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BELARUS: Long-awaited Alternative Service Law abandoned?

By Olga Glace, Forum 18

Nearly 20 years after Belarus' 1994 Constitution enshrined a right to an alternative to compulsory military service for young men, an Alternative Service Law was drafted and sent to Parliament. The draft Law would have allowed only religious-based objection, and alternative civilian service would have been two-thirds longer than military service. But no sooner had it arrived than it was recalled, allegedly for "technical" corrections. "We didn't see it as it was withdrawn on about 20 December last year [2013]", Valentina Goshko of the parliamentary staff told Forum 18. "As soon as the corrections are made, the draft will be sent back for work in Parliament," Vera Chaushnik of the National Centre for Legislation and Legal Research told Forum 18. Elena Tonkacheva of the Lawtrend Legal Transformation Centre fears the proposed Law may now disappear, as "even in this current form, the authorities see it as a threat".

Hopes of Belarusian human rights defenders and conscientious objectors to military service for the adoption of a long-awaited Alternative Service Law – however imperfect – have been set back. The draft Law was withdrawn from Parliament in mid-December 2013 almost as soon as it reached it, Forum 18 News Service has learned. It appears to have been returned for corrections to the Labour and Social Security Ministry which drafted it, though the Ministry spokesperson refused to confirm or deny this to Forum 18. No date for its return to Parliament has been given.

"It might take a long time before the Alternative Service Law is adopted and implemented," Elena Tonkacheva, Head of the Lawtrend Legal Transformation Centre – which has campaigned for such a law - in the capital Minsk told Forum 18. She has concerns that the latest draft Law proposed that alternative service would not be open to non-religious conscientious objectors, and that its length – two-thirds longer than military service - would be punitive.

All men between 18 and 27 (with a few exceptions or deferments on grounds of health or family circumstance) are required to do 12 or 18 months' military service. Belarus remains one of the few participating States of the Organisation for Security and Co-operation in Europe (OSCE) with no legal possibility for conscientious objectors to compulsory military service to do a civilian alternative service (see below). Previously announced plans to adopt such a law in Belarus have failed to happen. The most recent draft Law was supposed to be adopted "at the earliest by summer 2014" (see F18News 10 January 2013 http://www.forum18.org/archive.php?article_id=1789).

When the draft Law reached the lower chamber of Parliament, the House of Representatives, in December 2013, it was supposed to be assigned to its Labour and Social issues Committee. But no sooner had the draft Law reached Parliament than it was withdrawn, apparently by the Council of Ministers.

The Head of the Department responsible for the work of the Labour and Social issues Committee, Valentina Goshko, declared that the Committee had not even started working on the draft. "We didn't see it as it was withdrawn on about 20 December last year," she told Forum 18 from Minsk on 20 January. "Maybe now it is in the Government."

Draft "will be sent back to Parliament"

However, the Deputy Head of the Social Legislation Department at the National Centre for Legislation and Legal Research, Vera Chaushnik, assured Forum 18 on 20 January that occasions when a draft law is recalled from Parliament for improvement are not unusual. "As soon as the corrections are made, the draft will be sent back for work in Parliament and to be accepted it doesn't have to be approved in the Legislative Programme," she explained.

Chaushnik added that a withdrawn draft law should be returned to the institution responsible for its preparation, which in this case is the Labour and Social Security Ministry.

The spokesperson of the Labour and Social Security Ministry, who would not give her name, refused to give any information to Forum 18 on 29 January. "Please send an official inquiry with all signatures. This is the rule."

Citing her private source, Tonkacheva of Lawtrend confirmed that the draft Law had been returned to the Labour and Social

Security Ministry for some "technical details" to be reworked. She was promised that soon it would be back in Parliament. "It was not explained to me what technical details are to be revised," she told Forum 18 on 27 January.

State views alternative service "as a threat"?

Tonkacheva of Lawtrend is convinced that the recall of the draft Law from Parliament demonstrates that the state is not ready to introduce a civilian alternative service. "I think that it happened not because someone decided that the draft should be more modern or humane," she insisted to Forum 18. "It means that even in this current form, the authorities see it as a threat."

She would not predict whether the draft Law will be returned to Parliament, pointing to her experience of similar situations. "This is a soft move which avoids having to give any explanations to the public, because here [in Belarus] nobody is obliged to inform the public," she told Forum 18. "The authorities hope that the draft Law will be forgotten."

International human rights obligations

The right to refuse to perform military service is part of everyone's right to freedom of thought, conscience and religion guaranteed in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified in 1976. This is clearly stated in General Comment 22 on Article 18 of the ICCPR, by the then United Nations (UN) Human Rights Committee. International human rights law rulings have repeatedly underlined this (see a personal commentary, by Derek Brett of Conscience and Peace Tax International, on conscientious objection to military service and international law at http://www.forum18.org/Archive.php?article_id=1597).

Included in 2013 Legislative Programme

The latest draft Alternative Service Law was included in the Legislative Programme for 2013, approved by presidential decree on 3 January 2013. It assigned preparation of the Law to the Council of Ministers and to the National Centre for Legislation and Legal Research. It envisaged completion of work on the draft text in July 2013 and its presentation to the Lower House of Parliament in October 2013 (see F18News 10 January 2013 http://www.forum18.org/archive.php?article_id=1789).

The text of the draft Law on Alternative Civilian Service was published on the government's legal website pravo.by in December 2013 at about the same time that the draft was handed over to Parliament and then recalled.

Only religious objectors, punitive length

Article 3 of the proposed Law would have allowed applications for alternative civilian service only for those for whom "the taking of the military oath, the bearing and use of weapons or direct participation in the production and servicing of weapons, ammunition and military equipment contradict their religious convictions to such an extent that undergoing military service becomes impossible".

This would thus have excluded those with non-religious conscientious objection to military service. It might also have been interpreted to exclude individuals who belong to religious communities which do not tend to oppose all forms of military activity.

University professor Grigory Vasilevich, a member of the Council on Issues of Legal and Judicial Activity and former General Prosecutor, argued to Forum 18 in April 2012 that alternative service should be introduced gradually and "it's too early to talk about alternative civilian service for all ethical objectors" (see F18News 4 May 2012 http://www.forum18.org/archive.php?article_id=1697).

The campaign For Alternative Civilian Service, initiated by Lawtrend, complained that the Law would be applied only to those who have religious objections and can prove it.

Article 15 of the proposed Law would have allowed applications for alternative service only within 10 days of the call-up to military service or to reserve military service. It thus does not envisage the possibility for those already conducting military service to apply to be transferred to alternative civilian service if they change their conscientious views during military service.

Article 19 of the draft Law would have set alternative service at 20 months for those with higher education and 30 months for those without, compared with 12 and 18 month military service respectively. Alternative service would thus be punitive in length. Other Articles specify that those doing alternative service have a 48-hour working week, 10 days' holiday per year and a small financial allowance.

Though formally alternative service is supposed to be socially beneficial labour, it is not regulated by the Labour Code which provides for a 40-hour working week, 24 days' holidays annually and a salary according to qualifications and position. To compensate for the minimum allowance to those performing alternative service, the state would provide accommodation and pay for utilities for the whole term of alternative service.

Alternative service would be performed in the least popular working sectors, such as public health organisations, social establishments, city maintenance and agricultural sectors, road construction organisations and emergency situations divisions.

Tonkacheva of Lawtrend complained to Forum 18 that these conditions would put conscientious objectors at a disadvantage compared with those who undertake military service. "Provisions in the draft Law would humiliate conscientious objectors, making them look for other income opportunities (which is prohibited by law) or slack work", the For Alternative Civilian Service campaign has warned.

She noted only one positive provision of the draft Law – the opportunity to get an education. "We know that this provision was the subject of disputes with the Defence Ministry, but as we see a compromise was reached," she told Forum 18.

No public debate?

Tonkacheva of Lawtrend is worried that the public will have no chance to influence the draft Law's content. "The authorities are not interested to hold open public discussions on the one hand, while on the other the state has all the protective mechanisms to ignore public opinion," she lamented.

The campaign group For Alternative Civilian Service submitted an analytical report comparing different alternative service models. "We consider the model of alternative service in Moldova the most successful in the region and most suitable for the countries with transitional economies," Tonkacheva explained. She assured Forum 18 that though the chances to contribute amendments to the draft are low, For Alternative Civilian Service activists will address members of Parliament again.

In July 2010 a group of non-governmental organisations drew up and publicly presented proposals for an Alternative Service Law. The government has as yet made no response to these proposals (see F18News 30 July 2010 http://www.forum18.org/Archive.php?article_id=1472).

Is proposed alternative service acceptable?

Asked if they would choose alternative service under the provisions offered by the draft Alternative Service Law, three conscientious objectors separately expressed their doubts to Forum 18.

"Under such conditions I wouldn't use the law but would have tried to find some other ways," Andrei Chernousov told Forum 18 on 27 January. In May 2012 Chernousov, a pacifist from Lida, was confined to a psychiatric hospital to establish if his convictions which led him to refuse call-up accord with "norms of psychiatric health" (see F18News 4 May 2012 http://www.forum18.org/archive.php?article_id=1697).

Minsk-based Messianic Jew Ivan Mikhailov said that when he had problems with Conscription Offices, he would have found such a Law useful. "It's not that I like it [the draft Law], but back then due to the absence of other alternatives I'd have taken civilian service," he told Forum 18 on 27 January. He admitted that the financial factor and his family status would influence his decision. Mikhailov served nearly three months in prison for refusing military service before eventually being acquitted in May 2010 (see F18News 28 June 2010 http://www.forum18.org/archive.php?article_id=1461).

Jehovah Witness Aleksandr Belous, who was threatened with criminal persecution after declaring his religious objections to military service in the Conscription Office, told Forum 18 from Gomel on 28 January that he would have applied for alternative service to free himself from pressure he had experienced with every call-up for nine years because "there was no other way out".

Ivan Mikhailov, Dmitry Smyk and Yevhen Yakovenko - who have all been convicted since late 2009 of refusing compulsory military service on grounds of conscience - separately told Forum 18 in June 2010 that they want a proposed Alternative Service Law to introduce a fully-civilian service and not of punitive length. They also stated that a genuine alternative service should be open to all conscientious objectors, whether religious or not (see F18News 29 June 2010 http://www.forum18.org/archive.php?article_id=1462).

Alternative service less attractive "on purpose"?

"I'm sure that the law is made in such a way which makes it less attractive for young people. And it is done on purpose," Tonkacheva of Lawtrend insisted to Forum 18.

Jehovah's Witness leader Pavel Yadlovsky was cautious over whether he believes the draft Law would be acceptable for Jehovah's Witnesses. "The law in practice will show if it is acceptable or not," he told Forum 18 from Minsk on 20 January.

Yadlovsky insists that "it is the right of every individual to choose whether to take alternative service and put up with discriminatory conditions, or serve a term in prison." However he admitted that the draft Law reaching Parliament should be considered progress.

"The state itself should decide when it's ready to introduce alternative service and we'd better not push it," he maintained philosophically to Forum 18.

He remarked that currently Military Conscription Offices make concessions to those who refuse military service on religious grounds. "We handed out about 50 references confirming applicants' religious affiliation last year and so far no one reported any problems," he told Forum 18.

By contrast, the pacifist Chernousov remarked that neither he nor his friends sharing the same pacifistic views found understanding in local Conscription Offices. "Having the same problems with the conscription office we are looking for a hook to avoid military service," he confessed to Forum 18.

While there is no legal framework for an alternative service, those who refuse military service on grounds of conscience are offered as an alternative to serve in the Military Transport Division or Military Construction Division without taking the military oath.

Mikhailov, Belous and Chernousov separately declared that they found such service unacceptable. "It is not only the oath, in the Transport and Construction Troops it is obligatory to wear a military uniform, which is also a direct link to the army," Chernousov told Forum 18. Belous expressed his willingness to work in the railway or construction sectors but only provided they are outside the military structure.

20-year wait

For almost 20 years, young men cannot exercise their constitutional right to undertake an alternative to military service. Article 57 of Belarus' 1994 Constitution states: "Defence of the Republic of Belarus is the obligation and sacred duty of a citizen of the Republic of Belarus. The procedure for undergoing military service, and the bases and conditions for exemption from military service or the substitution of it by an alternative are determined by law." However, no legal mechanism regulating alternative civilian service has yet been introduced.

As a result, a conscript claiming his Constitutional right to alternative service can be charged with evasion of regular call-up to active military service under Article 435, Part 1 of the Criminal Code. Punishments under this Article are a fine, or imprisonment of up to two years.

The first attempt to adopt an Alternative Service Law was in 1992 when a draft passed its first reading in Parliament, but failed to go further. A similar attempt failed in 2004 when the Defence Ministry refused to approve it.

Little progress was made despite two Constitutional Court rulings on the issue. In its 26 May 2000 ruling (decision R-98/2000), the Constitutional Court stressed that the gap in the legislation gives ground for conflicts between some citizens and the state ignoring the rights guaranteed by the Constitution. It called for the "urgent" adoption of a legal mechanism for alternative service (see F18News 10 January 2013 http://www.forum18.org/archive.php?article_id=1789).

The Chair of the Constitutional Court, Pyotr Miklashevich, supported the adoption of an Alternative Service Law during an online press conference with the official news agency Belta on 15 March 2013. This repeated an earlier appeal Miklashevich made just before a conscientious objector was jailed in January 2010 (see F18News 1 February 2010 http://www.forum18.org/archive.php?article_id=1402).

In 2009, according to the campaign For Alternative Civilian Service, 25 applications for alternative service were lodged of which five remained unanswered. "The chances for the adoption of the law appeared after many cases initiated by citizens who would like to apply for alternative service," Tonkacheva of Lawtrend told Forum 18.

In February 2010 President Aleksandr Lukashenko ordered the Secretary of the Security Council Leonid Maltsev to prepare a draft Law on Alternative civilian service. "There is an alternative to military service," Maltsev told national television station ONT at the time. "It is possible to get military training which lasts only six months in military facilities. But there is another category, about 50-60 young men per conscription period, who can't touch arms for so-called religious reasons."

A draft Alternative Service Law was included in the 2010 Legislative Programme but was soon removed without explanation (see F18News 18 January 2010 http://www.forum18.org/archive.php?article_id=1396).

In July 2010 a group of non-governmental organisations publicly presented their proposals for an Alternative Service Law. The government made no response to these proposals (see F18News 30 July 2010 http://www.forum18.org/Archive.php?article_id=1472).

In February 2012, the Council on Issues of Legal and Judicial Activity under the President began work on a legal procedure to introduce a fully civilian alternative service. The Council was made up of representatives of courts, the General Prosecutor's Office, lawyers and university professors.

For many years the draft Law was handled by the Labour and Social Security Ministry classified for internal use only and unavailable for the public discussion and criticism (see F18News 4 May 2012 http://www.forum18.org/archive.php?article_id=1697).

Conscientious objection deniers

Azerbaijan, Turkey, and Turkmenistan are the other OSCE participating States which do not formally offer a full civilian alternative to compulsory military service. In contrast, Armenia in 2013 freed all its jailed conscientious objector prisoners of conscience and introduced a genuinely civilian alternative service (see F18News 28 November 2013 http://www.forum18.org/archive.php?article_id=1901).

In Azerbaijan an 18-year-old conscientious objector, Kamran Shikhaliyev, has been forcibly sent to a military unit. A trial before a military court is due on Thursday 13 February. "Despite physical abuse, verbal humiliation, and psychological pressure, Shikhaliyev has refused to wear a military uniform, perform military duties, or take the military oath", Forum 18 has been told (see F18News 10 February 2014 http://www.forum18.org/archive.php?article_id=1926).

Turkish military court decisions concerning conscientious objection claims have shown a selective and not complete recognition of the right to conscientious objection, after Council of Europe pressure on the Turkish government to implement European Court of Human Rights (ECtHR) judgments (see F18News 1 May 2012 http://www.forum18.org/archive.php?article_id=1696).

Turkmenistan currently has nine known conscientious objector prisoners of conscience. The latest known jailed conscientious objector is a Jehovah's Witness, 18-year-old Suhrab Rahmanberdiyev, sentenced to an 18-month jail term in November 2013 (see F18News 20 December 2013 http://www.forum18.org/archive.php?article_id=1910).

The unrecognised breakaway entity of Nagorno-Karabakh in the south Caucasus also imprisons conscientious objectors. Jehovah's Witness Karen Harutyunyan was sentenced in December 2011 to 30 months' imprisonment and is still in jail (see F18News 17 January 2012 http://www.forum18.org/archive.php?article_id=1656). (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=1796.

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.

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