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KYRGYZSTAN: Impunity for officials, mob and torturers ignoring law

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

On 15 February Kyrgyzstan's Supreme Court rejected an appeal by Jehovah's Witnesses against refusal to register communities in Osh, Naryn, Jalal-Abad, and Batken, Forum 18 News Service has learned. And on 24 February the Supreme Court sent two Jehovah's Witnesses, Nadezhda Sergienko and Oksana Koriakina, for a new trial "in total disregard of the overwhelming and unchallenged evidence of my clients' innocence", their lawyer Shane Brady told Forum 18. Elsewhere, a court rejected an appeal by the registered Elchilik Zhiyini Church against Kemin Kenesh's halting of their activity despite a decision by the Constitutional Chamber of the Supreme Court. "Our decision must be followed", Akylbek Akhmatov of the Constitutional Chamber told Forum 18. He added that "the lawyers of the Kemin Church should refer to our decision in court". The Church has not been able to meet since August 2015 and was threatened with violence at a Kenesh (council) meeting. Police have refused to take action against people they witnessed threatening violence. In another case, the authorities have refused to bring officials who tortured Jehovah's Witnesses in Osh to justice.

On 15 February Kyrgyzstan's Supreme Court rejected an appeal by Jehovah's Witnesses against the State Commission for Religious Affairs' (SCRA) refusal to register four religious communities, Forum 18 News Service has learned.

In September 2014, a Constitutional Chamber of the Supreme Court decision removed two major obstacles to the registration of religious or belief communities: a restriction that a religious organisation is limited to carrying out its activity only in the place where it has its legal address; and a requirement that local keneshes (councils) must approve a list of 200 founding members of a religious organisation before it can apply for legal status. Yet officials have refused to follow this decision, and the SCRA is preparing a draft Religion Law ignoring it (see F18News 29 May 2015 http://www.forum18.org/archive.php?article_id=2067).

Under international human rights law (which Kyrgyzstan's Religion Law contradicts) state registration cannot be a precondition for exercising freedom of religion or belief, 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.osce.org/odihr/139046>).

Kyrgyzstan is an OSCE participating State.

"We asked the Supreme Court to cancel trial and appeal court decisions and to order the SCRA to approve our applications for the registration of four religious organizations in Osh, Naryn, Jalal-Abad, and Batken districts", Jehovah's Witness lawyer Shane Brady told Forum 18 on 24 February. The authorities have persistently obstructed many religious or belief communities in gaining registration (see Forum 18's Kyrgyzstan religious freedom survey http://www.forum18.org/archive.php?article_id=2013).

The authorities have also arrested and detained for 31 months on false charges two women, Nadezhda Sergienko and Oksana Koriakina, in reprisal for a registration application. On 24 February the Supreme Court sent the women for a fresh trial, despite many violations of due process and strong evidence of their innocence – including a judge describing it as a "a fabricated case" (see below).

Brady explained that "the SCRA refused our application, arguing that although Article 10(2) of the Religion Law had been declared unconstitutional by the 4 September 2014 decision of the Constitutional Chamber, Parliament had not yet amended the Law". 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 that "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." (see F18News 22 May 2015 http://www.forum18.org/archive.php?article_id=2064).

"According to the SCRA", Brady said, "the unconstitutional provision still remained in force." Lower courts agreed with the SCRA and the Supreme Court has not yet made its reasoning public. "We are waiting to see what exactly arguments the Supreme Court will give in its written decision."

Supreme Court officials who would not give their names and Press-Secretary Aynura Toktosheva refused to discuss the cases with

Forum 18 on 3 March, or put Forum 18 through to any officials who would discuss the cases.

Will the law be followed by officials?

Asked why the SCRA and Kemin Kenesh (see below) do not follow the Constitutional Chamber decision, SCRA Deputy Director Zakir Chotayev told Forum 18 on 3 March that "it is an arguable issue and it has been contested in many court cases". He then refused to discuss the issue more with Forum 18 and referred it to SCRA lawyer Zhanibek Botoyev.

Botoyev also claimed that "the issue has been contested in Courts". Asked what exact court cases he meant, and whether he respects the Constitutional Chamber decision, he replied "I will not discuss these issues with you" and declined to talk more to Forum 18.

No freedom of religion or belief even with registration

Even if a religious community has state registration, this does not mean that it can exercise freedom of religion or belief. In the northern Chuy Region, the Inter-District Economic Court on 14 December 2015 rejected an appeal by the registered Elchilik Zhiyini (Embassy) Protestant Church against a decision by Kemin Kenesh that the Church's activity should be stopped. The Church argued that the Kenesh had no such power, but the Court argued in a decision that Forum 18 has seen that, under Article 269 of the Civil Procedure Code, it had such a power. Article 269 describes the competence of a court to uphold or reject administrative decisions by the authorities.

The Church has not been able to meet for worship since August 2015 and was threatened with mob violence at the Kenesh meeting which halted its activity. Church lawyer Toktorbek Ahsirkul uuly told Forum 18 on 24 February that "we are challenging the unlawful decisions in the Regional Appeal Court. Church members are not gathering for worship officially, because they are afraid of more severe punishments by the authorities." (see below).

Ahsirkul uuly told Forum 18 that the Court gave "no reasonable arguments" for its decision. Judge Kurmanov of the Economic Court refused to answer when asked why the Court decided that a Kenesh could stop a religious or belief community exercising freedom of religion or belief. "They have appealed against our decision in the Regional Court, let us wait and see what it will decide," he told Forum 18 on 24 February.

Judge Jeksenaly Kurmanbayev, one of the Judges of the panel hearing the Church's new appeal in Chuy Regional Court on 24 February told Forum 18 that the initial hearing was postponed. This was because "a representative of the SCRA also needs to participate in the hearing". He did not say why this was and stated that "we are investigating whether or not the Kenesh can suspend the activity of the Church". He would not say how long the investigation will go on and commented that "attracting young people to the Church was brought up."

Warning, threats of violence

In late July 2015 Kemin Kenesh summoned Elchilik Zhiyini Church to a meeting at which it was told, Church lawyer Ahsirkul uuly told Forum 18, "that it must stop its activity since there are complaints and threats against the Church from local Muslims and that their legal documents are not in order."

Kenesh Vice-Speaker Bakhtiyar Kurmanaliyev confirmed this, and added that there were threats of violence made against the Church at the meeting and that the National Security Committee (NSC) secret police was present. "We received not only complaints but also threats that if the Church continued its activity, it could lead to bloodshed", he told Forum 18 on 24 February. "The Muslim group at the Kenesh meeting expressed threats to us once again. That's we decided it would be better to stop the Church at least temporarily to calm down the local people."

Asked how it is possible that a group of individuals can threaten others in the presence of the authorities and NSC secret police, Kurmanaliyev said "that's the reason we invited the law-enforcement agencies". Asked if the authorities had taken action against those who threatened the Church, Kurmanaliyev claimed that "it is none of my business but it is up to NSC and police. We cannot interfere in their work, and you need to ask them."

"Our colleagues were in that Kenesh meeting since it is our duty to calm down possible conflicts between groups of local citizens", Chuy Regional Police Press-Secretary told Forum 18 on 26 February after consulting police chief Kapar Batyrkanov. "But the police are not investigating any threats as Church members did not file a complaint". Asked why the police did not take action against threats of violence they themselves witnessed, Toktosunov claimed without giving any details that "the case was referred to court, and we cannot make any further comments".

The authorities in Kyrgyzstan have a long history of complicity with violence and failure to protect people. Many in Kyrgyzstan think this was a contributory factor in the December 2015 murder of an Ahmadi Muslim (see eg. F18News 18 February 2016 http://www.forum18.org/archive.php?article_id=2150). The state has also repeatedly failed for many years to stop violence and coercion to change beliefs against people who want to peacefully bury their dead, with the religious ceremonies and in the

cemeteries they would wish (see eg. F18News 6 June 2014 http://www.forum18.org/archive.php?article_id=1966).

Ban

On 5 August Kemin Kenesh made a decision (which Forum 18 has seen), signed by Kenesh Vice-Speaker Kurmanaliyev, to stop the activity of the Church. It stated that the NSC secret police on 9 July and the SCRA on 29 July both claimed that the Church violated the Religion Law as it is officially registered at one address but holding meetings at a different address. These claims directly contradict the Constitutional Chamber of the Supreme Court's September 2014 decision that this is legal (see above).

Asked whether the Kenesh was aware of the Constitutional Chamber decision and why the Kemin authorities did not follow it, Kurmanaliyev replied that "I am not answering for the whole of Kyrgyzstan".

The Kemin decision also says that a group of local Muslims complained to the Kenesh on 15 July that the Church is: "adding young Kyrgyz people to its ranks by misleading them". Asked why the Church members cannot share their faith with others and children, and whether there is freedom of religion or belief in Kyrgyzstan, Vice-Speaker Kurmanaliyev replied: "Kyrgyzstan respects religious freedoms but at the meeting the Church did not provide us with documents proving they can do religious activity". Asked why the Kenesh thinks it is their duty to interfere in the activity of the Church, he replied that "there could have been a scandal, we were concerned".

Asked why the Kenesh made a decision to stop the Church, which has official registration, Vice-Speaker Kurmanaliyev claimed that "we asked the Church to show us their founding documents and they did not do so". He then claimed that "in that meeting they did not want to show us their documents but did so some time later. We had made our decision by that time".

Church lawyer Ashirbek uuly told Forum 18 that "the Church did not provide documents as the Kenesh has no rights to stop its activity. Nowhere in the law are they given such a competence".

Asked by what authority Kemin Kenesh halted the Church's activity, Kurmanaliyev claimed that "I am busy. If you came to our office I could show you our competences from the official documents".

"Our decision must be followed in the whole territory of Kyrgyzstan"

"Our decision must be followed in the whole territory of Kyrgyzstan", Akylbek Akhmatov, Advisor to the Chair of the Constitutional Chamber of the Supreme Court, told Forum 18 on 2 March. He added that "those who do not follow it must be held responsible".

While Akhmatov did not wish to directly comment on the actions of Kemin Kenesh, he added that "the lawyers of the Kemin Church should refer to our decision in court".

Supreme Court sends freed women in "fabricated case" for another trial

In October 2015 a Jehovah's Witness mother and daughter, Nadezhda Sergienko and Oksana Koriakina, were freed from house arrest, having been held since March 2013, in what a judge described as "a fabricated case". 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 (see F18News 3 November 2015 http://www.forum18.org/archive.php?article_id=2116).

Yet the Supreme Court on 24 February 2016 granted an appeal by Nazar Kenzheyev and D. Kachybekov of Osh City Prosecutor's Office against the decision to acquit and free Sergienko and Koriakina. The Supreme Court also sent the two women for a new trial in Osh City Court "in total disregard of the overwhelming and unchallenged evidence of my clients' innocence", their lawyer Brady told Forum 18.

"Both the trial and appeal courts, in detailed written reasons dated 7 October 2014 and 25 October 2015, agreed that Oksana Koriakina and Nadezhda Sergienko were innocent of the criminal charges. The trial court had concluded that both women had in fact been wrongly targeted based on religious prejudice by investigators from the Osh Department of Internal Affairs and the Osh City Prosecutor's office", Brady explained.

Brady noted that Osh City Prosecutor's office "raised the identical arguments they raised at trial and on appeal", but despite this they were represented in the Supreme Court by a prosecutor from the Prosecutor General's Office. "We are very concerned about the prospects of this case now returning to Osh City Court", Brady stated. He anticipated that it may take a month for the case to be sent

back to Osh.

The Judges of the Supreme Court who heard the case were Kanatbek Turganbekov, Busurmankul Baktygulov and Kanibek Bokoyev. Judges Turganbekov and Baktygulov did not answer their phones on 3 March. Judge Bokoyev refused to discuss the case with Forum 18, claiming that "I cannot make comments over the phone".

Supreme Court does partial justice in one case

However, on 2 March the Supreme Court did reject Osh Prosecutor's appeal against the acquittal of Jehovah's Witness Nurlan Usupbayev, a Jehovah's Witness leader who was tortured along with fellow believers by Osh Police. They were arrested and charged after a 9 August raid on them as they were meeting for worship. During the raid the Jehovah's Witnesses were tortured (see F18News 19 August 2015 http://www.forum18.org/archive.php?article_id=2091).

The Supreme Court rejected Osh Prosecutors' appeal because they had missed the limitation period to file the appeal, Brady told Forum 18. "So, the appeal court decision and trial court decision which held Mr. Usupbayev was innocent of the charges are in force, and the Prosecutors will now have no further ability of to appeal it."

International obligations

The United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Kyrgyzstan acceded to on 5 September 1997, defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

Under Article 6 of the Convention Kyrgyzstan is obliged to arrest any person suspected on good grounds of having committed torture. Under Article 4 Kyrgyzstan is obliged to try them under criminal law which makes "these offences punishable by appropriate penalties which take into account their grave nature".

On 29 December 2008 Kyrgyzstan acceded to the Optional Protocol to the Convention, whose purpose is to "establish a system of regular visits undertaken by independent international and national bodies". The UN Subcommittee on Prevention of Torture (SPT) carried out its first regular visit to Kyrgyzstan from 19 to 28 September 2012. Its report found that "torture and ill-treatment is prevalent in the country", caused by among other factors "the impunity and general lack of accountability of officials" (see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fKGZ%2f1&Lang=en).

Torturers free and unpunished

Osh City Prosecutor's Office refused – despite their clear obligations in international law - to open a criminal case against named officers of Osh City Police over their torture of seven members of a Jehovah's Witness community during a 9 August 2015 raid on a meeting for worship. The authorities also refused to follow their international obligations by arresting the police officers involved. The victims led by Usupbayev challenged this refusal to the General Prosecutor's Office (see F18News 20 October 2015 http://www.forum18.org/archive.php?article_id=2112).

"Although we have video and audio recordings proving the police beat the persons gathered for the religious service, Osh Prosecutor's Office refuses to file criminal charges and the Prosecutor General's office has to date refused to intervene and order that the police be criminally charged", Brady told Forum 18. "We appealed to the Prosecutor General's office three times demanding that the police be criminally charged; the last appeal was simply referred back to the Osh City Prosecutor, who refused to start a criminal case."

Almaz Subandykov of the Chancellery and other officials (who would not give their names) from the Prosecutor General's Office in the capital Bishkek on 1 March refused to tell Forum 18 what they are doing to bring the torturers to justice.

Prosecutor on duty Marat Busurmankulov of Osh Prosecutor's Office refused on 1 March to state why they refuse to bring the torturers to justice. "We cannot give you such information over the phone", he claimed. He then refused to talk further. (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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