

1 February 2010

## BELARUS: Conscientious objector jailed

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

*Ivan Mikhailov, a Messianic Jew, has today (1 February) had a three-month jail term imposed on him by a court in Belarus for refusing compulsory military service. His brother-in-law told Forum 18 News Service that "The sentence has nothing to do with justice." His lawyer, Svetlana Gorbatok, argued that the absence of an Alternative Service Law is not a legal basis for violating Mikhailov's rights. He has been in pre-trial detention since 15 December 2009, and must serve another six weeks unless he wins an appeal he will make. Also present in court was Mikhail Pashkevich of 'For Alternative Civilian Service', which has launched a civic society petition calling for civilian alternative service. Prosecutor Aleksandr Cherepovich, asked by Forum 18 who had suffered from refusal to undertake compulsory military service, replied: "The state." Meanwhile, the launch of a CD compilation of Christian songs at a Catholic church has been stopped under state pressure. Senior religious affairs official Alla Ryabitseva angrily told Forum 18 that: "Concerts don't take place in churches."*

The family of Ivan Mikhailov, a Messianic Jew, condemned a three-month prison term handed him today (1 February) by a court in the Belarusian capital Minsk for refusing compulsory military service. "So many positive things were said about Ivan in court – and then came this sentence," his brother-in-law Mikhail Suboch, present in court, told Forum 18 News Service from Minsk in the wake of the verdict. "The sentence has nothing to do with justice. The judge did not make his decision alone." Officials at Minsk District Court confirmed the sentence to Forum 18 but declined to discuss it.

Mikhailov was found guilty under Article 435, Part 1 of the Belarusian Criminal Code, which punishes refusing the compulsory call-up to military service with a fine or imprisonment of up to two years. He plans to appeal to Minsk Regional Court against today's jail sentence.

Also present in court was Mikhail Pashkevich, coordinator of the campaign group For Alternative Civilian Service <http://ags.by>. "Mikhailov looked very thin, but stuck firmly to his position," he told Forum 18 from Minsk on 1 February. He said Mikhailov had been brought to court in handcuffs with a shaved head, and was held in a cage during the trial. The opposition Christian Democratic Party, which sent a representative to the trial, described the sentence as "a crude violation of the rights of all to freedom of conscience".

The right to refuse military service is part of the right to freedom of thought, conscience and religion guaranteed by Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified in 1976. It is also part of Belarus' Organisation for Security and Co-operation in Europe (OSCE) human dimension commitments. Despite Belarus' international obligations, a possible Law on Alternative Service was this year withdrawn. The failure to introduce civilian alternative service comes a decade after a May 2000 Constitutional Court ruling declaring its introduction "urgent" (see F18News 18 January 2010 [http://www.forum18.org/Archive.php?article\\_id=1396](http://www.forum18.org/Archive.php?article_id=1396)).

Main victim is "the state"?

Aleksandr Cherepovich, the Minsk District prosecutor who led the case in court, declined to comment on the sentence. "The reasons will all be in the written verdict," he told Forum 18 on 1 February. He refused to discuss why Mikhailov was unable to make use of his rights to alternative civilian service set out in Belarus' Constitution. Asked who had suffered from his refusal to conduct military service, he responded: "The state."

The sentence means that Mikhailov, held in pre-trial detention in Zhodino near Minsk since 15 December 2009, must serve another six weeks there unless he wins an appeal.

Arguments in court

Mikhailov, 21, belongs to a Messianic Jewish congregation in Minsk. He was arrested on 15 December after Minsk District Military Commissariat rejected his repeated appeals to be allowed to do alternative civilian service (see F18News 18 January 2010 [http://www.forum18.org/Archive.php?article\\_id=1396](http://www.forum18.org/Archive.php?article_id=1396)).

His trial began at Minsk District Court on 29 January under Judge Aleksei Minich. Prosecutor Cherepovich argued for a five-month prison term, but Mikhailov insisted it was not his fault that Parliament and other state bodies have made no moves to adopt a Law allowing him to make use of his constitutional right to alternative service.

Mikhailov's lawyer, Svetlana Gorbatok, repeatedly referred to Article 57 of the 1994 Constitution, which refers to legal provision of alternative service. She argued that the absence of an Alternative Service Law cannot serve as a legal basis for violating Mikhailov's rights. Article 57 states:

(1) It shall be the responsibility and sacred duty of every citizen of the Republic of Belarus to defend the Republic of Belarus.

(2) The procedure governing military service, the grounds and conditions for exemption from military service, and the substitution thereof by alternative service shall be determined by law.

#### Alternative civilian service petition launched

In the wake of Mikhailov's sentence, For Alternative Civilian Service announced the launch of a petition calling for such a civilian alternative service. The Petition is addressed to the General Prosecutor and the chairs of the Supreme Court, the Constitutional Court and the House of Representatives (the lower house of Parliament).

Belarusian authorities have been hostile to civil society groups initiating such petitions, fining and firing from their work human rights defenders who collected the largest non-party political petition in Belarusian history (see F18News 29 April 2008 [http://www.forum18.org/Archive.php?article\\_id=1121](http://www.forum18.org/Archive.php?article_id=1121)). This petition - which gained 50,000 signatures and was 3,442 pages long - called for the Religion Law to be changed to conform with international human rights standards (see F18News 16 May 2007 [http://www.forum18.org/Archive.php?article\\_id=957](http://www.forum18.org/Archive.php?article_id=957)).

"Obstructed the maintenance of the manpower of the armed forces"

For Alternative Civilian Service notes that Mikhailov's sentence is the second sentence recently imposed for conscientious objection to military service. In November 2009 the Central District Court of the south-eastern city of Gomel [Homyel] fined Jehovah's Witness Dmitry Smyk 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 both from leaving Belarus and travelling within the country without notifying the authorities, and required to maintain "good conduct". This was the first such prosecution since 2000 (see F18News 18 January 2010 [http://www.forum18.org/Archive.php?article\\_id=1396](http://www.forum18.org/Archive.php?article_id=1396)).

Smyk has now lost two appeals against the original sentence. He told Forum 18, from Gomel on 1 February, that he lodged a further supervisory appeal to the Chair of the Regional Court, Lyudmila Mikhalkova, after his appeal to the Regional Court failed in December 2009. However, she upheld the original sentence in late January 2010, arguing that his failure to respond to the call-up "obstructed the maintenance of the manpower of the armed forces". Smyk said he is now appealing to the Supreme Court.

#### Constitutional Court calls for Alternative Service Law

Mikhailov's sentence came less than a week after the Chair of Belarus' Constitutional Court, Pyotr Miklashevich, told a Minsk press conference on 26 January that the country should adopt an Alternative Service Law. "He pointed out that the Constitutional Court already decided twice back in 2000 that a Law should be adopted to put individuals' constitutional right to alternative service into practice," Court Press Secretary Vasily Seledovsky told Forum 18 on 1 February (see F18News 18 January 2010 [http://www.forum18.org/Archive.php?article\\_id=1396](http://www.forum18.org/Archive.php?article_id=1396)). "This remains the position of the Constitutional Court."

Seledovsky agreed that no mechanism exists to force those who have the right to initiate new Laws to do so. "Nowhere do the Constitutional Court judges have the mechanism to punish anyone. We have to rely on the Court's high authority." He stressed that "unfortunately" not all Court decisions are applied quickly but insisted that an Alternative Service Law will eventually be adopted.

"Concerts don't take place in churches"

Meanwhile, the organisers of a 28 January concert to launch a CD compilation of Christian songs by contemporary composers and performers told Forum 18 that the planned launch in the central Minsk Catholic Church of Saints Simon and Helena (known locally due to its brickwork as the Red Church) had to be cancelled.

"We began advertising the concert two weeks in advance, but just two days before it was due to take place the church received a call from a secretary at the City Executive Committee who said there would be problems if the concert was not cancelled," Valeria Chernomortseva, one of the organisers of the CD and its launch, told Forum 18 from Minsk on 29 January. She said that at the last minute they had to transfer the launch to the nearby offices of the Belarusian Popular Front, an opposition political party.

Chernomortseva also said that organisers had asked several Minsk churches to host the launch, but they had refused, fearing

problems from the authorities as a result. She said earlier CDs in the series – this is the fifth – did not face such problems.

She speculated that the authorities may have been unhappy that a number of the artists appearing were also members of the Christian Democratic Party and the symbol of the party appears on the cover. "But the disc is non-political – these are Christian songs."

Alla Ryabitseva, senior religious affairs official at Minsk City Executive Committee, reacted angrily when asked why officials had warned the church not to host the concert. "Why are you asking me? I don't know what you are talking about," she told Forum 18 from Minsk on 29 January. "Concerts don't take place in churches." She then put the phone down.

In September 2008, officials in the town of Borisov [Barysaw] cancelled a Christian music festival initiated by local Catholics just minutes before it was due to begin, even though permission had been sought in advance. Local parish priest Fr Zbigniew Grygorcewicz, a Polish citizen, had his state permission for religious work in Belarus stopped at the end of December 2008. A religious affairs official for Minsk Region told him verbally that it was because of the festival (see F18News 7 January 2009 [http://www.forum18.org/Archive.php?article\\_id=1237](http://www.forum18.org/Archive.php?article_id=1237)).

Christian musicians in Belarus have long used their music to promote their faith in ways that would not otherwise be allowed (see F18News 20 September 2006 [http://www.forum18.org/Archive.php?article\\_id=842](http://www.forum18.org/Archive.php?article_id=842)). (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](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](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](http://www.forum18.org/Archive.php?article_id=1351).

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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