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KAZAKHSTAN: Criminal trial for atheist writer imminent, pastor still in prison, new criminal case

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

The criminal trial of 62-year-old atheist writer Aleksandr Kharlamov on charges of "inciting religious hatred" – which he rejects – is set to begin in Ridder this month. He has been held for three months in prison and psychiatric detention, mostly in cellars, and has lost 20 kilograms in weight, his partner Marina Kaplunskaya told Forum 18 News Service. Asked who had suffered because of what Kharlamov had written on religion, Ridder's Prosecutor Vitaly Shaber told Forum 18: "This Criminal Code Article does not need victims – if there had been any, a completely different Article would have been used." Astana Prosecutor's Office told Forum 18 a criminal case on the same charges was launched in March in connection with the activity of the city's Grace Protestant Church. The church's 66-year-old pastor Bakhytzhan Kashkumbayev is already in prison facing separate criminal charges of harming health, which he rejects. The alleged victim says her health has not been harmed.

After three months in prison and psychiatric detention, atheist writer Aleksandr Kharlamov is set to face trial this month in Ridder in East Kazakhstan Region. "I'm in shock – I just heard he's lost 20 kilograms in prison and psychiatric hospital," his partner Marina Kaplunskaya told Forum 18 News Service from the town on 12 June. "And they've put a restraining order on his flat." Kharlamov faces up to seven years' imprisonment if convicted on charges of "inciting religious hatred", which he rejects. A criminal case on the same charges was launched in secret in March against Grace Protestant Church in Kazakhstan's capital Astana, though at present it is at the investigation stage. The church's pastor Bakhytzhan Kashkumbayev remains in pre-trial detention facing separate criminal charges of harming health, which he denies.

In addition to these criminal prosecutions to punish people for exercising their right to freedom of religion or belief, perhaps about 100 administrative punishments have been handed down since the beginning of 2013 for meeting for worship without state permission or for sharing faith with others. If individuals refuse to pay the fines, they risk short-term imprisonment, confiscation of personal property – such as washing machines or cars – and being banned from foreign travel (see F18News 10 June 2013 http://www.forum18.org/archive.php?article_id=1845).

Punishments for exercising the right to freedom of religion or belief seem set to increase in new versions of the Criminal Code and the Code of Administrative Offences now being prepared (see F18News 18 March 2013 http://www.forum18.org/archive.php?article_id=1814).

Kharlamov case almost complete

The criminal case against Kharlamov – who was arrested on 14 March in his home town of Ridder – is now almost complete. "I am expecting the police to present the case by the end of this week," Ridder's Prosecutor Vitaly Shaber told Forum 18 on 12 June. "I then have ten days to check whether legalities have been observed in the procedures. I must decide whether to hand the case to Ridder Town Court or back to the investigators for further work."

The investigator, police Captain Alikhat Turakpayev, confirmed to Forum 18 on 12 June that he will hand the criminal case to Prosecutor Shaber "within days". However, he refused absolutely to discuss the case. "I am not the court – it will decide whether he is innocent or guilty. Wait for the trial." He then put the phone down.

Kaplunskaya told Forum 18 that the final case was given to Kharlamov and the lawyer on 12 June, and they are given ten days to prepare before the trial.

Held in the cellars

Kharlamov – who will mark his 63rd birthday on 2 July – was transferred back to Ridder in early June. "I went yesterday [11 June] to the police detention centre where he is being held in the cellars," his partner Kaplunskaya told Forum 18. "I was able to hand over a parcel of clothes and food, but not allowed to see him." She said his weight before his arrest was about 85 kilograms, and he has lost about 20 kilograms since then.

Kaplunskaya said the last time she was able to see Kharlamov was in early April while he was being held in the regional capital Oskemen (Ust-Kamenogorsk). "Aleksandr was also being held in the cellars, and I had five minutes with him and couldn't discuss anything serious."

Kharlamov's lawyer has been able to meet him in the detention prison in Ridder since his return, Kaplunskaya added.

"Inciting religious hatred"?

Kharlamov is due to face trial under Criminal Code Article 164, Part 1. This Article is both unclear and wide-ranging. It criminalises: "Deliberate actions aimed at the incitement of social, national, clan, racial, or religious enmity or antagonism, or at offence to the national honour and dignity, or religious feelings of citizens, as well as propaganda of exclusiveness, superiority, or inferiority of citizens based on their attitude towards religion, or their genetic or racial belonging, if these acts are committed publicly or with the use of the mass information media."

No definitions are offered for the concepts criminalised by Article 164. Punishments are a fine or imprisonment of up to seven years.

Prosecutor Shaber defends the charges. "This case is not being brought about Kharlamov's personal beliefs – it is only about the elements of incitement in what he published," he insisted to Forum 18. Asked who had suffered because of what Kharlamov had written, Shaber responded: "This Criminal Code Article does not need victims – if there had been any, a completely different Article would have been used."

Kaplunskaya rejects the accusations against her partner. "He didn't incite people against anyone," she told Forum 18. "He's not in conflict with anyone." She believes the criminal charges were launched to punish Kharlamov for his criticism of local officials. "They're not interested in what he wrote on religion – they didn't even read it. But they were looking for something they could use to imprison him."

Prosecutor Shaber denies this. "I can officially state that Kharlamov is not being punished for the articles he wrote about local issues."

Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law has condemned the case against Kharlamov. "I want to stress that there is no incitement to hatred of any representatives of any religion in his writings," he said in April. "He writes about religion, he criticises ideas, and puts forward his own views. That is, he carries on a perfectly normal activity in a country where expressing one's own views is not yet a criminally-prosecutable action" (see F18News 20 May 2013 http://www.forum18.org/archive.php?article_id=1837).

Psychiatric examination

The investigation against Kharlamov began in late 2012. An October 2012 "court/philological expert analysis" concluded that his writings on religion "contain negative information aimed at inciting religious hatred and discord". On the basis of the "analysis", the criminal case against him was opened on 25 January 2013.

A March "expert analysis" found that 28 of the 36 writings by Kharlamov it analysed "contain negative information aimed at inciting religious hatred and discord". A psychiatric examination of Kharlamov conducted while he was in prison in Oskemen found Kharlamov was suffering from "delusional disorder".

In early April, on investigator Turakpayev's instructions, Kharlamov was transferred to Investigative Prison No. 1 in Almaty for a second psychiatric examination to be conducted. He was forcibly held in the Republican Scientific/Practical Centre of Psychiatry, Psychotherapy and Narcology in Almaty from 29 April to 27 May, according to a 28 May article by Kazis Toguzbayev of Radio Free Europe's Kazakh Service.

Kaplunskaya, his partner, told Forum 18 that the psychiatric examination in Almaty had found him responsible for his actions, though she has not seen the document certifying this.

Kharlamov also told Toguzbayev that the psychiatric examination in Almaty had found him responsible. One male doctor had insisted he showed signs of "a schizoid and paranoid" form of delusion. But the female doctors disagreed, Kharlamov told Toguzbayev from Almaty Investigation Prison No. 1 immediately after his return there.

Kharlamov complained that conditions in the Psychiatric Centre were like in prison, including being held in underground rooms. Those being held there were not allowed to wear glasses or even have toothbrushes, allegedly on grounds of safety. During the month there, he had therefore been unable to read anything or clean his teeth, he told Toguzbayev.

"They want to leave him with nothing"

Kaplunskaya also told Forum 18 that on reading the case materials on 12 June, the lawyer had discovered that the investigator had put a restraining order on Kharlamov's flat, which he uses as an office.

"I understood that they also want to make him pay for the two psychiatric analyses," she complained, "though it was the investigator that called for them, not him. If they don't imprison him they want to leave him with nothing, no office, no pension, no clothes."

Criminal case against Church members?

Astana based senior police investigator Captain Vyacheslav Glazkov launched a criminal case on 19 March in connection with allegations that Astana's Grace Church, or members of it, were inciting "religious hatred" under Criminal Code Article 164, Part 1, an official of Astana Prosecutor's Office told Forum 18 on 11 June.

"The case is not against the Church itself, but investigating the fact of incitement of religious hatred," the prosecutor, who did not give his name, stressed. "No specific individuals are suspects at the moment."

Article 14, Part 1 of the Criminal Code declares that criminal cases can only be launched against individuals. So it appears that if investigators and prosecutors conclude that there is a case to answer, allegations would have to be launched against specific church members.

Reached on 11 June, Investigator Glazkov told Forum 18 only that the case he opened on 19 March was separate to the case against Pastor Kashkumbayev. However, he declined to say who is being investigated and why. "It is not a convenient time to speak," he told Forum 18 before putting the phone down. All subsequent calls went unanswered.

Prepared in secret?

News of the criminal case came as a shock to church members, who are already upset by the arrest in a separate criminal case of their pastor, Kashkumbayev. "The first we heard of this was yesterday [11 June] – even though the case appears to have been launched back in March - and we don't know any details," one told Forum 18 from Astana on 12 June. "We are desperately trying to find out more."

"They are moving against Evangelical Christians," another church member told Forum 18. "It is no surprise that they have launched another criminal case."

First raid in the case?

At least one raid is known to have taken place in connection with the new criminal case. On 25 May, on the "special instruction" of Investigator Glazkov, the National Security Committee (KNB) secret police raided the premises in Almaty of the charity United Mercy in Central Asia. The required two witnesses were also present, according to the record of items confiscated in the raid, seen by Forum 18.

Officers seized documentation about the work of the charity – which has state registration - over at least the last nine or ten years. They were also reportedly looking for copies of the book "Worthy Answers", but did not find any. The KNB officers called in other officers from the normal police to confiscate other religious literature once they had finished their search. In all 16 religious books were taken for "expert analysis".

Questioning of charity officials continued after the 25 May raid, Forum 18 has learned.

Copies of "Worthy Answers" – a book by two local Protestants, Galymzhan Tanatgan and Zhomart Temir, published in both Kazakh and Russian – have been seized in earlier raids on Protestant churches. During such confiscations in October 2012, Police alleged that the book is banned and contains "extremist" ideas, but failed to produce any evidence of this (see F18News 19 October 2012 http://www.forum18.org/archive.php?article_id=1756).

Pastor still imprisoned

Meanwhile, Astana Grace Church's pastor, the 66-year-old Kashkumbayev, remains in pre-trial detention in the capital. He was arrested on criminal charges of harming health on 17 May, with a court hearing two days later confirming his pre-trial detention until 17 July (see F18News 20 May 2013 http://www.forum18.org/archive.php?article_id=1837).

The 19 May decision by Judge Nurlan Bayakhmetov of Astana's Almaty District Court No. 2, seen by Forum 18, reveals that Pastor Kashkumbayev is accused 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. It said the criminal case had been opened in October 2012 "for causing considerable harm to the psychological health" of a church member.

The decision records the prosecutor's allegation that "the crime was carried out by Kashkumbayev under the guise of carrying out charitable and religious activity by means of exerting psychological influence on church members, including with the use of stupefying substances with the aim of collecting gifts for the use of the association".

The "stupefying substances" appear to be a reference to the red tea used by the Church as a non-alcoholic communion wine. Church members told Forum 18 they buy the tea in local shops (see F18News 20 May 2013 http://www.forum18.org/archive.php?article_id=1837).

The decision also referred to a September 2012 expert assessment of church member Lyazzat Almenova which claimed regular attendance at church had led her to develop "paranoid schizophrenia". Church members vigorously rejected such claims to Forum 18 in October 2011 when they were first made (see F18News 19 October 2012 http://www.forum18.org/archive.php?article_id=1756).

Almenova has written to Astana Prosecutor's Office to say she is psychiatrically healthy, that the 2012 assessment was conducted illegally and calling for the case to be abandoned.

She told Forum 18 that the authorities had put her in a psychiatric hospital and injected with unknown drugs against her will. "Unfortunately they used me as a witness to open a case against Pastor Kashkumbayev, who is totally innocent and has not harmed my health at all" (see F18News 16 July 2013 http://www.forum18.org/archive.php?article_id=1860).

Kashkumbayev's lawyers tried to challenge the need to hold him in pre-trial detention, but on 24 May, Judge Zhaksylyk Alkhamin of Astana City Court upheld the earlier court decision ordering his detention, according to the decision seen by Forum 18. At the hearing, Prosecutor Kyzdygoi Ergeshbayeva argued that as Kashkumbayev is accused of a "serious crime", it is right to keep him in custody, the transcript of the hearing seen by Forum 18 notes. The Judge upheld her argument.

Forum 18 tried to reach Prosecutor Ergeshbayeva, but the woman who answered her phone on 12 June hung up as soon as Forum 18 introduced itself. Subsequent calls went unanswered.

Psychiatric assessment

A psychiatric assessment of Kashkumbayev was conducted in prison in mid-June, Protestants told Forum 18. "This is normal when an individual is accused of a serious offence." It appears the psychiatric assessment found him responsible for his actions, though his lawyers have not yet been given a copy of the record.

Kashkumbayev's lawyers have been given access to him in the Interior Ministry's Investigation Isolation Prison in Astana where he is being held. However, his wife and other family members have not. "The investigator won't give permission for this," one Protestant complained to Forum 18.

The prison address is:

SI-12 (ETs 166/1)

Alash Tas Zhol street 30/1

010000 Astana

Kazakhstan

Lawyers have lodged a complaint to Astana Prosecutor's Office over the way Investigator Glazkov is running the case, especially over his refusal to hand over case documents to the defence team. (END)

For a personal commentary on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1352.

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>.

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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