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KAZAKHSTAN: Conscientious objector's 6 months in military detention

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

In autumn 2022, Jehovah's Witness Daniil Smal presented the Conscription Office a certificate from the Jehovah's Witness Centre that he is a "religious minister". This should have exempted him from conscription. He was summoned on 17 May 2023, and forcibly transferred to a military unit. He was freed only in November 2023 when Almaty Military Garrison Court ruled his conscription illegal. The Military Court rejected the military's appeal in April 2024. Smal's conscientious objection "may lead to mass negative consequences and wide public resonance", the military claimed.

Jehovah's Witness Daniil Smal spent from 17 May 2023 in detention in a military unit until Almaty Military Garrison Court ruled on 9 November 2023 that the call-up decision in his case should be revoked and he should be freed. On 16 April 2024, the Military Court rejected the Conscription Office's appeal against the decision. The Conscription Office did not appeal further to the Supreme Court by the deadline and the decision entered legal force on 23 May.

"Any type of military service, whether involving the use of weapons or not, is incompatible with my religious beliefs," Smal told Forum 18 (see below).

"The conscription of D.V. Smal for compulsory military service contrary to his clearly expressed religious beliefs, which do not allow him to perform military service, violated his right to freedom of conscience and religion," the November 2023 decision noted (see below).

Almat Sarsenov, head of Kostanai Region Defence Department, appealed against the November 2023 decision. He claimed that Smal's conscientious objection "may lead to mass negative consequences and wide public resonance". Sarsenov did not answer his phone each time Forum 18 called (see below).

The April 2024 Military Court decision ruled that Smal's conscription had been illegal. "According to the practice of the UN Human Rights Committee, the right to refuse military service on the basis of strongly held religious beliefs is an integral part of the right to freedom of thought, conscience and religion and is protected by Article 18 of the [ICCPR]," it declared (see below).

The military authorities did not appeal further by the deadline and the decision entered legal force on 23 May, the Military Court Chancellery told Forum 18 (see below).

Kazakhstan provides no alternative to those who cannot perform compulsory military service on grounds of conscience. Jehovah's Witnesses, some Council of Churches Baptists, and members of a smaller Christian community refuse on grounds of conscience to serve with weapons or to swear the military oath (see forthcoming F18News article).

Article 36 of the 2012 Law on Military Service and the Status of Military Personnel includes among those exempted from conscription in peacetime "clergy of registered religious associations" (see below).

Jehovah's Witness young men are seen by the community as unpaid "religious ministers", and so can gain exemption from military conscription. Military Conscription Offices generally accept the certificates issued to the young men by the Jehovah's Witness Centre in Almaty designating them as "religious ministers". Sometimes proving this to the Conscription Office can be difficult (see below).

The regime's proposed wide-ranging repressive amendments to the Religion Law and other laws include a provision which would reduce the categories of people who would be eligible to be exempted from compulsory military service.

A proposed amendment to Article 1 of the Religion Law – in the draft text seen by Forum 18 in early 2024 – would change the term "clergy" (which includes "religious ministers") to "religious servant". This restricts those designated by a registered religious organisation as doing "spiritual or preaching service" to those "employed under a legal document of a registered religious association

issued on the basis of a completed work contract".

This would prevent all "religious ministers" who are not formally employed by a registered religious organisation from being exempted from military conscription (see below).

It remains unknown when the amendments will reach parliament (see below).

Smal: Summoned, detained, forcibly sent to military unit

Jehovah's Witness Daniil Viktorovich Smal (born 18 March 2003) was called up in his home town of Rudny, in Kostanai Region of northern Kazakhstan, in the autumn 2022 conscription round. He presented to the Defence Department of Altynsarin and Kostanai District a certificate issued by the Jehovah's Witness Centre in Almaty confirming his role as a "religious minister". This should have exempted him from conscription.

On 16 March 2023, officials issued a conscription order for Smal. On 17 May, they summoned him, and immediately detained him. They then forcibly sent him by train to a military unit in Almaty Region, some 1,500 kms (950 miles) away in the south of Kazakhstan.

The military unit was under the control of the Emergency Situations Ministry, which deals with fires, natural disasters, and civil defence.

"Any type of military service, whether involving the use of weapons or not, is incompatible with my religious beliefs," Smal told Forum 18 on 24 May 2024. He notes that units of the Emergency Situations Ministry have the attributes of military structures, including military ranks and an oath.

"Jesus did not participate in military affairs or conflicts and did not take sides," Smal added. "I believe that it is impossible to make a promise both to God and the state. I too have decided to act like Jesus and not support the affairs of this world directly or indirectly."

Despite "numerous complaints from his mother and his lawyer, and in violation of his fundamental rights", Smal was forcibly detained in the military unit. "Daniil held firmly to his beliefs and refused to take a military oath or wear a military uniform," Jehovah's Witnesses noted.

Smal: Court finds his conscription was illegal

On 1 August 2023, Smal filed an administrative suit against the decision of the Regional Conscription Commission of the Defence Department of Altynsarin and Kostanai District to conscript him for compulsory military service. The suit was sent to Almaty Military Garrison Court.

Hearings began at Almaty Military Garrison Court on 13 September 2023 under Judge Dikhan Aliaskarov. At the final hearing on 9 November 2023, the court decided to accept Smal's claim in full (https://www.forum18.org/archive.php?article_id=2887), declaring that the order to recruit him was illegal.

"The conscription of D.V. Smal for compulsory military service contrary to his clearly expressed religious beliefs, which do not allow him to perform military service, violated his right to freedom of conscience and religion," the decision, seen by Forum 18, states.

The decision added that "the right to conscientious objection to military service is guaranteed by the Constitution of the Republic of Kazakhstan and the International Covenant on Civil and Political Rights".

The court decision warned the military authorities that failure to abide by the decision would - under the Administrative Procedural Code - lead to fines of 50 Monthly Financial Indicators. Fines would increase if such failure continued. The decision came into effect immediately, and Smal was released in the courtroom.

Smal: Detained again by military unit

After the hearing, officials told Smal that he could go to the military unit to pick up his belongings. He went in a car with his mother and a friend. When he entered the unit, he was not allowed to leave.

Smal's lawyer advised his mother to call the police and the military prosecutor. It appears that the military unit's deputy commanding officer was not willing to release Smal without an order from his superior, who was out of the office and not answering his phone. The deputy commanding officer also stated that Smal would be released if his mother withdrew her complaint to the police.

However, the military unit allowed Smal to leave only that evening, Jehovah's Witnesses told Forum 18.

Smal: Conscientious objection "may lead to mass negative consequences and wide public resonance"

Kostanai Region Defence Department was unhappy with the November 2023 court decision upholding Daniil Smal's suit, and lodged an appeal to the Military Court in the capital Astana.

The 26 December 2023 appeal (seen by Forum 18) was prepared by Almat Sarsenov, head of Kostanai Region Defence Department. It claimed that Smal's conscientious objection "may lead to mass negative consequences and wide public resonance". It accused him of actions directly prohibited by the Religion Law, quoting the provision that registered religious organisations are banned from undertaking "incitement of citizens to refuse to carry out obligations envisaged in the Constitution and laws".

Sarsenov of Kostanai Region Defence Department's appeal cited a reply from Kostanai Regional Religious Affairs Department questioning Smal's status as a "religious minister," as attested by the certificate issued by the Jehovah's Witness Centre in Almaty. Sarsenov claimed Smal was merely an attendee and was not listed as a founder of the local religious community.

"In the course of conscription campaigns," Sarsenov's appeal added, "a number of those called up presented certificates from local Jehovah's Witness religious communities, which creates conditions for refusing conscription and numbers of them are becoming greater and greater from one call-up to another."

Smal: Military Court confirms right to conscientious objection

On 16 April 2024, a panel of three judges at the Military Court in Astana – chaired by Judge Chingiz Maishibayev - ruled to uphold the first instance court decision which found in Daniil Smal's favour. "During the trial, a judicial panel of the Military Court treated Smal with due respect," Jehovah's Witnesses note.

The Military Court confirmed that citizens have the right to object to military service based on their strongly held personal religious beliefs. The ruling did not immediately enter into force, because the military authorities had one month to lodge any appeal.

The court decision relied on Kazakhstan's constitution, which states "Everyone shall have the right to freedom of conscience," and also on the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan has been obligated to abide by since ratifying it in 2006.

"According to the practice of the UN Human Rights Committee, the right to refuse military service on the basis of strongly held religious beliefs is an integral part of the right to freedom of thought, conscience and religion and is protected by Article 18 of the [ICCPR]," the court stated in its decision.

The United Nations (UN) Human Rights Committee has repeatedly recommended that Kazakhstan recognise individuals' right to conscientious objection, and provide an alternative to compulsory military service (see forthcoming F18News article).

Sabit Aimukhanov, head of Altynsai and Kostanai District Defence Department, and Almat Sarsenov, head of Kostanai Region Defence Department, had both been present in court to support the appeal against Smal's conscription being illegal. Neither Aimukhanov and Sarsenov were in their offices on 23 or 24 May each time Forum 18 tried to reach them.

"We are thankful to the judge for rendering a fair decision and for respecting the freedom of conscience that is enshrined both in the country's Constitution and international human rights law," Jehovah's Witnesses told Forum 18. "This judgment sets a significant precedent for upholding and protecting fundamental human rights in Kazakhstan and Central Asia."

Both sides had the opportunity to appeal against the 16 April Military Court decision to the Supreme Court in Astana. The military authorities did not appeal further by the deadline and the decision entered legal force on 23 May, the Military Court Chancellery told Forum 18 the same day.

Despite the Military Court decision in Smal's case, no alternative to compulsory military service exists (see forthcoming F18News article).

Religious ministers exempted from military service

The regime has not introduced a civilian alternative service for those who cannot serve in the military on grounds of conscience (see forthcoming F18News article). However, since 1992 the regime recognises those designated as ministers by registered religious communities as exempt from conscription.

In 1997, Jehovah's Witnesses designated all their baptised young men as religious ministers. This is in line with international human rights law, as outlined in the OSCE / Council of Europe Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (<https://www.osce.org/files/f/documents/9/9/139046.pdf>). This notes: "In the regime that governs access to

legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership, its internal rules, .. the structure of the community and methods of appointment of the clergy .."

The regime then agreed to exempt Jehovah's Witness young men designated as religious ministers from conscription.

The Military Duty and Military Service Law of 8 July 2005 continued this exemption for religious ministers, as did its replacement, the Law on Military Service and the Status of Military Personnel of 16 February 2012.

The 2012 Law exempts a range of individuals from conscription in peace time, including – in Article 36, Part 1, Point 6 - "clergy of registered religious associations." Under Article 35, among those entitled to deferment from conscription are those undergoing "full time education in spiritual (religious) educational establishments."

The Jehovah's Witness Centre in Almaty issues certificates to their young men to present to conscription offices to confirm their right to be exempted from conscription under the Law on Military Service and the Status of Military Personnel. Conscription offices generally accept these certificates and exempt Jehovah's Witness young men.

However, in some cases military conscription officers refuse to accept the certificates, or try to pressure young men to accept conscription (see forthcoming F18News article).

Jehovah's Witnesses noted that the military authorities have brought no criminal charges for refusing conscription on grounds of conscience in recent years.

Earlier criminal cases for refusing conscription on grounds of conscience

In 2017, criminal cases or investigations were launched in different regions of the country against six Jehovah's Witness young men (https://www.forum18.org/archive.php?article_id=2317) under Criminal Code Article 387, Part 1 ("refusing military service"). Military conscription offices had refused to accept the certificates that each had from the Jehovah's Witness Centre in Almaty confirming that they were religious ministers. This should have ensured their exemption from military service.

From May 2017 onwards, police investigators closed the criminal cases against five of the six young men (https://www.forum18.org/archive.php?article_id=2333) "for absence of a crime." The Military Conscription Office appears not to have sent the case against the sixth young man to the police.

Proposed narrowing of conscription exemption

The regime's proposed wide-ranging repressive amendments to the Religion Law and other laws (https://www.forum18.org/archive.php?article_id=2887) include a provision which would reduce the categories of people who would be eligible to be exempted from compulsory military service.

A proposed amendment to Article 1 of the Religion Law – in the draft text seen by Forum 18 in early 2024 (https://www.forum18.org/archive.php?article_id=2887) - would change the term "clergy" (which includes "religious ministers") to "religious servant". This restricts those designated by a registered religious organisation as doing "spiritual or preaching service" to those "employed under a legal document of a registered religious association issued on the basis of a completed work contract".

This would prevent all "religious ministers" who are not formally employed by a registered religious organisation from being exempted from military conscription.

Any young man who is part of religious community which is not state-registered (https://www.forum18.org/archive.php?article_id=2753) remains liable to military conscription.

The draft Amending Law is ostensibly the work of parliamentary deputies led by Ermurat Bapi, but indications are that it was initiated or drafted by officials (https://www.forum18.org/archive.php?article_id=2887).

The Justice Ministry announced on 17 April 2024 that the Amending Law and proposed amendments to the Administrative Code allegedly "initiated by deputies" had been sent for government assessments on 25 January. On 8 February the Inter-Agency Commission had approved the government assessments. They were sent in the next few days to the Government Administration and then the Presidential Administration.

No texts of these proposed new Laws have been made public. Officials have not indicated when they intend to submit them to the regime-controlled lower house of Parliament, the Mazhilis, whose members have never faced a free and fair election (<https://www.osce.org/odihr/elections/kazakhstan>). (END)

More reports on freedom of thought, conscience and belief in Kazakhstan (<https://www.forum18.org/archive.php?country=29>)

For background information, see Forum 18's Kazakhstan freedom of religion or belief survey (https://www.forum18.org/archive.php?article_id=2753)

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

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

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY