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KAZAKHSTAN: Parish ousted from church after 31 years

By Felix Corley, Forum 18 (<https://www.forum18.org>)

The Holy Apostles Peter and Paul Orthodox parish in Oktyabrskoye held its last Sunday service on 28 May in the church where it has worshipped since December 1991. On 2 June, court executors and police ousted the parish, handing the building to the Russian Orthodox diocese. "This was done on a legal basis," officials told Forum 18. The parish moved from the Moscow Patriarchate to the Russian Orthodox Church Abroad in 1997. Official documents appear to attest that the parish owned the church, not the Moscow Patriarchate Diocese.

On 2 June, court executors and police ousted an Orthodox parish in the village of Oktyabrskoye in Kostanai Region from the church where its members have worshipped since it took over and renovated the derelict building in 1991. The parish lost a legal challenge lodged by the local Russian Orthodox Moscow Patriarchate diocese.

The parish of the Holy Apostles Peter and Paul belongs to the part of the Russian Orthodox Church Abroad that did not join the Moscow Patriarchate in 2007 and which is led by Odessa-based Metropolitan Agafangel (Pashkovsky).

The parish's last service in its church was on Sunday 28 May 2023. "Our parishioners had decorated the church for the feast of the Holy Trinity," parish priest Fr Gennady Subbotin told Forum 18. By the time the feast of the Holy Trinity came on 4 June, court bailiffs had ousted the parish from its church (see below).

When the parish was established in 1991, it was part of the local Russian Orthodox Moscow Patriarchate Diocese. However, it chose to leave the Russian Orthodox Diocese in 1997 and joined the Russian Orthodox Church Abroad. The parish maintains that the church building was and remains the property of the parish, not of the Moscow Patriarchate Diocese. The Moscow Patriarchate Diocese argued that it owned the church building (see below).

"No-one took the church away," Indira Nurgabulova, head of Oktyabrskoye Rural District, told Forum 18. "It's open and is functioning," she claimed. Told that Forum 18 had seen official documents that appear to attest that the parish had owned the church, not the Moscow Patriarchate Diocese, she responded: "There is a court decision" (see below).

Lyazzat Kompyshova, the head of the Department for Work with Religious Organisations at Kostanai Region Akimat's Religious Affairs Department, similarly defended the forcible ousting of the parish community from its church. "This was done on a legal basis," she told Forum 18. "They're not the legal owners" (see below).

Forum 18 has reviewed more than 70 pages of official and parish documents, as well as the court decisions which found in favour of the Moscow Patriarchate Diocese. Documents issued by a range of state agencies appear to back the parish's contention that it owns the church building where it worshipped between December 1991 and late May 2023 (see below).

The parish's 1991 statute – registered by the authorities – notes that the parish is itself a legal person, of which the parish council is the executive body for the legal person. Point 5 includes the provision: "The parish, on the basis of ownership, owns, uses and disposes of financial resources and other property belonging to it, including the place of worship" (see below).

A 1997 "technical passport" for the church lists as the owner "the Orthodox community of the village of Oktyabrskoye". The certificate of ownership of the church and its land – issued by the Kostanai Region Justice Department in 2012 – cites the parish's 1997 property registration document and lists the owner as the Church of the Holy Apostles Peter and Paul parish under the diocese of the Russian Orthodox Church Abroad. A 2019 property record repeats this (see below).

However, in 2019 the Kostanai Region branch of the Government for Citizens State Corporation issued a replacement certificate listing the Moscow Patriarchate Diocese as the owner of the church and the land, overturning the parish's 1997 property registration document. The parish finally lost its legal challenge against this unilateral decision at the Supreme Court in 2021 (see below).

Forum 18 wrote to the Kostanai Region branch of the Government for Citizens State Corporation asking why it had unilaterally revoked a 1997 property registration certificate 22 years later without informing the parish that owned and was using the church.

Forum 18 received no response (see below).

Tight controls on exercising freedom of religion or belief

The regime imposes tight restrictions on the exercise of freedom of religion or belief (https://www.forum18.org/archive.php?article_id=2753). Against international human rights commitments, the Religion Law declares that only state-registered religious communities are allowed to hold meetings for worship at state-approved locations. The Muslim community faces even tighter restrictions: only mosques subject to the state-controlled Muslim Board are allowed to exist.

All other meetings for worship risk punishment. Individuals, charities and companies face fines under Administrative Code Article 490, Part 1 ("Violating procedures established in law for conducting rites, ceremonies and meetings") for holding meetings for worship without state permission or allowing such meetings to be held in their premises.

In 2022, courts are known to have heard 26 cases against 17 individuals, 4 businesses, 3 charities and 1 Protestant Church for holding "illegal" religious meetings and rituals. Of these, 20 ended with fines (https://www.forum18.org/archive.php?article_id=2821).

Cases have continued in 2023, including for those running "illegal" Muslim prayer rooms (https://www.forum18.org/archive.php?article_id=2844).

In a typical case, on 30 January, Anti-Extremism Police in the capital Astana inspected a congress centre run by the company QazExpoCongress. Officers found a room that had been used for prayer. They informed the Religious Affairs Department of the city Akimat (administration), where officials prepared a case against the company for maintaining an unregistered prayer room under Administrative Code Article 490, Part 1, Point 1 ("Violating procedures established in law for conducting rites, ceremonies and meetings").

At a hearing at Astana's Specialised Inter-District Administrative Court on 5 April, company representative A. Meyirzhan explained that the congress centre had hosted an intergovernmental conference between Kazakhstan and Iran on trade, science and cultural cooperation. Iranian delegates had used the prayer room. This did not stop the court fining the company 140 Monthly Financial Indicators or 483,000 Tenge, according to the decision seen by Forum 18.

The fine on the company is the equivalent of six weeks' average wage for an individual.

On 3 May, Astana City Court rejected the company's appeal (https://www.forum18.org/archive.php?article_id=2844) against the fine. "It was established that the functioning in an administrative building .. of a prayer room (namazkhana) had not been agreed with the local executive body", notes the decision seen by Forum 18.

The fines on "illegal" prayer rooms are part of an upsurge in 2023 of administrative cases to punish the exercise of freedom of religion or belief. More than 110 administrative cases are known to have been brought in the first half of 2023, compared to 144 in the whole of 2022 (https://www.forum18.org/archive.php?article_id=2821).

30+ years of worship

The Orthodox parish of the Holy Apostles Peter and Paul is based in Oktyabrskoye in the northern Kostanai Region, a village of some 1,300 people 20 kms (12 miles) east of Kostanai. Fr Gennady Subbotin, who has led the parish since its foundation, describes it as a "small community". Until the parish was expelled from its church, up to 15 parishioners would attend Sunday liturgy on average, he told Forum 18 from Kostanai on 20 June. He said about 100 people would attend on major religious festivals.

The parish's last service in its church was on Sunday 28 May 2023. "Our parishioners had decorated the church for the feast of the Holy Trinity." By the time the feast of the Holy Trinity came on 4 June, court bailiffs had ousted the parish from its church.

Now the community has been ousted from its place of worship, Fr Gennady says he has to hold services in parishioners' homes in other villages. He fears that the authorities might now try to strip the parish of its registration and seek to punish their meetings for worship.

Forum 18 was unable to find out from Kostanai Region Justice Department if it is seeking to strip the parish of registration. On 29 June, an official of the Non-Commercial Organisations Registration Department referred questions to the head of the Department, Azamat Sultanov. He was on a work trip that day. He did not answer his phone when Forum 18 called repeatedly on 30 June.

Parish formed, gains and restores place of worship

The Orthodox parish of the Holy Apostles Peter and Paul in the village of Oktyabrskoye in Kostanai Region was formed at a meeting on 29 April 1991. It adopted a statute approved by the local bishop of the Moscow Patriarchate diocese, of which the parish

was then a part. The bishop approved the statute on 8 July 1991.

The statute – seen by Forum 18 – notes that the parish is itself a legal person, of which the parish council is the executive body for the legal person. Point 5 includes the provision: "The parish, on the basis of ownership, owns, uses and disposes of financial resources and other property belonging to it, including the place of worship." Disposing of the place of worship needs the agreement of the bishop.

The Executive Committee of Kostanai District Council of People's Deputies registered the community and its statute on 21 October 1991, according to the decision seen by Forum 18. The decision speaks only of "the Orthodox parish of the church in the village of Oktyabrsky" without mention of any denominational affiliation.

The parish received a building for use as a church in late 1991. On 31 January 1992, the director of the state farm issued a decree about handing the building of a former Russian Orthodox convent – founded in 1902 and seized from the Church in 1917 – to "the Orthodox community of the village of Oktyabrsky". It noted that no capital repairs had ever been carried out on the building. On 2 February 1992, the formal transfer document handed the former convent and the land to Fr Gennady as representative of the parish.

A decision of the then collective farm council of people's deputies of 24 June 1992 handed a small additional plot of land next to the church simply to "the parish of the Holy Apostles Peter and Paul".

"We received the church building in 1991 when it was a derelict, dangerous ruin," Fr Gennady told Forum 18. "We cleaned up two of the rooms, knocked them into one and held the first liturgy there on 4 December 1991." He said that the community had put in a new roof, new floors and new windows.

Fr Gennady says all the building work was undertaken by the parish with money it collected locally, from parishioners and several local businesspeople. "Not one rouble came from the bishop or the [Moscow Patriarchate] diocese."

Parish changes affiliation

The parish rejected a new statute the Moscow Patriarchate bishop was trying to impose on parishes in October 1996.

Following disagreements between Fr Gennady Subbotin and the Moscow Patriarchate diocese over payments for church rituals, the Archbishop removed Fr Gennady as parish priest in June 1997 and banned him from serving as a priest.

"I convened a parish meeting and told them that I am leaving and will no longer serve here under the leadership of the bishop," Fr Gennady told Forum 18. "The meeting asked me what solution there was. I told them: collect money and hand it over to the bishop, asking for mercy, or come with me. The meeting chose to stick with me and enter the Russian Orthodox Church Abroad."

In July 1997, a bishop of the Russian Orthodox Church Abroad accepted Fr Gennady into that Church and removed the ban on serving as a priest.

On 1 December 1997, the Dean of Kostanai Region, Fr Viktor Petrov, wrote to the Akim of Kostanai Region to complain that "up till now, a community of the church abroad is using the previous official stamp and claiming the building that historically belongs to the Moscow Patriarchate". He hoped that the authorities would take a "wise and correct decision" about the parish's registration application.

On 26 December 1997, a prosecutor in Kostanai Region Prosecutor's Office Department for Supervision in the Social and Economic Sphere rejected Fr Petrov's claims in a report seen by Forum 18. The prosecutor summarised the parish's position – and that of Fr Gennady. "In such circumstances," the prosecutor wrote, "there are no bases for taking measures of prosecutorial reaction."

The same day, Kostanai Region's Deputy Prosecutor also wrote to Fr Petrov about the latter's complaint that Fr Gennady was conducting "illegal" activity. The Deputy Prosecutor told Fr Vetrov that disputes between two parties over ownership of property are not within the competence of the Prosecutor's Office but should be resolved in court.

However, some local officials continued to try to oust the parish from its church. On 8 June 1998, the head of the regional Department of Information and Social Accord (which then controlled the exercise of freedom of religion or belief) wrote to the deputy head of Kostanai District complaining the Fr Gennady was "continuing to serve in that church illegally". He called on him, with other "interested officials", to return the church to the control of the Moscow Patriarchate diocese.

On 26 August 1998, the acting head of the Kostanai Region National Security Committee (NSC) secret police wrote to the head of the regional police that Fr Gennady was leading "illegal religious activity" in the village. "In the name of the Russian Orthodox Church Abroad, which is not registered in Kazakhstan, G. A. Subbotin is leading rituals in the building he has unilaterally seized," he wrote. "In his sermons, he sets two religious denominations against each other."

The Regional NSC secret police acting head did not say how he knew what Fr Subbotin was preaching about.

"He ignored repeated demands on the part of representatives of the district Akimat and Regional Department of Information and Social Accord to leave the building and halt his activity." The NSC asked the police to take "measures of administrative impact".

On 4 January 1999, the local Moscow Patriarchate Archbishop wrote to Kostanai Region Justice Department. "In Kazakhstan there are no dioceses of the Russian Orthodox Church Abroad and no parishes either," the bishop insisted. He claimed that as Fr Gennady had been banned from serving as a priest, "all of Subbotin's actions are invalid, whether baptisms, weddings or funerals".

Registration, re-registration

On 27 July 1997, a parish meeting approved a new statute, confirming the parish's affiliation with the Russian Orthodox Church Abroad. It submitted the new statute for registration with Kostanai Region Justice Department on 4 August 1997. However, the parish complained that the Justice Department "used all possible excuses" not to register the statute.

After the parish took Kostanai Region Justice Department to court, and with the support of a local parliamentary deputy, the Justice Department finally registered the parish on 9 November 1999. However, the Justice Department refused to register the parish at the address of the church, so the parish's legal address is the home of a parishioner on the same street as the church.

"The authorities changed their position, and after then we lived peacefully," Fr Gennady recalls of that time.

In October 2011, a harsh new Religion Law was adopted, which mandated re-registration for all registered religious communities (https://www.forum18.org/archive.php?article_id=2753) by 24 October 2012.

On 23 September 2012, a parish meeting confirmed a new statute for the "Local Orthodox Religious Community 'Church of the Holy Apostles Peter and Paul' of the Russian Orthodox Church Abroad, the village of Oktyabrskoye". On 18 October 2012, Kostanai Region Justice Department approved and stamped the new statute, and issued a registration certificate. The parish's legal address remained the home of a parishioner.

Parish owns church

Official documents confirming ownership of the Church of the Holy Apostles Peter and Paul itself list the parish as the owner. A 1997 "technical passport" for the church, seen by Forum 18, lists as the owner "the Orthodox community of the village of Oktyabrskoye". It based this on the document transferring the former monastery building of 2 February 1992, and the property registration certificate of 27 November 1997.

The certificate of ownership of the church and its land – issued by the Kostanai Region Justice Department on 27 September 2012 – cites the parish's 1997 property registration document and lists the owner as the Church of the Holy Apostles Peter and Paul parish under the diocese of the Russian Orthodox Church Abroad.

The task of administering property registers was later handed from Justice Departments to the non-commercial company Government for Citizens State Corporation.

The certificate of ownership of the church and its land – issued by the Kostanai Region branch of the Government for Citizens State Corporation on 7 August 2019 – similarly cites the parish's 1997 property registration document and lists the owner as the Church of the Holy Apostles Peter and Paul parish of the Russian Orthodox Church Abroad.

Retrospective change of ownership

On 15 November 2019, the Kostanai Region branch of the Government for Citizens State Corporation issued a replacement certificate listing the Moscow Patriarchate Diocese as the owner, in effect cancelling the 27 November 1997 property registration certificate given to the parish 22 years earlier. It subsequently emerged that it had done so on request from the representative of the Moscow Patriarchate Diocese.

On 9 December 2019, the new 2019 registration certificate was already cited on the church ownership record online on the government website.

Forum 18 wrote to Gulnar Kabdybekova, spokesperson of the Kostanai Region branch of the Government for Citizens State Corporation, before the start of the working day of 29 June 2023 asking why her organisation had unilaterally revoked a 1997 property registration certificate 22 years later without informing the parish that owned and was using the church. Forum 18 had received no response by the afternoon of the working day in Kostanai of 30 June.

On 29 November 2019, the Moscow Patriarchate Bishop wrote to Fr Gennady, demanding that the parish leave its church and hand

it over within 15 days. If it failed to do so, the bishop said it would take the parish to court.

Court hearings reject parish's suit

On 16 January 2020, Fr Gennady lodged a suit to Kostanai Region Specialised Inter-District Economic Court against the land registry under the Kostanai Region branch of the Government for Citizens State Corporation. The suit described its 15 November 2019 decision to issue a replacement certificate as "completely illegal". Fr Gennady found out about this decision only on 9 December 2019.

The suit complains that "officials categorically refused to explain on what legal basis and without a court the legally-valid document on the property was annulled, or to provide information about the document that formed the basis for this and who specifically was given the replacement of the registration certificate".

The suit adds that this only became clear when the parish received the 29 November 2019 letter from the Moscow Patriarchate Bishop.

The suit complains that the Kostanai Region branch of the Government for Citizens State Corporation "with its illegal actions in effect empowered the hostile seizure of the property which has belonged to the parish on a legal basis over 22 years". The suit called for the November 2019 replacement certificate handed to the Moscow Patriarchate diocese to be annulled.

On 23 January 2020, Fr Gennady wrote to the court to amend the respondent from the land registry under the Kostanai Region branch of the Government for Citizens State Corporation to simply the Kostanai Region branch of the Government for Citizens State Corporation.

Also on 16 January 2020, the Moscow Patriarchate Diocese lodged a suit to the same court against the parish to oust it from its church.

On 6 February 2020, Kostanai Region Specialised Inter-District Economic Court combined the two suits into one case. Judge Mariash Zhamaliyeva brought into the case the Kostanai District Justice Department as a third party, as well as the Kostanai Region Akimat's Religious Affairs Department.

On 18 May 2020, Judge Zhamaliyeva backed the Moscow Patriarchate in its suit to oust the parish. She accepted the Moscow Patriarchate Diocese's contention that as the parish received registration as part of the Russian Orthodox Church Abroad only in 1999, it could not have been the owner of the church building which was returned in 1992. She therefore found that the parish was occupying its place of worship "illegally" and ordered it to leave.

In the same decision, Judge Zhamaliyeva rejected the parish's suit against the Kostanai Region branch of the Government for Citizens State Corporation. She said that the Moscow Patriarchate's contention that the 2012 Justice Department's recognition of the parish's rights to the property had been "erroneous" was "well-founded". She said the issuing of a replacement certificate in November 2019 in favour of the Moscow Patriarchate Diocese had been legal.

The parish then appealed to Kostanai Regional Court, but on 24 September 2020 the court rejected the appeal.

On 13 September 2021, the parish lodged a further appeal to the Supreme Court. However, on 14 February 2022 the Supreme Court said there was no basis to review the lower court decisions. "It was found by the courts that the change of service of G. A. Subbotin does not mean the transfer of the property rights to the church building to the respondent [the parish]," the court decision maintains.

Court bailiffs, police oust parish

At the end of May 2023, court bailiffs came to Fr Gennady and told him that they had received the task to implement the court decisions to evict the parish from its church some time earlier. "They kept hold of it after being told not to touch our community," he told Forum 18. "Then it changed and the order came from above for them to act."

On 2 June, court bailiffs and police arrived in the village of Oktyabrskoye and ousted the parish from the church where it had worshipped for more than 31 years. "I decided not to be present to prevent any conflict," Fr Gennady told Forum 18. "Our deacon was there, and up to about 15 parishioners arrived. The police officers intimidated those present so that they didn't cause trouble."

The bailiffs told the deacon to hand over the keys "in a good way", otherwise they would use force to open the church. "The deacon handed over the keys," Fr Gennady said.

Over the next week the bailiffs allowed the parish to remove its property. "We removed all the church items, including the icons. We left the icon screen," Fr Gennady said.

"No-one took the church away," Indira Nurgabulova, head of Oktyabrskoye Rural District, told Forum 18 on 21 June. "It's open and is functioning," she claimed. Told that Forum 18 had seen official documents attesting that the parish had owned the church, not the Moscow Patriarchate Diocese, she responded: "There is a court decision." She said Forum 18 could seek further information from parishioners.

"They're not the legal owners"

Lyazzat Kompysheva, the head of the Department for Work with Religious Organisations at Kostanai Region Akimat's Religious Affairs Department, defended the forcible ousting of the parish community from its church in 2 June 2023. "This was done on a legal basis," she told Forum 18 on 21 June. "They're not the legal owners."

Kompysheva insists that the Oktyabrskoye Orthodox church belongs to the Moscow Patriarchate Diocese. Told that Forum 18 has seen more than 70 pages of documentation related to the parish, including many from a variety of state agencies that affirm that the parish had ownership of the church, not the diocese, she said she had the documents from the Justice Department that say the church belongs to the Moscow Patriarchate.

"I can't challenge a court decision," Kompysheva added. "Besides, it has now been carried out."

Asked how the parish could continue to exercise freedom of religion or belief now it has been deprived of the place of worship it regained, restored and used for more than 31 years, Kompysheva responded: "They have the right to meet at their legal address, provided the Justice Department has registered it as a place of worship." (END)

More reports on freedom of thought, conscience and belief in Kazakhstan (<https://www.forum18.org/archive.php?country=29>)

For background information, see Forum 18's Kazakhstan freedom of religion or belief survey (https://www.forum18.org/archive.php?article_id=2753)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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