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KAZAKHSTAN: Appeals rejected in absentia

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

Eight prisoners of conscience have lost their appeals against long jail terms for discussing Islam on a WhatsApp group. Almaty City Court rejected the appeals on 20 November in their absence. Even before the decision came into force, the authorities transferred them to often distant labour camps. One is in a Shymkent camp, where another Muslim was tortured.

On 20 November, Almaty City Court rejected the appeal by eight Muslims against their long jail terms for sharing Muslim texts on a private group on their mobile phones. A lower court in the city had handed down the jail terms of up to eight years on 5 August. The eight Muslims were not in court for the appeal hearing. The eight men have now been transferred to prison camps to serve their sentences.

The trial of the ninth defendant in the case, Zhuldzybek Taurbekov, is due to begin in Almaty Investigation Prison in the afternoon of 3 December. (http://www.forum18.org/archive.php?article_id=2523) This is despite his serious heart condition which his lawyer says should lead to immediate release. Like the other eight Muslims, Taurbekov has already spent 13 months in pre-trial detention since the National Security Committee (NSC) secret police arrested him in October 2018.

All eight convicted Muslims rejected prosecutors' accusations that their WhatsApp discussion group promoted "propaganda of terrorism" or "inciting hatred". In particular they objected to the "expert analysis" the prosecution had commissioned which backed these claims (see below).

The defence commissioned an analysis of the prosecution "expert analysis" from the St Petersburg Centre of Independent Expert Analysis and Evaluation in Russia, which found that the prosecution "analysis" failed to establish that the texts the men distributed contained "insulting features, negative emotional evaluations or negative positions", adding that the texts did not incite anyone to any hatred or discord or humiliation of others based on their identity. However, the judges at Almaty City Court refused to accept the St Petersburg analysis (see below).

Similarly, in the original trial an analysis for the defence by the Adil Soz (Free Word) International Foundation for Protection of Freedom of Speech found no incitement to hostility, aggression, or violence (http://www.forum18.org/archive.php?article_id=2498) towards others based on their religious affiliation, nor any assertion or propaganda that anyone is superior or inferior to anyone else based on their religious affiliation.

The mother of one of the defendants complained that Almaty City Court Chair had gone back on a promise that the eight Muslims would be allowed to attend the appeal hearing (see below).

She also complained that the eight are now required to pay "compensation" of one month's average wages to the Victims' Compensation Fund, even though the prosecution never claimed that anyone had been a victim of their discussion group (see below).

Within days of the rejection of their appeal, the eight prisoners of conscience were transferred from Almaty Investigation Prison to prisons in different regions. Only one of the prisoners has been transferred to a prison in Almaty Region. This will make it expensive and difficult for relatives to be able to visit (see below).

Now the eight men have lost their appeals, they are likely to be added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism". Being added to the List means that any bank accounts an individual may have are blocked with no further legal process. Their families are allowed to withdraw only small amounts for daily living if they do not have other sources of income. Individuals remain on the Financial Monitoring Committee List for six or eight years after their sentence has expired.

Transferred to distant labour camps

Almaty City Court's rejection of the eight Muslims' appeals against their convictions was due to come into force only on 29

November, according to the one-page initial decision seen by Forum 18.

However, immediately after the Court issued its rejection on 20 November, the prison authorities began transferring the men to prison camps to begin serving their sentences. At least one of them was taken from Almaty Investigation Prison late at night on 23 November.

Relatives complained that the transfer to labour camps before the convictions had come into force was illegal.

The telephone at the Special Department of Investigation Prison LA-155/18 went unanswered each time Forum 18 called between 26 and 28 November. However, prison officials confirmed to Kazis Toguzbayev of Radio Free Europe's Kazakh Service on 25 November that the men had been transferred from the prison. However, they refused to discuss why the transfers took place before the verdicts had come into force.

The camps where the eight are being sent are across Kazakhstan. This means the men will serve their prison terms often a long way from their homes and families. This will make prison visits expensive, difficult and time-consuming for relatives.

1) Bolatbek Dyusenbekovich Nurgaliyev (born 12 December 1978) – 8 years' imprisonment - has been transferred to a labour camp in North Kazakhstan Region.

2) Ernar Samatovich Samatov (born 19 March 1980) – 7 and a half years' imprisonment - has been transferred to one of the three labour camps in the village of Zarechny in Almaty Region.

3) Beket Tastanbekovich Mynbasov (born 10 January 1983) – 7 and a half years' imprisonment - has been transferred to a labour camp, reportedly in the central Karaganda Region.

4) Nazim Alimzhanovich Abdrakhmanov (born 10 March 1988) – 5 and a half years' imprisonment - has been transferred to a labour camp in the northern Kostanai Region.

5) Samat Asylkhanovich Adilov (born 28 August 1986) – 5 and a half years' imprisonment - has been transferred to a labour camp in the western Aktobe Region.

6) Zhasulan Meiramovich Iskakov (born 22 October 1984) – 5 and a half years' imprisonment - has been transferred to a labour camp in Karaganda Region.

7) Esim Kadirzhumanovich Suleimenov (born 1 February 1983) – 5 and a half years' imprisonment - has been transferred to a labour camp in the south-western Kyzylorda Region.

8) Azamat Gaidarovich Umbetaliyev (born 10 January 1992) – 5 and a half years' imprisonment - has already arrived at labour camp ICh-167/3 in the southern city of Shymkent, where he is now in isolation ("quarantine").

160000, g. Shymkent

Abaisky raion

Temirlanskoe shosse 28

Uchr. ICh-167/3

Bagdat Asilbekov, the head of labour camp ICh-167/3, told Forum 18 from Shymkent on 28 November that Umbetaliyev is now in quarantine, which lasts for 15 days. He said his health is good.

Asilbekov refused to discuss how Umbetaliyev will be treated in future and whether he will be allowed to pray visibly and read the Koran if he wishes to.

Relatives of Muslim prisoner of conscience Dadash Mazhenov told Forum 18 that he and other Muslims who celebrated Eid-al-Fitr and prayed were tortured in the prison in 2019 (see below).

However, Asilbekov said he "couldn't discuss" torture at the labour camp and put the phone down.

Long jail terms

Arrested in October 2018, the eight Muslims were finally convicted and jailed on 5 August 2019 at Almaty's Almaly District Court. (http://www.forum18.org/archive.php?article_id=2498) They were convicted for participating in a WhatsApp discussion group

about Islam which was monitored by the National Security Committee (NSC) secret police. Prosecutors allege some of the distributed messages promoted "propaganda of terrorism" and "incited hatred". The eight Muslims all denied the accusations.

Among the messages the group's participants circulated was one by Azamat Umbetaliyev, warning about innovations in religion. An analysis of the message - commissioned by his defence lawyer from Adil Soz (Free Word) International Foundation for Protection of Freedom of Speech – found neither any incitement to hostility, aggression, or violence towards others based on their religious affiliation, nor any assertion or propaganda that anyone is superior or inferior to anyone else based on their religious affiliation.

Three of the men – Nurgaliyev, Samatov and Mynbasov - were convicted under both Criminal Code Article 256, Part 2 and Criminal Code Article 174, Part 2. The other five – Abdrakhmanov, Adilov, Iskakov, Suleimenov and Umbetaliyev - were convicted only under Criminal Code Article 174, Part 2.

Article 256, Part 2 punishes "Propaganda of terrorism or public calls to commit terrorism", which includes the production, storage for distribution or distribution of [unspecified in the Article] specified materials, carries a punishment of five to nine years' imprisonment plus confiscation of property. If committed by an individual using a state or non-state official position, or with the use of the mass media or other communication networks, or with foreign support, or in a group, the punishment is seven to 12 years' imprisonment with confiscation of property.

Article 174, Part 2 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". Punishment under Part 2, when such actions are carried out by a group of people, is a jail term of between five and ten years.

Prison hunger strike

On 30 September, the eight jailed Muslims began a hunger strike in Almaty's Investigation Prison against what they regarded as the unjust convictions. They wrote to President Kassym-Zhomart Tokayev, former President and current Chair of the Security Council of Kazakhstan Nursultan Nazarbayev, and various state agencies calling on them to look into their cases.

Four of them halted the hunger strike in early October, and the other four on 8 October. Officials then promised that they would be able to participate in their appeal hearing.

Appeal rejected in absentia

On 20 November, a panel of three Judges at Almaty City Court chaired by Yerzhan Kenenbayev rejected the eight Muslims' appeals against 5 August convictions, according to the decision seen by Forum 18. The decision notes that the full decision with reasoning is due to be issued on 29 November, when the decision comes into force.

The eight men will have up to one year to appeal further to the Supreme Court in the capital Nur-Sultan.

"We definitely intend to appeal to the Supreme Court and, if necessary, to the United Nations," Umbetaliyev's mother Anzhelika Belyayeva told Forum 18 from Almaty on 27 November.

The eight Muslims were convicted on the basis of prosecution claims that they "acting with a common intention, aware of the illegality of their actions .. actively discussed religious themes .. deliberately made radical statements which represented propaganda of terrorism and incitement of religious discord". However, of the state-nominated "experts", only Gulnara Mukhatayeva from Almaty found fault with Umbetaliyev's one repost to the group.

At the appeal hearing, lawyers for the eight Muslims presented to the Court a separate 39-page analysis of Mukhatayeva's "expert analysis". The defence had commissioned this from the St Petersburg Centre of Independent Expert Analysis and Evaluation, which had completed it on 15 October 2019 (and seen by Forum 18).

The St Petersburg analysis found that Mukhatayeva had conducted her analysis "subjectively". It found that she failed to establish that the texts the men distributed contained "insulting features, negative emotional evaluations or negative positions", adding that the texts did not incite anyone to any hatred or discord or humiliation of others based on their identity.

The St Petersburg analysis concluded that Mukhatayeva's "expert analysis" was, "because of the numerous violations, unreliable, cannot be regarded as bearing the truth and should not be taken account of in forming conclusions".

The Court dismissed defence attempts to have Mukhatayeva and other "experts" questioned during the appeal hearing and dismissed the St Petersburg analysis.

The representative of Almaty City Prosecutor's Office Sapar Torekul told the Court that no violations had occurred at the original trial and that the sentences should therefore be upheld, Kazis Toguzbayev of Radio Free Europe's Kazakh Service – who was present in court – noted the same day.

Forum 18 was unable to reach Judge Kenenbayev or Prosecutor Torekul between 26 and 28 November.

Why were victims absent?

The 20 November appeal hearing took place in the absence of the eight Muslims, who were then being held in Almaty's Investigation Prison.

Article 428 of the Criminal Procedural Code, which covers appeal hearings, requires convicted individuals to be present in court only if prosecutors are seeking to have punishment increased, or if new evidence will be heard that was not considered in the lower court trial. The appeal court decides on whether convicted individuals are to be summoned to the appeal hearing or not.

Umbetaliyev's mother Belyayeva told Forum 18 that the Chair of Almaty City Court, Nurgazy Abdikanov, had promised that the eight men would be able to be present for the appeal hearing. "He was lying!" Belyayeva insisted. "They didn't allow my son or the others to be brought from prison for the appeal hearing."

Forum 18 was unable to find out who took the decision to bar the men from participating in the appeal. "They were not banned from participating," an Almaty City Court official insisted to Forum 18 on 28 November.

The official said Abdikanov has stepped back as Chair of the Court (first she said he was on leave, then she said he was ill). The acting Chair is Bakhytzhan Karamanov, who took up the role on 18 November, two days before the men's appeal hearing. He told Forum 18 via the official that all had been done "in accordance with the law".

The official then pointed to provisions of the Criminal Procedural Code, which allow appeal hearings to take place in convicted individuals' absence.

She then referred Forum 18 to Judge Kenenbayev, the acting head of the Court's criminal division and who presided at the appeal hearing. However, despite repeated calls Forum 18 was unable to reach him between 26 and 28 November.

Told that relatives accused Court Chair Abdikanov of lying when he promised the men would be able to take part, the official responded: "It is not proved that he lied."

Paying the "victims"?

Umbetaliyev's mother Belyayeva complained that the eight, including her son, will be required to pay financial compensation to their "victims" in line with the 5 August verdict.

The verdict said each of the eight must pay 20 Monthly Financial Indicators, 48,100 Tenge, into the Victims' Compensation Fund. This represents about one month's average wage for those in formal work. In addition, the eight were also ordered to pay court fees.

"No one ever said who the victims were," Belyayeva told Forum 18. "But they insisted we have to pay into the Victims' Compensation Fund."

Muslims tortured in Shymkent camp

Muslim prisoner of conscience Dadash Temirgaliyevich Mazhenov (born 28 September 1990) was tortured when he was held at Labour Camp ICh-167/3 in Shymkent, where Umbetaliyev has now been sent. Mazhenov was transferred to the camp in March 2019.

In a case initiated by the NSC secret police, Mazhenov was accused of posting online four talks on Islam by Kuanysh Bashpayev (http://www.forum18.org/archive.php?article_id=2457). Burabai District Court jailed Mazhenov in November 2018 for seven years and eight months in a general regime labour camp. Akmol Regional Court went ahead with an appeal hearing on 30 January 2019, despite Mazhenov's decision to withdraw his appeal. The Regional Court left his jail term unchanged.

Guards at the Shymkent camp subjected Mazhenov to torture, his relatives told Forum 18.

"Those who marked Eid al-Fitr [Muslim festival that in 2019 fell in early June] were fed rotten food and all were made ill," relatives stated. Later in June, prisoners were banned from praying the namaz. "Anyone praying the namaz during the daytime was threatened with having extra prison time added."

In late July the prison authorities transferred Mazhenov to the Investigation Prison in Kyzylorda, 425 kms (265 miles) away. "They hide such prisoners in Investigation Prisons," his relatives told Forum 18, "so that there would be no publicity."

Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kazakhstan is under a binding legal obligation to arrest and put on criminal trial any official suspected of torture or complicity in torture (http://www.forum18.org/archive.php?article_id=2409). There is no indication that any of the staff of Labour Camp ICh-167/3 in Shymkent have been arrested or put on criminal trial. (END)

Full reports on freedom of thought, conscience and belief in Kazakhstan (<http://www.forum18.org/archive.php?query=&religion=all&country=29>)

For more background, see Forum 18's Kazakhstan religious freedom survey (http://www.forum18.org/archive.php?article_id=2409)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (http://www.forum18.org/archive.php?article_id=1351)

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