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KYRGYZSTAN: No effective punishment for body snatching

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Only three people prosecuted from 70, including imams and officials, who twice dug up a deceased Protestant's body. The two convicted were not given the jail sentences the law requires. Human rights defenders and the family condemned the punishments as "not appropriate and not effective".

In October 2016 officials co-operated with mobs who twice dug up the body of deceased Protestant Kanygul Satybaldiyeva in Kyrgyzstan's south-western Jalal-Abad Region. After prolonged delays, the authorities put on trial three men out of the more than 70 people – including state officials and two imams – who either dug up the body twice, buried it in an unknown location without the family's knowledge or consent, or did nothing to prevent the crime.

On 12 January 2017 two of the three men brought to trial – none of whom are officials or imams - were convicted and given suspended jail sentences. The third was acquitted.

However, the Criminal Code requires jail sentences with deprivation of liberty, not suspended sentences, for this type of crime. A human rights defender, who wished to remain anonymous for fear of state reprisals, commented: "The authorities will not prosecute their own people. But of course they will prosecute simple citizens. Obviously those who were prosecuted could not have done it on their own; they carried out the orders of the imams and officials" (see below).

In early November 2016 a police officer showed Zhyldyz Azayeva, Satybaldiyeva's daughter, a patch of open grassland 15 kilometres (10 miles) from the nearest settlement in Jalal-Abad Region. He insisted the authorities had buried her mother there. The land was not a cemetery. He did not explain why police officers allegedly buried her there, nor gave any proof that he is telling the truth (see F18News 15 December 2016 http://www.forum18.org/archive.php?article_id=2239).

As of 20 January 2017, officials have still not told Azayeva or other family members what exactly they did with her mother's body.

The government has long failed to ensure that people may exercise their right to bury their dead with the religious ceremonies and in the cemeteries they would wish. Protestants, Baha'is, Jehovah's Witnesses and Hare Krishna devotees have complained about this problem, which causes families and communities great distress (see Forum 18's Kyrgyzstan religious freedom survey http://www.forum18.org/archive.php?article_id=2013).

These freedom of religion and belief violations still continue in 2017 (see below).

Interrogations, charges

On 11 January 2017 Judge Gulmira Kodjobekova of Ala-Buka District Court told Forum 18 that five individuals were being interrogated by police. However, she said that only three people were being tried. She said that the three were charged under Criminal Code Article 263, but refused to give their names or more details of the case.

Article 263 ("Defilement of the body of a deceased person or a place of burial")

Part 1

Defilement of the body of a deceased person, or the destruction, damaging, or desecration of a place of burial, gravestone, as well as stealing items from inside or on top of the grave shall be punished by:

- community service (public works) for between 180 and 200 hours;
- or deprivation of liberty for up to three years.

Part 2

If the same actions are carried out by a group of persons or repeatedly, they shall be punishable with deprivation of liberty for between three and five years.

Trial, sentences "not appropriate and not effective"

The trial began in Ala-Buka District Court on 29 December 2016 of Emilbek Zhanayev and Kubanych Erkavlianov, both of whom are 28 years old, as well as 35 year old Bekturgan Kulchunov, a resident of Ala-Buka village.

At the conclusion of the trial on 12 January 2017, Zhanayev and Erkavlianov were convicted and each given three year suspended jail sentences – not jail with deprivation of liberty as Criminal Code Article 263 requires. Kulchunov was acquitted.

Maksat Koychumankulov was also interrogated by police, but was not committed for trial.

The three men on trial were part of a mob of about 70 people who participated in the second of two exhumations of Satybaldiyeva's body in Ala-Buka in Jalal-Abad Region.

On 14 October 2016, a mob prevented Satybaldiyeva's burial. The 76-year old was a member of the Jesus Christ Protestant Church. On 14 and 17 October, mobs in the nearby village of Oruktu and then in the central cemetery of Ala-Buka District twice exhumed her body. Their objections were to a non-Muslim being buried in state-run village cemeteries.

Police and National Security Committee (NSC) secret police officers, as well as local and regional officials, observed the exhumations but did nothing to stop them. They also failed to take action when individuals called on members of Satybaldiyeva's family to be killed (see F18News 20 October 2016 http://www.forum18.org/archive.php?article_id=2226).

Human rights defenders and Satybaldiyeva's daughter Azayeva told Forum 18 on 16 January that the punishments are "not appropriate and not effective".

Judge Kodjobekova did not answer when asked by Forum 18 why she gave only suspended sentences to the convicted criminals, and not jail sentences as Criminal Code Article 263 requires. On 19 January she claimed: "We already mailed the verdict to the Plaintiff [Azayeva, Satybaldiyeva's daughter], you can ask them about the details." The Judge then put the phone down. Subsequent calls to her phone on the same day went unanswered.

As this was a criminal case and the prosecution was brought by the state, Azayeva was not the Plaintiff in the case, Forum 18 notes.

However, as of 19 January Azayeva had not received a copy of Judge Kodjobekova's verdict.

On 18 January Forum 18 asked Aripzhan Sulaimanov, Deputy Prosecutor of Ala-Buka District who represented the prosecution in the trial, whether the punishments are effective. However, he too did not answer. He then claimed to Forum 18 that "I am busy" and put the phone down. Subsequent calls were not answered.

Why were only three out of 70 people put on trial?

Human rights defenders, some of whom wished to remain anonymous for fear of state reprisals, also complained that the prosecution did not indict Shumkar Chynaliyev (Chief Imam of Ala-Buka District), or Tynchtyk Orozmatov imam of Sary-Taala village where Satybaldiyeva lived, who incited mobs in two villages to dig up the body.

The human rights defenders also state that Sonunbek Akparaliyev, Akim (Head of Administration) of Ala-Buka District, ordinary police, and NSC secret police officials who watched the exhumations and filmed them, but did nothing to stop them, should also be brought to trial for their actions. Witnesses also stated that Akim Akparaliyev incited the mob.

Kulchunov, who was acquitted in court, and questioned suspect Koychumankulov told Radio Free Europe/Radio Liberty on 6 January that Akim Akparaliyev, Imams Chynaliyev and Orozmatov, police, and other state officials were present during the second exhumation in Ala-Buka village.

Koychumankulov stated that the "body was dug up by about 70 people. I also took out a few shovels of soil, which was filmed". He condemned the trial of only a few people as "unfair". He said that Akim Akparaliyev "was there also and was angry and shouting why the body was buried inside the cemetery and not outside it as he had ordered."

Kulchunov also complained that he was "disappointed" that the police, the District Akim, and other officials who were present were not also put on trial. He stated that "they did not stop us and did not even warn us that there is a responsibility under the law for digging up a grave".

"The authorities will not prosecute their own people"

On 4 January 2017 the Court questioned Imams Chynaliyev and Orozmatov, Gulnara Umarova, Head of Ala-Buka village administration, and lower rank police officials as witnesses. "They all denied to the Court that they were part of the exhumation," Azayeva told Forum 18. "They told the Court that they were there to 'give an explanation to the people that they should not exhume the body'."

Azayeva complained that the Court "did not make them responsible as I had asked in my complaints to the Interior Ministry and the Prosecutor-General's Office in October" (see F18News 15 December 2016 http://www.forum18.org/archive.php?article_id=2239).

Azayeva also complained that Akim Akparaliyev was "not summoned at all by the Court and questioned."

A human rights defender, who asked not to be named for fear of state reprisals, told Forum 18 on 17 January: "I am not surprised that neither the Akim of the District nor the Imams were prosecuted. The authorities will not prosecute their own people. But of course they will prosecute simple citizens." They elaborated that "Obviously those who were prosecuted could not have done it on their own; they carried out the orders of the imams and officials."

The authorities "could have made this prosecution a lesson for others"

"I do not think that the punishments will be effective since burial problems have existed for years and incidents of burial obstruction have occurred repeatedly," Galina Kolodzinskaya of Kyrgyzstan's Interfaith Council told Forum 18 on 16 January. The authorities "must resolve this issue within a legal framework, and allocate plots of land to non-Muslims for cemeteries".

Kolodzinskaya also observed that the authorities "could have made this prosecution a lesson for others to demonstrate that they want to stop similar future cases. But obviously they did not do that."

A Jehovah's Witness, who wished to remain unnamed for fear of state reprisals, pointed out to Forum 18 the unfairness of the authorities prosecuting "our believers on fabricated charges" while not "seriously prosecuting those who participated in the exhumations".

One example of such fabricated charges is the case of Jehovah's Witnesses Nadezhda Sergienko and Oksana Koriakina, who have faced house arrest for months and an ongoing legal battle, despite many violations of due process and strong evidence of their innocence – including a judge describing it as a "a fabricated case" (see F18News 3 March 2016 http://forum18.org/archive.php?article_id=2155). The next hearing is due on 1 July 2017, and at present the mother and daughter are not under house arrest.

"Let the relatives ask the Prosecutor's Office"

Asked on 11 January why she did not ask the imams or police officials she questioned why they did not stop the mobs from twice exhuming the body, Judge Kodjobekova replied "I will not give an account to you of my actions". Asked why no officials or imams were brought to trial she replied: "Let the relatives ask the Prosecutor's Office to bring a lawsuit against whoever else they think is responsible".

Prosecutor Sulaimanov claimed that Imams Chynaliyev and Orozmatov, Akim Akparaliyev, and other officials "were only witnesses". He further claimed that "other witnesses told the Court that the Imams and Akim are not guilty because they tried to stop the people but could not."

When Forum 18 noted that the police could have stopped the mobs but did not, that the imams incited the mobs, and that Akim Akparaliyev ordered the body to be buried outside the Ala-Buka cemetery, Prosecutor Sulaimanov claimed: "We only brought the case before the Court after the preliminary investigation. You need to ask the police who opened the case about this."

Lieutenant Colonel Manas Amanbayev of the Interior Ministry's 10th Department claimed to Forum 18 on 18 January that "we have not stopped the investigation of this case", but that "I cannot answer some of these questions over the phone".

Told that both Prosecutor Sulaimanov and Prosecutor-General's Office officials referred Forum 18 to the police for answers as to why no imams and officials had been brought to court, Amanbayev replied: "That is not correct. The police simply open criminal cases and lead the preliminary investigation. But Prosecutor's Office officials evaluate it before bringing to court."

On 18 January Forum 18 asked Asylbek Akhmatov, head of the International Section of Prosecutor-General Indira Joldubayeva's office, why the Prosecutor-General's Office did not bring state officials or imams to legal responsibility for their actions. He responded that the case was referred to Jalal-Abad regional Prosecutor's Office. When Forum 18 observed that those officials had not brought other officials to trial for crimes, he referred Forum 18 back to the same Jalal-Abad regional officials.

Asked whether the Prosecutor-General's Office was interested in an investigation of the case, and what steps are being taken to end such burial violations, Akhmatov replied "why are you calling us, call the Interior Ministry".

New complaint to Ala-Buka Prosecutor's Office

Azayeva told Forum 18 on 18 January that she had filed a new complaint to Ala-Buka Prosecutor's Office. "I asked for two things to be done," she explained. "We want the authorities to punish all those responsible for the exhumations, including both those who incited the mobs and asked them to dig up the body and those who did the exhumations. We also want my mother to be buried with all dignity in Ala-Buka's central cemetery."

No answer has been received to her previous complaints to the Interior Ministry and the Prosecutor-General's Office (see F18News 15 December 2016 http://www.forum18.org/archive.php?article_id=2239).

Burial problems continue

Since Satybaldiyeva's body was twice exhumed by mobs and her body apparently secretly buried somewhere by the authorities, burial problems have continued.

In one of the examples known to Forum 18, a Protestant woman was refused burial in a village cemetery in the north-eastern Issyk-Kul [Ysyk-Kol] Region. "A group of young men were against her being buried in the village cemetery," Elchibek Zhintayev, acting Head of Ak-Suu Administration told Forum 18 on 18 January. "As we did not want any conflict in the village, and after consultation with the District Imam, we decided that she should be buried in the old cemetery just outside the village."

A Protestant from the woman's church, who wished to remain unnamed for fear of state reprisals, told Forum 18 that "her body was buried on a hilltop near the village, inside an old grave in an old, unattended cemetery".

Asked why the woman was not buried in a new grave in the village's maintained cemetery, and why no action was taken against those who blocked the burial, Zhintayev replied: "We did not want any conflicts."

Resolving burial problems?

Asked what steps the Interior Ministry is taking to end such violations, Lieutenant Colonel Amanbayev told Forum 18: "We talk to local people in the regions and peacefully resolve the burial issues".

Asked what steps the central government authorities are taking to resolve burial problems, Almas Kulmatov, acting Head of the Presidential Administration's Ethnic, Religious Policy, and Cooperation with Civil Society Department, on 18 January refused to answer questions. He asked for questions in writing, and so was asked:

- When will responsible state officials or imams be brought before the law in the Satybaldiyeva case?
- Will the authorities hand down more serious punishments against those who block the burials?
- What other measures are the central authorities taking to resolve burial problems?

No answer had been received as of the end of the working day in the capital Bishkek on 20 January. (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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