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KAZAKHSTAN: Government contradicts UN Human Rights Committee

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

Kazakhstan contradicts new Human Committee recommendations by preparing harsher "extremism" punishments, described by a human rights defender as "to intimidate society". A Muslim prisoner of conscience's appeal has been rejected, and he has not been allowed to know of his father's death and funeral.

The United Nations (UN) Human Rights Committee has criticised Kazakhstan for, among other things, its "broad formulation" of "extremist" offences and called for laws to be brought "into full compliance" with its international human rights obligations. It also added that Kazakhstan should ensure that "rights to a fair trial and access to justice are respected" (see below).

But in direct contradiction to the Committee's recommendations, Kazakhstan is currently preparing even harsher "extremism" punishments in changes to six codes and 18 laws, including the Religion Law. Confusingly, some of the manifestations of freedom of religion and belief the government has announced it will ban are already banned.

Human rights defender Yevgeny Zhovtis, of the Kazakhstan International Bureau for Human Rights and Rule of Law, has commented that "instead of a normal partnership and mutual respect, the authorities begin to intimidate society". He noted that "experience shows this, such measures mainly 'hit' not the extremists and radicals, but law-abiding citizens, at the same time reducing their loyalty and civic sense" (see below).

The Human Rights Committee also expressed concern that "counter-terrorism activities continue to target in particular members or presumed members of banned or unregistered Islamic groups, such as the Tabligh Jamaat". Among its other concerns and recommendations, the Committee also called for Kazakhstan "to eradicate torture and ill-treatment and to effectively investigate, prosecute and punish such acts" (see below).

On 20 July, Sunni Muslim prisoner of conscience Murat Takaumov's appeal against his nine month jail sentence for exercising freedom of religion and belief was rejected. Takaumov's father died on 18 July and was buried the following day (as is usual). He was not allowed by the authorities to attend the funeral, or even yet to know of his father's death. This has caused his relatives great distress (see below).

Kazakhstan has also misled the Human Rights Committee about the numbers of people it has fined and jailed for exercising freedom of religion and belief, and the country's human rights record has been strongly criticised by Kazakh human rights defenders and belief communities. Four days after the Committee's examination of the country's record, the government fined three Muslims for exercising freedom of religion and belief and the same day was elected to the UN Security Council (see F18News 15 July 2016 http://www.forum18.org/archive.php?article_id=2199).

"Extremism" convictions, Committee recommendations

The UN Human Rights Committee considered Kazakhstan's record under the International Covenant on Civil and Political Rights (ICCPR) in Geneva on 22-23 June. It adopted its Concluding Observations on Kazakhstan on 11 July (CCPR/C/KAZ/CO/2 http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/CCPR_C_KAZ_CO_2_24582_E.doc).

The Committee expressed concern about "the broad formulation of the concepts of 'extremism', 'inciting social or class hatred' and 'religious hatred or enmity' under the State party's criminal legislation and the use of such legislation on extremism to unduly restrict freedoms of religion, expression, assembly and association". Such broad formulations and negative language has long been used by Kazakhstan in relation to its violations of freedom of religion and belief and interlinked human rights (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939)

A total of 32 individuals (31 Sunni Muslims and 1 Seventh-day Adventist) are known to have been given criminal convictions since December 2014 for exercising the right to freedom of religion or belief, which the government claims is "extremism". Of these, 20

were given prison terms. All 32 cases were initiated by the National Security Committee (NSC) secret police (see F18News 8 June 2016 http://www.forum18.org/archive.php?article_id=2186).

All 31 Sunni Muslim prisoners of conscience, alleged members of missionary movement Tabligh Jamaat, were convicted under Criminal Code Article 405 (or its predecessor in the old Criminal Code). This punishes "Organising or participating in the activity of a social or religious association or other organisation after a court decision banning their activity or their liquidation in connection with extremism or terrorism they have carried out".

Two of the 31 Sunni Muslim prisoners of conscience, Saken Tulbayev and Khalambakhi Khalym, were also convicted under Criminal Code Article 174, Part 1. This punishes "incitement of social, national, clan, racial, or religious discord" (see F18News 8 June 2016 http://www.forum18.org/archive.php?article_id=2186).

Adventist prisoner of conscience Yklas Kabduakasov was similarly convicted under Criminal Code Article 174, Part 1 (see F18News 29 December 2015 http://forum18.org/archive.php?article_id=2136).

In expressing concern over the targeting of "members or presumed members of banned or unregistered Islamic groups, such as the Tabligh Jamaat", the Committee referred to ICCPR Articles 9 ("Right to liberty and security of person"), 14 ("Right to equality before courts and tribunals and to a fair trial"), 18 ("Freedom of thought, conscience and religion"), 19 ("Freedoms of opinion and expression") and 21 ("Right of peaceful assembly").

The Human Rights Committee stated that Kazakhstan "should bring its counter-terrorism and counter-extremism legislation and practices into full compliance with its obligations under the Covenant [ICCPR], inter alia by revising the relevant legislative provisions with a view to clarifying and narrowing the broad concepts referred to above, to ensure that they comply with the principles of legal certainty and predictability and that the application of such legislation does not suppress protected conduct and speech."

Kazakh human rights defenders have expressed strong concern to the Committee that "With rather dubious criteria being applied, terms such as 'traditional' and 'non-traditional' religious organisations, 'religious extremism' etc. are being introduced into the realm of law-related definitions" (see F18News 8 June 2016 http://forum18.org/archive.php?article_id=2186).

The Committee added that Kazakhstan "should also ensure that the rights to a fair trial and access to justice are respected in all 'extremism' prosecutions". Many such trials in Kazakhstan are conducted so as to obstruct a fair trial (see eg. F18News 8 July 2015 http://www.forum18.org/archive.php?article_id=2078).

Kazakhstan acts against Committee recommendations

Kazakhstan is currently acting directly contrary to the Human Rights Committee's recommendations. NSC secret police head Vladimir Zhumakanov told a 19 July meeting of government ministers and senior officials that a working group has been set up to draft a Law on Amendments and Additions to Various Laws on Questions of Countering Extremism and Terrorism. He said the draft Law envisages amendments to six codes and 18 laws.

Zhumakanov said this was in response to a 10 June order by President Nursultan Nazarbayev to harshen laws on "extremism", terrorism and religion (see F18News 14 June 2016 http://www.forum18.org/archive.php?article_id=2188).

"Firstly, responsibility will be tightened for crimes of an extremist and terrorist nature, through an increase in the minimum and maximum ranges of terms of deprivation or restriction of freedom," Zhumakanov stated in remarks quoted on the prime minister's website the same day. "Norms are to be introduced on confiscating property as an obligatory means of punishment for extremism and terrorism."

Other measures NSC chief Zhumakanov mentioned were stronger defences for state buildings and tighter controls on weapons.

A spokesperson for the national NSC secret police in Astana refused to discuss the proposed amendments with Forum 18 on 21 July. He said that the amendments were in the hands of Nurlan Zhuldashov, head of the NSC Legal Department. However, he declined to give Forum 18 a phone number for the Legal Department or to put Forum 18 through.

New and not-so-new restrictions on freedom of religion and belief

At the same 19 July meeting of government ministers and senior officials, Culture and Sport Minister Arystanbek Mukhamediuli outlined tighter legal controls on exercising freedom of religion or belief set to be introduced as part of the amendments. He billed such amendments as part of the need to counter "religious radicalism".

Parts of the proposed amendments affect the Religion Law. They are being prepared by the Legal Department of the Religious Affairs Committee, which is part of the Culture and Sports Ministry. The proposals it produces will be reviewed by other "relevant

structures", including the Interior Ministry, the NSC secret police and the Prosecutor's Office, a Legal Department official told Forum 18 in June (see F18News 14 June 2016 http://www.forum18.org/archive.php?article_id=2188).

Culture and Sport Minister Mukhamediuli told the meeting of government ministers and senior officials that "missionary activity" will be subjected to controls. "Activity to spread a faith as a missionary without registration will not be allowed," according to remarks quoted on the Prime Minister's website. He added that further controls will be imposed on publishing, distributing and importing books and items related to religion.

Talking about a faith with others without personal registration as a "missionary" commissioned by a registered religious organisation is already banned and punishable. Similarly, violating the compulsory prior censorship of all literature and items related to religion - including publishing, distributing and importing it without state permission - is already banned and punishable (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

So it remains unclear what further restrictions Minister Mukhamediuli intends to impose.

Among new proposed measures, Minister Mukhamediuli spoke of new requirements for those going on pilgrimages abroad, including the haj and umra pilgrimages to Mecca. He also spoke of a requirement that religious communities, particularly the state-backed Muslim Board, introduce a "unified procedure for conducting religious rituals".

Culture and Sport Minister Mukhamediuli added that between now and 1 December, his Ministry will work with the Interior Ministry (which controls the police) to remind the population of the need not to violate the law in the area of religion. The two ministries have already begun work to "secure control over the conducting of religious meetings, services, ceremonies and rituals, missionary activity and the circulation of religious literature".

Torture

Among other recommendations, the Human Rights Committee also recommended that Kazakhstan "should take robust measures to eradicate torture and ill-treatment and to effectively investigate, prosecute and punish such acts".

Credible claims of torture have often been made in relation to prisoners of conscience jailed for exercising their freedom of religion or belief (see eg. F18News 29 December 2015 http://forum18.org/archive.php?article_id=2136).

Under the 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 anyone strongly suspected of having tortured prisoners of conscience jailed for exercising freedom of religion and belief appear to have been made.

"To intimidate society"

In a commentary on the new proposed laws and the UN Human Rights Committee's Concluding Observations, human rights defender Zhovtis of the Kazakhstan International Bureau for Human Rights and Rule of Law complained that the government's response to violent attacks was prepared without consultation, and mainly by security agencies.

"And instead of a normal partnership and mutual respect, the authorities begin to intimidate society," Zhovtis stated in the commentary published on the ratel.kz website on 21 July. "We'll control everyone, we'll harshen the punishments, we'll check everyone and maintain order. Unfortunately, and experience shows this, such measures mainly 'hit' not the extremists and radicals, but law-abiding citizens, at the same time reducing their loyalty and civic sense."

Appeal by prisoner of conscience fails

On 20 July, Judge Gulnara Mergenova of Astana City Court rejected the appeal by Sunni Muslim prisoner of conscience Murat Takaumov, the Judge's assistant told Forum 18 on 21 July. He added that Takaumov was not present for the hearing. "Those convicted don't normally attend appeal hearings," the assistant claimed. Takaumov was represented at the hearing only by a state-appointed lawyer, relatives told Forum 18.

Astana's Saryarka District Court No. 2 sentenced Takaumov to nine months' imprisonment on 2 June (see F18News 8 June 2016 http://www.forum18.org/archive.php?article_id=2186). This was six months after his 18 November 2015 arrest for exercising freedom of religion and belief for allegedly being part of the Tabligh Jamaat missionary movement (see F18News 29 December 2015 http://forum18.org/archive.php?article_id=2136).

As pre-trial detention counts towards his sentence, Takaumov is due for release from prison on 18 August 2016.

Takaumov's father died on 18 July and was buried the following day, Takaumov's relatives told Forum 18 on 22 July. He could not attend the funeral as the authorities have kept him in detention, and does not yet know of his father's death. This has caused his relatives great distress.

"Two friends who attended the appeal hearing asked the state-appointed lawyer to appeal on Murat's behalf for conditional release because of his father's death," relatives told Forum 18. "The lawyer refused, saying Murat could write his own appeal after his transfer from the Investigation Prison to a labour camp."

Relatives told Forum 18 earlier that the authorities had said they would not be taking Takaumov to the court for the appeal hearing and that he did not have a lawyer to represent him there (see F18News 18 July 2016 http://www.forum18.org/archive.php?article_id=2200).

No date set for Supreme Court appeal

On 22 June, Aiman Umarova, the lawyer for Sunni Muslim prisoner of conscience Tulbayev, lodged a final appeal against his conviction to the Supreme Court in Astana. "It is not yet clear when the Court will hear the case," Umarova told Forum 18 from Kazakhstan's commercial capital Almaty on 20 July. She added that she is not optimistic that the Supreme Court will overturn Tulbayev's conviction.

A court in Almaty sentenced Tulbayev (who was also tortured in pre-trial detention) on 2 July 2015 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, from his scheduled December 2019 release until December 2022 (see F18News 8 July 2015 http://www.forum18.org/archive.php?article_id=2078).

Umarova pledged that, if necessary, she will take her client's case to the United Nations human rights mechanisms. She stressed that the three-year ban on Tulbayev's religious activity – set out in the lower court verdict – particularly violates his right to freedom of religion or belief. "How are they going to implement the ban on his religious activity?" she asked. "Is he going to be banned from praying, and what else?"

Will transfer bids to nearer prisons succeed?

Lawyer Umarova is also lodging a request to the Criminal Implementation Committee on Tulbayev's behalf for him to be transferred to a prison in Almaty Region. Tulbayev is a resident of the city of Almaty, while he is currently held in a prison camp in Pavlodar.

The Pavlodar labour camp is nearly 1,500 kilometres north of Almaty by road on a journey that takes more than 15 hours. That Tulbayev has been sent there will make visiting him difficult and expensive, relatives complained to Forum 18 following his September 2015 transfer (see F18News 7 October 2015 http://www.forum18.org/archive.php?article_id=2108).

Adventist prisoner of conscience Kabduakasov – held in another prison camp in Pavlodar – similarly wishes to be transferred to a prison nearer his home city of Astana. "Yklas lodged an appeal on 29 May to be transferred to an open prison, which would be near his home town," Adventist pastor Andrei Teteryuk told Forum 18 from Astana on 21 July. "But they refused to even accept the application, telling him he has not generated any rewards and softening his terms of imprisonment can't be considered. When he asked them to explain why it can't be considered, they responded: 'It just can't, that's all'."

Bank accounts of three further prisoners of conscience blocked

Three Sunni Muslim prisoners of conscience were added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism". Aidin Shakentayev, Bauyrzhan Serikov and Murat Shopenov were added to the List on 8 July. This brought to 29 the number of individuals convicted for exercising freedom of religion or belief on the List.

The three were convicted by a court in Karaganda on 28 March and handed prison terms of up to 30 months for alleged membership of Tabligh Jamaat (see F18News 28 March 2016 http://www.forum18.org/archive.php?article_id=2162).

Convicted individuals can be added to the list without being informed of it and without separate legal process. "The only way they would know is when they go to the bank and find their account is blocked and the bank then tells them," a Ministry Financial Monitoring Committee official told Forum 18 in June. All financial transactions by an individual on the List are under tight restrictions. Family members who live in the same household without any separate source of income are allowed to apply for access to funds for subsistence (see F18News 10 June 2016 http://www.forum18.org/archive.php?article_id=2187).

The bank account of Adventist prisoner of conscience Kabduakasov – who was placed on the List earlier – was blocked without notice. "His wife said her bank card had been blocked, but we don't know if this was connected with his inclusion in the List," Adventist pastor Teteryuk told Forum 18 on 28 June.

Relatives of some of the Muslim prisoners of conscience on the List have confirmed to Forum 18 that their accounts have similarly been blocked without warning.

No information on Oskemen criminal case

The NSC secret police appears to be still investigating five men in Oskemen (Ust-Kamenogorsk) under Criminal Code Article 405, Part 2 for alleged membership of Tabligh Jamaat. "We can't identify the individuals or give any details of the investigation because it is secret," an officer at East Kazakhstan Region NSC told Forum 18 from Oskemen on 21 July. The officer refused to identify the NSC Investigator in the case.

Oskemen Court No. 2 and East Kazakhstan Region Specialised Inter-district Criminal Court – the most likely courts for any such case to be heard - both told Forum 18 on 21 July that the case has not been presented to court yet.

East Kazakhstan Regional NSC secret police officers raided homes in Oskemen on 16 May as part of an investigation in the criminal case against the five local residents. Officers seized "extremist" religious literature and other materials which they claim indicated that the men had a possible connection to Tabligh Jamaat. The five men had to sign statements that they would not leave Oskemen without the investigator's permission (see F18News 8 June 2016 http://www.forum18.org/archive.php?article_id=2186). (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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