

28 December 2015

KAZAKHSTAN: Two years' imprisonment for Astana Adventist

By Felix Corley, Forum 18 (<https://www.forum18.org>)

The City Court in Kazakhstan's capital Astana today (28 December) increased the punishment handed down to Seventh-day Adventist prisoner of conscience Yklas Kabduakasov in November to two years' imprisonment in a labour camp, Forum 18 News Service notes. The lower court had given the 54-year-old father of eight a seven-year sentence of restricted freedom at home. He was prosecuted for alleged incitement of religious discord while talking to others of his faith, charges he and his fellow Church members reject. KNB secret police officers seized Kabduakasov at the end of the hearing and took him away to prison. Nurlan Belesov, the same secret police Investigator who prepared Kabduakasov's prosecution, is also leading the criminal cases against six Sunni Muslims accused of membership of the banned Muslim missionary movement Tabligh Jamaat. The six prisoners of conscience are being held in Astana's KNB secret police Investigation Prison. The court-ordered period for pre-trial detention for five of them has already expired and appears not to have been extended. Three other Muslim prisoners of conscience accused of Tabligh Jamaat membership have been in pre-trial imprisonment in Karaganda for nearly 12 weeks.

Seventh-day Adventist prisoner of conscience Yklas Kabduakasov was arrested by officers of Kazakhstan's National Security Committee (KNB) secret police in the courtroom today (28 December) as the Prosecutor succeeded in having his punishment of seven years' restricted freedom changed into a prison term. The City Court in the capital Astana increased the sentence to two years' imprisonment in a general regime labour camp, those attending the appeal hearing told Forum 18 News Service. The 12 weeks Kabduakasov spent in pre-trial detention will count towards his two year prison term.

Prisoner of conscience Kabduakasov, who is 54, denies the allegations of inciting religious hatred on which he was convicted on 9 November. The charges were initiated by the KNB secret police, who spent more than a year seeking to punish him (see below).

The same KNB secret police investigator who prepared the criminal case against Kabduakasov, Nurlan Belesov, is also preparing the criminal cases against six Sunni Muslim prisoners of conscience awaiting trial in Astana's KNB Investigation Prison. They are accused of belonging to the banned Tabligh Jamaat Muslim missionary movement. The court-ordered pre-trial detention period already appears to have expired for five of the six, though they are still being held (see below).

Three more Sunni Muslim prisoners of conscience are being held in the KNB secret police Investigation Prison in the northern city of Karaganda [Qaraghandy] awaiting trial. The three - Bauyrzhan Serikov, Aidin Shakentayev and Murat Shopenov - were arrested on 7 October and ordered held in pre-trial imprisonment on 9 October. They too are accused of membership of Tabligh Jamaat (see F18News 12 January 2016 http://www.forum18.org/archive.php?article_id=2139).

Another prisoner of conscience imprisoned for exercising the right to freedom of religion or belief, Sunni Muslim Saken Tulbayev, no longer appears to be being physically tortured in prison but cannot pray the namaz (Muslim prayers), a human rights defender told Forum 18. Tulbayev was beaten after his transfer to a labour camp in Pavlodar in September, the human rights defender added (see below).

Meanwhile, a court-ordered three month ban on Transfiguration Church, a Baptist congregation in a village in West Kazakhstan Region, ended in mid-December. The church has not paid a large fine handed down in September to punish it for running a children's camp as it does not have the money (see below).

Many freedom of religion or belief violations in 2015

Kazakhstan imposes harsh controls on all exercise of the right to freedom of religion or belief. Only religious communities which want to and have been able to gain state registration are allowed to exist. Even registered religious communities face severe restrictions, including on where they may hold religious events. Religious literature and the sharing of beliefs is also under tight state restrictions, which include prior compulsory censorship of all published or imported materials and a licensing system for where approved religious literature can be sold or distributed (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

There has been a significant rise in 2105 in violations of freedom of religion or belief, including the jailing of prisoners of

conscience (see

http://www.forum18.org/archive.php?year_start=2015&month_start=01&day_start=01&year_end=2015&month_end=12&day_end=31&country=29&results=50)

KNB secret police-initiated prosecution

The KNB secret police had been tracking Adventist Kabduakasov for a year as he spoke to others about his faith. The KNB appear to have rented the flat to which four university students invited him for religious discussions, appear to have organised the secret filming of the meetings with at least two hidden cameras, and prepared the prosecution case.

The KNB secret police finally arrested Kabduakasov in Astana on 14 August, accused of violating Criminal Code Article 174, Part 2. This punishes "incitement of social, national, clan, racial, or religious discord" by repeat "offenders" with prison terms of between five and ten years. On 9 November at the end of his first trial, Astana's Saryarka District Court No. 2 sentenced Kabduakasov to seven years' restricted freedom under Article 174, Part 1. He was allowed home that day to begin serving his sentence (see F18News 9 November 2015 http://www.forum18.org/archive.php?article_id=2119).

The 9 November verdict also ordered nine Christian books confiscated in searches at the time of Kabduakasov's arrest to be destroyed (see F18News 8 December 2015 http://www.forum18.org/archive.php?article_id=2130).

Appeal hands down two-year prison term

Kabduakasov appealed against the decision to Astana City Court, as did the Prosecutor, Asylzhan Gabdykaparov. Kabduakasov sought the overturning of the sentence and his full acquittal. The Prosecutor sought seven years' imprisonment in place of the restricted freedom sentence.

The appeal hearing began under Judge Gulnara Mergenova on 22 December, with a further hearing on 25 December. At the final appeal hearing on 28 December, the Judge handed down the two year prison term and officials arrested him at the end of the hearing.

Prisoner of conscience Kabduakasov's lawyer Gulmira Shaldykova described the two-year prison term to Madi Bekmaganbetov of Radio Free Europe's Kazakh Service as "too harsh". She pointed out that Kabduakasov has eight children, six of them still minors. She said she would discuss with her client whether to appeal against the verdict to a higher court.

Kabduakasov's Pastor, Andrei Teteryuk of Astana's Adventist Church, condemned the sentence as a violation of the United Nations Universal Declaration of Human Rights and other international human rights documents that Kazakhstan has signed up to. "Freedom of religious confession and of conscience is the basic civil right in any society recognised as democratic and constitutional," he told Bekmaganbetov of Radio Free Europe.

The person who answered the phone of Investigator Gabdykaparov later on 28 December listened to Forum 18's request to speak to him and then put the phone down without responding. All subsequent calls went unanswered.

The telephone of KNB secret police investigator Belesov, who prepared the initial case, went unanswered each time Forum 18 called the same day.

Six Sunni Muslims in secret police prison awaiting trial

The same KNB secret police investigator Belesov is preparing the criminal prosecution in Astana of six Sunni Muslim prisoners of conscience. All six are accused of membership of the banned Muslim missionary movement Tabligh Jamaat. They face prosecution under Criminal Code Article 405. This punishes participation in the activity of a banned social or religious organisation with a fine or a prison term.

Tabligh Jamaat was banned as "extremist" in Kazakhstan by an Astana court in February 2013. Sharing some of its teachings or habits, possessing religious books often used in the movement or meeting with others close to the movement is enough for a criminal prosecution (see F18News 12 December 2014 http://www.forum18.org/archive.php?article_id=2023).

The KNB arrested 38-year-old Bolatbek Kozhageldinov, 31-year-old Khalambakhi Khalym, 35-year-old Nurzhan Nuradilov, 44-year-old Erbolat Omarbekov and 53-year-old Kubaidolla Tyulyubayev in late September. They arrested the sixth, Murat Takaumov, on 18 November, just days after his 31st birthday. All six prisoners of conscience are being held in Astana's KNB Investigation Prison.

The address of the KNB Investigation Prison where the six Muslim prisoners of conscience are being held (and where Kabduakasov was held for 12 weeks):

SIZO KNB g. Astana

010003 Astana

Ul. Shyntas 2

Kazakhstan

Illegal imprisonment?

Astana's Saryarka District Court No. 2 extended the pre-trial detention of prisoners of conscience Kozhageldinov, Khalym, Nuradilov, Omarbekov and Tyulyubayev for a further month on 23 November. However, this expired on 23 December. An official of the court told Forum 18 on 28 December that it has no record of any application by prosecutors to extend the period of pre-trial detention. Nor could she find any record that any criminal trial had taken place in that court.

Holding pre-trial detainees in prison without court approval would be illegal, Forum 18 notes.

On 20 November the same Court ordered prisoner of conscience Takaumov's pre-trial detention for two months, which runs out on 18 January 2016 (see F18News 24 November 2015 http://www.forum18.org/archive.php?article_id=2124).

Takaumov tried to challenge his pre-trial imprisonment. However, on 11 December Judge Kairat Aitzhanov of Astana City Court rejected his appeal, according to the decision seen by Forum 18.

A total of 15 Muslims are known to have been convicted since late 2014 on criminal charges of Tabligh Jamaat membership. Eight are prisoners of conscience who are serving or have completed prison sentences of up to 4 years 8 months. The other seven Muslims are serving sentences of restricted freedom, where they can live at home but under tight controls (see F18News 13 October 2015 http://www.forum18.org/archive.php?article_id=2110).

No longer physically tortured - but no prayers possible

Sunni Muslim prisoner of conscience Tulbayev – also imprisoned for alleged membership of Tabligh Jamaat – was tortured after his transfer to labour camp in Pavlodar in September, human rights defender Yelena Semenova told Forum 18 from the city on 28 December. "I saw the result of the beatings," she noted of her 23 October meeting with him in labour camp. After this she lodged a complaint to the KNB secret police and to the camp authorities. But the torture only stopped after publicity was given to Tulbayev's maltreatment, she added.

Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Kazakhstan acceded to in 1998, the government is obliged to both arrest any person suspected on good grounds of having committed torture, and to try them under criminal law which makes "these offences punishable by appropriate penalties which take into account their grave nature". No arrests of prisoner of conscience Tulbayev's torturers appear to have been made.

Semenova said she had last visited prisoner of conscience Tulbayev in the labour camp in early December. "His situation is much better than it was when he first arrived there," she told Forum 18. However, she noted that because of the long work hours, he is unable to pray the namaz (Muslim prayers).

International law defends the right of prisoners to freedom of religion or belief. The International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan in 2003, states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Article 10, Paragraph 1). This specifically includes those held in prisons, detention camps or correctional institutions (General Comment 21 on ICCPR Article 10).

Among other relevant UN standards is the 1955 Standard Minimum Rules for the Treatment of Prisoners (revised form adopted unanimously by the UN General Assembly on 17 December, A/C.3/70/L.3), which among other things state: "So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination" (Rule 66).

"The prison is very bad"

"The prison is very bad," relatives complained to Forum 18 in mid-December. "Saken is being held with paedophiles and murderers." Relatives live a long way from the labour camp and can afford only rare visits, even when they are permitted. Prisoner of conscience Tulbayev's wife Rumina was able to visit in late October with their two-year-old daughter.

Relatives have sent a parcel containing new glasses to replace his old pair which was broken, possibly deliberately, relatives told Forum 18. They also sent two pairs of thick gloves to protect his hands while at work.

A court in Kazakhstan's commercial capital Almaty sentenced Tulbayev (who was also tortured in pre-trial detention) on 2 July to four years eight months' imprisonment. He was also banned from exercising freedom of religion or belief, including praying with others and reading the Koran, until the end of 2022 (see F18News 8 July 2015 http://www.forum18.org/archive.php?article_id=2078).

Prisoner of conscience Tulbayev's address in labour camp is:

140000 g. Pavlodar

Severnaya promyshlennaya zona

Uchr. AP-162/3

Tulbayevu Sakenu Peisenovichu

Kazakhstan

Large fine, three-month ban

Trouble began on 6 and 7 July for Transfiguration Baptist Church in the village of Darinskoe in Zelenov District of West Kazakhstan Region on the country's northern border with Russia. The Church organised a summer camp for children in the home of a church member in the nearby village of Yanvartsevo. The Church invited fellow Baptists from Russia and the United States to help with the camp.

Adil Nurmukhanov of the Regional Religious Affairs Department accused the Church of conducting religious activity away from its registered legal address without having gained the Department's permission as required in law. However, the church's pastor Viktor Demyashev insisted in subsequent court hearings that its statute defines the area of its activity as West Kazakhstan Region. Nurmukhanov also accused the Church of involving children without their parents' consent. Pastor Demyashev similarly denied this in court.

Prosecutors then brought a case against the Church to court under Administrative Code Article 490, Part 1, Point 1. This punishes "violation of procedures established in law for conducting rites, ceremonies and meetings" with a fine for legal organisations of 200 Monthly Financial Indicators and a three-month ban on their activity.

On 16 September, Judge Aleksandra Sidorova of Zelenov District Court No. 2 found the Church guilty, according to the court decision seen by Forum 18. She handed down the prescribed penalties: a fine of 200 Monthly Financial Indicators, 396,400 Tenge (then equivalent to 11,700 Norwegian Kroner, 1,300 Euros or 1,500 US Dollars) and a three-month ban on all the Church's activity.

On 18 September, a different Judge at the same court dismissed Prosecutors' attempts to deport three Russian citizens and one US citizen for participating in the summer camp, as all four had left Kazakhstan in late July, according to the court decision seen by Forum 18.

Transfiguration Church appealed against the fine and three-month ban. However, on 8 October, Judge Tlek Gusmanov of West Kazakhstan Regional Court dismissed the appeal, according to the decision seen by Forum 18.

"We don't have the money to pay"

Pastor Demyashev said that the Church has not paid the fine. "When officials came to us we told them we don't have the money to pay," he told Forum 18 from Darinskoe on 28 December.

He added that the ban began immediately the 16 September court decision was handed down. It therefore ended on 16 December. "But no one has visited us again," Pastor Demyashev noted. (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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