



Forum 18 News Service

<http://www.forum18.org>*The right to believe, to worship and witness**The right to change one's belief or religion**The right to join together and express one's belief****WS 14 - Fundamental freedoms including freedom of thought, conscience, religion or belief***

The newly-published *OSCE/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities*<sup>1</sup> open with the words “freedom of religion or belief is a fundamental right, recognized in international instruments and in OSCE commitments. International standards specify that everyone will have the right to freedom of thought, conscience and religion”. Yet this does not stop Uzbekistan and Turkmenistan imposing severe jail sentences in conditions where torture is normal for exercising this right. For example, in the case of Muslim prisoner of conscience Khayrullo Tursunov - on a 16-year jail term after Kazakhstan illegally extradited him to Uzbekistan - it appears that the Uzbek authorities tried to infect him with the potentially fatal disease of Tuberculosis.

The *Joint Guidelines* also state: “State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures.” Or as UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt told the 2012 HDIM, it is a “non-negotiable right of all human beings that the State has to respect”.

Yet despite this, in participating States such as Belarus, Azerbaijan, and all those in Central Asia the exercise by groups of people of freedom of religion or belief without state permission is banned. In 2013 Viktor Kandyba, who leads a Baptist church in Semei in East Kazakhstan which meets without applying for state permission, was fined for this “offence”. In May 2014 he served a 10-day prison term for refusal to pay the fine. Prosecutor's Office official Bolzhan Botbayev, who brought both cases to court, struggled to explain why Kandyba can gather friends to drink vodka or watch football on television but not to meet for worship. “The law says they must have registration before they are allowed to meet”, he insisted. Kandyba is one of 13 known persons - all either Baptists or Muslims - to be given a short-term prison sentence in 2014 for refusing to pay fines for exercising the right to freedom of religion or belief. Over 40 such fines were imposed in the first 10 weeks of 2014 alone.

Rustam Kypshakbayev of the government Ombudsperson's Office for Human Rights told Forum 18 that “I can't agree that these imprisonments are a violation of human rights”. The Kazakh government and its apologists routinely denies - for example at HDIMs - that its laws or state actions violate its international obligations. Kazakhstan also tries to intimidate civil society. Some religious communities told Forum 18 that fear of the consequences of criticising the government caused them to decide not to participate in the UN Human Rights Council Universal Periodic Review, and not to meet the UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt on his 26 March to 6 April visit.

Punishments for exercising fundamental freedoms will continue under new Criminal and Administrative Offences Codes due to come into force in January 2015, described in a joint statement of human rights defenders as “considerably restricting and harming human rights”. As Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law told Forum 18, they are “a baton, to use as a threat against those the state does not like”.

Raids, violence, literature confiscations, fines and legal status denials are typical of many violations in the OSCE region affecting diverse individuals and communities from Kazakh atheists, Presbyterians and Muslims to Russian Jehovah's Witnesses and Muslims. This reminds us that legal status engages many related human rights and human dimension commitments. These include the freedoms of religion or belief, of expression, of assembly and association, of information, of movement, the rights of the child, the right to be free of torture and cruel, inhuman or degrading treatment or punishment, the rule of law and the right to a fair trial with due process. The situation in two participating States is analysed in a Norwegian Helsinki Committee report launched today: *Below Freedom of religion or belief standards: State policy in Kazakhstan, arbitrary protection in the Kyrgyz Republic*.

<sup>1</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)023-e)

There can also be state suppression and takeovers of existing communities. For example, Azerbaijan has repeatedly closed Sunni Muslim mosques. In mid-July the leader of Baku's Lezgin Mosque community - where police stop people praying outside - was told that it must leave the building in advance of full renovation. The community fears this might be an attempt to oust them, given consistent closures of specifically Sunni mosques. Sarkhan Halilov of Azerbaijan's State Committee for Work with Religious Organisations insisted that the government "has nothing against Sunni mosques", but admitted to Forum 18 that Baku's (Sunni) Martyrs' Mosque - closed by the state in 2009 - will never be reopened. In March, the State Committee for Work with Religious Organisations removed recognition from the Sunni community of the mosque in Mushfiqabad near Baku to transfer it to new, Shia control. Unnamed officials of the State Committee said in March that the old community which ran the mosque had "dissolved itself". Muslims close to the community denied this to Forum 18.

Censorship is also an issue. In Uzbekistan a police officer who led a raid on the home of a Seventh-day Adventist couple in Samarkand told Forum 18 that it is illegal for them to have religious literature as Adventists do not have registration in the city. Protestants think the raid was a reprisal for lodging a new registration application. Among books seized were a Koran and Bibles in Braille. This and many other examples indicate that serious legal status problems are symptoms of a wider fundamental problem preventing OSCE-wide implementation of human dimension commitments: the rulers and officials of many participating States aim not to implement their commitments and other international obligations, but to impose state control on all of society.

Obstructions to the rights to exist legally, to meet without state permission, to exercise the freedoms of religion or belief, of association, and of assembly, and of expression, can flow from many laws and state policies. A serious example of this is the use of Russia's Extremism Law against those with views the authorities dislike - especially Muslims who study the works of theologian Said Nursi, and Jehovah's Witnesses. This has involved among other things: bans on very questionable grounds of many texts and making possession of them a criminal offence; many raids - even sometimes involving anti-terrorist forces - on meetings of followers of these beliefs; long-running trials involving lack of due process; and the fining and jailing of some. Esadullah Bairov, a deputy head of Crimea's Muftiate, became the first person since the Russian annexation of Crimea in March to be prosecuted for "extremist" religious literature seized during a raid on a madrassah (Islamic religious school). He was fined on 26 August and Prosecutor Andrei Oliyar refused to say what confiscated books had been the basis for the prosecution. At least seven Crimean madrassahs, as well as mosques, many private homes and the Muftiate itself have been raided in the hunt for religious literature banned as "extremist" by Russia.

Denials of legal status can even pre-date the creation of the OSCE. No belief community has ever had an independent legal existence in Turkish law - whether Muslim, Jewish, Armenian Apostolic, Greek Orthodox, Syriac Orthodox, Catholic, Protestant, Baha'i, Jehovah's Witness, atheist, or any other. In May all Turkey's religion or belief communities - including atheists - met to address this problem, convened by the *Norwegian Helsinki Committee: Turkey Freedom of Belief Initiative*. Achieving legal status for all would not solve all problems, but the needed changes in law and in official and social attitudes would help resolve the other problems. What is lacking is the political will.

There is in the OSCE region a need, as the European Union's *Guidelines on the promotion and protection of freedom of religion or belief*<sup>2</sup> state, to "challenge attempts to make the exercise of human rights conditional upon state permission". What can constructively be done? Participating States, OSCE institutions and field operations could:

- insist that human dimension commitments are implemented in full by all participating States;
- situate OSCE religious tolerance and non-discrimination work within a human rights for all perspective, prioritising respect for the freedoms of religion or belief, expression, assembly, and other human rights and fundamental freedoms including the right to be free from torture;
- mainstream work to ensure and promote freedom of religion or belief with its interlinked human rights, for example building on the work of the ODIHR Human Rights Department;
- use tools such as the *EU Guidelines on the promotion and protection of freedom of religion or belief*, the *OSCE/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities* and the *OSCE Guidelines on the Protection of Human Rights Defenders*.

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<sup>2</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/137585.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf)