

INTERNATIONAL FELLOWSHIP OF RECONCILIATION

UPR SUBMISSION

BELARUS

36th SESSION (May 2020)

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Executive Summary

1 The last report of Belarus under the UPR was considered on 4th May 2015. Neither in that Session nor in the previous cycle were any recommendations made to the State Under Review concerning its conscientious objectors to military service, even though at the time Belarus had no provisions.

2 An Alternative Service Law was finally adopted later in 2015 and came into effect on 1st July 2016. However its provisions still fall far short of the generally-accepted international standards.

Historical background

3 Article 57 of the 1994 Constitution, without explicitly mentioning conscientious objection, states: "Procedures regulating military service, and the grounds or conditions for exemption from military service or its replacement by alternative service, shall be further regulated by law".

4 According to Article 4 of the 1994 Law "On the Procedure Governing the Entry into Force of the Constitution of the Republic of Belarus", a law on alternative service should have been adopted within two years. This however did not happen.

5 In 1994, the Parliament discussed a draft law but it did not proceed with its implementation.

6 In 2000, in the case of Valentin Guhai, a Jehovah's Witness who had requested a civilian alternative service rather than the unarmed military service which was available to those who convinced the military of their objection to bearing arms on religious grounds, the Constitutional Court ruled that conscientious objectors had a constitutional right to a civilian alternative to military service, and called upon the Government to bring in implementing legislation. Guhai's sentence of 18 months imprisonment plus 18 months labour on a state construction project was subsequently commuted to a twelve-month suspended sentence.

7 A further draft Law, which envisaged 27 months' alternative service to be performed on collective farms, in factories or on building sites, was introduced in 2001. This draft was criticised by the Ministry of Defence as too favourable towards conscientious objectors, and was defeated in Parliament in December 2004.

8 It is reported that at the beginning of 2010 President Lukashenka personally instructed the Security

Council of Belarus, which “consists of top military, KGB, police and other related officials” to prepare a draft Law.¹ However, soon after this had appeared on the legislative programme it ceased to be listed, with no announcement or explanation.

9 Nevertheless, in May 2010, an international conference on conscientious objection to military service took place in Minsk, hosted by the Public Campaign “For alternative civilian service in Belarus”, with the support of the Organisation for Security and Co-operation in Europe, and produced an unusually open dialogue between representatives of conscientious objectors' organisations throughout the region, international experts, and representatives of government ministries, including the Ministry of Defence, which seemed to be actively contemplating the possibility of drafting an alternative service law. In July 2010, as a follow-up to that conference, a group of non-governmental organisations drew up and published proposals for an Alternative Service Law. The government made no response to these proposals.

10 A draft Law on Alternative Service was included in the Legislative Programme for 2013, approved by presidential decree on 3rd January 2013. Preparation of the draft was assigned to the Council of Ministers in co-operation with the National Centre for Legislation and Legal Research. Completion of the draft was scheduled for July 2013 and it was envisaged that it would be presented to the Lower House of Parliament in October 2013.²

11 In the event a draft prepared by the Ministry of Labour and Social Security was presented to parliament in December 2013 but before the Labour and Social Affairs Committee of the Parliament could commence its consideration, the draft was returned to the Ministry “for technical amendments”, with no date set for its return. This draft would have granted the possibility of applying to substitute a civilian alternative service for military service only to those who cited explicitly religious grounds. The proposed duration of alternative service was punitive and discriminatory – 30 months as opposed to 18 months of military service.³

12 Eventually, on November 10th 2014, the first draft of the Law which would be passed in 2015 was put before the House of Representatives.

13 However, this law makes Alternative Civilian Service available only to those who object on religious grounds, and possibly only to members of denominations which have a formal pacifist stance. The duration of alternative service is set at twice that of military service, ie 36 months, or 24 months for those with higher education.⁴ And the pay for those performing alternative service was set lower

1 Shraibman, A., “Alternative Civilian Service in Belarus; possible, but only in theory”<http://belarusdigest.com/story/alternative-civilian-service-belarus-possible-only-theory-12784>, 17th January 2013

2 Corley, F., “Belarus: Alternative service law “earliest by Summer 2014”?”, [Forum 18 News Service \(www.forum18.org\)](http://www.forum18.org), 10th January 2013.

3 Details from Glace, O., “Belarus: Long awaited alternative service law abandoned?” [Forum 18 News Service \(www.forum18.org\)](http://www.forum18.org), 4th February 2014.

4 Fifth Periodic Report of Belarus under the International Covenant on Civil and Political Rights (CCPR/C/BLR/5), submitted 30th March 2017, published 14th June 2017., para 328

than that received by military conscripts. Moreover, there are strict time limits; the application must be lodged not later than ten days before the end of the relevant conscription period. There are no provisions for those who develop conscientious objections only after having started military service.

14 Conscientious objectors continued to be persecuted. In the Autumn of 2015, between the adoption of the Law and its coming into force, two Jehovah's Witnesses who had requested the opportunity to perform civilian alternative service rather than military service were subjected to what were denounced as "show trials".

15 On 8th September 2015, they were acquitted by Moscow District Court in Brest on the charge of violating Criminal Code Article 435, Part 1, "Refusal of call-up to military service", the judge having invoked the constitutional guarantees. This acquittal was upheld by the Regional Court on 13th October 2015.

16 However in the case of 21-year-old Viktor Kalina the General Prosecutor's Office then launched a further appeal to the Supreme Court, which in March 2016 agreed that unarmed service in the Military Railway Troops was a suitable alternative for conscientious objectors. Over the years some 240 objectors had accepted this option, although this branch of the military had not been specifically set up with conscientious objectors in mind. ⁵

17 On 24 June 2016, just one week before the new law came into effect, Brest Regional Court rejected an appeal by Kalina against his conviction and fine equivalent to roughly \$1000 for his refusal of military service.

18 In its Concluding Observations on the Fourth Periodic Report of Belarus in 1997, the Human Rights Committee "noted the statement of the delegation of Belarus that legislation on conscientious objection to military service is envisaged" and recommended "that a law exempting conscientious objectors from military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's general Comment No. 22".⁶

19 Referring to this, in the List of Issues drawn up in July 2015 in advance of the Fifth Periodic Report the Committee requested:

"please report on the status of the draft law on conscientious objection to military service introduced in the House of Representatives in November 2014. Please indicate, inter alia, whether any draft or adopted legislation extends the right of conscientious objection against military service to persons who hold non-religious beliefs, whether the length of alternative service is equal to the duration of military service and, if not, what are the reasons that justify any such difference. ⁷

20 In its subsequent Report Belarus states that "Under article 3 of the Act, persons who are liable to conscription for fixed-term military service or service in the reserve and are healthy and physically fit to serve may be directed to perform alternative service if they have made a personal declaration that taking the military oath, bearing or using arms or participating directly in the production or servicing of

5 Glace, O. op cit

6 CCPR/C/79/Add.86, para 16.

7 CCPR/C/BLR/QPR/5, 9th August 2015, para 27.

arms, ammunition or military hardware would violate their religious beliefs to such an extent that they would be unable to perform military service.”⁸

21 It further explains: “The length of alternative service has been set at twice that of military service in order to prevent abuses and avoid an increase in the number of persons requesting the substitution of alternative service for fixed-term military service simply because they wish to perform a less arduous type of service.”⁹

22 In its Concluding Observations “The Committee notes the adoption of the Alternative Service Act in 2015, but remains concerned that conscientious objection to military service can be exercised on religious grounds only and is not extended to persons who hold non-religious beliefs grounded in conscience. It is also concerned at the difference in the length of alternative service compared with military service between those with and without higher education, with alternative service for the latter category being twice as long as military service. While noting that the justification given for this difference is to prevent abuses and avoid an increase in the number of requests for alternative service, the Committee is concerned at the discriminatory and punitive aspects of this difference.”¹⁰, and it recommends “**The State party should take measures to review its legislation with a view to recognizing the right to conscientious objection to military service without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and to ensuring that alternative service is not punitive or discriminatory in nature or duration by comparison with military service.**”¹¹

23 The 2015 law seems, the Kalina case apart, to have placated the Jehovah's Witnesses, who ask simply to be required to serve their country in a nonmilitary fashion.

24 But the requirement that the duration of alternative service should be twice that of military service is clearly contrary to the standard set by the Human Rights Committee in their 1997 Views in the case of Foin v France, and in fact results in an alternative service which, at 36 months, is currently the longest anywhere.

25 Other discriminatory aspects might also be of concern:

Those performing alternative service will not be covered by the national labour code. For example, article 25 of the Law states that the working week in alternative service cannot be more than 48 hours, while the working week of an ordinary citizen may not exceed 40 hours. The holiday allowance is 10 days after each year of service; the equivalent for normal employees is 28 days. Moreover if there are unredeemed disciplinary penalties, the total leave can be decreased by 10 days. Article 28 states that failure to carry out the duties appropriately will be classed as evasion – the definition being three rebukes from the employer.

8 CCPR/C/BLR/5,, para 316.

9 Ibid, para 319.

10 CCPR/C/BLR/CO/5, 22nd November 2018, para 47.

11 Ibid, para 48.

RECOMMENDATION

That Belarus revise its Military Service legislation and practice to bring itself into conformity with international standards, in particular avoiding discrimination a) in the process for assessing claims of conscientious objection on the basis of the beliefs on which the objection is based, and b) in the terms and conditions of Alternative Civilian Service as compared with those of military service; that it also recognise the right of those already engaged on military service to apply for release on the grounds of conscientious objection.