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KYRGYZSTAN: Criminal convictions overturned, but will alternative to military service be for all?

By Felix Corley, Forum 18

Jehovah's Witnesses have welcomed as "an encouraging sign" the overturning in court of criminal convictions of 13 of their young conscientious objectors to military service. However, the Education Committee of Kyrgyzstan's parliament has rejected draft legal amendments which would – if adopted – allow some conscientious objectors to military service to pay the "alternative service" fee not to the military but to the government. "All five deputies on the Education Committee were categorically against the draft," an aide to one of the draft's initiators told Forum 18 News Service. Parliament's Defence Committee is expected to consider the amendments on 7 or 8 April. "The Defence Committee is the main Committee handling this draft, and we will fight for it." Deputy Defence Minister Zamir Suerkulov defended the proposed restriction of the right to apply to pay the "alternative service" fee only to members of registered pacifist religious organisations.

The Education Committee of Kyrgyzstan's parliament, the Zhogorku Kenesh, has rejected draft legal amendments which would – if adopted – allow conscientious objectors to military service to pay the "alternative service" fee not to the military but to the government, Forum 18 News Service has learned. However, even if the amendments are approved by Parliament's Defence Committee (with consideration expected on 7 or 8 April) and eventually the full Parliament, they are currently drafted to allow the possibility only to a limited number of young men.

Deputy Defence Minister Zamir Suerkulov defended the proposed restriction of the right to apply to pay the "alternative service" fee only to members of registered pacifist religious organisations. Asked what would happen to non-religious conscientious objectors or members of unregistered religious communities if the amendments are adopted, he told Forum 18: "They would have to serve [in the army]."

The legal amendments were ordered in a November 2013 decision of the Supreme Court's Constitutional Chamber, which declared three provisions of the current Law on General Obligations of Citizens, on Military and Alternative Service unconstitutional, effectively annulling them: that the "alternative service" fee goes to the military; that conscientious objectors during this period are under military supervision; and that when completed individuals are assigned to the military reserve. It said these deficiencies of the Law needed to be remedied (see F18News 25 February 2014 http://www.forum18.org/archive.php?article_id=1931).

Following this decision, thirteen Jehovah's Witnesses have had their earlier criminal convictions and fines for rejecting military service overturned (see below).

Meanwhile, other legal changes which might further restrict freedom of religion or belief – including to the 2008 Religion Law - are being prepared (see below).

Criminal convictions overturned

In response to the November 2013 Constitutional Chamber decision, the Supreme Court has reviewed the criminal convictions of 13 conscientious objectors, all of them Jehovah's Witnesses. All had been convicted under Criminal Code Article 351, Part 2. This punishes "evading" the "alternative service" with a maximum fine of 200 financial units (20,000 Soms - about 2,200 Norwegian Kroner, 270 Euros, or 370 US Dollars) or up to a maximum of 240 hours' community service.

On 14 January the Supreme Court cancelled the criminal cases still underway against nine conscientious objectors convicted and fined in various courts in 2012, the government and Jehovah's Witness noted.

Nursultan Satayev, Andrei Kultasov, Maksim Raskin, Alisher Ismailov and Kubatbek Abaskanov had each been fined 15,000 Soms. Oleg Drebot, Symyk Turdaliev, Tilek Osmonbekov and Mirlan Sooronbayev had each been fined 10,000 Soms (also Sooronbayev had been ordered to pay 12,000 Soms to the Defence Ministry, Drebot and Turdaliev had been ordered to pay 12,000 Soms to the account of the local conscription office). The nine had all failed in 2012 to have their convictions and fines overturned on appeal.

Also on 14 January 2014, the Supreme Court returned the case of Jehovah's Witness conscientious objector Erlan Zhusupov to Bishkek City Court, which had upheld his conviction and fine of 20,000 Soms in October 2012. This time, however, Judge Janyl Mambetaly of the City Court acquitted Zhusupov on 6 March 2014, a court official told Forum 18.

These ten cases were reconsidered because they had been the subject of the Constitutional Chamber review.

On 1 April, the Supreme Court overturned the criminal convictions of a further three Jehovah's Witness conscientious objectors, all of them sentenced in 2011. The written decisions are expected within ten days. These reviews came at the request of the three individuals.

Bishkek's Sverdlov District Court had convicted Milan Nasrytdinov, Adilet Bayakunov and Talas Niyazmambetov to 240 hours' community service each on 7 July 2011, the Supreme Court website notes. The City Court had rejected the three men's appeals three months later and the Supreme Court in March 2012.

"Encouraging sign"

Jehovah's Witnesses have expressed satisfaction at the decisions, even though the community service Nasrytdinov, Bayakunov and Niyazmambetov had to do cannot be overturned. "The three men were most interested in having the criminal convictions overturned," Jehovah's Witnesses told Forum 18 on 1 April.

The three men had each filed applications to the United Nations Human Rights Committee on 20 June 2012. "The Kyrgyz government has provided written information to the Committee," Jehovah's Witnesses told Forum 18. "As soon as the 1 April decisions are available in writing, these will also be sent." The Committee has not yet considered the three applications.

"We are pleased the court system is working well on this issue since the November 2013 Constitutional Chamber decision," Jehovah's Witnesses note. "It is an encouraging sign."

Education Committee rejection

Proposed amendments to the Law on General Obligations of Citizens, on Military and Alternative Service, prepared by four parliamentary deputies in response to the November 2013 Constitutional Chamber decision, reached the Zhogorku Kenesh on 17 February 2014 (see F18News 25 February 2014 http://www.forum18.org/archive.php?article_id=1931).

Although the draft amendments were assigned to the Defence Committee for consideration, the Speaker Asylbek Jeenbekov also sent them to the Education Committee, Temir Kasymov, assistant to one of the initiators Mairamkul Tlenchiyeva, told Forum 18 from Bishkek on 31 March.

The Education Committee held a hearing to discuss the proposed amendments on 25 March, also attended by Deputy Minister Suerkulov of the Defence Ministry and the head of the State Commission for Religious Affairs (SCRA) Orozbek Moldaliyev. "All five deputies on the Education Committee were categorically against the draft," Kasymov – who attended the hearing - told Forum 18.

The following day the Education Committee issued its written conclusion, posted on the parliament website. The Committee believes, it said, that the draft "contradicts Kyrgyzstan's Constitution and that many religious movements of the like of the Jehovah's Witnesses could use this draft law to fill up their ranks". It claimed that adopting the draft would "lead to the destruction of Kyrgyzstan's security".

The conclusion was signed by Committee chair Kanybek Osmonaliev, a former head of the State Agency for Religious Affairs (the SCRA's predecessor) under the discredited regime of ex-President Kurmanbek Bakiev.

Osmonaliev was unavailable in meetings each time Forum 18 called on 1 April.

Government support?

The man who answered the phone of government spokesperson Melis Erzhigitov on 31 March refused to tell Forum 18 by telephone if the government supports the proposed amendments. Forum 18 then sent the question in writing, but no response had been received by the end of the working day in Bishkek on 1 April.

Deputy Minister Suerkulov insisted to Forum 18 that the Defence Ministry "in principle supports this draft". He said the Education Committee's conclusion is "important", but said the Defence Committee will next consider the draft, at which he too would represent the Ministry. "It will be difficult to get it through, but this is normal," he insisted.

Kasymov, Tlenchiyeva's assistant, downplayed the Education Committee's rejection of the draft. "The Defence Committee is the

main Committee handling this draft, and we will fight for it," he insisted to Forum 18. "The government too is behind it." He said the Defence Committee is likely to consider it on 7 or 8 April. He noted that if the Defence Committee rejects the draft it cannot be considered by the full parliament for a further year.

Why proposed limitations?

Deputy Minister Suerkulov seemed unconcerned that only members of registered pacifist religious organisations would be eligible to apply to pay the "alternative service" fee rather than serve in the military. He was unable to explain to Forum 18 why such a possibility should not be open to all young men with a conscientious objection to serving in the armed forces.

Esengul Isakov, one of the amendments' drafters, was unable to explain to Forum 18 in February why they did not allow any conscientious objector to apply to pay the "alternative service" fee (see F18News 25 February 2014 http://www.forum18.org/archive.php?article_id=1931).

The amendments were sharply criticised on 20 March by Bishkek-based human rights group Open Viewpoint, which is headed by Dmitry Kabak. It pointed out that objections to military service "are not always connected with a religious belief". It also noted that the limitation to members of "registered religious organisations" could cause problems as decisions to opt not to serve in the armed forces "are not connected to state registration [of religious organisations]".

In its 25 March concluding observations (CCPR/C/KGZ/CO/2) to its consideration of Kyrgyzstan's record under the International Covenant on Civil and Political Rights (ICCPR), the United Nations Human Rights Committee repeated its earlier concerns over Kyrgyzstan's "limiting conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and stipulating a shorter period of military and alternative service for persons with higher education".

The Committee noted Kyrgyzstan's intentions to amend the Law on General Obligations of Citizens, on Military and Alternative Service. It insisted that Kyrgyzstan "should ensure" that any amendments "provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant [ICCPR], bearing in mind that article 18 also protects freedom of conscience of non-believers, and stipulating periods of military and alternative service on a non-discriminatory basis".

Proposed Religion Law changes

At least two other legal proposals which might – if adopted – restrict freedom of religion or belief are under consideration. Potentially the most significant are proposed amendments to the 2008 Religion Law, which came into force in 2009. These are being led by a Working Group established in February 2014.

Religious communities objected to the Religion Law before and after its adoption. The government claimed to be looking at its ban on sharing beliefs, the ban on distribution of religious literature in public places and the requirement to have 200 founding members to register a religious organisation. Nothing came of such claims (see F18News 27 May 2009 http://www.forum18.org/archive.php?article_id=1301).

Forum 18 has been unable to find out what progress the Working Group to prepare legislative amendments in the area of religion has made. Aides to the Chair of the Working Group, Justice Ministry State Secretary Kasymbek Maikozov, told Forum 18 from Bishkek on 1 April that he was off sick.

Working Group member Gulnaz Isayeva, an Inspector in the Legal Department of the State Commission for Religious Affairs, confirmed to Forum 18 on 31 March that the Working Group is at present considering amendments only to the Religion Law, not to other laws.

However, Isayeva refused to say by telephone whether a draft has yet been prepared and whether any deadline has been given to complete the initial drafting. She asked for Forum 18's questions to be sent in writing, but failed to respond by the end of the working day on 1 April to the same questions sent in written form.

Although the government has long spoken of its intention to amend the Religion Law, the intention was spelled out again in a 3 February closed-door Defence Council meeting and a follow-up 7 February presidential Decree. SCRA head Moldaliyev told journalists after the meeting that legal changes would focus in particular on the state registration of religious organisations. Also due for amendment are the punishments for religious activity in the Code of Administrative Offences (see F18News 27 February 2014 http://www.forum18.org/archive.php?article_id=1932).

UN criticism

The United Nations Human Rights Committee also commented on 25 March on both the current Religion Law and the plans to amend it. It noted that "the Committee is concerned about the restrictions incompatible with provisions of the Covenant [ICCPR]

contained in the current law, including with respect to missionary activities, registration procedure and dissemination of religious literature".

The Committee stressed that planned amendments to the Religion Law should "remove all restrictions incompatible with article 18 of the Covenant, by providing for a transparent, open and fair registration process of religious organizations and eliminating distinctions among religions that may lead to discrimination".

The Committee also condemned "reports of religious intolerance with respect to converts from the majority religion, including incidents of hate speech". It said Kyrgyzstan should publicly condemn "any act of religious intolerance and hatred" and "investigate all cases of violence based on religion, prosecute perpetrators and compensate victims".

Police and other state agencies have failed to stop or even appeared sympathetic to violent attacks on people exercising freedom of religion or belief (see F18News 15 June 2012 http://www.forum18.org/archive.php?article_id=1712).

Supporting "traditional religions"?

A proposed Law on State Support for Traditional Religions reached the Zhogorku Kenesh on 24 March, according to the parliamentary website. Proposed by parliamentary deputy Omurbek Tekebayev, the draft would – if adopted – allow national and local government subsidies for just two of the country's religious organisations, the Muslim Board and the Russian Orthodox Church.

The draft identifies the two as the representative bodies of the country's "traditional religions". These are described as "historically arisen religions which constitute an inalienable part of the historical, spiritual and cultural heritage of the corresponding nation of the Kyrgyz Republic".

Such subsidies would be to support their "patriotic" and charitable work, as well as their activity "countering the activity of pseudo-religious organisations which represent a danger to the individual and society". The draft does not identify such "pseudo-religious organisations".

The draft would also allow employees and businesspeople to record themselves as "Muslim", "Christian", "member of another faith" or "atheist". Those recording themselves as "Muslim" would pay a monthly fee from their earnings to support the Muslim Board. Those recording themselves as "Christian" would pay a similar fee to the Russian Orthodox Church. The draft claims such fees would be voluntary. (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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