

Submission by Church of Scientology

OSCE High-Level Conference on Tolerance and Non-Discrimination (Kazakhstan, Astana, 29-30 June 2010)

Religious Discrimination Targeting Scientology in Kazakhstan: 2009

The religious freedom rights of the Church of Scientology and its parishioners continue to be seriously and systematically violated in Kazakhstan in contravention of international human rights standards articulated in the Helsinki Accords and the International Covenant on Civil and Political Rights, human rights instruments that Kazakhstan has signed and ratified.

This memorandum provides a summary of matters relating to Scientology.

Karaganda: Liquidation and Denial of Religious Registration

On 16 Feb 2009, the Specialized Inter-District Court for Resolution of Economic Disputes of the Karagandi Region delivered a judgment liquidating the Church of Scientology Mission of Karaganda, a non-commercial religious organization of Scientology. In its judgment, the Court sustained all arguments produced by the public prosecutor that the Church engages in commercial activity that is not consistent with its Charter and that it has failed to pay taxes as a commercial organization. The Court reached this erroneous conclusion on the grounds that, while the Church's Charter articulates activities including the dissemination of religious literature and delivery of religious services, the Charter does not specify that Scientology books would be sold and that donations would be accepted for Scientology services.

The Church noted that sales of books and other Scientology properties are carried out for the purpose of dissemination of the Scientology religion, which goes to the heart of their activities and their right as articulated in articles 2.3 and 2.4 of the Charter.

All its activities are carried out in accordance with its Charter. The Judge dismissed the arguments of the Church that the inspection conducted by the prosecutor was unlawful, and that the conclusions made following the tax audit were false and unlawful. The Church was not provided the opportunity to proffer evidence showing that it operated as an idealistic non-profit religious organization and did not engage in any commercial activity.

The Court also accepted the prosecution's argument that the activities of the Church of Scientology "entail a threat to the national security of the Kazakhstan Republic, as well as to the health of its residents". In reaching this erroneous conclusion, the Court accepted "expertises" filed by the prosecution arguing that Scientology Scriptures are not religious materials and that Scientology services are not religious in nature but instead are "aimed at the use of mind technologies to alter the state of consciousness of individuals". The Court accepted these expertises even though this assessment of the religion is completely false and violates human rights law which mandates that the government may not evaluate religious beliefs as such evaluations are inherently discriminatory. See, e.g., *Church of Scientology Moscow v. Russia* (no. 18147/02) (April 2007).

The Court did not accept the Church's arguments that the expert opinions were inaccurate, contrary to overwhelming international academic, judicial and administrative opinion and evidence and unlawful as they were conducted without notifying the Church and were procedurally and substantively completed in noncompliance with the law. These arguments were rejected by the Court even though one expertise that was supposedly from the Chair of the Religious Committee was signed by someone else.

The Court also refused to allow the Church to submit other expertises finding that the books and services were religious and to call witnesses to testify to this effect. Finally, the Church noted that the expertises were conducted in violation of Article 4 of the Law of the Kazakhstan Republic on Freedom of Religion and on Religious Associations as they were carried out without the required participation of representatives of religious organizations, lawyers and other experts in the field of freedom of conscience, rendering them unlawful and inherently deficient. These arguments were also rejected by the Court.

This decision violated due process in that it was made without providing the Church with an opportunity to put forward witnesses and evidence on key issues in the case. In March 2009, the Church and its parishioners filed separate appeals of this liquidation decision to the Karagandi Regional Court on the grounds that it is unconstitutional, violates the Church's right to religious freedom and freedom of association and offends fundamental due process. These appeals were summarily rejected and on 12 June 2009 the decision to liquidate the Church of Scientology of Karaganda came into force. The Church was liquidated.

In March 2009, the Karaganda Bureau of Human Rights accepted the complaints filed by Mission staff and parishioners concerning their mistreatment. The Bureau has opened its own investigation.

Liquidation is effectively a "death sentence" for a religious organization which represents a drastic government action terminating the very existence of the Church of Scientology Mission, making it impossible for this religious

organization to exercise the Church's fundamental right to religious freedom and parishioners' right to practice their religion. In its General Comment, the UN Human Rights Committee makes it very clear that the freedom to manifest religion protected by Article 18 of the International Covenant on Civil and Political Rights, a treaty signed and ratified by Kazakhstan, extends to the Church of Scientology and other new faiths:

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

Likewise, the OSCE has from its inception recognized the importance of legal personality and entity structure to religious organizations as part of their right to freedom of religion or belief. The concern with this issue has been reemphasized in recent years during the OSCE Human Dimension Seminar on religious freedom and by ODIHR's Advisory Panel of Experts on Freedom of Religion in its Guidelines for Review of Legislation Pertaining to Religion or Belief. As Kazakhstan is the Chair in Office of the OSCE in 2010, it should respect and protect these rights instead of engaging in liquidation of targeted religious communities.

Moreover, the 2007 decision of the European Human Rights Court in the Church of Scientology Moscow v. Russia case reaffirms the right of religious communities like the Church of Scientology to be free from arbitrary State interference.

"While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organized structures, Article 9 must be interpreted in the light of Article 11 of

the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs."

The decision of the Human Rights Court in the Church of Scientology Moscow case mandates that States cannot intervene arbitrarily into religious matters and are strictly prohibited from evaluating or reinterpreting the internal validity of religious beliefs genuinely held by individual believers or religious communities like Scientology. Any attempt to investigate, evaluate or question Scientology beliefs would thus violate the duty of a State to be neutral and impartial. Yet, that is precisely what the government has done in this liquidation suit in violation of the Church's fundamental rights.

As Scientologists in Karagandi were denied to use the right to have a legal status as a religious union to exercise their religious practices as stated in Principle 16.3 of Vienna meeting 1986 (Vienna 1989), they attempted to register a religious group in June 2009 and April 2010, but they were denied registration by the city hall with no legal reasons given.

Having no possibilities to achieve registration as a legal entity, Scientologists gathered together to study their religious scriptures, executing their fundamental human right to manifest their religion either alone or in community with their co-religionists. However, on the 25th of June 2010, the local police delivered a subpoena to the leader of the group to come to the court as the group of Scientologists was accused of performing religious activity without registration. The leader of the Karaganda religious group is being forced to stand before the court for manifesting his sincere religious beliefs on 28 June and during the OSCE summit. These actions by the government completely contravene the right to freedom of religion and conscience guaranteed by the Helsinki Accords.

Moreover, the denial of registration of religious groups and Churches continues in the Karagandy region and Pavlodar in the last 2 years.

Almaty Bad Faith Judgment

In the morning of 8 October 2008, officials from Kazakhstan's Committee of National Security (KNB) in Almaty raided and conducted a search and seizure of the premises of the Church of Scientology Mission of Almaty. The KNB also raided the homes of four executives of the Missions to search their

premises, seize documents and bring them in for interrogation as well as the home of certain Mission staff that also contained the Almaty Mission's archives. Nine different locations were subjected to raids followed by searches and seizures.

The raids were executed by more than 50 KNB officials who rushed into the Missions and the flats of executives. The KNB alerted the media prior to conducting the searches and seizures; KNB officials arrived at the Almaty Mission accompanied by a Kazakhstan TV crew to film the raid.

The KNB seized and confiscated almost all the computers from the Missions. In addition, the majority of files in the Mission were seized, including all accounting and financial files. Materials seized included Scientology Scriptures and religious artifacts used in Scientology religious services known as E-Meters. All the confidential priest-penitent materials (referred to as PC Folders) provided by parishioners to Church ministers as part of the delivery of the central sacrament of the Scientology religion, known as auditing , which memorialize the spiritual progression of parishioners were seized.

These bad faith investigations aimed at disrupting the religion and its parishioners from manifesting their faith remain ongoing.

Numerous verbal and written complaints have been lodged by the Mission, Church staff and parishioners about the violation of their fundamental rights, including the violation of their right to religious freedom based on the seizure of their private priest-penitent confessional folders and other religious materials. These complaints also detail the ongoing mistreatment of parishioners and Church officials by the KNB in interrogations and further seizures of religious artifacts and materials.

KNB officers have repeatedly threatened and attempted to intimidate Scientologists during the interrogation process. KNB officers have warned staff members that they will be imprisoned for a long time unless they "turn against" the Church and their religion. KNB officers have also attempted to force Scientologists to watch a DVD containing propaganda denigrating the religion in an effort to persuade them to leave the Church.

On 10 February 2009, KNB officers appeared at the Almaty Church of Scientology Mission with a decree to seize E-meters and proceeded to do so, disrupting ongoing religious services in the process of this latest seizure. As the E-meter is a religious artifact necessary for the delivery of the central sacrament of the Scientology religion, these continuing seizures are designed to effectively shut down the religious activities of the Church.

Likewise, harassing KNB interrogations of Mission officials and parishioners continued, with numerous interrogations occurring in February and March 2009.

All confiscated priest-penitent confessional folders still remain in the possession of the KNB in violation of the right to fundamental religious freedom of the Church and its parishioners. These materials were seized during the searches, and KNB officers have shown they will do anything to prevent the return of the confessional folders of parishioners to the Church. Shockingly, some officials even offered these confessional folders to the parishioners for sale.

The resulting indictment issued against the President of the Church of Scientology of Almaty attacks the use of the E-Meter in the core religious practice of auditing, recasting purely religious and spiritual pursuits as "unlicensed" commercial activity. The interrogation of witnesses continued through June 2009. The court did not find any proofs to support the accusation and the case was sent back for further investigation on June 29th 2009.

The Prosecutor appealed this decision, which was reversed on appeal. The case was sent back to the same District Court to be considered by another judge. On October 1st 2009 it resulted in conviction against the President of the Church of Scientology of Almaty.

The Church's President was convicted for following her beliefs, exercising religious practices, performing religious rites and studying Scientology Scriptures, as well as for facilitating her fellow parishioners to follow their religion. With this decision, the government illegally intrudes into religious matters, improperly evaluating and questioning Scientology beliefs.

Fundamental rights of Scientologists and Churches of Scientology in Kazakhstan for freedom of religion granted by the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Kazakhstan Constitution and legislation of the Republic of Kazakhstan were rendered powerless by one court decision, based on absolutely groundless accusations.

The Church representatives appealed to numerous officials of different governmental institutions of Kazakhstan responsible for the religious affairs in the country. Most of them promised to consider the matter and help to resolve it.

None of the attempts of the Church to seek relief in order to restore its right to religious freedom has succeeded.

This repression of religious freedom not only violates OSCE standards; it also violates UN standards.

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief makes it quite clear that necessary

articles and materials related to religious rites in matters of religion and belief such as the E-meter are included within the ambit of freedom of religion. Article 6 of the Declaration states that the right to freedom of religion or belief shall include, inter alia, the following freedoms:

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.

Moreover, the rule of law is in serious jeopardy in Kazakhstan. Judges face enormous pressure to convict members of religious groups targeted by the KNB and by the executive branch. The right of Scientologists and Scientology organizations to a fair trial has been completely undermined.

Judicial independence is the bedrock of the rule of law and a fundamental guarantee of a fair trial. Judges are "charged with the ultimate decision over life, freedoms, rights, duties and property of citizens" as articulated in UN Basic Principles on the Integrity of the Judiciary, The Bangalore Draft Code of Judicial Conduct 2001, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002, and Article 14 of the International Covenant on Civil and Political Rights.

Yet, in Kazakhstan, the judiciary is denied true independence and the Rule of Law, and therefore the right of minorities to a fair trial, is under assault.

Because of the discriminatory treatment of the Church of Scientology and its parishioners, the President of the Church sent an open letter to the President of Kazakhstan complaining about unlawful harassment against the religion and its adherents by the KNB.

Teaching Intolerance to Children throughout Kazakhstan

In the beginning of 2010 a school book for 9th grade students called "Basics of Religions" was published. This book has already created great protest amongst citizens and religious scholars in Kazakhstan and abroad. A lot of famous citizens of Kazakhstan and noted experts publicly criticized this book and its authors. The book is full of misinformation and false allegations, employing pseudo-scientific terms, diminishing and discrediting religious minorities, including the Scientology religion. This kind of terminology and false description of religious minorities and false data about religious groups creates the rise of intolerance and hatred towards these religions and its members starting in school. The chapter on Scientology in this book is completely false.

Several expertises were already done against this school book concluding it does not meet educational standards. Nevertheless, it was published and delivered to retail stores. Several Kazakhstani regions have already ordered

it for their schools. Numerous appeals from religious scholars, religious unions and citizens to the President of Kazakhstan, Ministry of Education and other government institutions asking to prohibit this book has not cause any positive result to this day. It appears the Kazakhstan government is fully in agreement to distribute misinformation that contravenes the principle of tolerance into their school system in order to stir up hatred and discrimination throughout its educational institution, a sure recipe for religious suppression in the country.

Conclusion

In 2009 the Church of Scientology adrew the attention of OSCE to the problem of repressions and discrimination of religious minorities by Kazakh authorities.

The Church of Scientology and Scientology organizations have been the target of systematic religious repression and discrimination by Kazakh authorities in contravention of OSCE Accords and international human rights law which Kazakhstan is obliged to follow.

Beside all the above mentioned rights violations of believers, local and international legislation, Kazakhstan, as the Chair in Office of the OSCE, also violates the OSCE obligations in the sphere of human dimension, stated in the Helsinki Acords and the Principles of the Concluding document of the Vienna meeting 1986 (Vienna 1989):

a) Denial of registration of religious groups violates the Principle 16.3. - grant upon the request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of the States, recognition of the status provided for them in their respective countries;

b) The court decision against the President of the Church of Scientology of Almaty calls studying the religious practices and scriptures and receiving donations from parishioners "unlicensed commercial activity" is in violation of the Principle 16.4. - respect the right of these religious communities to solicit and receive voluntary financial and other contributions, 16.6. - respect the right of everyone to give and receive religious education in the language of their choice, whether individually or in association with others;

c) Naming the E-meter (a religious artifact necessary for the delivery of the central sacrament of the Scientology religion) in a doubtful expertise a "special technical devise" for use in law enforcement operative activities, which is nonsense by itself, violates the Principle 16.9. - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion of belief.

Summarizing all the above, the Church of Scientology would like to propose for consideration the following suggestions.

1. Continued attacks on religious minorities by Kazakh authorities, especially while Kazakhstan is the Chair in Office of the OSCE, should be condemned by OSCE members and Kazakhstan should stop such practice.
2. OSCE must ensure that Kazakhstan executes its obligations in the sphere of fundamental human rights.
3. Kazakh authorities must review discriminatory actions against religious minorities in the frame of legislation of Kazakhstan and International obligations, including OSCE obligations. These actions must stop.
4. Judges and state officials in Kazakhstan must respect properly and correctly done expertises and follow the legislation of Kazakhstan, international agreements and obligations, ratified by Kazakhstan.
5. The existing Code of honor of government officials must be amended to require that they respect the religious beliefs of all citizens of the country and uphold the neutrality of the government vis-a-vis religion.