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BELARUS: Alternative Service Law withdrawn as prisoner awaits trial

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Arrested by Belarus on 15 December, after his demands to do alternative civilian service were rejected, Messianic Jew Ivan Mikhailov is due to go on trial on 29 January on charges of refusing compulsory military service, Minsk District Court told Forum 18 News Service. After a gap of nine years, Dmitry Smyk, a Jehovah's Witness from Gomel, was found guilty on the same charge in November 2009 and given a large fine, which he is still appealing against. A Law on Alternative Service was initially included in the 2010 Legislative Programme but was removed "for some reason" at the last minute, an official of the National Centre for Legislation and Legal Research told Forum 18. The failure to introduce alternative service comes a decade after a May 2000 Constitutional Court ruling declaring its introduction "urgent". Meanwhile, the Supreme Court denied Jehovah's Witnesses in Gomel the right to challenge an official written warning, despite a 2007 Constitutional Court decision upholding religious organisations' right to make such challenges.

As a religious conscientious objector detained for over a month nears trial in the capital Minsk, Belarus looks no nearer to providing an alternative to compulsory military service, Forum 18 News Service notes. Ivan Mikhailov's month in prison insisting on his right to alternative civilian service is "the price he is paying for his choice", Mikhail Pashkevich of the campaign For Alternative Civilian Service told Forum 18 from Minsk on 15 January.

No family members have been allowed to visit Mikhailov, a Messianic Jew, since his arrest at a hotel after work in the town of Saligorsk near Minsk on 15 December. In a cell with five others at an investigation prison in Zhodino (Minsk Region), he nevertheless remains optimistic, his brother-in-law Mikhail Suboch told Forum 18 from Minsk on 16 January: "His health and mood are both good – he's not complaining." Mikhailov's lawyer, Svetlana Gorbatok, was permitted to attend his interrogation and hold an individual meeting with him on 14 January, said Suboch. Her application for him to be freed in the run-up to the trial if he signed a pledge not to leave Minsk was rejected on 14 January, however.

Mikhailov's trial at Minsk District Court is due to begin on the morning of 29 January under Judge Aleksei Minich, the court's chancellery told Forum 18 on 15 January. Under Article 435, Part 1 of the Criminal Code, the 21-year-old faces a fine or up to two years' imprisonment if found guilty of refusing compulsory military service.

Mikhailov is a member of New Testament, a Minsk-based Messianic Jewish congregation whose founder, a foreign citizen, was forced to leave Belarus after being denied permission to continue religious work. Both Mikhailov and his family have repeatedly told the Minsk District call-up commission that he is unable to do military service because of his religious beliefs, Suboch told Forum 18. Mikhailov asked instead to be assigned to civilian alternative service, in line with Article 57 of Belarus' Constitution. Article 36 of the Law on Military Obligation and Military Service also requires call-up commissions to offer alternative service, but there is no legal mechanism for providing it.

Alternative Service Law dropped

A Law on Alternative Service was initially included in the 2010 Legislative Programme. However, it was removed "for some reason" at the last minute before the Programme was approved by presidential decree on 4 January, an official from the Department of Legislation on National Security and Law-Enforcement Activity at the National Centre for Legislation and Legal Research told Forum 18 on 18 January. "The President signed the decree without this," the official - who declined to be named - commented. Asked why it had been removed, the official responded: "Ask the Presidential Administration."

The telephone of the Presidential Administration Press Office went unanswered on 18 January.

Colonel Sergei Puzakov of the Defence Ministry General Staff had claimed to the Tut.by news agency on 15 January that a draft Alternative Service Law was under consideration by Parliament. However, the National Security Commission, the Human Rights Commission and the Labour and Social Protection Commission of the House of Representatives, the lower chamber of Parliament, all denied to Forum 18 on 18 January that any such draft Law is being considered or has been considered in recent years.

A previous attempt to adopt an Alternative Service Law was rejected by Parliament in 2004.

Constitutional Court called for "urgent" change in 2000

The failure to introduce an alternative to military service comes despite a Constitutional Court ruling nearly ten years ago that the Law should be changed. The May 2000 Constitutional Court ruling called for the "urgent" adoption of an Alternative Service Law or an amendment to the Law on Military Obligation and Military Service (see F18News 20 October 2009 http://www.forum18.org/Archive.php?article_id=1364).

"I agree this ruling has not been fulfilled, but each ruling is carried out in its own way," Sergei Latushkin, the Constitutional Court's official in charge of supervising the enactment of its rulings, told Forum 18 from Minsk on 18 January. "Some take months, others take years. It depends on state bodies, Parliament, the legislative programme and other circumstances."

More prosecutions

Meanwhile, the numbers of prosecutions of conscientious objectors are increasing. A Jehovah's Witness, Dmitry Smyk, became the first such case in nine years in late 2009. On 6 November the Central District Court of the south-eastern city of Gomel [Homyel] fined him 3,500,000 Belarusian Roubles (7,230 Norwegian Kroner, 862 Euros or 1,290 US Dollars) under Article 435, Part 1 of the Criminal Code. He was also banned from leaving Belarus, banned from travelling within the country without notifying the authorities and required to maintain "good conduct" (see F18News 11 November 2009 http://www.forum18.org/Archive.php?article_id=1374).

Smyk appealed against the verdict, but on 9 December a three-judge panel at Gomel Regional Court upheld his conviction, he told Forum 18 from Gomel on 13 January. Later in December he lodged a supervisory appeal to the Chair of the Regional Court, Lyudmila Mikhalkova, whose decision is expected by 23 January. "If that is negative, I will take my case to the Supreme Court," Smyk told Forum 18. Although the verdict against him is now in force, he is refusing to pay the fine.

Pashkevich of For Alternative Civilian Service notes two other current cases of Gomel residents facing punishment for refusing military service on grounds of conscience: Andrei Tenyuta and opposition Christian Democrat Yevgeny Yakovenko. According to Smyk, several more Jehovah's Witnesses may similarly be prosecuted.

Second Constitutional Court ruling unimplemented

Smyk's fellow Jehovah's Witnesses in Gomel are also finding the law powerless to defend their right to protest unjust treatment by the state. In July 2009 the community was raided by some ten police officers and heavily fined. A written "final warning" from Aleksandr Prusov of the Religious Affairs Department of Gomel Regional Executive Committee followed on 22 September.

The community tried to challenge Prusov's warning in Gomel Regional Court. In its 26 October decision seen by Forum 18, however, Judge Zinaida Kamalyeva rejected their application on the grounds that the 2002 Religion Law does not envisage legal challenges to written warnings.

The Gomel Jehovah's Witnesses tried to appeal against this verdict citing a relevant 2007 Constitutional Court decision, but a panel of three judges at the Supreme Court in Minsk on 3 December again rejected their right to challenge the written warning. The ruling, seen by Forum 18, records the community's reference to the 2007 Constitutional Court decision, but repeats that the Law does not envisage challenges by religious communities to written warnings.

"We were surprised by the court ruling," Jehovah's Witnesses told Forum 18 on 13 January. "All other organisations have the right to challenge such decisions in court – except religious organisations. They have no right to defend themselves."

In its decision R-199 of 5 April 2007, the Constitutional Court highlighted the inadequacy of the Law in failing to give religious organisations the right to challenge in court written warnings issued to them by Religious Affairs officials. The detailed ruling points out that these written warnings have "consequences": Article 37 of the Religion Law declares that if a religious organisation fails to remove the "violation" that led to the warning within six months or repeats the "violation" within a year, the registering organ can halt its activity and seek its liquidation in court.

Latushkin of the Constitutional Court admitted to Forum 18 that the 2007 ruling has not been implemented. He insisted to Forum 18 that both it and the Court's ruling on alternative service would be fulfilled, "but I'm not the Lord God to be able to look into the future to say when and how this will happen."

Fines continue

Jehovah's Witnesses in Kostyukovichy in Mogilev [Mahilyow] Region are the latest religious believers to be punished for religious

activity. According to court documents seen by Forum 18, Sergei Yevstafyev, Aleksei Ilnitsky and Ivan Mustetsanu were each fined 140,000 Belarusian Roubles (280 Norwegian Kroner, 34 Euros or 49 US Dollars) by Judge Valentina Androsenko of Kostyukovich District Court on 18 December. The three were found guilty of creation or leadership of a religious organisation without state registration (Article 9.9, Part 1 of the Administrative Violations Code). Under the harsh 2002 Religion Law, all religious activity must be registered with the state.

The fines followed a 26 July raid by officials of the local administration, police and KGB secret police on their meeting in Ilnitsky's home in Kostyukovich where, the verdict complained, "a meeting of citizens was underway, of about 30 people, in the course of which those present prayed and studied the Bible".

The verdict records that religious literature was confiscated during the raid. It also complains that the local Jehovah's Witness community has functioned without compulsory state registration since 2001 and that community members periodically conduct "religious agitation" in nearby villages.

The three Jehovah's Witnesses fined have appealed to Mogilev Regional Court, which is due to hear their cases on 2 February.

Further raids and fines on unregistered activity have occurred across Belarus in recent months, including two heavy fines imposed on a 68-year old pensioner with disabilities in Grodno [Hrodna] (see F18News 6 January 2010 http://www.forum18.org/Archive.php?article_id=1393).

Catholic priests barred from religious work

Meanwhile, a Polish Catholic priest facing denial of permission to conduct religious work after the end of 2009 has been given a six-month reprieve. Fr Aleksander Drogas, who serves at St John the Baptist parish in Volpa, appears to have been allowed to stay due to pressure from the Catholic Church. "Thanks to talks between Bishop Aleksandr Kashkevich [of Grodno Diocese] and the local authorities, it was possible to achieve this result," Fr Aleksandr Amialchenia, who speaks for the Belarusian Catholic Bishops' Conference, told Forum 18 from Minsk on 13 January.

Two other Polish Catholic priests working in Grodno Diocese - Fr Jan Bonkowski and Fr Edward Smaga - were banned from continuing their religious work in Belarus after the end of 2009. Officials have not explained the decisions, and the pair are thought to be in Poland (see F18News 5 January 2010 http://www.forum18.org/Archive.php?article_id=1392). (END)

For a personal commentary by Antoni Bokun, Pastor of a Pentecostal Church in Minsk, on Belarusian citizens' struggle to reclaim their history as a land of religious freedom, see F18News 22 May 2008 http://www.forum18.org/Archive.php?article_id=1131.

For more background information see Forum 18's Belarus religious freedom survey at http://www.forum18.org/Archive.php?article_id=1311.

Full reports on freedom of thought, conscience and belief in Belarus can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=16>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A personal commentary on the European Court of Human Rights and conscientious objection to military service is at http://www.forum18.org/Archive.php?article_id=1377.

A printer-friendly map of Belarus is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=belaru>.

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