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BELARUS: Alternative Service Law "a bad law. But it exists and that's good."

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

Belarus has for the first time adopted an Alternative Service Law, to take effect from 1 July 2016. The Law will allow some but not all young men who are conscientious objectors to perform a civilian alternative service instead of compulsory military service. However, Forum 18 News Service notes, only young men with a religious objection will be eligible to apply, not those with non-religious pacifist convictions. It is also unclear whether even all young men with religious objections to military service will be allowed to do civilian alternative service. The new Law is silent on how objectors from communities which are not as a community formally pacifist – such as the Orthodox Church - will be treated. And the length of alternative service will be twice as long as the comparable military service. Human rights defenders and the Jehovah's Witnesses – who refuse to do military service - have welcomed the Law's adoption. Human rights defenders such as Yauhen Asiyuski of For Alternative Civilian Service stress that they will continue to work to bring the Law into line with international human rights standards.

For the first time, Belarus has adopted an Alternative Service Law, which will allow some young men to opt out of compulsory military service to perform a civilian alternative service instead. Yet under the Law – whose provisions take effect from 1 July 2016 – only young men with a religious objection will be eligible to apply, preventing those with other pacifist convictions from applying, Forum 18 News Service notes. The length of alternative service will be twice as long as the comparable military service. And young men already undertaking military service will not be eligible to apply for alternative service if they change their views.

Human rights defenders and the Jehovah's Witnesses – who refuse to do military service - have welcomed the Alternative Service Law's adoption. Human rights defenders stress that they will continue to work to bring the Law into line with international human rights standards, by including non-religious conscientious objectors and shortening the length of alternative service.

They also point out that there is a lack of clarity in the way even those with a religious objection – for example those from communities' that have not historically been pacifist – will be assessed. This makes it impossible to know until the new system is in operation whether even all young men with a religious conscientious objection will be able to undertake alternative civilian service.

"The Law might help 40 to 50 young men per year – and that is progress," Yauhen Asiyuski, coordinator of the For Alternative Civilian Service campaigning group, told Forum 18 from Minsk on 17 June. "But it doesn't resolve all the problems."

A spokesperson for the Defence Ministry in Minsk declined to discuss the way military officials – including those on Conscription Commissions – will deal with applicants for alternative service, once the new system is operational. "The Law was prepared by the Labour and Social Security Ministry, not us," the official – who would not give his name – told Forum 18 from Minsk on 18 June.

Arbitrary current system

Currently, all young men between the ages of 18 and 27 are called up for military service. Service is 12 months for those with higher education, 18 months for those without. Exemptions are allowed only on grounds of health or family situation.

Up till now, 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 ("Refusal of call-up to military service") of the Criminal Code. Punishments under this Article are a fine, or imprisonment of up to two years.

The new Alternative Service Law will replace the current arbitrary system. At present, those who object on grounds of conscience either to swearing the military oath or serving directly with weapons (or both) are sent to work with the railway troops or in another non-combat capacity. Those who object to serving with the armed forces in any capacity are either exempted from service altogether or imprisoned.

Jehovah's Witness Dmitry Smyk was fined under Article 435, Part 1 in 2009 before being acquitted the following year. Messianic Jew Ivan Mikhailov was sentenced to three months in prison under the same article in 2010; he served almost all of this term before

acquittal. In 2010 pacifist Yevhen Yakovenko received a one-year sentence of restricted freedom under the same article, but automatically fell under an amnesty. Later criminal cases failed to reach court, though pacifist Andrei Chernousov was forcibly confined to a psychiatric hospital for five days in 2012 to establish if his convictions leading him to refuse call-up accorded with "norms of psychiatric health" (see Forum 18's Belarus religious freedom survey http://www.forum18.org/archive.php?article_id=1997).

Young men may also be denied their right to freedom of religion or belief while conscripted. Youth Front activist Pavel Sergei – whose opposition to both the regime and military service is motivated by his Christian faith – was forcibly conscripted in November 2012. He was prevented from attending church during his service (see Forum 18's religious freedom survey http://www.forum18.org/archive.php?article_id=1997).

Jehovah's Witnesses say since 2012 their young men have not been prosecuted. "We write dozens of certificates each year to say that individuals are in good standing in our community," they told Forum 18. "These certificates are currently accepted with no problem."

International human rights obligations

The right to refuse to perform military service is part of everyone's right (whether or not they hold a religious belief) to freedom of thought, conscience and religion guaranteed in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Belarus ratified the ICCPR in 1976. This is 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).

Until now Belarus - like Azerbaijan (see eg. F18News 26 May 2015 http://www.forum18.org/archive.php?article_id=2065), Turkey (see eg. F18News 1 May 2012 http://www.forum18.org/archive.php?article_id=1696) and the unrecognised entity of Nagorno-Karabakh (see eg. F18News 10 November 2014 http://www.forum18.org/archive.php?article_id=2014) – has jailed conscientious objectors. But unlike Azerbaijan and Turkey, Belarus is not a member of the Council of Europe so its citizens have not been able to challenge such punishments to the European Court of Human Rights (ECtHR) in Strasbourg.

Previous delays

Belarus' new Alternative Service Law has been discussed intermittently over many years. Attempts in 1992 and 2004 failed. A draft Law was withdrawn from Parliament in December 2013 almost as soon as it reached it (see F18News 3 February 2014 http://www.forum18.org/archive.php?article_id=1923).

The new Alternative Service Law

The current Law, and an associated Law amending other Laws to take account of the new alternative service, were prepared by the Labour and Social Security Ministry. They reached the lower chamber of parliament, the House of Representatives, on 6 February 2014. The two Laws passed their first reading only on 10 November 2014 and their second (and final) reading there on 13 May 2015. The upper chamber of parliament, the Council of the Republic, approved both Laws on 20 May.

Both laws were then sent to the Constitutional Court which, in separate decisions on 27 May (published on its website), ruled that they were both in conformity with the Constitution (see below). President Aleksandr Lukashenko signed them into law on 4 June and they were published on the government's legal website on 11 June. They come into force on 1 July 2016.

- Civilian service

The new Alternative Service Law makes clear throughout that alternative service itself is under the control of the Labour and Social Security Ministry. Article 1 specifies that alternative service "is not connected with service in the Armed Forces of the Republic of Belarus, or other armed or military formations of the Republic of Belarus".

Article 4 identifies healthcare, social service, housing, agriculture, forestry, road building or railway maintenance as areas where those doing alternative service would be placed. Article 5 allows for those doing alternative service to be drafted in to tackle "natural or technogenic emergency situations".

Human rights defenders and religious communities have welcomed the civilian nature of and control over alternative service.

- Punitive service length

Article 19 of the new Law specifies that the length of alternative service is 24 months for those with higher education and 36 months for those without. Nowhere is it explained why the term of alternative service is twice the length of military service.

Jehovah's Witnesses acknowledged to Forum 18 that the difference in the length of service is "not good", but noted that "our young men will agree to this". They point out that all young men are being called up for service. "We're law-abiding people," one insisted to Forum 18 from Minsk on 11 June. "Our young men will be pleased to take up the opportunity to be of service to others."

- Only religious objectors

Article 3 of the new Law specifies that the only young men eligible to apply for alternative civilian service are those "who have personally declared that taking the military oath, bearing or using weapons, or direct participation in the production or servicing of weapons, ammunition or military equipment contradicts their religious convictions to such an extent that conducting military service becomes impossible".

Human rights defenders insist that alternative service should not be confined to those who have religious objections. "We believe that everyone who applies to do alternative service should be allowed to do it," Asiyuski of For Alternative Civilian Service told Forum 18.

Elena Tonkacheva of the Lawtrend Legal Transformation Centre (who has been forced to leave the country) noted that under the Law, only young men "with particular religious convictions" would be able to apply for alternative service. "This directly contradicts current conceptions, under which it is enough for the citizen to declare that he holds humanitarian convictions which do not allow him to bear weapons and that pacifist principles are part of his essence," she told the EuroBelarus news agency on 14 May.

On 27 May, the Constitutional Court attempted to provide a justification of why only young men with religious objections are allowed under the new Law to be conscientious objectors (see below).

- Will even all religious objectors be eligible?

The new Law does not make clear whether – in future interpretations of Article 3 – Conscription Commissions will rule that a young man must be a member of a particular religious community known for its pacifist teachings, or whether all individuals who have a personal religious objection to armed service will be accepted for alternative service.

Under Article 16, Conscription Commissions or applicants are entitled to invite to Commission meetings considering individual applications representatives of religious communities or other organisations "who might give explanations on the substance of an application". It remains unclear what will happen if a member of the clergy of the same faith as the applicant argues that this particular faith does not support objection to military service.

Asiyuski of For Alternative Civilian Service notes this lack of legal clarity on how Conscription Commissions will treat conscientious objectors. "The Law appears mainly designed for Jehovah's Witnesses and Protestants, who have strong pacifist traditions," he maintained. "I can imagine that Catholic clergy would speak up in support of young Catholics who oppose military service. But I doubt if Orthodox clergy would do so."

Fr Sergei Lepin, head of the Orthodox Church's Synodal Information Department, maintained that Orthodox theology does not exclude the use of force to defend oneself or others, with some reservations and certain limits. "Moreover, Orthodox theology considers radical pacifism incompatible with the teaching of the Scriptures – it is heresy," he insisted to Forum 18 from Minsk on 17 June. He described military service as a "sacrificial service to one's nation".

"For this reason," Fr Lepin added, "referring to Orthodox teaching to base one's desire not to serve in the army is the equivalent of referring to the Bible to justify refusal to pay one's taxes." He added that he regards conscription as necessary in view of poverty and force majeure. "I'm not saying that a person can't have reasons not to serve in the army on call-up. All I am saying is that references to Orthodoxy can't be such a reason."

By contrast, Fr Yuri Sanko, spokesperson for the Conference of Catholic Bishops, says that "of course" a priest summoned to a Conscription Commission would support a young Catholic's application to do alternative service. "Our lawyer is working on the issue of the new Law right now," he told Forum 18 from Minsk on 17 June.

Jehovah's Witnesses say they do not envisage any problems with the way Conscription Commissions will operate. They point out that currently their certificates supporting individuals unable to conduct military service are accepted with no problem. They add that they are preparing to write to all their congregations to explain the provisions of the new Law.

- Military dominance of Conscription Commissions

Asiyuski expressed concern about the composition of Conscription Commissions, which generally meet in the building of the local Military Conscription Office. He pointed out that although the deputy head of the Regional Executive Committee chairs the Commission for each young man called up, another representative is from the Military Conscription Office and the third is a doctor

working for the Conscription Office.

"The Executive Committee chairs generally back decisions the Military Conscription Office wants," Asiyeuski told Forum 18. "We would like such Commissions to be entirely independent of military structures."

The spokesperson for the Defence Ministry insisted to Forum 18 that local Executive Committees control Conscription Commissions, not Military Conscription Offices.

- Challenging rejections

Those unhappy with a Conscription Commission decision (such as rejection of an alternative service application) may appeal against the decision to the Regional Conscription Commission or a court, according to Article 17 of the new Law.

- No change of mind during military service

The new Law makes no provision for a young man conducting military service or reserve service to change his mind once that service has begun. Article 15 states that eligible individuals seeking to do alternative service must lodge their applications in writing no later than 10 days before the end of the conscription period for military service or reserve service.

The Law makes no mention of any eligibility to apply for transfer to alternative civilian service, once service has begun, if a young man has changed his convictions.

"We don't recall any cases of young men changing their convictions during their service," Jehovah's Witnesses told Forum 18.

Asiyeuski of For Alternative Civilian Service says he knows of no one in recent years already serving in the armed forces who has publicly expressed a demand to stop serving in the military on grounds of conscience. "It would be futile," he said. "Once conscripts have sworn the military oath they can't change their mind. The only way out of military service is on health grounds."

The Defence Ministry spokesperson had put the phone down before Forum 18 was able to ask how many young men conducting military service each year developed conscientious objections during their service. Forum 18 was also unable to ask what will happen in such cases after the new Law's provisions enter into force in July 2016.

- Military record after service

Article 30 specifies that those who have completed alternative civilian service are recorded by Military Conscription Offices in a Military Reserve Register. Individuals are also issued with a military statement that notes that they have conducted alternative service.

Jehovah's Witnesses say they are not too concerned that their young men will be listed in a register maintained by Conscription Offices. "Our young men are already on such registers," they pointed out to Forum 18. "This doesn't mean any individual has to fight. If they put names in an official category that's up to them. We would only be worried if they try to make us do something which is against our conscience."

Similarly, Asiyeuski of For Alternative Civilian Service said he was not worried if names of those who have completed alternative service are put on a Conscription Office-maintained register.

In some countries individuals known not to have conducted military service face official or social discrimination, human rights defenders and religious communities have told Forum 18 that they do not think this will be a problem in Belarus.

Constitutional Court rules against non-religious pacifism

In its 27 May ruling backing the Alternative Service Law, the Constitutional Court pointed to Article 57 of the 1994 Constitution. This 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 was introduced.

The Constitutional Court noted that the adoption of an Alternative Service Law was a "necessity" to end this gap between the Constitutional offer of an alternative service and the law. The Constitutional Court has since May 2000 repeatedly called for the adoption of an alternative service law (see F18News 3 February 2014 http://www.forum18.org/archive.php?article_id=1923).

The Constitutional Court also claimed on 27 May 2015 that Belarus is committed to international human rights obligations, including to freedom of religion or belief under the 1948 Universal Declaration of Human Rights and the ICCPR. However, despite expressly recognising an individual's right to "hold or adopt a religion or conviction of one's choice" and to exercise the right, as set

out in the ICCPR, the Constitutional Court tries to justify why in the Law this right is extended only to those who have a religious objection to serving in the armed forces.

(Serious domestic legal and practical obstacles exist to exercising freedom of religion or belief in Belarus - see Forum 18's Belarus religious freedom survey http://www.forum18.org/archive.php?article_id=1997.)

The decision to allow a young man to perform alternative service, the Constitutional Court insisted, "depends on the depth of the religious convictions of the citizen, making it impossible for him to undertake military service. The lawmaker does not connect the right to substitute an alternative service for military service only with the fact of being in a religious organisation or other, in particular, pacifist convictions."

The Constitutional Court claimed in its support the 7 July 2011 ECtHR judgment in the case of Armenian Jehovah's Witness conscientious objector Vahan Bayatyan (Application no. 23459/03). The ECtHR ruled that the state's refusal to offer Bayatyan an alternative to compulsory military service and punishment of him for refusing to serve in the armed forces violated his rights under Article 9 ("Freedom of thought, conscience and religion") of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (see F18News 7 July 2011 http://www.forum18.org/archive.php?article_id=1591).

After the ECtHR judgment, Armenia introduced a genuine alternative civilian service (see F18News 28 November 2013 http://www.forum18.org/archive.php?article_id=1901). This seems to have been functioning without problems.

To support its argument, Belarus' Constitutional Court quoted part of the ECtHR judgment that only "opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 [of the ECHR]".

The Constitutional Court did not explain why it does not think it that non-religious conscientious objection to military service meets the ECtHR's criterion of "deeply and genuinely held .. other beliefs".

Demands to bring new Law into line with international standards

In May and June, both before the new Law's final adoption, veteran campaigners for the right to perform alternative civilian service gave public comments.

On 14 May, the day after the Alternative Service Law completed passage in the lower house of Parliament, Tonkacheva of Lawtrend welcomed progress on it after 21 years when "Belarusian citizens were deprived of the direct constitutional right to undertake alternative civilian service".

She told the EuroBelarus news agency that preparation of the Law came "despite the opposition of the power structures and despite the institutions that dominate in the Belarusian state sector, and thanks to the initiative of civil organisations".

Tonkacheva argued that civil society should push for further amendments to the Alternative Service Law to "humanise" it and bring it into line with international norms. She told EuroBelarus news that this might take five to seven years to achieve.

Asiyeuski of the For Alternative Civilian Service campaigning group was equally concerned about some provisions of the new Law. "Well it's here, the Law's been adopted," he noted on his VKontakte page on 11 June, the day of its publication. "So many years of work resulted in .. the Law. A bad law. But it exists and that's good."

Asiyeuski similarly said that efforts should continue for the Law to be amended. "That will be difficult though, given the absence of pro-democratic lawmakers from Parliament," he told Forum 18. (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=1997.

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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