

Criminal prosecution for possessing extremist materials is a part of general repressive policy carried out in Kyrgyzstan and other states of Central Asia under the guise of combating Islamic extremism, as noted in the Human Rights Watch report.

### Русский Кыргызча



*Photo: MVD's press center*

The report is based on 70 interviews carried out in the Kyrgyz Republic with the accused and convicts on a charge of possession of extremist materials, their relatives, local human rights defenders, lawyers and public officials.

“Kyrgyzstan should prosecute people for committing or plotting violence, but not for the videos they watch or the books they read,” said Letta Tayler, senior terrorism and counterterrorism researcher at Human Rights Watch, in the news release. “Outlawing mere possession of material vaguely defined as extremist makes it all too easy to unjustly target political opponents, activists, journalists, defence lawyers, and ordinary citizens.”

This refers to article 299-2 of the criminal code of the Kyrgyz Republic, which is the most widely applied charge against possession of videos, brochures and books with the signs of extremism. The sentence is 3 to 10 years in prison even if there was no distribution of material or no use of it to incite violence.

According to report's estimates, 258 people have been convicted under this article since

2010. Several hundred suspects are awaiting trial by the date of report publication. The numbers have increased each year.

"Several respondents told that police and security agents had planted the material during searches, then demanded payoffs to end investigations. Some said law enforcement officials tortured them to extract confessions," Human Rights Watch [writes](#) in its report named "'We Live in Constant Fear': Possession of Extremist Material in Kyrgyzstan."

### **Expert examination issues**

The organisation has emphasised an important point to which the majority of lawyers and experts agree.

"The determination of whether material is or is not extremist is made by the State Commission for Religious Affairs (GKDR), a government panel that human rights defenders have criticised for insufficient expertise and impartiality. The government has pledged to transfer reviews of material for extremist content to its forensic service but at time of writing had yet to do so," the report urges.

There is some progress, religion expert Indira Islanova assured. She is one of the authors of the methodological guidelines for religious examination.

"Examination is the main issue for all. It must be comprehensive in nature. For example, it's the sphere of linguists to determine whether materials contains propaganda and calls to violence. They have clear methods of determination. Religion experts should be involved in the interpretation of terms and religious texts. Psychologists should examine audio and video files. If calls to interethnic strife are suspected, sociologists and political analysts could be involved. That is the examination should be psychological-linguistic with a religious component, if we speak about a religious text," Aslanova explained.

According to her, a step by step approach and the standard procedure for persons commissioning the expert examination are being developed. It will take about three years to implement this process.

From January 2019, the Kyrgyz criminal code will change. Article 299-2 will also be modified. The definitions of "possession of extremist materials" and "possession for the purpose of distribution" will finally be separated. In fact, these amendments have been taken from Russia's experience. With one provision: in Russia, possession of such materials is penalised, not criminalised.

"I hope so much that we will eliminate this gap. Otherwise, we all will depend on law enforcement bodies' will," Indira Aslanova emphasised.

### **Everyone's at risk**

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### **mere formality**

Zhanabil Davletbaev, a member of the Lawyers' Association of Kyrgyzstan, analysed all last year's trials under article 299-2 of criminal code of the Kyrgyz Republic and reached a conclusion: courts most often relied on examination when delivering judgements.

"This is the main evidence the sentence is based on. But the quality of examination by the State Commission for Religious Affairs raises many questions. Often it can be done as a mere formality," respondent said.

Davletbaev was an expert in the monitoring project of trials related to extremism and interethnic strife. He made examples of the weirdest charges in the last two years.

A man was convicted for extremism because he listened to a voice message sent to him via WhatsApp. He was detained, his cell phone was seized, they found this record in the storage and initiated criminal proceedings.

"The nonsense was that the investigators didn't even want to know who sent this doubtful file. They wrote the sender was unknown," the lawyer said.

### **We are all at risk every time we read specialised literature, take part in discussions in social media, or write comments**

In another case, a man was convicted for having some words in Arabic written in his notebook and separated by commas. All together they didn't have any meaning or contain any call, they were just nouns. But the examination board wrote a conclusion that these words were often used by prohibited extremist organisations.

"Do you understand that the State Commission for Religious Affairs neither reveals hate speech nor sees into context? If any given word can be interpreted as participation in extremism and anyone get a term for "distribution", then everyone's at risk. We are all at risk every time we read specialised literature, take part in discussions in social media, or write comments," Davletbaev warned.

