

29 May 2014

KAZAKHSTAN: Drink vodka – yes, watch football – yes, praying – no

By Felix Corley, Forum 18

The leader of a Baptist congregation in Semei in East Kazakhstan Region, which chooses to meet for worship without state permission, began a ten-day prison term on 27 May. Viktor Kandyba had refused to pay a fine handed down in 2013 for leading the church. Prosecutor's Office official Bolzhan Botbayev, who brought both cases to court, struggled to explain why Kandyba has the right to gather friends to drink vodka or watch football on television but not to meet for worship. "The law says they must have registration before they are allowed to meet," he insisted to Forum 18. Kandyba is the tenth known Baptist to be given a short-term prison sentence in 2014 for refusing to pay fines for exercising the right to freedom of religion or belief. "I can't agree that these imprisonments are a violation of human rights," Rustam Kypshakbayev of the government's Ombudsperson's Office for Human Rights told Forum 18. Those who lead unregistered religious communities will face up to 60 days' imprisonment if the new Criminal Code now in the Senate is adopted in current form.

Prosecutor's Office official Bolzhan Botbayev defends the 10-day prison term handed down on 27 May to Viktor Kandyba for refusing to pay a fine for leading an unregistered meeting for worship in his home. Asked by Forum 18 News Service if Kandyba has the right to invite friends to drink vodka in his home, Botbayev responded: "Yes, he has the right." Asked if Kandyba has the right to invite friends to watch football on television, he responded: "Yes." Asked if Kandyba has the right to invite friends to pray, he responded: "No, not if the community is not registered."

Botbayev, assistant to the Prosecutor in Semei [Semipalatinsk] in East Kazakhstan Region, led the administrative case against Kandyba in court. He struggled to explain to Forum 18 on 29 May why those who drink vodka or watch football together in private homes are treated differently to those who gather for religious meetings.

Told that Kandyba and his fellow Council of Churches Baptists repeatedly point out that Kazakhstan's Constitution guarantees them the right to freedom of religion or belief, Botbayev insisted to Forum 18 on 29 May: "The law says they must have registration before they are allowed to meet."

Galym Shoikin, Deputy Chair of the Agency of Religious Affairs (ARA) in Astana, refused to discuss Kandyba's imprisonment on 29 May. He put the phone down as soon as Forum 18 had introduced itself.

But officials of the government's Ombudsperson's Office for Human Rights did not consider that Kandyba's human rights have been violated (see below).

2013 raid and fine

Kandyba and his congregation in Semei have faced repeated state harassment for meeting for worship without the compulsory state permission. Police have frequently raided the church, while Court Bailiffs imposed a restraining order on Kandyba's home and car in 2007 for unpaid fines. The restraining orders remain in force seven years later, local Baptists complained to Forum 18.

The most recent trouble for Kandyba began when police raided the Sunday morning meeting for worship of his congregation in Semei on 12 May 2013, just two weeks after a previous raid. Although ten other church members were fined between June and mid-July 2013 (including one of Kandyba's sons, Maksim – see below) for participating in an unregistered religious organisation, Viktor Kandyba was not immediately brought to court.

However, on 24 July 2013 Semei Specialised Administrative Court fined Kandyba for leading an unregistered religious community, a fact he freely admitted in court, according to the court decision seen by Forum 18. He was punished under Administrative Code Article 374-1, Part 1 ("Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation").

Judge Nurlan Nuralinov fined Kandyba 100 Monthly Financial Indicators (MFIs), 173,100 Tenge (6,700 Norwegian Kroner, 880

Euros or 1,150 US Dollars). This is about two months' wages for those in work.

East Kazakhstan Regional Court rejected Kandyba's appeal on 25 September 2013 (see F18News 11 November 2013 http://www.forum18.org/archive.php?article_id=1895).

Kandyba refused to pay the fine, considering he had committed no offence for which he should be punished. The case was then handed to the Court Bailiffs. Three Bailiffs "long tried to persuade him to pay at least part of the fine in instalments, but he refused," local Baptists told Forum 18 on 28 May.

Ten day imprisonment

Botbayev, the same Prosecutor's Office official who had led the case in July 2013, then brought a new case to court, this time under Administrative Code Article 524. This punishes "Failure to carry out court decisions". He demanded the maximum punishment of ten days' imprisonment.

On 27 May, Judge Gibrat Valiyev of Semei Specialised Administrative Court upheld the Prosecutor's Office request and sentenced Kandyba to the maximum punishment under Article 524 of ten days' imprisonment, according to the court decision seen by Forum 18. During the trial, Kandyba repeated his innocence of any offence "and because of this has no intention of paying the fine".

The court decision says Kandyba had to be given the maximum term of imprisonment because of the "social danger" of his "intentional" refusal to pay and his refusal to recognise his "guilt".

Botbayev insisted to Forum 18 that the "social danger" consisted of Kandyba's wilful refusal to fulfil a court order. "If he's not happy with the decision, he can lodge an appeal," he insisted to Forum 18.

"Viktor was arrested right in the court room to begin serving his sentence," local Baptists told Forum 18. They added that the trial was filmed by local television.

Forum 18 was unable to reach Judge Valiyev on 29 March to ask which he handed down a term of imprisonment to punish Kandyba for exercising his right to freedom of religion or belief. His assistant told Forum 18 that the Judge was in hearings.

Hearing filmed

Sholpan Rakhimzhanova, assistant to Court head Kenzhesh Mukashov, told Forum 18 that her boss had given permission to local television channel TVK-6 to film the trial at the request of the Court Bailiffs. "We often have local television filming hearings," she insisted. She said she did not know if the channel has already aired the footage.

Telephones went unanswered at TVK-6 in Semei when Forum 18 called on 29 May.

Television channels have in the past shown footage of court cases against individuals for exercising their right to freedom of religion or belief. Such coverage has often been accompanied by hostile commentary (see F18News 26 October 2009 http://www.forum18.org/archive.php?article_id=1367).

Harsher Article 524 punishments

Administrative Code Article 524 was amended on 15 January 2014 to increase the fines for individuals from a maximum of 10 MFIs to between 10 and 20 MFIs for individuals and between 20 and 30 MFIs for people acting in an official capacity. The other possible punishment for individuals, short term-imprisonment – previously "up to ten days" – was changed to "between five and ten days". These amendments came into force ten days after the 18 January official publication.

Thus Article 524 punishments of 2 days' imprisonment given to fellow Council of Churches Baptists Vyacheslav Cherkasov and Zhasulan Alzhanov on 9 January are no longer possible (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

The new Administrative Code now going through the upper house of Parliament, the Senate, is due to include fines under the new Article 645 similar to the pre-January 2014 Article 524 fines. According to the text as it completed passage in the lower house of Parliament, seen by Forum 18, punishments would be fines of 10 MFIs on individuals and 20 MFIs on people activity in an official capacity "if the offence does not bear a criminal nature".

Tenth known 2014 imprisonment

Kandyba, a father of 17 who had his 47th birthday on 8 May, is the tenth Council of Churches Baptist known to have been given a prison term of up to ten days in 2014 for refusing to pay earlier fines to punish them for exercising their right to freedom of religion

or belief. One of those imprisoned earlier this year was one of his sons, Maksim Kandyba, given a ten-day prison term in January. Maksim Kandyba is among many Council of Churches Baptists to be banned from travelling abroad because of unpaid fines (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

Council of Churches Baptists have adopted a policy of civil disobedience, refusing to pay fines imposed for meeting for worship without compulsory state registration. Council of Churches Baptists think such fines are wrong, as neither Kazakhstan's Constitution nor the country's international human rights obligations allow punishments for exercising human rights without state permission.

"No violation" says Ombudsperson's Office

Officials at the government's Ombudsperson's Office for Human Rights in Astana rejected suggestions that the human rights of those like Kandyba punished for exercising their right to freedom of religion or belief have been violated. "I can't agree that these imprisonments are a violation of human rights," Rustam Kypshakbayev of its Expert Department insisted to Forum 18 from Astana on 29 May. "Courts are independent and they take such decisions."

His colleague Alibek Sabdinov agreed. "I don't agree that such cases are against the Constitution and Kazakhstan's international commitments," he told Forum 18 the same day.

Neither Kypshakbayev nor Sabdinov were able to explain what the Ombudsperson's Office had done to try to protect individuals punished for exercising their right to freedom of religion or belief. "We deal with individual complaints," Sabdinov said. "We observe and make recommendations on concrete questions." He refused to say how this might have helped individuals facing such punishments.

(The office of Kazakhstan's Ombudsperson for Human Rights is not fully compliant with the Paris Principles on the independence of such national human rights bodies from government, according to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.)

Fines, fines

Individuals from a range of communities – as well as commercial booksellers – face constant fines for exercising their right to freedom of religion or belief. They are punished for selling or distributing religious books without the compulsory state licence, meeting for worship without state permission or talking about their faith with others without the compulsory personal registration as a "missionary".

More than 150 individuals – including Protestants, Jehovah's Witnesses, Muslims and Hare Krishna devotees – were known to have been given administrative fines in 2013. Nearly 50 such fines are known to have been handed down in the first ten weeks of 2014 alone, one of them on an 87-year-old man, Yegor Prokopenko (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

Harsher punishments to come in new Codes

Harsher punishments for exercising the right to freedom of religion or belief seem set to be introduced if the new Criminal Code and new Administrative Code now going through the upper house of Parliament, the Senate, are adopted in their current form. Human rights defenders have heavily criticised many provisions of these Codes.

The "offence" for which Kandyba was originally punished – leading an unregistered religious community – would become a criminal offence under proposed Criminal Code Article 403. The maximum punishment is set to be up to 60 days' imprisonment (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959).

The full Senate is due to hold its first reading of the new Criminal Code on 30 May, the Senate website notes. The draft, after discussion in the Working Group established in the Senate, was approved by the Senate Legal Committee on 27 May.

Also due for its first reading on 30 May is the proposed new Criminal Implementation Code. This would require religious literature used by prisoners to have undergone the compulsory ARA religious censorship and would also ban the construction of places of worship in prisons (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959).

The Senate has not yet set a date for the first reading of the proposed new Administrative Code. (END)

Reports on freedom of thought, conscience and belief in Kazakhstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=29>.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1939.

For a personal commentary from 2005 on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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