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KYRGYZSTAN: Will state officials obey the law?

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

Officials are refusing to follow a Constitutional Chamber of the Supreme Court decision legally removing two major obstacles to the registration of religious or belief communities. "We are observing the present Religion Law until the Constitutional Chamber's decision is integrated into it," Kyrgyzstan's State Commission for Religious Affairs (SCRA) Deputy Head told Forum 18. "You need to ask Parliament about changes to the Law." However, Judge Mukambet Kasymaliyev, Chair of the Constitutional Chamber, told Forum 18: "Everyone must abide by the Court's decisions as they become part of the law immediately after they are passed." Asked what he thinks of local officials and the SCRA ignoring this, Judge Kasymaliyev replied, "I cannot evaluate the actions of those officials. But it seems to me that they do not know Kyrgyzstan's laws and must study them." Also, two Jehovah's Witnesses, Nadezhda Sergienko and Oksana Koryakina, under house arrest for two years, still face prosecution, despite a describing the case as "fabricated". And the July 2011 ban on Ahmadi Muslims still continues.

State officials in Kyrgyzstan have repeatedly used registration of religious or belief communities as a means to restrict the numbers of such communities legally allowed to exist, as well as where in the country they are allowed to operate. Even after a Constitutional Chamber of the Supreme Court decision legally removing two of the major obstacles, state officials are illegally refusing to obey the Chamber's decision.

The State Commission for Religious Affairs (SCRA) Deputy Head, Tabyldy Orozaliyev claimed to Forum 18 from the capital Bishkek: "We are observing the present Religion Law until the Constitutional Chamber's decision is integrated into it. You need to ask Parliament about changes to the Law."

However, Judge Mukambet Kasymaliyev, Chair of the Constitutional Chamber, told Forum 18: "Everyone must abide by the Court's decisions as they become part of the law immediately after they are passed." Asked what he thinks of local officials and the SCRA ignoring this legal requirement, Judge Kasymaliyev replied: "I cannot evaluate the actions of those officials. But it seems to me that they do not know Kyrgyzstan's laws and must study them."

The registration restrictions and other obstacles to exercising freedom of religion or belief were strongly criticised in March 2014 by the United Nations (UN) Human Rights Committee. It recommended that the Religion Law should be changed to "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).

Other current obstacles to exercising freedom of religion or belief include threats to the property of some registered religious communities, proposed harsh changes to the Religion Law, and stalled legal changes to allow a genuinely civilian alternative to compulsory military service (see F18News 29 May 2015 http://www.forum18.org/archive.php?article_id=2067).

Restricted numbers and locations

The SCRA on its website today (22 May) lists as registered the following individual organisations: 62 local Muslim organisations, 3 foreign Muslim organisations, 51 Pentecostal, 50 Baptist, 46 Russian Orthodox (Moscow Patriarchate), 41 Jehovah's Witness, 30 Seventh-day Adventist, 20 Lutheran, 12 Baha'i, 4 Catholic, 2 Old Believer, 119 other Protestant, 1 Jewish, 1 Buddhist and one other organisation. None are listed as having been registered since 2012.

Other religious communities – including Jehovah's Witnesses and Protestants - 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).

But on 4 September 2014 the Constitutional Chamber of the Supreme Court ruled, in a case brought by Jehovah's Witnesses, 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 the requirement for local keneshes (councils) to approve the list of 200 founding members of a religious organisation before it can apply for legal status to be unconstitutional.

If implemented, Jehovah's Witnesses think this decision will remove a major obstacle to legal status applications. They also hope it will help end harassment and interference their co-believers have faced from law enforcement officials in the south of the country (see F18News 24 October 2014 http://www.forum18.org/archive.php?article_id=2008).

