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KYRGYZSTAN: Seven year sentences despite "fabricated evidence" and "procedural violations"

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

Two cousins – both Jehovah's Witnesses – were sentenced on 18 May to seven years' imprisonment accused of having two DVDs in their private home claimed by the state to be extremist Islamic, Forum 18 News Service has learned. The two young men, Iskandar Kambarov and Jonibek Nosirov, insist the DVD discs must have been planted by police during a 29 January search of their flat at which they were arrested. The two have appealed against their conviction, noting "fabricated evidence" and "procedural violations". The two have been denied religious literature they have requested on the orders of the Judge who sentenced them, Judge Lutfulla Saliev. Forum 18 has been told that the judge's phone is broken. Two anti-terrorism police officers stated that they put the flat under surveillance because the two had been "preaching" and only went out after dark. No warrant was issued authorising the raid that accompanied the arrests. Until 4 February the police denied that the two were in detention, although court documents contradict this claim. No date has been set for the appeal.

Almost four months after their arrest, two cousins – both Jehovah's Witnesses – were sentenced on 18 May to seven years' imprisonment accused of having two DVDs in their private home claimed by the state to be extremist Islamic, according to court documents seen by Forum 18 News Service. The two young men, Iskandar Kambarov and Jonibek Nosirov, insist the DVD discs must have been planted by police and complain of numerous procedural violations in their arrest and trial. They have lodged appeals against the sentences.

Two anti-terrorism police officers, revealed in court documents to have been involved in January raids on the flat, have refused to discuss with Forum 18 why they put the private home under surveillance and why the two Jehovah's Witnesses were targeted.

Berymukhamed Esenov, an official of the regional office for southern Kyrgyzstan of the State Commission for Religious Affairs (SCRA), was unable to tell Forum 18 whether individuals have the right to discuss religious issues in their own homes. Esenov produced an "expert analysis" claiming the DVDs were extremist (see below).

Seven year sentences

The trial of 18-year-old Kambarov and 22-year-old Nosirov began on 28 April. It took place under Judge Lutfulla Saliev at Kadamjai District Court in Batken Region, the most south-western region of Kyrgyzstan.

The cousins were accused of violating Article 299-2.2.1 of the Criminal Code ("Acquisition, storage, transport and despatch of extremist materials with the aim of distribution, or of their preparation and distribution, as well as the deliberate use of symbols or attributes of extremist organisations", conducted by a group of people). This Article was added to the Criminal Code in February 2009 in the wake of popular unrest in Nookat in Osh Region at the end of Ramadan in October 2008.

Serious procedural violations took place in both the arrests and the trial, however these were ignored during the trial (see below). After hearings on 10, 11, 12 and 16 May, Judge Saliev handed down his guilty verdict on 18 May, giving both seven year prison terms, according to the verdict seen by Forum 18.

Forum 18 was unable to reach Judge Saliev to discuss the case, as court officials stated on 23 May to Forum 18 that his telephone was broken.

The representative for Batken Region of Kyrgyzstan's Human Rights Ombudsperson, Kamaldin Rakhmatulaev, observed the trial, his colleagues confirmed to Forum 18 on 23 May. However, they said he is now on leave until the beginning of July.

Graziella Pavone, Human Dimension Officer at the Field Office in Osh of the Organisation for Security and Co-operation in Europe (OSCE), confirmed that an observer from the OSCE Field Office in Osh monitored the first two days of the trial on 10 and 11 May. "The OSCE Centre in Bishkek/Field Office in Osh will continue to follow this case," she told Forum 18 from Osh on 23 May.

Why was private flat searched?

Trouble began for the two cousins on 22 January, when the flat in Kadamjai where they live, south-west of Kyzyl-Kyya, was put under police surveillance, two officers of the Police's 10th (Anti-terrorism) Department Ruslanbek Omoshov and Keneshbek Talipov told the court. They said they had done so because the two had been "preaching" and only went out after dark.

On 23 January two people visited the flat claiming to inspect the electricity system. Jehovah's Witnesses told Forum 18 that they think at least one of them was from the National Security Service (NSS) secret police.

On 25 January an electricity company official arrived at the flat, ostensibly for a "routine" inspection. She was accompanied by three men, but she told the court she could not remember who they were. Jehovah's Witnesses told Forum 18 that again at least one of them was from the NSS secret police.

The two police anti-terrorism officers told the court that they arranged for four police officers to raid the flat on 25 January, but said they could not discuss the raid because it was "confidential". No warrant was issued authorising the raid.

Eight police officers – including anti-terrorism officer Omoshov – raided the flat on the evening of 29 January, when it was already dark.

Illegal search

Kambarov and Nosirov insist in their appeal that the search was illegal as it was conducted without a warrant and after dark. They point to Article 184 Part 5 of the Criminal Procedure Code, which says that searches must be conducted in the day time "except in cases not allowing for delay".

During the search, which lasted over an hour, Nosirov (the only one at home) was instructed to place all his religious literature in a box.

However, the police did not seal the box and did not supply a detailed description of the confiscated items – which police are required to do under the Criminal Procedure Code. The box with its alleged contents were handed to the Osh office of the SCRA two days after the raid, on 31 January.

After Nosirov was ordered to place items in the box, Police Officer Omoshov then ordered him to lift the carpet in the kitchen, according to the two men's appeal. To Nosirov's surprise he found an unmarked DVD, which was added to the box. "The actions of Officer Omoshov indicate that he already knew that the DVD was under the corner of the carpet," the appeal notes.

Police Investigator U. Kurmanaliev then took the only key to the flat from the two Jehovah's Witnesses.

Victims "invited" police?

Officer Omoshov claimed that Kambarov and Nosirov had "invited" the police to their flat. "They were checking identity documents and the two invited them in," he told Forum 18 from Kadamjai on 23 May. "We saw books on the table and looked through them." Asked why, if the aim had been to check identity documents the police had examined books or anything else, he declined to discuss anything else. "This is not a conversation for the telephone," he said without explanation and put the phone down.

Forum 18 was therefore unable to ask Omoshov about Nosirov's discovery of the DVD under the carpet in his kitchen.

Similarly Investigator Talipov, reached the same day, insisted to Forum 18 that "this is not the subject of a phone conversation". He too did not explain and put the phone down.

Arrest – and then contradictory claims

Nosirov was arrested in the flat on 29 January, while Kambarov was arrested at 10 pm that evening as a "witness".

On 31 January, the same day he received the discs from the police for a "judicial religious analysis", Esenov of the SCRA told the police one of the discs was from the banned Hizb ut Tahrir Islamic party. Although Esenov's full "expert analysis" was not produced until 10 February, on 3 February Investigator Kurmanaliev claimed that two Hizb ut Tahrir discs had been found. He had launched a criminal case against the two men on 2 February.

(For an outline of Hizb ut-Tahrir's views, see F18News 10 April 2006 http://www.forum18.org/Archive.php?article_id=755.)

Esenov of the SCRA confirmed he had testified at the trial, but declined to discuss his court testimony with Forum 18 on 23 May.

Omoshov and Investigator Kurmanaliev denied to the court that Nosirov and Kambarov were in custody from 29 January. However, this claim is contradicted by not only the arrests themselves, but also documents such as interrogation records and a 3 February order from Kurmanaliev for a medical examination to determine whether or not the two men had been beaten by police.

Only on 4 February were the two men allowed contact with a lawyer. It was only in the late afternoon of 5 February that a court approved the detention of the two men, although Article 24 Part 4 of Kyrgyzstan's Constitution includes the provision "No one can be subjected to detention for a period of more than 48 hours without a court ruling".

The head of the temporary isolation cells at Kadamjai Police Station – who said he was not allowed to give his name – insisted to Forum 18 on 23 May that the two men had been arrested on 4 February, not 29 January. However, he refused to say where they had been held between 29 January and 4 February and why documents from the investigation contradicted his assertion.

Appeal

The defendants argued in court that there was "strong evidence" the two discs were planted on them. They insist they could have been planted during either of the police raids or during the alleged electricity inspection. They say the prosecution failed to prove that they own the discs, that they intended to distribute them, or that they represented a group intending to do so.

On 19 May, because of the conduct of the arrests, detentions and trial, the two Jehovah's Witnesses lodged their appeal to Batken Regional Court before the formal written verdict was received. The appeal notes both "fabricated evidence" and "procedural violations".

No date has yet been set for the appeal hearing.

The two have also filed a complaint with the Prosecutor General's office about the prosecution.

Still detained – without being allowed religious literature

Fellow Jehovah's Witnesses told Forum 18 on 23 May that Nosirov and Kambarov are still being detained at Kadamjai Police Station. The head of the temporary isolation cells there refused to allow Forum 18 to speak to them by telephone on 23 May. "The law doesn't allow this. Only a court can order this."

The head of the isolation cells – who said he was not allowed to give his name – insisted to Forum 18 on 23 May that the two men's health is "excellent", that they are allowed visits from relatives and that they can have religious literature if they want. He admitted that they do not have religious literature such as Bibles at present, claiming they have not asked for them and no one has brought them any. He said that if some is brought it would be handed to them.

Jehovah's Witnesses told Forum 18 that Nosirov and Kambarov had repeatedly asked to have religious literature and raised the issue at the start of the trial, but the prosecutor called for the move to be rejected and the judge ruled against allowing them to have such literature.

Jehovah's Witnesses added that in the months leading up to the trial, the two men's relatives were allowed only weekly meetings with them each Friday which lasted at most two or three minutes.

Pressure and questioning

In the days after the trial, one Jehovah's Witness who had attended the trial to support Nosirov and Kambarov was detained, Jehovah's Witnesses told Forum 18, asking that the individual not be identified for fear of further state reprisals. Taken to the police station, the Jehovah's Witness was questioned by an NSS secret police officer and pressured to write a statement before being freed. (END)

For background information see Forum 18's Kyrgyzstan religious freedom surveys at <http://www.forum18.org/Analyses.php?region=30>.

More reports on freedom of thought, conscience and belief in Kyrgyzstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=30>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Kyrgyzstan is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Kyrgyzstan>.

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