



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

The Right to Conscientious Objection in Europe: A Review of the Current Situation

Country Report: BELARUS

Conscription

Conscription is enshrined in Article 57 of the 1994 Constitution and further regulated by the 1992 Law on Universal Military Duty and Military Service.

The length of military service is 18 months, and 12 months for university and college graduates. All men between the ages of 18 and 27 are liable for military service. There are two call-up periods per year, one during spring and one during autumn.

Reservist obligations apply. According to a new Law on Reserve Service of January 2004, reservists may be obliged to undertake military training of up to 800 hours over a three-year period (two years for college graduates) and 250 hours a year subsequently.¹

In 2003, Minister of Defence Maltsaw announced a possible reduction of military service to one year in the near future. Abolition of conscription is not foreseen.²

Statistics

The armed forces comprise 83,000 troops, including 30,000 conscripts. Every year, approx. 87,000 young men reach conscription age; approx. 35 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 57 of the 1994 Constitution, according to which: "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".

In addition, the 1992 military service law stipulates in Article 5.1 and 14.3 that "universal military duty" may consist of either military service or alternative service.³

According to the Constitution, a law on alternative service should have been adopted two years after the adoption of the Constitution in 1994, which means before 30 March 1996.⁴ However, no further legislation on conscientious objection has ever been introduced.

In 1994, the Belarusian Parliament discussed a draft law but it did not proceed with its implementation. In 1997, the Belarusian government stated to the United Nations Human Rights Committee that legislation on conscientious objection was envisaged. The Human Rights Committee in fact called upon the Belarusian government to pass such a law, providing for a civilian alternative service of equivalent length to military service, at an early date.⁵

¹ Information provided by the Belarusian Defence Attaché to the USA, quoted in: Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

² 'Defence Minister pledges reduced conscription term', Minsk Belarus Television, 17 February 2003 (WPS Monitoring Agency).

³ Decision of the Constitutional Court of the Republic of Belarus of 26 May, Minsk No. D-98/2000, <http://ncpi.gov.by/constsud/eng/d98.htm>

⁴ In accordance with Article 4 of the 1994 Law "On the Procedure Governing the Entry into Force of the Constitution of the Republic of Belarus" (Decision of the Constitutional Court D-98/2000).

⁵ United Nations Human Rights Committee: Concluding observations of the Human Rights Committee: Belarus (CCPR/C/79/Add.86.), 19 November 1997.

In 2001, the Belarusian Parliament again discussed a draft law, which envisaged 27 months' alternative service, to be performed on collective farms, in factories or on building sites.⁶ The draft law was under preparation in Parliament for several years, but in December 2004, it was eventually rejected by the Belarusian Parliament. The Ministry of Defence reportedly considered that the conditions of the draft law were too favourable for COs, a view which was apparently shared by a majority in Parliament. The Deputy Head of the National Security Commission stated that a different law on alternative service may be drafted in the future.⁷

Pending the introduction of a CO law, the legal basis of conscientious objection remains unclear. There is no substitute service available, only an unarmed military service within the armed forces. Moreover, this option is only available for COs who refuse military service on religious grounds.⁸

Practice

Every year, dozens of conscripts refuse military service and apply for an alternative service outside the armed forces. The exact number of applications is not known. According to the Ministry of Defence in May 2003, the number of applications for alternative service had dropped by 50 per cent.⁹ More detailed figures are not available.

In some cases, COs are apparently allowed to serve in unarmed units of the armed forces, such as the construction battalions and railway troops.¹⁰ Decisions on assignment to unarmed units are probably made by individual military commanders or conscription officers. It is not known which criteria are used to decide on such applications. However, all available sources suggest that only COs who refuse military service on religious grounds are allowed to do unarmed service. The Belarusian Constitutional Court in fact stated in 2000 that there are dozens of conscripts annually who "with their religious beliefs taken into account, are being sent to railway troops".¹¹

In 2000, the case of Valentin Guhai attracted considerable attention. Guhai, a member of the Jehovah's Witnesses, asked to perform a civilian service outside the armed forces. His request was denied and he was sentenced by Rechitsa Regional Court to a conditional 18 months' prison sentence, on the condition that he would work for 18 months on a state construction project. However, in May 2000 the Belarusian Constitutional Court ruled that the constitution guarantees COs the right to a civilian alternative to military service, and it recommended to the government to take steps to ensure this right. Subsequently, Gomel Regional Court overruled Guhai's original sentence and reduced it to a one year suspended sentence.¹² Since 2000, there have been no known cases of COs who have refused to perform unarmed military service and who were consequently prosecuted.

All known cases of COs are members of religious groups who forbid their members to bear arms. It is not known how applications that are made on secular pacifist grounds would be treated by the authorities. However, it seems unlikely that non-religious COs would be allowed

⁶ Alies Harkun: I don't want to send my son in the army, in: The right to freedom 92(20), Human Rights Centre "Viasna", Minsk, October 2001.

⁷ 'Belarusian Parliament turns down bill on alternative service', Interfax, 17 December 2004.

⁸ The 2004 report of the United Nations High Commissioner for Human Rights concludes that "claims to be a conscientious objector are accepted without further inquiry" (Civil and Political Rights, including the question of conscientious objection to military service, Report of the Office of the High Commissioner for Human Rights, United Nations Commission on Human Rights, 60th session (E/CN.4/2004/55), 16 February 2004). This conclusion is based on information provided by the Belarusian government. As this information is not publicly available, it is not known which information was exactly submitted. However, the conclusion drawn in the report of the High Commissioner is not in line with the actual practice, as described by several sources.

⁹ 'About One Third of Recruits Unfit for Military Service', BASA-Press, 12 May 2003 (WPS Monitoring Agency).

¹⁰ Decision of the Constitutional Court D-98/2000. US State Department Bureau for Human Rights, Democracy and Labor: International Religious Freedom report 2003.

¹¹ Decision of the Constitutional Court D-98/2000.

¹² Amnesty International: Conscientious Objector Valentin Gulai (EUR 49/12/00), Concerns in Europe January-June 2000 (EUR/01/03/00).

to perform unarmed military service. Even the Constitutional Court, although repeatedly calling for legislation on conscientious objection, restricts the constitutional right to conscientious objection to religious grounds. According to its 2000 decision, citizens "shall have the right, in particular under religious beliefs, to substitute military service for an alternative one".¹³

The absence of clear legal provisions for conscientious objection means that the only way in which non-religious COs can avoid military service is by bribing draft officials or evading call-up.

Draft evasion

Draft evasion and desertion are punishable under Articles 435, 437, 445, 446 and 447 of the Criminal Code. Evasion of military registration is punishable by a fine or up to three months' arrest. Draft evasion is punishable by a fine or up to two years' imprisonment, if committed after administrative punishment was imposed. Desertion and evasion of military duties by mutilation or other means is punishable by up to seven years' imprisonment.¹⁴

Officially there are few draft evaders, the official number of 120 per year remaining unchanged for some years.¹⁵ However, in 1998 and 1999 according to the Ministry of Defence, there were believed to be between 1,200 and 1,500 cases per year.¹⁶

There are no detailed figures available about the scale of criminal prosecution of draft evasion. According to several sources, COs face administrative sanctions or criminal prosecution for evading call-up for military service.¹⁷

¹³ Decision of the Constitutional Court D-98/2000.

¹⁴ UNHCR: Basis of Claims and Background Information on Asylum Seekers and Refugees from the Republic of Belarus, October 2004.

¹⁵ UNHCR (2004).

¹⁶ '1,500 deserters', Belorusskya Delovaya Gazeta, Minsk, 3 September 1999.

¹⁷ Representative of a NATO country's embassy, quoted in: Danish Immigration Service: Fact Finding Mission to Belarus, 30 January-7 February 2000, Copenhagen, 2000. International Helsinki Federation for Human Rights: Problems of Religious Freedom and Tolerance in Selected OSCE States, Report to the OSCE Supplementary Meeting on Freedom of Religion or Belief, Vienna 17-18 July 2003.