

Submission by Church of Scientology

OSCE Supplementary Human Dimension Meeting: Freedom of Religion or Belief

Warsaw, September 2009

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 of Church of Scientology Mission

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 Mission 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 two of the three expert opinions were not signed and the 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 in June 2009. Supervisory appeals are pending.

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*.¹ As Kazakhstan is set to assume 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.

¹ *Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the Venice Commission (2004) Section 5.1.2.*

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.

The decision to liquidate the Church of Scientology of Karaganda came into force on 16 June 2009. The liquidation process of the corporation of the Church has now started. The Church has filed two petitions to the General Prosecutor's office stating that this decision violates fundamental principles of justice and the rule of law. These petitions were rejected.

Ongoing KNB Harassment and Bad Faith Investigations

In the morning of 8 October 2008, officials from Kazakhstan's Committee of National Security (KNB)² in Almaty raided and conducted a search and seizure of the premises of the Church of Scientology Mission of Almaty and the Scientology Mission of Medeo (Medeo is a district of Almaty) as well as the Almaty Mission District Office. 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 approximately 52 KNB officials who rushed into the Missions and the flats of executives. The KNB alerted the media prior to conducting the searches and seizures;

² Kazakhstan's National Security Committee (KNB) was established on June 13, 1992. It includes the Service of Internal Security, Military Counterintelligence, Border Guard, several Commando units, and Foreign Intelligence (Barlau).

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 auditing³, 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 Mission 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

³ Auditing is a core religious practice in Scientology. It is a unique form of spiritual counseling involving an auditor (from the Latin *audire* meaning to hear or listen) who is a minister or minister in training in the Scientology religion and a parishioner.

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 continue, with numerous interrogations occurring in February and March 2009. 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.

The resulting indictment issued against the Mission Holder 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 and resulted in the case being sent back for further investigation on June 29.

The criminal case against the President of Religious Association "Church of Scientology of Almaty" Svetlana Baitinger is ongoing. The District Court Judge refused to find the President of the church guilty of any crimes as requested by the Prosecutor; instead the Judge sent the criminal case back to the investigators as the facts did not justify a conviction. The Prosecutor appealed this decision, which was reversed on appeal. The case was sent back to the District Court. The next court hearing will take place on 29 of September 2009.

The Church sent several complaints to the Prosecutor of Almaty, requesting that the government restore violated human rights and that it return confiscated confessional materials held by the KNB. The Church has filed similar appeals to the General Prosecutor's office of Kazakhstan. These confessional materials of the parishioners of the Church remain in the possession of the KNB in violation of the right to fundamental religious freedom of the Church and its parishioners.

After the OSCE meeting in July 2009, representatives of the Kazakhstan government from Ministry of culture (Mrs. Banu Nurgazieva) and Ministry of Foreign Affairs (Mrs. Madina Zharbosynova) represented that the government is ready to engage in dialogue with the Church of Scientology in an effort to resolve these situations.

Unfortunately, when Church representatives met with these officials they noted that resolving the issues brought up by the Church is not in their scope of competence. They urged the Church to appeal to national government bodies, but not to international organizations as such organizations have no power to influence religious matters within the country.

The Chief of Committee of religion affairs, Mr. Ardak Doszhan, met with the President of liquidated Church of Scientology of Karaganda city and representative of Church of Scientology of Almaty city. He informed the Church about his readiness to monitor the situation objectively and to help Scientologists to realize their right to freedom of beliefs. However, he added that he has no powers to interfere into activity of the courts and law-enforcement systems. He also agreed to make an objective, not prejudiced state expertise of religious materials of Scientology.

The Church also appealed to the Ombudsman of Kazakhstan. He met with representatives of the Churches and promised to study the situation. His response to the written petition from the Church was not received yet.

Since meetings with representatives of the government, who were present at the OSCE conference in Vienna, ended with no results, the Church initiated several meetings with other government bodies with the intention to start communication and resolve the situation.

Church representatives met with an official of the Department of Internal Policy at the Presidential Administration, who accepted the Church's petition to the Head of the Presidential Administration, and promised to consider the matter and help to resolve it. To date, there has been no further answer received by the Church.

Church representatives also appealed to the Chief of Department of Supervision of Legal investigation and injury who agreed to consider the Church's petition regarding the Almaty case – in particular, the return of the confessional materials. No response has yet occurred.

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.

Conclusion

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.

Religious repression of targeted minority faiths has become the pattern and practice of the government of Kazakhstan in 2009. Many minority faiths have been illegally targeted and subjected to religious persecution; moreover

The Church calls upon the OSCE and ODIHR to hold Kazakhstan accountable to fundamental human rights standards such as the Helsinki Accords. The egregious level of religious repression implemented by the government cannot be countenanced by OSCE standards. Unless the Kazakhstan government takes immediate action to reform its systematic campaign of religious repression against minority faiths, the OSCE should take action so that Kazakhstan does not assume the OSCE Chair in 2010.