

2016-04-20

Fråga-svar

Afghanistan. Avvikit från tjänst inom afghanska säkerhetsstyrkorna / underrättelsetjänsten (NDS)

Fråga

En person med en hög position inom underrättelsetjänsten NDS (en del av ANSF) har lämnat sin tjänst utan att anmäla detta (avvikit).

- Hur ser Afghanistans lagstiftning på detta? Är detta reglerat i lagtext?
- Finns det någon landinformation som tyder på att avvika från tjänstgöring inom underrättelsetjänsten är kriminaliserat eller bestraffas på något sätt?

Svar

Nedan följer en sammanställning av information kring avvikelser från tjänst inom afghanska militären/underrättelsetjänsten.

Straff för desertering

Enligt tillgänglig information är temporär desertering inte straffbelagt i afghansk lagstiftning, medan däremot desertering på permanent basis är det. Specifik information om ev repressalier för högt uppsatta officerare som deserterat från NDS har inte gått att finna. Tillgänglig information tyder emellertid på att varken det militära rättsväsendet eller centrala afghanska myndigheter generellt har kapacitet eller vilja att åtala personer som deserterar, åtminstone inte inom ANA.

I en rapport från ICG (2010) om Afghan National Army (ANA) beskrivs lagstiftning som reglerar militären (lagtexterna är emellertid inte tillgängliga):

Parliament has adopted three bodies of law, which nominally guide the military's organisational structures, rules and regulations and criminal procedures: the Uniform Code of Military Justice; the Criminal Procedure Code for Military Courts; and the Afghanistan Military Court Law.¹⁰⁰ These laws (discussed in detail below)

focus primarily on military justice, outlining the role and structure of military courts, and articulating penalties and punishments for dereliction of duty.

(s. 13)

...the Uniform Code of Military Justice, adopted in 2008, which includes a series of prohibitions and punishments for everything from desertion to treason. In all, the code covers 34 different violations, all but a handful of which incur a minimum punishment of at least oneyear imprisonment. The codes are enforced and cases reviewed by primary military courts in each of the regional commands. Appeals are handled by a secondary military court of appeals consisting of five judges, located in Kabul. There is, however, little evidence that military codes are regularly or fairly enforced.

Military courts reviewed 1,779 cases from 2006 to 2009.¹⁰³ While the cases ranged from murder to embezzlement, absenteeism and serious traffic accidents represented the bulk of the caseload. In Herat, for example, where the 207th corps command is headquartered, 90 of 100 cases pending in January 2010 involved absenteeism.¹⁰⁴ Yet Afghan officials admit that the desire to reduce attrition rates by any means, as well as interference from high-ranking officials, have thwarted efforts to maintain discipline and pursue cases against military deserters.

According to one MOD legal adviser, lack of political will and mixed signals from factional leaders within the ministry have resulted in the haphazard application of justice.

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Lack of capacity within the ministry's legal department also contributes to the inability

(s. 14)

Enligt en respons från norska Landinfo (2011) kan desertering straffas med upp till 15 års fängelse:

Uniform Code of Military Justice (2008) regulerer desertering fra de væpnede styrker. Lovens artikkel 15 fastslår at en person som deserterer på permanent basis kan bli straffet med fengsel fra to til fem år. Dersom deserteringen skjer i tilknytning til bestemte oppdrag, eksempelvis i forbindelse med militære trefninger, er strafferammen mellom fem og femten års fengsel.

(s. 1)

Khaama Press (2016) rapporterar om en soldat som dömts till fängelse för bl a desertering:

An Afghan National Army (ANA) soldier was sentenced to 15 years in jail for desertion and joining enemy ranks by a military court in eastern Nangarhar province of Afghanistan.

Flera källor rapporterar om straffrihet för desertering inom afghanska militären, enligt uppgift ska detta baseras på en regel utfärdad av ex-president Karzai:

Stars and Stripes (sep 2015):

There is no legal penalty for soldiers and police who decide to quit before their term of enlistment is complete.

Centre for Security Governance (2014):

Combat losses are also complemented by high losses to disease and desertion, which has yet to be criminalized in Afghanistan. Police and military officers are able to abandon their post with impunity.
(s. 6)

AREU (2014):

Desertions from the ANA have rarely affected the officer corps, except in special cases such as sudden redeployment from permissive to heavily contested regions.

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98 percent of desertions and AWOL affect field units

(s. 7)

The debate over what is driving high attrition rates highlights a number of problems. A major point of contention has always been the failure to punish deserters, who have been able to live normal lives and even get other jobs such as security guards. This was originally due to the desire to “allow some flexibility during harvest time and to encourage recruiting”, but led instead to desertions and AWOL rates getting out of control.

(s. 8)

The New York Times (2012):

American officials have tried to persuade the Afghans to criminalize desertion in an effort to reduce it; instead, Afghan officials have proposed a four-year effort to order the recall of 22,000 deserters, according to General Ahmadzai.

Meanwhile, Afghan deserters live so openly that they list their status as a job reference.

Ghubar, 27, who is from Parwan Province but lives in Kabul, deserted from his battalion with the First Brigade in Kabul just six months into his three-year commitment. Citing his military training, he promptly got a job as a security guard.

The New York Times (sep 2011):

Some Afghan officials say the figures point to the vulnerability of a long-standing Afghan policy that prohibits punishment of deserters. The rule, issued under a decree by President Hamid Karzai, was aimed to encourage recruiting and allow for some flexibility during harvest time, when the number of desertions spikes.

“I am personally in favor of removing that amnesty,” said Gen. Sher Mohammad Karimi, the chief of staff of the Afghan army. “We cannot turn a blind eye on the individuals who are doing something wrong.”

The New York Times (juni 2011)

Afghan soldiers often leave without permission to help their families. In fact, there is no penalty for desertion, according to the Defense Ministry.

“There is not yet a culture in the military that says you can’t go away and do harvests and come back,” said Maj. Gen. D. Michael Day, deputy commander of the NATO Training Mission in Afghanistan.

Allmänt om desertering inom afghanska militären

De afghanska styrkorna har varit och fortsätter vara hårt drabbade av deserteringar. Primärt gäller det ANA:s stridande förband, enligt uppgift 98 % av alla deserteringar, och anledningarna till dessa är flera:

AP (2015):

...army, police and intelligence agency soldiers left their posts as the Taliban advanced on the city [Kunduz]. The large-scale desertion enabled the insurgents to enter the city almost unopposed.

Stars and Stripes (mars 2015):

Without compulsory service, it is natural that some troops decide to leave, Waziri [deputy spokesman for the Afghan Defense Ministry] argued. “The Afghan National Army is a volunteer army and if some of them quit after a year or two, no one can force them to stay.”

Tribus [a spokesman for the NATO-led Resolute Support mission] acknowledged that desertion is a problem and that the most commonly cited reasons for soldiers and police leaving without authorization were disagreements with leadership over issues like leave, and poor quality of life.

Deutsche Welle (2015):

Desertion and retention have been persistent problems within the Afghan army since the start of coalition efforts to rebuild it, with many factors feeding into it. Jason Campbell, an international security expert at the US-based RAND Corporation, explains that for instance, if soldiers are stationed in a particularly dangerous part

of the country or far from their home province, their likelihood of deserting goes up.

There is also anecdotal evidence that soldiers will, at times, desert temporarily. Campbell says that a common reason for this is that the leave time allotted to soldiers does not include extra time to travel to and from their home village and, given that this must be done in most cases via truck or bus, soldiers on occasion will simply depart their unit before their leave time formally begins.

Moreover, there are instances where soldiers will leave their unit to take part in seasonal poppy cultivation, which pays more than soldiering, or to attend to family matters without going through formal channels, said the Afghanistan expert, adding that all these reasons highlight why desertions remains difficult to precisely quantify.

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

(källor hämtade 2016-04-20)

AREU - Afghanistan Research and Evaluation Unit, *The Afghan National Army: Sustainability challenges beyond financial aspects*, februari 2014, <http://www.areu.org.af/Uploads/EditionPdfs/ANA%20Issues%20Paper.pdf>

Centre for Security Governance, *The Afghan National Security Forces Beyond 2014: Will They Be Ready?*, February 2014, <http://www.ssrresourcecentre.org/wp-content/uploads/2014/02/eSeminar-Primer-No.-2.pdf>

Deutsche Welle, *Why Afghanistan's security forces are dwindling*, 2015-03-05, <http://www.dw.com/en/why-afghanistans-security-forces-are-dwindling/a-18298881>

Landinfo, *Respons: Afghanistan: Desertering fra det afghanske militæret (ANA)*, 2011-02-17, http://landinfo.no/asset/1551/1/1551_1.pdf

ICG - International Crisis Group, *A Force in Fragments: Reconstituting the Afghan National Army*, 12 May 2010, Asia Report N°190, <http://www.refworld.org/docid/4bf0e68b2.html>

Khaama Press, *Afghan soldier jailed for 15 years for desertion and joining enemy ranks*, 2016-03-03, <http://www.khaama.com/afghan-soldier-jailed-for-15-years-for-desertion-and-joining-enemy-ranks-0232>

Stars and Stripes, *Casualties, desertions spike as Afghan forces take lead*, 2015-03-03, <http://www.stripes.com/news/casualties-desertions-spike-as-afghan-forces-take-lead-1.332504>

Stars and Stripes, *Tide of desertions — among highest in recent history — strains Afghan forces*, 2015-09-03, <http://www.stripes.com/news/middle-east/tide-of-desertions-among-highest-in-recent-history-strains-afghan-forces-1.366071>

The New York Times, *Afghan Army's Turnover Threatens U.S. Strategy*, 2012-10-15, http://www.nytimes.com/2012/10/16/world/asia/afghan-armys-high-turnover-clouds-us-exit-plan.html?_r=0

The New York Times, *More Afghan soldiers deserting the army, NATO statistics show*, 2011-09-03, https://www.washingtonpost.com/world/asia-pacific/more-afghan-soldiers-deserting-the-army/2011/08/31/gIQABxFTvJ_story.html

The New York Times, *Afghans Build Security, and Hope to Avoid Infiltrators*, 2011-06-27, <http://www.nytimes.com/2011/06/28/world/asia/28infiltrate.html>