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KAZAKHSTAN: Muslim jailed and fined, books banned

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

Rustam Musayev was jailed for two years for talking about his Islamic faith to KNB secret police informers. "Expert analyses" claimed two books Musayev allegedly offered incited religious hatred. One of these books – with one not claimed to incite religious hatred - was banned.

Rustam Musayev has been imprisoned for two years in a labour camp in East Kazakhstan Region, for talking to others about his Islamic faith during meetings. What he said was recorded by the National Security Committee (KNB) secret police and the meetings may have been set up by them. The 31-year-old Muslim was sentenced in Almaty Region on 1 June to two years' ordinary regime labour camp. He was convicted under Criminal Code Article 174, Part 1 for allegedly inciting religious discord, even though an "expert analysis" commissioned by the KNB did not find any incitement in the recorded conversations.

That February analysis, and a second one in March, both claimed that two of the Muslim books Musayev allegedly offered contained passages which incite religious hatred. Musayev was also fined the cost of producing two "expert analyses". One of these books – together with one that was not claimed to incite religious hatred - was subsequently banned throughout Kazakhstan at a hearing on 22 September (see below).

There is no evidence independent of the state's claims either that Musayev possessed and offered the books to others, or that the books contain the statements the state attributed to them. Evidence has in the past apparently been planted by the state on other prisoners, for example on Sunni Muslim Saken Tulbayev. He was convicted of Tabligh Jamaat membership in Almaty in July 2015, being sentenced to 4 years and 8 months' imprisonment and banned from exercising freedom of religion and belief for three years after his release (see F18News 8 July 2015 http://www.forum18.org/archive.php?article_id=2078).

Broadly-framed Criminal Code Article 174, Part 1

Rustam Imenzhanovich Musayev (born 17 April 1985) is among a growing number of people imprisoned under the broadly-framed Criminal Code Article 174, Part 1. This Article punishes "incitement of social, national, clan, racial, or religious discord" with a prison term of two to seven years.

Two of the 41 Sunni Muslims known to have been convicted of alleged membership of the Tabligh Jamaat Muslim missionary movement since December 2014 - Saken Tulbayev and Khalambakhi Khalym - were also convicted and imprisoned under Article 174, Part 1 (see F18News 9 March 2016 http://www.forum18.org/archive.php?article_id=2156).

Also convicted under the same Article was Seventh-day Adventist prisoner of conscience Yklas Kabduakasov. He was given a two-year prison term in December 2015 to punish him for talking to others of his faith. As with all the Muslim prisoners of conscience jailed for their beliefs, the KNB secret police was also heavily involved in Kabduakasov's case, including with the use of informers (see F18News 28 December 2015 http://www.forum18.org/archive.php?article_id=2136).

Criminal Code Article 174 is also used against human rights defenders and peaceful protests. Almaty-based free speech organisation Adil Soz (Free Word) identified two human rights defenders convicted in 2015 (in addition to Kabduakasov) and five others convicted between January and August 2016. Article 174 is also being used against Maks Bokayev of the NGO Arlan and lawyer Talgat Ayan, who in May were arrested when they along with thousands of others protested against the government's plans to lease land to foreigners. Their trial, which human rights defenders have condemned as unfair, began in Atyrau on 12 October.

Human rights defenders have repeatedly called for Article 174 to be reworded or abolished. "We have more than once criticised it [Article 174] because it does not contain a precise and clear formulation of what constitutes social, national or other discord," Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law told a press conference in Almaty in January.

Twelve Kazakh human rights organisations, including Adil Soz and the Kazakhstan International Bureau for Human Rights and the Rule of Law, strongly criticised the government's human rights record to the United Nations Human Rights Committee (see

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F18News 8 June 2016 http://www.forum18.org/archive.php?article_id=2186). The Committee in July strongly criticised Kazakhstan's record, including on Article 174 "the use of broadly formulated crimes and administrative offences in the Criminal Code .. and the legislation on combating extremism to punish individuals exercising their freedom of religion and belief" (see F18News 22 July 2016 http://www.forum18.org/archive.php?article_id=2201).

Bank accounts blocked

In early August, Musayev was added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", thus blocking any bank accounts he might have. Convicted individuals can be added to the list without being informed of it and without separate legal process. "The only way they would know is when they go to the bank and find their account is blocked and the bank then tells them," a Ministry Financial Monitoring Committee official told Forum 18 in June. All financial transactions by an individual on the List are under tight restrictions. Family members who live in the same household without any separate source of income are allowed to apply for access to funds for subsistence (see F18News 10 June 2016 http://www.forum18.org/archive.php?article_id=2187).

Thirty individuals convicted of exercising freedom of religion and belief have already been added to the Financial Monitoring Committee List. Of these, 29 are Sunni Muslims accused of Tabligh Jamaat membership, while the other is the Adventist prisoner of conscience Kabduakasov (see F18News 22 July 2016 http://www.forum18.org/archive.php?article_id=2201).

Detained for offering religious books

KNB secret police officers from Zhambyl District of Almaty Region detained Musayev during "operational/investigative measures" on 7 December 2015, according to the subsequent Prosecutor's Office suit for two Muslim books confiscated from him to be banned. It said he had been offering religious literature on the road just outside the village of Abai in Karasai District of Almaty Region.

According to the KNB, Musayev gave the books to a man identified in case documents with the pseudonym "Nurik". The KNB secret police recorded the 16-minute conversation between the two and a third name identified with the pseudonym "Zhandos". The documents do not make clear whether or not "Nurik" and "Zhandos" were undercover KNB secret police officers.

The KNB secret police recorded two further conversations between the three, a 14-minute conversation on 11 December 2015 and a conversation of 1 hour 55 minutes on 22 December 2015. The KNB also confiscated several Muslim books from Musayev.

"Expert" analyses started

On 18 January 2016, senior KNB secret police investigator Major Kuanish Mildokhodzhayev sent the confiscated books, together with CDs of the three recorded conversations and transcripts to Almaty's Centre for Judicial "Expert" Analysis. Major Mildokhodzhayev asked to what religious trend the materials belonged, whether they contain "incitement of social, national, clan, racial, or religious hatred or antagonism" or whether they promote or call for terrorism. The Centre handed the analysis to Dinara Musina and Gulnara Mukhatayeva.

"Expert" analyses: February analysis of two books

Musina and Mukhatayeva concluded that one of the two Russian-language books allegedly confiscated from Musayev – "Explanation of the Last Tenth of the Noble Quran Followed By Rulings that Concern Every Muslim" – contained "incitement of religious hatred, propaganda of exclusivity and the superiority of individuals because of their religious affiliation".

An extract of what Musina and Mukhatayeva say is from "Explanation of the Last Tenth of the Noble Quran Followed By Rulings that Concern Every Muslim" states that anyone who denies Resurrection is a kafir [unbeliever]. So too is anyone who performs Muslim prayers but does not abide by the pillars of Islam. Musina and Mukhatayeva quote the book as declaring that "it is permitted to kill the kafir".

Musina and Mukhatayeva's 12-page analysis – completed on 5 February and seen by Forum 18 – concludes that the books and CDs follow the ideas of Wahhabi Islam. They found that the second book - "An Explanation of the Book of Monotheism" – did not contain "incitement of social, national, clan, racial, or religious hatred or antagonism".

"Expert" analyses: February analysis of CDs

KNB senior operational officer E. Amantaiuli produced transcripts of the three conversations from the CDs. According to the February "expert" analysis, the man on the recordings which it identifies as Musayev discussed "observing the canons of monotheism, and explained the significance and forms of sinful acts (shirk [idolatry], bidah [innovation])". The man also recommended reading the two books to help understand "what is shirk and what is forbidden in Islam (honouring the dead, baking shelpeki – traditional cakes among the Kazakh people)".

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Shelpeki consist of dough fried in oil. The "expert" analysis does not explain why Musayev appears to have considered these unacceptable in Islam.

The man on the recordings also insisted that Muslims should not go to mosques to pray the namaz as "they do not do it there correctly. They commit shirk [idolatry]..".

(All non-state controlled and non Sunni Hanafi mosques have been closed, and all mosques must give 30 per cent of their income to the state-controlled Muslim Board which appoints all imams (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Musina and Mukhatayeva's analysis concludes that Musayev made no comments in the three conversations inciting any form of hatred or terrorism.

"Expert" analyses: March analysis

A second analysis – which looked at a third book "Violations of Monotheism" – was completed on 24 March. This concluded that the book contained negative views of Jews and Christians, as well as of Muslims who cease praying the Koran. However, the two short passages quoted in the Prosecutor's Office suit do not call for any actions by Muslims against such people.

Nevertheless, the "expert" analysis found that this book too contained "incitement of social, national, clan, racial, or religious hatred or antagonism".

"We don't make comments on our analyses"

Musina declined to discuss the analysis which she and Mukhatayeva completed. "We don't make comments on our analyses," she told Forum 18 from Almaty on 9 November. "Put your questions to the organs." She declined to say whether she was referring to the KNB secret police which had handled the case initially or to the Prosecutor's Office, which led the criminal prosecution of Musayev and the suit to court to ban the two books.

KNB secret police investigator Mildokhodzhayev confirmed that he had investigated Musayev's case. However, he declined to discuss any aspect of it. "Don't call me," he told Forum 18 on 9 November. "I won't give any comments." He then put the phone down.

Almaty Region KNB told Forum 18 on 9 November they had no senior operational officer named Amantaiuli.

Pre-trial imprisonment

Following the "expert" analyses, Musayev was arrested on 4 April. Karasai District Court then ordered that he be held in pre-trial imprisonment, a court official confirmed to Forum 18 on 9 November. He was held in Investigation Prison LA-155/18 in Almaty's Turksib District, the court official added.

The Prosecutor's Office suit to have the two books confiscated from Musayev banned claims that Musayev distributed them "knowing full well that the ideas expressed in the given literature propagandise religious extremism". It claimed that he had warned the two men in conversation in December 2015 that he knew they were banned in Kazakhstan. Neither of the two books were then banned in Kazakhstan.

Karasai District Prosecutor's Office assistant Dastan Myrzagali completed the criminal case and handed it to Karasai District Court on 15 April, according to court records. It was assigned to Judge Amangeldi Makhanbetov.

Two-year labour camp sentence

The full trial began on 28 April and on 1 June, the seventh day of hearings, Judge Makhanbetov found Musayev guilty of inciting religious discord under Criminal Code Article 174, Part 1. He sentenced him to two years' imprisonment in a general regime labour camp. The sentence is deemed to run from 4 April, the date of his arrest.

The assistant to Judge Makhanbetov told Forum 18 she had not been in post when the trial took place, and was therefore unable to say if the Judge imposed any restrictions on Musayev after he completes his prison term. She refused to put Forum 18 through to Judge Makhanbetov, saying it was not possible to talk to him.

Lawyer Erbol Kaliakperov, who defended Musayev in court, told Forum 18 on 9 November he could not remember the case. He refused to say if he had been engaged by Musayev or his family, or whether he had been the duty lawyer assigned to the case by officials.

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Officials at Karasai District Prosecutor's Office told Forum 18 each time it called on 9 November that District Prosecutor's Office assistant Myrzagali was out of the office.

It does not appear that Musayev appealed against his conviction to Almaty Regional Court.

Musayev also fined costs of "expert" analyses

Musayev was also ordered by Judge Makhanbetov to pay the state 35,890 Tenge, to cover the costs of the two "expert" analyses commissioned by the KNB secret police.

On 1 July, moves were initiated to recover the 35,890 Tenge from Musayev that he was ordered to pay for the costs of the "expert" analyses. On 26 July, Ili District Bailiffs' Office began procedures to recover the money. However, on 9 November Nigora Mustafayeva – the official handling the case – was unable to tell Forum 18 immediately what moves it had undertaken to recover the funds.

Transfer to labour camp

On 22 July, Musayev was transferred to a labour camp in East Kazakhstan Region, officials at the LA-155/18 Investigation Prison told Forum 18 on 10 November. His prison address is:

Vostochno Kazakhstanskaya Oblast

Zharminski raion

s. Solnechnoe

Uchr. OV-156/18

Musayevu Rustamu Imenzhanovichu

Kazakhstan

Confused book banning application?

On 30 June, four weeks after Musayev was sentenced, Dzhanseit Ayazbayev, Karasai District Prosecutor, lodged a suit to Karasai District Court "in the interests of the state" to have two of the Muslim books banned as "extremist".

The suit – seen by Forum 18 – asks for two books, "Explanation of the Last Tenth of the Noble Quran Followed By Rulings that Concern Every Muslim" and "An Explanation of the Book of Monotheism", to be declared "extremist" and banned for importation, distribution or publication in Kazakhstan.

While the first book was found by the "experts" on 5 February to contain incitement of religious hatred, the second book was not. Indeed, the 30 June Prosecutor's Office suit states that the 24 March "expert" analysis found a different book, "Violations of Monotheism", incite religious hatred. It is possible that Prosecutor Ayazbayev confused the two similar titles.

Arbitrary book banning

Kazakhstan has banned a wide variety of Muslim, Ahmadi Muslim, Christian, Hare Krishna and Jehovah's Witness items. The General Prosecutor's Office publishes on its website a list of "religious" books and materials banned as being allegedly "extremist". However, the list includes many books which are not religious (such as Adolf Hitler's "Mein Kampf") and does not include other religious books known to have been banned on separate banned book lists (see F18News 16 March 2016 http://www.forum18.org/archive.php?article_id=2158).

It is difficult for anyone to precisely identify which books have been banned. Many of the 695 items on the General Prosecutor's Office's list have only a title without an author. No publication details, such as the edition, publication place and date, or language, are given for any text. The basis for book banning decisions appears to be a combination of court decisions and arbitrary official opinions (see F18News 16 March 2016 http://www.forum18.org/archive.php?article_id=2158).

Two books banned – even though

On 22 September, Judge Aygul Zhanbyrbayeva of Karasai District Court upheld Prosecutor Ayazbayev's suit and banned the two books, according to the decision seen by Forum 18. Deputy Prosecutor Darkhan Dosmukhanbetov represented the Prosecutor's Office in court. The decision notes that other "interested parties" – the Interior Ministry, the Finance Ministry and the Culture and

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Sport Ministry (which had until 13 September handled religious affairs) – failed to appear in court.

The decision claims that the "expert" analysis had found that the two books contained incitement of religious hatred - even though this is not what the analysis states. The decision also notes that Musayev was convicted for "deliberately" distributing them. It then ordered that both the books be banned, noting that the ban covers both printed and internet versions of the books.

The two books were then added to the General Prosecutor's Office's website list of "religious" books and materials banned as "extremist".

Officials at Karasai District Prosecutor's Office claimed to Forum 18 on 9 November that neither Prosecutor Ayazbayev nor Deputy Prosecutor Dosmukhanbetov were available. (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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