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KYRGYZSTAN: Police impunity for torturing people at religious meeting?

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

Kyrgyzstan is refusing despite medical evidence to investigate named police who tortured seven Jehovah's Witnesses during a raid on an Osh meeting for worship, Forum 18 News Service has learned. The victims have complained to the General Prosecutor's Office. Under the UN 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. A 2012 UN Subcommittee on Prevention of Torture (SPT) visit found that "torture and ill-treatment is prevalent", due to among other factors "the impunity and general lack of accountability of officials". Asked by Forum 18 why Prosecutors will not prosecute torturers but prosecuted their victims meeting for worship, Deputy Osh Prosecutor Mirlan Kongaytiyev claimed: "We just want the law and justice to be fulfilled". Osh Prosecutors continue to try to convict two Jehovah's Witnesses of, among other things, conjuring live snakes from eggs. Nadezhda Sergienko and Oksana Koryakina have been under house arrest since March 2013, despite a judge condemning "a fabricated case".

Osh City Prosecutor's Office in Kyrgyzstan has refused 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 raid on a meeting for worship, Forum 18 News Service has learned. The victims, led by Nurlan Usupbayev, are now challenging this refusal to the General Prosecutor's Office.

Jehovah's Witnesses complained to Forum 18 on 14 October over Osh Prosecutor Elisa Tazhibayeva's refusal to open a criminal case against the officers who carried out "this brutal raid". "She accepted that the incident took place, and that even some days later the victims had physical bruising from the strangulation. But still she claims there was no evidence of the police violence. Instead, she says it was sufficient that the officers receive administrative discipline."

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).

Victims not torturers prosecuted

Instead of arresting and punishing the torturers, police and Prosecutors sought to punish Usupbayev for leading what they claimed was an "illegal" religious meeting, but the judges at both the first and the appeal courts dismissed the case.

Asked by Forum 18 on 1 October why the Prosecutor's Office will not investigate police torture, but continues to seek to punish Jehovah's Witnesses exercising their right to freedom of religion or belief, Deputy Osh City Prosecutor Mirlan Kongaytiyev responded: "We just want the law and justice to be fulfilled."

Prosecutors have also appealed against the acquittals by Osh City Court of two female Jehovah's Witnesses accused of swindling. The two have been under house arrest since March 2013 (see below).

Medical certificates attest torture

Usupbayev and his fellow community members were detained by officers of Osh Police's 10th Division on 9 August, while they were holding a worship service in a rented hall on the second floor of a cafe in the centre of Osh. Officers beat one man for filming the raid on his phone and "his screams of terror and pain could be heard throughout the building". At the police station, officers beat six participants, three of whom were strangled "to the point that they passed out" (see F18News 19 August 2015 http://www.forum18.org/archive.php?article_id=2091).

On the day of the raid, 9 August, one of those attacked by the police, Tynchtykbek Olzhobayev, sought a medical examination at Osh City Clinical Hospital to document his injuries. Surgeon Doctor Emil Asylbekov of Osh City Clinical Hospital issued a medical certificate stating that Olzhobayev had multiple bruises on his neck, right shoulder and face.

The following day, 10 August, six more of the victims went to the same hospital for a medical examination. Surgeon Doctor Emil Turgunbekov issued certificates to Usupbayev, Chorobek Kadyrov, Bakytbek Kubanychbek uulu, Manas Bilal uulu, Razanbek Korgolov and Islamedin Kombarov, stating that they showed bruises on their forearms and necks.

The seven medical certificates from Osh City Clinical Hospital – seen by Forum 18 – are all stamped by the hospital. Dr Asylbekov confirmed that Olzhobayev asked him for the certificate on 9 August. "I did not write when exactly the bruises took place, but they were fresh", he told Forum 18 from Osh on 19 October.

Photos of Usupbayev, Kadyrov and Bilal uulu taken in the days after their torture clearly show marks of strangulation and abrasions on their necks and faces. Jehovah's Witnesses provided the photos to Forum 18 on 18 August, less than 10 days after the incident.

Osh Prosecutors refuse to investigate police torture

Prosecutors have failed to accept a request from the victims to open a criminal case against the police officers responsible for the torture, contrary to Kyrgyzstan's obligations under international law (see F18News 19 August 2015 http://www.forum18.org/archive.php?article_id=2091).

In their 17 August complaint to the Osh City Prosecutor's Office, Usupbayev and the other victims asked it to open a criminal case against Officer Kozhobek Kozubayev and Lieutenant Colonel Nurbek Sherikbayev of Osh Police's 10th Division, which oversees religious or belief cases. To support their demand they provided copies of the medical certificates they had obtained at Osh City Clinical Hospital on 9 and 10 August.

However, Elisa Tazhibayeva of Osh City Prosecutor's Office, in a decision of 18 September seen by Forum 18, claimed not enough evidence was available to open a criminal case. "Osh City Prosecutor's Office has examined your complaint against officers of Osh City Police's 10th Division," she wrote, "and with a decision from 18 September 2015 refused to initiate a criminal case for lack of facts and circumstances constituting a breach of the law in the actions of the officers."

However, Tazhibayeva admits, "Regarding the rude treatment by officers of the Osh City Police Department, expressed in denigration and insults, and the failure to adhere to the ethics for civil servants, a notice has been issued to the directors of that agency for them to remedy these violations, to not permit such violations of the law in the future, and to bring the guilty officers to strict disciplinary accountability."

Both police and prosecutors were highly evasive and refused to commit themselves to any investigation of torture, when asked by Forum 18 after the raid whether this crime would be investigated and the perpetrators prosecuted (see F18News 19 August 2015 http://www.forum18.org/archive.php?article_id=2091).

Prosecutor's forensic examination

Jehovah's Witnesses told Forum 18 that the Prosecutor's Office commissioned its own forensic medical examination of five of the victims. The Prosecutor's Office sent them to the Forensic Medical Expertise Centre of Osh City - more than 10 days after the incident took place and after the independent examination of the victims by Osh City Clinical Hospital.

Prosecutor Tazhibayeva in her 18 September decision claims that the forensic medical examinations were commissioned to determine the severity of the physical harm to Usupbayev, Kubanychbek uulu, Bilal uulu, Kadyrov and Olzhobayev.

"According to the conclusions from forensic medical expert studies No. 2056 dated 21 August 2015, No. 2064 dated 25 August 2015, No. 2058 dated 28 August 2015, and No. 2194 dated 8 September 2015, however, the injuries caused to Kadyrov, Usupbayev,

Bilal uulu, and Olzhobayev did not result in short-term health problems, but, due to incomplete descriptions of the nature, colour, form and location of the injuries in the medical chart from the examination by a neurosurgeon at Osh City Clinical Hospital on 9 August 2015, it was impossible to determine when those injuries occurred. According to the conclusion from forensic medical expert study No. 2153 dated 1 September 2015, no bodily injuries were discovered on Kubanychbek uulu."

She does not explain why this examination contradicts the findings of Osh City Clinical Hospital.

Asked why the Prosecutor's Office did not criminally investigate police officers Kozubayev and Sherikbayev, as well as other officers who tortured the Jehovah's Witnesses, Osh City Deputy Prosecutor Kongaytiyev told Forum 18: "We did not find any evidence that the officers physically abused them."

When Forum 18 asked how the Prosecutor's Office explains the bruises and strangulation marks found by Osh City Clinical Hospital on the bodies of the victims, as noted in the 9 and 10 August medical certificates and photos seen by Forum 18, Kongaytiyev responded: "We don't know how that happened." Asked why the Prosecutor's Office did not or will not investigate who inflicted the injuries on the victims, he would not say. "I don't know all the details of the case," he claimed.

When asked by Forum 18 on 16 October why the Prosecutor's Office did not or will not investigate and identify those who beat and tortured the Jehovah's Witnesses, Prosecutor Tazhibayeva replied that: "I already said in my decision that it is not possible to determine exactly when the injuries took place, and we do not have any witnesses." When Forum 18 asked how the injuries occurred, she did not answer.

"Witnesses" against the Witnesses

Prosecutor Tazhibayeva claims in her decision that four people she identifies as witnesses in the case told the Prosecutor's Office that the police did "not use violence" against the Jehovah's Witnesses. The alleged witnesses include Imam Keneshbay Ryskeldi uulu, who represents Osh City Kaziyyat, the state-sponsored Muslim Board's Osh City branch. However, Tazhibayeva does not specify why and how the Imam came to the scene. She also omits to mention that the Imam was a participant in the raid during which the torture took place (see F18News 19 August 2015 http://www.forum18.org/archive.php?article_id=2091).

According to Tazhibayeva's decision, Ryskeldy uulu claims that he came there "because he heard that Jehovah's Witnesses were holding an illegal meeting". The Imam told the Prosecutor's Office that he went there with Aziz Abdrakhmanov, Secretary of the Osh City Kaziyyat.

The three other alleged witnesses mentioned in Tazhibayeva's decision were two people she said were customers of the café and an employee of the café. They also allegedly told the Prosecutor's Office the police were "not violent".

Zh. Abdurasulova, one of the claimed witnesses, admits that she "called an acquaintance, police officer Nurbek Sherikbayev, and asked him to come and make sure the meeting was legal." She told the Prosecutor's Office that "some time later police officers came and went up to the second floor. They took away about 10 Jehovah's Witnesses. We did not see any violent or unlawful actions on the part of the police officers."

Jehovah's Witnesses told Forum 18 that they do not know Abdurasulova or any other of the alleged witnesses Prosecutor Tazhibayeva mentions. They noted that only members of their community were present in the second-floor hall, where the worship service took place and where the police detained and tortured community members.

Prosecutor Tazhibayeva claimed to Forum 18 on 19 October that Abdurasulova does "not work for the police". However, she refused to say how Abdurasulova knows Officer Sherikbayev. "You have a copy of my written response to the Jehovah's Witnesses" she said before putting the phone down.

Tazhibayeva did not explain why other members of the Jehovah's Witness community who saw or heard the torture inflicted were not regarded as "witnesses" to the crimes committed by the police.

"It is their duty to work with the population"

Asked why the Muslim Board's representatives in Osh were asked to participate in the raid, Tazhibayeva declined to answer. "I am busy, and I cannot talk to you." She then put the phone down. The Muslim Board is controlled by the state (see Forum 18's Kyrgyzstan religious freedom survey http://www.forum18.org/archive.php?article_id=2013).

Similarly, Deputy City Prosecutor Kongaytiyev was also unable to say why an Imam from the Muslim Board participated in the Police raid on the Jehovah's Witness meeting.

Imam Ryskeldy uulu and Secretary Abdrakhmanov participated in the raid on the Jehovah's Witnesses meeting "because the people invited them there", Uboydullo azhy Sarybayev, Kazy of Osh City, told Forum 18 on 15 October. He refused to specify who invited

his officials.

Asked why they took part since they are responsible for work with Muslims, not Jehovah's Witnesses, Sarybayev would only respond: "It is their duty to work with the population." When Forum 18 insisted with the question, he replied, "Please, either send your representative to us in person or talk to us through the National Security Committee (NSC) secret police." He then put the phone down.

Jehovah's Witnesses complain to General Prosecutor's Office

Jehovah's Witnesses submitted a complaint to the General Prosecutor's Office in the capital Bishkek on 25 September, asking it to investigate the raid and torture inflicted on people, they told Forum 18. They also asked for an investigation of Osh City Prosecutor's Office refusal to open a criminal investigation against the police officers.

Jehovah's Witnesses also provided the General Prosecutor's Office with documentation of the torture inflicted, including photographs and medical certificates from Osh City Clinical Hospital of the injuries and bruises inflicted on the seven.

In the complaint, seen by Forum 18, the Jehovah's Witnesses state that the Osh City Prosecutor did not open a criminal case despite "clear evidence of the severe violations" against their believers. "The severity of the injuries and the fact the Prosecutor's Office could not determine the time of the injuries cannot be a reason for it to decide not to open a case," they said.

Jehovah's Witnesses also complain that the injuries are "not the only reason" why a criminal case must be opened. Audio-records of the meeting prove that Officers Kozubayev and Sherikbayev and Imam Ryskeldy uulu "disrupted peaceful worship", they state, and "threatened and insulted" community members.

"So far we have not received a response from the General Prosecutor's Office," Jehovah's Witnesses told Forum 18. "According to the law It has one month to respond."

Prosecution of torture victim fails

Osh Police have sought to punish the man they regarded as leading the 9 August "illegal" meeting for worship in the rented hall of the cafe. Police brought a case against Usupbayev under Administrative Code Article 395, Part 2 ("Violation of procedures for holding religious meetings and processions, and other religious rites"). The punishment for this is a fine of up to five Financial Indicators (FIs).

In 2006 Kyrgyzstan's Parliament set one Financial Indicator at 100 Soms. This means that the maximum fine for this "offence" is 500 Soms (about 68 Norwegian Kroner, 7 Euros or 8 US Dollars).

However, on 21 August Judge Bolot Satybaldiyev of Osh City Court dismissed the case. The Judge said in his decision, seen by Forum 18, that Usupbayev's "actions lack the constituent elements of the violation" of Article 395, Part 2.

On 9 September, in a document seen by Forum 18, Deputy Osh City Prosecutor Kongaytiyev appealed to Osh Regional Court against Judge Satybaldiyev's 21 August acquittal decision. He demanded that the case be retried by another panel of Judges in the City Court.

However, on 16 October Judge Aivar Kubatov of the Regional Court upheld the Osh City Court decision, and refused to re-open the administrative case against Usupbayev.

Who "incorrectly interpreted legislation of the Kyrgyz Republic"?

In his 9 September suit against the first acquittal, Prosecutor Kongaytiyev claimed that Usupbayev violated Administrative Code Article 395, Part 2 "because it was proven that a religious meeting was held, with sermons and the singing of psalms, and that a large number of persons participated in the meeting, including 14 minors, without obtaining appropriate permission from the local state authorities."

Kongaytiyev insisted that according to the charter of the Religious Centre of Jehovah's Witnesses of Kyrgyzstan, local communities of Jehovah's Witnesses "must register with the appropriate state agencies, which includes obtaining necessary registration on the territory of the city of Osh, which requires approval from the local Kenesh [Council]."

Kongaytiyev claimed that Judge Satybaldiyev "incorrectly interpreted the norms of legislation, did not hear out the opinion and arguments of representatives of the police, and incorrectly interpreted legislation of the Kyrgyz Republic in his ruling."

Judge Satybaldiyev, however, told Forum 18 on 15 October that, as he indicated in his decision, Jehovah's Witnesses had not violated the Law. "I don't understand why the Prosecutor's Office appealed against our decision, but I won't comment on their

actions." He declined to discuss the case further with Forum 18.

In his acquittal decision, seen by Forum 18, Judge Satybaldiyev notes that the Jehovah's Witnesses are "registered as a religious organisation in accordance with the procedure established in the Kyrgyz Republic". He cites the 4 September 2014 decision of the Constitutional Chamber of the Supreme Court, which ruled that a religious organisation is not limited to carrying out its activity only in the place where it has its legal address (see F18News 30 October 2014 http://www.forum18.org/archive.php?article_id=2011).

Prosecutors challenge another acquittal in "fabricated case"

Osh City Prosecutor's Office have also appealed against the acquittal by Osh City Court of two Jehovah's Witnesses, Nadezhda Sergienko and her daughter Oksana Koryakina. The two 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).

Osh City Prosecutor's Office alongside Tatyana Tomina, the lawyer for the people allegedly swindled, failed several times in 2015 in their attempts to return the case for further investigation by Prosecutors as well as in their challenge of the competences of the Judges who heard the case or the Lawyers who defended the Jehovah's Witnesses. In all cases the Supreme Court and the Osh Regional Court rejected the Prosecutor's Office appeals (see F18News 22 May 2015 http://www.forum18.org/archive.php?article_id=2064).

Osh Regional Court is due to hear the Prosecutor's Office's latest appeal on 21 October, Jehovah's Witnesses told Forum 18.

Asked why, after so many failed attempts to convict Sergiyenko and Koryakina, the Prosecutor's Office still pursues the case, Prosecutor Kongaytiyev responded: "It is the plaintiffs in the case who demand us to do so, not us, and we must respect the law." Despite the many violations of legal process and claims in the case materials that the two women can conjure live snakes from eggs, Kongaytiyev insisted that "we have nothing against Jehovah's Witnesses but we must follow the law".

Asked whether the Prosecutor's Office will again challenge a court decision if the two women are once more acquitted, he replied that "I cannot say but it is an open question".

Jehovah's Witnesses told Forum 18 that the authorities were unable to prove in court either that the alleged offences took place, or that if they had taken place that the defendants were responsible. They think the entire case is a reprisal for applying to register a local community in Osh Region (see F18News 2 April 2013 http://www.forum18.org/archive.php?article_id=1819). (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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If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY