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HELSINKI CITIZENS' ASSEMBLY-VANADZOR



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REPORT

On the situation of the rights of conscripts during winter 2019, summer 2020, winter 2020 and
summer 2021 call-ups

VANADZOR

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INTRODUCTION

Helsinki Citizens' Assembly-Vanadzor (hereafter also referred to as “the Organization”) considers protection of conscripts' rights and oversight of the call-up process as one of the essential elements of ensuring human rights protection and civilian oversight in the Armed Forces. The Organization has been monitoring the call-up process since 2008. The Organization attaches importance to restoration of conscripts' rights, that is why it continues raising awareness regarding rights and obligations of conscripts, in particular, notifying citizens subject to conscription about compulsory military service, military training gathering or mobilization, conscripts' health state examination, medical conclusions regarding their health state, decisions regarding their fitness for military service, state bodies' actions in terms of providing medical and other documents; the Organization also carries out legislative analyses and regularly presents recommendations regarding legislative changes and legal practice to state authorities.

The Organization hereby presents a report on the situation of the rights of conscripts during winter 2019, summer 2020, winter 2020 and summer 2021 call-ups (1 August 2019 – 31 July 2021 included). The appendix to the report also presents information regarding citizens who were granted a deferral and were exempted from military service during the period of 1998 - 6 August 2021 in accordance with the RA Government's decision.

The information summed up in the report was received from various RA provinces, in particular, from 156 citizens (conscripts and their relatives) who applied from Lori (46 persons), Shirak (13 persons), Tavush (1 person), Aragatsotn (1 person), Armavir (4 persons), Kotayk (9 persons), Syunik (2 persons), Vayots Dzor (1 person), Gegharkunik (1 person) provinces, Yerevan city (22 persons), foreign countries (19 persons), various places without mentioning a specific

address, as well as the RA Defence Ministry and other institutions through the Organization's inquiries.

LEGISLATION REGULATING THE CALL-UP PROCESS, LEGISLATIVE CHANGES, AND ISSUES RELATED TO LEGISLATIVE GAPS OR APPLICATION OF LEGISLATION

Below are the main legal acts regulating the process of call-ups, medical examination of conscripts during call-ups, as well as the right to deferral on various grounds:

- ***RA Law on Military Service and Status of Servicemen*¹**
 - Law ՀՕ-169-Ն on making an amendment and addendum to the Law on Military Service and Status of Serviceman was adopted on 19 April 2021.²

Clause 5.1 was added, establishing that “In line with the Republic of Armenia Government's decision, citizens subject to compulsory military service conscription, who have not finished their secondary vocational educational program studies or study in the graduate year as of the last day of the deferral granted in line with clause 2 of part 3 of this Article, shall be granted one deferral until the last day of the studies included, but not longer than the day they turn 20 years old”.

- On 19 April 2021, Law ՀՕ-170-Ն on making amendments to the Law on “Military Service and Status of Servicemen” was adopted³, and the following amendment was made to Article 30:

¹ <https://www.arlis.am/DocumentView.aspx?DocID=131552>

² <https://www.arlis.am/DocumentView.aspx?DocID=152087>

3) male citizens under the age of 45 (40 according to the previous decision) who have not previously served contractual military service and are enlisted in the reserve, and female citizens irrespective of being enlisted in the reserve, as well as citizens under the age of 50 (45 according to the previous decision) enlisted in private or junior non-commissioned officers' staff, in case of being appointed to service in the military unit circle.

The following amendment was made to Article 57:

The reserve groups and age limit for being in the reserve.

Below are those registered in the reserve:

- 1) those under the age of 53 (48 according to the previous decision), registered in private, junior and senior non-commissioned officers' reserve;
- 2) those, under the age of 55 (50 according to the previous decision), registered in junior officers' reserve;
- 3) reservists, under the age of 58 (55 according to the previous decision), with senior officers' military ranks of “mayor” and “lieutenant colonel”;
- 4) reservists under the age of 60 (58 according to the previous decision), with senior officers' military rank of “colonel”.

3. Below are those registered in the second group of the reserve:

³ arlis.am/DocumentView.aspx?DocID=152084

- 1) reservists of private, junior and senior non-commissioned officers under the age of 55 (50 according to the previous decision);
- 2) junior officer reservists under the age of 57 (52 according to the previous decision);
- 3) senior officer reservists under the age of 60 (58 according to the previous decision) with “major” and “lieutenant colonel” military ranks;
- 4) senior officer reservists under the age of 63 (60 according to the previous decision), with the military rank of “colonel”.

- ***The RA Law on Defence adopted on 15 November 2017⁴***

During participation in mobilization call-up and training gatherings, a number of issues emerged related to provision of privileges to persons subject to mobilization and training gatherings based on their status, as well as compulsory medical examination and ensuring proper preparatory work of mobilization process.

Besides, due to legislative uncertainty, many citizens had problems related to involvement of transport means owned by them, in the frame of military transportation obligation.

- ***The RA Government's decision 404 of 12 April 2018 on “Establishing the list of illnesses determining the level of fitness of a citizen or a serviceman for military service, as well as***

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https://www.arlis.am/documentview.aspx?docid=144772&fbclid=IwAR2YNtgZoGAzTsYzhgXysWK7v6hNuhTGc1WB_NBHvKtEI1EvVMVgrHDMnVY

military service conditions contraindicated for the health state of a citizen or serviceman”

5

It should be mentioned that we regularly addressed the list of illnesses determining fitness of a citizen or serviceman for military service, as well as the decision establishing it, which was previously set by the RA MoD order. Later, on 12 April 2018, the list was determined by the RA Government's decision. Nonetheless, many issues related to the content of the decision remained unsolved. In 2020, the RA draft decision “On making amendments to the RA Government's decision N 404-Ն of 12 April 2018” was posted on e-draft unified website for publication of legal acts' drafts for the period of 29.09.2020 - 15.10.2020.⁶ The draft was incomparably improved, taking into account the condition that it had more objective indicators, which would later allow commissions and organizations dealing with these issues to consider cases using specific indicators. Besides, the draft introduced new modern measurement scales, some examinations became compulsory, about which the Organization had made many recommendations to the RA Ministry of Defence. The issue of compliance of diagnoses with the International Classification of Diseases (ICD) was almost solved. Nonetheless, some issues still remained uncertain. However, the draft was not discussed due to the war operations that started on 27 September 2020.

- *Decision N 952-Ն “On making amendments to the Republic of Armenia Government's decision N 404-Ն of 12 April 2018”*

⁵ <https://www.arlis.am/DocumentView.aspx?DocID=132970>

⁶ <https://www.e-draft.am/projects/2774/about>

By the RA Government's decision N 952-Ն of 25 July 2019 "On making amendments to the Republic of Armenia Government's decision N 404-Ն of 12 April 2018", an amendment was made to the RA Government's decision N 404-Ն of 12 April 2018 on "Establishing the list of illnesses determining the level of fitness of a citizen or a serviceman for military service, as well as military service conditions contraindicated for the health state of a citizen or serviceman", and a person with mild mental retardation – previously a condition with which a conscript was considered fit for military service with limitations – is considered temporarily unfit for military service. Moreover, this decision was made after HCA Vanadzor NGO challenged in the RA Administrative Court the CMC's decision on a citizen who, having the diagnosis of mild mental retardation, was recognized fit for military service with limitations and drafted.⁷

It should be mentioned that after the RA Government's decision N 952-Ն of 25 July 2019 on "Making amendments to the RA Government's decision N 404-Ն of 12 April 2018" was made, the RA MoD CMMC implemented expert examinations of servicemen determined by the decision, as a result of which, 148 compulsory-term military servicemen were early discharged from the RA Armed Forces.

- *The RA Government's decision 405 of 12 April 2018 "On establishing procedures of a citizen's health state check-up and medical expert examination, referral for check-up and expert examination, bodies conducting check-up and medical expert examination and their operation procedure, the list of expert examinations and medical institutions,*

⁷ <https://hcav.am/yurik-broyan-14-01-2018>

procedure of remuneration for the delivered services, and on recognizing invalid a number of the RA Government's decisions".⁸

Though the RA Constitution establishes citizens' right to information, in practice, military commissariats do not provide conscripts with copies of health state examinations implemented in the frame of the call-up and the Central Medical Commission's conclusion, as a result of which the conscripts are deprived of the opportunity to appeal diagnoses of their health state medical examinations and decision on fitness for military service. The acting Law on Military Duty⁹ did not imply a procedure for compulsorily providing such documents or receiving such documents based on the conscript's application. However, adopted in 2017, the Law on Military Service and Servicemen's Status¹⁰ establishes that a citizen has the right to familiarize with his health state examination and medical expert examination process and receive conclusions and documents made based on them, to present recommendations, explanations or objections, to appeal conclusions on their health state in a procedure established by this law or other laws. The above-mentioned norm mainly changed the practice violating human rights.

Similarly, civilian medical institutions were not providing conscripts with such information and documents. The Republic of Armenia Government's decision N 405-Ն of 12 April 2018¹¹ establishes that a medical institution is obliged to provide the citizen or his legal representative or the person authorized by him with information on the conscript's health state, medical

⁸ <https://www.arlis.am/DocumentView.aspx?DocID=121636>

⁹ <https://www.arlis.am/documentview.aspx?docid=574>

¹⁰ <https://www.arlis.am/DocumentView.aspx?docid=117633>

¹¹ <https://www.arlis.am/DocumentView.aspx?DocID=151135>

examinations results, illness diagnoses and treatment methods, the risk related to them, possible options of medical interventions, their consequences and treatment results.

- It should be mentioned that due to the emergency state declared by the RA Government's decision **298-Ն of 16 March 2020** to prevent the spread of Covid-19, the public was not provided with timely official information regarding the upcoming call-up and relevant pre-conscription preparatory measures, and implementation of medical expert examination of pre-conscription and conscription age persons. Official information was provided only once: on 18 March 2020, spokesperson of the RA Defence Minister made a Facebook post and informed that no changes were planned in terms of summer call-up.¹²

Since 1 April 2020, citizens subject to conscription show up at the outpatient polyclinic institutions' conscription medical commission to undergo a medical examination according to the RA Government's decision 405 of 12 April 2018 "On establishing procedures of a citizen's health state check-up and medical expert examination, referral for check-up and expert examination, bodies conducting check-up and medical expert examination and their operation procedure, the list of expert examinations and medical institutions, procedure of remuneration for the delivered services, and on recognizing invalid a number of the RA Government's decisions". Then, prior to the launch of the call-up, according to the lists of citizens subject to conscription confirmed by the territorial military commissariat, outpatient polyclinic institutions shall present information from conscripts' medical files to the military commissariat for further medical examinations.

¹² <https://news.am/arm/news/566866.html>

It should be mentioned that the RA Government's decision N 298-Ն of 16 March 2020 established restrictions for certain institutions, in particular, the following was prohibited in military units of the RA Ministry of Defence:

- 1) receiving and sending deliveries, parcels and packages,
- 2) visits (except for video calls),
- 3) leaves of compulsory-term servicemen of private and junior non-commissioned officers' staff.

Before that, after a consultation of the Armed Forces leadership in 25 February 2020, the Armed Forces shifted to a regime of operation in an anti-epidemic situation. Medical service in all military units was intensified. Compulsory-term military servicemen's visits, as well as granting them leaves was prohibited in military units.¹³

Besides, as the borders were closed and there were no flights due to the emergency state declared by the RA Government's decision **298-Ն of 16 March 2020 to prevent the spread of COVID-19**, citizens whose deferral period expired when they were abroad did not manage to return to the Republic of Armenia in order to go to the military commissariat and undergo the relevant medical examination; and state bodies did not inform the conscripts and did not ensure the return of conscript citizens through the relevant embassies. According to the data possessed by the Organization, at least one criminal case was initiated against a conscript who did not show up during the call-up due to closed borders, and currently the preliminary investigation is

¹³

<https://www.civilnet.am/news/2020/02/26/%D4%BF%D5%B8%D6%80%D5%B8%D5%B6%D5%A1%D5%BE%D5%AB%D6%80%D5%B8%D6%82%D5%BD%D5%AB-%D5%BF%D5%A1%D6%80%D5%A1%D5%AE%D5%B4%D5%A1%D5%B6-%D5%BE%D5%BF%D5%A1%D5%B6%D5%A3-%D5%8A%D5%86-%D5%B6-%D5%A1%D6%80%D5%A3%D5%A5%D5%AC%D5%A5%D5%AC-%D5%A7-%D5%A6%D5%AB%D5%B6%D5%BE%D5%B8%D6%80%D5%B6%D5%A5%D6%80%D5%AB-%D5%A1%D6%80%D5%B1%D5%A1%D5%AF%D5%B8%D6%82%D6%80%D5%A4%D5%B6%D5%A5%D6%80%D5%A8-%D5%A6%D5%B8%D6%80%D5%A1%D5%B4%D5%A1%D5%BD%D5%A5%D6%80-%D5%A1%D5%B5%D6%81%D5%A5%D5%AC%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%D5%B6%D5%A5%D6%80%D5%A8/377154>

underway. The conscript did not manage to return from China to Armenia and participate in summer 2020 call-up. The conscript's parents informed representative of the RA MoD Conscription and Mobilization Service territorial subdivision (and also the investigator) about this, and yet the case was sent to the investigative division and a criminal case was initiated.

- *The RA Law on "Citizens who did not serve the compulsory military service by violation of the established procedure"*

*The RA Law on "Citizens who did not serve the compulsory military service by violation of the established procedure"*⁴⁴ is an important legal act concerning the call-up process, which was adopted in 2003 and entered into force in 2004. This law was adopted taking into account the condition that many RA citizens were abroad and subject to call-up, but avoided military service, which is considered a criminally punishable act (Article 327 of the RA Criminal Code).

The mentioned law has been amended 12 times, and as a result, the period of being in force was extended and also applied to RA citizens (persons) who were not conscripted to compulsory military service by violation of the RA Law "On compulsory military duty" (persons who avoided the call-up) and those who were exempted from compulsory military service or were granted grounds for deferral from compulsory military service call-up at the age of 27 (35 for reserve officers) or before 27 (35). Further recommendations regarding extension of the action of law were not accepted and the law stopped acting after 31 December 2019.

After war operations of 2020, on 09.04.2021, the RA Government drafted the Law on “Announcing amnesty for persons who avoided compulsory military or alternative service call-up, training gathering or mobilization”, which entered into force after 19 May 2021. The Law on “Announcing amnesty for persons who avoided compulsory military or alternative service call-up, training gathering or mobilization” presupposes that it will be applied to privates under 27 and reserve officers, 35, who avoided compulsory military or alternative services and are suspected, accused or convicted under part 1 or part 3 of Article 327 of the RA Criminal Code for committing the crime of avoiding compulsory military or alternative service conscription (only if the action under part 1 of the same Article was committed during the martial law).¹⁵

The law was developed to provide an opportunity to have one's own contribution to the development in economic, social, spiritual and cultural spheres of the Republic of Armenia, to mitigate post-war consequences and also based on the vision of ensuring stable development of the Republic of Armenia.¹⁶

- *On 27 September 2020, decision N 1586 - Ն on “Establishing a martial law in the Republic of Armenia” was made¹⁷*

¹⁵ <https://www.arlis.am/DocumentView.aspx?DocID=152705>

¹⁶ http://www.parliament.am/draft_history.php?id=12396&lang=arm

¹⁷ <https://www.e-gov.am/gov-decrees/item/34842/>

The RA Government's Decision N 1586 - Ն of 27 September 2020 established a martial law in the whole territory of the Republic of Armenia. A general mobilization was announced in the RA and the plan of Armed Forces application was put into action. Mobilization of reserve officers, non-commissioned officers and privates under the age of 55 was announced. The RA Defence Minister ensures mobilization call-up of citizens registered in the reserve, and the RA MoD Conscription and Mobilization Service territorial subdivisions (military commissariats) implement the process.

According to Article 17 of the RA Law on Military Service and Status of Servicemen, when enlisting citizens for military service, during the call-up of compulsory military service, including **mobilization call-up**, and involving citizens in contractual military service and training gatherings, citizens shall **undergo a health state check-up and medical expert examination**. In cases mentioned in this part, check-up, expert examination and treatment of citizens are implemented primarily and free of charge in the frame of medical aid and service guaranteed by the state.

Part 2 of Article 17 of the same Law establishes that check-up and medical expert examination of a citizen's health state is conducted in line with the requirements established by the RA Government's decision N 405-Ն of 12 April 2018.

Though the RA Law on "Military service and status of servicemen" establishes that during the mobilization call-up persons subject to call-up also undergo health state check-up and medical expert examination, many citizens (persons drafted in the frame of a mobilization call-up or their relatives) who applied to the Organization, stated that the above-mentioned process is accompanied by serious human rights violations. In particular, citizens informed military

commissariats employees about their health state complaints and problems, but they were not taken into account and relevant health state examination and medical expert examination was not conducted. As a result, having no alternative, citizens subject to conscription were drafted to military service, during which their health problems deteriorated. There were cases when after a conscripted citizen's health state deteriorated, he was transferred to the RA MoD military hospital and received treatment, or a conscripted citizen's health state deteriorated shortly after conscription due to lack of the necessary medical oversight.

At the same time, it should be stated that Article 76 of the RA Constitution enshrines that in the condition of martial law, fundamental human rights and freedoms can be restricted and it can be assumed that a war can generate a situation where the RA MoD Conscription and Mobilization Service territorial subdivisions and medical commissions can objectively be deprived of the opportunity to ensure implementation of legislation requirements, given the big number of citizens subject to mobilization. However, it is inadmissible that it be implemented at the expense of violations of fundamental right to health.

We also find it important to stress that during the martial law, on 20 October 2020, the RA Ministry of Defence made an announcement that it temporarily suspended accepting application-complaints regarding health state of servicemen, mentioning that “The Ministry of Defence of the Republic of Armenia informs that the acceptance of the applications and complaints that are being sent to the Military Medical Department of the Armed Forces by the servicemen, citizens drafted through mobilization and volunteers about the state of health is temporarily suspended. During martial law, the medical services are equally provided to all the servicemen, including those drafted through mobilization and volunteers in accordance with the procedure existing in the

general system for the medical-evacuating measures of the Armed Forces, military units or places of deployment".¹⁸ At the same time, the Ministry of Defence did not present any justification or explanation for suspending acceptance of applications and complaints.

Based on the aforementioned, it can be assumed that fundamental rights and freedoms of Armed Forces servicemen and conscripts were not secured, in particular, according to requirements of clause 27 of OSCE Code of Conduct on Politico-Military Aspects of Security, "Each participating State will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms".¹⁹

According to Recommendation No. 1742 (2006) of the Parliamentary Assembly of the Council of Europe on the human rights of members of the armed forces, the army is the institution which is responsible for protecting the state and defending the community. Clause 2 of the Recommendation establishes that members of the armed forces are citizens in uniform who must enjoy the same fundamental freedoms and the same protection of their rights as any other citizen, within the limits imposed by the specific exigencies of military duties.²⁰

Besides, the RA MoD announcement on suspending acceptance of applications and complaints regarding health state of servicemen itself violates requirements of the principle of legal certainty, since the mentioned issue, as a restriction, is not regulated by law, and on the other

¹⁸ <https://mil.am/hy/news/8572>

¹⁹ <https://www.osce.org/hy/forum-for-security-cooperation/74974?download=true>

²⁰ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17424&lang=en>



hand, it is not clear to the person being conscripted how he should behave in the condition of such a restriction.

Statistics regarding persons who applied to the Organization in winter 2019, summer 2020, winter 2020 and summer 2021 call-ups, as well as legal aid provided to them by the Organization and the relevant results

During winter 2019, summer 2020, winter 2020 and summer 2021 call-ups (1 August 2019–31 July 2021) **307** persons applied to HCA Vanadzor, **156** of whom addressed questions concerning the call-up process.

117 out of **156** persons were conscripts, **17** were persons who avoided military service by violation of the established procedure, **22** were pre-conscription age persons subject to military enlistment.

We find it necessary to stress that during the recent two call-ups of winter 2020 and summer 2021, fewer conscripts applied to the Organization, which can be explained by war operations and the post-war situation.

It should be mentioned that **202** persons applied to the Organization during the previous four call-ups (winter 2017, summer 2018, winter 2018 and summer 2019) with **questions regarding the call-up process**, **180** of them were conscripts, **9** were persons who avoided military service by violation of the established procedure and **13** were pre-conscription age persons subject to military enlistment.²¹

Problems of the majority (81 persons, which amounts to 52%) of **conscripts** who applied to the Organization during winter 2019, summer 2020, winter 2020 and summer 2021, and 8 (52%)

²¹ https://drive.google.com/file/d/1Alf5ou27JMQbMWLLwk5_0G11-9fluz3M/view

persons subject to military enlistment concerned improper implementation of medical check-up of their health state and the need to conduct a medical expert examination, as well as disagreeing with the medical conclusion.

9 **conscripts** (13 %) and 8 **persons subject to military enlistment** (13 %) applied to the Organization with questions regarding the deferral and military service exemption grounds /family status, health state, study purposes/ and their rights established by law.

5 conscripts (about 4 %) and 5 **persons subject to military enlistment** (23 %) applied to the Organization regarding procedures of joining the military service in case of double citizenship, as well as regulations of being a citizen of the Republic of Armenia and serving military service in a different country and being exempted from the military service in the Republic of Armenia.

17 persons (more than 10 %) applied to get consultation and legal aid regarding procedures related to avoidance from military service by violation of the established procedure.

The others' problems (about 15%) were related to other issues and clarification of legal procedures, as presented in Table 1.

By the way, detailed information regarding issues recorded during the mentioned call-ups is presented in “**Conduct of the RA state competent bodies in cases of conscripts and early discharged servicemen in terms of respect for human rights principles**”.²²

Table1. Problems of conscripts and persons subject to military enlistment who applied to the Organization, per each call-up²³

²² <https://hcav.am/hcav-report-6-10-2021/>

²³ *It should be mentioned that one person might have applied with more than one problem.*

Problem description	Winter 2019 call-up			Summer 2020 call-up			Winter 2020 call-up			Summer 2021 call-up			Total		
	Conscript	Citizen who avoided military service by violation of established procedure	Citizen who avoided military service by violation of established procedure	Conscript	Citizen who avoided military service by violation of established procedure	Citizen who avoided military service by violation of established procedure	Conscript	Citizen who avoided military service by violation of established procedure	Citizen who avoided military service by violation of established procedure	Conscript	Citizen who avoided military service by violation of established procedure	Citizen who avoided military service by violation of established procedure	Conscript	Citizen who avoided military service by violation of established procedure	Citizen who avoided military service by violation of established procedure
Health problems/ improper medical aid, disagreeing with health state examination results	18	4		37	2		11			15	2		81	8	0
Consultation regarding grounds for deferral from compulsory military service call-up /for study purposes, based on family status/	2	1		6	4		1	2			1		9	8	0
Consultation on provisions and regulations of the RA Law on RA citizens who avoided military service by violation of the established procedure			9			3						5	0	0	17
Consultation regarding provisions of the RA laws on "Citizenship" and "Military service and servicemen's status"	2	2		3	1			2					5	5	0
Consultation regarding practice and legal procedures concerning military duty of LGBT community persons	1			5			2			1			9	0	0
Consultation regarding making a note in the passport concerning terms of validation in a foreign country to complete studies abroad										2			2	0	0
Consultation regarding procedure of medical examination/re-examination of conscripts	2												2	0	0
Consultation regarding possibility to return to the RA from abroad due to COVID-19				2									2	0	0

Regarding doctors-officers with health problems drafted as officers	1												1	0	0
Consultation regarding problems related to the RA Government's call-up decisions / provisions of the RA Government's decision 404-Ն	1												1	0	0
Consultation regarding compensation for transport expenses made to leave for a settlement to undergo a medical examination				2									2	0	0
Consultation regarding the right to deferral in order to continue education in the frame of "I have the honor" program, and legality and procedures of joining the military service in case of being expelled from the higher education institution				2									2	0	0
Consultation regarding possibility of serving military service in the same unit in case two brothers are conscripted simultaneously	1												1	0	0
Consultation regarding procedures of military enlistment				1			2						3	0	0
Consultation regarding legality of undergoing military preparation during studies in a higher education institution for persons recognized unfit for compulsory military service due to health state							1						1	0	0
Consultation regarding possibility of undergoing health state examination and medical expert examination before conscription age								1					0	1	0
Regarding improper organization of call-up										1			1	0	0
Consultation regarding military duty of a brother of a person who died during combat operations							1						1	0	0
Total	28	7	9	58	7	3	18	5	0	19	3	5	123	22	17

All persons who applied to HCA Vanadzor during winter 2019, summer 2020 and summer 2021 call-ups were provided with oral legal advice.

Besides oral consultation, 19 conscripts were also provided with legal aid in written form (see Table 2). Problems of 14 out of 19 conscripts were related to health problems, 2 conscripts had problems concerning the possibility of exercising the right to deferral from compulsory military

service call-up due to family status, problems of 2 conscripts were related to making a note in the passport regarding terms of validity for completing studies abroad, 1 conscript's problem was related to compensation of transport expenses made to reach a specific settlement in order to undergo a medical examination (in the conditions of the Covid-19 pandemic).

Table 2. Procedure of providing legal aid

Procedure of providing legal aid	Winter 2019 call-up	Summer 2020 call-up	Winter 2020 call-up	Summer 2021 call-up	Total
Written	2	9	3		14
Oral	41	55	19	28	142
Total	43	63	22	28	156

Besides the mentioned letters, with the support of the Organization, 5 applications were prepared on behalf of 5 conscripts addressed to the Central Medical Commission or the RA MoD conscription and mobilization service.

Terms of responses to letters sent in the frame of the Organization's aid in written form²⁴

In the frame of problems of 14 conscripts who applied to the Organization during winter 2019 – summer 2021 call-ups, the Organization provided legal aid in written form and a total of 16 letters were sent to the RA Ministry of Defence,

Terms of response letter	Timely	With a delay	Total
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²⁴ In the report "Conduct of the RA Ministry of Defence in terms of providing information", the Organization addressed conduct of the RA MoD in terms of providing information <https://hcav.am/category/publications/reports/own/>>

	To the point	Not to the point	To the point	Not to the point	
Number of letters sent	5	6	2	3	16

Besides the aforementioned, written legal aid was provided to 3 more persons by legal inquiries addressed to the RA MoD, conscription and mobilization service and mibs medical center.

Results of legal aid provided by HCA Vanadzor

During the above-mentioned call-ups, as a result of legal aid,

- *7 conscripts were recognized unfit for military service and were exempted from military service; 1 of them – recongnized fit for military service by the CMC decision – presented results of medical examination conducted by his own initiative and was not drafted, instead, a decision was made to have him undergo double examination during the next call-up, as a result of which the conscript was exempted from military service;*
- *4 persons were recognized temporarily unfit for military service/ a three-year deferral was granted /,*
- *12 persons were granted a deferral due to health problems, 8 of whom were granted a 6-month deferral and 4 persons were granted a deferral of up to 1 year (10 months);*
- *1 person was referred to additional medical examinations upon the Organization's claim²⁵,*

²⁵If after the additional examinations conscripts are recognized unfit for military service or they are granted a deferral, the final results are presented.

- *1 conscript's issue of transportation was regulated immediately after the Organization sent an application (the public transport restarted its operation after not operating for 1 month in the conditions of the Covid-19 pandemic);*
- *Based on the relevant application, 1 person was drafted to military service in the same military unit where his brother was serving.*

During winter 2019, summer 2020, winter 2020 and summer 2021 call-ups, the Organization continued actions aimed at protection of conscripts who applied during and before summer 2019 call-up.

Problems of all the 25 conscripts who applied to the Organization during and before summer 2019 call-up concerned appealing health state examination results. With the support of the Organization, legality of decisions on being recognized fit for military service was appealed to the superior body or in court.

As a means of protecting conscripts' rights, the Organization continued appealing decisions regarding conscripts and in this context, 9 conscripts' cases were appealed **in court** and 6 conscripts' cases were **appealed to the superior body**.

25 conscripts applied during and before summer 2019 call-up.

- ❖ CMC decisions regarding **9** of them were appealed in court; in 1 of those cases, a claim was made to grant a deferral from compulsory military service call-up due to family conditions.
- ❖ CMC decisions regarding **6** of them were appealed to a superior body.

- ❖ Cases of 3 conscripts who applied in the past – they did not agree with the health state examination results and were not drafted to military service – are in pre-trial proceedings, which means that there has been no need for the Organization to make a written appeal in the frame of criminal cases initiated against them so far. They are currently being provided with oral legal consultation regarding the criminal cases initiated against them.
- ❖ The other **7 conscripts**, previously granted a deferral or exempted from military service, regularly received oral legal aid from the Organization during winter 2019, summer 2020 and winter 2020 call-ups.

Out of conscripts who applied to the Organization in the past and received **oral or written, as well as judicial legal aid from the Organization**,

- **8** were recognized unfit for military service,
- **5 conscripts were** recognized temporarily unfit for military service and were granted a three-year deferral,
- **1 conscript** was granted a one-year deferral.
- **1 conscript** – since 2016 the Organization has been engaged in his case of being recognized fit for military service with health problems – was granted a deferral in 2020 due to family conditions upon birth of his second child.
- **1 conscript**, drafted to military service during judicial appeal based on his own application, was early discharged from military service due to health state.
- **In the case of 1 doctor in the officers' staff**, the Organization's claim was upheld and the RA MoD order on granting him an officer rank of “medical service lieutenant” during the call-up

was recognized invalid. Later, the RA MoD appealed the court's judgment in the RA Administrative Court of Appeals. The Appeal Court rejected the RA MoD's appeal and the decision entered into legal force.

- Judicial appeals of CMC decisions regarding 3 conscripts' fitness for military service are underway.

RECOMMENDATIONS

Taking into account that certain problems repeat during every call-up, are of regular nature and have not been solved so far and there is a need to have legislative and legal practice amendments, we hereby present the relevant recommendations.

1. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions** – to establish procedure of electronically notifying conscripts of their obligation to go to the military commissariats, including the relevant exact and reasonable terms, taking into account the need to ensure measures to prevent Covid-19, in order to ensure conscripts' presence during the compulsory military service call-up and training gatherings announced during that period.
2. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions** – to eliminate cases of rejecting to provide documents of conscripts' health state examination, as well as copies of CMC decisions.
3. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions** – in case a conscript does not agree with the decision on his fitness and does not show up at the subdivision, to eliminate cases of forcing the conscript to show up, especially when the conscript has already come to the commissariat and rejected to be drafted to military service.
4. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions** - to ensure all the conscripts' right to confidentiality, especially during implementation of medical examinations.
5. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions** - to eliminate the vicious practice of having conscripts wait a long time to undergo medical

examinations during call-ups and establish the schedule and maximum number of conscripts who can undergo a health state examination; to ensure all protective and preventive measures, as well as physical and social distance, given that the pandemic is not overcome yet.

6. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions** –when drafting reserve servicemen in the frame of the announced mobilization, to conduct proper, objective medical check-up and expert examination.
7. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions**- when drafting reserve servicemen and volunteers in the frame of the announced mobilization, to organize proper military training exercises before sending them to military operations zone/frontline.
8. **To the RA MoD Conscription and Mobilization Service Territorial Subdivisions**- to take into account reserve servicemen's military profession when drafting them in the frame of the announced mobilization.
9. **To medical institutions** – to subject conscripts to complex examinations to find out their real health state. At the same time, to also provide copies of documents concerning their health state.
10. **To medical institutions** – to conduct **effective and quality** free of charge medical measures in the frame of state-provided free medical aid, including magnetic resonance imaging and other laboratory or instrumental examinations.
11. **To civilian medical institutions** – to solve the issue of pandemic-related objective obstacles when organizing medical examination of those who are to start contractual military service.
12. **To the RA Ministry of Defence** – to provide responses to information inquiries within the terms established by law and address issues raised therein to the point.

13. **To the military commissariats' medical commissions** – to ensure the right to confidentiality of one's health state when conducting a medical expert examination.
14. **To the military commissariats' medical commissions** – when a conscript has more than one health problem, to conduct his medical examination for all of his health problems and make a health state conclusion on all the health problems irrespective of the decision on fitness made based on one problem and irrespective of the condition when the health problem emerged.
15. **To the military commissariats' medical commissions** – to eliminate the practice of not recording conscripts' complaints. Irrespective of results of further examination of those complaints, to properly record them in the relevant person's health state examination acts.
16. **To the military commissariats' medical commissions-** to take into account the nature and peculiarities of seasonal illnesses and make the relevant decision only based on this.
17. **To the Central Medical Commission** – to provide substantiated conclusions if they are different from conscripts' health state diagnoses established by acts.
18. **To the Central Medical Commission-** to make a substantiated decision when applying essentially different illnesses or Articles establishing the illnesses.
19. **To the Central Medical Commission-** to offer citizens the operations, implementation of which should be ensured if there are the relevant instructions before the call-up and the conscript does not refuse to be operated on.
20. **To the Central Medical Commission** – to ensure a referral for all the necessary examinations in order to make a right decision on a conscript's fitness
21. **To the Central Medical Commission** – to take into account the “seasonal” nature of certain illnesses, e.g., “angiotrophoneurosis”, and organize check-ups and expert examinations during winter call-up. The Central Medical Commission has the discretion of granting a deferral for up

to one year, and taking into account that the mentioned illness is more intensely manifested in cold weather, to ensure medical check-up for such diseases during their exacerbation period.

22. During criminal proceedings initiated based on appeals against decisions, action or inaction of **competent bodies** organizing and implementing call-ups, to properly discuss factual and legal grounds of the appeal and make an argued and substantiated decision based on results of discussion of the appeal.

23. With regard to **criminal cases** initiated based on avoidance of a regular compulsory military service call-up,

- Take into account that the relevant person exercises his fundamental rights guaranteed by the RA Constitution, the RA Administrative Procedure Code, the RA Law on “Fundamentals of administration and administrative proceedings” and other legal acts, tries to find out the legality of administration implemented by the administrative body and challenges the decision on recognizing him fit for military service or fit for military service with limitations, and to give a criminal-legal assessment to that person’s act only after the final document (judicial act, decision of the administrative body) adopted as a result of challenging the administrative act, action or inaction, becomes unappealable;
- Take the above-mentioned condition into account also during judicial examination of criminal cases;
- Instead of appointing a forensic medical commission examination during the preliminary investigation, to appoint a complex forensic medical and military medical expert examination;
- During the regular call-up announced during preliminary investigation, not to send the conscript’s personal case and not to call on the conscript to show up at the territorial subdivision of the RA MoD Conscription and Mobilization service to once again clarify

the issue of being fit for military service or fit for military service with limitations and not to delay the process of preliminary investigation respectively.

24. Regarding legislative changes,

- **To the RA Government, RA NA deputies** – to bring back to the agenda the RA Government's draft decision “On making amendments to the RA Government's decision N 404-Ն of 12 April 2018”.
- **To the RA Government, the RA NA deputies** – when making amendments to the RA Government's decision N 404-Ն of 12 April 2018, to establish the mechanism and legal grounds for assessing drafting of a person to military service if he has two and more illnesses, and reject the approach to making decisions on conscripts' fitness based on assessment of separate illnesses.
- **To the RA Government, the RA NA deputies** - when making amendments to the RA Government's decision N 404-Ն of 12 April 2018, to justify the logic of establishing deferrals in case of 5 specific illnesses.
- **To the RA Government, the RA NA commissions, the RA NA deputies** – to review the circle of persons in the category established under Article 29 clause 2 of the RA Law “On defence”, in particular,
 - Based on family conditions (in case of drafting parents who have underage child/ren, in case more than one person is drafted from the same family at the same time, in case the relevant person is the only breadwinner, in case the conscript has parent(s) with disabilities, etc.).
- **To the RA Government, the RA NA commissions, the RA NA deputies** – to clearly establish the procedure of involving transport means belonging to citizens in the frame

of military transportation obligation established under Article 27 of the RA Law “On Defence”.

- **To the RA Government, the RA NA commissions, the RA NA deputies-** to establish the procedure of mobilization call-up, as is in case of compulsory military service call-up.
- **To the RA Government, the RA NA commissions, the RA NA deputies -** in the frame of criminal cases initiated based on applications presented to the RA Administrative Court against administrative acts, actions or inaction during call-up for compulsory military service, to establish terms for administrative cases' examination and forensic medical examinations appointed in the frame of those cases, that will allow having the court's decision by the end of the call-up, as is established for cases of protecting the right to vote.

ANNEX: INFORMATION ON CITIZENS WHO WERE GRANTED A DEFERRAL OR WERE EXEMPTED FROM COMPULSORY MILITARY SERVICE BY THE DECISION OF THE GOVERNMENT FROM 1998 TILL 6 AUGUST 2021

HCA Vanadzor studied decisions taken by the RA Government during 1998- 6 August 2021²⁶, based on which some citizens are granted a deferral or exempted from compulsory military service.

The Government's decisions on granting a deferral or exempting citizens from compulsory military service are made based on Article 21 and part 5 of Article 22 of the RA Law ²⁷ "On Military service and status of servicemen", as well as the RA Government's decisions N 450-Ն, N 451-Ն, N 457-Ն of 12 April 2018.

In particular, **clause 5 of Article 21** of the RA Law on "Military service and status of servicemen" establishes that "a citizen can, **in exceptional cases**, be exempted from compulsory military service by the decision of the RA Government in a procedure established by the RA Government".

Clause 5 of Article 22 of the same Law establishes that, "Citizens with significant achievements in **science, education, culture, art and sports**, can be granted a deferral from compulsory military service also by the RA Government's decision in the procedure and conditions established by the RA Government".

²⁶ Including summer 2021 call-up period

²⁷ <https://www.arlis.am/DocumentView.aspx?DocID=131552>

According to the RA Government's decision *N 450-Ն* of 12 April 2018, **a deferral from compulsory military service is granted to citizens with significant achievements in sports.**²⁸

According to the RA Government's decision *N 451-Ն* of 12 April 2018, **a deferral from compulsory military service call-up is granted to citizens with significant achievements in science and education.**²⁹

According to the RA Government's decision *N 457-Ն* of 12 April 2018, **a deferral from compulsory military service is granted to citizens with significant achievements in culture and art.**³⁰

By the Government's decision, **citizens are exempted from compulsory military service** on grounds of activity in culture and art, sports, as well as activity of citizens with a science degree in education and science in line with RA Government's decision *N 89-Ն of 15 February 2019* "On establishing the procedure of exempting citizens from compulsory military service in exceptional cases".³¹

According to our study, from 1998 till 6 August 2021, **2318 citizens were granted a deferral and 249 citizens were exempted** from compulsory military service. Moreover, 30 persons out of those exempted, were exempted from compulsory military service immediately without being granted a deferral before that. 219 persons were exempted from military service after receiving one or more deferrals.

1759 persons were granted a deferral once (deferral granted to 3 of them was later terminated due to them not being involved in a certain sports team).

558 persons were granted a deferral **more than once**. In particular,

²⁸ <https://www.arlis.am/DocumentView.aspx?DocID=152177>

²⁹ <https://www.arlis.am/DocumentView.aspx?DocID=145549>

³⁰ <https://www.arlis.am/DocumentView.aspx?DocID=135030>

³¹ <https://www.arlis.am/DocumentView.aspx?docid=128187>

- **310 persons** were granted a deferral twice,
- **172 persons** were granted a deferral three times,
- **32 persons** were granted a deferral four times,
- **16 persons** were granted a deferral five times,
- **9 persons** were granted a deferral six times,
- **10 persons** were granted a deferral seven times,
- **6 persons** were granted a deferral eight times,
- **3 persons** were granted a deferral 9 times (see Table 1).

Table1. Number of persons who were granted a deferral or were exempted from compulsory military service by the RA Government's decision from 1998 till 6 August 2021 per relevant grounds and frequency of deferrals

Grounds for deferral and exemption from military service	Number of deferrals per person	Number of exemptions per person	Frequency of deferrals from compulsory military service and exemptions granted as a result			
			Frequency of granted deferrals including the number of deferrals granted to the same person once and/or more than once		Exemption after deferral	Immediate exemption
					person	
Educational	888	0	1019			
			once	796		
			twice	63		
			3 times	23		
			4 times	4		
			5 times	2		
Spiritual	404	190	1008		168	22
			once	133	25	22
			twice	99	53	
			3 times	110	69	
			4 times	22	9	
			5 times	12	1	
			6 times	9	6	
			7 times	10	2	
			8 times	6	0	
			9 times	3	3	
Sports	254	42	392		42	
			once ³²	161	11	
			twice	54	12	
			3 times	35	18	
			4 times	4	1	
Not mentioned	66	3	70		1	2

³²In 3 cases, deferrals were terminated as 3 citizens were not involved in a certain sports team.



			once	62	1	2
			twice	4		
Cultural	47	8	72		5	3
			once	35	2	3
			twice	5	1	
			3 times	3	1	
			4 times	2	1	
			5 times	2		
Scientific-educational	653	6	735		3	3
			once	570	3	3
			twice	82		
			3 times	1		
Work-related	6	0	9			
			once	3		
			twice	3		
Total	2318	249	3305		206	28



The Government made **721** decisions regarding 2318 persons who were granted a deferral and 249 persons exempted from compulsory military service from 1998 till 6 August 2021; **669** out of **721** decisions concerned granting a deferral and 52 concerned exemption from compulsory military service (see Table 2).

Table 2. The number of decisions regarding persons who were granted a deferral or exempted from compulsory military service by the RA Government's decision from 1998 till 6 August 2021 per grounds for deferral and exemption

Deferral and exemption grounds	Deferral decision	Exemption decision	Total
Educational	446	0	446
Spiritual	37	20	57
Cultural	56	8	64
Sports	65	16	81
Not mentioned	38	3	41
Scientific-educational	24	5	29
Work-related	3	0	3
Total	669	52	721³³

Data regarding compulsory military service deferrals granted by the RA Government's decision

446 decisions were taken during 1998 – 31 March 2021 to grant **888³⁴** citizens deferrals with the purpose of continuing **education**; those citizens were studying primary (craftsmanship) or secondary vocational educational programs, as well as programs for a Bachelor's degree, degree of a Certified Specialist or integrated educational program full-time course.

³³ The number of decisions includes all separate decisions, including the number of decisions taken with regard to one person several times.

³⁴ Those who were granted a deferral on educational grounds and were later also granted a deferral or exempted from military service on scientific-educational grounds, are included in the number of those granted a deferral on scientific-educational grounds.

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It should be mentioned that amendments were made to the RA Law “On military service and status of servicemen” on 19 April 2021, according to which “In line with the Republic of Armenia Government’s decision, a citizen subject to compulsory military service call-up, who has not finished his secondary vocational educational program studies, or studies in the graduate year as of the last day of the deferral, shall be granted a deferral until the last day of the studies included, to but not more than the day he turns 20 years old”.³⁵ Before that, deferral was granted until the day the relevant person turned 19 years old.

37 decisions on granting compulsory military service deferral were taken with regard to **404** spiritual servants of Armenian Apostolic Church and/or students of seminaries.

56 decisions were taken to grant a deferral to **47** persons on cultural grounds (exceptional abilities in culture and arts).

65 decisions on granting a deferral were taken with regard to **254** persons with exceptional abilities in sports.

24 decisions on compulsory military service deferral were taken with regard to **653** persons with significant achievements in science and education.

3 decisions on granting a deferral on the ground of work was taken regarding **6** persons.

Deferral grounds are not mentioned in 38 decisions with regard to **66** persons.

Detailed data regarding exemption from compulsory military service as decided by the Government

20 decisions on exemption from compulsory military service were taken with regard to **190 spiritual servants** of the Armenian Apostolic Church and/or students of seminaries. 168 out of the mentioned persons have previously been granted a deferral once or several times, while 22 of them were exempted from military service without prior deferrals.

³⁵ <https://www.arlis.am/DocumentView.aspx?docid=152087>

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8 decisions were taken to grant deferrals to 8 persons for exceptional abilities in culture. 5 of them were exempted from military service after being granted a deferral once or several times, and 3 of them were exempted immediately.

16 decisions on granting a deferral were taken with regard to 42 persons with exceptional abilities in sports. They had all been previously granted one or several deferrals.

5 decisions on compulsory military service exemption were taken with regard to 6 persons with significant achievements in science and education.

Exemption grounds are not mentioned in 3 decisions on military service exemption of 3 persons. 1 of those persons had previously been granted a deferral and 2 were immediately exempted from military service without prior deferrals.