

Case No. AD-1294/12IDC2

**D E C I S I O N**  
**In the Name of the Kyrgyz Republic**

29 August 2012

Bishkek City

**Bishkek City Interdistrict Court**

Presiding Judge Sadirova Ch.I.,

secretary Dovletova P.,

with the participation of representatives for the applicants: N.J. Kachiev (by powers of attorney dated March 1, 2011, and August 13, 2012), Shane Heath Brady (by powers of attorney dated March 15, 2012, and August 13, 2012), and translator G. J. Bekmanova,

considered in open court the application of the “Religious Center of Jehovah’s Witnesses in the Kyrgyz Republic” and “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District,”

asking to cancel Order No. 69 of the State Commission on Religion Affairs of the Kyrgyz Republic, dated June 12, 2012,

**HAS ESTABLISHED:**

The “Religious Center of Jehovah’s Witnesses in the Kyrgyz Republic” and “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District” filed a court application asking to cancel Order No. 69 of the State Commission on Religion Affairs of the Kyrgyz Republic, dated June 12, 2012.

The applicants substantiate their request by stating that the State Commission on Religion Affairs of the Kyrgyz Republic (hereinafter, SCRA KR) grossly exceeded its lawful authority when it issued Order No. 69, dated June 12, 2012, withdrawing the religious registration of the “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District” (hereinafter, “Toktogul Religious Organization”).

Article 27 of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic,” No. 282, dated December 31, 2008 (hereinafter, Law “On Freedom of Religion”) provides the circumstances when SCRA KR may “suspend” the activity of a religious organization. None of those circumstances apply to the present case.

At no time has the “Toktogul Religious Organization” violated the law. To the contrary, the “Toktogul Religious Organization” and individual Jehovah’s Witnesses have been the innocent victims of the criminal activity of a few unlawful persons in Toktogul. The decision of SCRA KR to withdraw the religious registration of the “Toktogul Religious Organization” punishes innocent citizens who are Jehovah’s Witnesses living in Toktogul while rewarding the criminals who have persecuted them. Order No. 69 of SCRA KR, dated June 12, 2012, is a very serious violation of Articles 32 and 35 of the Constitution of the Kyrgyz Republic, Articles 18 and 22 of the International Covenant on Civil and Political Rights (hereinafter, ICCPR), and Article 27 of the Law “On Freedom of Religion.”

The “Religious Center of Jehovah’s Witnesses in the Kyrgyz Republic” (hereinafter, “Religious Center”) was registered with the Commission on Religion Affairs of the Kyrgyz Republic

on April 30, 1998, and received state registration on August 6, 1998. Alymbek Bekmanov is the chairman of the Governing Council of the Applicant Religious Center.

The “Toktogul Religious Organization” was registered by the State Commission on Religion Affairs on March 18, 2005. Mamatkasymov Taalaybek is the chairman of the Applicant “Toktogul Religious Organization.”

Kyrgyz citizens who are Jehovah’s Witnesses have been living in Toktogul and carrying out their peaceful religious worship in the city since at least the mid-1990s. Jehovah’s Witnesses living in Toktogul have an excellent relationship with their neighbors and, until May 2010, have not encountered significant problems.

In May 2010 and again in May 2012 a few unlawful individuals living in Toktogul attempted to stir up religious hatred against their fellow citizens who are Jehovah’s Witnesses, in violation of the Criminal Code. Sadly, some individuals acted on this religious hatred and attacked Jehovah’s Witnesses and destroyed their place of worship.

Jehovah’s Witnesses filed criminal complaints against the instigators of the May 2010 and May 2012 criminal attacks.

On June 27, 2012, the Prosecutor General’s office took direct control of those criminal investigations.

On June 12, 2012, SCRA KR issued Order No. 69 which withdrew the registration of the “Toktogul Religious Organization.” The Order and covering letter No. 01-08/1529 of SCRA KR, dated June 13, 2012, do not provide any reasons for the decision.

The “Religious Center” represents Jehovah’s Witnesses throughout the Kyrgyz Republic, as stated in its Charter. According to paragraph 1.4 of the Charter of the “Toktogul Religious Organization” it is part of the Applicant “Religious Center.” For these reasons, the Order No. 69 of SCRA KR withdrawing the registration of the “Toktogul Religious Organization” directly affected the right and legal interests of the “Religious Center.”

In its Order No. 69, dated June 12, 2012, SCRA KR claims that it is authorized by Article 10 of Presidential Decree No. 319, dated November 14, 1996, to withdraw the registration of the “Toktogul Religious Organization” without a court hearing or a court order and without a prior written warning. This statement is not correct.

Presidential Decree No. 319 was a temporary provision intended to apply only to the former Law of the Republic of Kyrgyzstan “On Freedom of Religion and Religious Organizations,” which was repealed on December 31, 2008, when the new law on religion was enacted. This is obvious from a plain reading of Decree No. 319 which relies on provisions of the old religion law which no longer apply.

In any event, Article 10 of Presidential Decree No. 319 contradicts Article 27 of the KR Law “On Freedom of Religion” and therefore cannot be lawfully applied.

It is clear from Articles 6(1) and 6(2) of the Law of the Kyrgyz Republic “On Legal Acts,” No. 241, dated July 20, 2009, that a Presidential Decree cannot contradict the provisions of a law enacted by parliament. Article 10 of the Law of the Kyrgyz Republic “On Legal Acts” specifies that a decree which contravenes a law enacted by parliament is considered invalid and cannot be applied. This is also confirmed by Article 2 of the KR Law “On Freedom of Religion”: legislation on

freedom of religion and religious organizations in the Kyrgyz Republic is based on the Constitution of the Kyrgyz Republic and consists of this Law and other statutory legal acts adopted in accordance with this Law. Public authorities and local governments may not adopt statutory legal acts contradicting this Law.

Article 27 of the KR Law “On Freedom of Religion” states that before suspending the activity of a religious organization SCRA of the Kyrgyz Republic must:

1) if a religious organization or mission commits a violation of the legislation of the Kyrgyz Republic or carries out activities which contradict its charter, the state religious affairs agency issues a written warning which shall be sent within three days to the administrative body of the religious organization or mission.

2) if the violations specified in point 1 of this Article are not eliminated within three months or are repeated within the period of one year, the state religious affairs agency has the right to file a claim in court for the liquidation of the religious organization.

Only after SCRA KR has followed these first two steps, does it have the right to make a decision to suspend the religious organization’s activity until a court decision is rendered.

SCRA KR has not followed any of the steps set forth above.

Additionally, chapters 3 and 4 of the Regulations “On the State Commission on Religion Affairs of the Kyrgyz Republic,” confirmed by Presidential Decree No. 71, dated March 23, 2012, prescribe the specific functions and rights of SCRA KR under the KR Law “On Freedom of Religion.” SCRA KR does not have the authority to withdraw a registration of a religious organization, but only to suspend the activity of the religious organization in the manner prescribed by Article 27 of the KR Law “On Freedom of Religion.”

SCRA KR has exceeded its lawful authority, in violation of Article 5(3) of the KR Constitution which prohibits state authorities from exceeding the limits of powers defined in the present Constitution and laws.

In violation of Article 41 of the Law of the Kyrgyz Republic “On Administrative Procedures” and Article 41(1) of the Constitution of the Kyrgyz Republic, Order No. 69 does not provide any substantiation for the decision about withdrawing the registration of the “Toktogul Religious Organization”.

According to Article 41 of the Law of the Kyrgyz Republic “On Administrative Procedures,” No. 16, dated March 1, 2004, a decision of an administrative body must contain “introductory, descriptive, reasoned, and resolution parts.” The reasoned part of the decision must contain the facts and evidence relied on by the administrative body as the basis for its decision. Those requirements are necessary to demonstrate whether the administrative body acted lawfully. These fundamental requirements are repeated in Article 41(1) of the KR Constitution and Article 14 of the ICCPR.

Article 11(2) of the KR Law “On Administrative Procedures” states that a decision from an administrative body contradicting the KR Constitution, the laws of the Kyrgyz Republic, and other normative legal acts is invalid and cannot be applied.

Order No. 69 violates the constitutional rights to freedom of religion and the right to have and maintain a religious organization. All religions and all persons are equal under the law. All citizens of the Kyrgyz Republic, regardless of religious affiliation, have the constitutional right to have a

religious organization in any region of Kyrgyzstan, as guaranteed by Articles 32 and 35 of the KR Constitution, Articles 18 and 22 of the ICCPR, and Articles 1, 4(2), 5(1), and 8(3) of the KR Law ‘On Freedom of Religion.’”

The only limitation on that right is Article 20(2) of the KR Constitution and Article 18(3) of the ICCPR which state that the activity of a religious organization must not be contrary to “national security, public order, health and morals of the population as well as the rights and freedoms of other persons.”

The KR Constitution and ICCPR guarantee religious pluralism and require that the government must take actions to ensure that “competing groups tolerate each other.” This legal requirement under Article 18 of the ICCPR was explained in detail by the Special Rapporteur on freedom of religion or belief at paragraphs 41-52 of the report “Elimination of All Forms of Religious Intolerance” presented to the UN General Assembly.

SCRA’s Order No. 69, dated June 12, 2012, to withdraw the registration of the “Toktogul Religious Organization” based on the criminal activity of a few intolerant individuals violates the applicants’ right to freedom of religion and the right to have a religious organization, contrary to Articles 32 and 35 of the KR Constitution and Articles 18 and 22 of the ICCPR.

In turn, the State Commission on Religion Affairs of the Kyrgyz Republic filed an Objection to the Application, in which it requests to refuse to satisfy the Application of the religious organizations for the following reasons.

On March 18, 2005, the Community of Jehovah’s Witnesses in the town of Toktogul were registered by the State Commission on Religion Affairs of the Kyrgyz Republic and received a certificate in the established form No. 0456-POX. However, in order to avoid interreligious conflicts in that and other regions, where most of the population is Muslims, the State Commission on Religion Affairs repeatedly insisted that Jehovah’s Witnesses abstain from missionary activity. But the community of Jehovah’s Witnesses pursued their own interests and was totally indifferent to the public stability of the Republic.

From the beginning of the activity of Jehovah’s Witnesses in the town of Toktogul, Jehovah’s Witnesses have actively spread their religious beliefs among the Muslim population and this has often provoked conflict situations. Under an appearance of charity they use material inducements. Local people complained to the local government that the community of Jehovah’s Witnesses was enticing local young ones into their religion, and they were persistently spreading religious literature.

The local people’s hostility and opposition toward the religious activity of Jehovah’s Witnesses reached its climax when Jehovah’s Witnesses started to build a Kingdome Hall in the town of Toktogul, in May 2012. The local people viewed that as extensive religious activity from the part of Jehovah’s Witnesses and it lead to the destruction of the property belonging to the community by a group of young people and a large protest by the local people, who required forbidding the religious activity of Jehovah’s Witnesses in the region.

The situation worsened and the danger of open opposition, destabilization in the region, violation of public order and interreligious conflict arose.

According to the Toktogul regional administration, the police, and the authorities, if the community of Jehovah’s Witnesses will continue their activity in the region, the public stability will worsen and it could lead to unpredictable consequences and an intensification of the conflict.

Article 32 of the Constitution of the Kyrgyz Republic guarantees freedom of conscience and belief, everyone has the right to confess individually or jointly with others any religion or not to confess a religion. Everyone has the right to freely choose and have a religion and other convictions. No one may be forced to express religious and other convictions or deny them.

Article 20(2) of the Constitution of the Kyrgyz Republic state that “human and civil rights and freedoms may be limited by the Constitution and laws for the purposes of protecting national security, public order, health and moral of the population as well as rights and freedoms of the other persons. The introduced limitations should be commensurate to the declared objectives.”

Article 4(7) of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations” permits to limit the rights and religious freedom in order to protect the public security and order. Article 14(2) states that the grounds for liquidation of a religious organization and prohibition of its activity or mission in judicial procedure are:

- the violation of public security and public order, undermining of the state’s security;
- inciting citizens to refuse to fulfill their legally established civil duties and to perform other illegal actions.

Article 18.3 of the International Covenant on Civil and Political Rights defines the limits as those who are necessary for the protection of the public security, order health and moral, and the main rights and freedoms of others.

Article 9.2 of the European Convention on Human Rights states that fundamental rights and freedoms can be subject only to limits necessary “in the interest of public safety, for the protection of public order, health or morals.”

By taking in account the situation, the categorical demands of the people, the need to take urgent measures to avoid the spread of the conflict, to ensure public stability and security, to stop the conflict from escalating into violence, to prevent interrelation conflicts, the requests from the governmental bodies of the Toktogul region and being guided by point 10 of the “Temporary regulation about registration of religious organizations” which was approved by the Decree of the President of the Kyrgyz Republic dated November 14, 1996, No. 319 “About measures on realization of the rights of citizens of the Kyrgyz Republic on freedom of conscience and religion,” the State Commission on Religion Affairs of the Kyrgyz Republic issued Order No. 69, dated June 12, 2012, withdrawing the religious registration of the “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District.”

The Presidential Decree of the Kyrgyz Republic “About measures on realization of the rights of citizens of the Kyrgyz Republic on freedom of conscience and religion,” No. 319, was accepted on November 14, 1996, and has not been annulled. The Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations,” dated December 16, 1991, operates with it. In 1997 amendments and additions were made to the law.

These two normative legal acts were in force at the same time and used in regulating the activity of religious organizations. Those norms which were written in the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations” (amended by the KR Law No. 79 dated November 19, 1997) were written in the Decree of the President of the Kyrgyz Republic No. 319, dated November 14, 1996.

The application of Article 27 of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations” would require a time period of 120 days.

The Application states that SCRA KR did not provide any reasons for its decision, but the letter No. 01-08/1641 of July 17, 2012, from SCRA KR to the Religious Center of Jehovah’s Witnesses in the Kyrgyz Republic clearly explained that the registration of the mentioned organization was being withdrawn because the activity of that religious organization presented a danger to public security, social stability, interreligious unity and moral of the population.

According to Article 1(2) of the Presidential Decree No. 71, dated March 23, 2012, in its activity the SCRA of the Kyrgyz Republic should be guided by the Constitution and the Laws of the Kyrgyz Republic; Presidential Decrees are consequently mandatory for the activity of SCRA KR.

Because of the aforementioned, the State Commission on Religion Affairs of the Kyrgyz Republic considers that the decision about withdrawing the religious registration of the Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region was founded.

During the court hearing the applicants requested to change their requests and to find invalid Order No. 69 of the State Commission on Religion Affairs of the Kyrgyz Republic, dated June 12, 2012.

Representative of the State Commission on Religion Affairs of the Kyrgyz Republic did not come to the hearing although they were informed properly about the time and place of the hearing.

The Application of the SCRA of the Kyrgyz Republic about adjourning the hearing was not satisfied because it was groundless.

**After examining** the materials of the case and hearing the explanation of the participants, the court decided that the Application of the “Religious Center of Jehovah Witnesses in the Kyrgyz Republic” and “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District” **should be satisfied for the following reasons.**

It results from the case materials that the State Commission on Religion Affairs of the Kyrgyz Republic, based on the conclusion prepared by the Southern Regional Department of SCRA, issued Order No. 69, dated June 12, 2012, withdrawing the religious registration of the “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District.” SCRA relied on point 10 of the **“Temporary regulation about registration of religious organizations” which was approved by the Decree of the President of the Kyrgyz Republic, dated November 14, 1996, No. 319** “About measures on realization of the rights of citizens of the Kyrgyz Republic on freedom of conscience and religion.”

**The Court cannot accept this Decree as valid since it contradicts the International Covenant on Civil and Political Rights and the legislation of the Kyrgyz Republic and violates the rights, freedoms and interests of the applicants protected by the law.**

Firstly, the disputed order or as the respondent calls it in his Objection to the Application, the decision about withdrawing the registration, contradicts the Law of the Kyrgyz Republic “On Administrative Procedures” in its form and content.

According to Article 41 of the Law of the Kyrgyz Republic “On Administrative Procedures,” a decision of an administrative body must contain “introductory, descriptive, reasoned, and resolution parts.

A collective organ or an official empowered to review administrative cases of corresponding category may make a decree on behalf of the administrative organ and its reasons should include:

- the facts of the administrative case settled by a collective organ (official);
- the evidence on which the conclusions of the facts are based;
- the reasons why the collective organ (official) objected to one or more evidence and did not apply laws or other normative legal acts that the applicant had cited.

Order No. 69 of SCRA, dated June 12, 2012, contains absolutely no descriptive or reasoned part.

Furthermore, despite the requirements of Article 32(1) of the above mentioned Law, the representative of the religious organization were not invited as an interested party by SCRA and were not interviewed about the circumstances of the case.

However, according to Article 40(2) of the Constitution of the Kyrgyz Republic, everyone has the right to protect its rights and freedoms by any means that are not prohibited by the law.

Further, as it was mentioned before, the Conclusion prepared by the Southern Regional Department of SCRA served as a basis for the disputed Order, but the applicants were not allowed to familiarize themselves with that conclusion before the order was issued. It was also not provided at the hearing in the Interdistrict Court. To this day, neither the Court nor the applicants have any idea about what concrete violations and circumstances served as a reason for the respondent to withdraw the registration of the religious organization and suspend its activity.

Secondly, the disputed Order issued by SCRA, violates the Constitution of the Kyrgyz Republic and Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations in the Kyrgyz Republic.”

According to Article 2 of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations,” any legislation about freedom of religion and religious organizations in the Kyrgyz Republic is based on the Constitution of the Kyrgyz Republic and consists of this Law and other statutory legal acts adopted with this Law.

According to Article 16 of the Constitution of the Kyrgyz Republic, human rights and freedoms are of superior value. The Kyrgyz Republic ensures the respect of human rights and freedoms of all persons in its territory and under its jurisdiction.

According to Article 32 of the Constitution of the Kyrgyz Republic everyone is guaranteed freedom of conscience and belief. Everyone has the right to freely choose and have a religion and other convictions.

According to Article 27 of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations,” if a religious organization or mission violates the legislation of the Kyrgyz Republic or carries out activities which are contrary to its charter, SCRA issues a written warning which shall be sent within three days to the administrative body of the religious organization or mission. If the violations specified in point 1 of this Article are not eliminated within three months or are repeated within the period of one year, SCRA has the right to file a claim in court for the liquidation of the religious organization. At that time SCRA has the right to make a decision to suspend the religious organization’s activity until a court decision has been rendered.

No evidence was provided during the court hearing to prove that SCRA had given a written warning to the applicants in compliance with the law. The Court did also not have any proof that SCRA filed a claim in court according to Article 14 of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations” to which it refers in its Objection to the Application.

According to Article 60(1) of the Civil Procedure Code of the Kyrgyz Republic, the participants in a case should prove the circumstances they refer to in their application or objection.

The respondent did not bring into evidence any documents which, in compliance with the law, would show that the religious organization violated the current legislation of the Kyrgyz Republic, or destabilized the situation in the region, violated public order and interreligious unity, presented a danger to the national security and public order, health and moral of the population as well as the rights and freedoms of other persons or that Jehovah Witnesses are the subject of an administrative or criminal liability.

For this specific reason, the Court considers as groundless the reference the respondent makes to Article 20 of the Constitution of Kyrgyz Republic and Article 4(7) of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations.”

Additionally, the reference SCRA makes to point 10 of the “Temporary regulation about registration of religious organizations” which was approved by the Decree of the President of the Kyrgyz Republic, No. 319, dated November 14, 1996, “About measures on realization of the rights of citizens of the Kyrgyz Republic on freedom of conscience and religion” is baseless since the content of this Regulation contradicts the new Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations.”

According to Article 6(1,2) of the Law of Kyrgyz Republic “About Legal Acts,” laws, in the hierarchy of normative legal acts, have more authority than Presidential Decrees. Further, a normative legal act should not contradict a normative legal act with higher legal authority.

According to Article 10(1) of the above mentioned Law, if provisions of the old normative act contradict the new adopted normative act, the former normative act is not valid anymore.

Consequently, when the Law of the Republic of Kyrgyzstan “On Freedom of Religion and Religious Organizations,” came into force on December 31, 2008, the Decree of the President of the Kyrgyz Republic, No. 319, dated November 14, 1996, and accordingly the “Temporary regulation about registration of religious organizations” lost their legal force.

In these circumstances, the Court considers that in the absence of a court ruling about the liquidation of the religious organization, SCRA exceeded its lawful authority and unlawfully issued the decision about withdrawing the Certificate of the Religious organization.

According to SCRA and as confirmed by Presidential Decree No. 71, dated March 23, 2012, the activities of SCRA should be guided by the Constitution and laws of the Kyrgyz Republic.

According to Article 5(3) of the Constitution of the Kyrgyz Republic, the state, its authorities, self-governance bodies, and officials thereof shall not go beyond the limits of the powers as defined in the present Constitution and laws.



According to Article 2 of the Law of the Kyrgyz Republic “On Freedom of Religion and Religious Organizations,” public authorities and local governments cannot adopt statutory legal acts contradicting this Law.

According to Article 11 of the Law of the Kyrgyz Republic “On Administrative Procedures,” an administrative act should not contradict the Constitution and laws of the Kyrgyz Republic. Any administrative act that contradicts the requirements of the Constitution, the laws of the Kyrgyz Republic, or other normative legal acts is invalid and should not be applied on the territory of Kyrgyz Republic.

The claims of the applicants are grounded and the disputed Order is invalid.

As to the written arguments of SCRA about the categorical protests of the local people against Jehovah’s Witnesses, the request of the local government about the need to take prompt decision against situations rising to conflicts, there is no proof of their existence. Even if such evidence was available, the Court finds that it would not allow a governmental organ to make a decision which contradicts the law, the Constitution of the Kyrgyz Republic, and other normative legal acts.

According to Article 263(1,3) of the Civil Procedure Code of Kyrgyz Republic, the result of the examination of the application to annul a non-normative act or appeal from the action (or inaction) of a public organ, state authority, local government or their officials, the Court has the right to make a decision to: nullify the challenged act entirely or in a part, or to oblige the body or the official who has carried out the challenged action or inaction, to eliminate in full the violation of the rights, freedoms and legitimate interests of the applicant if its statement is recognized as substantiated.

According to Article 114 of the Civil Procedure Code of the Kyrgyz Republic, the respondent should pay the judicial costs to the Governmental budget.

On the basis of what was said above and according to Articles 114, and 197-201 of the Civil Procedure Code of the Kyrgyz Republic, the Court

**DECIDED:**

To satisfy the application of the “Religious Center of Jehovah’s Witnesses in the Kyrgyz Republic” and “Religious Community of Jehovah’s Witnesses of the town of Toktogul, Toktogul Region, Jalal-Abad District.”

To annul Order No. 69 of the State Commission on Religion Affairs of the Kyrgyz Republic, dated June 12, 2012.

To request payment from the State Commission on Religion Affairs of the Kyrgyz Republic to the governmental budget duty expenses of 1,000 som and post expenses of 100 som.

The decision can be appealed within 30 days to the Bishkek City Court.

**Presiding Judge**

**Sadirova Ch.**

True Copy (s) Kenrishova