

Table of Contents

- ***TRANSDNIESTER: Conscientious objectors banned from leaving***
- ***Property disputes and Orthodoxy: Orlović and Metropolitan Church of Bessarabia***

TRANSDNIESTER: Conscientious objectors banned from leaving

Three Jehovah's Witnesses returning to Transdniester to visit family were called up for military service in May and banned from leaving. "I've been living with this uncertainty for nearly half a year, unable to leave, work or relax," Mikhail Yeremeyev told Forum 18. Proposed Alternative Service Law amendments would subordinate alternative service applications to the personnel needs of the military.

By Felix Corley

Forum18 (10.10.2019) - <https://bit.ly/2OMRko2> - Jehovah's Witness conscientious objectors Mikhail Yeremeyev, Yury Yemelyanov and Vladimir Kotovsky have been banned from leaving Transdniester since May because they have refused to conduct military service. "I hope they'll be a resolution soon," Yeremeyev told Forum 18. "I've been living with this uncertainty for nearly half a year, unable to leave, work or relax."



Bendery City Court
lana_2802/Wikimapia [CC BY-SA 3.0]

Transdniester (Transnistria) - in the eastern part of Moldova on the border with Ukraine - is an internationally unrecognised entity which broke away from Moldova in 1990.

The call-up of the three men came after Transdniester's Supreme Soviet in the entity's

capital Tiraspol amended the Universal Military Service Law in February 2018 to require individuals who have not performed military or alternative service in Transdniestria and who re-visit their homeland to perform military or alternative service. This applies even if they no longer live in Transdniestria.

The three young men – who all now live outside Transdniestria – were called up to perform military service during what were intended to be brief visits back home to their families (see below).

The Alternative Civilian Service Law states that the Conscription Commission decides whether an individual is allowed to perform alternative service. Commissions also decide whether this will be in military structures, or in state or local authority institutions (see below).

Conscription Commissions in each district are made up of personnel from the local Military Conscription Office and representatives of the local civilian authority.

Transdniestria's Military Commissar, who is responsible among other things for conscription throughout the territory, Lieutenant-Colonel Ruslan Kuzmin insisted to Forum 18 that the three young men must be conscripted, and that individuals can undertake their alternative service within the army as civilians. He struggled to understand that some individuals cannot on grounds of conscience serve in military structures in any capacity. "By what conscience do they reach this decision?" he asked (see below).

While they were resident in Moldova, one of the young men, Kotovsky, performed alternative civilian service and another, Yeremeyev, was given exemption from service as clergy (see below).

Deputy Defence Minister Aleksandr Donnikov put the phone down on 9 October as soon as Forum 18 began asking about the case. Subsequent calls went unanswered.

The three men have not been arrested and are not otherwise restricted, apart from the ban on leaving Transdniestria, Jehovah's Witnesses told Forum 18.

In May 2019, the three men contested the decisions of the Military Conscription Offices and filed complaints in the appropriate courts for their places of residence. Their cases are only now being heard. The first began in Bendery City Court on 10 October and is due to resume on 30 October (see below).

Alternative civilian service being made harder

The call up of the three young visitors to Transdniestria came as getting approval from Conscription Commissions for alternative civilian service became harder in 2019. Five Jehovah's Witness young men are struggling to be allowed to perform a civilian alternative service as Military Conscription Offices try to pressure conscientious objectors to perform civilian work within the armed forces instead (see below).

Jehovah's Witnesses (and many other pacifists) would not accept civilian work within military structures.

Military Commissar Kuzmin claimed to Forum 18 that the five young men lodged their applications late and are simply trying to evade their obligations (see below).

Proposed amendments to the 2014 Alternative Civilian Service Law, which reached Transdniestria's Supreme Soviet on 23 September 2019, would if adopted prioritise

military needs in allocating individuals to alternative service. This would remove conscientious objectors' right to choose a civilian alternative service (see below).

Military Commissar Kuzmin said the amendments were the initiative of others. No one at the Supreme Soviet Committee that is considering them could be immediately reached (see below).

Council of Churches Baptists do not as a community oppose conducting military service. But they told Forum 18 that military leaders pressure their young to swear the military oath, even though they object to swearing oaths on religious grounds. "The young men simply declare that they will serve conscientiously," a church member told Forum 18 from Tiraspol on 9 October. "Officers try to force them to swear the oath, but without success."

Jehovah's Witness conscientious objector Rostom Aslanian, freed in 2012 after being jailed in Transdniestria for refusing the then compulsory military service, is hoping for a decision soon from the European Court of Human Rights in Strasbourg (see below).

Called up, banned from leaving

Three young Jehovah's Witnesses, all of whom are from Transdniestria but now live outside the territory, were called up in May 2019 during what they intended to be brief visits home to visit family.

Mikhail Yeremeyev, who is 24 and has lived in Moldova for the past four years, was visiting his parents in Transdniestria and needed to renew official documents. On 2 May the police in Bendery detained him, saying the authorities were looking for him. They then photographed and fingerprinted him. "They did not explain why they did this or who it was for," he told Forum 18 on 10 October.

The Military Conscription Office in Slobodzia District, Transdniestria's southernmost district, then called up Yeremeyev, but he refused to perform military service on grounds of conscience. He had previously been given exemption from service in Moldova as clergy, he told Forum 18.

On 8 May, Slobodzia District Military Commissar Major Yury Chaban issued Yeremeyev with an order (seen by Forum 18) banning him from leaving Transdniestria from that day until 27 May 2020.

Yeremeyev said he had told the Military Conscription Office he was ready to do an alternative, civilian service. Officers had responded that he would be unable to do alternative service as he had not lodged an application the required six months before.

"I am ready to do an alternative service if they order me to do it, provided it is fully civilian, such as in a hospital," Yeremeyev told Forum 18. "I'm not afraid of hard work."

Major Chaban insisted that Yeremeyev is subject to military service where he lives. "He's registered [to live] here, he's subject to call up as a citizen," he told Forum 18 from Slobodzia on 9 October. "I acted in accordance with the law."

Major Chaban added that the "investigative organs" are examining Yeremeyev's case. He refused to say if he will face any prosecution and, if so, what for. "He has a lawyer."

Major Chaban refused to say how many young men had applied for alternative service in Slobodzia District so far in 2019.

In early May the Military Conscription Office in Bendery, a city west of Tiraspol, called up 23-year-old Vladimir Kotovsky, but he refused to perform military service on grounds of conscience. He had previously performed alternative civilian service in Moldova.

"Kotovsky doesn't want to serve in the army," Major Roman Gogol, acting head of Bendery's Military Conscription Office's second department told Forum 18 on 9 October. "He tried to de-register to avoid service." He then put the phone down.

Also in early May, the Military Conscription Office in Tiraspol called up 25-year-old Yury Yemelyanov, but he refused to perform military service on grounds of conscience.

The call-up of the three men came after the Universal Military Service Law was amended on 28 February 2018 to require young men to be on the military register not only in the place they are registered to live, but also in places they are visiting. In effect, this makes conscientious objectors who visit their homeland subject to call up to military service, even though they no longer live in Transdniester.

Transdniester's Military Commissar, Lieutenant-Colonel Ruslan Kuzmin, insisted that the three men are citizens of Transdniester and have to fulfil their legal obligations. "The law may be harsh but it's the law, as the Roman maxim says," he told Forum 18.

Asked why one who had performed alternative civilian service in Moldova and another who had been exempted from service in Moldova should be required to be called up again, Lieutenant-Colonel Kuzmin responded: "Service there is only one year, while here it is two. Our law says that such service elsewhere is valid only if it is as long as ours."

On 25 May 2019, the three men contested the decisions of the Military Conscription Offices and filed complaints to court.

Bendery City Court held a first hearing in Kotovsky's case on 10 October. The case is due to resume on 30 October, Jehovah's Witnesses told Forum 18.

Slobodzia City Court was due to have begun hearing Yeremeyev's case on 27 September, but it was postponed, he told Forum 18. The case is now due to begin on 29 October.

Tiraspol City Court is due to hear Yemelyanov's case, but no date has yet been set, Jehovah's Witnesses told Forum 18.

The three men have not been arrested and are not otherwise restricted, apart from the ban on leaving Transdniester, Jehovah's Witnesses told Forum 18.

"I hope they'll be a resolution soon," Yeremeyev told Forum 18. "I've been living with this uncertainty for nearly half a year, unable leave, work or relax."

Five conscientious objectors struggle for alternative service

After a change in policy in 2019 by Military Conscription Offices, five conscientious objectors – all Jehovah's Witnesses – are struggling to have their right to perform a civilian alternative service recognised, Jehovah's Witnesses complained to Forum 18.

Article 4 of the Alternative Civilian Service Law specifies that alternative service is conducted as civilian personnel within the armed forces, or in state or local authority institutions. Article 10 specifies that the Conscription Commission determines whether an individual is allowed to perform alternative service and whether this will be in military structures or in state or local authority institutions.

"First they try to steer individuals to serve within the armed forces," Jehovah's Witnesses told Forum 18. "Only if the individual insists do they allow him to do a civilian alternative. But the law doesn't give the individual that choice."

Military Commissar Lieutenant-Colonel Ruslan Kuzmin confirmed to Forum 18 that the Conscription Commission decides where an individual asking for alternative civilian service should be sent. He insisted that individuals can undertake their alternative service within the army – for example as cooks or cleaners – as civilians and without taking the military oath.

Lieutenant-Colonel Kuzmin struggled to understand that some individuals cannot on grounds of conscience serve in military structures in any capacity. "By what conscience do they reach this decision?" he asked.

As for the five young men, Kuzmin claimed they were trying to evade their obligations. "They tried to drag out their applications – they violated the law," he told Forum 18. He said some of them had been refused alternative service while others had been sent to perform alternative service in the army.

Alternative service no longer to be civilian?

Transdniestria adopted its first Alternative Civilian Service Law in February 2014. This specified that "if military service contradicts his convictions or faith", a young man can opt for civilian service in the armed forces or civilian service in a state or local authority institution.

Alternative service lasts 18 months for young men who have completed higher education and two years for all other conscientious objectors. Military service lasts one year.

Transdniestria's Supreme Soviet in Tiraspol is considering further amendments to the Alternative Civilian Service Law that specify that the armed forces will determine whether alternative service takes place under military control and supervision.

The proposed new Article 4, Part 4 declares: "To be considered above all is the need for labour resources of the armed forces of the Transdniestrian Moldovan Republic, other armed forces and military formations and agencies in terms of civilian personnel."

The amendments to the Alternative Civilian Service Law were proposed by Transdniestria's Prime Minister Aleksandr Martynov. They were presented to the Supreme Soviet on 23 September, according to its website, where the text of the draft amendments is posted. The amendments are now with the Supreme Soviet Committee on Legislation, Law Enforcement Agencies, Defense, Security, Peacekeeping, and Protection of the Rights and Freedoms of Citizens.

Neither the Committee chair Galina Antyufeeva nor the head of the Committee staff Kristina Li were available when Forum 18 called on 9 and 10 October.

Military Commissar Lieutenant-Colonel Kuzmin told Forum 18 that any amendments are prepared not by his office but by other parts of the administration.

If these amendments become law, conscientious objectors in Transdniestria could be deprived of the option of performing an alternative service that is genuinely civilian in nature. Jehovah's Witnesses have expressed concern about the proposal.

The then United Nations Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, examined the issue of conscientious objection during his September 2011 visit to Moldova, which included a brief visit to Transdniestria.

In his report following his visit (A/HRC/19/60/Add.2), Bielefeldt noted in relation to Transdniestria that "everyone has the right to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, and that conscientious objectors should be provided with the option of an alternative service that is compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature".

Strasbourg appeal against earlier jailing

On 12 February 2014, the Alternative Civilian Service Law came into effect. This allowed for conscientious objectors to perform alternative civilian service in lieu of military service. Before this date, conscientious objectors were prosecuted and often jailed for refusing military service or chose to relocate and carry out alternative civilian service in Moldova or Ukraine.

Rostom Aslanian, a Jehovah's Witness conscientious objector who lives in Rybnitsa in northern Transdniestria, was jailed for one year from March 2011 to March 2012 despite offering to perform a civilian alternative service. He lodged an appeal against his conviction to the European Court of Human Rights in Strasbourg in November 2011 (Application No. 74433/11).

Aslanian lodged the case against both Moldova (of which Transdniestria is internationally recognised as being part) and against Russia (which retains influence over Transdniestria).

On 17 June 2019, the Court asked both Moldova and Russia whether Aslanian's rights under Article 9 ("Freedom of thought, conscience and religion") and/or Article 14 ("Prohibition of discrimination") of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been violated "as a result of convicting the applicant despite his opposition to military service on religious grounds and his willingness to carry out alternative civilian service".

The Court pointed to the decision in the case of Armenian Jehovah's Witness conscience objector Vahan Bayatyan (Application No. 23459/03). It ruled in July 2011 that the Armenian state's refusal to offer him an alternative to compulsory military service and punishment of him for refusing to serve in the armed forces [violated his rights under Article 9 \("Freedom of thought, conscience and religion"\) of the European Convention](#).

The Court also asked Moldova and Russia if Aslanian's case fell under their jurisdiction and therefore whether they had "positive obligations to secure the applicant's rights under the Convention".

In its 17 September response, seen by Forum 18, the Moldovan representative to the Court Oleg Rotari said that a "friendly settlement" in Aslanian's and four other unrelated cases "have not appeared to be possible at the moment". But he added that Moldova will "continue to pursue efforts to reach the friendly settlement".

In its 25 September response, seen by Forum 18, the Russian representative to the Court Mikhail Galperin said that Russia "does not exercise jurisdiction" as Transdniestria "is part of the territory of another sovereign State", and that no evidence was presented that any actions were taken by any Russian officials.

Property disputes and Orthodoxy: Orlović and Metropolitan Church of Bessarabia

By Frank Cranmer

Law & Religion UK (08.10.2019) - <https://bit.ly/2ATS4Jy> - Though the Iron Curtain came down in 1989/90 and the civil wars in the former Yugoslavia ended in the mid-1990s, outstanding property disputes between rival religious groups arising out of adherence to different jurisdictions or previous dispossession continue to take up the time of the courts – as the following two recent cases show.

In ***Metropolitan Church of Bessarabia and Nativity of the Virgin Mary Parish v The Republic of Moldova* [2019] ECHR 658** [*in French*], the Nativity Parish had sought recognition in 2005 of its ownership of a plot of land in Mihalăsa to finalise the construction of a church. The court had acknowledged the Metropolitan Church's right of ownership and the judgment had become final in November 2005.

According to the applicants, Act No. 979 of 1992 on cults, in force at the material time, was not explicit about the property rights of the Church as opposed to those of the Parish. In 2006 the land was registered to the Metropolitan Church and the Parish obtained a planning certificate to construct the church [1-9]. In 2009, however, the Assumption of the Virgin Mary Parish of the rival Orthodox Church of Moldova (under the Moscow Patriarchate) succeeded in overturning those decisions in the Bălți Court of Appeal, which ordered a re-examination of the case [10-21]. The applicants complained that the Court of Appeal's admission of the application for review and the annulment of the earlier judgment was, in fact, a disguised and improper appeal [22], while the Government argued that the purpose of the review had been to correct a miscarriage of justice [23].

The Court noted that the final judgment in 2005 in favour of the Metropolitan Church had been annulled after the admission of the application for revision from the Orthodox Church of Moldova. However, the domestic law at the material time had not provided such a ground for review, it did not appear that another ground had been raised, and the lower court had rejected the request because it had not revealed any of the grounds provided in Article 449 of the Code of Civil Procedure [25]. The Court of Appeal, however, had held that a registration certificate alleging ownership of the disputed land by the Assumption Parish was a new fact justifying a review [26].

It was clear both from law and practice that only new facts of essential importance to a case could justify a retrial. The certificate presented as a "new fact" had a different registration number and had apparently related to a different parcel of land, nor had the Bălți Court of Appeal explained the relevance and importance of the alleged "new fact". The certificate was not, therefore, a genuine piece of new evidence with which to resolve the case [27].

In reality, the review proceedings had indeed been a "disguised appeal" intended to obtain a new examination rather than the proper review provided for in the Code of Civil Procedure [29]. There had therefore been a violation Article 1 of Protocol No 1 ECHR (respect for property) [30]. As to the complaint under Article 6 (fair trial), there had been a violation in relation to the Nativity Parish, but not in relation to the Metropolitan Church itself [32].

In ***Orlović and Others v Bosnia and Herzegovina* [2019] ECHR 653**, Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, which put an end to the 1992–95 war, guaranteed the free return of refugees to their homes and restitution of their property. To comply with it, the Republika Srpska (one of the two constituents of Bosnia and Herzegovina) enacted the Restitution of Property Act in 1998. Under it, the Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC”) had granted the applicants full restitution in 1999, confirmed by a further decision of the Ministry for Refugees and Displaced Persons in 2001. Both were final and enforceable; but when the land was returned, a plot on which a church had been built was not.

The applicants failed in their administrative claim for repossession and in a civil suit against the Serbian Orthodox Church. In the meantime, in 2004 the Orthodox parish obtained planning permission for the church. The applicants complained that they had been prevented from using their property, contrary to Article 1 of Protocol No. 1 ECHR (protection of property), because the church – built unlawfully – had not been removed from their land and that the domestic courts’ judgments in their civil claim had violated Article 6 (fair trial).

The Court noted that there was no dispute that the applicants owned the property and that, as internally displaced persons, they had been entitled under Annex 7 to the Framework Agreement to have their land restored. That right had been established in the decisions of 1999 and 2001 but the authorities had not implementing them, nor had the Government had given any justification for the authorities’ inaction. There had therefore been a violation of A1P1 and, given that finding, there was no need to examine the complaint under Article 6.

Further, to comply with Article 46 (binding force and execution of judgments), the state had to enforce the CRPC’s and the Ministry for Refugees’ decisions – including, in particular, *the removal of the church from the applicants’ land* – without further delay and at the latest within three months of the judgment becoming final. The first applicant was awarded €5,000 and the others €2,000 each in respect of pecuniary damage. Judge Kjølbrot expressed a partly dissenting opinion, which is annexed to the judgment.

Frank Cranmer, "Property disputes and Orthodoxy: *Orlović and Metropolitan Church of Bessarabia*" in *Law & Religion UK*, 8 October 2019, <http://www.lawandreligionuk.com/2019/10/08/property-disputes-and-orthodoxy-orlovic-and-metropolitan-church-of-bessarabia/>