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KYRGYZSTAN: Will government defend judges, lawyers and residents from police?

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

A Jehovah's Witness mother and daughter in Kyrgyzstan have been freed from house arrest, having been held since March 2013, in what a judge described as "a fabricated case", Forum 18 News Service has learned. But NSC secret police and ordinary police 10th Department officers repeatedly illegally tried to stop the two women's lawyers participating in the appeal hearing, and then invaded the judges' deliberation room when they realised that the women might be set free. Under international law some of the police should not have been at liberty, as they were involved in torturing other Jehovah's Witnesses. The two women's defence lawyers have publicly called for the ordinary police and NSC secret police officers who openly attacked lawyers' and judges' independence to be investigated on criminal charges, and if guilty punished according to the law. Officials have refused to tell Forum 18 if these and other official attempts to obstruct the rule of law will be subject to investigation and criminal charges.

A Jehovah's Witness mother and daughter were finally freed from house arrest on 29 October after 31 months, when a court in Kyrgyzstan's southern city of Osh finally upheld their acquittal, Forum 18 News Service has learned. But Osh regional National Security Committee (NSC) secret police and police 10th Department officers attempted to stop the two women's lawyers from participating in the appeal hearing brought by the State Prosecutor against the women. (The 10th Department supposedly deals with internal security and religious "extremism" issues.) Jehovah's Witnesses told Forum 18 that the women now intend to take their wrongful arrest and detention to the Supreme Court.

The lifting of house arrest means that after 31 months the two women – 35 year-old Oksana Koryakina and her 56-year-old mother Nadezhda Sergienko – can travel outside Osh without permission from the local authorities and will not be confined to their home during curfew hours. They have been under house arrest since March 2013 after the authorities alleged that they conjured live snakes from eggs and then swindled old women out of their life savings. The case was condemned by Judge Sheraly Kamchibekov, who acquitted the women in October 2014, as "a fabricated case" (see F18News 13 November 2014 http://www.forum18.org/archive.php?article_id=2015).

Jehovah's Witnesses think that the two women were arrested, charged and detained to punish their religious community for its applications for state registration (see F18News 2 April 2013 http://www.forum18.org/archive.php?article_id=1819).

The ordinary police and NSC secret police systematically attempted to stop due legal process in the appeal hearing by stopping the women's lawyers from attending court hearings and invading the judge's deliberation room when police realised the judge might find in favour of the two women. Officials have refused to tell Forum 18 if these and other official attempts to obstruct the rule of law will be subject to investigation or criminal charges.

Kyrgyzstan has also refused to investigate named police who tortured seven Jehovah's Witnesses during a raid on an Osh meeting for worship (see F18News 20 October 2015 http://www.forum18.org/archive.php?article_id=2112).

NSC secret police and ordinary police obstruct defendants' lawyers

The NSC secret police and ordinary police 10th Department officers tried to obstruct the three defence lawyers for Koryakina and Sergiyenko – local lawyer Nurlan Kachiyev, Shane Brady (a Canadian citizen), and Kostia Chernychenko (a Ukrainian citizen).

The hearing of the appeal case was initially scheduled for 4 pm on 28 October. But at 2 pm NSC secret police and ordinary police 10th Department officers came to the Hotel Classic in central Osh, where Kachiyev, Brady and Chernychenko, were staying as they were preparing to leave for the Court. The officers stopped the lawyers, checked their passports and identity and questioned them.

Many of the police 10th Department officers who harassed the lawyers also tortured local Jehovah's Witnesses, including community leader Nurlan Usupbayev, on 9 August. "The lawyers recognised them", Jehovah's Witnesses told Forum 18, "as they had seen the police on the video of the raid on the worship meeting." Under international law the police officers should have been under arrest as, under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kyrgyzstan

is obliged to arrest anyone suspected on good grounds of having committed torture and try them under criminal law (see F18News 20 October 2015 http://www.forum18.org/archive.php?article_id=2112).

"The officers said among themselves that, if the lawyers attempted to leave the hotel, they would be arrested", Jehovah's Witnesses told Forum 18. When the three lawyers came out of the hotel, the officers "tried to push them into a police car, which they could not do as they were drawing the attention of bystanders".

The lawyers finally reached the Court, but by the time they arrived the hearing had been postponed to 29 October, as the State Prosecutor in the case was absent.

On the way back to the hotel, Kachiyev, Brady and Chernychenko were harassed by the NSC secret police and ordinary police. "Officers pulled and pushed them to try to get them to come to Osh Police Station", Jehovah's Witnesses complained to Forum 18. "However, because the lawyers resisted and protested loudly about the officers' actions, a large crowd began to notice. And perhaps because of that the officers finally let them return to the hotel."

Illegal police summons

Officers remained in the hotel during the evening of 28 October watching the lawyers. Later that evening police left a summons for the lawyers to appear before Osh Regional Police Investigator Major Mahmud Sultanov at 9 am the following morning – one hour before the Court hearing was due to start.

The summons claimed that Tatyana Tomina, the lawyer for the people allegedly swindled, had made an unspecified complaint about the defence lawyers. Kachiyev, Brady and Chernychenko pointed out in reply that neither the police nor Tomina had any legal power to issue such a summons, which can only be issued by a judge (see below).

"Again the officials' intent was to stop our lawyers from participating in the hearing", Jehovah's Witnesses noted to Forum 18. The lawyers ignored the summons and participated in the 29 October hearing.

Police attack judge's independence, officials refuse to take action

When the police "understood that the Court was inclined to uphold the previous acquittal, which would also mean our believers' release from house arrest, they tried to force their way into the judges' deliberation room to influence the judges' decision," Jehovah's Witnesses told Forum 18. "The judges immediately came out and told those present in the court room about the incident."

Officials have refused to take action against the police attack on judicial independence. An Assistant (who did not give her name) to Deputy Interior Minister Kalybek Satyvaldiyev referred Forum 18 to Lieutenant Colonel Meder Myrzabayev, Osh Regional Police representative of the Interior Ministry, when Forum 18 asked what measures the Interior Ministry will take against its police officers.

Lieutenant Colonel Myrzabayev referred Forum 18 to Colonel Aziz Toshbulatov, of Osh Regional Police 10th Department – the Department whose officers attacked lawyers' and judges' independence, and tortured Jehovah's Witnesses. "Colonel Toshbulatov is leading the case now," was all Myrzabayev would say. Colonel Toshbulatov claimed to Forum 18 on 2 November that "it's a wrong number" when called. He then put the phone down when Forum 18 pointed out that this was the number the Interior Ministry had for him.

Mirlan Kongaytiyev, Osh City Deputy Prosecutor, also refused to tell Forum 18 whether the Prosecutor's Office will investigate the police harassment of the lawyers and judges. "I do not want to talk to you over the phone," he replied. "Please send your questions in writing." He declined to talk further to Forum 18. He has previously refused to say why Prosecutors will not prosecute torturers, but prosecuted their victims meeting for worship (see F18News 20 October 2015 http://www.forum18.org/archive.php?article_id=2112).

Acquittals upheld

Despite the police and NSC secret police's attacks on lawyers' and judges' independence, Judge Aivar Kubatov of Osh Regional Court upheld the original decision of Judge Sheraly Kamchibekov of Osh City Court on 7 October 2014 acquitting the women as they faced "a fabricated case" (see F18News 13 November 2014 http://www.forum18.org/archive.php?article_id=2015).

The women had still been held under house arrest since their acquittal as Tomina working with Osh City Prosecutors Office had repeatedly made various failed appeals against the acquittal (see F18News 19 August 2015 http://www.forum18.org/archive.php?article_id=2091). Jehovah's Witnesses told Forum 18 on 29 October that the numerous appeals had been brought "in order to prolong the house arrest of the two and the investigation of the case".

"Now the Regional Court once again upheld the acquittal of our believers. This decision is final, and they are free from house

arrest," Jehovah's Witnesses told Forum 18 on 29 October. "Prosecutors may once again bring the case to the Supreme Court, but even if they do so the believers will be free from arrest."

Illegal police summons rebutted

In a 29 October letter to police Major Sultanov, seen by Forum 18, the three Jehovah's Witness lawyers pointed out that the police acted illegally in summoning them. "The summonses violate Kyrgyzstan's law and Constitution because no concrete reasons or grounds for our appearance before the police are indicated, and therefore we will not obey the unlawful demand to report, nor answer any questions," Kachiyev, Brady and Chernichenko wrote.

"We understand that you summon us on the basis of [the Plaintiffs'] lawyer Tomina, who already challenged the legitimacy of our participation in the case as lawyers." They noted that the lower court, the appeal court and the Supreme Court rejected her appeals. The Courts established that "we legitimately participated in the case as the lawyers", they added.

Under the Criminal Procedural Code Article 382, Part 2, Supreme Court decisions "cannot be challenged, neither by Tomina, nor you, nor any other official."

The "question of examination of the competences of lawyers and their admittance into the Court procedure is exclusively under competence of the Judiciary."

The lawyers copied their letter to President Almazbek Atambayev's Office, General Prosecutor Indira Joldubayeva in the capital Bishkek and Osh City Prosecutor's Office

Police Major Sultanov told Forum 18 from Osh on 30 October that he summoned Kachiyev, Brady and Chernichenko "because a report was drawn up by the police 10th Department, which necessitated their appearance before the police." Asked on what grounds the lawyers were required to appear before the police, he replied, "I have not read the report."

Asked why he issued the summons without knowing what is in the report, Major Sultanov stated that "we will let them know when they appear before us." He would not say what legal authority he had for his demand, or why he chose a time when the lawyers would have been on their way to the court hearing. He then declined to talk further to Forum 18.

Lawyers ask for open criminal investigation of harassment

The lawyers also asked Major Sultanov to investigate on criminal charges the actions of the police 10th Department and NSC secret police against the rule of law.

They pointed out that Article 29 of the Law on the Legal Profession and Lawyers "directly bans any interference in a lawyer's legal professional activity". A lawyer "is not entitled to explain or testify the circumstances of their rendering of legal aid." The Law states that the detention, arrest, or body search of a lawyer "can only be carried out by a Court decision".

The three lawyers told Major Sultanov that they have video records proving the NSC secret police and the 10th Department police officers' interference with them.

The actions of the officers "are a crime foreseen in the Criminal Code Article 318-1, Part 2, which is punishable with deprivation of liberty up till five years".

"Such actions are also a crime foreseen in Part 2 of Article 322 of the Criminal Code, which is coercion to testifying. Moreover, it is a flagrant violation of Part 2 of UN General Assembly's 12th resolution (..), which calls on the states to take all necessary measures to guarantee the protection of any person, individually or association with others from any violence, threats, vengeance, actual or formal hostile discrimination, pressure or any other unauthorised actions (..)."

Stopped at airport

After the acquittals had been upheld in court on 29 October, ordinary police and NSC secret police officers briefly tried to detain the lawyer Brady at Osh Airport, when he was preparing to board a plane to Bishkek. "Police officers came and took Shane's passport from the flight officials," Jehovah's Witnesses told Forum 18. "However after a while, having talked to some authorities over the phone, they gave it back." Brady and Chernichenko were able to board the plane for Bishkek. "Evidently the officers were not happy with the results of the hearing," Jehovah's Witnesses observed.

Will authorities act against police attacks on lawyers' and judges' independence?

Asked what measures General Prosecutor Joldubayeva's Office will take over police attacks on lawyers' and judges' independence, her assistant Ozoda Omurzakbekova refused to comment on 30 October. She referred Forum 18 to Aynura Eshmambetova, Chief of

the General Section of the General Prosecutor's Office, who is responsible for responding to complaints. "We know of the case, but you need to talk to Eshmambetova on the execution of the response to the complaint." Several calls on 30 October to Eshmambetova went unanswered.

Osh Regional Court's Chancellery officials refused to comment on the case or harassment of the lawyers and judges. The officials (who did not give their names) on 2 November referred Forum 18 to the Court's Chair, Abdurasul Shamsiyev, and Judge Kubatov. However, their phones went unanswered that day. (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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