

13 October 2020

KAZAKHSTAN: No surgery yet for prisoner needing heart transplant

By Felix Corley, Forum 18

Despite Muslim prisoner of conscience Zhuldyzbek Taurbekov being seriously ill and needing a heart transplant, he was sent from Petropavl Labour Camp on an over 1,000 kilometre journey to Pavlodar Labour Camp. "I am very worried about Zhuldyzbek," his mother told Forum 18. The chief doctor of Pavlodar Labour Camp medical unit confirmed that Taurbekov needs a heart transplant, and that Pavlodar has no suitable cardiology centre.

Despite 42-year-old Muslim prisoner of conscience Zhuldyzbek Taurbekov being seriously ill and needing a heart transplant, on 23 September Labour Camp ES-164/3 in Petropavl transferred him by train on an over 1,000 kilometre (630 mile) journey to Labour Camp AP-162/2 in Pavlodar. He arrived on 26 September and was placed in the medical unit.

"I am very worried about Zhuldyzbek," his mother Asemgul Zhaugasheva told Forum 18 on 9 October. "He needs an operation on his heart and has problems with his kidneys, his liver, high sugar levels and lack of oxygen. The medical unit doesn't have the facilities to treat him, and doesn't even have appropriate medicine." She added that he has asked for early release on grounds of health, but this has not been granted (see below).

The chief doctor of Pavlodar Labour Camp medical unit, Berik Smagulov, described Taurbekov as "ill but stable". He told Forum 18 from Pavlodar on 9 October that Taurbekov needs a heart transplant, "but as a planned operation, not as an emergency". He said that Pavlodar has no suitable cardiology centre, so any operation would have to take place in the capital Nur-Sultan. Against the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) the prison authorities insist that this medical decision will be taken by Petropavl Labour Camp administration (see below).

Prisoner of conscience Taurbekov has been hospitalised multiple times, and his mother's request for him to be in prison close to his Almaty home and medical treatment has been denied (see below).

Arstan Mukashev, the head of Pavlodar Labour Camp AP-162/2, insisted that his camp's medical unit is providing Taurbekov with the care he needs. "Prisoners do die, but he's not dying," Mukashev told Forum 18. "If he dies it won't be on our conscience, but because of illness" (see below).

Sunni Muslim prisoner of conscience Azamat Gaidarovich Umbetaliyev (born 10 January 1992) was one of the men arrested with prisoner of conscience Taurbekov for participation in an online Muslim discussion group. Prisoner of conscience Umbetaliyev has appealed for early release from prison. Abai District Court in Shymkent accepted his appeal on 5 October, but has not yet scheduled a date to hear the appeal (see below).

On 26 June, parliament adopted amendments to the Criminal Code and other laws, which came into force in early July 10 days after their official publication. Among the Criminal Code changes were two to Article 174, which human rights defenders and United Nations human rights bodies have repeatedly criticised for its unclear language and formulations. Human rights defender Yevgeny Zhovtis described the June amendments as a "half step forward", but noting that "they did not change the term 'discord' to 'hatred or enmity' as we had pushed for. This means they kept this very undefined term" (see below).

Sunni Muslim prisoner of conscience Kuanysh Ablayevich Bashpayev (born 3 February 1987) has been freed at the end of his sentence (see below).

Taurbekov: "I am very worried about Zhuldyzbek"

Despite Muslim prisoner of conscience Zhuldyzbek Abikenovich Taurbekov (born 20 September 1978) being seriously ill and needing a heart transplant, on 23 September Labour Camp ES-164/3 in Petropavl transferred him by train to Labour Camp AP-162/2 in Pavlodar. He arrived on 26 September and was placed in the medical unit.

Petropavl is 600 kms (375 miles) from Pavlodar direct, but the train journey was via Karaganda, a journey of over 1,000 kms (630 miles).

"I am very worried about Zhuldyzbek," his mother Asemgul Zhaugasheva told Forum 18 on 9 October. "He needs an operation on his heart and has problems with his kidneys, his liver, high sugar levels and lack of oxygen. The medical unit doesn't have the facilities to treat him, and doesn't even have appropriate medicine." She added that he has asked for early release on grounds of health, but this has not been granted.

