

22 April 2014

KAZAKHSTAN: Jailed over Easter; new deportation order

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

Imprisoned for six days over Easter was Council of Churches Baptist Denis Yenko. He refused to pay a fine in 2013 imposed to punish him for leading worship without the compulsory state permission. His family only learned of his imprisonment when police called, relatives told Forum 18 News Service. "He wasn't fined for praying to God," a Prosecutor's Office official claimed to Forum 18. "He committed an offence and made no attempt to pay the fine." Yenko is the ninth known Council of Churches Baptist to be given a short prison term in 2014 so far. Jehovah's Witness Yuri Toporov, a Russian citizen married to a Kazakh citizen, has lost his appeal against a fine and deportation to punish him for addressing his own religious community without state registration as a "missionary". UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt has strongly criticised such raids and punishments, and the ban on exercising freedom of religion or belief without state permission.

Due out of prison in Sergeyevka in North Kazakhstan Region at lunchtime tomorrow (23 April) is Denis Yenko. The 31-year-old Baptist, who is married with three young children, will have completed a six-day prison term – which included his Easter. He was imprisoned to punish him for refusing to pay an earlier fine to punish him for exercising the right to freedom of religion or belief, according to court documents seen by Forum 18 News Service.

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Council of Churches Baptists refuse on principle to seek state permission to be able to meet for worship. As many as 33 of the 42 known administrative fines handed down in the first ten weeks of 2014 to punish individuals for exercising the right to freedom of religion or belief were on their members. The oldest of those fined, Yegor Prokopenko, was aged 87 and three months. They also have a policy of civil disobedience, refusing to pay such fines (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

Meanwhile Jehovah's Witness Yuri Toporov has lost his appeal against a fine and deportation. A Russian citizen married to a Kazakh citizen, he is being punished for addressing his own religious community without state permission to act as a "missionary" (see below).

The continuing administrative punishments for exercising the right to freedom of religion or belief come as harsher punishments are being considered by parliament in the new Code of Administrative Offences and the new Criminal Code. Human rights defenders have sharply criticised many of their proposed provisions (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959).

The government's restrictions on this human right were strongly criticised by the United Nations Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, at the conclusion of his visit to the country. In particular, he called for "far-reaching reforms" of the 2011 Religion Law, including an end to the ban on exercising freedom of religion or belief without state permission (see below).

"Singing psalms" without state registration

Trouble began for Yenko on 14 September 2013, when the authorities discovered he and others were handing out Christian leaflets in Sergeyevka. The following day, on Sunday morning, police raided worship in the family home in the town. Police inspector Captain Zh. Sarsenov told Shal-akyn District Court on 30 October that he received a report of an "illegal meeting" and found about eight people, including Yenko, "singing psalms" without state registration.

Judge Sekerbai Kaskarbayev fined Yenko and fellow Baptist Sergei Lantsov – who was also present – 50 Monthly Financial Indicators (MFIs) each, 86,550 Tenge (2,800 Norwegian Kroner, 350 Euros or 475 US Dollars). This represents about one month's average wages for those in work. Yenko does not have a regular job.

Both were punished under Administrative Code Article 374-1, Part 2. This punishes "Participation in the activity of an unregistered, halted, or banned religious community or social organisation".

Yenenko and Lantsov insisted they were innocent of any wrongdoing, but on 28 November 2013, Judge Abai Ryskaliyev of North Kazakhstan Regional Court rejected their appeal, according to the decision seen by Forum 18. Like all Council of Churches Baptists, Yenenko and Lantsov refused to pay what they regard as "unjust" fines.

Second attempted punishment fails

On 26 November 2013, Shal-akyn District Court rejected an attempt to have Yenenko also punished for distributing religious literature. On 8 November, Bolat Omarov of North Kazakhstan Region Religious Affairs Department had drawn up a record of an offence, seen by Forum 18, under Administrative Code Article 375, Part 1.

Article 375, Part 1 punishes "Violation of the demands established in law for the conducting of religious rites, ceremonies and/or meetings; carrying out of charitable activity; the import, production, publication and/or distribution of religious literature and other materials of religious content (designation) and objects of religious significance; and building of places of worship and changing the designation of buildings into places of worship".

Judge Abai Bulatov rejected the case as witnesses denied that they had recognised Yenenko among those offering the literature. The Judge concluded that he had committed no offence, according to the decision seen by Forum 18.

Six-day prison term

On 17 April 2014, Court bailiff Marat Baitelenov summoned Yenenko and handed him the record of an administrative violation under Administrative Code Article 524 - seen by Forum 18 - for refusing to pay the October 2013 fine. Article 524 punishes "Failure to carry out court decisions". However, Yenenko refused to sign the record.

Baitelenov immediately took him to Shal-akyn District Court, where Judge Bulatov handed down the six-day punishment. The court decision – seen by Forum 18 - notes that Yenenko insisted that he would not pay what he regards as an unjust fine. It also noted that District Prosecutor's Office official Saule Kozhakhmetova had demanded a five-day prison term. The decision recorded that the term was to run until 12.30 (lunchtime) on 23 April.

Judge Bulatov defended his decision to imprison Yenenko. "He is not being punished for his faith," he insisted to Forum 18 from the court on 22 April. "He didn't fulfil the court decision from last October – court decisions must be fulfilled. He hasn't paid one kopek [penny]." Forum 18 pointed out that the original fine had been to punish him for exercising the right to freedom of religion or belief, but Judge Bulatov dismissed this. "We all pray to one God."

Kozhakhmetova similarly defended the imprisonment. "He wasn't fined for praying to God," she claimed to Forum 18 from the Prosecutor's Office on 22 April. "No one is fined for that. He committed an offence and made no attempt to pay the fine."

Yenenko's family found out that he had been imprisoned only when the police called them several hours after the court hearing, relatives told Forum 18 on 22 April. Police told them they should bring clothes and food for him. Relatives said they were able to hand on a Bible for him, and deliver food each day. He developed strong toothache on 18 April, but only on 22 April did the police take him to the dentist to have a tooth extracted.

Despite repeated calls on 22 April, Forum 18 was unable to reach court bailiff Baitelenov. His colleagues said he was out of the office.

Two-day prison term

Fellow Council of Churches Baptist Sergei Golovanenko was similarly given a short term prison sentence under Administrative Code Article 524 at Burabai District Court in Akmola Region. Judge Damir Shamuratov handed him the two-day prison term on 18 March for refusing to pay a fine levied in November 2013, according to the court decision seen by Forum 18.

Golovanenko was the eighth known Council of Churches Baptist to be punished with a short-term prison term since the beginning of 2014. In February, court bailiffs seized his car because of his failure to pay the November 2013 fine (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

Deportation order

Jehovah's Witness Toporov has failed in his attempt at Almaty City Court to overturn the lower court decision to fine and deport him for addressing a Jehovah's Witness meeting. On 15 April, Judge Nurlan Kurmangaliyev rejected his appeal, according to the decision seen by Forum 18.

"I'll have 30 days to leave Kazakhstan when the decision enters into legal force," Toporov told Forum 18 from Almaty on 22 April.

He said he had received the written decision on 21 April and today (22 April) lodged a further appeal to Kazakhstan's General Prosecutor's Office. In his appeal he asked the General Prosecutor's Office to halt the deportation process while the appeal is heard. He has not paid the fine.

Toporov, a Russian citizen, has lived in Kazakhstan since 2003 and married a Kazakh citizen in 2007. "If I fail to have the decision overturned I'll have to leave for Russia," he lamented to Forum 18. "Of course I want to be with my wife, so she'll have to leave too."

Addressing own community is "missionary activity"?

Toporov was prosecuted for addressing a meeting of Almaty's registered Jehovah's Witness community on 23 November 2013, according to the 3 March 2014 decision of Almaty's Inter-district Specialised Administrative Court seen by Forum 18. He was punished under Administrative Code Article 375, Part 3.

Article 375, Part 3 punishes "The carrying out of missionary activity by citizens of the Republic of Kazakhstan, foreigners and persons without citizenship without registration (re-registration), as well as the use by missionaries of religious literature, informational materials of religious content or objects of religious significance without a positive assessment of a religious studies expert analysis".

As a foreigner, he needed registration as a "missionary", Rasul Dursunov of Almaty's Religious Affairs Department – who had drawn up the record of an offence – told the court.

Clarification of the law?

As part of its preparation for the case, Almaty's Religious Affairs Department had written to the government's Agency of Religious Affairs (ARA) on 19 February to ask for its clarification of the law. The ARA response – seen by Forum 18 – was signed by ARA Deputy Chair Yerlan Abdakasov.

The ARA claims that "spiritual and preaching activity by foreign citizens and people without citizenship, irrespective of their status as clergy, represents missionary activity. Spiritual and preaching activity by clergy of local and regional religious associations outside relevant locations similarly represents missionary activity."

This interpretation of the law is highly controversial. Toporov insisted to the court that Jehovah's Witnesses had not granted him any status as a missionary and that he was simply giving his personal interpretation of his faith to a Jehovah's Witness meeting. He insisted this was his right under Constitutional protections of free speech and freedom of belief.

Roman Podoprigora, an Almaty-based law professor who is also on the advisory council of Kazakhstan's Supreme Court, agrees. "A member of the clergy or other individual who is conducting spiritual or preaching service in front of fellow-believers during a religious service is definitively not a missionary," he told the Kazakhstan International Bureau for Human Rights and the Rule of Law for a 21 April article on the case.

Podoprigora insists that leading or contributing to a service differs from missionary activity. "The very fact that people of another faith (as well as people indifferent to religion or atheists) might be present does not turn it into missionary activity."

Toporov asks whether he or anyone in his position is supposed to check whether all those present at a religious community's meeting are already members of that community before they start the service.

The Toporov decision appears to contradict an earlier decision in a similar case. In March 2010, the Supreme Court overturned the punishments handed down to two visiting Jehovah's Witnesses, American Theodore Jaracz and Canadian John Kikot. Both were detained by police and counter-terrorist police in Almaty in 2008 after giving a 30 minute "pastoral discourse" at a Jehovah's Witness meeting. They were both found guilty by an Almaty court under Article 375 Part 3, fined and ordered deported (see F18News 8 September 2010 http://www.forum18.org/archive.php?article_id=1486).

Hidden surveillance?

Toporov told the court that the Religious Affairs Department had brought the case after it had viewed secretly-filmed footage of the meeting. "The authorities must have listened in to the meeting and sent people," he told Forum 18. He declined to specify who might have sent such individuals.

"As in tsarist Russia, when a police officer had to be present at every political gathering, and as was the earlier official practice in Kazakhstan, now under a secret command the secret police are always present, visibly or invisibly," Andrei Grishin of the Kazakhstan International Bureau for Human Rights and the Rule of Law complained. "They are present at practically all religious gatherings of representatives of 'non-traditional' confessions."

The police and National Security Committee (KNB) secret police have for some years been monitoring and attempting to plant spies inside religious communities (see eg. F18News 30 January 2008 http://www.forum18.org/Archive.php?article_id=1078).

Forum 18 was unable to reach Dursunov on 22 April. A colleague at Almaty's Religious Affairs Department - who would not give his name – said he was out of the office. However, the colleague insisted "no spies" are sent to religious communities' meetings. He also claimed that Dursunov does not distinguish between local citizens and foreigners in religious communities in his work.

He was unable to explain why Toporov, who has been legally resident in Kazakhstan for more than a decade and whose wife is Kazakh, should be fined and ordered deported for addressing a meeting of his own religious community. He refused to say if Toporov represents a danger to Kazakhstan and merits deportation for that reason. He refused to say if anyone had suffered from his address to his own religious community. "You're misinformed about the case," he insisted to Forum 18.

Lawyer barred

At the lower court hearing on 3 March, Judge Akmaral Isabayeva had barred a Canadian lawyer Toporov had wished to defend him from doing so. The request to bar the lawyer had come from Bostandyk Prosecutor's Office official Aidynbek Abdukhanov.

Forum 18 was unable to reach Abdukhanov on 22 April – his telephone went unanswered.

Fine follows raid

Among other recent fines, Council of Churches Baptist Yevgeny Lyakhov was fined 100 MFIs, 185,200 Tenge, on 17 April. Judge Alma Mukhamedyarova of Musrepov District Court in North Kazakhstan Region found him guilty under Administrative Code Article 374-1, Part 1.

Article 374-1, Part 1 punishes "Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation".

As often happens, the trial was delayed because the court sent back case materials four times because police had failed to prepare documents correctly (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

The fine followed a police raid on 19 January on the Council of Churches congregation in the village of Ruzayevka during Sunday worship, which Lyakhov was leading. Four officers and an official of the local Religious Affairs Department, Abu-Bakir Karmenov, arrived and Lyakhov had to ask them not to disturb the service. "They came into the hall and began to film all those present," local Baptists complained to Forum 18. After the service, police took Lyakhov to the police station and drew up a record of an offence.

Lyakhov "objects to the fine", and intends to appeal against it to the Regional Court, Baptists told Forum 18.

A separate prosecution under Administrative Code Article 375, Part 1 was sent back by the court on 30 January as North Kazakhstan Religious Affairs Department failed to prepare case documents correctly.

UN criticism

UN Special Rapporteur Bielefeldt criticised such raids and punishments, and the ban on exercising freedom of religion or belief without state permission, in his 4 April end of visit statement issued in the capital Astana.

He stated that: "registration procedures should in any case be based on the clear understanding that freedom of religion or belief, due to its nature as a human right, inheres to all human beings and can never be rendered dependent on any specific acts of State approval or administrative registration. (...) registration should be in the service of this human right, which itself precedes any registration (...) registration should be an offer by the State, not a mandatory legal requirement. The situation of non-registered religious communities thus assumes the quality of an important test question about the understanding of the normative status of freedom of religion or belief in general."

Special Rapporteur Bielefeldt went on to state that: "A main problem concerning the administration of religious registration is that non-registered religious groups can hardly exercise any collective religious functions in Kazakhstan," he observed. "Any of their activities, even the common performance of prayers and rituals in private homes, are deemed illegal and can incur serious administrative sanctions."

He recounted how, during his 11-day visit, he had heard "credible stories about police raids in the premises of some non-registered groups, leading to confiscation of literature, computers and other property".

Special Rapporteur Bielefeldt also criticised the widespread punishments for "missionary activity". "At times, the term 'missionary

activities' is reportedly used in such a broad way as to almost cover all forms of bearing witness and communicating about issues of faith," he complained.

"According to international standards, freedom of religion or belief unequivocally includes the right to bear witness to one's conviction, to communicate within and across denominational boundaries and to try to persuade others non-coercively. This also covers missionary activities." (see <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14468&LangID=E>). (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=1939.

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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[f18news @ editor.forum18.org](mailto:f18news@editor.forum18.org)

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY