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KYRGYZSTAN: Who can be a conscientious objector?

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

Changes before Kyrgyzstan's Parliament continue to restrict conscientious objection to "members of registered religious organisations whose beliefs do not allow the use of weapons or service in the Armed Forces". But they change the recipient of the financial penalty - called "alternative service" and equivalent to between one and two months' average wages - paid by conscientious objectors from the Defence Ministry to "the state body which handles social issues". Human rights defender Dmitry Kabak of Open Viewpoint observed to Forum 18 News Service that there could be problems if the state deregisters a community. Temir Kasymov, assistant to Deputy Mairamkul Tlenchiyeva who co-drafted the legal changes, stated that Muslim or Russian Orthodox conscientious objectors, and atheists, would be able to opt out of military service. But asked what would happen if Muslim or Orthodox leaders were asked if their faiths allowed individuals to perform military service, Kasymov appeared unsure. "There haven't been cases when Muslims refused to serve", he told Forum 18. Kasymov pointed out that the proposed amendments are still in draft form, and asked for help in framing them to meet concerns over who will be allowed to be a conscientious objector.

Kyrgyzstan's proposed amendments to the Law on Military Obligations continue to restrict opting out of military service to young men who are "members of registered religious organisations whose beliefs do not allow the use of weapons or service in the Armed Forces", according to the text seen by Forum 18 News Service.

The proposed amendments, which reached Kyrgyzstan's Parliament the Zhogorku Kenesh on 17 February, would also continue a financial penalty to be paid by those who do not perform military service on grounds of membership of a registered pacifist religious organisation. However, the payment would no longer go to the Defence Ministry as at present, but to the government's social sector.

The amendments would also end such individuals being forcibly enrolled in the military reserve.

The proposed amendments come in response to a November 2013 Supreme Court ruling that parts of the current Law on General Obligations of Citizens, on Military and Alternative Service are unconstitutional.

If the amendments are adopted in their current form, exemption from military service on conscientious grounds would continue to be denied to atheists, agnostics, members of unregistered religious communities, and members of registered religious communities which do not institutionally have pacifist beliefs.

Human rights defender Dmitri Kabak of Open Viewpoint pointed out to Forum 18, from the capital Bishkek on 25 February, that the requirement that conscientious objectors be part of a registered religious organisation might cause problems if the state deregisters a religious community.

International human rights obligations

The right to refuse to perform military service is part of everyone's right to freedom of thought, conscience and religion guaranteed in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which Kyrgyzstan acceded to in 1994. This is clearly stated in General Comment 22 on Article 18 of the ICCPR, by the then United Nations (UN) Human Rights Committee. International human rights law rulings have repeatedly underlined this (see a personal commentary, by Derek Brett of Conscience and Peace Tax International, on conscientious objection to military service and international law at http://www.forum18.org/Archive.php?article_id=1597).

On 24 July 2000, the then UN Human Rights Committee's Concluding Observations on Kyrgyzstan stated that it "takes note that conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms". But the Committee declared that: "Conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 ["Equality before the law"] of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers." (see CCPR/CO/69/KGZ <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.CO.69.KGZ.En?Opendocument>).

International human rights law does not allow a financial penalty to be imposed for exercising a human right.

Financial penalty an "alternative service"

Article 32 of the current Law on General Obligations of Citizens, on Military and Alternative Service imposes a financial penalty (described as "alternative service") on young men who do not perform the one-year military service between the ages of 18 and 27 without a valid exemption (such as family or medical circumstances or membership of a registered religious community which opposes military service). The financial penalty is 180 financial units in the current Law. This is currently 18,000 Soms (about 2,000 Norwegian Kroner, 250 Euros, or 350 US Dollars), equivalent to between one or two months' wages for those in work.

The proposed amendments would not change either the existence or level of the financial penalty.

Article 32, Part 4 specifies at present that the penalty is paid to the Defence Ministry via Military Conscription Offices, to be "used for support of and provisions for troops, for conducting training assemblies, upgrading educational facilities, and increasing social security for military personnel".

Jehovah's Witness young men found this unacceptable. The proposed amendments would assign the financial penalty for members of registered religious communities who are allowed to opt out of military service not to the Defence Ministry but to "the state body which handles social issues".

Reserve military service

Article 32, Part 7 of the current Law obliges those who have paid the financial penalty in place of military service to be included in the military reserves at the completion of the designated "alternative service" period. Jehovah's Witness young men also objected to this.

Punished for refusal to pay

For some years Jehovah's Witness young men who were given the financial penalty refused to pay it, as they did not want their financial penalties to be used to support the military. Many were then brought to court under Article 351, Part 2 of the Criminal Code for "evading" the "alternative service". More than 12 were sentenced to pay the maximum fine of 200 financial units (20,000 Soms - about 2,320 Norwegian Kroner, 280 Euros, or 385 US Dollars) or serve up to the maximum of 240 hours' community service.

Jehovah's Witnesses repeatedly wrote to the Defence Ministry asking that financial penalties for not serving in the armed forces be sent not to it but to a state ministry, an agency for social work, or a governmental general fund. However, they received no "substantive response", Jehovah's Witnesses told Forum 18 on 24 February.

On 20 March 2012, the Supreme Court upheld criminal convictions imposed on Milan Nasrytdinov, Adilet Bayakunov and Talas Nyazmambetov for "evading" the "alternative service". On 11 June 2012, applications on behalf of the three were filed with the UN Human Rights Committee.

On 30 August 2012, a judge in Kara-Balta in the northern Chuy Region suspended a criminal case against a Jehovah's Witness conscientious objector and referred the case to the Constitutional Chamber of the Supreme Court in Bishkek. The judge asked the Chamber to determine if the law on military service is in compliance with the Constitution and international standards.

On 11 October 2012, the Presidential Administration told Jehovah's Witness representatives that the Zhogorku Kenesh had been requested to review and amend the law on military service, to provide conscientious objectors with the opportunity to perform genuine alternative civilian service. However, nothing appears to have come of this.

Supreme Court decision

After convictions of eight conscientious objectors in 2012 under Criminal Code Article 351, Part 2, and cases lodged in a Bishkek court against a further three, the judges in the various courts referred the constitutionality of the Law on General Obligations of Citizens, on Military and Alternative Service to the Constitutional Chamber. Judges in one of the courts also asked for a determination of the constitutionality of Criminal Code Article 351, Part 2. The Constitutional Chamber combined all the applications into one case in August 2013.

On 19 November 2013, a panel of eight judges of the Supreme Court's Constitutional Chamber – chaired by Judge Mukambet Kasymaliyev – issued its unanimous ruling. The ruling was published on the Court website.

Citing records of the court hearings in the cases, the Constitutional Chamber noted the individuals' objections to the current Law were that:

"(a) this service requires to pay money directly to the Defence Ministry for support of the military and military activity;

(b) places the conscientious objector under the direct control and supervision of the military;

and (c) enlists the conscientious objector in the Armed Forces as an 'obligated reservist'.

The Defendants consistently stated, however, that they are willing to pay the required sum for 'alternative service' to the general revenue fund of the Kyrgyz Republic or to a government department that is not connected to the military or the Defence Ministry."

The Judges ruled that "it is obvious that this [alternative] service is under the control and supervision of the Defence Ministry". They noted that this meant that the Constitutional rights of individuals are not being protected in full. They also pointed out that individuals' rights to freedom of religion or belief are protected under Article 18 of the International Covenant on Civil and Political Rights, to which Kyrgyzstan is a party.

The Judges ruled that the provisions of the Law requiring the payment of the financial penalty by conscientious objectors to the Defence Ministry and the enrolment of conscientious objectors in the military reserve are unconstitutional. It demanded that the Zhogorku Kenesh amend these provisions "immediately", the Supreme Court website noted.

The Judges found no violation of the Constitution in Criminal Code Article 351, Part 2.

At the Constitutional Chamber hearing, both the Zhogorku Kenesh representative Kyzjibek Karabekova and the Defence Ministry representative Talgat Saalayev insisted that all the provisions under review met the requirements of the Constitution.

"In addition to resolving the issue of conscientious objection to military service, this ruling will be helpful in further demonstrating to Kyrgyz officials that Jehovah's Witnesses are a respected, international religion," Jehovah's Witness representative Khamit Iskakov stated after the ruling was handed down.

Draft amendments

Following the Constitutional Chamber ruling, four parliamentary deputies – Mairamkul Tlenchiyeva, Almazbek Baatyrbekov, Esengul Isakov and Elmira Jumaliyeva - responded to a letter from Jehovah's Witnesses to the Zhogorku Kenesh alerting them to the ruling, Temir Kasymov, an assistant to Tlenchiyeva, told Forum 18 from Bishkek on 25 February.

In their explanation of the amendments, accompanying the text of the proposed amendments on the Zhogorku Kenesh website, the initiators of the amendments describe as their aims the "increasing of state funds" to the Defence Ministry. They add that the amendments would resolve problems faced by those called up "who are Jehovah's Witnesses or members of other religious confessions".

Deputy Tlenchiyeva herself was unavailable on 25 February, Kasymov stated.

Conscientious objection to be "for all"?

Deputy Tlenchiyeva's assistant Kasymov initially insisted that Muslim or Russian Orthodox conscientious objectors, for example, and atheists would be able to opt out of serving in the military. But asked what would happen if Conscription Offices asked Muslim or Orthodox leaders - for example - if their faiths allowed individuals to perform military service or not, Kasymov appeared unsure. "There haven't been cases when Muslims refused to serve," he then told Forum 18.

Kasymov pointed out that the proposed amendments are still in draft form, and asked for help in framing them to meet concerns over who will be allowed to be a conscientious objector.

Deputy Isakov, one of the parliamentary deputies who drafted the proposed amendments, claimed to Forum 18 on 24 February that the right to opt out of military service would be "for all". But Isakov was unable to explain why only members of registered religious communities whose doctrines are pacifist would be eligible.

Many "go to sectarian groups to avoid their military duty"?

Deputy Isakov complained to Forum 18 that "many young men change their faith and go to sectarian groups to avoid their military duty". He insisted that this number is rising. Asked where he had such information from, he pointed to Orozbek Moldaliyev, named on 17 January to head the State Commission for Religious Affairs (SCRA).

However, Deputy Isakov was not able to name any cases of people who had changed their faith to avoid conscription.

Isakov lamented that some young men "lack patriotic values" and insisted that "we want to eliminate this negative phenomenon" of

individuals allegedly changing their faith. He was unable to explain why it was a matter of concern to the state whether or not individuals change their faith.

Moldaliyev at the SCRA refused absolutely to discuss anything with Forum 18 on 25 February. "I don't give interviews to unknown journalists," he claimed before putting the phone down. (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.

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If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY