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BELARUS: New possible fines for unapproved worship

By Olga Glace, Forum 18

On 18 July, criminal punishments for unregistered religious activities, including worship meetings, ended, but were replaced by summary fines of up to five weeks' average wage. "Some church members will be scared and stop coming to worship services or, God forbid, the authorities will impose a restraining order on the church's property," the leader of an unregistered Christian community commented.

Punishments for organising or participating in unregistered religious activities, including meetings for worship, were changed on 18 July from possible prison terms under the Criminal Code to fines under a new provision of the Administrative Code. Individuals can now be fined up to five weeks' average wage for those in work. Human rights defenders described it as "particularly alarming" that such summary fines can be handed down by police without any court hearing.

"Some church members will be scared and stop coming to worship services or, God forbid, the authorities will impose a restraining order on the church's property," the leader of a Christian church which has struggled for registration for decades commented to Forum 18 (see below).

Human rights defender Leonid Sudalenko is among critics of the new punishments. "Why can't people form religious organisations without asking permission from the authorities?" he told Forum 18. "Their rights must be respected" (see below).

A senior government religious affairs official in the capital Minsk dismissed religious communities' concerns over the punishments for unapproved exercise of the right to freedom of religion or belief (see below).

The United Nations Special Rapporteur on the situation of human rights in Belarus welcomed the abolition of the criminal punishment for organising or participating in the activity of unregistered organisations. But she complained that they are subject to punishment under the Administrative Code. She described the changes as only "small steps" (see below).

The regime bans all exercise of the right to freedom of religion or belief without state permission. Religious communities which cannot get the required state permission to exist – or which choose not to seek it – risk punishment when they meet for worship. However, raids on unapproved worship meetings have lessened in recent years (see below).

One human rights defender has told Forum 18 that no punishments are yet known to have been handed down to punish exercise of the right to freedom of religion or belief under the new Administrative Code Article 23.88 in the eight weeks since its introduction. However human rights defenders express concern that the punishment exists (see below).

In addition to bans on unapproved worship and outdoor religious activity, the authorities have introduced heavy police, medical and clean-up fees for public events, including religious events. Greek Catholics had to cancel a proposed pilgrimage in July (http://www.forum18.org/archive.php?article_id=2503) because of "unaffordable" police fees.

Tight state control

In Belarus the state closely controls all public exercise of freedom of religion or belief. The Religion Law requires state registration before communities can meet for worship. Those who meet without state registration risk police raids and fines, though such raids have diminished in recent years. Any public religious meetings or outdoor events risk fines or other punishment. Individuals can be punished under the Administrative Code for violating the Law on Mass Events, which requires prior permission (usually refused) for a range of public events.

A Baptist husband and wife in Lepel were fined in October 2018 for singing Christian songs and offering literature outside the town market without state permission. (http://www.forum18.org/archive.php?article_id=2437)

At the same time, the authorities have long been reluctant to register religious communities (http://www.forum18.org/archive.php?article_id=2436), using various pretexts to make state registration unobtainable for

communities they do not like. The most frequent pretext is rejecting a community's proposed legal address as unsuitable.

The Jehovah's Witness community in Borisov [Barysaw] in Minsk Region has had 16 registration denials in 20 years. In July 2019 a Minsk Pentecostal Church received its ninth rejection since 2017 and chooses not to meet for fear of raids and fines (see below).

Unregistered religious organisations punishments reduced from prison to fines

Punishments for organising or participating in unregistered religious activities, including meetings for worship, were changed on 18 July from possible prison terms under the Criminal Code to fines under a new provision of the Administrative Code. Individuals can now be fined up to five weeks' average wage for those in work.

After a long-running campaign by human rights defenders, the authorities abolished Article 193-1 of the Criminal Code. This punished "organisation of or participation in activity by an unregistered political party, foundation, civil or religious organisation" with a fine or imprisonment for up to two years.

The abolition of Criminal Code Article 193-1 came in a Law amending various Codes, adopted by Parliament in December 2018 and officially published on 18 January 2019. The Law also abolished the criminal record for those earlier punished under Article 193-1. Both provisions came into effect six months later, on 18 July.

However, the same law introduced a new Administrative Code Article 23.88, which came into force on 18 July. This punishes "Illegal organisation of or participation in activity by an unregistered political party, foundation, civil or religious organisation" with a fine of up to 50 base units. Police can issue the summary fines with no court hearing.

A base unit was set on 1 January 2019 at 25.5 Belarusian Roubles. This means that police could hand down a fine of up to 1,275 Belarusian Roubles, for example, for meeting for worship without state permission. This represents about five weeks' average wages for those in work, according to government figures.

Article 12.2 of the Administrative Offences Procedural Implementation Code allows an individual to challenge such a fine at a higher-level authority, higher-level official or at court within 10 days of receiving the decision of an administrative offence.

Summary fines "particularly alarming"

Human rights defenders celebrated on 18 July when the abolition of Criminal Code Article 193-1 came into effect. However, they complained of the entry into force on the same day of Administrative Code Article 23.88 punishing the same activity with fines.

Two Minsk-based human rights groups – Lawtrend Centre for Legal Transformation and the Assembly of Non-governmental Democratic Organisations - described it as "particularly alarming" that drawing up records of an offence and issuing fines under the new Article are in the hands of the police and the Justice Ministry, "which means no court will be involved".

"The entry into force of Article 23.88 and the potential use of it will be an important indicator of the state of freedom of association in the country and could be one of the fundamental indicators of the legal position of Belarusian civil society organisations," the two groups warned.

One human rights defender told Forum 18 that they are not aware that the new Administrative Code Article 23.88 has yet been used to punish exercising freedom of religion or belief.

The United Nations Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, described the abolition of Criminal Code Article 193-1 as among "welcome changes". However, she warned that these developments "only partly address" recommendations by human rights defenders.

"Non-registered organizations are still subject to administrative liability," Marin told the UN Human Rights Council in her report published on 8 May, "and the notification procedure for assemblies is valid only for those taking place in areas designated by authorities, and is often denied in practice. These small steps, although going in the right direction, have yet to testify to a real change in Government policies."

Criticism from human rights defenders, confusion from officials

Administrative Code Article 23.88 and other laws face harsh criticism for contradicting international legal standards, Leonid Sudalenko from the Vyasna (Spring) human rights organisation maintained to Forum 18 on 3 September. He points out that state registration for religious and other organisations should not be obligatory and is supposed to protect smaller religious organisations.

"Why can't people form religious organisations without asking permission from the authorities?" Sudalenko told Forum 18. "Their rights must be respected. They did not come from outer space - they live among us." He could not forecast the effect of the new

Article on religious organisations' future activities.

Andrei Aryaev, the Head of the Religious Department of the Office of the government's Plenipotentiary for Religious and Ethnic Affairs, told Forum 18 on 9 September that he was not aware of the amendment. Asked whether Administrative Code Article 23.88 will create new obstacles for unregistered religious organisations, he assured Forum 18: "I don't see any problems for religious organisations."

The Justice Ministry spokesperson, Olga Shibko, assured Forum 18 on 9 September that this Article is not related to the Justice Ministry. "We do not deal with registration of local religious communities and it is not our function to keep public order," she explained to Forum 18. She recommended that Forum 18 contact the Interior Ministry "for professional comments".

However, when on the same day Forum 18 called officials in the Interior Ministry, they were unaware of the new Administrative Code Article 23.88. After many calls to officials in different departments, they confirmed to Forum 18 that under the Article, police can issue fines directly without court hearings.

Asked to explain the purpose of the amendment, Interior Ministry spokesperson Olga Chemodanova told Forum 18 on 10 September that she needs time to study Administrative Code Article 23.88 in detail before giving comments. When Forum 18 tried to reach her again the phone went unanswered.

Earlier criminal prosecution threats

Forum 18 knows of no prosecutions under Criminal Code Article 193-1 to punish exercise of the right to freedom of religion or belief. However, it knows of eight threats to initiate prosecutions under the Article against religious believers and communities between 2010 and 2019.

The most recent known threat of criminal prosecution came in July 2015. Gomel's Prosecutor Sergei Zaitsev "officially" warned Pastor Sergei Nikolaenko of the Reformed Orthodox Transfiguration Church in Gomel and another church member in writing that any further violations of the law by holding unregistered meetings for worship would result in criminal prosecution. (http://www.forum18.org/archive.php?article_id=2096)

Repeated registration denial leaves community vulnerable

Religious communities which cannot get the required state permission to exist – or which choose not to seek it – risk punishment when they meet for worship.

In July 2019, the Executive Committee of Minsk's Frunze District again rejected the latest registration application from the Pentecostal Your Will Be Done Church, a church member told Forum 18. This is the ninth such refusal since 2017, when the church began seeking registration (http://www.forum18.org/archive.php?article_id=2461). The Church chooses not to meet for fear of raids and fines.

The leader of another Christian church which has struggled for registration for decades but now hopes it will achieve it told Forum 18 on 11 September that Administrative Code Article 23.88 restricts the freedom of unregistered religious organisations and threatens their existence.

"Some church members will be scared and stop coming to worship services or, God forbid, the authorities will impose a restraining order on the church's property," the leader commented to Forum 18.

The Christian leader also pointed out that the state should not punish and force its regulations on religious communities, nor should it promote some churches and discriminate against others. "The church should be independent from the state to preserve its moral and spiritual function for the people."

Some Jehovah's Witness communities have faced repeated registration denials, often for more than ten years. These include the communities in Lida in Grodno Region (most recent denial 23 January 2019); Vileika in Minsk Region (most recent denial 11 February 2019); and Borisov in Minsk Region (most recent denial 16 July 2019). In all these cases Jehovah's Witnesses tried to challenge the denials, but without success.

Other religious communities choose not to seek state registration on principle. Among them are Council of Churches Baptists. They have always argued that they do not form a religious organisation as defined by law, so any such restrictions do not apply to them.

Members of a range of unregistered churches and communities confirmed to Forum 18 that the authorities' pressure on them has lessened. "As long as we keep our profile low, the authorities do not come to us," one told Forum 18 on 30 August. "It is clear that the new amendment is related to the forthcoming elections and everyone has their own way to prepare themselves. At the moment it is not affecting our religious activities. We'll see what happens." (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=1997).

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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