

30 October 2014

KYRGYZSTAN: Contradictory court decisions, arbitrary official actions

By Mushfig Bayram, Forum 18 (<https://www.forum18.org>)

Some officials in Kyrgyzstan appear unwilling to act on their domestic and international legal obligations, Forum 18 News Service notes. Commenting on a UN Human Rights Council recommendation to "remove all restrictions incompatible with article 18 of the Covenant [on Civil and Political Rights]", State Commission for Religious Affairs (SCRA) lawyer Zhanibek Botoyev told Forum 18: "Go and bring some order to your own countries and Norway. We are a sovereign country here, and you cannot command us what to do or what not to do". In relation to a Constitutional Chamber of the Supreme Court ruling on where a religious organisation may operate, in a case brought by Jehovah's Witnesses, Botoyev claimed that the ruling did not mean what it clearly states it does. The SCRA has also forced a Russian Orthodox Church catechist, Vakhtang Fyodorov, to leave the country and with the State Property Fund continues to try to confiscate a Protestant church's building.

Some officials in Kyrgyzstan appear unwilling to act on their domestic and international legal obligations, Forum 18 News Service notes. A reluctance by officials to implement their obligation to respect and implement freedom of religion or belief can be seen in a number of ongoing issues in the country.

These issues include but are not limited to: a UN Human Rights Council recommendation to "remove all restrictions incompatible with article 18 of the Covenant [on Civil and Political Rights]"; a ban in Kyrgyzstan on Ahmadi Muslims exercising freedom of religion or belief together; a Constitutional Chamber of the Supreme Court ruling that a religious organisation is not limited to carrying out its activity only in the place where it has its legal address; the expulsion of a Russian Orthodox Church Bishop and a catechist; and continuing state attempts to deprive a Protestant church of its building.

Kyrgyzstan is also proposing to harshen its Religion Law and Code of Administrative Offences by, among other things: increasing the number of founders required for registered religious organisations to be founded from 200 to 500 and all such organisations to be re-registered; requiring anyone working in any capacity in any religious organisation to have an annually renewed State Commission for Religious Affairs (SCRA) licence; and requiring every institution offering religious education to have an SCRA licence. The proposals go directly against the UN Human Rights Committee's March recommendation that changes to the Religion Law should "remove all restrictions incompatible with article 18 of the Covenant [on Civil and Political Rights]" (see F18News 24 October 2014 http://www.forum18.org/archive.php?article_id=2008).

Ahmadis still banned

On 10 July the Supreme Court ignored violations of due legal process and human rights obligations by rejecting an appeal against two lower courts' support of the SCRA's refusal to give state registration to the Ahmadi Muslim community. Asel Bayastanova, the Ahmadis' defence lawyer, told Forum 18 that "it means that Ahmadi Muslims cannot act like Ahmadi Muslims and organise meetings for worship or any other activity together". The community has not been able to meet together since July 2011 (see F18News 17 July 2014 http://www.forum18.org/archive.php?article_id=1977).

The Ahmadis remain banned, and on 22 September received a copy of the Supreme Court decision. It was made by Judge Aynash Tokbayeva, who chaired the hearing, sitting with Judges Kamil Osmonaliyev and Bolotbek Akmatov. The Ahmadi Muslim community told Forum 18 on 29 October that it is now considering what its next steps will be.

A non-Ahmadi Muslim religious leader in Kyrgyzstan, who asked not to be named for fear of state reprisals, told Forum 18 on 29 October that the ban on the Ahmadis is "a political decision". The leader suggested that the government imposed the ban "to do a service for the [state-backed] Muslim Board and foreign Muslim investors, who dislike Ahmadis".

Asked why this decision was taken, despite the UN Human Rights Committee's March recommendation on the Religion Law that "all restrictions incompatible with article 18 of the Covenant [on Civil and Political Rights]" should be removed, hearing chair Judge Tokbayeva on 30 October claimed to Forum 18 that: "I am sorry, I cannot answer, I am busy hearing a case". She then put the phone down. Subsequent calls to her went unanswered.

