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KAZAKHSTAN: Lawyers now face trial for defending client

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

The two lawyers for a Jehovah's Witness now on trial in Astana are themselves under criminal investigation. The NSC secret police investigator accuses them of "revealing information from a pre-trial investigation" by appealing to President Nazarbayev for the case against their client to be halted.

Kazakhstan's National Security Committee (NSC) secret police has opened a criminal case against two lawyers defending a Jehovah's Witness on trial for exercising freedom of religion and belief. Vitaly Kuznetsov and Natalya Kononenko are facing criminal investigation seeking to punish them for appealing to Kazakhstan's President Nursultan Nazarbayev for the charges against their client to be dropped. Charges were brought against the lawyers even before the trial they were working on began in the capital Astana.

The NSC secret police accuses Kuznetsov and Kononenko of "revealing information from a pre-trial investigation" under Criminal Code Article 423. Kuznetsov described the accusation to Forum 18 as "absurd". An Astana-based legal specialist told Forum 18 the accusation was "bizarre" (see below).

Astana Prosecutor's Office handed the case to Asilzhan Gabdykaparov of the General Prosecutor's Office, it told Forum 18 on 3 April. His telephone went unanswered the same day.

NSC Major Medet Duskazyev – who initiated the criminal cases against Jehovah's Witnesses Teymur Akhmedov and Asaf Gulyev, as well as the two lawyers Kuznetsov and Kononenko – refused to answer any of Forum 18's questions on 30 March.

At the preliminary hearing of Akhmedov's criminal trial on 27 March, Prosecutor Baurzhan Kulmaganbetov tried to have Kuznetsov and Kononenko removed as his lawyers for allegedly "revealing information from a pre-trial investigation", Radio Free Europe's Kazakh Service reported after the hearing. Judge Talgat Syrlybayev of Astana's Saryarka District Court No. 2 rejected the Prosecutor's request. Akhmedov's full trial is due to begin at 10.30 am on 6 April (see below).

Attempt to remove Akhmedov's lawyers

During the closed part of Akhmedov's preliminary hearing, Prosecutor Kulmaganbetov tried to have Kuznetsov and Kononenko removed from defending Akhmedov. He argued that Kuznetsov is a lawyer from Sverdlovsk Region in Russia, so should not be allowed to defend his client. He also revealed – for the first time - that the criminal case had been opened against both lawyers (see below).

Judge Syrlybayev rejected the Prosecutor's request.

Criminal case against Akhmedov's lawyers

On 20 February the lawyers Kuznetsov and Kononenko sent a 23-page appeal (plus numerous attachments) to NSC Investigator Major Duskazyev, who led the investigation against Akhmedov and Gulyev. The appeal asked for the case against Akhmedov to be halted "because of the absence of the elements of a crime".

The lawyers argued that the "expert analyses" of the literature confiscated from Akhmedov and Gulyev should be "completely rejected as contradicting international law". They gave documentary evidence that officials and leaders of so-called "traditional" religions have made statements that are far more insulting and critical than the statements Akhmedov is accused of making.

The lawyers noted that law enforcement officials stated that the words used by officials and so-called "traditional" religious leaders were lawful (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

(Claims about so-called "traditional" and "non-traditional" religions are often used by the state to legitimise attacks on freedom of religion and belief - see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/Archive.php?article_id=1939.)

The lawyers also sent copies of their appeal to several officials and state agencies, including President Nursultan Nazarbayev and the Foreign Ministry.

On 1 March the Investigator, NSC Major Duskazyev rejected the appeal without addressing the points made (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

On 16 March Major Duskazyev opened a criminal case against the lawyers Kuznetsov and Kononenko, Astana Prosecutor's Office told Forum 18 on 30 March. The case is under Criminal Code Article 423, which punishes: "Revealing information from a pre-trial investigation by an individual warned under the law of the inadmissibility of information being revealed without the permission of the prosecutor or person undertaking the pre-trial investigation". Punishments are fines of up to 2,000 Monthly Financial Indicators, or restricted freedom or imprisonment of up to two years.

However, the first time the lawyers themselves knew they were facing a criminal case was when officials told them this during the preliminary hearing of Akhmedov's criminal trial on 27 March.

"To pressure the lawyers and deprive Akhmedov of his defence"

An Astana legal specialist described the opening of the criminal case against Kuznetsov and Kononenko for having addressed an appeal to President Nazarbayev as "bizarre". "This is a violation of the right of an individual to be properly defended," the legal specialist told Forum 18.

The legal specialist – who preferred not to be identified for fear of state reprisals – pointed out that only a limited number of lawyers are allowed to take on cases which the state regards as covering "state secrets".

Kuznetsov described opening the criminal case against him and fellow lawyer Kononenko for appealing to President Nazarbayev and the Foreign Ministry on behalf of Akhmedov as "absurd". "I don't believe the President needs any permission from the investigator to know about the violations of the human rights of an individual in a state of which he is the head," Kuznetsov told Forum 18.

"When we appealed to the Foreign Ministry about Akhmedov's case, the NSC had already provided the Ministry with information on the case," the lawyer told Forum 18. "They had even provided such details for example that Guliyev had admitted his guilt."

Kuznetsov pointed out that even before the criminal case was launched on 16 March, the television channel Khabar had shown a video of "operational/investigative measures" against the two Jehovah's Witnesses, including a house search.

"How can one talk about revealing information of the investigation to the President after information from the investigation was shown on television?" Kuznetsov asked. "It is therefore clear that this criminal case has one aim – to pressure the lawyers and deprive Akhmedov of his defence."

What next for prosecution of lawyers for doing their duty?

After Major Duskazyev opened the case, the NSC secret police then handed it via Astana's Prosecutor's Office to Astana Police for investigation. "We don't know who the case has been assigned to at Astana Police," Kuznetsov told Forum 18.

Despite repeated calls to Astana Police on 30 March, including to its Investigation Department and Central Chancellery for criminal cases, no official would give Forum 18 any information on the criminal case against Kuznetsov and Kononenko.

Astana's Prosecutor's Office told Forum 18 on 3 April that the case against the lawyers had been handed to Asilzhan Gabdykaparov of the General Prosecutor's Office. His telephone went unanswered each time Forum 18 called the same day.

Cancer sufferer Akhmedov detained and tortured, not hospitalised

On 20 January Akhmedov was ordered to be held in two months' pre-trial detention, even though a report from the National Scientific Centre for Oncology and Transplantation (the national cancer centre) "recommends an operation and requests that Akhmedov undergo an examination before being hospitalised".

The pre-trial detention of a cancer sufferer who needs to be hospitalised violates the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules) (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252).

"Akhmedov has two large tumours of the gastro-intestinal tract," his lawyer Kuznetsov told Forum 18. "There is no confirmed diagnosis yet that this is cancer. But it is suspected that these tumours are cancerous." The lawyer added that this would only become

clear after Akhmedov has the operation he has been waiting for.

While in detention Akhmedov has been tortured, which officials deny. In defiance of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no arrests of anyone strongly suspected of having tortured prisoners of conscience (including Akhmedov) jailed or detained for exercising freedom of religion and belief appear to have been made (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

Wide-ranging Criminal Code Article 174

The 60-year-old Jehovah's Witness Akhmedov – a retired bus driver - is on trial for allegedly "inciting religious discord" under the wide-ranging Criminal Code Article 174, Part 2. He denies inciting discord of any sort. He had spoken to NSC secret police agents pretending to be students. Guliyev, arrested with him, was sentenced on 24 February to five years' restricted freedom (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

Guliyev does not appear to have appealed to Astana City Court against his conviction.

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".

Part 2, which Akhmedov and Guliyev have faced, punishes these actions "committed by a group of persons, a group with prior planning, repeatedly, with violence or threat of violence, or by an official, or by the leader of a public association". If convicted they face five to 10 years imprisonment, "with deprivation of the right to hold specified positions or to engage in specified activity for up to three years".

The UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, as well as the UN Human Rights Committee and Kazakh human rights defenders have strongly criticised the broad and unclear formulation of Article 174 and other laws, as well as the prosecution of a wide range of individuals under Article 174 (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252).

Growing number of Article 174 prosecutions

Akhmedov and Guliyev are among a growing number of individuals prosecuted under Criminal Code Article 174 for exercising their rights to freedom of religion or belief and freedom of speech. Lawyers in at least some Criminal Code Article 174 cases have been forced to sign statements that they will not violate the "secrecy of the investigation", people close to several cases have told Forum 18 (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

Muslim prisoner of conscience Kuanysh Bashpayev is on trial under Article 174, Part 1 for criticising the state-controlled Muslim Board. His closed trial is due to continue at Pavlodar City Court at 10.00 am on 5 April (see below).

Others are still being investigated under Article 174 include: Satymzhan Azatov who met with other Astana Muslims without state permission; Imam Abdukhalil Abduzhabbarov who was extradited from Saudi Arabia and who was then immediately arrested on 18 February; and atheist writer Aleksandr Kharlamov who faces two separate Article 174 cases (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

Also under arrest and under investigation is Almaty resident Denis Korzhavin. He had previously studied Islam in Saudi Arabia. However, Forum 18 has been unable to find out why he was arrested (see below).

Those convicted to be stripped of citizenship?

A Justice Ministry draft amendment to Criminal Code Article 174 – published on 27 March on the Ministry's website – would if adopted also allow courts to strip Kazakh citizenship from those convicted under the Article. No changes were proposed to the other existing punishments. The amendment is silent on what would happen if the only citizenship held by a convicted person was that of Kazakhstan.

The proposed amendment does not explain whether this would apply only to individuals who are citizens of more than one country or citizens only of Kazakhstan.

A legal specialist pointed out to Forum 18 that countries cannot strip people of citizenship to leave them stateless. "This would be a violation of international law."

Akhmedov trial begins

The trial of Jehovah's Witness Akhmedov began with a preliminary hearing on 27 March. He was held in the cage in the courtroom during the hearing. Akhmedov's lawyers put forward a motion to the Judge to free their client from pre-trial detention. The Prosecutor put forward a motion to have the lawyers removed from the case (see below).

Although the Judge had declared the trial open, he ordered relatives and supporters out of the courtroom as he considered the requests "so as not to disturb the normal process of the trial", Bolat Abilkasimov of Ratel.kz wrote the same day. They were allowed back in only to hear his decisions on the requests.

Some 20 relatives and supporters were banished from the courtroom in addition to the journalists, Abilkasimov added. The Judge's secretary claimed to them that the courtroom was too small to accommodate them.

In the corridors of the court, Akhmedov's son Parviz told local journalists that his father was known among colleagues as honest and hard-working. He added that he had been praised in the press in an article entitled "The World is not without Good People".

Bashpayev: secret trial continues

The closed trial of Muslim prisoner of conscience Kuanysh Bashpayev under Article 174, Part 1 began under Judge Kayirbek Yelemesov at Pavlodar City Court No. 2 with a preliminary hearing on 14 February. The full trial began on 6 March (see F18News 7 March 2017 http://www.forum18.org/archive.php?article_id=2262).

Further hearings were held on 13, 14 and 27 March, according to court records. The trial is due to resume at 10.00 am on 5 April.

Judge Yelemesov's secretary – who did not give her name – said the Judge had ordered the hearings closed "to protect the security of the victim". She confirmed to Forum 18 on 30 March that the "victim" in the case is the prominent Almaty Muslim Board imam Ersin Amire. However, she declined to say in what way he needed "protecting". She told Forum 18 she "did not have the right to give any further information on the case" and put the phone down.

The 30-year-old Bashpayev gained a first degree and then began studies for a Master's degree in Islamic theology at Medina University in Saudi Arabia.

Captain Gabit Bakirov of Pavlodar Region NSC secret police prepared the criminal case against Bashpayev after officers found recordings of his sermons on the Russian social network VKontakte on 7 April 2016, according to the 24-page indictment seen by Forum 18. Further online sermons were found on 22 May 2016. "Expert analyses" of 15 April 2016 and 20 June 2016 claim to have found Bashpayev inciting religious hatred.

One of those questioned as a witness in the case was Asiya Abitova, a religious studies specialist at the state-financed Centre for Analysis and Development of Inter-confessional Relations in Pavlodar. She claimed that in his sermons, Bashpayev had described making pilgrimages to mausoleums and reading the Koran there as "shirk" (idolatry). "The official Islamic clergy of Kazakhstan do not ban visiting mausoleums or the graves of the deceased and reading verses of the Koran there," the indictment summarises Abitova's remarks.

Abitova also claimed – without providing any detail – that in another sermon Bashpayev had declared it was permitted to kill those guilty of "shirk".

Reached at the Centre in Pavlodar, Abitova refused to discuss her testimony with Forum 18 on 29 March 2017.

Interrogated on 12 October 2016, Bashpayev refused to answer any questions, according to the indictment. He was arrested the following day (see F18News 6 February 2017 http://www.forum18.org/archive.php?article_id=2253).

NSC Captain Bakirov signed the indictment on 25 January 2017 and K. Bazarbayev of the Regional Prosecutor's Office counter-signed it five days later.

Korzhavin: why was he arrested?

Arrested in Almaty on 18 February was Denis Valeryevich Korzhavin (born 21 May 1983). On 21 February Judge Maral Dzharilgasova of Almaty's Almaly District Court ordered him held in two months' pre-trial detention, the court chancellery told Forum 18 on 3 April. It added that Korzhavin is being investigated under Criminal Code Article 174, Part 1.

The Special Department of Almaty's Investigation Prison No. 18 confirmed to Forum 18 on 30 March that it is holding Korzhavin. However, the official – who would not give her name – refused to discuss his conditions in prison, including whether he has access to the Koran and whether he can pray openly.

Korzhavin is an ethnic Russian who converted to Islam. He then studied his faith at Medina University in Saudi Arabia before returning to Kazakhstan.

Forum 18 has been unable to find out why Korzhavin was arrested. No official at Almaly District Prosecutor's Office would identify the Investigator in the case on 3 April or tell Forum 18 why he had been arrested. (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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