



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*

Working Session 7 - Freedom of religion or belief - Legal status, freedom of association

On the day the 2012 HDIM discussed freedom of religion or belief, Turkmenistan fined 11 Baptists, including a 17-year-old schoolboy, two months' average monthly wages each for meeting without state permission. The fines followed a raid by police and local administration officials the day before the HDIM opened, during which officials searched the house the Baptists were meeting in (without a search warrant) and confiscated all the Christian literature and CDs they found. Those present were violently taken away for questioning and fingerprinting, during which 75-year-old Begjan Shirmedov was dragged out by his collar. When his 68-year-old wife Kerime Ataeva protested that it was illegal to seize literature, that they should not treat a senior citizen with such disrespect, and that they were wearing shoes in her home, officials beat her until her hands bled. When she showed her bloodied hands to another official, he responded: "I saw nothing". Officials told the Baptists that religious activity without state registration is illegal, although they have sought such registration four times since 2004. The two judges refused to discuss with Forum 18 why they had punished people meeting together for worship without state permission. One of the judges also refused to explain why he had imprisoned a Jehovah's Witness conscientious objector to military service in March 2012.

The raid, violence, literature confiscations, fines, and denials of legal status - which are typical of many violations in the OSCE region affecting diverse communities from Kazakh Muslims to Belarusian Pentecostals - remind us that legal personality and state registration are issues that strongly impact on many people's lives, and engage many related human rights and human dimension commitments. These include the freedoms of religion or belief, of expression, of assembly and association, of information, 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.

In some participating States - including Belarus, Azerbaijan, and all those in Central Asia - the exercise by groups of people of freedom of religion or belief is banned unless state permission has been given. Yet under the binding international human rights standards which participating States have promised to implement, no state can require permission for human rights to be exercised. As the Helsinki Final Act - reinforced by later commitments - puts it: "Civil, political, economic, social, cultural and other rights and freedoms all ... derive from the inherent dignity of the human person." Or as the UN Special Rapporteur on Freedom of Religion or Belief, Professor Heiner Bielefeldt, put it at the 2012 HDIM: "freedom of religion or belief should not be seen as an act of mercy by the State, but rather as an inalienable and non-negotiable right of all human beings that the State has to respect."

This is a vitally important point in relation to legal status: registration must not be mandatory, as the exercise of human rights is not conditional upon state permission.

Denials of the rights to meet without state permission and to legal status are often intermeshed with other restrictions designed to impose other state controls on civil society. For example, Kazakhstan's two October 2011 laws seriously restricting freedom of religion or belief imposed a wide range of restrictions including a ban on exercising freedom of religion or belief with others without state permission, compulsory censorship of religious literature, and restrictions on the bookshops allowed to sell such literature. Similarly - also contrary to international standards such as Article 18 of the International Covenant on Civil and Political Rights and the UN Human Rights Committee's General Comment 22 - some states link registration with written and unwritten restrictions. These include limits on activities to those in founding charters and requirements to co-operate with secret police.

This indicates that serious legal personality and state registration 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 would be 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 is the most threatening recent development for freedom of religion or belief in the Russian Federation, and has involved among other things: bans on very questionable grounds of many texts making possession of them a criminal offence; many raids - even sometimes involving anti-terrorist forces - on meetings of followers of both of these peaceful beliefs; long-running trials involving lack of due process; and the fining and jailing of some. There is no reason to suppose that pursuit of "extremism" will stop with Muslim readers of Nursi's works and the Jehovah's Witnesses. Other groups now widely regarded in Russia as "non-traditional" or "sects" have already been targeted occasionally, if so far not convicted. From June 2008 onwards law enforcement agents have detained, investigated or warned atheists, Baptists, Hare Krishna devotees, Lutherans and Pentecostals in connection with "extremism", and tried to have Hare Krishna devotees' most sacred text banned.

The linked freedoms of religion and belief, assembly and association, and other rights have also come under threat from much more recent Russian laws. Human rights defender Alexander Verkhovsky of the SOVA Center for Information and Analysis has noted in relation to "astoundingly nonsensical laws" - such as the vaguely-worded laws criminalising "offence to religious feelings" and "propaganda of non-traditional sexual relations" - that the "anti-opposition" campaign begun since President Putin's return to the Kremlin involves a kind of "competition between initiatives". The new laws are so poorly defined that they have given rise to fears in Russia that they could be used by anyone to prosecute actions the authorities simply dislike. The authorities' use since 2002 of the Extremism Law offers no reassurance in that regard.

Verkhovsky thinks the "offending religious feelings" amendments will be interpreted in a way that criminalises actions previously not treated as criminal. Earlier, some "extremism" cases have centred on "offending feelings", he pointed out to Forum 18, "but now the number of such cases should rise." Currently, "many complaints by various religious, anti-religious and other groups against one another" have been made to various prosecution or investigative authorities. He expects that some will now be acted on, which will "lead to new unjust sentences, and aggravate the whole situation."

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. This leads to bizarre situations, such as communities being unable to prove they are liable for the taxes they already pay. Achieving legal status for all would not solve all problems, but the changes in law and in official and social attitudes necessary would help resolve the other problems.

UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt stated at the 2012 HDIM that non-mandatory ways to obtain legal personality "should be transparent, quick, fair, free from bias, inclusive and in line with the rules of due process". Where this does not apply there is a need, as the European Union's *Guidelines on the promotion and protection of freedom of religion or belief*¹ state, to "challenge attempts to make the exercise of human rights conditional upon state permission".

To assist implementation of human dimension commitments, recommendations for participating States and OSCE institutions and field operations would include:

- insisting that the politically binding human dimension commitments to ensure freedom of religion or belief and related human rights are implemented in full by all participating States;
- identifying freedom of religion or belief violations against particular people or communities as attacks on the fundamental rights and freedoms of all people;
- and mainstreaming the commitments to ensure and promote freedom of religion or belief for all and its interlinked human rights, taking advantage of resources such as the *EU Guidelines on the promotion and protection of freedom of religion or belief*, the *ODIHR/Venice Commission Guidelines for Review of Legislation pertaining to Religion or Belief*, and the forthcoming *ODIHR Guidelines on Recognition of Religious or Belief Communities*.

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¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf