

14 October 2020

KAZAKHSTAN: Tortured prisoner of conscience jailed again

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

After being arrested in 2018, jailed, tortured, acquitted, and put on trial again, 30-year-old Sunni Muslim Dadash Mazhenov has been jailed for nearly 8 years on the same "terrorism" charges he faced in 2018. His "crime" was to post online 4 Islamic talks, which he later deleted. In 2019 he was tortured for praying in prison, but no officials have been arrested or tried for this. One official insisted to Forum 18 that prisoner of conscience Mazhenov tortured himself.

Sunni Muslim Dadash Mazhenov was arrested in April 2018 by the NSC secret police for posting four talks about Islam on his social media page. He endured a first trial that ended with a nearly eight year prison term, torture for praying while in prison, and a second trial on the same charges after the first verdict was overturned. Even after the first verdict was overturned by the Supreme Court in January 2020, he was not acquitted and continued to be held in detention (see below).

Prisoner of conscience Mazhenov has stated that he was tortured in 2019 for marking Eid al-Fitr and praying the namaz while he was held in Labour Camp ICh-167/3 in the southern city of Shymkent. Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kazakhstan is under a binding legal obligation to arrest and put on criminal trial any official suspected of torture. This has not yet happened, and an official has insisted to Forum 18 that Mazhenov tortured himself (see below).

Now, Akmola Regional Court in prisoner of conscience Mazhenov's latest trial – which began on 19 March 2020 – on 13 October handed down the same nearly eight year jail term he received in the original seriously flawed November 2018 trial.

The latest trial also appears to have been unfair, using the same "expert" whose lack of qualifications led to the original 2018 verdict being overturned by the Supreme Court. The same "expert" has also contributed to three other prisoners of conscience – a Seventh-day Adventist, a Jehovah's Witness, and another Sunni Muslim – being jailed (see below).

The written verdict is to be issued within five days of the oral verdict, Judge Askerbek Zhakulin's assistant told Forum 18 from the Court. He said that any appeal would be heard directly by the Supreme Court in the capital Nur-Sultan. He refused to discuss any other aspect of Mazhenov's case (see below).

The 30-year-old Mazhenov is planning to appeal against his latest conviction, his wife Yurana Esmagulova told Forum 18 (see below).

Prisoner of conscience Mazhenov's verdict will go into force only once any appeal has been heard. If the conviction and sentence are upheld, he will be sent to serve his sentence in a labour camp. "I hope he's not sent back to Shymkent where he could be tortured again," Esmagulova added (see below).

Prosecutor Darkhan Sansyzbai, who led the case until August, refused to talk to Forum 18. On 14 October Forum 18 was unable to reach Ablai Ibrayev, the Prosecutor who took over the case (see below).

Torture victim tortured himself, official claims

Prisoner of conscience Mazhenov has stated that he was tortured in 2019 for marking Eid al-Fitr and praying the namaz (http://www.forum18.org/archive.php?article_id=2524) while he was held in Labour Camp ICh-167/3 in the southern city of Shymkent.

Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kazakhstan is under a binding legal obligation to arrest and put on criminal trial any official suspected of torture (http://www.forum18.org/archive.php?article_id=2409). This has not yet happened, and an official from the Shymkent Criminal Implementation Department on 6 May 2020 insisted to Forum 18 that Mazhenov had caused his injuries to himself (http://www.forum18.org/archive.php?article_id=2570). "He hit his head on a wall," the official, who would not give his name, claimed to Forum 18 on 6 May.

The official also claimed that prisoners often allege torture, something he described as "slander" aimed at "destabilising the situation in prison" (http://www.forum18.org/archive.php?article_id=2570).

Bakytzhan Dzhunisbekov, who was appointed head of Labour Camp ICh-167/3 in mid-August 2020, insisted to Forum 18 on 20 August that Mazhenov was not tortured: "There was no such incident and there won't be. There aren't tortures here." (http://www.forum18.org/archive.php?article_id=2570)

Dzhunisbekov claimed that an investigation had taken place but Mazhenov's statement that he had been tortured "is not proved". He added that no one had been arrested for the torture. In May officials claimed they had initiated a criminal case regarding Mazhenov's torture (http://www.forum18.org/archive.php?article_id=2570).

Human rights defenders the Coalition Against Torture has appointed a lawyer to work on the case, and noted that few prison torture cases ever reach court, with few officials found guilty (http://www.forum18.org/archive.php?article_id=2570).

In early October Labour Camp head Dzhunisbekov did not answer his phone each time Forum 18 called.

2018 arrest, jailing, for posting Islamic talks online

Shchuchinsk resident Dadash Temirgaliyevich Mazhenov (born 28 September 1990) in 2015 posted on his VKontakte social media page four talks by Muslim teacher Kuanysh Bashpayev, but had removed them before a court in 2017 banned the talks as "extremist". (http://www.forum18.org/archive.php?article_id=2427)

In early 2018, the National Security Committee (NSC) secret police's 9th Department in Akmola Region launched a criminal case against Mazhenov. He was arrested on 23 April 2018.

The NSC also launched a criminal case against Galymzhan Abilkairov for posting some of the talks online before the ban. He was jailed for seven years, seven months in October 2018 (http://www.forum18.org/archive.php?article_id=2427).

Bashpayev himself was in April 2017 jailed for four and a half years to punish him for talks he gave on Islam between 2008 and 2011 (http://www.forum18.org/archive.php?article_id=2272). He had been arrested in October 2016 on his return to Kazakhstan from Saudi Arabia.

Burabai District Court sentenced Mazhenov on 16 November 2018 (http://www.forum18.org/archive.php?article_id=2435) under Criminal Code Article 256, Part 2. This 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.

The Court sentenced Mazhenov to 7 years and 8 months in a general regime labour camp, plus a fee of 60,790.14 Tenge. He appealed against the conviction, but Akmola Regional Court left his prison term unchanged on 30 January 2019 (http://www.forum18.org/archive.php?article_id=2452). The Court did though reduce the fee he had to pay to 1,255 Tenge (30 Norwegian Kroner, 3 Euros or 3 US Dollars).

Burabai District Court convicted Mazhenov on the basis of the "expert analysis" of one of the three "experts" appointed by the state, Aigerim Seifullina (http://www.forum18.org/archive.php?article_id=2435). She claimed that the recordings he posted online constituted "propaganda of terrorism" by "spreading concepts justifying the use of violent acts on a religious basis". She added that the recordings contained no public calls to commit terrorism or to form organisations to conduct terrorism.

However, as the defence pointed out, Seifullina did not have the qualifications the state requires to provide "expert analysis" for use in court. Prosecutor Sansyzbai admitted to Forum 18 that the "expert" Seifullina, who had undertaken the only analysis that found fault with the materials Mazhenov had uploaded to his VKontakte page "had no diploma". But, Sansyzbai claimed (wrongly) on 6 May, "no one knew of this" (http://www.forum18.org/archive.php?article_id=2569).

Prisoner of conscience Mazhenov was convicted despite the two other "experts" commissioned by the NSC secret police concluding that the recordings Mazhenov posted online did not incite religious or other hatred and discord or the violent overthrow of the government (http://www.forum18.org/archive.php?article_id=2435).

On 25 February 2019, after the sentence entered legal force, Mazhenov was added to the Finance Ministry Financial Monitoring Committee 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. Their families are allowed to withdraw only small amounts for daily living if they do not have other sources of income. Individuals remain on the List for six or eight years after they complete their sentences. (http://www.forum18.org/archive.php?article_id=2409)

Supreme Court annuls guilty verdict, but orders new trial

Due to "expert" Seifullina's lack of the qualifications required to provide "expert analysis" for use in court, the General Prosecutor's Office appealed to the Supreme Court on 5 December 2019 to annul Mazhenov's convictions and to send the case for a new trial. The Court did this on 21 January 2020 (http://www.forum18.org/archive.php?article_id=2569).

However, the Supreme Court chose not to acquit Mazhenov, an option available under Article 494, Part 7 of the Criminal Procedural Code. Instead it chose one of the three other possible options – to send the case for a new trial in Akmola Regional Court.

Because the Supreme Court decision was not an acquittal, Mazhenov could not be removed from the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", Zhovtis added.

Forum 18 sent the Financial Monitoring Committee a written question about Mazhenov's continued presence on their List of individuals "connected with the financing of terrorism or extremism" before the beginning of the working day of 6 May. As of 14 October Forum 18 has still not received a response.

New trial in 2020, same charges as 2018

On 6 February 2020, two weeks after the Supreme Court decision, prosecutors sent the new criminal case against Mazhenov to Akmola Regional Court, according to court records. There it was assigned to a panel of three Judges, led by Askerbek Zhakulin and also including Askar Kulmagambetov and Roza Ertaeva. The prosecution case was led by Darkhan Sansyzbai of Akmola Regional Prosecutor's Office.

The first hearing was then held on 19 March which, because of the coronavirus outbreak was held online. Mazhenov participated from Almaty's Investigation Prison. Mazhenov's mother Irina Mazhenova told Forum 18 that the sound for her and her son's lawyer kept being cut off (http://www.forum18.org/archive.php?article_id=2569).

Prisoner of conscience Mazhenov was charged under the same charges he faced in 2018 (http://www.forum18.org/archive.php?article_id=2435), Criminal Code Article 256, Part 2. This 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.

"Expert" who helped jail at least three other prisoners of conscience

At the second hearing of the trial on 29 April 2020, Akmola Regional Court agreed to Prosecutor Sansyzbai's request to commission a new "psychological/philological expert analysis" of sermons Mazhenov had posted online. The Court allocated the "analysis" to Roza Akbarova, a deputy director of the Justice Ministry's Institute of Judicial Expertise in the capital Nur-Sultan, according to the decision seen by Forum 18.

"Akbarova is a pocket expert, of the same type as Seifullina," Irina Mazhenova complained to Forum 18. "She's someone who will be useful to them."

Akbarova has provided "expert analyses" which helped jail three prisoners of conscience for speaking about their beliefs with NSC secret police informers: Seventh-day Adventist Yklas Kabduakasov, jailed for two years in December 2015 (http://www.forum18.org/archive.php?article_id=2136); Jehovah's Witness Teymur Akhmedov, jailed for five years with a ban on "ideological/preaching activity" for three more years in May 2017 (http://www.forum18.org/archive.php?article_id=2277); and Sunni Muslim Satymzhan Azatov, jailed for four years eight months in July 2017 (http://www.forum18.org/archive.php?article_id=2296).

When Forum 18 pointed out that Akbarova's "expert analyses" had helped jail at least three prisoners of conscience, Prosecutor Sansyzbai defended the choice. "She is well-known and well-qualified," he told Forum 18 (http://www.forum18.org/archive.php?article_id=2569) from Kokshetau on 6 May.

Akbarova refused to discuss her latest "expert analysis" task. "Under our law, you don't have the right to contact me," she claimed to Forum 18 from the capital Nur-Sultan on 5 May 2020.

The assessment in Mazhenov's case, completed on 19 May, contained conclusions by two additional experts – Maira Myrzayeva and Gulnar Kudaibergenova – that Bashpayev's talks that Mazhenov posted online contained no calls to overthrow the government, nor any "inciting calls to specific negative actions".

Akbarova herself concluded: "The materials presented for examination contain texts directed at propaganda of terrorism, though absent are elements of public calls to conduct acts of terrorism, the creation and leadership of a terrorist group, or participation in its activity in financing terrorist or extremist activity, or other facilitating of terrorism or extremism."

Unqualified "expert" ?

Prisoner of conscience Mazhenov's wife Yurana Esmagulova insists that "expert" Akbarova was not qualified to conduct such an assessment. At the 28 September hearing, Akbarova claimed that she had the right to conduct the assessment as a "politological expert", even though she admitted she had no licence for this. Esmagulova told Forum 18 that she subsequently checked with the Justice Ministry, which said that no such category of expert exists in Kazakh law.

Esmagulova told Forum 18 that at the 2 October hearing, the expert Myrzayeva stated in response to a question from Mazhenov that the works she had assessed contained no propaganda of terrorism.

Mazhenov's defence asked for Akbarova's assessment to be removed from the case.

Forum 18 was unable to reach Akbarova to ask about her assessment. The Justice Ministry's "Centre for Judicial Expert Analysis" claimed to Forum 18 on 9 October that she no longer works there.

Prosecutor Sansyzbai completed a new, five-page indictment (seen by Forum 18) on 24 June after the "expert assessment". Forum 18 reached Sansyzbai on 9 October, but he put the phone down as soon as Forum 18 introduced itself.

In August, at the request of Mazhenov's defence, Prosecutor Sansyzbai was replaced by another Prosecutor, Ablai Ibrayev.

Secret police pressure, unfair trial

Prisoner of conscience Mazhenov's wife Esmagulova questions how the case was handled, not only over the "expert analyses". "The talks Dadash posted were deemed to be 'extremist' after he had already deleted them," she told Forum 18. "Yet he was charged and convicted of spreading 'terrorism'. (http://www.forum18.org/archive.php?article_id=2427)"

Esmagulova also stated that at least some of the alleged screenshots of posts on Mazhenov's social media accounts used as evidence had been faked.

Esmagulova notes that three witnesses questioned in court testified that they had been pressured by the NSC secret police. "The witnesses spoke the truth," she said. One testified that he signed a document presented by the NSC without knowing what was in it.

Unfair trials have frequently happened in Kazakhstan (http://www.forum18.org/archive.php?article_id=2409).

Second trial, same verdict

More than 25 hearings took place in Mazhenov's second trial at Akmola Regional Court. Most were online because of the coronavirus pandemic. Mazhenov's wife and his mother Irina Mazhenova complained that at several hearings the connection was poor and they could not hear, while on some occasions it appeared the sound had deliberately been muted (http://www.forum18.org/archive.php?article_id=2569).

On 13 October, the panel of judges issued their verdict orally. They convicted Mazhenov for a second time under Criminal Code Article 256, Part 2 ("Propaganda of terrorism or public calls to commit terrorism"). They sentenced him to seven years and eight months' imprisonment in a medium-security labour camp, his wife Esmagulova told Forum 18.

The Court also ordered Mazhenov to pay a total of 134,599 Tenge (2,900 Norwegian Kroner, 270 Euros or 315 US Dollars) in fees for the April 2018 and May 2020 "expert" analyses.

The written verdict is to be issued within five days of the oral verdict, Judge Zhakulin's assistant told Forum 18 from the Court on 14 October. He said that any appeal would be heard directly by the Supreme Court in Nur-Sultan. He refused to discuss any other aspect of Mazhenov's case.

Prisoner of conscience Mazhenov intends to appeal against his new conviction. "We will appeal to the Supreme Court and to international bodies if we need to," Esmagulova told Forum 18.

Criminal Code Article 62 was amended in December 2019 to increase the amount any time in pre-trial detention is offset against any subsequent sentence (http://www.forum18.org/archive.php?article_id=2566). For example, one day in pre-trial detention is equivalent to one and a half days in a medium-security labour camp or two days of restricted freedom. The change had retroactive force.

On 14 October Forum 18 was unable to reach Ibrayev at Akmola Regional Prosecutor's Office in Kokshetau.

"I hope he's not sent back to Shymkent where he could be tortured again"

Mazhenov's verdict will go into force only once any appeal has been heard. If the conviction and sentence are upheld, he will be sent to serve his sentence in a labour camp. "I hope he's not sent back to Shymkent where he could be tortured again," Esmagulova added.

Prisoner of conscience Mazhenov remains in Investigation Prison in Kokshetau, whose address is:

Akmolinskaya Oblast

020000, g. Kokshetau

raion kirzavoda

ul. Nikitina 67

uchr. ETs-166/23 (SI-20)

Kazakhstan

(END)

Full reports on freedom of thought, conscience and belief in Kazakhstan
(<http://www.forum18.org/archive.php?query=&religion=all&country=29>)

For more background, see Forum 18's Kazakhstan religious freedom survey (http://www.forum18.org/archive.php?article_id=2409)

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

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