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BELARUS: Non-existent offences prosecuted

By Olga Glace, Forum 18 (<https://www.forum18.org/>)

Belarus has removed from its Code of Administrative Offences punishment for religious events held without state permission. But officials still sometimes raid and prosecute such meetings – even in private homes. Jehovah's Witness Kirill Dashkovsky told Forum 18 News Service that in his recent case a judge refused to hear arguments that his "offence" no longer exists. If adopted, a new Housing Code might make home worship freer – but it would still need state permission.

Despite two legal changes in Belarus which may prevent punishments for registered religious communities holding state-approved religious meetings in private homes, officials in several regions are still raiding such meetings and seeking to punish those involved. Two Jehovah's Witnesses in separate cases have faced prosecution under Article 23.34 of the Code of Administrative Offences ("Violation of the procedure for organising or conducting a mass event or demonstration") despite November 2011 amendments which appear to have removed such an "offence". One was fined, while the other faces a new hearing after police appealed against his acquittal.

A proposed new Housing Code, which is awaiting the signature of President Aleksandr Lukashenko, would for the first time specifically allow religious meetings by registered religious organisations in some private homes. However, meetings would only be permitted if they have state approval (see below).

Administrative Code changed – but prosecutions continue

In a separate move, Administrative Code changes, which came into force on 27 November 2011, have removed any punishment under Article 23.34 for unapproved "other public events". The Article previously punished two kinds of actions: "public events", defined as "public gatherings, meetings, public marches, demonstrations, pickets; and "other public events", which cover events like religious meetings and sports events.

Dina Shavtsova, a religious freedom lawyer in the capital Minsk, says that the amendments mean that small-scale religious events without approval are no longer punishable. "Thus, a religious meeting performed in a place not designated for worship – whether in a private home or in the open air - is not subject to this Article," she told Forum 18 on 22 June. However, she noted that officials could still issue warnings if such worship takes place without official permission.

However, the changes have not stopped prosecutions under Article 23.34 for meeting for worship continuing. The leader of the Jehovah's Witness community in Rogachev, in the south-eastern Gomel [Homyel'] Region, Kirill Dashkovsky is awaiting a second trial under the Article. No date has yet been set, but the new trial is due within two months of 6 June when the last hearing took place.

In February 2010, amendments to Article 9.9, Part 1 of the Administrative Code cancelled administrative charges for unregistered religious activity. After this, Article 23.34 has been widely used to punish this "offence" (see eg. F18News 9 April 2010 http://www.forum18.org/Archive.php?article_id=1430).

Gomel prosecution despite no offence

Trouble began for Dashkovsky when police, headed by Lieutenant Colonel Yury Astapovich, raided a Jehovah's Witness religious meeting in a private home in Rogachev on 1 April.

In the protocol dated 18 April – seen by Forum 18 – Lt. Col. Astapovich accused Dashkovsky of violating Article 23.34, Part 2 of the Administrative Code and suggested a fine of one month's wage, equivalent to 700,000 Belarusian Roubles (506 Norwegian Kroner, 67 Euros, or 84 US Dollars). "I refused to sign the protocol and I don't see anything wrong in our meetings," Dashkovsky told Forum 18 on 20 June. "I don't know the reason for this hostility." He noted that when an Executive Committee official attended one of their religious meetings in 2011, "she quite liked it".

Also charged was Nina Volchkova, the owner of the house where the meeting took place, for misuse of living quarters under Article

21.16 of the Administrative Code ("Not using living premises for their purpose"). The protocol dated 25 April (seen by Forum 18) was not signed by Volchkova, who expressed her disagreement and stated her right to invite friends to her house.

On 18 May, Judge Irina Malashkevich of Rogachev District Court found no offence in Volchkova's case and all charges were dropped.

Likewise, on 8 May Judge Vladimir Solomeichuk of Rogachev District Court acquitted Dashkovsky. The verdict – seen by Forum 18 – stated that no offence had been committed and ordered the return of the confiscated literature, CDs and audiocassettes.

Prosecuted again despite no offence

The same day, Vasily Korolchuk, head of the Ideology Department at Rogachev District Executive Committee, wrote to Dashkovsky – in a letter seen by Forum 18 – to warn him that holding religious services in a private home not designated officially as a place of worship is an offence. Korolchuk warned that if such a "violation" happened again he would be "brought to administrative responsibility".

The head of Rogachev police, Lieutenant Colonel Viktor Pekurin, appealed against Rogachev Court's decision to Gomel Regional Court, insisting on charging Dashkovsky under Article 23.34 of the Administrative Code.

On 6 June, Judge Aleksei Shamekhin upheld the police's appeal and annulled the Rogachev Court's decision. In the document – seen by Forum 18 – Gomel Regional Court was unable to define whether it was "a meeting or other public event". The case was sent back to the police for further investigation and work on the protocol.

Dashkovsky told Forum 18 of his unhappiness at the decision. He complained that the judge showed "absolute indifference" to all the given arguments and refused to listen when told of the amendments to Article 23.34 of the Administrative Code. He fears that a new trial will end up with his conviction.

"Nothing against Jehovah's Witnesses"?

Lieutenant Colonel Pekurin was not available for comments to Forum 18 on 20 and 21 June. But police officer Astapovich insisted to Forum 18 on 20 June that he personally had "nothing against Jehovah's Witnesses". However, he refused to discuss any aspects of the raid or explain why the police had appealed against Dashkovsky's acquittal to Gomel Regional Court.

Korolchuk of the Ideology Department insisted that Rogachev residents "have no fear of or hostility to Jehovah's Witnesses". "Their number is too small to affect the town society", he told Forum 18 on 20 June. He also stated that in his meeting with a Jehovah's Witness leader from Minsk, Pavel Yadlovsky, on 11 June it was agreed that the congregation would be able to use the house where it currently holds meetings as its legal address. "We have discussed the issue and now this is the work for lawyers," he maintained.

In Belarus, a registered religious organisation does not automatically have the right to worship at its legal address, since premises require specific state approval before they may be used for worship.

Korolchuk said he had no information about trials of Dashkovsky. "We sent him an official warning and didn't send any papers to the court," he insisted to Forum 18.

Another Gomel Region prosecution

Dmitry Lebedko, leader of the Jehovah's Witness community in Svetlogorsk, Gomel Region, faced a similar fine under Article 23.34 for leading religious worship in his private home in Svetlogorsk on the evening of 24 November 2011. At the third court hearing on 7 March 2012 at Svetlogorsk Court, Lebedko was fined 700,000 Belarusian Roubles, a ruling upheld at his appeal at Gomel Regional Court on 11 April.

Lebedko told Forum 18 on 18 June that their worship was raided by local police, who accused them of holding an unapproved religious service in a private home and confiscated 553 items of religious literature and 39 CDs and audio-cassettes. "Timofei Sudorgin, the policeman responsible for our district, even called the Minsk office of the Plenipotentiary for Religious and Ethnic affairs, reporting that the literature was not approved by the state," Lebedko complained to Forum 18.

Forum 18 tried to contact Sudorgin to find out the reasons for such eagerness to punish Jehovah's Witness. However, on 20 June the duty officer refused to put the call through to him.

After considering the case, Svetlogorsk Court ruled on 15 December 2011 that Lebedko had violated Administrative Code Article 23.34, but the charges were dropped due to the "insignificant harm" of the offence.

Appeal against guilty verdict for offence that no longer exists

Lebedko then appealed against being found guilty of an offence that no longer exists, insisting on his innocence. He pointed to the amendments to the Administrative Code and asked for the return of the confiscated materials. However, on 11 January 2012 Gomel Regional Court rejected his appeal. Judge Aleksandr Suzhaev annulled the December 2011 decision of the Svetlogorsk Court and sent the case for a new trial at Svetlogorsk Court under a different judge.

The 7 March verdict – seen by Forum 18 – recorded that Judge Raisa Zinkevich of Svetlogorsk Court fined him 700,000 Belarusian Roubles. The verdict also confirmed the confiscation of religious literature and CDs, referring to the absence of labelling. Article 26 of the 2002 Religion Law requires religious literature to be labelled with the full name of the religious organisation distributing it and its confessional affiliation.

Yadlovsky of the Jehovah's Witnesses in Minsk told Forum 18 on 21 June that all religious literature came to Minsk office to be sent for "expert analysis". "In accordance with the requests from the regional Jehovah's Witness congregation, we sent them only literature approved by the state. I don't know anything about labelling," Yadlovsky maintained.

Grodno Region raid with no search warrant

On 19 April in Slonim, in the western Grodno [Hrodna] Region, Jehovah's Witnesses were held by police in a private home after a meeting for worship. They were released after the personal information of each person who attended the meeting was recorded and the house examined. Yadlovsky told Forum 18 that those present refused to open the door during the worship as the authorities had no search warrant. Though not disrupted, the religious meeting was disturbed.

Yadlovsky confirmed that after numerous efforts to register the community, the leader of Slonim's Jehovah's Witnesses congregation Andrei Boiko "can't think of any organisation where he didn't sent requests for a legal address". Every time he was refused.

Where can religious communities meet?

Both Jehovah's Witness communities in Rogachev and Svetlogorsk have state registration and have the right to hold religious meetings. Like many other Jehovah's Witness leaders, Dashkovsky and Lebedko separately pointed to the problem of finding a place designated for worship. This prevents many communities from gaining state registration (see F18News 18 October 2011 http://www.forum18.org/Archive.php?article_id=1626).

"I agree we had a meeting in a private home, but this is covered under the 2002 Religion Law. I can't understand why the court turned a deaf ear to all our arguments that Article 23.34 could not be applied to our case," Lebedko lamented. He added that in accordance with the court ruling, the fine has already been deducted from his salary. "There are good people and not very good, it's a pity that people with prejudice have power in their hands," Lebedko commented.

Forum 18 tried to find out from Gomel Regional Court why it has handed down or upheld a series of judgments based on an apparently inappropriate use of the amended Administrative Code Article 23.34. However, the Court press officer on 21 June refused to give any information by phone and advised to address the other party for "they should know better".

Lebedko is planning to appeal to the Supreme Court. He hopes for the judgment to be overturned and return of the religious materials confiscated during the raid.

Forum 18 is not aware of other recent cases of trials for an Article 23.34 offence that no longer exists.

Will new Housing Code end harassment?

The proposed text of Article 16.3 Part 4 of the new Housing Code would specifically allow single-occupied homes or homes in small blocks where each flat has a direct entrance from the street to be used for religious meetings by registered religious organisations. (Such homes are more typical of villages than towns.) However, this would be allowed only with permission from the local authorities and if the house meets sanitary and technical requirements and fire safety regulations. The current 1999 Housing Code makes no specific mention of religious meetings in private homes.

Forum 18 notes that on the one hand, the new wording formalises the exemptions from the ban on using residential premises for worship that are unofficially granted by some local officials when the premises are the type of smaller homes specified. However, it still leaves registered religious communities subject to arbitrary state decisions on whether or not to grant approval, and does not extend to unregistered religious communities.

The amendments were initiated by the Cabinet of Ministers and had their initial consideration in the House of Representatives (the lower house of parliament) in 2010. The House of Representatives approved them in the second reading on 31 May 2012. The Council of the Republic (parliament's upper house) approved the amendments on 22 June and is expected to send them to the President very soon, Natalya Krasovskaya of the Council's Permanent Commission for Regional Policy - which handled the new

Code – told Forum 18 on 27 June. The amended Housing Code would come into force six months after its official publication.

Jehovah's Witnesses still have eight communities which function without registration and could face raids at any time. "State registration without a legal address is a big problem for us," Yadlovsky of the Jehovah's Witnesses complained to Forum 18. "Unregistered communities are trying to get legal status but since they can't find a suitable building designated for worship, everything is in vain."

Raids on meetings for worship without state permission still continue (see F18News 27 February 2012 http://www.forum18.org/Archive.php?article_id=1672). (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://education.nationalgeographic.com/education/mapping/outline-map/?map=Belarus>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY