

19 July 2022

KAZAKHSTAN: Seven years' jail for online Muslim posts

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

Muslim Anatoli Zernichenko was jailed for seven years, for posting on social media Muslim texts which prosecutors without evidence claimed promoted terrorism. Zernichenko has appealed, but no hearing date is set. The case started with the secret police hunting through his social media accounts, and the jailing rests on textual "expert analyses". Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law says this is "exactly what the United Nations (UN) Special Rapporteur for Protecting Human Rights while Countering Terrorism raised concerns about". There are now 10 known prisoners of conscience jailed for exercising freedom of religion or belief.

On 20 June, a court in the town of Arys in Kazakhstan's southern Turkestan Region jailed 27-year-old Muslim Anatoli Zernichenko for seven years in a medium-security labour camp. He was punished for posting on his social media accounts Muslim texts which prosecutors without any evidence claimed promoted terrorism. Zernichenko has appealed and his case reached Turkestan Regional Court on 13 July. No date has yet been set for the appeal to be heard.

Including Zernichenko, there are now (July 2022) 10 known prisoners of conscience (all Sunni Muslim men) who have been jailed for exercising freedom of religion or belief (see below).

The court also ordered Zernichenko to pay 55,560 Tenge in compensation to the "Victims' Fund" (though the court identified no victims of his postings), as well as 870,900 Tenge for the "expert" analyses that led to his conviction. The total Zernichenko now owes represents about six months' average local wages for those in formal work (see below).

The case appeared to start with the National Security Committee (NSC) secret police deciding to go on a "fishing expedition" against Zernichanko's social media accounts (see below).

Zernichenko lived with his wife and young daughter in the town of Arys in the southern Turkestan Region. "Anatoli lived quietly and didn't harm anyone, and suddenly this," his wife Anna Tukova told Forum 18. "We want to achieve justice. They fabricated the case against him for nothing, just so that they would fulfil their plans or gain promotion. Our daughter cries constantly: 'Papa, papa!'" (see below).

Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law – who has seen the verdict – noted that "when there is no evidence that an individual charged with extremism or terrorism planned, prepared or committed any act of violence, or that anybody planned, prepared or committed acts of violence based on his post, the authorities use such expert opinions as the only evidence". Zhovtis told Forum 18 that this is "exactly what the United Nations (UN) Special Rapporteur for Protecting Human Rights while Countering Terrorism raised concerns about" (see below).

Zernichenko's wife Tukova said quotations from the Koran which prosecutors and some of the "experts" claimed incited terrorism were from pages of a book "The Book of Monotheism" by Saudi Islamic scholar Saleh Al-Fawzan which police seized from his home during an October 2021 search. She said her husband had uploaded them to Instagram so that he could study them while he was travelling for work and had posted them on a closed page (see below).

An April 2022 "political studies expert analysis" by Gulnara Mukhatayeva – commissioned while Zernichenko's trial was underway – found that the texts did not contain "signs of terrorism and extremism or propaganda of terrorism and extremism" (see below).

Mukhatayeva said the "violent content" consisted of quotations from the Koran and the hadith (sayings attributed to the Muslim prophet Muhammad), which "characterise the situation in the epoch of the prophet and describe the polytheists of the past". She added: "This content is not aimed at comparing polytheists of the epoch of the prophet Muhammad with contemporary polytheists, and in this text from the book ["The Book of Monotheism"] there are no propaganda devices and methods justifying violence and terror against contemporary believers" (see below).

Arys District Court ordered all four of the Islamic books seized from Zernichenko in searches in October 2021 – including "The Book of Monotheism" – to be returned to him (see below).

The judge allowed no questioning of the regime's "experts" from a June 2022 analysis, despite defence lawyer Ablai Beiseyev pointing out that there are serious flaws and illegalities in the "analysis" (see below).

Since his arrest in October 2021, Zernichenko has been held in Investigation Prison No. 11 in Shymkent, being brought to his home town of Arys only for trial hearings. He remains in the Investigation Prison as he awaits his appeal. He has no access to the Koran or other Muslim literature, violating the UN Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules), as camp officials do not allow any religious literature in the prison, his wife told Forum 18 (see below).

The investigator in the case, Abai Yeshymkul, refused to discuss why Zernichenko had been prosecuted and jailed, and his role in the prosecution. "I won't give any information by phone. We have our procedures," he told Forum 18 from Arys. "All was done in accordance with the law" (see below).

Both the two prosecutors at the trial, N. Arysbaev and Sylbek Arynbekeev, refused to discuss the case with Forum 18 (see below).

Now 10 known prisoners of conscience jailed for exercising freedom of religion or belief

Including Zernichenko, there are now (July 2022) 10 known prisoners of conscience (all Sunni Muslim men) who have been jailed for exercising freedom of religion or belief (https://www.forum18.org/archive.php?article_id=2744). When individuals complete prison or restricted freedom sentences for exercising freedom of religion or belief and other rights, punishment does not stop (https://www.forum18.org/archive.php?article_id=2743). Many still face often vague bans on specific activity, including exercising freedom of religion or belief. "The Financial Monitoring Agency List says it relates to finance, but it's in fact about everything," one said. "When you want to get a job or open a bank account .. there's a block everywhere!" Restrictions include bank account blocks, driving bans and being unable to work in many jobs (https://www.forum18.org/archive.php?article_id=2743).

"Expert opinions as the only evidence"

Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law – who has seen the verdict – notes that Zernichenko's conviction is based solely on the "expert analysis" (https://www.forum18.org/archive.php?article_id=2753) of a political scientist and a religion specialist.

"When there is no evidence that an individual charged with extremism or terrorism planned, prepared or committed any act of violence, or that anybody planned, prepared or committed acts of violence based on his post, the authorities use such expert opinions as the only evidence," Zhovtis told Forum 18 on 18 July. "No independent expertise was presented in court."

Zhovtis noted that this is "exactly what the United Nations (UN) Special Rapporteur for Protecting Human Rights while Countering Terrorism raised concerns about" after her visit to Kazakhstan in May 2019.

Special Rapporteur Fionnuala Ní Aoláin in her January 2020 report (A/HRC/43/46/Add.1 (<https://undocs.org/en/A/HRC/43/46/Add.1>)) strongly criticised the regime's jailing of alleged "extremists". She also noted the regime's "subjectivity in determining what can be considered extremist", observing that: "this is largely done on the basis of the opinions of government-appointed and security-cleared 'experts' (linguists, philologists, psychologists, theologians and political scientists) who are called upon to determine whether any document, statement or group contains an extremist element. Once this opinion is obtained, it is very difficult in practice to refute or counter."

Special Rapporteur Ní Aoláin also noted (https://www.forum18.org/archive.php?article_id=2753) "an overly bloated security sector, numerous overlapping layers of legislation and bodies that exist primarily to provide the appearance of a system based on the rule of law and a professed adherence to the principle of equality."

NSC secret police secretly collected information from social media accounts

The case appeared to start with the National Security Committee (NSC) secret police (https://www.forum18.org/archive.php?article_id=2753) deciding to go on a "fishing expedition" against the social media accounts of Anatoli Pavlovich Zernichenko (born 21 October 1994). He lived with his wife and young daughter in the town of Arys in the southern Turkestan Region.

"Anatoli lived quietly and didn't harm anyone, and suddenly this," Tukova told Forum 18. "We want to achieve justice. They fabricated the case against him for nothing, just so that they would fulfil their plans or gain promotion. Our daughter cries constantly: 'Papa, papa!'"

On 2 June 2021, Major-General Abilseyit Duisebayev, head of the NSC secret police's Turkestan Regional branch, issued an order to secretly collect information from Zernichenko's social media accounts on VKontakte, Instagram and Telegram.

Turkistan Region's NSC Cyber Security Department downloaded screenshots from Zernichenko's accounts and handed them to Turkistan Regional Police, which handed them to Arys Police. There they were handed to Investigator Abai Yeshymkul on 9 July 2021.

Officers arrested Zernichenko on 15 October 2021 at the market in Arys. They then searched his home in Arys and a rented property in Shymkent. They confiscated three telephones (two of which did not work) as well as four Muslim books, according to case documents.

Investigator Yeshymkul opened a case against Zernichenko under Criminal Code Article 256, Part 2 ("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"). This carries a punishment of 7 to 12 years' imprisonment.

Investigator Yeshymkul refused to discuss why Zernichenko had been prosecuted and jailed, and his role in the prosecution. "I won't give any information by phone. We have our procedures," he told Forum 18 from Arys. "All was done in accordance with the law"

"Expert" analyses?

Three "expert analyses" (https://www.forum18.org/archive.php?article_id=2753) were commissioned in the course of the investigation and the trial. Zernichenko was ordered to pay for them once the guilty verdict was handed down.

A 30 September 2021 "judicial psychological/philological and religious studies expert analysis" (seen by Forum 18) claimed to find that the texts Zernichenko posted contained "signs of propaganda of terrorism and extremism". One of the "experts" was Aigerim Seifullina.

"It turns out that the expert Seifullina is well known to many," Tukova noted. "She completes such analyses for everyone. In Shymkent's Investigation Prison many people know her and have a poor opinion of her."

Seifullina's "expert analysis" helped convict another prisoner of conscience Dadash Mazhenov (https://www.forum18.org/archive.php?article_id=2435) in November 2018. This was despite her lack of qualifications to provide "expert analyses" for use in court. Mazhenov's conviction was overturned because of this (https://www.forum18.org/archive.php?article_id=2569), but he was in October 2020 jailed for eight years at a second trial (https://www.forum18.org/archive.php?article_id=2608), with the help of an "expert analysis" provided by Roza Akbarova.

Akbarova has provided "expert analyses" which helped jail Seventh-day Adventist, Jehovah's Witness, and Muslim prisoners of conscience (https://www.forum18.org/archive.php?article_id=2753) for speaking about their beliefs with NSC secret police informers (see below).

Prisoner of conscience Mazhenov has been repeatedly tortured (https://www.forum18.org/archive.php?article_id=2753), and is still in jail being tortured by being kept in solitary confinement.

An 8 April 2022 "political studies expert analysis" by Gulnara Mukhatayeva (seen by Forum 18) was commissioned while Zernichenko's trial was underway. It found that the texts did not contain "signs of terrorism and extremism or propaganda of terrorism and extremism".

Another "expert analysis" by Mukhatayeva was used in August 2019 jail eight prisoners of conscience (https://www.forum18.org/archive.php?article_id=2524) for long jail terms for discussing Islam on a WhatsApp group. Defence lawyers commissioned the St Petersburg Centre of Independent Expert Analysis and Evaluation to evaluate the "expert analysis". They found that it was "because of the numerous violations, unreliable, cannot be regarded as bearing the truth and should not be taken account of in forming conclusions" (https://www.forum18.org/archive.php?article_id=2524).

Five of these prisoners of conscience remain jailed despite the United Nations Working Group on Arbitrary Detention (https://www.forum18.org/archive.php?article_id=2742) in October 2021 calling (Opinion A/HRC/WGAD/2021/33) for them to be "immediately" freed and compensated for their imprisonment. The Working Group "established that their arrest, detention and imprisonment resulted from their exercise of the rights to freedom of religion or belief and to opinion and expression", and stressed that "no trial" of the men "should have taken place".

Nothing in book "justifying violence and terror"

In Mukhatayeva's April 2022 "expert analysis" (https://www.forum18.org/archive.php?article_id=2753), she said the "violent content" Zernichenko posted consisted of quotations from the Koran and the hadith (sayings attributed to the Muslim prophet Muhammad), which "characterise the situation in the epoch of the prophet and describe the polytheists of the past". She added: "This

content is not aimed at comparing polytheists of the epoch of the prophet Muhammad with contemporary polytheists, and in this text from the book ["The Book of Monotheism"] there are no propaganda devices and methods justifying violence and terror against contemporary believers."

Zernichenko's wife Anna Tukova told Forum 18 on 18 July that quotations from the Koran which prosecutors and some of the "experts" claimed incited terrorism were from images Zernichenko had posted of pages of a Russian-language translation of "The Book of Monotheism" by Saudi Islamic scholar Saleh Al-Fawzan (<https://www.hrw.org/report/2017/09/26/they-are-not-our-brothers/hate-speech-saudi-officials>). Police seized the book from Zernichenko's home during an October 2021 search. She said her husband had uploaded them to Instagram so that he could study them while he was travelling for work, and had posted them on a closed page.

On 1 March 2022, in a letter seen by Forum 18, Yerzhan Nukezhanov, chair of the Information and Social Development Ministry's Religious Affairs Committee, told Zernichenko's lawyer Ablai Beiseyev that it had not conducted an "expert analysis" of Al-Fawzan's "The Book of Monotheism". This means that, while the book is not allowed to be distributed in the country, the Committee has given it neither a favourable nor unfavourable opinion.

The Religious Affairs Committee conducts the compulsory "expert analyses" and state censorship of all religious literature (https://www.forum18.org/archive.php?article_id=2753).

After Zernichenko's conviction, the Court ordered four Muslim books seized from Zernichenko – including "The Book of Monotheism" - to be returned to him.

Unqualified "expert", latest "analysis" breaks law

On 18 April 2022, the court ordered a second "political studies expert analysis" from the Judicial Expert Analysis Centre in Shymkent. They wrote back saying that a March 2017 Justice Ministry Decree does not allow a political studies "expert analysis" (https://www.forum18.org/archive.php?article_id=2753) alone for use in court. On 4 May 2022 the Court ordered a joint "political studies and religious studies expert analysis" from the Judicial Expert Analysis Centre in Shymkent.

The analysis was assigned to Roza Akbarova (to conduct both analyses) aided by political scientist Erakash Kobankhan and religious studies "expert" Kamil Tleubayeva. However, both Kobankhan and Tleubayeva later dropped out and other "experts" were brought in.

The "judicial psychological/philological and religious studies expert analysis with the involvement of political studies experts" was completed on 10 June 2022 (and seen by Forum 18). No incitement to change the constitutional order by force was found, nor "ideas promoting religious hatred and discord of one religious group against another". However, two of the "experts", Roza Akbarova and Marina Onuchko, found that the texts did contain "signs of propaganda of terrorism as well as of extremism".

Zernichenko's lawyer Ablai Beiseyev complained to the Justice Ministry in a letter (seen by Forum 18) on 4 July, two weeks after his client was convicted, about the way the 10 June "expert analysis" had been conducted.

Defence lawyer Beiseyev complained that Akbarova and Onuchko had claimed that the texts contain "signs of propaganda of terrorism as well as of extremism" despite the two "experts" also finding that there were no "calls to conduct acts of terrorism and extremism".

Defence lawyer Beiseyev also noted that in defining the terms "propaganda", "extremism" and "terrorism", "experts" Akbarova and Onuchko used sources which they did not include in their list of legal, methodological and reference sources. They also failed to refer to the definitions as given in laws, as required by a Justice Ministry Decree.

Beiseyev also states that Akbarova and Onuchko's failure to take account of their colleagues' findings in the same "expert analysis" shows that, in their contribution, "comprehensiveness, fullness, objectivity and a scientific basis for judicial expert analyses are absent". Defence lawyer Beiseyev concluded that they have committed "serious violations" of the law governing "expert analyses".

Defence lawyer Beiseyev also noted that Onuchko is not licensed to conduct judicial "expert analyses". The "expert" not being qualified led to prisoner of conscience Mazhenov's initial conviction being overturned (https://www.forum18.org/archive.php?article_id=2569) (see above).

Beiseyev also complained to the Justice Ministry that the cost of the "expert analysis" was ordered to be sent to a different organisation from the one the court commissioned to conduct the analysis.

No questioning of "experts" allowed

On 16 June 2022, Zernichenko's lawyer asked the judge to allow questioning of Akbarova and Onuchko in court. He described their conclusions as "not completely comprehensible" as reference was made to an unnamed encyclopedia, while parts of the analysis were copied from other analyses. However, the Judge rejected the application, saying one of the "experts" was said to be away and the other in hospital. "This was very strange," Zernichenko's wife Anna Tukova told Forum 18.

When eight prisoners of conscience were jailed for long terms for discussing Islam on a WhatsApp group, the judge in that case refused to allow a Justice Ministry "expert" to be questioned in court (https://www.forum18.org/archive.php?article_id=2524) about the errors of the "analysis". Similarly, a Justice Ministry "expert analysis" (https://www.forum18.org/archive.php?article_id=2753) was successfully used to make financial claims against Jehovah's Witness communities, despite 63 per cent of the "analysis" being plagiarised (https://www.forum18.org/archive.php?article_id=2686). An academic analysis found it "cannot be accepted as comprehensive, complete, scientifically based, or in accordance with the normative demands presented to the specialists for investigation".

Seven-year jail term, large fees

Prosecutors handed Zernichenko's case to Arys District Court on 15 December 2021, where it was assigned to Judge Saparkhan Umarov. The trial began with several hearings in late December 2021 and continued in 2022.

Prosecutors claimed in court that Zernichenko posted on his Instagram account and Telegram channel in November and December 2020 extracts from the Koran and Muslim books which they said promoted terrorism. His Instagram account had 32 followers.

Zernichenko said he had posted the materials online but denied any guilt. He told the court that "they don't contain elements of terrorism or propaganda of terrorism, and are based on religious teachings and the holy book the Koran, a book that is not banned, so he considers the charges unfounded", according to the verdict.

Both the two prosecutors at the trial, N. Arysbai and Sylbek Arynbekov of Arys District Prosecutor's Office, refused to discuss the case with Forum 18 on 18 July.

On 20 June 2022, Judge Umarov found Zernichenko guilty under Criminal Code Article 256, Part 2 ("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 Judge jailed Zernichenko for seven years in a medium-security labour camp, according to the decision seen by Forum 18. This is the minimum punishment under this Article.

The court also ordered Zernichenko to pay 55,560 Tenge in compensation to the "Victims' Fund" (though the court identified no victims of his postings), as well as 870,900 Tenge for the "expert" analyses that led to his conviction. The total Zernichenko now owes represents about six months' average local wages for those in formal work.

Zernichenko has appealed and his case reached Turkestan Regional Court on 13 July, according to court records. No date has yet been set for the appeal to be heard.

If Zernichenko fails to succeed in his appeal and the sentence goes into force, he is likely to be added to the Financial Monitoring Agency 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 (https://www.forum18.org/archive.php?article_id=2409).

Nine months so far in Investigation Prison, no religious literature breaking Mandela Rules

Ever since Zernichenko's arrest on 15 October 2021, he has been held at Investigation Prison No. 11 in Shymkent, 70 kms (45 miles) east of Arys.

"It seems Anatoli can pray there, but he has no Koran," his wife Anna Tukova told Forum 18. "No books on religion are allowed there."

Such denials of religious literature are in violation of the UN Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules, A/C.3/70/L.3 (https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)). Rule 66 states: "So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination."

The official who answered the phone of the Investigation Prison's Special Department refused to say whether or not the prison bans

religious literature. She also refused to say anything about Zernichenko's conditions. "We don't give any information by telephone," she told Forum 18 on 18 July. She then put the phone down.

Zernichenko's address in Investigation Prison:

160000, g. Shymkent

Abaysky raion

Mkr. Saule 400

Uchr. ICh 167/11

(END)

More reports on freedom of thought, conscience and belief in Kazakhstan (<https://www.forum18.org/archive.php?country=29>)

For background information, see Forum 18's Kazakhstan freedom of religion or belief survey (https://www.forum18.org/archive.php?article_id=2753)

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

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