Supreme Court Deputy Chairperson Baktygul Amanaliyeva, asked the same question, replied on 30 October: "Don't you know what the Ahmadis were charged with?" Informed that Forum 18 had seen the decision and had not seen any evidence to back the SCRA's claims of "extremism", she claimed that "I cannot do anything about the decision, and it is final."

Asked if the UN Human Rights Council's recommendations mean anything for Kyrgyzstan, she repeated that "I cannot do anything".

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Botoyev represented the SCRA at the Supreme Court hearing which effectively banned Ahmadi Muslims. At that time he claimed to Forum 18 that "we are not going to send them to prisons". He also stated that "they can individually pray or read their books in their homes but they must not worship together. Otherwise they will be punished." He refused to say exactly what punishments will be imposed (see F18News 17 July 2014 http://www.forum18.org/archive.php?article_id=1977).

Positive Constitutional Chamber rulings on legal status

However, the Constitutional Chamber of the Supreme Court on 4 September ruled that a religious organisation is not limited to carrying out its activity only in the place where it has its legal address. It also found it unconstitutional for local keneshes (councils) to approve the list of 200 founding members of a religious organisation required for a legal status application. If implemented, Jehovah's Witnesses who brought the case think this decision will remove a major obstacle to legal status applications (see F18News 24 October 2014 http://www.forum18.org/archive.php?article_id=2008).

The hearing was chaired by Judge Mukambet Kasymaliyev, sitting with Judges Chinara Aydarbekova, Meergul Bobukeyeva, Jumadil Makeshov, Erkinbek Mamyrov, Aysalkyn Narynbekova, Emil Oskonbayev, Cholpon Osmonova, and Klara Sooronkulova. The case brought by Jehovah's Witnesses was opposed in court by some deputies from the Zhogorku Kenesh (the Parliament), as well as officials of the SCRA and the National Security Committee (NSC) secret police.

Jehovah's Witnesses told Forum 18 on 28 October that they hope that the Constitutional Chamber decision will help to stop the harassment and interference their co-believers have faced from law enforcement officials in the southern regions of Osh, Naryn, Jalal-Abad and Batken. They added that the ruling means that "we can carry on our religious activity without additional registration in those regions since the charter of our central Community in Bishkek indicates all of Kyrgyzstan as our territory of activity". They indicated also that they would also like to get registration in those regions.

Jehovah's Witnesses and other religious communities have faced severe harassment and raids from the authorities in trying to exercise their right to freedom of religion or belief (see eg. F18News 8 April 2013 http://www.forum18.org/archive.php?article_id=1821).

SCRA claims rulings do not mean what they say they mean

SCRA lawyer Botoyev, asked by Forum 18 whether the SCRA would refuse Jehovah's Witnesses registration in these southern regions after the Constitutional Chamber ruling, claimed on 30 October that "Jehovah's Witnesses are not correctly interpreting the Constitutional Chamber's ruling. It does not mean that they do not need new registration in other localities".

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Why the opposing decisions?

The contradiction between the Supreme Court supporting an SCRA ban on Ahmadi Muslims and its Constitutional Chamber loosening restrictions on freedom of religion or belief was explained by Supreme Court Deputy Chairperson Amanaliyeva by her stating that the Constitutional Chamber is within the Supreme Court, but is independent of the Supreme Court.

The Constitutional Chamber of the Supreme Court is the country's highest judicial authority for constitutional issues. The Supreme Court is the highest court of appeal.

What do other communities think of Constitutional Chamber decisions?

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Reactions to the Constitutional Chamber decisions included those of an Ahmadi Muslim, who told Forum 18 on 30 October that "it does not mean anything for us, as we are banned".

A Protestant leader, who wished to remain anonymous for fear of state reprisals, commented to Forum 18 on 30 October that "laws mostly do not work in our country. Who knows how this will be interpreted by the authorities, and whether it will be applied favourably?"

Tamilla Zeynalova, Chairperson of the Baha'i Community in the capital Bishkek, told Forum 18 on 23 October that "it does not matter if 200 or 500 signatures are demanded to receive legal status. We will not be able to do this."

One Hare Krishna devotee noted that their community is small and so cannot gain legal status. They thought being unable to get state registration was the reason it was not growing. Because the authorities know the community is not growing, they leave them alone.

Father Igor Dronov of the Russian Orthodox Diocese in Bishkek told Forum 18 on 23 October that the Constitutional Chamber decisions will "not affect us much, as we usually do not have problems with registration".

A Baptist, who wished to remain anonymous for fear of state reprisals, told Forum 18 on 30 October that "it's not the first time this has happened. The authorities make promises or decisions seeming positive, but they continue their harsh policies. I do not think this will change anything, and the authorities will continue harassing and punishing believers and religious freedom will be more and more limited."

Arrested and charged for attempting to register?

Jehovah's Witnesses think criminal charges lodged against a mother and daughter in Osh in March 2013, and their being given two months' house arrest, were aimed at punishing the community for lodging a fresh registration application. The two women were accused of allegedly conjuring live snakes from eggs and then swindling old women out of their life savings, which charges they and their fellow believers strongly deny (see F18News 2 April 2013 http://www.forum18.org/Archive.php?article_id=1819).

On 7 October a court in Osh acquitted the two women and ordered their release from house arrest. However, they still remain under arrest after an appeal by prosecutors against the acquittal (see F18News 13 November 2014 http://www.forum18.org/Archive.php?article_id=2015).

Russian Orthodox Church catechist expelled

Russian Orthodox Sunday school catechist Vakhtang Fyodorov has, like the leader of the Russian Orthodox Church in Kyrgyzstan Bishop Feodosy, been threatened with expulsion by the SCRA. On 14 July the SCRA refused registration as a missionary to Bishop Feodosy. "This is a ban on the Bishop", Orthodox Church spokesperson Yuliya Farbshteyn told Forum 18. The SCRA claimed that the Bishop was denied registration as he "threatens the public security of Kyrgyzstan and sows religious discord among the population". Orthodox believers totally denied these claims to Forum 18. The SCRA arranged for both men to be interviewed by the Anti-terrorism Department of the Interior Ministry (see F18News 18 July 2014 http://www.forum18.org/archive.php?article_id=1978).

On 25 July, Feodosy was replaced by the Moscow Patriarchate as leader of the Church in Kyrgyzstan by Bishop Daniil (secular name Semyon Kuznetsov).

On 12 October, Orthodox catechist Fyodorov was forced to leave Kyrgyzstan as the authorities did not extend his residence permit, his wife Yekaterina Ozmitel (a Kyrgyz citizen) told Forum 18 on 20 October.

Ozmitel stated that the authorities did not like her husband "because he was close to Bishop Feodosy, and they wanted him also to stop his activity in the Church after the Bishop left". She explained that Fyodorov can travel and work in Kyrgyzstan in secular work without a visa, as he is a Russian citizen, but he would like to continue his work in the Church. He hopes that he can resolve the problem through Kyrgyzstan's Embassy in Moscow.

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Continued threat to church's building

The State Property Fund has been since 2009 seeking to confiscate the building of the Protestant Church of Jesus Christ in Bishkek. The case originated in May 2009 when the General Prosecutor's Office sent a proposal to the Government's State Property Ministry. By law court actions on such claims must start within three years – by May 2012 – but hearings began in the Economic Court in November 2013, the fourth and final hearing being on 24 January 2014.

That day the court – following a suit brought by the Fund with the SCRA as an interested party - annulled a 1999 sales contract between the Church and the Fund for the former Culture House of the old Bishkek Machine-Building Plant. It claimed the sale violated the law. A local construction company is interested in the property, which the Church thinks is the real reason for the case. The Church appealed against the decision and separately to have the whole case thrown out (see F18News 8 April 2014 http://www.forum18.org/archive.php?article_id=1945). Bishkek City Court granted the Church's request on 18 April

However, the State Property Fund and the SCRA has continued seeking – this time through the Supreme Court - to confiscate the Church's building. On 21 October the Supreme Court referred the case brought by the SCRA and the State Property Fund back to Bishkek's Economic Court.

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No other religious community appears to be currently facing a threat that the state will confiscate the building it uses to meet for worship or other activities. (END)

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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/mapping/outline-map/?map=Kyrgyzstan>.

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