

7 March 2017

KAZAKHSTAN: Article 174 cases increase, Cancer sufferer tortured

By Felix Corley, Forum 18

Jehovah's Witness Asaf Guliyev was given five years' restricted freedom on 24 February. Fellow Jehovah's Witness Teymur Akhmedov, a cancer sufferer, is in pre-trial detention and states he was tortured. Guliyev's conviction is one of an increasing number of Criminal Code Article 174 cases.

Of two Jehovah's Witnesses arrested in January in Kazakhstan's capital Astana for "inciting religious hatred or discord" for talking to National Security Committee (KNB) secret police agents about their faith, one has already been punished. Asaf Guliyev was given a five-year restricted freedom sentence on 24 February.

Still in pre-trial detention is 60-year-old fellow Jehovah's Witness Teymur Akhmedov, who suffers from cancer and who told his lawyer he was tortured by being beaten in prison. He is also denied hospitalisation, violating the UN Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules). Akhmedov was also given tablets which made him feel much worse, but it is unclear if this was deliberately intended (see below).

Guliyev's conviction brings to five the number of individuals known to have been convicted since the beginning of 2015 under the broadly-framed Criminal Code Article 174 for exercising freedom of religion or belief. The closed trial of another person is already underway in Pavlodar, with five further cases under investigation. The number of prosecutions appears to be growing (see below and full list at base of article).

Criminal Code Article 174 ("Incitement of social, national, clan, racial, or religious hatred or discord") cases are currently ongoing against: Kuanysh Bashpayev, a Muslim who criticised the state-controlled Muslim Board and whose case has been described as "completely fabricated" and where the next hearing in Pavlodar is due on 13 March; Satymzhan Azatov who met with other Astana Muslims without state permission; Imam Abdukhalil Abduzhabbarov who was extradited from Saudi Arabia and who was then immediately arrested on 18 February; and atheist writer Aleksandr Kharlamov who faces two separate Article 174 cases (see below).

Secrecy surrounds many of these cases. Lawyers are forced not to reveal information on the cases, hearings are often closed to observers, and prosecution and court officials often refuse to answer questions (see below).

All the cases have either been brought by or have the close involvement of the KNB secret police.

Criminal Code Article 174

Criminal Code Article 174 punishes: "Incitement of social, national, clan, racial, or religious hatred or 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 hatred or discord".

Part 1 punishes these actions committed by individuals. If convicted, they face two to seven years imprisonment, or two to seven years restricted freedom. Typically, during sentences of restricted freedom individuals live at home, but are not able to leave their town or city without seeking permission. They are often also banned from visiting restaurants, cafes or places of public entertainment.

Part 2 punishes these actions "committed by a group of persons, a group with prior planning, repeatedly, with violence or threat of violence, or by an official, or by the leader of a public association". If convicted they face five to 10 years imprisonment, "with deprivation of the right to hold specified positions or to engage in specified activity for up to three years".

Human rights defenders and opposition political activists are also frequent victims of Article 174 (see eg.

<http://www.nhc.no/no/nyheter/NHC+condemns+harsh+sentence+given+to+peaceful+activists.b7C_wIDG1O.ips>).

All known prisoners of conscience convicted under Criminal Code Article 174 have been added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", thus freezing any bank accounts they may have, without any additional due legal process. As individuals are not told when they are added to the List, they normally only find out they have been added when they or relatives attempt to withdraw money from their account (see F18News 10 June 2016 <http://www.forum18.org/archive.php?article_id=2187>).

The United Nations (UN) Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, as well as the UN Human Rights Committee and Kazakh human rights defenders have strongly criticised the broad and unclear formulation of Article 174 and other laws, as well as the prosecution of a wide range of individuals under Article 174 (see F18News 2 February 2017 <http://www.forum18.org/archive.php?article_id=2252>).

Prosecutions increasing

The number of prosecutions under Criminal Code Article 174 to punish individuals for exercising the right to freedom of religion or belief appears to be increasing. Since the new Criminal Code came into force on 1 January 2015, Article 174 criminal cases are known to have been launched or to have been underway against 19 individuals in 20 cases (see full list below, compiled from court records and other information).

Of these 20 known cases: five have ended in convictions (3 Muslims, 1 Jehovah's Witness, 1 Seventh-day Adventist); one trial is currently underway (Muslim); and five cases are still being investigated (2 Muslim, 1 Jehovah's Witness, while atheist Aleksandr Kharlamov is facing two investigations - see list below). In nine known cases, Article 174 cases were launched but were then closed down, with the individuals instead fined under the Administrative Code.

Article 174 replaced the identically worded Article 164 of the old Criminal Code (see F18News 9 July 2014 <http://www.forum18.org/Archive.php?article_id=1976>). Kharlamov, as well as other individuals, were prosecuted under the old Article 164. He still may be prosecuted under the Article 164 investigation (see F18News 17 February 2017 <http://www.forum18.org/archive.php?article_id=2258>). But overall, the number of pre-January 2015 Article 164 freedom of religion or belief prosecutions was lower.

Secrecy, closed hearings, lawyers banned from speaking

The authorities appear determined to keep publicity of the Article 174 cases to a minimum. Investigators and courts have often refused to give Forum 18 any information about the cases, even simple factual information.

Lawyers in at least some of the cases have been forced to sign statements that they will not violate the "secrecy of the investigation", people close to several cases have told Forum 18.

When cases come to court, at least some are held in closed hearings, as is happening in Pavlodar in the case of the Muslim Kuanysh Bashpayev (see below). Human rights defenders and observers have been denied entry to hearings.

Bashpayev on trial

The criminal case in the north-eastern city of Pavlodar against Kuanysh Bashpayev, a Muslim, was handed to Pavlodar City Court on 2 February, the day before his 30th birthday. It was assigned to Court Chair Judge Kayirbek Yelemesov. The trial under Article 174, Part 1 ("Incitement of social, national, clan, racial, or religious hatred or discord") began with an initial hearing on 14 February. The first full hearing was held on 6 March and the trial is due to resume on the afternoon of 13 March, according to court records.

The KNB secret police arrested Bashpayev at Astana Airport on 13 October 2016 and transferred him to Pavlodar, after he criticised the state-controlled Muslim Board. Colonel Bekezhan Kalkomanov of Pavlodar KNB claimed to Forum 18 in January that Bashpayev had "insulted the religious feelings of Kazakhstan's traditional Muslims". Bashpayev allegedly said "it is not right for Kazakh Muslims to visit graves and pray for their deceased relatives, which he thinks is idolatry". He "also spoke against the official representatives of Islam in Kazakhstan, the Spiritual Administration of Muslims of Kazakhstan [the Muslim Board], by which he tried to sow discord among the Muslims", Colonel Kalkomanov added (see F18News 6 February 2017 <http://www.forum18.org/archive.php?article_id=2253>).

"The case against Bashpayev is completely fabricated," one individual familiar with the case told Forum 18 on 7 March 2017. "It is entirely unfounded. The witnesses give confusing testimony and don't seem to know what to say."

Bashpayev's closed trial

Judge Yelemesov closed Bashpayev's trial to observers and human rights defenders. Several sources told Forum 18 this was a

response to a request by the alleged "victim" of Bashpayev's activity, the prominent Almaty Muslim Board imam Ersin Amire.

Forum 18 made repeated attempts to reach Judge Yelemesov on 6 and 7 March to find out why he had declared the trial closed. However, the telephone went unanswered each time.

The acting head of the Pavlodar branch of the Kazakhstan International Bureau for Human Rights and Rule of Law, Ruslan Issenov, had been intending to observe Bashpayev's trial. "The Judge read my appeal to be allowed into the trial and rejected it," Issenov told Forum 18 from Pavlodar on 7 March. "I asked for a copy of the ruling declaring the trial closed, but he replied that a ruling is an internal document and cannot be handed out."

Guliyev sentenced

The KNB secret police arrested two Jehovah's Witnesses, the 43-year-old Asaf Guliyev and Teymur Akhmedov, on 18 January after launching a criminal case against them under Article 174, Part 2 ("Incitement of social, national, clan, racial, or religious hatred or discord"). The KNB allege that between May and October 2016 the two men insulted the faith of non-Jehovah's Witnesses as they spoke about their own faith to young men who turned out to be KNB agents, who secretly video-recorded their conversations (see F18News 2 February 2017 <http://www.forum18.org/archive.php?article_id=2252>).

The KNB told Radio Free Europe's Kazakh Service on 13 February that in searches at the two men's homes and at the religious community's temporary address, officers then confiscated copies of 18 different books. The books were "earlier not recommended for import into or distribution in Kazakhstan on the basis of a religious-studies expert conclusion by the Religious Affairs Committee", it added.

KNB investigators separated the case against the two men, Guliyev and Akhmedov, apparently in February.

Prosecutors sent the case against Guliyev to Astana's Saryarka Court No. 2 on 16 February, according to court records. On 24 February, Judge Bolat Pazylov found him guilty under Criminal Code Article 174, Part 2. The Judge handed down a sentence of five years' restricted freedom.

In deciding not to imprison Guliyev, the Judge took into account his "full recognition of his guilt and pure-hearted repentance", newtimes.kz noted on 28 February. Guliyev was defended in court by a government lawyer, Forum 18 learned.

Cancer sufferer Akhmedov awaiting trial, tortured

The KNB secret police in Astana is continuing to investigate fellow Jehovah's Witness Akhmedov under Article 174, Part 2 ("Incitement of social, national, clan, racial, or religious hatred or discord"). He remains in Astana's Investigation Prison No. 12. Astana's Saryarka Court No. 2 told Forum 18 no case against Akhmedov has yet reached court.

Akhmedov told his lawyer Vitaly Kuznetsov that following his 18 January arrest he was tortured by being beaten in the Investigation Prison, as Investigators tried to force him to admit his "guilt", the Kazakhstan International Bureau for Human Rights and Rule of Law noted on 3 March. However, Akhmedov continues to insist he is innocent of any wrongdoing, it added.

The head of Astana's Public Observers Commission, Ruslan Ozdoyev, visited Akhmedov in prison in late February. Ozdoyev expressed serious concern about whether Akhmedov would survive his imprisonment, in view of his cancer and the poor and overcrowded prison conditions. (The Public Observers Commission is a body set up by the state to inspect prisons, and consists of civil society activists.)

Akhmedov "barely spoke and, when he did speak about his condition, tears began to flow", Ozdoyev told Svetlana Glushkova of Radio Free Europe's Kazakh Service on 28 February.

Akhmedov told Ozdoyev of his anaemia and cancer. He complained of tablets he was given which he said "made him feel even worse", Ozdoyev noted. It is unclear if this was deliberately intended. "He can hardly walk." Ozdoyev said the question had been raised with prosecutors that in such conditions an individual should be transferred to house arrest or some other form of restriction.

Akhmedov denied hospitalisation

On 20 January Akhmedov was ordered to be held in two months pre-trial detention, even though a report from the National Scientific Center for Oncology and Transplantation (the national cancer centre) "recommends an operation and requests that Akhmedov undergo an examination before being hospitalised". The pre-trial detention of a cancer sufferer who needs to be hospitalised violates the UN Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules) (see F18News 2 February 2017 <http://www.forum18.org/archive.php?article_id=2252>).

Article 14, Part 7 of the Criminal Procedural Code stipulates that detention of criminal suspects "must occur in conditions excluding

a threat to their life and health".

Akhmedov "lying because no one is beaten here"

At Astana's Investigation Prison No. 12 where Akhmedov is being held, the duty officer, an official of the Special Department and the Deputy Head of the Investigation Prison separately claimed to Forum 18 on 7 March that no one is beaten there. The Head of the Prison, Murat Uralbayev, was not present when Forum 18 called.

"People can lie," the Special Department official told Forum 18. Akhmedov "is lying because no one is beaten here".

Among many other recommendations, the UN Human Rights Committee recommended in July 2016 that Kazakhstan "should take robust measures to eradicate torture and ill-treatment and to effectively investigate, prosecute and punish such acts" (see eg. F18News 22 July 2016 <http://forum18.org/archive.php?article_id=2201>). Credible claims of torture have often been made in relation to prisoners of conscience jailed for exercising their freedom of religion or belief (see eg. F18News 29 December 2015 <http://forum18.org/archive.php?article_id=2136>).

Under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Kazakhstan acceded to in 1998, the government is obliged to both arrest any person suspected on good grounds of having committed torture, and to try them under criminal law which makes "these offences punishable by appropriate penalties which take into account their grave nature". No arrests of anyone strongly suspected of having tortured prisoners of conscience jailed for exercising freedom of religion and belief appear to have been made.

Appeal to end case dismissed, worse statements of others ignored

On 20 February Akhmedov's lawyers filed an appeal to terminate the case, giving documentary evidence that officials and leaders of so-called "traditional" religions have made statements that are far more insulting and critical than the statements Akhmedov is accused of making. The documentation notes that law enforcement officials stated that the words used by officials and so-called "traditional" religious leaders were lawful. (Claims about so-called "traditional" and "non-traditional" religions are often used by the state to legitimise attacks on freedom of religion and belief - see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/Archive.php?article_id=1939>.)

The Investigator rejected the motion on 1 March without addressing the points made, so appeals to Astana City Prosecutor and then if necessary higher courts will be made.

Akhmedov being given all necessary medical treatment?

The three Investigation Prison officials - none of whom would give their names - also insisted that Akhmedov is being given all necessary medical treatment in the Prison. "If he was ill he wouldn't be here," the duty officer told Forum 18. "Of course he is not dying," the Special Department official said. "If it is needed he would be taken at once to the city hospital."

The Deputy Head - who repeatedly refused to give his name - told Forum 18 that prison warders had once taken Akhmedov to the city hospital, where he was examined by a doctor. The Deputy Head added that Akhmedov's son regularly brings prescriptions.

The Deputy Head insisted that "of course Akhmedov can pray" in prison. Asked if he can have religious literature of his choice, the Deputy Head responded: "We have a prison library he can use, which has a wide-range of religious literature, including the Koran and the Bible." He then declined to discuss anything further.

Muslim prisoners of conscience have stated that their human rights are violated in prison, including by being banned from reading the Koran and other religious books (see eg. F18News 9 March 2016 <http://www.forum18.org/archive.php?article_id=2156>).

Azatov awaiting trial

Also in Astana, 27-year-old Muslim prisoner of conscience Satymzhan Azatov remains in the city's KNB Investigation Prison. Arrested in early January, he is under investigation under Article 174, Part 1 ("Incitement of social, national, clan, racial, or religious hatred or discord"). He had met with other Muslims in Astana without state permission (see F18News 6 February 2017 <http://www.forum18.org/archive.php?article_id=2253>).

Astana's Saryarka Court No. 2 first put Azatov in two-months' pre-trial detention on 6 January. On 27 February, Judge Elizaveta Atchibayeva at the same Court extended this pre-trial detention for a further two months, Court officials told Forum 18.

Abduzhabbarov awaiting trial

The KNB secret police arrested 41-year-old Imam Abdukhalil Abduzhabbarov, extradited from Saudi Arabia at Kazakhstan's

request, as he arrived at Almaty Airport on 18 February. He was then transferred to Oral in West Kazakhstan Region (see F18News 21 February 2017 <http://www.forum18.org/archive.php?article_id=2259>).

KNB secret police Investigator Daniyar Ashim is investigating Abduzhabbarov under Criminal Code Article 174, Part 1 ("Incitement of social, national, clan, racial, or religious hatred or discord") and Criminal Code Article 256, Part 2.

Article 256, Part 2 punishes: "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 punishment is seven to 12 years' imprisonment with confiscation of property.

On 22 February Judge Slukhanym Kadraliyeva of Oral City Court acceded to the request of KNB secret police Investigator Ashim to have Abduzhabbarov held in two months' pre-trial detention, Saule Kaisarova, head of the Court chancellery, told Forum 18 from Oral on 7 March. Abduzhabbarov was brought to court under convoy and was present for the hearing, she added. She said she had not seen him and was unable to comment on his condition.

Given that such court orders must be adopted within 72 hours of an individual's arrest and given that Abduzhabbarov was arrested on the evening of 18 February, Forum 18 was unable to establish why no court decision had been adopted by the evening of 21 February.

Kaisarova, however, insisted that no violation of the deadline for gaining court approval for Abduzhabbarov's arrest had occurred. "The court last year adopted a decision in absentia to hold him in pre-trial detention," she told Forum 18. She did not give any further details.

Investigator Ashim's telephone went unanswered each time Forum 18 called on 6 and 7 March.

What did others convicted do?

Official secrecy surrounding Criminal Code Article 174 ("Incitement of social, national, clan, racial, or religious hatred or discord") cases often makes it impossible to determine either whether freedom of religion or belief has been violated, or if the accused advocated the destruction of others' human rights.

For example, on 31 May 2016, in a case initiated by the KNB secret police, Judge Esen Ustelbayev of Almaty Region's Zhambyl District Court found 47-year-old ethnic Uyghur Muslim Farida Kolesnyuk guilty under Article 174, Part 1. As she admitted her guilt, he sentenced her to three years' restricted freedom, according to court records. She lives at home and can attend mosque, but must be home each night and cannot leave her town without permission.

An official of the court familiar with the verdict claimed to Forum 18 on 6 March 2017 that Kolesnyuk had gathered a group of fellow Muslims and expounded her ideas about Islam. Among the material she allegedly used were recordings of sermons by Muslim preachers, including the Russian convert Said Buryatsky, who fought with the North Caucasian insurgency. It is unclear whether Kolesnyuk herself advocated the destruction of other people's human rights or not.