The chief doctor of Pavlodar Labour Camp medical unit, Berik Smagulov, described Taurbekov as "ill but stable". He told Forum 18 from Pavlodar on 9 October that Taurbekov needs a heart transplant, "but as a planned operation, not as an emergency". He said that Pavlodar has no suitable cardiology centre, so any operation would have to take place in the capital Nur-Sultan.

Multiple hospitalisations, jailed far from home and treatment

Earlier, on 14 April, prison authorities transferred prisoner of conscience Taurbekov from Almaty's Investigation Prison to the city's Cardiology Centre. However, they transferred him back to prison on 20 April. "Doctors say he's better, but I don't believe it," Taurbekov's mother Asemgul Zhaugasheva told Forum 18. "Six days is not enough for him to have recovered. He should have stayed longer in hospital" (http://www.forum18.org/archive.php?article_id=2565). This was soon after Almaty City Court rejected his appeal against a seven year jail sentence (http://www.forum18.org/archive.php?article_id=2565), and was his third spell of treatment in the Centre since his arrest.

Prisoner of conscience Taurbekov was arrested in October 2018 as one of a group of nine men who had taken part in the WhatsApp Muslim group. The authorities accused them of "propaganda of terrorism" and "inciting hatred", charges all nine denied (http://www.forum18.org/archive.php?article_id=2565). An independent analysis found no evidence of this, while a second analysis found the prosecution's "expert analysis" had been conducted "superficially" (http://www.forum18.org/archive.php?article_id=2498).

Because of his poor health, prisoner of conscience Taurbekov's trial was separated from the others. The other eight Muslims were jailed for between five and a half and eight years on 5 August 2019 (http://www.forum18.org/archive.php?article_id=2498). The eight men are among the 24 known prisoners of conscience who were in April 2020 serving jail sentences for exercising freedom of religion and belief (http://www.forum18.org/archive.php?article_id=2566).

After Taurbekov's April hospitalisation, his mother Zhaugasheva then appealed for her son to be allowed to serve his sentence in Almaty Region, either to remain in Almaty's Investigation Prison or to be sent to the nearby Zarechny Labour Camp, Radio Free Europe's Kazakh Service noted on 4 May. This would allow him to remain close to his family and to the specialised medical care he needs.

However, Colonel Tenizzhan Dzhanibekov, first deputy head of the Interior Ministry's Criminal Implementation Committee in the capital Nur-Sultan, wrote to Taurbekov's mother informing her that her son is to be transferred to Labour Camp ES-164/3 in Petropavl now that his sentence has come into force. This is "with the aim of preventing him from committing new violations of the law" (http://www.forum18.org/archive.php?article_id=2565), according to the letter seen by Forum 18.

Breaking Mandela Rules

Dr Smagulov of Pavlodar Labour Camp said he would make a recommendation for suitable medical treatment for Taurbekov to Labour Camp ES-164/3 in Petropavl, and it will take a decision on what treatment will then be given.

However, the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules, A/C.3/70/L.3 (http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)) apply to people who have been sentenced as well as those in pre-trial detention. Rule 27 states in part: "Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals .. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff."

Dr Samgulov did not explain why a medical decision about a patient needing a heart transplant was being taken by a labour camp administration.

The fact that Taurbekov - who is from the southern city of Almaty - has been imprisoned in Petropavl and then Pavlodar also violates the UN Standard Minimum Rules for the Treatment of Prisoners. Rule 59 declares: "Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation." Petropavl is 1,730 kms from Almaty by road, while Pavlodar is 1,500 kms from Almaty by road.

"If he dies it won't be on our conscience"

Arstan Mukashev, the head of Pavlodar Labour Camp AP-162/2, insisted that his camp's medical unit is providing Taurbekov with the care he needs, and has taken him to the city hospital for appointments. "Prisoners do die, but he's not dying," Mukashev told Forum 18 from the camp on 9 October, though he stressed that he was not speaking a medical worker. "If he dies it won't be on our conscience, but because of illness."

Pavlodar Labour Camp head Mukashev told Forum 18 that to approve Taurbekov's early release on health grounds a commission would have to examine him. "But his illness isn't on the list of those that would allow early release."

Dr Smagulov of Pavlodar Labour Camp said that any commission would have to be held at the Labour Camp in Petropavl, not in Pavlodar, as the Petropavl camp is responsible for any such decisions. "Mukashev has no power to convene such a commission," he told Forum 18. He added that Taurbekov would have to be sent back to Petropavl for such a commission. He would not explain why the Petropavl Labour Camp had not convened a medical commission before it transferred the ill Taurbekov on the long train journey to Pavlodar. Smagulov responded: "That is not a question for me."

"How can he be transferred from one place to another like that? He is an ill man"

Taurbekov's mother Zhaugasheva expressed concern at the prospect of her son having to be sent back by train to Petropavl to be assessed for whether he is ill enough to be released. "How can he be transferred from one place to another like that? He is an ill man."

She added that neither she nor Taurbekov's wife has been able to afford the long journey from their home in the south-eastern city of Almaty to visit Taurbekov. The coronavirus pandemic has this year made prison visits impossible.

The address of the Pavlodar Labour Camp is:

140011, g. Pavlodar

ul. Vostochny

Promraion 5

Uchr. AP-162/2

Umbetaliyev: Ruling due on early release appeal

Sunni Muslim prisoner of conscience Azamat Gaidarovich Umbetaliyev (born 10 January 1992) was one of the men arrested with prisoner of conscience Taurbekov for participation in an online Muslim discussion group (http://www.forum18.org/archive.php?article_id=2497). Umbetaliyev was jailed for five and a half years in August 2019 (http://www.forum18.org/archive.php?article_id=2498).

Prisoner of conscience Umbetaliyev has appealed for early release from prison. Abai District Court in Shymkent accepted his appeal on 5 October, but has not yet scheduled a date to hear the appeal, his mother Anzhelika Belyayeva told Forum 18 on 9 October. "The court could reduce his sentence by a third, or change the punishment to a fine."

Umbetaliyev is serving his prison term in the 31st zone of Labour Camp ICh-167/3 in the southern city of Shymkent. Belyayeva stated that the Labour Camp head for a long time failed to send on Umbetaliyev's appeal for early release to court.

"There aren't tortures here" ?

Prisoner of conscience Umbetaliyev is serving his prison term in the 31st zone of Labour Camp ICh-167/3 in the southern city of Shymkent, the same camp where Muslim prisoner of conscience Dadash Mazhenov was tortured in 2019 for marking Eid al-Fitr and praying the namaz (http://www.forum18.org/archive.php?article_id=2570). In defiance of Kazakhstan's international human rights obligations, no official has been arrested and put on criminal trial for torturing Mazhenov (http://www.forum18.org/archive.php?article_id=2608).

Sunni Muslim Mazhenov was arrested in April 2018 by the KNB secret police for posting four talks about Islam on his social media page (http://www.forum18.org/archive.php?article_id=2427). He endured a first trial that ended with a nearly eight year prison term (http://www.forum18.org/archive.php?article_id=2435), torture while in prison (http://www.forum18.org/archive.php?article_id=2570), and a second trial on the same charges after the first verdict was overturned. Even after the first verdict was overturned, he was not acquitted, but continued to be held in detention. The verdict in prisoner of conscience Mazhenov's latest trial – which began on 19 March 2020 - on 13 October handed down the same nearly eight year jail term he received in the original seriously flawed November 2018 trial. (http://www.forum18.org/archive.php?article_id=2608).

Bakytzhan Dzhunisbekov, who was appointed head of the Shymkent Labour Camp in mid-August 2020, insisted to Forum 18 on 20 August that prisoner of conscience Umbetaliyev is being well treated, can have a copy of the Koran and can pray. Reminded about the torture of Mazhenov, and asked whether Umbetaliyev might also face torture, Dzhunisbekov responded: "There was no such incident and there won't be. There aren't tortures here."

The address of the Shymkent Labour Camp is:

160000, g. Shymkent

Abaisky raion

Temirlanskoe shosse 28

Uchr. ICh-167/3, 31 zona

New possible punishment for "incitement"

On 26 June, parliament adopted amendments to the Criminal Code and other laws, which came into force in early July 10 days after their official publication.

Among the Criminal Code changes were two to the controversial Article 174, which 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".

Human rights defenders and UN human rights bodies have repeatedly criticised Criminal Code Article 174. This is often used to punish people exercising freedom of religion and belief, as well as human rights defenders and the government's political opponents. One of the key criticisms has been of the broad and unclear formulations in the article (http://www.forum18.org/archive.php?article_id=2252).

The June amendments changed the word for "incitement" in the Russian version of the Criminal Code but left the word in the Kazakh version unchanged.

Human rights defender Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law described the June amendments as a "half step forward", pointing in particular to the possibility of a fine rather than only restricted freedom or imprisonment as a punishment. "But they did not change the term 'discord' to 'hatred or enmity' as we had pushed for," he told Forum 18 on 1 August. "This means they kept this very undefined term."

The June amendments also introduced a new possible punishment under Part 1 of Criminal Code Article 174, which punishes such activity in individual cases, or where there are no serious consequences. A fine of 2,000 to 7,000 Monthly Financial Indicators was added to the possible punishments, alongside restricted freedom of two to seven years or imprisonment for two to seven years.

A fine of 2,000 to 7,000 Monthly Financial Indicators represents about two to seven years' average wage for those in formal work.

Of the 23 prisoners of conscience known to be serving jail terms in April 2020 for exercising freedom of religion and belief (http://www.forum18.org/archive.php?article_id=2566), 14 had been sentenced under various parts of the Article or its predecessor in the earlier Criminal Code. Of the 6 people serving restricted freedom sentences, 4 had been sentenced under Criminal Code Article 174. Of the 16 people known to have completed prison terms but who remain under post-prison restrictions, one had been sentenced under Article 174.

Prisoner of conscience Bashpayev freed

Sunni Muslim Kuanysh Ablayevich Bashpayev (born 3 February 1987) was freed from the Investigation Prison in the western city of Aktau on 29 July 2020 at the end of his sentence. "Each day of pre-trial detention counted as one and a half days of his sentence," his lawyer Bauyrzhan Azanov explained to Forum 18 on 8 October.

Officers arrested Bashpayev in October 2016 on his return to Kazakhstan from Saudi Arabia. In April 2017 Pavlodar City Court No. 2 jailed him for four and a half years to punish him for talks he gave on Islam between 2008 and 2011 (http://www.forum18.org/archive.php?article_id=2272). He was convicted under old Criminal Code Article 164, Part 1 (equivalent to Article 174, Part 1 of the new Criminal Code), which punished "inciting religious enmity". On appeal in June 2017, Pavlodar Regional Court modified the labour camp provision.

Criminal Code Article 62 was amended in December 2019 to increase the amount any time in pre-trial detention is offset against any subsequent sentence (http://www.forum18.org/archive.php?article_id=2566). For example, one day in pre-trial detention is equivalent to one and a half days in a medium-security labour camp or two days of restricted freedom. The change had retroactive force.

Prisoner of conscience Bashpayev applied for early conditional release after he had served half his sentence, pointing out the deterioration in his health while imprisoned and the fact that his wife and their six children were waiting for him at home. However, on 20 February 2019 Atyrau City Court rejected his application, a decision upheld by Mangistau Regional Court on 22 April 2019.

Like almost all other prisoners of conscience convicted for exercising freedom of religion and belief, including prisoner of conscience Taurbekov (see above), Bashpayev was added to the Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", whose bank accounts are blocked. Blocks on bank accounts last for years after any sentence is completed (http://forum18.org/archive.php?article_id=2409). Prisoner of conscience Taurbekov was added to Financial List on 30 April 2020, and Bashpayev remains on the List as of the most recent update of 2 October.

Several Muslims – including Dadash Mazhenov (http://www.forum18.org/archive.php?article_id=2608) - were subsequently jailed for posting online Bashpayev's talks on Islam (http://www.forum18.org/archive.php?article_id=2427). (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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