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BELARUS: Prosecutions of conscientious objectors resume

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

The criminal trial of Jehovah's Witness Dmitry Smyk, which began in Gomel on 8 October and is set to resume on 29 October, represents the first known prosecution of a religious conscientious objector to compulsory military service in the past nine years, Forum 18 News Service notes. "I have tried to abide by the Bible in all aspects of my life and act on its teachings that one shouldn't fight or teach to fight," Smyk told Forum 18. He said he is ready to do a civilian alternative service, as guaranteed in Belarus' Constitution. However, without a mechanism to enact this, Gomel's Military Commissariat says it must pass cases of refusal to conduct military service for prosecution. "So I have the right, but can't use it," Smyk says. Two other local Jehovah's Witness conscientious objectors have been referred to the Prosecutor's Office and another case is reportedly likely in Grodno.

After a gap of some nine years, the criminal prosecution of those in Belarus who cannot perform compulsory military service on grounds of religious conscience has resumed, Forum 18 News Service has learnt. The trial of Jehovah's Witness Dmitry Smyk began in the south-eastern town of Gomel [Homyel] on 8 October and Forum 18 knows of two other religious conscientious objectors in the same town – Aleksei Boinichev and Aleksandr Belous – who are likely to face similar trials. All three have been banned from leaving the country while the cases proceed. Another case is reportedly likely in the western city of Grodno [Hrodna].

Igor Kupchin, Prosecutor of Gomel's Central District, who is conducting the case against Smyk in court, refused to discuss anything with Forum 18 on 20 October, including whether criminal cases have been launched against Boinichev and Belous in his District.

The prosecutions of the three Jehovah's Witness conscientious objectors in Gomel come as the local authorities have raided the local community and fined two of its members. An official of the local Executive Committee issued the community an official warning in September, telling it verbally that if it commits any further violations of the law it will be banned in court (see F18News 19 October 2009 http://www.forum18.org/Archive.php?article_id=1363).

Constitutional Court ruling that law should be changed ignored

Article 57 of Belarus' Constitution declares: "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." Article 36 of the Law on Military Obligation and Military Service requires call-up commissions to offer alternative service.

In a key ruling of 26 May 2000 (decision R-98/2000), Belarus' Constitutional Court examined how Article 57 should be applied to those who seek to do alternative service "on religious grounds". It called for the "urgent" adoption of an Alternative Service Law or an amendment to the Law on Military Obligation and Military Service to introduce a mechanism for alternative service. It said that before such legal changes are made, the authorities must allow citizens to perform service "that does not violate their religious convictions". The Constitutional Court made no reference to refusing military service on non-religious conscientious grounds.

The right to refuse to perform military service is part of the 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.

Despite Belarus' international human rights obligations, the Constitutional guarantees, and the 2000 Constitutional Court ruling, no mechanism for conducting alternative service has been introduced. Parliament most recently rejected a draft Law on alternative service in December 2004. 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.

However, no conscientious objectors are known to have been prosecuted since the Jehovah's Witness Valentin Gulai was given a suspended sentence in the south-eastern town of Rechytsa in 2000.

Oleg Gulak of the Belarusian Helsinki Committee told Forum 18 in March 2008 that in the absence of alternative military service, the Ministry of Defence struck a compromise whereby an estimated several dozen conscientious objectors serve in its transport

division: "They don't have to swear an oath or bear arms – in effect they're just unpaid labourers" (see F18News 20 March 2008 http://www.forum18.org/Archive.php?article_id=1103).

Smyk's trial in Gomel

The trial of Jehovah's Witness Smyk began under Judge Grigory Dmitrenko at Central District Court in Gomel on 8 October and continued with a second hearing on 19 October, as Smyk told Forum 18. He is facing trial under Article 435 Part 1 of the Criminal Code, which punishes refusing the compulsory call-up to military service with a fine or imprisonment of up to two years. First time offenders can be absolved of criminal responsibility in the case of "serious circumstances".

"I told the call-up commission I wanted to do alternative service for religious reasons - such as in a hospital or on the streets," Smyk told Forum 18. "I have tried to abide by the Bible in all aspects of my life and act on its teachings that one shouldn't fight or teach to fight. I must serve only Jehovah."

The Gomel City Military Commissariat rejected his request for alternative service and passed on his case to the Prosecutor's Office. "I received a letter from the Military Commissariat outlining that while the Constitution allows for alternative service, they cannot offer it because no mechanism exists," Smyk told Forum 18. "So I have the right, but can't use it."

Smyk said that at the 19 October hearing, the court decided it needed to investigate whether his decision not to do military service was his own or taken by an organisation. "I don't understand this – it was my decision based on what it says in the Bible." He added that the Prosecutor Kupchin got representatives of the Military Commissariat to admit that they had not offered Smyk alternative service. "But he told the military to offer me some other service within the armed forces, such as in the railway troops, which is unacceptable to me."

Smyk said he does not know what to expect when the trial resumes on 29 October.

Smyk, who is 23 and married with a four-year-old daughter, said he had previously received the deferments for fathers of children under three when he was called to military service before. However, now his young daughter is over that age, the Gomel City Military Commissariat no longer gave a deferment.

Gomel prosecutors move against two further conscientious objectors

The two other Gomel-based Jehovah's Witnesses to have told the call-up commission they have refused military service – Boinichev and Belous – have had their cases handed over to the Prosecutor's Office and have been banned from leaving the country, Smyk told Forum 18.

In a 25 August letter seen by Forum 18, Colonel Igor Ivashkov, acting Gomel City Military Commissar, told Boinichev that his request for alternative service was again being rejected. Ivashkov recognised that the Law on Military Obligation and Military Service requires call-up commissions to offer alternative service. "However, at present with all the will in the world it is impossible to take this decision because of the absence in the Republic of Belarus of a normative legal basis on the procedure for conducting alternative service," he told Boinichev.

Ivashkov wrote that he therefore has to be treated under Article 4 of the Law on Military Obligation and Military Service, which requires all men without regard to race or "attitude to religion" to meet the call-up demand. As Boinichev failed to turn up to conduct his military service, he was banned from leaving the country and his case passed to the Prosecutor's Office.

Ivashkov told Forum 18 on 20 October that he could not recall the individual letter to Boinichev – "I have thousands of pieces of paper that I sign" – and insisted that everything had been done in relation to those who refused military service in accordance with the law. Asked why action has been taken this year against three individuals in Gomel refusing military service on grounds of religious conscience when in the previous eight years no prosecutions are known to have taken place anywhere in Belarus, he responded: "Nothing has changed. We deal with each case as it comes up." (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 printer-friendly map of Belarus is available at
<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=belaru>.

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