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KAZAKHSTAN: Criminal conviction, large "moral damages" - and new criminal case?

By Felix Corley, Forum 18

Retired Presbyterian Pastor Bakhytzhon Kashkumbayev was this afternoon (17 February) given a four-year suspended prison term in Kazakhstan's capital Astana. He was convicted of harming the health of a church member, even though that church member has repeatedly insisted to state authorities that her health was not harmed. He also has to pay the representative of his alleged "victim" large "moral damages" of 2 Million Tenge (about 65,800 Norwegian Kroner, 7,900 Euros or 10,800 US Dollars). "In my experience as a lawyer, this is one of the strangest cases I have seen in terms of legality", Pastor Kashkumbayev's lawyer Nurlan Beysekeyev told Forum 18 News Service after the verdict was handed down orally. "It was not just strange, but from the standpoint of the law, all types of violations occurred, when the case was opened, when it was being investigated and during the trial." Kashkumbayev will appeal against the verdict. Other violations of freedom of religion or belief continue, including ongoing raids on meetings for worship without state permission.

Retired Presbyterian Pastor Bakhytzhon Kashkumbayev was this afternoon (17 February) handed a four-year suspended prison term in Kazakhstan's capital Astana. He was convicted under Criminal Code Article 103 ("Intentional inflicting of serious harm to health") of harming the health of a church member, even though that church member has insisted to state authorities, Forum 18 News Service and others that her health was not harmed. He also has to pay the representative of his alleged "victim" large "moral damages" of 2 Million Tenge (about 65,800 Norwegian Kroner, 7,900 Euros or 10,800 US Dollars).

Lyazzat Almenova, the only person whose health the state claims was harmed told Forum 18 in July 2013 that Kashkumbayev is "totally innocent and has not harmed my health at all" (see F18News 26 July 2013 http://www.forum18.org/archive.php?article_id=1860). She had earlier written to Astana Prosecutor's Office to say she is psychiatrically healthy, that a 2012 assessment of her was conducted illegally, and calling for the case to be abandoned (see F18News 12 June 2013 http://www.forum18.org/archive.php?article_id=1846).

Prosecutors for reasons they did not explain dropped four other criminal charges levied during the two year investigation. Forum 18 notes that on one of the charges a new criminal case could be launched. The state Agency of Religious Affairs (ARA) has also stated that Grace Presbyterian Church's legal status may be under threat (see below).

The retired Pastor's Grace Presbyterian Church has long been a target of state hostility. For example, after an October 2012 police raid on the Church, detained church members noted that police questioning displayed a curious lack of interest in the alleged harm they were supposedly investigating (see F18News 19 October 2012 http://www.forum18.org/Archive.php?article_id=1756).

The 67-year-old retired Pastor Kashkumbayev was freed in the court room after exactly nine months' imprisonment, but will live under at present unclear restrictions. He will challenge the conviction.

"One of the strangest cases I have seen in terms of legality"

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The case against Pastor Kashkumbayev, who led Astana's Grace Church until his retirement in October 2011, originated in 2011 amid claims he had harmed the health of church member Almenova, and the criminal case was formally lodged on 11 February 2012. The defence has strongly contested the legality of the trial (see F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

Both Kashkumbayev and Almenova rejected the claims. Kashkumbayev was only informed of the exact nature of the criminal case on 17 May 2013, the day of his arrest (see F18News 20 May 2013 http://www.forum18.org/archive.php?article_id=1837), according to case documents seen by Forum 18.

New criminal case?

By the time the case reached court on 22 January 2014, prosecutors had added accusations that retired pastor Kashkumbayev had harmed the health of another church member, had committed two counts of "religious extremism" and leading a religious organisation that harms individuals' health (see F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

However, during the trial Prosecutor Olzhas Shalabayev withdrew all but one of the charges with no explanation. The specific accusation of harming another named church member was handed back to prosecutors, the lawyer Beysekeyev told Forum 18. "A new criminal case could be launched against Pastor Kashkumbayev," he warned.

"They shouldn't have violated his rights"

Atheist writer Aleksandr Kharlamov, who has like Pastor Kashkumbayev also been subjected to arrest, detention and forcible psychiatric examination, welcomed Kashkumbayev's release from prison. "They shouldn't have violated his rights," he told Forum 18 from Ridder in East Kazakhstan Region on 17 February. "I'm glad he's now been released."

Like Kashkumbayev, Kharlamov spent one month's forced detention in a psychiatric hospital in Almaty in 2013, a doctor telling him that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities" (see F18News 7 October 2013 http://www.forum18.org/archive.php?article_id=1884).

Kharlamov is still facing criminal charges for articles he wrote in defence of atheism. He is alleged to have broken Criminal Code Article 164 Part 1 by allegedly "inciting religious hatred" (see F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

He wrote to various state agencies on 27 January calling for the criminal case to be dropped. "I have received no response," he told Forum 18. "They're clearly still thinking about it."

Other violations of freedom of religion or belief continue

The conviction of Kashkumbayev came as the criminal investigation against New Life Pentecostal Church in Almaty may have been behind the exit ban (since removed) which prevented Pastor Maksim Maksimov and his wife Larisa from leaving Kazakhstan on 12 February (see below).

Raids on meetings for worship continue, most recently with a raid on a Baptist Sunday service on 9 February in Aktobe (see below).

The authorities have also begun moves to expel the Din-Muhammed Tatar-Bashkir mosque community from their mosque in Petropavl (see F18News 5 February 2014 http://www.forum18.org/archive.php?article_id=1924).

Conviction

Judge Gulzhakhan Ubasheva of Astana's Almaty District Court No. 2 found retired Pastor Kashkumbayev guilty of violating Criminal Code Article 103, Part 1 ("Intentional inflicting of serious harm to health"). This carries a punishment of restrictions on freedom or imprisonment of between three and seven years. Prosecutor Shalabayev had asked in court for a three-year prison term.

Judge Ubasheva gave him a four-year prison term, suspended for three years, church members present in court told Forum 18 after the hearing. They said the written verdict is due within 15 days, though the Judge said it should be ready by 21 February. They insisted Pastor Kashkumbayev will appeal against the conviction.

Judge Ubasheva also ruled that pastor Kashkumbayev must sign a statement not to leave the city and must follow "appropriate conduct". It is unclear what exactly this means.

Kashkumbayev was also ordered to pay more than 2 million Tenge "moral damages" to the "victim", including legal costs. As a court ruled that Lyazzat Almenova is not responsible for her own decisions, and appointed her sister Guldana Almenova as her representative, it remains unclear who the money should be paid to.

Pastor Kashkumbayev's lawyer Beysekeyev said he thinks the money will be due to be paid not to Lyazzat Almenova but to her sister Guldana.

Svetlana Glushkova of Radio Free Europe's Kazakh Service noted that the many church members present in court were visibly upset by the verdict.

"I'm satisfied"

Guldana Almenova lodged the original complaint against Pastor Kashkumbayev in July 2011, according to court documents, alleging that her sister's health had been harmed. Lyazzat Almenova was twice forcibly incarcerated in psychiatric hospital and given a diagnosis of "paranoid schizophrenia of episodic type", a diagnosis she has consistently resolutely rejected (see F18News 26 July 2013 http://www.forum18.org/archive.php?article_id=1860).

Police warrants for October 2012 raids on the Grace Church and the unconnected New Life in Oral in West Kazakhstan Region stated at the time that the complaint was lodged by the sisters' mother. Church members have repeatedly strongly denied the allegations. They noted that police questioning ranged far beyond the alleged "harm", and that police and state media also made unsubstantiated claims that the Church uses "hallucinogenic" substances for Communion. The alleged "hallucinogens" were a commonly drunk local red tea used as a non-alcoholic communion wine (see F18News 19 October 2012 http://www.forum18.org/archive.php?article_id=1756).

"What do you think my reaction to the verdict is?" Guldana Almenova told Forum 18 after the verdict was given. "The court recognised that he [Pastor Kashkumbayev] is guilty of causing serious harm. I'm satisfied." Asked whether her sister Lyazzat or she will get the money, Guldana Almenova responded: "I don't know. But it's not about the money – it's about the fate of an individual."

Told that Lyazzat Almenova had insisted to Forum 18 that her health was not harmed, Guldana Almenova responded: "She's not in a state to give adequate answers to questions." Both sisters were in court during Pastor Kashkumbayev's trial. After the verdict, Lyazzat Almenova told Glushkova of Radio Free Europe's Kazakh Service that she is fully healthy.

Forum 18 was unable to reach the police Investigator who prepared the case, Captain Vyacheslav Glazkov. His phone went unanswered later on 17 February.

Church's legal status under threat?

Amid heavy local and foreign criticism of the case against Pastor Kashkumbayev, Galym Shoikin, Deputy Chair of the Agency of Religious Affairs (ARA), insisted to journalists on 3 February that the ARA was merely an observer of the proceedings. "Interference by the Agency in court proceedings would not be appropriate," local news agency Tengrinews quoted him as claiming. However, he noted that the church's registration might be reviewed once the verdict was handed down.

Grace Church finally gained re-registration on 21 December 2012. That registration might now be under threat. Forum 18 was unable to reach Shoikin on 17 February.

All unregistered exercise of freedom of religion or belief is – against international human rights law – illegal in Kazakhstan. Many religious communities, including mosques, have been forcibly closed. Communities complained of arbitrary and flawed decisions, as well as pressure exerted by local authorities on community members (see F18News 11 December 2012 http://www.forum18.org/archive.php?article_id=1780). The most recent targets of closure have been the Din-Muhammed Tatar-Bashkir Mosque in Petropavl (see F18News 5 February 2014 http://www.forum18.org/archive.php?article_id=1924), and the New Life Protestant Church members in Arkalyk (see F18News 28 January 2014 http://www.forum18.org/archive.php?article_id=1921).

Despite Shoikin's claims that the ARA was not involved in the case, Forum 18 has learnt from informed sources in Kazakhstan that the ARA took a close interest in the case. It proposed various outcomes in the case to those close to Pastor Kashkumbayev.

Stopped from leaving

In the early hours of 12 February, border guards at Almaty airport prevented Pastor Maksim Maksimov and his wife Larisa from catching their flight. "Having kept us in the border guards' office for more than an hour, no-one explained to us the reason for the ban or drew up any record," they complained on their Facebook page the following day. "They told us to go to the KNB [secret police]." The two had been due to fly to Amsterdam and then on to the United States for a broadcasters' conference.

However, after the police's Department for the Struggle with Extremism and Terrorism assured them that the restrictions had been a "mistake" and had been lifted, the Maksimovs bought new tickets for 14 February. Border guards did not prevent them from leaving.

Lieutenant-Colonel Askar Gabdulin, head of the Department for the Struggle with Extremism and Terrorism, refused to discuss anything with Forum 18 on 17 February. "Talk to the press service," he said and put the phone down.

"We wrote to the Prosecutor's Office, the KNB and the Police asking for reasons for the refusal to allow them to leave," a fellow New Life church member told Forum 18 from Almaty on 17 February. "We're still waiting for answers."

The church member added that when they get the answers they will seek to recover the cost of the two new air tickets through the

courts.

Travel ban connected with criminal case?

Almaty's New Life Church has been facing a long-running criminal investigation, though Forum 18 has been unable to find out what criminal charges investigators are considering. The Church and Pastor Maksimov has been repeatedly targeted by the state (see eg. F18News 5 July 2011 http://www.forum18.org/archive.php?article_id=1590).

Captain Eldar Musayev, an investigator at Almaty's Turksib District Police, said that he had collected "materials" about the church but insisted that no criminal case against individuals had been launched. "I gave these materials to the city Prosecutor's Office," he told Forum 18 from Almaty on 13 February. He refused to say if the travel ban on Maksim and Larisa Maksimov was linked to the investigation. He then put the phone down.

The assistant to City Deputy Prosecutor Zhandos Umiraliyev told Forum 18 that the criminal investigation is in the hands of investigator Galymzhan Berdimuratov. However, he denied this to Forum 18 on 17 February. "I just signed one of the documents. Deputy Prosecutor Talgat Khasenov is in charge of the case." Khasenov's assistant told Forum 18 that he was on leave until 24 February.

However, the Prosecutor's Office Chancellery told Forum 18 that Investigator Zhambyl Ermek is handling the case. Yet he too denied it to Forum 18 on 17 February. He insisted he had nothing to do with preventing the Maksimovs from leaving Kazakhstan on 12 February. He said the criminal investigation is now in the hands of Almaty Police, but declined to name the investigator.

No Prosecutor's Office official would say which Criminal Code Articles New Life Church is being investigated under.

Tax inspection

On 14 February Turksib District tax inspectors led by Chief Specialist Zh. Satiyev arrived at New Life Church to inspect all financial records covering January 2007 to September 2012. Inspectors claimed the church had under-declared income during this period and proposed a massive fine, according to documentation seen by Forum 18.

Church members strongly denied any wrongdoing to Forum 18.

"Usual type" of raid

In Aktobe on 9 February, about 10 police officers and at least one Prosecutor's Office official raided the local congregation of the Council of Churches Baptists. They refuse to apply for state registration in all the formerly Soviet states where they operate. In 2014 alone four Baptists have been jailed for exercising freedom of religion or belief without state permission (see F18News 28 January 2014 http://www.forum18.org/archive.php?article_id=1921).

"Officers arrived soon after the service had finished," one church member told Forum 18 from Aktobe on 17 February. "They filmed us for about an hour and a half, took books from our library and from individuals – one copy of each title - and checked the identity documents of six church members. The usual type of thing."

Council of Churches Baptists are frequent victims of police and prosecutor's office raids. Over 150 people from many faiths, including members of the Aktobe church, were fined after such raids in 2013 (see eg. F18News 11 November 2013 http://www.forum18.org/archive.php?article_id=1895).

The church was raided because it was meeting without state registration, the Regional Prosecutor's Office said in a 17 February statement on its website. About 70 people, including children, were present at the church. It said 43 seized books were being sent for "religious expert analysis". It said cases were being considered against church members under Article 374-1 of the Code of Administrative Offences.

Articles 374-1, Part 1 ("Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation") and 374-1, Part 2 ("Participation in the activity of an unregistered, halted, or banned religious community or social organisation") are frequently used to punish people for exercising freedom of religion or belief without state permission (see eg. F18News 11 November 2013 http://www.forum18.org/archive.php?article_id=1895).

Maratbek Myrzamuratov, head of the First Section at the Prosecutor's Office, drew up the records at the church, the Press Secretary told Forum 18 on 17 February. However, he was said to be in a meeting each time Forum 18 called him that day. (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=1352.

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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