His advice is: in the current situation, everyone must examine the law, turn on the "self-criticism" mode, and filter their own texts and actions, even if they concern such delicate topics as religion, religious movements, and especially banned organisations. Believers are particularly at risk.

The Centre for Religious Situation Study at GKDR also agrees that public awareness should be raised.

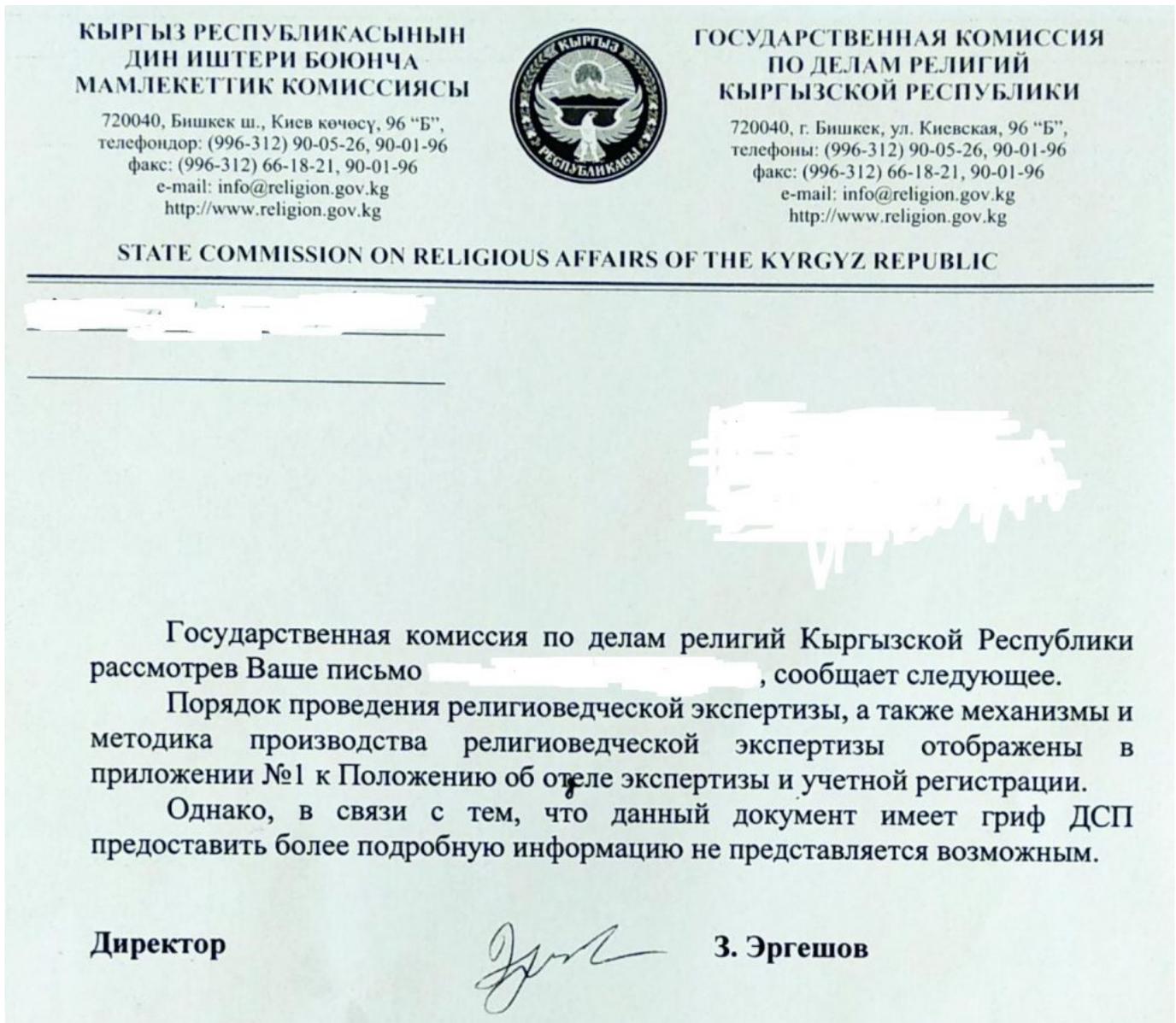
"Kyrgyzstan needs literate and educated religious activists, who would explain to the believers what traditional Islam is. Of course, true religion has nothing to do with extremism, but calculating manipulators have long ago mixed these definitions and play on the feelings of gullible people. So, now imams are being trained and certified," they commented.

The Centre also said that the situation could be improved by creating some unspecified ideology because some people read doubtful brochures in order to fill in this gap. Many complaints about courts have been voiced. IWPR decided to learn about them from Valerian Vakhitov, a well-known lawyer in the south of the country. He took part in almost a hundred criminal cases under article 299-2 together with Bir Duino human rights organisation. And the servant of Themis claimed that if you are detained under this article in Kyrgyzstan, be sure to get a prison term.

"Just listen, none (!) verdict of non-guilty has been rendered in Kyrgyzstan under the article "nationalist, racial, or religious hatred." If a case is filed, you will be convicted. For a like, for a brochure an imam hands to you and you won't even have time to open it - our law enforcement bodies do not care about it. And this is a "wolf ticket" for life - such convicts cannot apply for pardon, release on parole, you can hardly find a good job afterwards," Vakhitov said.

He also said that courts find people guilty only based on the examination of the State Commission for Religious Affairs.

"Do you think there is any legal background in such examination reports? I have seen only two options during my practice: "does not comply with the law" and "does not comply with the constitution." I sent an official letter to the head of the State Commission for Religious Affairs, Mr. Ergeshov, asking him to describe the method of examination in Kyrgyzstan. The official wrote back that all mechanisms were specified in the regulation - a document for internal use of the commission. It means that people are convicted and [commission] doesn't even bother to substantiate the reasons," he said.



*The State commission refuses to provide the examination methodology*

Also, he made a few examples from his legal practice.

**Such charges should be based on the  
main thing - wilful intent**

A case of imam of Kara Suu, Osh oblast, Rashod Kamalov, who was sentenced to 10 years in colony with reinforced regime. The reason was a compact disc that was played during the Friday prayer. But, according to Vakhitov, it was the sermon that the investigators of GKNB had already seized and the commission found it contained no prohibited things.

The lawyer reminded about the high-profile case of 2016, when a 21-year-old resident of Kara Suu, Abdullo Nurmatov, got probation for liking posts on the social media website,

*Odnoklassniki*, about imam Kamalov.

"You can just as well impose a term for law enforcement officers and judges who keep the seized literature in their offices. So such charges should be based on the main thing - wilful intent. Possession can be accidental (someone asked to keep it for a while), for professional study, for writing an article, for research purposes. The courts should find out why a person possesses such material and what he plans to do with it," Valerian Vakhitov said.

He added that possession of literature or discs itself cannot be a crime. No country in the world brings anyone to trial for this.

In fact, one of the main recommendations by Human Rights Watch is that the authorities of Kyrgyzstan should substantially revise article 299-2 and an overbroad definition of extremism.

"Freeze all pending prosecutions of persons for the offence of mere possession of proscribed material," report said.

### **State Commission for Religious Affairs does not carry out forensic expertise**



Zakir Chotaev. Photo: CABAR.asia/IWPR

"The law does not have retroactive force," **Zakir Chotaev**, deputy head of the State Commission for Religious Affairs, commented the initiative to CABAR.asia. "Some international organisations often make unrealisable demands they are interested in. Generally speaking, combatting extremism is the internal affair of the country. If the laws of Kyrgyzstan are amended, relevant work will be done accordingly."

He noted that this question is beyond the competence of GKDR. But, according to him, MVD already make efforts to improve the law.

Respondent has specifically emphasised: State Commission for Religious Affairs does not carry out forensic expertise.

"All we do is the state religion expert examination, which can be done by any expert who has relevant knowledge. We define whether materials refer to banned movements and organisations or not. Our expert examination is not a forensic one. It can be provided only upon request of government agencies. And then it's up to courts. Only a court can decide whether our expert examination can be used as an evidence or not," Chotaev explained.

Moreover, according to the official, experts of GKDR didn't find materials of religious movements banned in the Kyrgyz Republic in almost half of requests.

"The majority of materials have been found clear. None of our staff would assume the responsibility for writing things that do not exist. They understand that they subscribe their names to these documents," the interviewee concluded.

And here's the conclusion of the Human Rights Watch report: "not only are abusive counterterrorism measures unlawful, they also can be counterproductive by alienating local communities and generating support for extremist armed groups."

Thus, experts, lawyers, human rights defenders and even officials share only one thing in common - the law on countering extremist activity must be revised.



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