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KAZAKHSTAN: "I lost consciousness three times because of the pain"

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

Despite Muslim prisoner of conscience Dadash Mazhenov's credible allegations of Labour Camp torture, none of the named officials seems yet to be arrested or facing criminal trial for torture, in defiance of international law. The Coalition Against Torture has appointed a lawyer to work on the case, and noted that few prison torture cases ever reach court, with few officials found guilty.

Muslim prisoner of conscience Dadash Mazhenov lodged a complaint in March detailing a credible account of torture while he was held in Labour Camp in the city of Shymkent in southern Kazakhstan in summer 2019. The investigator from the Anti-Corruption Service in Shymkent confirmed that he is investigating a criminal case, but refused to say if any of the seven officials Mazhenov had named or any others are suspects in the case, citing the "secrets of the investigation".

Relatives told Forum 18 in November 2019 about torture of Muslim prisoners of conscience who marked the Muslim festival of Eid al-Fitr (that in 2019 fell in early June) and praying the namaz.

In one incident on 2 July 2019, during four hours of torture, camp officials beat Mazhenov's feet so much that they swelled to almost three times their normal size with a lot of hematoma (bleeding under the skin). Officials then stripped him naked and put him face down and began beating his buttocks with the truncheon. "After this I lost consciousness three times because of the pain, but they poured water on me and carried on beating," he wrote (see below).

Mazhenov testified in March 2020 that he still has pain and complications in his buttocks because of the torture inflicted in summer 2019 (see below).

In his complaint, seen by Forum 18, Mazhenov identified fully or partially by name five of seven officials of Shymkent's Labour Camp ICh-167/3 he said had participated in his torture (see below).

An official from the Labour Camp, who would not identify himself, claimed to Forum 18 that the Chief, Bagdat Asilbekov, was out of the camp at a meeting. He refused to give his mobile telephone number. The official also refused to say if any of the camp officials Mazhenov had identified as having tortured him had been suspended from work, arrested, or face criminal trial for torture (see below).

According to documents seen by Forum 18, the criminal case was launched by the authorities on 10 April 2020 under Criminal Code Article 146, Part 1, which punishes torture by a single official – not under Part 2 which punishes torture carried out by a group and/or repeatedly, or Part 3 punishing torture causing grave harm to health, both of which Mazhenov indicates happened to him (see below).

However, a second criminal case was then launched under an unknown Criminal Code Article. The two cases have now been merged into one and the Investigator refused to say if this is still an investigation under charges of torture (see below).

Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kazakhstan has a binding international law obligation both to 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".

Human rights defenders have expressed concern that any torture charges against camp officials could be downgraded to "exceeding official authority" under Criminal Code Article 362, which carries lower punishments.

Maksim Kudryavtsev of the Coalition Against Torture noted that only a handful of prison torture cases ever reach court, with only a small number of guilty verdicts. He added that downgrading the charges from torture to "exceeding official authority" is common.

The UN Committee against Torture (CAT) in 2014 called on Kazakhstan to stop doing this, and to criminally prosecute on torture charges officials accused of torture (see below).

"Proving or disproving the allegations of torture Mazhenov's relatives have passed on is the duty of the investigatory bodies," Kudryavtsev of the Coalition Against Torture told Forum 18 from Almaty. "The Coalition's task is to make sure that the pre-trial investigation takes place within the framework of the law, and is objective and thorough."

Prisoner of conscience Mazhenov is being held in Kokshetau's Investigation Prison while his new trial is underway. Investigators have not taken testimony from him for the criminal case, his family told Forum 18 on 13 May.

An official from the Shymkent Criminal Implementation Department insisted that Mazhenov had caused the injuries to himself. "It's all in the investigation file," he told Forum 18 (see below).

The Coalition Against Torture, which is supporting Mazhenov's case at the request of his family, has appointed a Shymkent-based lawyer Galiya Aldiyarova on 10 May to work on the torture case on Mazhenov's behalf.

Binding obligations to arrest, prosecute torturers

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (http://www.forum18.org/archive.php?article_id=2409) defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

Kazakhstan is obliged both to 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". Yet no arrests or criminal trials of anyone strongly suspected of having tortured prisoners of conscience jailed for exercising freedom of religion and belief appear to have been made (http://www.forum18.org/archive.php?article_id=2409).

The Coalition Against Torture told Forum 18 that they get many appeals about torture while in prison similar to that submitted by Dadash Mazhenov.

"Proving or disproving the allegations of torture Mazhenov's relatives have passed on is the duty of the investigatory bodies," Maksim Kudryavtsev of the Coalition Against Torture told Forum 18 from Almaty. "The Coalition's task is to make sure that the pre-trial investigation takes place within the framework of the law, and is objective and thorough."

Kudryavtsev noted that only a handful of prison torture cases ever reach court, with a small number of guilty verdicts. He pointed out that in "many of these cases", charges against prison officials are downgraded from charges under Criminal Code Article 146 ("Torture"), which specifies possible punishments from fines to imprisonment for up to 12 years depending on the circumstances. If the torture is carried out by a group and/or repeatedly, as Mazhenov indicated happened in his case, the punishment specified is not fines but imprisonment for between three to seven years. In cases of grave harm to health – as Mazhenov indicated happened to him – the punishment specified is imprisonment for between 5 and 12 years.

Instead, and against Kazakhstan's binding international legal obligations, charges are often brought under Criminal Code Article 362 ("Exceeding official authority"), which has lower possible punishments from fines to imprisonment for up to 10 years depending on the circumstances.

The UN Committee against Torture (CAT) in its 11 December 2014 Concluding Observations on Kazakhstan states that it (CAT/C/KAZ/CO/3 (http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/KAZ/CO/3&Lang=En)) "is concerned that law enforcement officials accused of committing acts amounting to torture are frequently prosecuted .. for 'abuse of official power' and 'excess of authority or official powers' .. The Committee is also concerned at the low number of persons convicted for having committed acts of torture. The Committee is further concerned at reports of cases in which individuals convicted of torture under the Criminal Code have nevertheless received extremely lenient sentences such as conditional sentences and probation."

The UN Committee stated that Kazakhstan "should ensure that all persons accused of acts amounting to torture as defined by the Convention are prosecuted for the crime of torture .. rather than for offences of lesser severity. The State party should ensure that those convicted are punished with appropriate penalties that are commensurate to the gravity of the crime of torture, as set out in article 4, paragraph 2, of the Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]."

Jailed

Shchuchinsk resident Dadash Temirgaliyevich Mazhenov (born 28 September 1990) in 2015 posted on his VKontakte social media page four talks by Muslim teacher Kuanysh Bashpayev (http://www.forum18.org/archive.php?article_id=2427), but had removed them before a court in 2017 banned the talks as "extremist".

In early 2018, the National Security Committee (KNB) secret police's 9th Department in Akmola Region launched a criminal case against Mazhenov. He was arrested on 23 April 2018.

Burabai District Court sentenced Mazhenov on 16 November 2018 (http://www.forum18.org/archive.php?article_id=2435) under Criminal Code Article 256, Part 2. This 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 - 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.

The Court sentenced Mazhenov to 7 years and 8 months in a general regime labour camp, plus a fee of 60,790.14 Tenge. He appealed against the conviction, but Akmola Regional Court left his prison term unchanged on 30 January 2019 (http://www.forum18.org/archive.php?article_id=2452). The Court did though reduce the fee he had to pay.

Torture in Shymkent

After Akmola Regional Court rejected prisoner of conscience Mazhenov's appeal in January 2019, the sentence entered into force. The prison authorities transferred him from Kokshetau in Akmola Region to Labour Camp ICh-167/3 in Shymkent, 1,220 kms (760 miles) to the south, where he arrived on 3 March 2019. He was held there until about 23 July 2019, when he was transferred to the Investigation Prison in Kyzylorda, where he would be held until early 2020.

During his time in Labour Camp in Shymkent, Mazhenov suffered repeated torture, including severe beatings, according to his subsequent complaint, seen by Forum 18 (see below). The Chief of the camp, both in 2019 and now, is Bagdat Asilbekov (http://www.forum18.org/archive.php?article_id=2524).

Relatives told Forum 18 in November 2019 of their concerns about torture (http://www.forum18.org/archive.php?article_id=2524) while Mazhenov was in the Shymkent Labour Camp earlier in the year. "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 2019, prisoners were banned from praying the namaz. "Anyone praying the namaz during the daytime was threatened with having extra prison time added."

In his March 2020 written complaint, Mazhenov recounts in detail two instances of torture by seven officials he says conducted it. He identifies by name five of the officials: Almaz Ikramov, Zhandos Bekbayev, Baurzhan Tankibayev, Aytzhan (criminal Police officer), and Sabit (criminal Police officer).

Mazhenov said the first occurred on 30 June 2019. After the morning inspections Ikramov told their detachment to march. During the march a conflict arose between two prisoners and he tried to separate them. The prisoners – including Mazhenov - were then taken back to the 2nd section of the prison.

Mazhenov was taken to the administration building. The Deputy Chief then told Officers Ikramov and Tankibayev to beat him, Mazhenov recounted. The beatings left his face swollen and black and blue.

"I told them that I will write a complaint, as it is not the first time that Almaz Ikramov and Baurzhan Tankibayev had beaten me," Mazhenov noted in his complaint.

Mazhenov showed his injuries to at least 100 other prisoners during the mealtime later that day, he noted.

Mazhenov said the second occurred on 2 July 2019. During the 8 am inspection he was taken to Bekbayev's office and tortured there for four hours.

Ikramov and Bekbayev beat him, Mazhenov wrote in his complaint. Then they tied up his legs and handcuffed him, and beat the soles of his feet with a rubber truncheon. The two, with five other officials, some of whose names he does not remember, beat his feet so much that they swelled to almost three times their normal size, with a lot of hematoma (bleeding under the skin).

After this they stripped Mazhenov naked and put him face down. Bekbayev began beating his buttocks with the truncheon. "After this I lost consciousness three times because of the pain, but they poured water on me and carried on beating," Mazhenov wrote.

After the torture they dictated a statement to Mazhenov. He was forced to write that he was declining his earlier request to be transferred to another camp with a special regime where he might feel safer. "At that point I was afraid I would not survive these tortures," Mazhenov recalled. After that the officials made him go and apologise to the Chief of the prison, which he did.

That same day, prison officials put Mazhenov in solitary confinement for seven days, where he was kept in handcuffs the whole time.

In an August 2011 report to the UN General Assembly on solitary confinement (A/66/268 (<http://undocs.org/A/66/268>)), then-UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Juan Mendez, after examining cases in Kazakhstan and elsewhere, stated that "short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment". On 18 October 2011 he cited Kazakhstan again and stated that: "Segregation, isolation, separation .. whatever the name, solitary confinement should be banned by States as a punishment or extortion technique" (<http://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>).

At the end of prisoner of conscience Mazhenov's solitary confinement, he was on the order of the Deputy Chief recorded as having refused to fulfil his duties or obligations. Mazhenov noted that he had never refused to perform his duties and obligations.

Mazhenov testified in March 2020 that he still has pain and complications in his buttocks because of the torture inflicted in summer 2019.

Conviction overturned, but new trial

As the only "expert" who had provided an analysis finding anything wrong with the materials Mazhenov had posted online was not qualified to provide "expert analysis" for use in court, the General Prosecutor's Office appealed to the Supreme Court on 5 December 2019 (http://www.forum18.org/archive.php?article_id=2569) to annul his 2018 conviction and to send the case for a new trial.

In July 2019, before the General Prosecutor's Office appeal, the prison authorities transferred Mazhenov first from Labour Camp ICh-167/3 in Shymkent, where he said he was tortured, to Investigation Prison SI-10 in Kyzylorda.

On 21 January 2020, the Supreme Court approved the General Prosecutor's Office suit. It annulled both the November 2018 Burabai District Court decision convicting Mazhenov and the January 2019 Akmola Regional Court decision.

However, the Supreme Court did not acquit Mazhenov, an option available under Article 494, Part 7 of the Criminal Procedural Code. Instead it chose one of the three other possible options – to send the case for a new trial in Akmola Regional Court. The new trial began on 19 March, and the court on 29 April assigned a new "expert" whose assessments have helped convict three other prisoners of conscience to analyse materials in Mazhenov's case. (http://www.forum18.org/archive.php?article_id=2569)

Prisoner of conscience Mazhenov remains in Investigation Prison in Kokshetau. The address:

Akmolinskaya Oblast

020000, g. Kokshetau

raion kirzavoda

ul. Nikitina 67

uchr. ETs-166/23 (SI-20)

Kazakhstan

Complaint against torture

Only once Mazhenov had arrived back in Investigation Prison in Kokshetau on 12 March 2020 was he able to write a complaint about the torture he said he had endured while in Shymkent Labour Camp in 2019. He submitted to Akmola Region Personal Security Directorate the four-page hand-written complaint – seen by Forum 18 – on 18 March 2020.

One of the tasks of local Personal Security Directorates (which come under the Interior Ministry) is to "carry out the identification and prevention of cases of use of torture by employees".

The Personal Security Directorate in the capital Nur-Sultan sent Mazhenov's complaint to Shymkent's Prosecutor's Office, according to a 23 April letter seen by Forum 18.

On 20 April, Shymkent's Prosecutor's Office informed Mazhenov's mother that the Anti-Corruption Service in Shymkent had opened a case on 10 April under Criminal Code Article 146, Part 1 ("Torture") related to the allegations against officials of the Shymkent Labour Camp. The case was assigned to Investigator Almat Seitov.

However, a second case was then launched. Forum 18 has been unable to establish why and also under which Criminal Code Article the case was launched.

"He harmed himself"?

Eldar Nasirdin of Shymkent's Prosecutor's Office told Forum 18 on 5 May that there are no suspects in the criminal case. He refused to say why no one had been arrested as a suspect in the case or answer any other questions, referring Forum 18 to the Anti-Corruption Service in Shymkent.

An official from the Shymkent Criminal Implementation Department – which oversees all prisons in the city - insisted that Mazhenov is healthy had caused the injuries to himself. "He hit his head on a wall," the official, who did not give his name, claimed to Forum 18 on 6 May. "It's all in the investigation file." He claimed that prisoners often allege torture, something he described as "slander" aimed at "destabilising the situation in prison".

"It seems they want to confuse everyone"

Investigator Seitov of the Anti-Corruption Service confirmed to Forum 18 from Shymkent on 13 May that the two cases had been combined into one, but refused to say which Criminal Code Article the case is being investigated under, whether any individuals are suspects in the case and whether they have been arrested or not. He cited the "secrets of the investigation".

Investigator Seitov refused to explain why the case was not opened under Criminal Code Article 146, Part 2, which punishes torture by a group of people and/or repeated torture which happened to Mazhenov. While punishments under Part 1 range from a fine to a maximum three year jail term, punishments under Part 2 are imprisonment of between three and seven years.

"It seems they want to confuse everyone," Mazhenov's mother told Forum 18, "as they have undertaken no investigative measures. They point out that we now have the [coronavirus] lockdown."

Maksim Kudryavtsev of the Coalition Against Torture told Forum 18 that when the lawyers get documentation in the case they should be able to see the basis for the decision to investigate only under Criminal Code Article 146, Part 1 punishing torture by a single official. "We will then raise the question of having the case changed [to Part 2]."

Mazhenov is being held in Kokshetau's Investigation Prison while his new trial is underway. Investigators have not taken testimony from him for the criminal case, his family told Forum 18 on 13 May.

An official of Labour Camp ICh-167/3 told Forum 18 on 14 May that the Chief, Bagdat Asilbekov, was out of the camp at a meeting. On 28 November 2019 Asilbekov claimed to Forum 18 that he "couldn't discuss" torture at the Labour Camp he runs and put the phone down. (http://www.forum18.org/archive.php?article_id=2524)

The official Forum 18 spoke to on 14 May 2020, who would not identify himself, refused to give Asilbekov's mobile telephone number. The official also refused to say if any of the camp officials Mazhenov had identified as having tortured him had been suspended from work, arrested, or face criminal trial for torture.

Known prisoners of conscience jailed for exercising freedom of religion and belief

Mazhenov is among 24 known prisoners of conscience serving sentences for exercising their freedom of religion and belief (http://www.forum18.org/archive.php?article_id=2566), all of them Sunni Muslims.

In addition to these 24 current known prisoners of conscience, others currently known to be under restrictions for exercising freedom of religion or belief (http://www.forum18.org/archive.php?article_id=2566) are: sentenced to jail in absentia (3 Pentecostal Christians); serving restricted freedom sentences (6: 5 Sunni Muslims, 1 Jehovah's Witness); under post-jailing bans on specified activity (at least 16 Sunni Muslims); and still on the Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", whose bank accounts are blocked, after completing jail sentences (27: 26 Sunni Muslims, 1 Seventh-day Adventist). (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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