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KAZAKHSTAN: "A general unwillingness to properly protect human rights"

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

Kazakhstan continues to jail people for exercising the right to freedom of religion or belief, Forum 18 News Service notes. Vasily Kliver, a Baptist in Aktobe Region was on 5 February given a 5-day jail term for non-payment of a 2008 fine. Judge Saule Spandiyarova ignored an Administrative Code limitation on punishments when jailing Kliver. He told Forum 18 that: "we are not afraid, and are glad to suffer for the Lord." Maina Kiai, the UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association noted after visiting Kazakhstan in January "a general unwillingness to properly protect human rights in the country, and of a sense of impunity by some officials" He also noted state intimidation of those he met. Talgat Rakhimov, Head of West Kazakhstan Region Religious Affairs Department, refused to tell Forum 18 why sports fans can share their views anywhere on the street without state permission, but religious believers need state permission. And a registered Protestant church has been raided by officials and those present forced to write statements.

Kazakhstan continues to jail people for exercising the right to freedom of religion or belief, and harass people exercising this right in public. The state also continues to raid even those religious or belief communities which have state permission to exist under the country's highly restrictive Religion Law, Forum 18 News Service notes.

After a 19 – 27 January visit to the country, Maina Kiai, the United Nations (UN) Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association noted in his concluding statement on 27 January what he described as "a general unwillingness to properly protect human rights in the country, and of a sense of impunity by some officials (..) It was remarkable that in many of the meetings I had with Government officials, the emphasis was on the restrictions to the rights rather than the rights themselves. This is a misconstruction of human rights, where the focus must be on facilitating and enjoying the right first and foremost, before restrictions which need to be interpreted narrowly."

As happened in connection with UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt's 2014 visit to the country (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939), civil society activists and others who wish to meet Kiai were intimidated by the authorities (see below).

"Why do I have to be punished for the same alleged violation time and again?"

Vasily Kliver, a Council of Churches Baptist in Aktobe Region was on 5 February 2015 given a 5-day jail term, being freed on 10 February. Council of Churches Baptists have a policy of not paying fines handed down to punish them for exercising the right to freedom of religion or belief. The authorities often impose short terms of imprisonment for this "offence" (see eg. F18News 8 October 2014 http://www.forum18.org/archive.php?article_id=2004). Kliver himself was jailed for five days in June 2009 (see F18News 9 June 2009 http://www.forum18.org/Archive.php?article_id=1309).

Long jail terms, the shortest being 18 months, have recently been imposed on alleged members of the Muslim missionary movement Tabligh Jamaat (see eg. F18News 14 January 2015 http://www.forum18.org/archive.php?article_id=2027).

Kliver's most recent jail term was for not paying two fines given to him in March 2008 and April 2010. He told Forum 18 on 21 February 2015 that police arrested him at home on the morning of 5 February. They then took him to a court where he was tried and then sent to jail.

"Why do I have to be punished for the same alleged violation time and again?", Kliver asked. "I already served a five-day jail term for the 2008 fine in 2009. It's not fair to punish me for the same thing twice". He added that "the authorities fined me in violation of my constitutional rights to begin with."

Kliver also noted that Judge Saule Spandiyarova, who presided at his February 2015 trial, ignored that fact that the Code of Administrative Offences' Article 890 states that penalties such as those imposed on Kliver in 2008 expire after one year unless the authorities cannot find or identify the violator. Kliver pointed out that – as the police arrest proved - "they know very well who I am,

where I live, and found me easily each time."

"We are not afraid, and are glad to suffer for the Lord"

Kliver told Forum 18 that he was treated "normally" while in jail and fed three times a day. Asked what he thinks of the authorities' repeated punishments of him and others for exercising the right to freedom of religion or belief, he replied: "we are not afraid, and are glad to suffer for the Lord."

"There is a distinct lack of confidence and trust in the judiciary"

Asked why Kliver was punished twice for not paying the same fine, Judge Spandiyarova on 18 February told Forum 18 that "if this citizen is not happy with my decision, let him complain to higher authorities." Spandiyarova also did not want to explain why she ignored the limitation of action under Article 890. "The Baptists are not interpreting the law properly," she claimed – but without giving reasons for her claim.

The Judge refused to say whether more arrests or other punishments will be given to Kliver in future. "I do not have time to talk to you over the phone for hours," Spandiyarova stated. She then put the phone down.

UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association Kiai noted: "There is a distinct lack of confidence and trust in the judiciary. Although authorities repeatedly make reference to the 'rule of law', the practice in Kazakhstan reflects strong adherence to 'rule by law', perhaps a holdover from the past Soviet era."

Criticising this, Kiai affirmed that: "Law is meant to serve people, rather than people serving the law, with the guiding spirit being one that supports the dignity of the person as the key subject of the law."

Manap Niyazbayev, who worked as a bailiff in Aktobe Bailiffs Department until late 2014, told Forum 18 on 18 February that the "authorities will go on punishing him [Kliver] and giving him more jail terms until he pays the fines." He added that "bailiffs can even open a criminal case against him for this."

"We only warned him this time"

Kenzhetai Baytinov, an ethnic Kazakh Council of Churches Baptist in Oral (Uralsk) in West Kazakhstan Region, was on 26 January stopped in a local open air market while sharing his faith with another person. Later he was taken to the Regional Administration's Religious Affairs Department, where he was warned that he will be given an administrative punishment unless he stops his street preaching. He was then released, he told Forum 18 on 25 February.

Talgat Rakhimov, Head of the Religious Affairs Department, on 23 February told Forum 18 that: "We did not open a case against him since he is a nice fellow. We only warned him this time that he must stop unauthorised missionary activity in public places." He added that "Baytinov was fined before, and if he continues he will be given a new fine".

Baytinov has been fined five times in the last two years (see eg. F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937). His most recent fine of 50 Monthly Financial Indicators was handed down by Judge Bogatoz Baymukhanova at Oral's Specialised Administrative Court on 25 July 2014, according to the decision seen by Forum 18. He was punished under the then Administrative Code Article 374-1, Part 2 for offering religious literature to passers-by on the street in Oral earlier in the month.

Baytinov was earlier fired from his job as a school caretaker because of state pressure (see F18News 21 November 2013 http://www.forum18.org/archive.php?article_id=1898).

Rakhimov told Forum 18 (correctly) that "the Religion Law states that one must receive prior authorisation from the local authorities, and then carry out the missionary activity only within specially designated rooms or buildings but not on the street" (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Asked why sports fans can share their views anywhere on the street or in a market without state permission, but religious believers cannot, Rakhimov stated that "it's our law, everyone must obey it. I do not have the right to comment on the law". He then said he did not wish to talk further with Forum 18.

UN Special Rapporteur on Freedom of Religion or Belief Bielefeldt has unequivocally underlined that: "According to international standards, freedom of religion or belief unequivocally includes the right to bear witness to one's conviction, to communicate within and across denominational boundaries and to try to persuade others non-coercively. This also covers missionary activities" (see F18News 22 April 2014 http://www.forum18.org/archive.php?article_id=1950).

Meeting by registered religious community raided

In a part of southern Kazakhstan the meeting for worship of a state registered Protestant church was raided in February. Officials from various agencies, including police officers in bullet-proof vests, raided the church which does not wish to be named for fear of state reprisals. A church member who did not wish to be named stated to Forum 18 that "officials behaved very rudely towards worshippers, disrupted the worship, and harassed the believers to make them write statements to explain why they attended the meeting".

A prosecutor claimed to Forum 18 that the authorities raided the worship meeting because "we acted on a complaint from the neighbours." He did not say when the investigation will end, and whether any charges were being prepared against the church.

Kazakhstan demands that groups of people can exist as a religious community and exercise freedom of religion or belief only if they have state permission. This is gained via a complex and restrictive state registration system (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). The ban on exercising human rights without state permission violates international law, as is outlined in the Organisation for Security and Co-operation in Europe (OSCE)/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see http://www.legislationline.org/download/action/download/id/5719/file/VC_ODIHR_Guidelines_Legal_personality_religious_communities_2014_en.pdf). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

As noted above, even communities with state registration are targeted by officials. Other examples beside the church in southern Kazakhstan include: the Full Gospel Church in Atyrau where the Anti-Terrorism Police with the Justice Department are bullying people identifying themselves as founders on registration applications, and trying to stop the Church meeting for worship without state permission; the Din-Muhammad Mosque community in Petropavl whose Mosque has been liquidated, but are still struggling against "legal" and extra-legal harassment to try to gain registration; and the registered Hare Krishna community in Kostanai who have been raided by police and their leader fined. It has appealed to the United Nations (UN) Human Rights Committee to be able to exercise freedom of religion or belief without fear of criminal or administration punishment (see F18News 19 December 2014 http://www.forum18.org/archive.php?article_id=2025).

"This incident was calculated to instil fear and intimidation"

UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association Kiai highlighted secret police surveillance of himself and people he met: "I am deeply disappointed by an incident that has left me very worried about the safety of individuals I met during my trip, and generally concerned about the situation of human rights in Kazakhstan.

While in Aktau city, I held a meeting with members of civil society on 23 January 2014. As we left the meeting venue, I learned that unknown persons, sitting in the back seat of a vehicle parked directly facing the entrance of the venue, were taking photographs of individuals leaving the building. They also took photographs of my driver. All this was done using equipment, and in a manner commonly associated with secret police surveillance.

I approached the men and demanded to know who they were and the purpose in taking the photographs; they then hurriedly drove off without responding."

UN Special Rapporteur Kiai reported the incident to police, who later produced a suspect, along with a written "confession". But the suspect was unequivocally not the same person who was taking photographs. Kiai commented that: "I am concerned that the handling of this incident is indicative of a general unwillingness to properly protect human rights in the country, and of a sense of impunity by some officials (..) this incident was calculated to instil fear and intimidation."

The government also used intimidation against civil society activists in relation to UN Special Rapporteur on Freedom of Religion or Belief Bielefeldt's visit. The police and National Security Committee (KNB) secret police monitor and attempt to plant spies inside religious and belief communities (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Restrictions on linked fundamental freedoms

Commenting on the state's linked legal restrictions on the freedoms of religion or belief, peaceful assembly and of association, UN Special Rapporteur Kiai stated that: "The concern over extremism has hampered the association rights of religious groups as well. Interlocutors informed me that authorities exercise close and excessive control on the activities of religious organizations. Thus they are subjected to mandatory re-registration leading to many religious groups being denied registration. Small religious groups with membership of less than 50 individuals cannot obtain registration, and cannot engage routinely in religious observances as a result, even when held in private venues" (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

UN Special Rapporteur Kiai continued: "I urge the government to engage in a thorough review of the broad legal framework (..) with a view to bringing it into compliance with international human rights standards." (see

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15517&LangID=E>. (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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