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The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief

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KAZAKHSTAN: Parents challenge schoolgirl headscarf ban

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

Kazakhstan's national schoolgirl headscarf ban is being legally challenged by a group of Muslim parents, whose daughters have been banned from school for wearing a headscarf. In their interpretation of Islam, they argue, wearing a headscarf is compulsory. Officials deny a headscarf problem exists.

A group of 107 Muslim parents from three of Kazakhstan's Regions, whose school-age daughters have been banned from school because they wear headscarves, are planning a further appeal to the Supreme Court. They are seeking to have the ban on girls wearing headscarves in schools declared in violation of Kazakhstan's Constitution, the United Nations Convention on the Rights of the Child and other UN human rights standards. The parents have failed so far in the lower courts, most recently at Astana City Court on 27 March.

This is the biggest appeal by a group of parents against the school ban on headscarves. Many other parents have brought their own appeals to court on similar grounds, both against the Education and Science Ministry and against local Education Departments and schools. All have failed so far (see below).

In September 2017, at the beginning of the new school year, schools in some Regions of Kazakhstan banned girls wearing headscarves from further attendance. More schools started banning girls in headscarves in January 2018. Education officials and schools argued that headscarves violate the January 2016 Education and Science Ministry instruction on compulsory school uniforms, which does not allow clothes which demonstrate a religious adherence (see below).

Mirzhan Gabdullin, a legal scholar who lives in Oral (Uralsk) in West Kazakhstan Region, prepared the suit for court. "My daughter wants to wear her headscarf to go to school," he told Forum 18. "She won't take it off just to be able to go to school." He complains that none of Oral's 46 state secondary schools will take girls if they are wearing headscarves.

An Education and Science Ministry official, who defended the Ministry's actions in Astana City Court in March and in earlier hearings, denied to Forum 18 that any problem over headscarves exists. Both he and the Justice Ministry official who participated in the same cases refused to say why an accommodation over the compulsory school uniform cannot be made to allow girls to wear headscarves for religious or cultural reasons (see below).

In early April 2018, a Muslim resident of West Kazakhstan Region failed to overturn in court a small fine handed down by the Education Department for refusing to send his daughters to school without a headscarf. Many such parents are now being fined (see below).

In December 2016, a teacher cut off a child's baptismal cross in front of other children. The school claimed that it too violated the Education Ministry's standard national uniform. Forum 18 is not aware of other actions by teachers to remove baptismal crosses (see below).

Other moves to restrict young people's rights

The authorities have long disliked the presence of under-18s at meetings for worship.

A research institute attached to the Religious Affairs Department of West Kazakhstan Region instructed some local registered Christian communities to submit by 10 April full names, ages, place of study and personal state-assigned number of all under-18s who attend. The official who sent the letter claimed to Forum 18 the information was needed for "monitoring". Human rights defenders expressed concern about the move and five local religious leaders wrote in, refusing to give the information (see F18News 11 April 2018 http://www.forum18.org/archive.php?article_id=2368).

Religious leaders risk prosecution if under-18s attend meetings for worship against the wishes of at least one of their parents. Prosecutions have been brought even in cases where neither parent has told a religious leader of their objections to their child's attendance (see F18News 11 April 2018 http://www.forum18.org/archive.php?article_id=2368).

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The demand to supply personal data on under-18s came as further restrictions on young people's participation in meetings for worship are likely to be included in the proposed Amending Law now being discussed in a Working Group in the lower house of parliament, the Majilis (see F18News 11 April 2018 http://www.forum18.org/archive.php?article_id=2368). The latest Working Group meetings were held on 16 and 17 April.

In February, a court in the central Karaganda Region fined a local Muslim for teaching his faith to under-18s in his home village. "This is not allowed under the law," the chief lawyer of the District Administration who supported the prosecution in court told Forum 18 (see F18News 11 April 2018 http://www.forum18.org/archive.php?article_id=2368.

Compulsory uniforms

Article 30 of Kazakhstan's Constitution declares that "Citizens are guaranteed the right to free secondary education in state educational establishments. Secondary education is compulsory."

However, as early as 2013, some schools banned girls from attending if they were wearing headscarves. A father in Aksai in West Kazakhstan Region challenged through the local court the school which had rejected his daughter. He argued that the ban amounted to discrimination on grounds of religion. Both his suit in December 2013 and his appeal the following March were rejected, according to the decisions seen by Forum 18.

The Education and Science Ministry enacted a new nationwide compulsory school uniform in a Decree of 14 January 2016, signed by the then Minister Aslan Sarinzhipov. Point 13 of the regulations declares: "The inclusion in school uniform of elements of clothing of religious adherence of various confessions is not allowed."

Education authorities in some Regions started banning girls in headscarves from attending school from the beginning of the school year in September 2017. Aktobe Region enacted further bans on such girls from attending from the beginning of the school term in January 2018. Some other Regions still allow girls in headscarves to attend school.

Some Muslim parents stopped sending their daughters to school after the ban on headscarves in schools was brought in. Those who could afford it have moved to other cities where the ban is not enforced or send their daughters to privately-run schools (which are allowed). Others have enrolled their daughters in online education, mainly from Russian providers. A few parents have chosen to emigrate with their families.

Regional Education Departments have fined many parents for refusing to send their daughters to school (see below).

Legal challenge to school headscarf ban

Between October and December 2017, several dozen parents from West Kazakhstan Region, Aktobe Region and Atyrau Region tried to challenge through the courts the legality of Point 13 of the uniform regulations banning "clothing of religious adherence".

One suit, initially from 36 parents, was lodged against the Education and Science Ministry at Esil District Court in Astana, as the Ministry is based in the District.

They argued that Point 13 of the regulations banning clothes expressing a child's religious identity violated Article 30 of the UN Convention on the Rights of the Child, as well as Kazakhstan's Constitution and the Religion Law.

Article 30 of the UN Convention on the Rights of the Child declares: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

On 20 December 2017, by which time it had been joined by other parents, Judge Kalzhan Ermaganbetova of Esil District Court rejected the parents' suit, according to the decision seen by Forum 18.

The parents challenged this in an appeal to Astana City Court. Other parents who had brought similar suits against the Education and Science Ministry and the Justice Ministry joined the appeal. The parents' case was put in court by Rauila Rogacheva, a lawyer from the Russian city of Orenburg.

"Wearing a headscarf is an inalienable element of the clothing of an individual who professes Islam, and is their choice and right," the parents claimed. They went on to argue that in their interpretation of their faith, "Islamic canons prescribe for all girls and women the compulsory covering of all parts of the body apart from the face and hands. Removing the scarf from the head or baring the shoulders represents an insult to the religious feelings of the child and parents."

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The parents again pointed to the rights set out in Article 30 of the UN Convention on the Rights of the Child, as well as in Article 18 of the International Covenant on Civil and Political Rights and other UN standards. They also pointed to the guarantee of free secondary education in state schools in Article 30 of the Constitution.

However, the prosecutor Akmaral Baizanova, as well as the Education and Science Ministry and Justice Ministry representatives, rejected the parents' arguments. The court upheld the officials' arguments that the Education and Science Ministry sets the national school uniform policy and that the law guarantees the secular nature of state schools. It denied that this violated the right of children to state secondary education.

The court also rejected arguments that the denial of access to state schools by girls in headscarves violated international human rights commitments.

"The principle of the secular nature of education in the Republic secures the equality of all religions," the court claimed. "The ban on the inclusion in the school uniform of elements of clothing of religious adherence of various confessions was introduced with the aim of preserving the internal order of educational establishments and the avoidance of manifestations of social, property or other differences between students."

On 27 March 2018, the panel of three judges, chaired by Taisiya Mirzoyan, rejected the parents' suit, according to the decision seen by Forum 18.

"The court took only a formal approach to the issue and didn't tackle it seriously," Rogacheva, the Russian lawyer who led the parents' case in court, told Forum 18 from the Russian city of Orenburg on 20 April. "Children are suffering – officials are violating the right of believers to freedom of religion and of children to education."

Mirzhan Gabdullin, a legal scholar who lives in Oral in West Kazakhstan Region, prepared the suit for court. "We'll take our case to the Supreme Court," he told Forum 18 from Oral on 10 April. "We have six months to lodge the case."

Erik Aidabulin, one of the two Education and Science Ministry officials who defended its position in the Astana City Court appeal and in similar cases, said he could not discuss the case. "We set out our case in court," he told Forum 18 from Astana on 17 April. "The parents raised the question and applied to court. It took its decision that their rights have not been restricted and the decision has now entered into legal force."

Asked why schools cannot make an accommodation to its uniform policy to prevent girls who wish to wear a headscarf from being denied state school education, Aidabulin responded: "There isn't a problem here."

Similarly, Maira Sergaliyeva, the Justice Ministry official who defended its position in the Astana City Court appeal and in similar cases, insisted she could not discuss the Ministry's case. "I can't comment either on the case or the issue itself," she told Forum 18 from Astana on 17 April. "Our opponents have the right to challenge it." She too refused to say why the state cannot make an accommodation over access to state-run schools for girls who wish to wear a headscarf.

Latest challenge fails in Astana City Court

Three other Muslim parents – Aslanbek Merkashev, Murat Kaziyev and Nurzhan Tokbayev - brought their own challenge against the headscarf ban. On 23 January, Judge Gilsulu Bashenova at Astana's Esil District Court rejected their suit, according to the decision seen by Forum 18. Aidabulin represented the Education and Science Ministry and Sergaliyeva the Justice Ministry.

The parents took their case further. However, on 3 April the panel of judges chaired by the same Judge Mirzoyan rejected their further appeal at Astana City Court, according to the decision seen by Forum 18.

Fined and fined again

Many parents whose daughters are unable to attend school because of the headscarf ban have been given small administrative fines – some more than once - under Administrative Code Article 409, Part 2. This punishes "Failure by parents or other legal representatives to fulfil or adequately fulfil obligations in the area of education established by law" with fines of 5 Monthly Financial Indicators (MFIs). Education officials are empowered to issue such punishments, which can be challenged in court.

A fine of 5 MFIs represents about three days' average wage for those in formal work.

On 13 December 2017, M. Uralov of West Kazakhstan Region's Department for Control in the Sphere of Education, fined local parent Erlan Khamzin. He had refused to send to school his three daughters (aged between 15 and 7) unless they could wear their headscarves. Uralov fined Khamzin 5 MFIs, 11,345 Tenge, under Administrative Code Article 409, Part 2.

The 47-year-old Khamzin – who works as a school sports coach - lives in the village of Chapayev in Akzhaik District.

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Khamzin took his case to Akzhaik District Court, but on 27 December 2017 Judge Askhat Gapuov rejected his appeal, according to the decision seen by Forum 18. The Regional Court rejected his further appeal on 11 January 2018.

Meanwhile, on 25 December 2017, Svetlana Bakhisheva, the head of West Kazakhstan Region's Department for Control in the Sphere of Education, again fined Khamzin under Administrative Code Article 409, Part 2, this time 10 MFIs, 22,690 Tenge.

Khamzin objected to the punishment and again appealed to Akzhaik District Court. However, on 9 January 2018 Judge Amerkhan Kulikeshev rejected Khamzin's appeal and left the fine unchanged, according to the decision seen by Forum 18.

However, Khamzin continued to refuse to send his daughters to school unless they could wear headscarves. A third case was opened against him, this time under Administrative Code Article 409, Part 7. This punishes repeat offences under this Article within one year, with punishments for individuals of 20 MFIs. Courts issue punishments under this Part of Article 409.

On 9 April, Judge Gapuov of Akzhaik District Court found Khamzin guilty of this third "offence" and fined him the prescribed 20 MFIs, 48,100 Tenge, according to the decision seen by Forum 18.

Other parents recently fined, according to court decisions seen by Forum 18, include: Asylbek Mukanbetzhanov (fined in Aktobe on 27 February, appeal rejected in court on 29 March); and Indira Kalzhanova (fined in Aktobe on 5 March, appeal rejected in court on 2 April).

Teacher cuts off child's baptismal cross

In one case, a teacher cut a baptismal cross from the neck of a child in a school in Moskovskoe in Esil District in Akmola Region in December 2016. "The class teacher, citing an order from the school headteacher, used scissors to cut off the cross in the presence of other children," the girl's aunt complained to the Regional Education Department. "In conversation with the school administration, the headteacher would not confirm her order in writing and would not provide the document banning wearing of baptismal crosses."

The Regional Education Department responded that no ban on wearing baptismal crosses existed at the school. It claimed that the girl had asked the teacher to remove the cross because the thread was tight and hurt her neck, and that the cross caused a danger when she was dancing.

The Regional Education Department then reminded the aunt that the 2016 Education and Science Ministry regulations on compulsory school uniforms does not allow anything to indicate a child's faith. It said this restriction applied equally to all faiths.

In a separate response, the Regional Education Department repeated the same arguments to the girl's mother.

Forum 18 asked the school headteacher Svetlana Birzhanova in writing on 12 January 2017 why the class teacher had cut the baptismal cross from the girl's neck. It never received any reply.

Human rights defenders told Forum 18 they are not aware that teachers have taken action against other school children who wear baptismal crosses under their school uniform. (END)

Reports on freedom of thought, conscience and belief in Kazakhstan can be found at http://www.forum18.org/Archive.php?query=&religion=all&country=29.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1939.

For a personal commentary from 2005 on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

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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