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KYRGYZSTAN: Jail terms overturned, but investigation continues

By Felix Corley, Forum 18

Batken Regional Court in southern Kyrgyzstan has overturned seven-year prison terms imposed on two cousins who are Jehovah's Witnesses, Forum 18 News Service has learned. However, despite this, the Court specifically stated that it rejected the two men's appeal. Instead of being exonerated and freed, the two - Iskandar Kambarov and Jonibek Nosirov - still face possible prosecution and remain in pre-trial detention. "We hope that reason will prevail and they will now be freed," Jehovah's Witnesses told Forum 18. The two men had been found guilty of having two discs which police say were from the Hizb ut-Tahrir Islamist movement. Kambarov and Nosirov say the discs were not theirs and were planted on them. Batken Regional Court also ordered that "in order to remedy the gaps in the investigation process" the case should be sent for further investigation, and ordered that the two cousins should pay costs. Officials continue to defend the prosecution to Forum 18. Local Jehovah's Witnesses state that the two men remain "in good spirits".

In a move which local Jehovah's Witnesses described to Forum 18 News Service as a "surprise", Batken Regional Court in southern Kyrgyzstan on 22 June overturned seven-year prison terms handed down to two cousins who are Jehovah's Witnesses. However, rather than be exonerated and freed, the two - Iskandar Kambarov and Jonibek Nosirov - still face possible prosecution. They remain in pre-trial detention. "We hope that reason will prevail and they will now be freed," Jehovah's Witnesses told Forum 18.

The two men had been found guilty of having two discs which police say were from the Hizb ut-Tahrir Islamist movement. Kambarov and Nosirov say the discs were not theirs and must have been planted during one of the police raids on their flat in Kadamjai. All the 609 other items of religious literature and discs confiscated from them were published by Jehovah's Witnesses (see F18News 23 May 2011 http://www.forum18.org/Archive.php?article_id=1573).

"The Defendants, although respecting all religions, have never practised the beliefs of Islam," Kambarov and Nosirov declared in their 21 June supplementary appeal seen by Forum 18. "They pray to Jehovah, the God of the Bible."

Forum 18 has been unable to find out how the case will now proceed or who the case has now been assigned to at Batken Regional Prosecutor's Office. On 24 June, Forum 18 reached Dinmukhamed Tashkojoev, a senior prosecutor at the Regional Prosecutor's Office who took part in the appeal hearing. As soon as Forum 18 began to ask about the case he claimed he could not hear well and asked Forum 18 to call back. Subsequent calls went unanswered.

Berymukhamed Esenov, an official of the regional office for southern Kyrgyzstan of the State Commission for Religious Affairs (SCRA), did not answer his telephone on 24 June when Forum 18 repeatedly called. He produced an "expert analysis" used during the original trial, claiming that the two DVDs were extremist.

"Procedural violations" at original trial

The original 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 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 after popular unrest in Nookat in Osh Region, at the end of Ramadan in October 2008.

The extremist materials in question were claimed to be from the banned Hizb ut-Tahrir Islamic party. (Hizb ut-Tahrir is an international political movement vowing to re-establish a single Islamic state, or caliphate, and claiming to be entirely peaceful. However, Forum 18 notes Hizb-ut-Tahir's denial of key human rights, including freedom of religion and belief, and that Hizb ut-Tahir has called for Jews to be murdered. Hizb ut-Tahrir's Draft Constitution prescribes execution for Muslims who change their faith, along with seriously restrictions on other human rights (see F18News 29 October 2003 http://www.forum18.org/Archive.php?article_id=170).

Serious procedural violations took place in both the arrests and the trial, however these were ignored during the trial. 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 in strict regime labour camp, according to the verdict seen by Forum 18 (see F18News 23 May 2011 http://www.forum18.org/Archive.php?article_id=1573).

Men "in good spirits"

One Jehovah's Witness told Forum 18 on 24 June that he had visited Kambarov and Nosirov in the police detention facility in Batken the previous day. Both had been "in good spirits", despite the failure of their attempt to be fully exonerated. "They remain hopeful of being cleared."

Jumabai Abdrohmanov, Chief of the Detention Facility, declined to allow Forum 18 to speak to either Kambarov or Nosirov by telephone. "I am not authorised to give this permission," he told Forum 18 on 24 June. He claimed that their conditions in the facility are "OK", then put the phone down.

The two men's lawyer is planning to lodge an appeal, to have the case terminated, to the General Prosecutor's Office in the capital Bishkek.

Sentences overturned, but investigation to continue

At the Batken Regional Court appeal hearing on 22 June, a panel of three judges chaired by Maksut Adanbaev cancelled the 18 May verdicts, according to the court decision seen by Forum 18. However, despite this, the Court specifically stated that it rejected the two men's appeal.

"The criminal case and the material evidence of the two DVDs of the Hizb ut-Tahrir party should be sent back to the Batken Prosecutor's Office, to remedy the gaps in the investigation process", the court ruled. It chose not to send the case back to Kadamjai District Prosecutor's Office, who led the original prosecution.

The Regional Court also ruled that the two cousins should remain in detention while the investigation continues. It also ruled that they should pay court costs of 500 Soms (60 Norwegian Kroner, 8 Euros or 11 US Dollars).

The two men had argued that two discs claimed to be from the Hizb ut-Tahrir Islamist movement, which police claim to have found in their flat on 29 January, did not belong to them. They think the discs must have been planted there either by the police who conducted the unapproved search of their flat, or by alleged electricity workers who had visited the flat in the week before the search (see F18News 23 May 2011 http://www.forum18.org/Archive.php?article_id=1573).

The two men argued in court that as Jehovah's Witnesses they had no connection with Hizb ut-Tahrir and had none of their literature or discs. They claim that the "evidence" of the discs had not been collected lawfully, was not properly witnessed, and their ownership of the discs could not be demonstrated. They rejected a claim by the two alleged electricity workers (one of whom admitted in court he had worked for the police) that they had shown one of the discs to them on their television.

The "gaps" the court identified as needing clarification were: the total number of discs confiscated by police; where the discs were found; whether the discs and literature were sealed on confiscation; and which disc the defendants allegedly showed to the "electricity workers".

Regional Ombudsperson and OSCE follow case

The case has been followed by the representative for Batken Region of Kyrgyzstan's Human Rights Ombudsperson, Kamaldin Rakhmatulaev, who observed the original trial. Jehovah's Witnesses told Forum 18 they welcomed his concern about the procedural violations in the case.

Also following the case has been the Field Office in Osh of the Organisation for Security and Co-operation in Europe (OSCE) (see F18News 23 May 2011 http://www.forum18.org/Archive.php?article_id=1573).

Officials defend prosecution

Police and other officials involved in the case continued to defend the prosecution of the two cousins, despite the annulling of the sentences. Ruslanbek Omoshev of the Police's 10th (Anti-terrorism) Department – who had initiated surveillance of the two, was present during the police search of their flat and testified at the original trial – says he still believes they are guilty. "Our agency found them to be guilty, but we are not involved in the case any more," he told Forum 18 from Kadamjai on 24 June. "We're little people who just work on things in our District. This will now be decided on a regional level."

Kadamjai District Deputy Prosecutor M. Ashimov, who led the case and testified in court, told Forum 18 the same day that he

believes the two cousins are guilty. "But let the court decide." He said he is studying the Regional Court decision. "If we don't think it was right, we will challenge it."

Ashimov defended the prosecution, and rejected claims that the search of the two men's flat had not been legal. "There was permission for the search," he claimed.

Kyrgyzstan's General Prosecutor's Office issued a statement on its website on 15 June specifically countering Forum 18's coverage of the case by repeating the prosecution's claims. It repeated claims that two Hizb ut-Tahrir discs had been found in Kambarov and Nosirov's flat and that they were duly sentenced for "holding religious-extremist materials". (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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