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BELARUS: Alternative Service Law "earliest by summer 2014"?

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

Belarus has prepared a "working version" of a proposed Alternative Service Law, Vera Chaushnik of the National Centre for Legislation and Legal Research has told Forum 18 News Service. "If all goes well and according to the plan", the Law will be adopted "at the earliest by summer 2014", she said. Asked whether the draft Law will be published before it reaches Parliament to allow public debate, Chaushnik said this was possible. "But not every draft Law is published for public discussion." Jehovah's Witness Dmitry Smyk, who has been convicted and punished for conscientious objection to military service, cautiously welcomed the news. He told Forum 18 that he hoped the issue would be resolved through legislation. Civil society group For Alternative Civilian Service stated that "this raises the hope that the gap in the law, which since 1994 has been an obstacle to realising individuals' constitutional rights, will be removed". Military conscription is used to silence political opposition. Currently conscripted Youth Front activist Pavel Sergei was last Sunday [6 January] prevented by military commanders from attending church.

An official of the Belarusian government's National Centre for Legislation and Legal Research has told Forum 18 News Service that a "working version" of a proposed Alternative Service Law has been prepared. "All state agencies" have agreed in principle that such a Law should be adopted. "If all goes well and according to the plan", the Law will be adopted "at the earliest by summer 2014", Vera Chaushnik of the National Centre for Legislation and Legal Research told Forum 18 from the capital Minsk on 9 January. The moves come long after the country's Constitutional Court ruled in May 2000 that an alternative to compulsory military service should be introduced "urgently".

It remains unclear why this Law is being brought forward now, after a previous draft was without explanation dropped in 2010 (see F18News 18 January 2010 http://www.forum18.org/Archive.php?article_id=1396).

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) where there is no legal possibility for conscientious objectors to compulsory military service to do a civilian alternative service. Previously announced plans to adopt such a Law in Belarus have failed.

(Other OSCE participating States without a civilian alternative service possibility for conscientious objectors and where objectors are imprisoned are Armenia, Azerbaijan, Turkey and Turkmenistan. The unrecognised breakaway entity of Nagorno-Karabakh also imprisons conscientious objectors.)

2013 Legislative Programme

The Alternative Service Law was included in Belarus' Legislative Programme for 2013, approved by presidential decree on 3 January and published on the government's legal website pravo.by on 5 January. It assigns preparation of the Law to the Council of Ministers and to the National Centre for Legislation and Legal Research. It envisages completion of work on the draft text in July 2013 and its presentation to the Lower House of Parliament in October 2013.

Chaushnik, the Deputy Head of the Department of Social Legislation at the National Centre for Legislation and Legal Research, said that consultations have already taken place among state agencies about the proposed new Law. "A deadline has now been given in the Legislative Programme," she told Forum 18. "It is very rare indeed when laws included in the Programme signed by the President don't get adopted."

Forum 18 reminded Chaushnik that a similar proposed Law had been removed from the 2010 Legislative Programme at the last minute (see F18News 18 January 2010 http://www.forum18.org/Archive.php?article_id=1396). She acknowledged this, but insisted that the Law is in the 2013 Programme and has been approved by all ministries and state agencies, including the Defence Ministry.

An official of the Presidential Press Office told Forum 18 on 10 January that President Aleksandr Lukashenko had indeed approved the Legislative Programme including the proposed Alternative Service Law. However, he refused to discuss whether this meant a serious intention and desire now exists to adopt this Law.

"I don't understand your question about 'a serious intention'," the official, who would not give his name, told Forum 18. "That the Law was included in the programme means that the Law was included in the programme. It is not correct to discuss 'desire' – this is a subjective term."

The official referred Forum 18 to presidential spokesperson Pavel Legky, who was out of the office. Forum 18 sent the same question to him in writing, but had not received a response by the end of the working day in Minsk on 10 January.

Will the draft Law be made public?

Asked whether the draft Law will be published before it reaches Parliament to allow public debate, Chaushnik of the National Centre for Legislation and Legal Research said this was possible. "But not every draft law is published for public discussion."

In July 2010 a group of non-governmental organisations drew up and publicly presented 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).

Will everyone's right to conscientious objection be respected?

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." Article 36 of the Law on Military Obligation and Military Service requires call-up commissions to offer alternative service.

In a 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. While stressing that the proposed new Law is still in a "working version", Chaushnik of the National Centre for Legislation and Legal Research insisted to Forum 18 that it would recognise the right of all those with a conscientious objection to opt for an alternative service, not just those with religious objections. "This is not just for religious people," she told Forum 18.

Chaushnik also stressed that alternative service "won't be under military structures". "It would be work in the social or health sphere."

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).

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. However, between 2000 and 2009, conscientious objectors were generally not prosecuted.

Cautious welcome

Jehovah's Witness Dmitry Smyk has cautiously welcomed news that an Alternative Service Law is scheduled to be adopted. "I am very pleased that there appears to be some progress on this," he told Forum 18 from Gomel [Homyel] on 9 January. "I hope they will resolve this issue not through the courts but through legislation."

After Smyk refused military service on religious grounds, in November 2009 he became the first conscientious objector to be prosecuted since 2000. He was fined, banned from leaving Belarus, banned from travelling within the country without notifying the authorities and required to maintain "good conduct". However, his conviction was overturned and he was acquitted in May 2010 after a retrial. Prosecutors' attempt to appeal against the acquittal subsequently failed (see F18News 30 July 2010 http://www.forum18.org/Archive.php?article_id=1472).

However, Smyk expressed some caution, noting that the text of the proposed new Law is not yet available. "We must study the text

when it is published, as understandings of alternative service vary," he pointed out. "It would only be acceptable if alternative service is outside military control. It would be wonderful if alternative service were in the medical sphere or in kindergartens."

Smyk stressed to Forum 18 his hope that those drafting the new Law will take account of the views of those such as himself, who cannot conduct military service on grounds of conscience.

Similarly cautious was Pavel Yadlovsky, a Jehovah's Witness leader from Minsk. He welcomed the intention to introduce an Alternative Service Law, but said that he will wait to see what is in the text once it is published.

"Such a law exists in Russia, where alternative service is not under military control and our young men there are happy to do it," Yadlovsky told Forum 18 on 9 January. "If the law is similar to the Russian law, many Jehovah's Witnesses would do it. The main thing is that alternative service should not be connected with the Defence Ministry."

Also welcoming the inclusion of a law in the 2013 Legislative Programme was the civil society group For Alternative Civilian Service, which was among those who drew up and presented their own alternative service proposals in 2010. It said on 8 January 2013, "this raises the hope that the gap in the law, which since 1994 has been an obstacle to realising individuals' constitutional rights, will be removed".

Imprisonments, fines

After prosecutions of conscientious objectors halted in 2000, they resumed in 2009 with Smyk's conviction. Messianic Jew Ivan Mikhailov and pacifist Yevhen Yakovenko also faced trial under Criminal Code Article 435, Part 1. Mikhailov (who spent three months in prison) and Smyk were eventually acquitted, while Yakovenko received a one year sentence of restricted freedom, though he was subsequently amnestied (see F18News 30 July 2010 http://www.forum18.org/Archive.php?article_id=1472).

Military Conscription Offices continued to try to seek the prosecution of other conscientious objectors, though cases did not reach the courts. Jehovah Witness Aleksandr Belous was told in April 2012 that criminal charges were being dropped, while pacifist Andrei Chernousov was forcibly held in a psychiatric hospital for five days in May 2012. Mikhail Pashkevich, coordinator of For Alternative Civilian Service, pointed out to Forum 18 that this highlighted the urgent need for a Law on Alternative Service (see F18News 15 May 2012 http://www.forum18.org/Archive.php?article_id=1700).

Conscription used to silence political opposition

The authorities have used military conscription as an apparent way to silence political opposition activists. Among the current cases is Pavel Sergei from Minsk who had been imprisoned for five days in May 2012 for his activities with the political opposition Youth Front. In November 2011 he was imprisoned for seven days for his political activities. Sergei was called up after his latest May 2012 release from prison, and requested alternative service at the Military Conscription Office in his home town of Molodechno [Maladzyechna]. This was refused as no such service currently exists.

In his application to the Conscription Office, according to the website Charter97.org, Sergei, a Protestant, wrote that "according to my religious convictions I cannot wear a military uniform and serve in an army which uses communist symbols (hammer and sickle), under which Christians were persecuted in the Soviet Union".

Pavel Sadovsky of the Belarusian Christian Democratic Party, also a member with Sergei of John the Baptist Pentecostal Church in Minsk, told Forum 18 on 10 January that while the decision to conscript Sergei was political, his objection to serving in the military is religious.

Although he was not taken into the army, Sergei challenged the refusal to allow him to do alternative service, but Molodechno District Court rejected his suit on 19 June 2012. His appeal to Minsk Regional Court was rejected on 16 August 2012. He was conscripted in autumn 2012 and on 19 November forcibly sent to a military unit in Grodno.

Sadovsky told Forum 18 that in early January 2013, Sergei had been transferred to serve with the Railway Troops in a unit in Slutsk. "Although he was pressured while in Grodno to swear the military oath, Pavel didn't give in. In the Railway Troops he is able to serve without the oath. Although conditions for him are better, it is not ideal as he does not want to be doing military service at all."

Sadovsky noted that while Sergei is able to have a Bible, military commanders in Slutsk refused to allow him to visit a local church last Sunday, 6 January.

Political prisoners in Belarus are routinely denied their right to freedom of religion or belief (see F18News 15 May 2012 http://www.forum18.org/Archive.php?article_id=1700).

Molodechno Military Conscription Office told Forum 18 on 10 January that conscription decisions are taken by the Conscription Commission at the local Executive Committee [local authority], which is headed by Igor Kasperovich. However, Kasperovich

refused to explain why Sergei had been conscripted against his will. "I can't give any information by telephone," he told Forum 18 the same day. "In any case, I am not a member of the Conscription Commission – I just fulfil the decisions it has taken."

Alternatives?

For some years, those who wish to conduct military service without swearing the military oath and/or without bearing weapons have been sent to perform their service in the Railway Troops. However, they are part of the armed forces and so not in any way the civilian alternative service international human rights law requires.

Jehovah's Witness leaders told Forum 18 that for their young men they provide a certificate every six months that they are Jehovah's Witnesses. Many local conscription offices ask to see such certificates when Jehovah's Witnesses refuse to serve in the armed forces and request alternative service in line with Article 57 of the Constitution.

In most cases at present, conscription offices then defer the call-up for these young men, Yadlovsky of the Jehovah's Witnesses told Forum 18. "In 2012 we had to discuss this whole issue not only with the Conscription Office but also with the Executive Committee in Vitebsk [Vitsyebsk] Region," he added. "But once we had set out our position the problems were resolved." (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.

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