However, Jehovah's Witnesses told Forum 18 on 20 May 2015 that the authorities in Osh and Jalalabad and elsewhere are still repeatedly refusing communities' applications for registration. The main excuse given is that the Religion Law states that keneshes must endorse a list of the founding members of a community, but no by-laws have been adopted to govern this procedure. This is a long-standing official excuse to avoid registering communities, which has been used since the Religion Law was adopted in 2009 (see Forum 18's Kyrgyzstan religious freedom survey http://www.forum18.org/archive.php?article_id=2013).

After one such registration application in 2013 two Jehovah's Witnesses, Nadezhda Sergienko and her daughter Oksana Koryakina, were placed under house arrest in March 2013 for alleged swindling. Both women are still under arrest and the case against them – described by one judge as "fabricated" – still continues. Jehovah's Witnesses think the entire case is a reprisal for making a registration application (see below).

The 4 September 2014 Constitutional Chamber decision removed the registration barrier that keneshes and the SCRA claim exists by declaring it unconstitutional. "This decision allows us to do religious activity without being registered in other regions, so we are upholding it despite pressure by local authorities to be registered in their region," Jehovah's Witnesses stated.

The authorities have not opened any new prosecutions against their members in recent months Jehovah's Witnesses told Forum 18 on 20 May. But officials still visit meetings for worship in Osh, Jalalabad and other regions where Jehovah's Witnesses are not registered and question the lawfulness of their meetings. "Our believers refer the authorities to the relevant Constitutional Chamber decision, and the officials allow them to go on with the worship," Jehovah's Witnesses told Forum 18. "The officials sit and observe the meetings quietly."

Ahmadi Muslims still banned and cannot meet for worship

Nearly a year after a July 2014 Supreme Court rejection of the Ahmadi Muslim community's appeal against the stripping of their state registration, they appear no nearer to being able to again meet together for worship. The authorities banned the Ahmadis in 2011, due to what a non-Ahmadi religious leader described as a "political decision", and they have not been able to meet since March 2011.

The July 2014 Supreme Court decision 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 Ahmadis (see F18News 30 October 2014 http://www.forum18.org/archive.php?article_id=2011).

The SCRA website lists the Ahmadi Muslims' original registration in 2000 as a representation of a foreign religious organisation, but adds: "Refused re-registration in 2011."

Asked whether the authorities will lift the ban on the Ahmadis and register them again, SCRA Deputy Head Orozaliyev told Forum 18 on 15 May: "We have the list of organisations banned in Kyrgyzstan, and the Ahmadis are not banned." Forum 18 then observed that the Supreme Court decision was effectively a ban, as the unregistered exercise of freedom of religion or belief is illegal.

Asked if the authorities are willing to register the Ahmadis if a new application is made, Orozaliyev replied: "We will see, we will analyse the situation and decide." Asked if this meant yes or no, Orozaliyev angrily replied: "Do not interpret my comments, I said what I said."

Asked if the Ahmadi Muslims have any hope of regaining registration, Orozaliyev repeated his previous answer. He then put the phone down.

Official reluctance to obey law

Some officials are unwilling to act on their domestic and international legal obligations. Commenting on a UN Human Rights Council recommendation to "remove all restrictions incompatible with article 18 of the Covenant [on Civil and Political Rights]", 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 the Constitutional Chamber ruling on where a religious organisation may operate, Botoyev claimed that the ruling did not mean what it clearly states it does (see F18News 30 October 2014 http://www.forum18.org/archive.php?article_id=2011).

Asked why the authorities continue pressuring Jehovah's Witnesses to have registration in Osh and Jalalabad and other regions, despite the Constitutional Chamber decision rendering this unnecessary, SCRA Deputy Head Orozaliyev claimed to Forum 18: "There was a decision but the Religion Law has not changed yet. We are taking the current Law as our basis."

Asked if he thinks the SCRA is obliged to implement the Constitutional Chamber decision, he replied: "We are observing the present Religion Law until the Constitutional Chamber's decision is integrated into it. You need to ask Parliament about changes to the Law."

"They do not know Kyrgyzstan's laws and must study them"

However Judge Mukambet Kasymaliyev, Chair of the Constitutional Chamber, told Forum 18 on 20 May: "Everyone must abide by the Court's decisions as they become part of the law immediately after they are passed."

Asked what he thinks of local officials and the SCRA ignoring this legal requirement, Judge Kasymaliyev replied: "I cannot evaluate the actions of those officials. But it seems to me that they do not know Kyrgyzstan's laws and must study them."

Asked if any mechanism exists to ensure that the SCRA and local keneshes abide by the law, Irina Erkenova, Deputy Chair of the Parliament's Committee on Human Rights and Constitutional Legislation, told Forum 18: "Religious believers can address the SCRA, which is the highest organ on religious issues. If this does not satisfy them, they can go to Court." She added that Parliament's Education Committee "is also responsible to control the implementation of the Religion Law."

The telephones of Kanybek Osmonaliev, former Head of the SCRA and current Chair of the Parliament's Education Committee, as well as those of other Education Committee members, went unanswered on 21 May.

House arrest and "fabricated" prosecution of women continue

Two Jehovah's Witnesses, Nadezhda Sergienko and her daughter Oksana Koryakina, have been under house arrest since March 2013 for alleged swindling. Both women strongly deny the authorities' allegations, and Judge Sheraly Kamchibekov acquitted the two women of all charges. He told Forum 18 in November 2014 that "it was a fabricated case" and that he did not believe the prosecution's claims.

However, the prosecution appealed against the acquittal. The two women's co-believers have told Forum 18 that they think the arrests and detentions may be reprisals by the authorities for registration applications Jehovah's Witness communities have made.

The lawyer for the people alleged to have been swindled argues in appealing against the acquittal that Jehovah's Witnesses "do not have registration in Osh, Jalalabad and Batken regions". As Judge Kamchibekov observed to Forum 18, "this has nothing to do with the case" (see F18News 13 November 2014 http://www.forum18.org/archive.php?article_id=2015).

On 23 January 2015 Judges Aivar Kubatov, Mamasaly Toktomushev and Bolotbek Murzabekov of Osh Regional Court rejected an appeal by Tatyana Tomina, the lawyer for the people allegedly swindled, to return the case to the Prosecutor's office for extra investigation. Osh City Prosecutor's Office then appealed against this rejection to the Supreme Court, which on 3 March rejected that appeal. Tomina then appealed to the Regional Court to remove the judges who on 23 January rejected her appeal. On 31 March the Regional Court rejected this. Tomina then appeal to the Supreme Court, which on 19 May rejected it.

Yet Osh City Prosecutor's Office still continues with the case. Prosecutor Bayishbek Alykeyev refused to tell Forum 18 on 20 May why the cases are being prosecuted, stating that "the investigation of the case continues". When Forum 18 asked why it is necessary to keep the women under house arrest, Alykeyev replied: "It was imposed by the Investigators as a restriction when the case was opened originally, and it continues until the final decision on the case." Prosecutor Alykeyev then declined to speak further to Forum 18.

The case will be heard again within a month in Osh Regional Court, Jehovah's Witnesses told Forum 18 on 20 May. They added that they hope that Court "will finally end the house arrest, even if the Prosecution or the plaintiffs go on appealing".

Jehovah's Witnesses also hope that Koriakina and Sergienko will be acquitted again. "As the Court rejected both appeals of the plaintiffs, this may indicate that they are inclined to think that our believers are totally innocent," they commented. "However, we cannot guarantee what the Court will decide".

The two women's house arrest, Jehovah's Witnesses told Forum 18, "has created no major obstacles for our believers so far. When they want to leave Osh to visit their friends or relatives, or visit Bishkek for medical treatment, Osh Regional Court always gave them permission in a timely manner." (END)

For more background information see Forum 18's Kyrgyzstan religious freedom survey at http://www.forum18.org/archive.php?article_id=2013.

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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