Criminal Code Article 174 prosecutions for freedom of religion or belief

The people listed below (with the most recent at the top) are all those known to have faced charges under Criminal Code Article 174 to punish them for exercising freedom of religion or belief. Article 174 ("Incitement of social, national, clan, racial, or religious hatred or discord") of the current Criminal Code came into force at the beginning of 2015, and replaced the identically-worded Article 164 of the old Criminal Code.

More information on all the cases listed below is in previous Forum 18 articles.

- Under investigation on one Article 174 charge

1) Abdukhalil Abdukhamidovich Abduzhabbarov; born 6 April 1975; Muslim; arrested Almaty 18 February 2017; Article 174, Part 1, Article 256, Part 2; Oral Investigation Prison.

2) Teymur Sultan ogly Akhmedov; born 7 May 1956; Jehovah's Witness; arrested Astana 18 January 2017; Article 174, Part 2; Astana Interior Ministry Investigation Prison.

3) Satymzhan Bagytzhanuli Azatov; born 17 September 1989; Muslim; arrested Astana early January 2017; Article 174, Part 1; Astana KNB Investigation Prison.

- Under investigation on two Article 174 charges

4) Aleksandr Milentievich Kharlamov; born 2 July 1950; atheist.

First case opened January 2013 (possibly suspended but never closed) under old Article 164, Part 1 (equivalent to new Article 174, Part 1); under travel restrictions in Ridder.

Second case opened autumn 2016; Article 174, Part 1; under travel restrictions in Ridder.

- On trial

5) Kuanysh Ablayevich Bashpayev; born 3 February 1987; Muslim; arrested Astana 13 October 2016; Article 174, Part 1; trial began 14 February 2017 Pavlodar City Court No. 2; Pavlodar City Police Investigation Prison.

- Convicted

6) Asaf Gadzhiaga ogly Guliyev; born 4 October 1973; Jehovah's Witness; Article 174, Part 2; sentenced 24 February 2017 Astana's Saryarka Court No. 2; five years' restricted freedom.

7) Rustam Imenzhanovich Musayev; born 17 April 1985; Muslim; Article 174, Part 1; sentenced 1 June 2016 Karasai District Court; two years' imprisonment.

8) Khalambakhi Khalym; born 12 August 1984; Muslim; sentenced 18 February 2016 Astana's Saryarka District Court No. 2; Article 405, Part 2, Article 174, Part 1; 2 and a half years' imprisonment.

9) Yklas Kairullinovich Kabduakasov; born 19 February 1961; Seventh-day Adventist; Article 174, Part 1 (though initial investigation under Article 174, Part 2); sentenced 28 December 2015 Astana City Court; two years' imprisonment.

10) Saken Peisenovich Tulbayev; born 16 June 1969; Muslim; sentenced 2 July 2015 Almaty's Bostandyk Court No. 2; Article 174, Part 1 and Article 405, Part 2; 4 years 8 months' imprisonment and banned from exercising freedom of religion or belief until the end of 2022, three years after his release.

- Investigated but charges dropped

11) Erlan Amanzholovich Aubakirov; born 22 March 1981; Muslim; Article 174, Part 1; case closed 31 May 2016, fined under Administrative Code.

12) Alisher Erkinbayevich Abduraimov; born 20 July 1971; Muslim; Article 174, Part 1; case closed 15 December 2015, fined under Administrative Code.

13) Gennadi Sergeyevich Zhirov; born 14 December 1953; Council of Churches Baptist; Article 174, Part 1; case closed 10 November 2015, fined under Administrative Code.

14) Yuri Ivanovich Bekker; born 18 June 1964; Council of Churches Baptist; Article 174, Part 1; case closed 10 November 2015, fined under Administrative Code.

15) David Yakovlevich Leven; born 4 November 1969; Council of Churches Baptist; Article 174, Part 1; case closed 10 November 2015, fined under Administrative Code.

16) Aleksandr Gennadievich Kulbeda; born 20 August 1972; Council of Churches Baptist; Article 174, Part 1; case closed 24 August 2015, fined under Administrative Code.

17) Vitali Nikolayevich Pan; born 5 May 1961; Council of Churches Baptist; Article 174, Part 1; case closed 24 August 2015, fined under Administrative Code.

18) Roza Sovetovna Sarsembayeva; born 21 September 1964; book seller; Article 174, Part 1; case closed 28 July 2015, fined under Administrative Code.

19) Nargiz Zhaksylykovna Bekkhozhayeva; born 8 June 1959; book seller; Article 174, Part 1; case closed 26 March 2015, fined under Administrative Code.

(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>.

A printer-friendly map of Kazakhstan is available at <<http://nationalgeographic.org/education/mapping/outline-map/?map=Kazakhstan>>.

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