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August 27, 2009

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Contribution to the Report of the U.N. High
Commissioner for Human Rights on the
implementation of the new review mechanism of the
Human Rights Council, established by GA Resolution
60/251 and by the Human Rights Council in Resolution
5/1 of 18 June 2007 for the 7th session 2010 of the UPR
(Dates of the WG: February 2010).

KAZAKHSTAN



Marcel Gillet

Chairman of the Religious Freedom Subcommittee

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JEHOVAH'S WITNESSES—KAZAKHSTAN

Legal Status

The Republic of Kazakhstan ratified the International Covenant on Civil and Political Rights (ICCPR) on November 28, 2005. According to Article 4 of the Kazakhstan Constitution, this treaty, since it has been ratified, is now part of domestic law. Kazakhstan has also ratified the first Optional Protocol of the ICCPR on February 11, 2009, which allows the UN Human Right Committee to hear complaints regarding violations of the ICCPR from citizens of Kazakhstan. Article 18 of the ICCPR guarantees freedom of worship and the right to share one's beliefs. The Kazakhstan Constitution (Articles 12, 22, 32, and 39) and the Law on Freedom of Religion and Religious Organizations (Articles 3, 12, and 13) protect the right to profess one's beliefs individually or jointly with others, as well as to share one's beliefs with others.

The Republic of Kazakhstan has also adhered to the OSCE Documents. The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (June 1990) has reaffirmed that "Everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

It also reaffirmed "to

- respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;
- allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations".

The Religious Center of Jehovah's Witnesses in the Republic of Kazakhstan has been registered as a religious association since January 22, 1997. On September 11, 2007, the Ministry of Justice re-registered the revised charter for the Religious Center in view of a change of address. Overall Jehovah's Witnesses are able to carry on their worship peacefully without official interference. However, there remain areas where religious freedom is being impeded.

Arrest and Detention in Almaty

On the evening of Sunday, May 25, 2008, after a 30-minute pastoral discourse to fellow believers in Almaty earlier that day, two senior representatives of Jehovah's Witnesses, Mr. Theodore Jaracz, an 82 year-old and a U.S. citizen, and Mr. John Kikot, a 69 year-old and a Canadian citizen, were ordered by an administrative court in Almaty to be deported.

In the case of Mr. Jaracz, the court began the deportation proceeding one hour after he was charged with unregistered missionary activity under Kazakhstan's Administrative Code. The Prosecutor was well prepared. Mr. Jaracz does not understand Russian or Kazakh. He was never given a written translation of the charges against him as required by the Administrative Code and a decision of the Supreme Court of Kazakhstan. Mr. Kikot also did not receive the written translation of the same charges that were made against him.

Both Mr. Jaracz and Mr. Kikot were assisted by a friend who provided verbal interpretation. The court record reveals that on May 23, 2008, two days earlier, the prosecutor was planning such action but never gave Mr. Jaracz and Mr. Kikot any fair warning.

The first judge on appeal showed some sensitivity to the issues, but during an adjournment she was removed without reasons. She was replaced by a new judge with a different disposition. Regrettably, the appeal court did not change the deportation order, which may adversely affect the mobility rights of Mr. Jaracz and Mr. Kikot in OSCE countries.

Messrs. Jaracz and Kikot on January 30, 2009, filed a motion with the General Prosecutor's Office requesting that the Prosecutor's Office file supervisory protests to review the cases, a wholly discretionary appeal within the control of the Prosecutor. The General Prosecutor's Office redirected the motions to the Almaty city Prosecutor's office on February 6, 2009. The Almaty city Prosecutor's Office wrote with a letter dated March 30, 2009, that they extended the consideration period until April 11, 2009.

On May 21, 2009, a representative of the Kazakhstan Religious Center received a copy of the response of the Almaty city Prosecutor's Office, in which they deny the motion to file a supervisory protest.

