

28 June 2010

BELARUS: Contradictory court rulings for conscientious objectors

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

The three conscientious objectors to compulsory military service sentenced under the Criminal Code since such prosecutions resumed in November 2009 have faced different outcomes, Forum 18 News Service has learnt. Messianic Jew Ivan Mikhailov was found guilty and imprisoned, but was freed days before the end of his three-month sentence. He was acquitted on retrial and the prosecutor's appeal against this was rejected. He told Forum 18 he will seek compensation for his imprisonment. Jehovah's Witness Dmitry Smyk, initially fined, was acquitted on retrial, but the prosecutor's appeal against this is due to be heard on 16 July, as he told Forum 18. Non-religious objector Yevhen Yakovenko, sentenced on 4 June to one year's restricted freedom, told Forum 18 he has appealed against the sentence. All three say they would do an alternative civilian service. "It is not wrong to serve one's country," Mikhailov told Forum 18, "especially on socially-useful work, such as in children's homes or hospitals."

Despite his acquittal in court in Belarus' south-eastern city of Gomel [Homyel] on 31 May, religious conscientious objector Dmitry Smyk faces a new hearing on 16 July as Prosecutor Igor Kupchin has lodged an appeal against the acquittal, Forum 18 News Service has learnt. Smyk is the second conscientious objector to have an earlier sentence for refusing compulsory military service overturned in a retrial this year. Minsk-based Messianic Jew Ivan Mikhailov – who served nearly three months in prison – was acquitted in a retrial and the Prosecutor's appeal against that acquittal was rejected on 15 June. Another conscientious objector, Yevhen Yakovenko, is appealing against his one year sentence of restricted freedom.

All three young men were prosecuted under Article 435, Part 1 of the Criminal Code, which punishes refusing the call-up to military service with a fine or imprisonment of up to two years.

Smyk, Mikhailov and Yakovenko all told Forum 18 separately that they would be prepared to do an alternative civilian service tomorrow if it were available. "It is not wrong to serve one's country," Mikhailov told Forum 18, "especially on socially-useful work, such as in children's homes or hospitals." Yakovenko told Forum 18 that introducing an alternative service "would be a model for people to help the disadvantaged at home or abroad".

In February, President Aleksandr Lukashenko ordered a new Alternative Service Law to be prepared in accordance with existing provisions for such a service outlined in Article 57 of the country's Constitution (see F18News 29 June 2010 http://www.forum18.org/Archive.php?article_id=1462).

A 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. An attempt to adopt an Alternative Service Law was rejected by Parliament in 2004 and a proposed Law was scheduled for inclusion in the 2010 Legislative Programme, but was removed at the last minute (see F18News 18 January 2010 http://www.forum18.org/Archive.php?article_id=1396). Activists hope this can now be achieved.

Prosecutor challenges Smyk's acquittal

Smyk, a Gomel-based Jehovah's Witness, said that the prosecutor's challenge to his acquittal is due to be heard on 16 July at Gomel Regional Court. "I believe the court will let the acquittal stand," he told Forum 18 on 24 June. He pointed to the earlier acquittal of Mikhailov in Minsk and the subsequent rejection of the prosecutor's challenge.

Kupchin of Gomel's Central District Prosecutor's Office refused absolutely to discuss why he is continuing to seek to have Smyk punished. "I do not discuss criminal cases with journalists by telephone," he told Forum 18 on 25 June. "Indeed, it is banned by law." He then put the phone down.

Smyk remains under restrictions until the court has heard the appeal. He cannot leave Belarus and has signed a pledge of good conduct. These restrictions will be lifted if the prosecutor's challenge is rejected.

In November 2009, Gomel's Central District Court fined 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. This was the first such prosecution since 2000 (see F18News 1 February 2010 http://www.forum18.org/Archive.php?article_id=1402).

Smyk lost his subsequent appeals, but on 15 March Gomel Regional Court – at the request of the Supreme Court – overturned its earlier decision and ordered a retrial.

Welcoming his acquittal by Central District Court on 31 May, Smyk pointed out that the case has been long and tiring. He added that instead of paying a large fine imposed for following his religious beliefs he can spend the money on supporting his wife and young daughter. He had not paid the fine.

Mikhailov to seek compensation

Mikhailov, a member of the Minsk-based New Testament Messianic congregation, was arrested in December 2009. He was found guilty under the same Criminal Code Article in February and given a three-month prison term (see F18News 1 February 2010 http://www.forum18.org/Archive.php?article_id=1402).

However, Minsk Regional Court upheld his appeal on 9 March and sent the case for a retrial. He was freed from prison in Zhodino on 10 March, just days before his original term was due to expire.

Mikhailov's retrial began on 26 March, and on 4 May Minsk District Court acquitted him of the charge. However, Minsk District's Prosecutor challenged the acquittal. On 15 June, Minsk Regional Court backed Mikhailov.

"The Prosecutor obviously wasn't happy with the acquittal and was demanding that I be given a fine of 7,000,000 Belarusian Roubles [15,020 Norwegian Kroner, 1,885 Euros or 2,320 US Dollars]," Mikhailov told Forum 18 from Minsk on 24 June. He added that although the Prosecutor could try to take the case further to a higher court he believes it unlikely. "I have been cleared twice now, and the court would have to bear the earlier decisions in mind."

Mikhailov is now free to lodge a suit for compensation for the almost three months he spent in prison after the first trial. "I believe I was wrongly imprisoned, so I am preparing to ask for compensation," he told Forum 18. "I don't think an innocent person should be imprisoned." He added that since his release he has been able to resume his work in a private company and his studies.

Yakovenko appeals against one year restrictions

The most recent conscientious objector to be sentenced was Yakovenko who, like Smyk, comes from Gomel. After several earlier court hearings he was found guilty on 4 June at Gomel's Central District Court under Article 435 Part 1. Judge Tatyana Shvets handed down a sentence of one year's restrictions on his rights. "I can live at home, but can't leave Gomel and have had to pledge myself to good conduct," Yakovenko told Forum 18 on 24 June. "This means I can't beat anyone up or cross the street on a red light," he joked.

He said he had lodged an appeal to Gomel Regional Court on 14 June and is waiting for a date to be set for the hearing.

Yakovenko told Forum 18 that he is a pacifist, but does not belong to any religious organisation. "It is a matter of conscience," he insisted. He described the verdict as "absolutely illegal" as he had merely demanded the right to an alternative service guaranteed in the Constitution.

Part of the prosecution case also related to his refusal to respond to call-up papers written in Russian, insisting that he wanted to receive them in Belarusian (both are state languages, though the government functions mainly in Russian). "Both issues – not having to serve in the army and being able to use our national language – are important to me."

Not all conscientious objectors prosecuted

Despite the current lack of a civilian alternative to military service, not all those who refuse military service on grounds of conscience are brought to court. Forum 18 is not aware of any cases between 2000 and Smyk's case in November 2009. "Sometimes cases are resolved quietly," Mikhailov told Forum 18. "It is only rarely that cases go to court."

Pavel Yadlovsky of the Jehovah's Witnesses says that each year his organisation sends certificates to local military commissariats confirming that named individuals claiming to be Jehovah's Witnesses who have requested not to perform military service on grounds of conscience are indeed members. "There are about 30 or 40 people each year we do this for," he told Forum 18 from Minsk on 25 June. "Some military commissariats take account of the Constitutional Court ruling from 2000 calling for a law on alternative service to be adopted."

As individuals who are allowed not to perform military service are then often summoned for the next call-up, he said sometimes they have to do this several times for one individual. "We have issued about 25 of such certificates so far this year."

Mystery surrounds presidential exemptions

Meanwhile, mystery surrounds assertions on 18 February by the Secretary of Belarus' Security Council Leonid Maltsev that a system of an annual presidential decree grants exemptions from military service to about 50 or 60 people each year, including on religious grounds. His remarks were quoted in the account on the presidential website of his meeting with President Lukashenko at which the president ordered the drafting of an Alternative Service Law.

Forum 18 has not been able to find any publicly-available texts of such decrees.

After seeing reports of this possibility of being exempted from military service, Smyk, the conscientious objector from Gomel, asked the local Military Commissariat how he could be brought into the scope of one of these presidential decrees. "They responded that they had never heard of them," he told Forum 18.

An official of the presidential Press Office told Forum 18 on 25 June that such decrees are not made public "because they only concern the Defence Ministry and the individuals affected". However, he denied that they are secret. "I myself have never seen such decrees," he added. He referred all further enquiries to the Defence Ministry.

Vyacheslav Remenchik, chief spokesperson for the Defence Ministry, refused to discuss these decrees. "I cannot comment on the actions of the head of state," he told Forum 18 from Minsk on 25 June. (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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