

4 March 2020

BELARUS: Jehovah's Witness fights extradition to Russia

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

Nikolai Makhalichev, a 35-year-old Russian Jehovah's Witness, is in Investigation Prison in the Belarusian city of Vitebsk as Belarus considers whether to accede to Russia's request for his extradition. Russia is investigating him on two criminal charges carrying up to ten and eight years' imprisonment to punish him for exercising freedom of religion or belief. Jehovah's Witness activity is legal in Belarus.

A 35-year-old Russian Jehovah's Witness, Nikolai Makhalichev, is in pre-trial Investigation Prison in the north-eastern Belarusian city of Vitebsk fighting extradition to Russia, where he is facing criminal prosecution for exercising the right to freedom of religion or belief. Jehovah's Witnesses fear he could face a long prison term if he is extradited.

Police in Belarus' Vitebsk Region stopped the car Makhalichev was travelling in on 21 February. Officers detained him when they saw that he is wanted in Russia on two separate "extremism"-related criminal charges. These carry a maximum punishment of ten years' imprisonment on one charge and eight years' imprisonment on the other.

Although Jehovah's Witnesses in Belarus feared that the authorities would summarily hand Makhalichev over to the Russian authorities without due process, the authorities then transferred Makhalichev to the pre-trial Investigation Prison in Vitebsk. His extradition case will be considered once Russia's General Prosecutor's Office formally lodges an extradition application (see below).

Gorodok's Prosecutor Yevgeni Avtsin refused to discuss with Forum 18 why Makhalichev is treated like an "extremist" and kept in a Belarusian prison, even though Jehovah Witnesses are officially allowed to exist in Belarus. "This is the part of a criminal case which is confidential," he told Forum 18 (see below).

Makhalichev tried to challenge in court the decision to hold him in Investigation Prison while his case is considered. The lower court rejected his challenge. Vitebsk Regional Court has yet to hear his appeal (see below).

Makhalichev has also lodged an application for refugee status in Belarus. Human rights defender Enira Bronitskaya said that Belarus is unlikely to grant such status, but that individuals often then seek refugee status in third countries (see below).

In Belarus, Jehovah's Witnesses have been officially registered since 1994 and have 27 communities, unlike in Russia, where their activities are banned and their adherents are prosecuted for extremism (see below).

Recently, there were reported cases of torture applied to Jehovah's Witnesses in Russia, which makes extradition unacceptable under international human rights law (see below).

Many Jehovah's Witnesses have fled Russia following the ban, seeking asylum in Finland, Ukraine and other nearby countries.

The Belarusian authorities rejected an extradition request from Tajikistan and released former professional footballer Parviz Tursunov in November 2018. They required that he return to Ukraine, from where he had entered Belarus. Tajikistan had been seeking his extradition to punish him for being a Salafi Muslim (http://www.forum18.org/archive.php?article_id=2438).

Makhalichev faces two Russian criminal cases

Nikolai Andreyevich Makhalichev (born 1 July 1984) from Urai in Russia's northern Khanty-Mansi Autonomous Region is one of three local Jehovah's Witnesses being investigated in a criminal case launched on 31 January 2019 (http://www.forum18.org/archive.php?article_id=2482).

Investigators accuse the three of organising a local Jehovah's Witness community between July 2017 and January 2019, according to case documents seen by Forum 18.

Prosecutors brought charges against Makhalichev and the two others under Russian Criminal Code Article 282.2, Part 1. This

punishes "Organisation of the activity of a social or religious association or other organisation in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity". (http://www.forum18.org/archive.php?article_id=2215) The maximum punishment under Part 1 of this Article is 10 years' imprisonment.

Russia's Supreme Court liquidated the Jehovah's Witness Administrative Centre as "extremist" in 2017 and banned Jehovah's Witness activities (http://www.forum18.org/archive.php?article_id=2297). In January 2020, prosecutors in Russia were investigating more than 300 Russian Jehovah's Witnesses on "extremism"-related criminal charges, of whom 24 were in pre-trial detention (http://www.forum18.org/archive.php?article_id=2536).

On 6 February 2019, "dozens of heavily-armed police" conducted simultaneous raids on the homes of eight Urai Jehovah's Witnesses, including that of Makhalichev (http://www.forum18.org/archive.php?article_id=2482). One of them was arrested and placed in pre-trial detention, but was transferred to house arrest in late February 2019.

The Russian authorities placed Makhalichev on the Interior Ministry's wanted list on 23 May 2019. Police in Urai asked their colleagues in Cherepovets in Vologda Region, where he was born and where his parents live, to hunt for him there.

On 21 August 2019, Urai City Court ruled that Makhalichev should be held in pre-trial detention.

On 10 October 2019, the Russian authorities also placed Makhalichev on the Russian Federal Financial Monitoring Service (Rosfinmonitoring) "List of Terrorists and Extremists", whose accounts banks are obliged to freeze, apart from small transactions (http://www.forum18.org/archive.php?article_id=2215).

On 28 January 2020, Urai Inter-District Investigative Department of the Investigative Committee split the criminal case against Makhalichev into two, according to the decision seen by Forum 18. He now separately also faces charges under Russian Criminal Code Article 282.3, Part 1. This punishes "Financing of extremist activity" with a maximum punishment of eight years in prison.

Held on Russian arrest warrant

Police in the north-eastern Belarusian town of Gorodok [Haradok] in Vitebsk Region arrested Makhalichev on 21 February on the basis of an international arrest warrant issued by Russia (seen by Forum 18). Police identified him in a roadside identity check when they stopped a car he was travelling in with fellow Jehovah's Witnesses.

On 24 February, Artyom Zaikin, Deputy Prosecutor of Gorodok District, determined that Makhalichev acted "deliberately for reasons of religious intolerance and from extremist motives, expressed in the promotion of the superiority of the adherents of the religious teaching of Jehovah's Witnesses over other individuals .. renouncing state authority institutions" and "instructed other members of the extremist organisation to profess and disseminate the ideology and faith to local residents by distributing literature and conversing with them".

The Deputy Prosecutor's decision, seen by Forum 18, confirmed Makhalichev's detention and ordered his transfer from the temporary detention centre in Gorodok to pre-trial Investigation Prison No. 2 in Vitebsk, where he is still being held.

Gorodok's Prosecutor Yevgeni Avtsin refused to discuss with Forum 18 why Makhalichev is being treated like an "extremist" and kept in prison, even though Jehovah Witnesses are officially allowed to exist in Belarus (http://www.forum18.org/archive.php?article_id=2612). "This is the part of a criminal case which is confidential," he told Forum 18 on 27 February.

Makhalichev challenged the decision to hold him in the Investigation Prison. However, on 27 February, Gorodok District Court rejected his request to release him from prison and confirmed the Prosecutor's decision.

Makhalichev lodged an appeal against the court's decision to Vitebsk Regional Court. The Court has not yet set a date for the appeal hearing. Forum 18 called Vitebsk Regional Court on 2 March, but the secretary refused to give any comments or transfer the call.

Phones were busy or went unanswered each time Forum 18 tried to reach the Vitebsk Investigation Prison to find out whether Makhalichev has access to religious literature of his choice, and is allowed visits from fellow Jehovah's Witnesses.

The head of the Jehovah's Witnesses in Belarus, Pavel Yadlovsky, told Forum 18 on 2 March that Makhalichev has better conditions than in a jail in Russia, though only his lawyer can visit him. He did not know whether Makhalichev is allowed to have a Bible and other literature of his choice.

The Investigation Prison address:

SIZO No. 2

Vitebskaya oblast

g. Vitebsk

ul. Gagarina 2

210026 Belarus

Awaiting Russian extradition request

The Belarusian authorities are now awaiting the extradition request for Makhalichev from Russia's General Prosecutor's Office to start consideration of the extradition process.

Makhalichev has also filed a complaint with the United Nations Human Rights Committee.

Gorodok's Prosecutor Yevgeni Avtsin stressed that the decision on extradition does not depend on him. "We are waiting for the next move from Russian investigators," he told Forum 18. He added that the extradition process will be handled on the basis of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (see below).

Application for refugee status

Makhalichev has also applied for refugee status in Belarus. According to his lawyer Valentina Shuplyak, his application was handed to Vitebsk Region Department of Internal Affairs.

To check the refugee status issue, Forum 18 contacted Vitebsk Regional Migration Department on 28 February, but the official (who did not identify herself) replied that all comments are given by the Interior Ministry in the capital Minsk. However, the Ministry's Spokesperson, Olga Chemodanova, said she had no information about Makhalichev's case. "I don't understand what you are talking about," she told Forum 18. "There is no information about it."

The director of the Human Constanta human rights advocacy centre in Minsk, Enira Bronitskaya, noted that Makhalichev is unlikely to get asylum in Belarus. "I would say that the chance of non-refoulement [not being sent back to one's home country] is much higher than the chance of getting refugee status, despite the specific grounds [of this case]," she told Forum 18 on 3 March.

Bronitskaya observed that no Russian citizen has ever received asylum in Belarus. However, she added that the Belarusian authorities know that if they reject asylum claims, individuals can find a third country which might take them in.

Minsk Convention, international human rights standards

Makhalichev's extradition case is being handled on the basis of Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. This was adopted in 1993 by 10 formerly Soviet states, including Belarus and Russia.

Under this Convention, the Prosecutor General of Russia must submit an extradition request to the Prosecutor General of Belarus. If that request is agreed, then it is referred to the district court of the jurisdiction where the person is detained. The district court will decide whether the individual should be extradited. This process can take weeks and a decision of the district court can be appealed.

Human rights defender Bronitskaya of Human Constanta commented to Forum 18 that the Minsk Convention does give grounds to refuse extradition, but they are not related to human rights. It demands "an assessment of Makhalichev's deeds and whether they can be legally defined as crimes in Belarus". She pointed out that his "deeds" are not crimes under Belarus' Criminal Code.

Also, the UN Human Rights Committee's Communication CCPR/C/48/D/470/1991 (<http://undocs.org/CCPR/C/48/D/470/1991>) states that: "if a State party takes a decision [on extradition] relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Covenant [the International Covenant on Civil and Political Rights - ICCPR] will be violated in another jurisdiction, the State party itself may be in violation of the Covenant".

Both Belarus and Russia are parties to the ICCPR.

"We consider that all international human rights standards should be used to seek justice in this case," human rights defender Bronitskaya of Human Constanta told Forum 18. (END)

Full reports on freedom of thought, conscience and belief in Belarus
(<http://www.forum18.org/archive.php?query=&religion=all&country=16>).

For more background, see Forum 18's Belarus religious freedom survey (http://www.forum18.org/archive.php?article_id=2612).

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (http://www.forum18.org/archive.php?article_id=1351).

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