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KAZAKHSTAN: Atheist writer faces more criminal charges

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

Atheist writer Aleksandr Kharlamov faces new criminal charges for a 2014 book. Police searched his home, confiscated books, and brought charges after he sought closure of the 2013 case. "They decided to protect themselves and take new action against me," he told Forum 18.

Kazakhstan continues to target people who exercise their freedom of religion and belief by writing about religious or belief topics, sharing or importing such publications, or meeting to discuss such publications. The 66-year-old human rights defender and atheist writer Aleksandr Kharlamov is again facing a criminal case for his writings on religion and beliefs, this time for a book he published in 2014. Investigators in East Kazakhstan Region claim the book incites "religious discord and hatred". They confiscated 83 copies of it in a 2 February 2017 raid on his home in Ridder. If eventually convicted, Kharlamov faces two to seven years' imprisonment.

Kharlamov remains under travel restrictions after a previous criminal case on the same charges which has never been closed. As part of that case he spent from March to September 2013 in pre-trial detention, including a month in a psychiatric hospital (see below).

In 2016 a Muslim in Atyrau narrowly avoided a similar criminal case after trying to send Arabic-language Muslim books by train to Almaty, three of which were subsequently banned as "extremist". He was fined instead. Court bailiffs would have destroyed the three banned books, an official told Forum 18 (see below).

A Turkish citizen married to a Kazakh citizen and with three Kazakh citizen children narrowly avoided deportation for participating in a home meal with friends in Oral (Uralsk). Officials accused them of meeting to study the writings of a Muslim theologian. On 6 February 2017 Aktobe Regional Court overturned the deportation order and the fine (see below).

Complete religious literature censorship

The authorities impose compulsory prior state censorship of all literature and items related to religion and beliefs, and publishing, distributing and importing them requires state permission (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The import of religious literature for personal use was restricted even more by January 2017 alleged "anti-terrorism" legal changes. Among other things, the changes restrict individuals to importing only one copy of any publication for personal use (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

Kazakhstan's censorship regime also imposes "expert analyses", including to help decide whether an item, text, or webpage should be banned. The process is often closed to public scrutiny and without any grounds of appeal. Among the items subject to such "expert analysis" have been Orthodox icons (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

"Incitement of discord"

Criminal Code Article 174 punishes: "Incitement of social, national, clan, racial, or religious discord, insult to the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their religion, class, national, generic or racial identity, committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, clan, racial, or religious discord".

Article 174, Part 1, which atheist writer Kharlamov is being investigated again under, punishes these actions committed by individuals. If convicted, he faces two to seven years' imprisonment, or two to seven years' restricted freedom. Typically, during sentences of restricted freedom individuals live at home, but are not able to leave their town or city without seeking permission. They are often also banned from visiting restaurants, cafes or places of public entertainment.

Criminal Code Article 174 has been strongly criticised by Kazakh and international human rights defenders, including the United Nations (UN) Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association and the UN Human Rights Committee (see F18News 2 February 2017 http://forum18.org/archive.php?article_id=2252).

As well as the broadly-framed Criminal Code Article 174, which Kharlamov is being investigated under, individuals can also be punished under Administrative Code Article 453, Part 4. This punishes production, storage, import, transfer and distribution of literature containing, among other things, "social, national, clan, racial, or religious discord". The punishment for individuals is a fine of 100 Monthly Financial Indicators (MFIs) and confiscation of the offending publications.

Ridder: Kharlamov case

Ridder-based atheist writer Kharlamov has faced a long-running investigation from March 2013 under the then-Criminal Code Article 164 (the equivalent of Article 174 in the current Criminal Code) for his writings related to religion (see F18News 18 April 2013 http://www.forum18.org/archive.php?article_id=1826).

Kharlamov was from March to September 2013 forcibly held in a psychiatric hospital, where he was subjected to repeated forcible psychiatric examinations (see F18News 4 September 2013 http://www.forum18.org/archive.php?article_id=1871). Officials have repeatedly refused to explain why he has been detained and investigated, or why he was without any medical evidence repeatedly psychiatrically examined and sent to a psychiatric hospital. This also happened to retired Presbyterian Pastor Bakhytzhan Kashkumbayev (see F18News 26 July 2013 http://www.forum18.org/archive.php?article_id=1860).

One doctor told Kharlamov that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities" (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Although Kharlamov was released from detention in 2013, prosecutors neither closed nor presented to court any criminal case. Yet he remains under travel restrictions, being unable to leave his home town without written state permission (see F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072).

When the case was started in 2013, atheist journalist, human rights defender, and former prisoner of conscience Sergei Duvanov commented to Forum 18: "People in Kazakhstan are not free to preach or promote their religious faith. Now it is even dangerous to promote atheism, as the case of Aleksandr Kharlamov demonstrates" (see F18News 26 April 2013 http://www.forum18.org/archive.php?article_id=1828).

Ridder: 2014 book

Following Kharlamov's 2013 release from detention, in the first half of 2014 he wrote a Russian-language book "Samaya genialnaya kniga" (The Most Brilliant Book). This contains "conclusions based on the brilliant scientific discoveries by scholars, inventors and philosophers", Kharlamov told Forum 18 on 6 February 2017. "All I did was bring everything together. Therefore the book cannot contain information directed at inciting religious hatred or discord, as I am not at all a religious person."

Kharlamov paid a local printing firm in his home town of Ridder to produce 400 copies. On 6 July 2014, he held a book launch in a local cafe. As well as friends and journalists, he invited the head of the town police, Oralbek Bilimbayev, Judge Mukhtar Tokzhanov of Ridder City Court and the head of the Akimat (Administration) Internal Policy Department Anar Dukenbayeva.

"I gave a copy of the book to all those invited," Kharlamov noted, "as well as to Ridder's Prosecutor and his deputy, the head of the NSC [secret police] in Ridder, the head and specialists of the education department in Ridder, the heads of educational establishments, the local head of the [ruling] Nur Otan political party and other townspeople."

Ridder: Complaint sparks revenge criminal investigation?

Police launched the new case against Kharlamov in autumn 2016, soon after he lodged a complaint over the police failure to close the earlier criminal case against him and lift the travel restrictions on him. "They decided to protect themselves and take new action against me," Kharlamov told Forum 18. "If the case was closed they would have to give me compensation because they violated all procedural norms."

Police made an "operational purchase" of a copy of Kharlamov's book "Samaya genialnaya kniga", according to case documents seen by Forum 18. The Deputy Head of Ridder Police, Nurzhan Beldeubayev, then opened a criminal investigation into Kharlamov on 16 November 2016.

Ridder: "Expert analysis"

The Deputy Head of the Operational/criminological Department, Kairat Yuvashev, commissioned an "expert analysis" of Kharlamov's book from Serik Omargazin and Gulnar Kudaibergenova of East Kazakhstan Regional Institute of Judicial Expert

Analysis in the regional capital Oskemen.

Yuvashev asked them to determine whether the book incites hatred, calls for the violent seizure of power, or a change to the political system or the territorial integrity of Kazakhstan. He also asked them to specify which religion the book relates to and what views the author has of other nations and religions.

The authors of so-called "expert analyses" normally only provide their philological or religious views, Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law observed to Forum 18 on 28 January. He noted that these "experts" are often unable to professionally comment on whether there are any grounds in international law for any action relating to the texts. Zhovtis also commented that Kazakh law does not use concepts relevant to such analyses which can be found within international human rights law.

Before Kharlamov was detained in a psychiatric hospital, Kudaibergenova in 2013 produced for Ridder Police a "psychological/philological expert analysis" of his writings. It claimed that they "contain negative information aimed at inciting religious hatred and discord". But she refused to tell Forum 18 whether anyone has suffered from his writings (see F18News 18 April 2013 http://www.forum18.org/archive.php?article_id=1826).

On 22 November 2016, within days of being appointed to conduct the "psychological/philological expert analysis", Omargazin and Kudaibergenova claimed according to case documents that Kharlamov's book: "contains information aimed at inciting religious hatred or discord, statements on the exclusivity, superiority or inferiority of individuals on grounds of their attitude to religion, as well as statements of an insulting nature in relation to the honour, worth and religious feelings of individuals".

Omargazin refused to discuss his analysis. "I have no right to give any information about it," he told Forum 18 from Oskemen on 13 February. "I am not an interested party." Asked whether he believes Kharlamov should be imprisoned for his book, Omargazin responded: "Whether he should be imprisoned or not is not a decision for me. I work on a text." He declined to say if he believes Kharlamov is a dangerous person. Asked whether he believes that writing on religion is an issue of state danger, he refused to respond.

Ridder: Search, confiscations

Ridder Police Deputy Head Beldeubayev then asked Ridder City Court to approve a search of Kharlamov's flat/office and confiscation of any relevant materials they might find. On 2 February 2017 Judge Galiya Saiduldinova approved the search, according to the decision seen by Forum 18. "In this case, religious literature, objects and materials of analogous content having significance as proof in the criminal case are subject to seizure," the Judge noted.

That same day, police Investigator Denis Simonov, Operational/criminological Department Deputy Head Yuvashev, three unidentified police officers, and the legally-required two witnesses came to Kharlamov's flat, which he also uses as an office. Kharlamov refused to let them search it without a lawyer being present.

Police then summoned duty lawyer Bolatzhan Uskembayev. The search lasted from about 5 pm to after 8 pm, Kharlamov noted. Officers confiscated a computer, three memory sticks, 60 hand-written pages, and 83 copies of Kharlamov's book.

Ridder: Suspect, attempt to introduce state lawyer

Officers handed Kharlamov a summons to an interrogation the following day with Investigator Simonov. He handed Kharlamov a declaration identifying him as a suspect under Criminal Code Article 174, Part 1 ("Incitement of social, national, clan, racial, or religious discord"). He was then allocated a lawyer Irina Serova at state expense, who was present as he was interrogated. "I said I didn't agree with the expert analysis," Kharlamov told Forum 18. "I renounced the use of the lawyer Serova, as I hadn't chosen her."

Kharlamov then chose his own lawyer, Manshuk Medikhanova. He also asked for a new "expert analysis" from people in Almaty he thinks will be more objective, as well as independent of the police.

Investigator Simonov refused to discuss why Police are again seeking to have Kharlamov punished for his writings about religion. "I'm not connected to the case," he claimed to Forum 18 from Ridder on 13 February. "All I did was go on the house search." He said the case is being led by Ridder Police Deputy Head Beldeubayev.

Beldeubayev's phone went unanswered between 13 and 17 February. The duty officer refused to put Forum 18 through to him.

Oral: Raid on Muslim meeting

Meanwhile in Oral (Uralsk) in West Kazakhstan Region close to Kazakhstan's northern border with Russia, police and religious affairs officials raided a home in the evening of 2 December 2016. Local police officer A. Mendybekov claimed – in a report seen by Forum 18 – to have received an anonymous call that "10-15 men with beards with books in their hands had entered a flat". The

alleged caller requested that they be investigated.

About half an hour later, police accompanied by Adil Nurmukhanov of the Regional Religious Affairs Department and one of his colleagues, arrived after the 14 men had gathered for a meal. "None of the men had beards!!!" journalist Tokbergen Abiyev noted on his website on 18 January.

Officers confiscated four books, one by the late Turkish Sunni Muslim theologian Said Nursi, as well as two prayer books and a Koran. They forced those present to write statements. All said that no religious discussions nor teaching based on Nursi's writings had taken place.

Police identified Habib Akkus, a visitor from Aktobe, as the leader of the group. The state-controlled Muslim Board invited Akkus, a Turkish citizen, to Kazakhstan in 1992. Against international human rights law, the state has given the Muslim Board a monopoly of all public expressions of Islam. The Board insists that all mosques should be under its control, and the only form of Islam allowed is Sunni Hanafi (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). In 1994 Akkus married a Kazakh citizen, and the couple live in Aktobe with their three children.

Oral: "Carrying out missionary activity without state registration"

On 5 December 2016, Adil Nurmukhanov of the Regional Religious Affairs Department drew up a record of an offence against Akkus. It accused him of having "conducted missionary activity without appropriate documents and preached the ideology of Said Nursi, which is not registered in Kazakhstan".

Regional Religious Affairs Department official Nurmukhanov claimed Akkus had violated Administrative Code Article 490, Part 3. This punishes: "Carrying out missionary activity without state registration (or re-registration), as well as the use by missionaries of religious literature, information materials with religious content or religious items without a positive assessment from a religious studies expert analysis, and spreading the teachings of a religious group which is not registered in Kazakhstan". The punishment is a fine of 100 MFIs, with deportation if the individual is a foreign citizen (see F18News 21 July 2014 http://www.forum18.org/archive.php?article_id=1979).

"Spreading a religious faith without registration is illegal," Nurmukhanov told Forum 18 from Oral on 7 February (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). Asked why people cannot meet in a home to discuss religion, he responded: "It's not people's internal life. Only the [state-backed] Muslim Board has the right to interpret Islam in Kazakhstan." Asked if people can gather in homes to read and discuss Pushkin or other writers, he responded: "That's not religious literature. He [Akkus] conducted propaganda of a religious faith."

Nurmukhanov claimed that neither his Religious Affairs Department nor the police know who made the call asking them to investigate the people meeting in a rented flat. "The police called us and asked us to accompany them." He did not explain how the raid was allegedly organised within 30 minutes of the meeting starting. All religious communities are thought to be under surveillance by the ordinary police and NSC secret police (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Aktobe: Deportation, fine, then both annulled

Akkus was brought to court in his home city of Aktobe. On 6 January 2017, Judge Nurlan Baktygaliyev of Aktobe's Specialised Administrative Code found him guilty under Administrative Code Article 490, Part 3. The Judge fined him the prescribed 100 MFIs, 212,100 Tenge. He also ordered him deported by 25 January, according to the decision seen by Forum 18. The four seized books were ordered returned to him.

In his 12 January appeal, seen by Forum 18, Akkus argued that he had committed no "offence" as he had not discussed religious themes with those present for the meal. He pointed out that all those present had confirmed this in their statements, including the eight who had testified to this in court. Akkus added that those present who had copies of works by Nursi had bought them freely in Kazakhstan, where they are not banned.

On 6 February, Judge Bagatai Iztai of Aktobe Regional Court upheld Akkus' appeal. The Judge cancelled both the fine and the deportation, noting that no offence had taken place, according to the decision seen by Forum 18.

Atyrau: Arabic Muslim books confiscated

On 14 May 2016, Transport Police at the train station in the Caspian Port city of Atyrau confiscated Muslim books which local Muslim Tamirlan Kamitov was planning to send to Almaty by train, according to case documents seen by Forum 18. The 68 different Arabic-language books, some in multiple copies, had been published in Saudi Arabia, Egypt, Lebanon and Turkey.

Transport Police Senior Investigator A. Dzholdybayeva sent the books for "expert analysis" to the Central Institute for Judicial

Expert Analysis in the capital Astana. This found that three of the books contained "extremist" statements, according to the 4 July 2016 analysis seen by Forum 18.

Police then launched a case against Kamitov under Criminal Code Article 174, Part 1 ("Incitement of social, national, clan, racial, or religious discord"). However, on 15 July 2016 the case was closed "for lack of the elements of a crime", according to case documents.

Instead Prosecutors brought a case against Kamitov under Administrative Code Article 453, Part 4 ("Production, storage, import, transfer and distribution of literature containing .. social, national, clan, racial, or religious discord"). On 8 August 2016 Judge Zamira Bainazarova of Atyrau's Specialised Administrative Court found Kamitov guilty, and handed down the prescribed fine of 100 MFIs, 212,100 Tenge, according to court records. He did not appeal against the punishment.

Exactly a month later, on 8 September 2016 (Kamitov's 21st birthday), court bailiffs began action to recover the unpaid fine.

Atyrau: Court bans 3 Muslim books

On 4 November 2016, Atyrau's Transport Prosecutor Berik Kulmagambet lodged a suit to Atyrau City Court for three of the Arabic-language books confiscated from Kamitov in May 2016 to be banned. Two of the three books had been published in Riyadh, Saudi Arabia and the other in Cairo, Egypt. The suit – seen by Forum 18 – was copied to the Transport Police and Atyrau Region's Religious Affairs Department as "interested parties".

On 22 December 2016, in a decision seen by Forum 18, Judge Zukhra Typylova of Atyrau City Court declared the three books "extremist". She banned their import into, publication in, or distribution within Kazakhstan.

Nurlan Sarsenov, deputy head of Atyrau Transport Prosecutor's Office, who was present in court, said that following such a banning decision such materials are destroyed. "They are destroyed by court bailiffs," he told Forum 18 from Atyrau on 15 February. "I didn't take part in this."

Sarsenov insisted that the Muslim books confiscated from Kamitov that had not been found "extremist" should have been returned to him. However, he said that was not a matter for him. He was similarly unable to say how the Transport Police would have decided to search the items he was sending on by train to Almaty. "No doubt this was part of operational measures," Sarsenov told Forum 18.

The NSC secret police uses the phrase "operational/investigative measures" to describe its activities against people exercising freedom of religion and belief (see eg. F18News 2 February 2017 http://forum18.org/archive.php?article_id=2252). (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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