The deadline to file a supervisory protest asking the Prosecutor General to review the decisions was June 17, 2009. Through their legal representation, Messrs. Jaracz and Kikot each filed a protest. On August 7, 2009 the two protests were officially denied. All domestic remedies to resolve this problem have now been exhausted.

Request to the Chairman of the Presidential Commission of Human Rights in Kazakhstan

In addition to the above procedure, Messrs. Theodore Jaracz, senior member of the Governing Body of Jehovah's Witnesses and John Russell Kikot, executive administrator at the World Headquarters of Jehovah's Witnesses, have addressed to Mr. Saginbek Tokabayevich Tursunov, Chairman of the Presidential Commission of Human Rights on January 21, 2009, a letter in which they state the following:

"We (Mr. Jaracz for the last 40 years) regularly visit Administrative Centers of Jehovah's Witnesses worldwide including those located in Eastern Europe and Asia.

We are writing regarding our deportation from Kazakhstan on May 25, 2008, which we consider to have been arbitrary. What is more serious is that the deportation greatly restricts our mobility rights and is a serious insult to our dignity and reputation. Hopefully, you are in a position to set matters straight.

During the proceedings in the court of first instance (the Almaty Specialized Inter-District Administrative Court), our legal representative pointed out that when we were arrested, the prosecutor failed to translate key procedural documents into English. A hurried trial was ordered to be conducted within one hour without the court ordering that we be provided with an English translation of key documents so that we could prepare a full defense. The hurried and unfair trial denied us the right to adequately communicate with and have personal access to authorized officials from the Consular Department of the U.S. Embassy prior to the start of the trial. It is our understanding that these acts are in themselves a gross violation of the law of Kazakhstan. Furthermore, we are aware that conducting an administrative case in this manner is also a violation of international human rights treaties such as the UN International Covenant on Civil and Political Rights. Unfortunately, the court ignored these violations of procedural law.

On May 25, 2008, we were delivering a talk for the encouragement of fellow believers on the premises of the Sports and Culture Complex. This was at the invitation of "The Religious Center of Jehovah's Witnesses in the Republic of Kazakhstan," which was registered with the RK Ministry of Justice on January 22, 1997. The court found that our talks were received very positively by a peaceful audience. We can assure you that this activity, as well as the contents of our talks,

were provided for in the Charter of the Religious Center. It seems clear that our actions on May 25, 2008, did not fall under the definition of missionary activity. This fact was confirmed in the attached Legal Opinion dated September 17, 2008, by Professor of the Caspian Public University, Doctor of Law R.A. Podoprigora.

It is our sincere hope that you are in a position to rectify the current situation so as to annul the record of our deportation and thereby remove all restrictions on our mobility throughout the OSCE region and particularly other countries of Eastern Europe and Central Asia. It is also our hope that this will remove the reproach on our good name and reputation.”

We would like to point out that at the time of their detention, Mr. Jaracz was 82 years old and Mr. Kikot was 68 years old. They were confronted to an extremely difficult and disturbing situation, not being treated humanely, with respect for their honor and dignity. During that time, they were restricted from moving about. Mr. Kikot was detained for nine hours and Mr. Jaracz over seven hours. They were not offered food, the opportunity to rest, to obtain needed medication, or to prepare properly with their attorney for the trial.

Appeal to the United Nations Human Rights - Office of the High Commissioner for Human Rights:

- To invite the Republic of Kazakhstan to annul the records of the deportations of Messrs. Jaracz and Kikot and to remove all restrictions on their mobility in Kazakhstan.
- To allow them to go back to Kazakhstan without unhindered access to perform their pastoral religious service in behalf of the Community of Jehovah’s Witnesses in that country.

Attachments: 2

Legal Opinion by Professor of the Caspian Public University, Doctor of Law R.A. Podoprigora - English

Legal Opinion by Professor of the Caspian Public University, Doctor of Law R.A. Podoprigora - Russian