complete compulsory military service. Hence, the author will discuss whether a compulsory military system is the best option for the Republic of Armenia in the light of international best practice as the first sub-issue of the paper. As a second sub-issue of the paper the author will discuss the phenomenon of draft evasion in and outline main reasons why people are trying to avoid compulsory military service. Such topic is interconnected with the main issue of the paper, as citizens who failed to complete compulsory military service are those who evading compulsory military draft.

Armenia is one of most militarized countries of the world. Huge percentage of the state budget is allocated to the military system, focusing on maintaining a compulsory military system. Military Expenditure in Armenia is expected to reach 420.30 USD Million by the end of 2020, according to Trading Economics global macro models and analysts' expectations. In the long-term, the Armenia Military Expenditure is projected to trend around 451.30 USD Million in 2020.⁵ In such a situation, it is obvious that the state budget is the sole source for the finance, for the military service. Previously, people who were 27 years old or older, who have not served in the Armenian army were exempted from compulsory military service or granted an extension in conformity with the established procedure, paying a unilateral fine of *3.600.000 AMD*. There are other options also applicable as per the regulations of the "Law on citizens who failed to complete compulsory military service through violation of the established procedure". However, the timeframe of the applicability of this law is expired and the state budget will be deprived of substantial financial contributions.

The decision not to extend the duration of the "Law on citizens who failed to complete compulsory military service through established procedure, will have a negative economic **impact on** both the RA economy and **people** who enjoyed the privileges of that law. Since 2003, the RA treasury has received \$24.5 million USD. The decision not to extend the duration of the mentioned law will deprive the RA treasury from its additional revenues. Armenian, whose military expenditures are almost 20 percent of the RA budget, undoubtedly, needs additional revenues. Non-extension decisions will eliminate such revenues.

⁵ See, "Armenia Military Expenditure", the Armenian forecast, www.tradingeconomics.com, last visited on 02.03.2020, the link is available at <https://tradingeconomics.com/armenia/military-expenditure>

This paper will also outline the legal cost which the RA citizen will bear, as a consequence of not-extension decision of the mentioned law. Specially, dedicated chapter will analyze possible legal costs which citizen will bear as a result of non-extension decision. The capstone will strive to find out whether criminal responsibility will be sufficient measure to deter such cases or not.

The First Chapter of the paper will discuss the current Military Service of the RA, and examine whether a compulsory military system is the best option for the Republic of Armenia in the light of international best practice. Different models of compulsory and non-compulsory military services will be provided. In the end of Chapter the author will provide an opinion on which system is the best in Armenia. **The Second Chapter** will discuss the phenomenon of draft evasion and underline the reasons why people are avoiding compulsory military service. **The Third Chapter** will discuss the economic costs of the decision not to extend the timeframe of the above-mentioned law. As general information the author will present info graphics that are showing military expenses. Then the author will examine the economic impacts which the RA taxpayers will face because of non-extension of the Law. **The Fourth Chapter** will analyze the legal costs of the decision not to extend the duration of the above-mentioned law. It will outline the legal consequences which people are facing failing to complete compulsory military service. It will also analyze whether criminal punishments which are stipulated in the RA Criminal Code are proportionate to the offence and challenge their effectiveness. Examples from international best practice will be presented in this Chapter. If relevant the author will make recommendations in the end of the Chapters. **Conclusion** will highlight the main findings of the paper.

Chapter 1

The overview of the RA Military Service. What is the best option for the Republic of Armenia to have a compulsory or non-compulsory military system?

Military service is a special type of state service in armed forces or other troops. There are two types of military service: basic and reserve. Basic military service consists of **compulsory military service** and **contract enlisted service**. Compulsory military service is the military service of rank and file and officer corps, as well as of students of military educational institutions.⁶ It is 24 months for rank and file, and 2-3 years for reserve officers.⁷ Contract enlisted service is the voluntary military service which is 3-5 years for officer corps and non-commissioned officers, and 2-3 years for rank and file. The age of conscription in Armenia is 18-27 years.

Below will be listed the reasons upon which the citizen is exempt from the compulsory military service.

1. The citizen recognized by the national call-up commission as unfit for military service due to health conditions (by being removed from military register), or the citizen recognized as unfit for military service in peaceful time (by registering in the reserve),
2. The citizen, whose father (mother) or brother (sister) lost his (her) life (deceased) during the defense of the Republic of Armenia or during performance of their military duties in the armed forces or other troops, and he is the only male child of the family,

⁶ See, “The RA Law on military service and status of military servicemen”, Article 5, entered into force in 2017.

⁷ See, “The RA Law on military service and status of military servicemen”, Article 3, www.arlis.am, entered into force on 17 November 2017, the link is available at <https://www.arlis.am/DocumentView.aspx?docid=117633>

3. Citizens who are exempt from service in specific circumstances upon the decree of the Government of Armenia,
4. The citizen who had served the compulsory military service in the armed forces of foreign states prior to admitting the RA citizenship,
5. The citizen holding an academic degree (Candidate of Science or Doctor of Sciences) in case he is engaged in professional, scientific or pedagogical activity.⁸

Provided information showed that for the RA male citizens the military system is compulsory. Armenia is not the only country where military service is compulsory for its citizens. There are several nations that have compulsory, or required military service. Those nations are Bermuda, Burundi, Cape Verde, Colombia, France, Kuwait, Mali, Mauritania, Singapore, Sweden, Thailand, and Venezuela. The United States does not have compulsory military service, but it is also included in this list because all males between the ages of 18 and 28 must register with the Selective Service to be drafted if needed.⁹

There are many nations that have compulsory military service up to one year. Those nations are Brazil, Estonia, France, Greece, Qatar, Sweden, and Turkey.¹⁰

The nations that require military service of longer than 18 months include Armenia, Angola, Central African Republic, Chad, Cuba, Eritrea, Equatorial Guinea, Guinea, Guinea-Bissau, Iran, Israel, North Korea, South Korea, Kyrgyzstan, Libya, Mali, Mauritania, Mozambique, Myanmar, Niger, Sao Tome and Principe, Senegal, Singapore, Somalia, Syria, Sudan, Tajikistan, Thailand, Turkmenistan, Togo, and Yemen.¹¹

In order to understand which system is the best option for the Republic of Armenia, it is necessary to discuss the advantages and disadvantages of the each system. French scholar Jean Jacques Rousseau argued vehemently against professional armies, believing that it was the right and privilege of every citizen to participate in the defense of the whole society, and a mark of

⁸ The RA Law on military service and status of military servicemen”, Article 73, www.arlis.am, entered into force on 17 November 2017, the link is available at <https://www.arlis.am/DocumentView.aspx?docid=117633>

⁹ See, “Countries with mandatory military service 2020” ,World Population Review, 17, February 2020,last visited on 03.03.2020, the link is available at <https://worldpopulationreview.com/countries/countries-with-mandatory-military-service/>

¹⁰ See, “Countries with mandatory military service 2020” ,World Population Review, 17, February 2020,last visited on 03.03.2020, the link is available at <https://worldpopulationreview.com/countries/countries-with-mandatory-military-service/>

¹¹ See, footnote 7

moral decline to leave this business to professionals. He based this belief upon the development of the Roman Republic, which came to an end at the same time as the Roman army changed from a conscript to professional force.¹² Niccolò Machiavelli argued strongly for conscription, seeing the professional armies as the cause of the failure of societal unity in Italy.¹³

Below are enumerated some prominent examples from the international best practice. In the first example the author is discussing the Israeli Army, which is enlisted in an obligatory manner. The second example is the United States of American's Army which is recruiting in a voluntary basis.

Israel is a country with a mandatory military system. From the moment of Israel's birth, the army has occupied a central role in society. In 1948, with the country in the throes of its War for Independence, the interim government ordered the establishment of one unified military.¹⁴ According to the 1949 **Israeli Security Service Law**, conscription to military service is compulsory for all Israelis who turn 18. Only two groups are exempt from mandatory military service: the ultra-Orthodox and Arab Israelis. Together these groups constitute over 30% of the Israeli population and, as their birth rate is significantly higher than other groups within Israel, they are set to constitute a whopping 60% of the Israeli population by 2050. The implications of these groups' continued absence from Israeli military conscription cannot be ignored.¹⁵ It is interesting that 65 percent of the population finds a way to avoid military service without suffering any consequence.¹⁶ Israeli leaders haven't countered these trends but rather encouraged them. They claim that the current threat level facing the state does not justify the great expense of sustaining a mass army. They fear that reversing the conscription exemption for ultra-Orthodox Jews and Arab Israelis, or enforcing military enlistment on those who evade it, would only lead to unnecessary expenses and would be operationally ineffective.¹⁷

¹² See, "Social Contract" Rousseau, J-J, Chapter "The Roman Comitia", 1762, Jovene Publisher.

¹³ See, "Machiavelli, Marketing and Management", Phil Harris; Andrew Lock; Patricia Rees, Routledge Publisher, 2000, page 10.

¹⁴ See, "The Israel Defense Forces", Joshua Mitnick, www.myjewishlearning.com, last visited on 03.03.2020, the link is available at <https://www.myjewishlearning.com/article/the-israel-defense-forces/>

¹⁵ See, "The myth of compulsory military service in Israel", Avi Jager, 18 October 2016, last visited on 03.03.2020, the link is available at <https://www.jpost.com/Opinion/The-myth-of-compulsory-military-service-in-Israel-569779>

¹⁶ See, footnote 16.

¹⁷ See, "The myth of compulsory military service in Israel", Avi Jager, 18 October 2016, last visited on 03.03.2020, the link is available at <https://www.jpost.com/Opinion/The-myth-of-compulsory-military-service-in-Israel-569779>

In an attempt to give all Israelis a chance to perform national service, the army offers several tracks for the country's different population groups. The military service is held in three different tracks, regular service, permanent service and reserve service. Israel is one of only a few nations that conscript women or deploy them in combat roles, although in practice, women can avoid conscription through a religious exemption and over a third of Israeli women do so.¹⁸

Nowadays Israel has the most technologically advanced military on Earth, because 4.5 percent of its GDP Israel spends on research and development which is almost twice the Organization for Economic Cooperation and Development average. Of that amount, about 30 percent goes to products of a **military nature**. By comparison, only 2 percent of German R&D and 17 percent of US R&D is for the military. Another major contribution is the culture of innovation and creativity in Israel. Israelis are more willing to take risks than other nations.¹⁹

Over the last few years, the IDF adopted some of the most revolutionary policies in its short history, meant to optimize manpower and enhance professionalism. The military's drafting agenda has transformed overwhelmingly into an army focused less on conventional warfare capabilities, and more on rocket defense systems and cyber capabilities. The common denominator of these changes is the deliberate prioritization of knowledge and professionalism over large numbers of soldiers.²⁰

The United States of American is a country where the army is recruiting on a voluntary basis.²¹ Even though the recruitment procedure in the USA is taking place on a voluntary basis, however, it should be noted that the US army is regarded as one of the most powerful armies of the world. **Conscription in the United States**, commonly known as **the draft**, has been employed by the federal government of the United States in five conflicts: the American Revolutionary War, the American Civil War, World War I, World War II, and the Cold War (including both Korean War and Vietnam War). The fourth incarnation of the draft came into being in 1940 through the

¹⁸ See, "Abuse of IDF Exemptions" The Jewish Daily Forward, 16 December 2009, last visited on 03.03.2020. The link is available at <https://forward.com/news/121173/abuse-of-idf-exemptions-questioned/>

¹⁹ See, "Why Israel has the most technologically advanced military on the Earth", Yaakov Katz, January 29, 2017, last visited on 03.03.2020, the link is available at <https://nypost.com/2017/01/29/why-israel-has-the-most-technologically-advanced-military-on-earth/>

²⁰ See, "The myth of compulsory military service in Israel", Avi Jager, 18 October 2016, last visited on 03.03.2020, the link is available at <https://www.jpost.com/Opinion/The-myth-of-compulsory-military-service-in-Israel-569779>

²¹ See, Bailey, Beth, "America's Army: Making the All-Volunteer Force", Belknap Press; November 23, 2009.

Selective Training and Service Act. It was the country's first peacetime draft.²² Some people in the United States argued that the US army is composed of low income people as they do not have proper education and had to go to the army in order to cover their basic needs.

Above mentioned examples are showing that both mandatory and non-mandatory enlisted military systems can achieve significant successes if they are governing properly. **However, in case of permanent threats to national security it is better to have mandatory military service. In the case of Armenia the role model of military service can be Israeli army.** As both nations suffered from permanent conflicts and devastating wars, it would be unrealistic to move into the non-mandatory military system.

Chapter 2

Draft evasion in the Armenian reality. Why people are trying to avoid compulsory military service?

Conscription is the mandatory enlistment in a country's armed forces, and is sometimes referred to as "the draft." The origins of military conscription date back thousands of years to ancient Mesopotamia, but the first modern draft occurred during the French Revolution in the 1790s.²³ Before the existence of a warrior class or military elite, Babylonian kingdoms employed a system of conscription called *ilkum*, in which laborers owed military service to royal officials for the right to own land. Similar systems of military conscription were popular in feudal Europe throughout the Middle Ages. Land-owning peasants often were required to provide one man per family for military duty. The first universal draft, or mass conscription of young men regardless of social class, took place in France during the French Revolution.²⁴

²² See, Holbrook, Heber A. *The Crisis Years: 1940 and 1941* October 19, 2012, page 1.

²³ See, "The US Government Conscription, www.history.com, retrieved on 13.10.2017.

²⁴ See, footnote 24.

Because of personal beliefs and other psychological reasons, sometimes people are trying to avoid a compulsory military service. This phenomenon is called a draft evasion which is an attempt to elude a government-imposed obligation to serve in the military forces of one's nation. Sometimes draft evasion involves refusing to comply with the military draft laws (formally known as conscription laws) of one's nation.²⁵ Such evasion is generally considered to be a criminal offense, and laws against it go back thousands of years.²⁶

Young people have engaged in a wide variety of draft evasion practices around the world.²⁷ One type of draft avoidance consists of attempts to follow the letter and spirit of the draft laws in order to obtain a legally valid draft deferment or exemption.²⁸ Another type consists of attempts to circumvent, manipulate, or surreptitiously violate the substance or spirit of the draft laws in order to obtain a deferment or exemption.²⁹

Draft evasion is a widespread phenomenon in the Armenian reality as well. The reasons are outnumbered, but they are some common tendencies which will be discussed in this Chapter. **The first reason** why people are trying to avoid draft is Nagorno Karabagh conflict. This conflict started right after the collapse of the Soviet Union and continues today. Even though ceasefire agreement concluded in 1994, however widespread violations of that agreement take place regularly. In 2016 April four days war broke between Nagorno Karabagh and Azerbaijan when both side suffered from significant human and financial loses. After four days war the risk of military confrontation remains very high. Such situation forced citizens to find ways to avoid military draft. Sometimes, families are moving to the other countries in order not serve in the army. Giving a bribe to the public officials and doctors is another way to avoid military service.

The second reason is criminal subculture exists in the Army. Human rights defenders are considering that not only soldiers, but also generals of the army are not following to the laws and regulations of the country; instead the relationships between officials and soldiers generally are governed by the criminal norms. According to cultural anthropologist Aghasi Tadevosyan in the

²⁵ See, Beare, Margaret E., "Encyclopedia of Transnational Crime and Justice", Sage Publications, p. 110, 2012.

²⁶ See, Christ, Matthew, "The Bad Citizen in Classical Athens", University of Cambridge Press, pp. 52–57, 2006.

²⁷ See, Prasad, Devi; Smythe, Tony, "Conscription: A World Survey: Compulsory Military Service and Resistance to It," London, 1968.

²⁸ See, Anna M., "Talking Conflict: The Loaded Language of Genocide, Political Violence, Terrorism, and Warfare", Santa Barbara, 2016, pp. 115-116.

²⁹ See, Kusch, Frank, "All American Boys: Draft Dodgers in Canada from the Vietnam War", Praeger Publishers, 2001, pp. 70–74.

army boys who are bearing criminal subculture are predominant and well-respected.³⁰ As a result, such situation sometimes ended with tragic events. For example, 13 military personal in the Armenian armed forces were killed in the first two months of 2020 under peaceful conditions.³¹ Even the RA Prime Minister Nikol Pashinyan admitted the fact that there is criminal sub culture in the army and stated that government will remain focused on maintain discipline in the army and weeding out all aspects of criminal subculture.³²

The third reason of draft evasion is low public trust on military justice. Torture and other ill-treatment have been used against witnesses and suspects by the Military police.³³ This is due to the lack of legislative clarity concerning the functions and powers of the Military police in disciplinary cells or in battalions, lack of civilian oversight mechanisms. Torture and other ill-treatment have also been reported in the military; however, no military commander has been held liable until now. There is no civilian monitoring in the detention centers of the National Security Services.³⁴

The fourth reason of draft evasion is endemic corruption in the military system. The corruption risks in Armenian defense sector were assessed as part of Defense and Security Program Government Defense Anticorruption Index 2015 global study. The highest risk areas in the RA army are finance, operations, and procurement. According to the results, the Armenian government classifies a vast majority of military procurement procedures and decisions and only reveals very general information about defense and budgets.³⁵ Civil society organizations still have limited access to the Ministry of Defense and defense-related information, although the Ministry of Defense has begun to participate in some civil society initiatives. This means that public oversight of and input into defense policy, procurement, and spending priorities is

³⁰ See, “In the army boys who are bearing criminal subculture are predominant and well-respected”, the link is available at <https://www.lragir.am/2020/02/17/518713/>

³¹ See, “Armenian army under more stringent supervision in attempt to avoid military deaths during peacetime”, www.jamnews.net, retrieved on 04.03.2020, the link is available at <https://jam-news.net/armenian-army-under-more-stringent-supervision-in-attempt-to-avoid-military-deaths-during-peacetime/>

³² See, “Pashinyan promises to prosecute those responsible for army death”, www.hetq.am, 17.02.2020, the link is available at <https://hetq.am/en/article/113415>

³³ See, Quarterly report on the human rights situation in the Armenian armed forces (Vol. 3), April 14, 2017, https://peacedialogue.am/en/2017/04/14/hrmf_eng_vol_3/#chapter4.

³⁴ See, “Prevention of torture and other ill-treatment, and right to life”, Joint Submission by a Group of Civil Society Organizations to the UN Human Rights Council 35th Session of the Universal Periodic Review (20 – 31 January 2020).

³⁵ See, “Corruption risks were assessed in Armenia’s defense sector”, www.transparency.am, 17.02.2016, the link is available at <https://transparency.am/en/news/view/1308>

practically non-existent.³⁶ As result of systemic corruption in the military the management of army becomes poor, nepotism is very high and resulted non-merit based recruitment and formats criminal-oligarchic system. Such tendencies lower public trusted in army and creates incentives for draft evasion. They are numerous cases when people corrupt army officials and doctors in order to avoid serving mandatory military system. Even though, “Velvet revolution” took place in Armenia in 2018 and newly formed government declared the fight against corruption as one of its main priorities, however, the army evidenced very little, cosmetic changes. Most of the officials who served during the time of previous authorities are continuing their service until now. Newly formed government failed to carry out fundamental reforms in the army (such as army personnel vetting with clearly defined criteria). As a consequence, corrupt officials are continuing their terms and public trust on the army remains very low in the society.

The fifth reason is the desire to continue high education in a constant and timely manner. In Armenia High education and compulsory military service somehow contradict each other. All 18 years old citizens have to go to army. At the age of 18 is almost beginning years at the universities for the students. The school system consists of 12 grades, after which the students pass examinations and get university admission. After admission procedure male students have to stop their education and go army. The deferment is possible in exceptional cases and can only be granted by the decision of the RA Government: meaning only limited places are possible. Some students are evading compulsory military service in order to have a chance to continue their education as most of the military compounds lack necessary conditions for proper education.

The sixth reason is the belonging to the particular religious groups. In Armenia there is religious group which is called Jehovah Witnesses. From their perspective serving in the army violates the peaceful nature of the Christian and that Jesus stated that “he who lives by the sword will die by the sword”. They also consider that compulsory military service is incompatible with the love ethic of Jesus and the injunction to love one’s enemies, Likewise, Being a Christian and a soldier was considered irreconcilable. Even though the RA Government adopted a Law on “Alternative Service” in 2003, however, it did not solve this issue completely.

³⁶ See, “Government Defense Anti-Corruption Index 2015”, www.government.defenceindex.org, the link is available at http://government.defenceindex.org/generate-report.php?country_id=6253

Recommendation 1 If the RA Government wants to increase public trust on military system and reduce draft evasion practices, it has to carry out institutional reforms in the Army. Above all, it is necessary to security personnel reforms in military. From author's viewpoint vetting in army is necessity. They are number of corrupted official who are continuing to serve in the military service for a long period. Army is also well-know with officials who committed human rights violations and there is low public trust on Military policy. Taking into consideration such tendencies army's personnel vetting has no alternative. Vetting should be done based on the following criteria.

1. All officials who have connections with criminals and their associates or spreading criminal atmosphere in the army should be removed.
2. All officials who illicitly enriched during their tenures and there is huge disproportionality between their incomes and wealth should be removed.
3. All army officials who committed fundamental human rights violations during their tenure at the army should also be removed from the office.

After personnel vetting it will be possible to increase public trust on army. If army is a place where the law is predominant, human rights are respected, and public has trust on it then fewer cases of corruption will be recorded.

Recommendation 2 It is crucial to create a specialized anti-corruption institution, which will examine the spending on the army and report about possible violations to the relevant stste bodies.

Chapter 3

The Economic costs of the decision not to extend the timeframe of the “Law on citizens who failed to complete compulsory military service through violation of the established procedure”.

In order to understand what are the real costs of the decision not to extend the timeframe of the law it is necessary to look at military expenditures. According to North Atlantic Treaty Organization's (hereinafter NATO) definition military expenditures includes all current and capital expenditures on the armed forces, including peacekeeping forces; defense ministries and other government agencies engaged in defense projects; paramilitary forces, if these are judged

to be trained and equipped for military operations; and military space activities.³⁷ Such expenditures include military and civil personnel, including retirement pensions of military personnel and social services for personnel; operation and maintenance; procurement; military research and development; and military aid.³⁸

Armenia's military expenditure increased by 33% to an estimated \$609 million in 2018, according to the recent findings by the Stockholm International Peace and Research Institute (SIPRI).³⁹ According to the World Bank, in 2018 the Republic of Armenia is the third in the world in terms of military expenditures (20.9 percent of the annual state budget). Only Saudi Arabia (24.6%) and Belarus (31.9%) spent more than Armenia in 2018. According to the same report overall defense expenditures of the Republic of Armenia are 4.8% percent of annual GDP. Military Expenditure in Armenia averaged 264.42 USD Million from 1992 until 2018, reaching an all-time high of 591 USD Million in 2018 and a record low of 49.80 USD Million in 1993.⁴⁰ Defense spending in Armenia increased significantly in 2020, stated in the “Law on state budget for 2020”. Thus, defense spending in 2020 will increase by 25.3% compared to 2018. Last year, the country's military spending amounted to \$ 609 million.⁴¹

Armenia is one of most militarized countries of the world. Huge percentage of the state budget is allocated to the military system, focusing on maintaining a compulsory military system. Military Expenditure in Armenia is expected to reach 420.30 USD Million by the end of 2020, according to Trading Economics global macro models and analysts' expectations. In the long-term, the Armenia Military Expenditure is projected to trend around 451.30 USD Million in 2020.⁴²

After successful examination of military expenditure, it is obvious that the state budget is the sole source for the finance, for the military service. Previously, people who were 27 years old or older, who have not served in the Armenian army were exempted from compulsory military

³⁷ See, “Armenia-Military Expenditure (% of GDP), www.tradingeconomics.com, last visited in 04.03.2020, the link is available at <https://tradingeconomics.com/armenia/military-expenditure-percent-of-gdp-wb-data.html>

³⁸ See, “Trends in world military expenditures, 2018”, Stockholm Peace International Research Institute, the link is available at https://reliefweb.int/sites/reliefweb.int/files/resources/fs_1904_millex_2018.pdf

³⁹ See, “SIPRI report reveals 33% increase in Armenia's military expenditure”, www.tert.am, 29 April 2019, last visited on 04.03.2020, the link is available at <https://www.tert.am/en/news/2019/04/29/expenditure/2985760>

⁴⁰ See, footnote 21.

⁴¹ See, “Defense spending in Armenia to grow by 25.3% in 2020”, 05, December, 2019, www.news.am, last visited on 04.03.2020, the link is available at <https://news.am/eng/news/548294.html>

⁴² See, “Armenia Military Expenditure”, the Armenian forecast, www.tradingeconomics.com, last visited on 02.03.2020, the link is available at <https://tradingeconomics.com/armenia/military-expenditure>

service or granted an extension in conformity with the established procedure, paying a unilateral fine of 3.600.000 AMD. There are other options also applicable as per the regulations of the “Law on citizens who failed to complete compulsory military service through violation of the established procedure”. However, the timeframe of the applicability of this law is expired and the state budget will be deprived of substantial financial contributions. This decision will negatively impact to the economy, as the state budget will be deprived from substantial financial resources.

The paper’s author sent an information request to the RA General Prosecutors Office to check how many people requested to pay monetary fine to the RA budget. According to the data provide by the General Prosecutors Office from 2004 to 2019 10,921 citizens paid monetary compensation. As a result, these citizens were freed from criminal prosecution. As per statistics provided by General Prosecutors Office the state treasury got **13, 396, 000 trillion AMD**.

The paper’s author also sent another information request to the RA Police to check the number of citizens who are under the search because of failure to complete a compulsory military service. According to the statistics provided by the RA Police from 2008 to 2019 the Police **indicted 11, 500 search orders** to find people who avoided compulsory military service.

In a long term perspective 13, 396, 000 trillion AMD is a very huge sum of money for the RA budget taking into consideration that in Armenia poverty rate is 23.5 percent according to Asian Development Bank and the proportion of employed population below \$1.90 purchasing power parity/day in 2019 is 0.3%.⁴³ The decision not to extend the duration of the “Law on citizens who failed to complete compulsory military service through established procedure”, will have a negative economic **impact on** both the RA economy and **people** who enjoyed the privileges of that law. The decision not to extend the duration of the mentioned law will deprive the RA treasury from its additional revenues. Armenian, whose military expenditures are almost 20 percent of the RA budget, undoubtedly, needs additional revenues. Non-extension decisions will eliminate such revenues.

Recommendation 1 Armenia should consider further extending the timeframe of this law and use these additional revenues to build its own military industry. As it is clear from the presented statistics that the military expenditure of the Republic of Armenia is continuing to increase

⁴³ Asian Development Bank’s statistics are available at <https://www.adb.org/countries/armenia/poverty>

dramatically and a huge portion of the state budget, 609 million USD is going to be allocated to the military. It is interesting to note that such a massive amount of money would not go to the military, if Armenia had a military industry and innovation and was able to produce its own arms. Armenia is an arms importing country, which means money is leaving the country for military purposes. Such a strategy will never be beneficial for the country's overall development. Therefore, **it is critical for the Republic of Armenia to consider establishing its own military industry and reduce its dependence from the third countries, in particular from Russia.** In case Armenia has its own military industry, Armenia will be able to not only **to reduce its military expenditures, but also consider exporting arms to the third country.** Hence, using additional money in building of military industry will be beneficial for the countries overall development. The Israeli example is the best model for Armenia, because both countries are not accompanied with the best neighboring countries, but Israel managed to be arms exporting country, unlike Armenia, and reinvest the money in research and innovation and create one of the best militarized economies of the world and reducing the military costs from the state.

Chapter 4

The legal costs of the decision not to extend the timeframe of the “Law on citizens who failed to complete compulsory military service through violation of the established procedure.”

According to the RA legislation if someone is 27 years-old or older, and failed to complete his obligation stipulated in the RA military legislation the criminal case is initiated against that person and that person is wanted by the authorities.⁴⁴ If someone is 27 years old and did not serve in the army, then the regulations of the “Law on citizens who failed to complete compulsory military service through established procedure” starting to apply.⁴⁵ Such citizens qualify for exemption from compulsory military service or will be granted an extension in conformity with the established procedure if they are over 27 years of age, paying a unilateral fine of 3.600.000 AMD (General procedure). There are other options also applicable per the regulations of the same law. However it should be noted that the validity of this has already expired on 31 December 2019.

The compulsory military service can be replaced by an alternative service, the procedure and conditions for the passage of which are established by law.⁴⁶ The Armenian law on the alternative civil service, which came into force on July 1, 2004, was adopted without taking into account the OSCE amendments and the requests of the believers themselves. Therefore, the alternative service is very similar to military service. An alternative service can be carried out by an RA citizen whose “religious confession and beliefs are contradicted only by carrying, preserving and using weapons”, and an alternative labor service can be carried out by that citizen of Armenia, “whose religious denomination contradicts the passage of military service in general”.⁴⁷

As practice showed, previously the RA Law on “Law on citizens who failed to complete compulsory military service through established procedure” created good incentive for the RA citizens to return Armenia, pay the necessary money and be free from a criminal prosecution. According to the statistics the recent extension of the law affected those who turned 27 between 2018 and 1 March 2019 – about 2,000 people. Since 2003, 9,885 people have already taken

⁴⁴ See, “The RA Criminal Code” Article 327, www.irtek.am, Yerevan 2003, last visited on 05.03.2015, the link is available at <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>

⁴⁵ See, “Law on Alternative Service”, Article 6, Yerevan, December 17, 2003, amended in 2013.

⁴⁶ See, “Law on Alternative Service”, Article 5, Yerevan, December 17, 2003, amended in 2013.

⁴⁷ See, footnote 29.

advantage of the opportunity to pay a fine and avoid criminal prosecution for evading military service. As a result, the state treasury has received 11.8 billion AMD (\$24.5 million).⁴⁸

As the RA Government decided not to extend the duration of the mentioned law, now the RA citizens will face criminal punishment if they fail to perform the military service. Article 327 of the RA Criminal Code stipulates that *evasion from regular military service or training exercises is a criminal offence. According to that Article, evasion* from the regular military conscription or training exercises, without any legal grounds for exemption, is punished with a fine in the amount of 300 to 500 minimal salaries or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years. The same action committed:

1. by inflicting bodily injury to oneself or simulation of illness;
2. by forging documents or by deception, is punished with arrest for the term of 1-3, or with imprisonment for 1 to 5 years.

The action envisaged in part 1 or 3 of this article, which was committed in conditions of martial law, in war conditions or during military actions, is punished with imprisonment from 4 to 8 years.⁴⁹

In order to understand, whether the punishment is proportionate to the pursued aimed the author used comparative method of research and similar legal regulations from other countries will be presented below. Under Russian law, draft evasion is a criminal offense punishable by a **fine or up to two years in prison**. Legislative amendments to the “Law on Military Obligation and Military Service”, which entered into force in September 2019, introduced new requirements for men eligible for conscription to register for military service not only at their residential address, but also at their place of work or study. Men who fail to register will risk encountering difficulties getting jobs.⁵⁰

The Greek government recently announced abolished the 6,000-euro penalty for young Greeks who skipped out on their military service. Alternate Defense Minister Panagiotis Rigas said that the proposed legislation aims to lessen the impact of mandatory military service in Greece. “This

⁴⁸ See, “Armenia to allow draft-dodgers to avoid prosecution by paying a fine”, www.jamnews.am, 03 March 2019, last visited on 05.03.2020, the link is available at <https://jam-news.net/armenia-to-allow-draft-dodgers-to-avoid-prosecution-by-paying-a-fine/>

⁴⁹ See, “The RA Criminal Code” Article 327, www.irtek.am, Yerevan 2003, last visited on 05.03.2015, the link is available at <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>

⁵⁰ See, “Crimea: Conscription Violates International Law”, www.hrw.org, 01.10.2019, the link is available at <https://www.hrw.org/news/2019/11/01/crimea-conscription-violates-international-law>

provision is of particular importance as it concerns many young people who have been forced to earn their living abroad in recent years. They are thus exempt from the payment of the amount of money to repay the admittedly-large administrative fine of **6,000 euros**,” he revealed. The proposed legislation also includes provisions for lowering the age limit for conscientious objectors, who would also be able to “buy off” their time in the military. It will also reduce the length of military service for those from families of three or more children or those who are the main breadwinners in their household.⁵¹

The Criminal Code of **the Republic of Azerbaijan** (2000) states the following regarding the evasion of military service: 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**. The same act committed in wartime -is punished by imprisonment for the term from three up to six years. 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. The same acts committed in wartime or fighting conditions - is punished by imprisonment for the term from three up to five years. (Azerbaijan 2000).⁵²

According to the Article 134 of the Norway’s Criminal Code any person who with intent to evade military service in Norway renders himself unfit for such service by mutilation or in any other way, or who is accessory to intentionally rendering another person unfit for military service, shall be liable to imprisonment for a **term not exceeding one year**. Any person shall be liable to fines or to detention or imprisonment for a term not exceeding one year who is accessory to the desertion or failure to report for military service of a person who has been drafted into the Norwegian armed forces, or to the commission of a criminal offence punishable according to military law with imprisonment for a term of two years or a more severe penalty. The penalty prescribed in the second paragraph shall also apply to any person who publicly seeks

⁵¹ See, “Greek Army to Abolish Penalty for Draft Dodgers”, Tasos Kokkinidis, 17.03.2019, the link is available at <https://greece.greekreporter.com/2019/03/17/greek-army-to-abolish-penalty-for-draft-dodgers/>

⁵² See, “Azerbaijan: compulsory military service, including requirements and exemptions; penalties for evasion or desertion”, www.refworld.org, the link is available at <https://www.refworld.org/docid/57974d494.html?fbclid=IwAR2KPf4bW8IMFg0FTpcSaAQScgrBAVoVkrYvot3uM6GzanRk2KS8JYX-hrU>

to arouse in any member of the armed forces aversion to military service or hatred for military superiors or senior officers.⁵³

The Ukrainian Criminal Code's Articles 335 and 337 address penalties for draft evasion. Article 335 state that 'avoidance of conscription for active military service, - shall be punishable by restraint of liberty for a **term up to three years.**' Article 337 state that 'avoidance of military registration by a person bound to military service after notification by an appropriate commissariat, - shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to six months...'.⁵⁴

According to Eritrean law, violations of the Proclamation of National Service, including draft evasion through fraud, self-inflicted disability, and other methods, are punishable **with two years' imprisonment and/or a fine of 3,000 Ethiopian Birr**. The law states, further, that if a person flees the country to avoid national service and "does not return to perform his service until the age of 40 years, he will be liable to punishment or to an imprisonment of 5 years until the age of 50, and his rights to license, visa, land tenure and the rights to work will be suspended"⁵⁵

According to Article 81 of the Swiss "Military Penal Code", refusing military service can be punished with **up to 18 months imprisonment or a fine**. According to article 81 (3) of the same code, members of a religious community who refuse military service for reasons of conscience and do not apply for substitute service will be sentenced to community service, the length of which is based on the Law on Civilian Service. Also, the conditions of the community service will be according to the Law on Civilian Service. This article has been introduced especially for members of the Jehovah's Witnesses. Being absent without leave can be punished with a fine equivalent of 180 days imprisonment. However, during active duty the punishment is up to three years imprisonment. Since 1996, between 41 and 110 conscripts per year refuse to perform both military and substitute service. According to article 81 of the Military Penal Code, total objection is punishable by up to 18 months' imprisonment. In practice, total objectors are sentenced on

⁵³ See, "Criminal Code of Kingdom of Norway", Article 134, adopted on 01.07.1994, the link is available at <https://www.legislationline.org/documents/id/8909>

⁵⁴ See, "Ukrainian Criminal Code", Article 335-337, adopted on 01.09.2001, the link is available at <https://www.refworld.org/docid/4c4573142.html>

⁵⁵ See, "Eritrea: Military service, including age of recruitment, length of service, grounds for exemption, penalties for desertion from and evasion of military service, and availability of alternative service" the link is available at <https://www.refworld.org/docid/5084f3982.html>

average to eight to twelve month. Total objectors also remain liable to the military exemption tax, even after a criminal conviction for their refusal to perform military and substitute service. Non-payment of the exemption tax can again lead to fines and seizure of income.⁵⁶

Under the terms of the Venezuelan Law of Military Conscription and Enlistment, individuals who fail to register for military service are liable to a fine or imprisonment. However, according to the general coordinator of the Justice and Peace Support Network, in practice individuals who attempt to evade military service are not brought to trial. Rather, when such individuals are discovered by the police, they are normally handed over to the military authorities, who force them to fulfill their military service obligations. While the general coordinator referred to instances in 1997 in which evaders were mistreated by the military, he noted that he was not aware of any recent cases of mistreatment. The general coordinator also stated that since 2000 his organization has only received two reports of evaders being detained and subsequently forced to perform military service. The lack of such cases may be attributed to the fact that, the authorities began paying conscripts the minimum wage, prompting many young people who are otherwise unable to find work to perform their military service.⁵⁷

According to a United Nations report titled *The Question of Conscientious Objection to Military Service*, "Article 79 of the Penal Code of the Republic of Lithuania stipulates that evasion of the regular draft or alternative (labor) service may be punishable by imprisonment for up to two years". . . Further, "if a conscript deliberately injures himself, simulates illness, forges documents or avoids performing his duty in any other way, he may be committed for from one to five years of imprisonment".. The report also states that under Article 80 of the same Code, if a person evades mobilization to the National Defense Service, they may be imprisoned for two to five years.⁵⁸

As it is obvious from the summary of international practice, the Armenian Criminal Code stipulates relatively moderate punishment. However, the RA citizens who failed to complete

⁵⁶ See, "Country profiles; Switzerland", published by "War Resisters' International, the link is available at https://wri-irg.org/en/programmes/world_survey/reports/Switzerland#sdfootnote28sym

⁵⁷ See, "Venezuela: Military service, including length of service, existence of alternative forms of service and penalties imposed on those who refuse to serve", www.refworld.org, the link is available at <https://www.refworld.org/docid/403dd226c.html>

⁵⁸ See, "Lithuania: The penalty for failure to respond to a call-up notice to perform military service in Lithuania; the availability of alternative service", www.refworld.org, the link is available at <https://www.refworld.org/docid/3f7d4dc77.html>

military service may be ground for the denial of certain rights and benefits. People who will not be able to pay fines, because of the decision will be subject to criminal prosecution and conviction. As a result they will obtain a criminal record which will lead to life-long societal and economic disadvantage. Criminally convicted people hardly find a job, both in public and private sectors, for example number of public jobs prohibits hiring citizens who have a criminal record. In addition, convicted citizens in most cases disbar from practicing certain professions following conviction. In Armenia military documentation is necessity for everyone.

Military documentation is sometimes required in order to be issued with identity documents, such as identity cards or passports. If non-extension decision remains unchanged then the citizens who failed to complete military service may stay without proper documents and unable to exercise their basic rights.

The decision not to extend the duration of the will not have any positive impact on the army. As the subject-matter citizen of this law is the person who is 27 years old or older, they will not be able to serve in the army as they age is not compatible with the RA military legislation. In case of criminal prosecution they will end up in prisons. In the last, but not scenario concerning people will continue to stay abroad and not to return to Armenia.

The decision not to extend the duration of the law will have negative legal impact to the people who are possessing the Armenian nationality but living outside of the country. The prospect to be criminally prosecuted upon return to the motherland in most cases will stop the repatriation to Armenia.

Recommendation 1 Even though the RA Criminal Code stipulates a relatively moderate punishment for draft evasion, however it should be highlighted that criminal conviction is not a best solution to the problem as its negative consequences has been discussed in this paper. As it was stated in the paper it is necessary to extend the deadline of the law and give 27 years old draft evaders to pay fines and be freed from criminal prosecution.

Recommendation 2 It is necessary to abolish law which create an obligation to the citizens to be appointed certain position based on the fact that a citizen completed military service. From the author's viewpoint military service is important for everyone, however they are certain positions which mostly require professionalism, rather than serving in the army. My suggestion is to take

into account the applicant's professionalism and knowledge rather than sole fact serving the army.

Recommendation 3 The RA government should consider undertake measures that allow reducing dependency to the military documents. Military documents have importance for everyone; however demanding a military documents even for basic visa application is somehow burdensome usual citizens.

Conclusion

Established procedure on the "Law on Citizens who failed to complete compulsory military service through violation of the established procedure" which gave 27old or older citizens an opportunity to pay unilateral fine of 3.600.000 AMD and not be subject to criminal prosecution expired on 31 December 2019 and the RA National Assembly decided not to extend the timeframe of this procedure.

Such decision has consequences to the number of people who would have an opportunity to pay the above-mentioned fee and not be subject to criminal prosecution. The decision not to extend further processing of the law has legal and economic impacts for the country and for the people who are subject matter of the law. This paper provided analyzes connected to legal and economic impact of that decision.

The information requests received by the Prosecutor General's Office shows that previously the RA state treasury got significant monetary contribution (**13, 396, 000 trillion AMD**) from the citizens who paid unilateral fine for the failure to complete compulsory military service and 10, 921 were freed from criminal prosecution. Another information request to the RA Police shows that from 2008 to 2019 the Police **indicted 11, 500 search orders** to find people who avoided compulsory military service. The decision not to extent the timeframe of this decision will deprive the RA budget from obtaining additional financial resources and ordinary taxpayers should pay for this budgetary gap. This decision will also have negative legal consequences to the citizens leaving them only option to be criminally prosecuted and having criminal record which will almost prevent them getting a job public or private sector.

The study of international best practices shows that for the Armenia mandatory military system is the best option, as the country is a part of Nagorno Karabagh conflict and the risk of military

escalation remains high in the region. Draft evasion is a widespread phenomenon in the Armenian society, as public trust on the army is low, army needs institutional reforms and personnel vetting is necessity. Criminal subculture is predominant in the military which sometimes has tragic consequences. The RA Army also characterized with endemic corruption as credible reports from international organizations are showing misspending in procurements, army finances. Nepotism is very high and rule of standards are not predominant in the Army yet, even though Armenian is one of the most militarized countries of the world.

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