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KAZAKHSTAN: Atheist and Pastor still detained with little evidence to convict either

By Mushfig Bayram, Forum 18 (<https://www.forum18.org>)

Imprisoned atheist writer and anti-corruption campaigner Aleksandr Kharlamov and Presbyterian pastor Bakhytzhan Kashkumbayev are both still being detained by Kazakhstan, Forum 18 News Service has found. Kharlamov has been in detention since his 14 March arrest for "inciting religious hatred". Kuat Rakhimberdin of the Kazakhstan International Bureau for Human Rights and the Rule of Law told Forum 18 that "If there were any Judge in Ridder with a minimum degree of honesty and independence, the indictment would be rejected as absurd and unfounded, and Kharlamov be acquitted." Kashkumbayev was arrested on criminal charges of "harming health" on 17 May. He is still detained although the only person whose health the state claims was harmed told Forum 18 that Kashkumbayev is "totally innocent and has not harmed my health at all". She herself was subjected to forcible psychiatric treatment by the state. Asked whether the use of psychiatry in the cases of Kharlamov and Kashkumbayev may be a return to Soviet-era misuse of psychiatry, a Prosecutor claimed to Forum 18 that the Criminal Procedure Code "necessitates such assessment in order to determine whether the suspects can be answerable for serious crimes".

Imprisoned atheist writer and anti-corruption campaigner Aleksandr Kharlamov, and Presbyterian pastor Bakhytzhan Kashkumbayev are both still being detained by Kazakhstan, Forum 18 News Service has found. And in both cases, the evidence justifying the state's denials of their freedom of religion or belief appears extremely weak or non-existent.

Imprisoned atheist writer and anti-corruption campaigner Kharlamov, from East Kazakhstan Region, is still in detention following his 14 March arrest. He is under investigation on criminal charges of inciting "religious hatred". Judge Kayirbek Yelemesov of Ridder City Court told Forum 18 on 26 July that he began on 19 July to hear the case, and that the next hearing will be on 29 July. Asked how long the trial will last, he responded that "it will depend on the defence and on their possible petitions," without specifying what he meant.

Kharlamov is being charged 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.

"No-one suffered from what he wrote on religion", police Captain Alikhat Turakpayev admitted to Forum 18 on 11 April. Turakpayev ordered "psychological/philological expert analyses" of Kharlamov's writings, as well as of Kharlamov himself in a psychiatric hospital. Turakpayev refused to explain on what, if any, medically-relevant evidence he ordered two psychiatric examinations (see F18News 18 April 2013 http://www.forum18.org/Archive.php?article_id=1826).

Kuat Rakhimberdin of the Kazakhstan International Bureau for Human Rights and the Rule of Law told Forum 18 that "Kharlamov is involved in many types of activity, but he annoyed the police and this appears to have been what triggered the case". Rakhimberdin added that "his writings on religion are just the excuse. But in any case, this is a violation of his right to freedom of speech and religion" (see F18News 18 April 2013 http://www.forum18.org/Archive.php?article_id=1826).

Indictment "sad and scary"

Rakhimberdin of the Kazakhstan International Bureau for Human Rights and the Rule of Law told Forum 18 on 26 July that the indictment before the Court concludes that Kharlamov: "in his articles on newspapers and the internet put his personal opinions above the opinions and faith of the majority of the public and thus incited religious animosity". The indictment "abounds with ambiguous terminology. Kharlamov's articles are defined as religious at some moments and as atheistic at other," Rakhimberdin told Forum 18. "There are endless repetitions, one passage being repeated 12 times."

"It is sad and scary to realise that the verdict of the Court can repeat the same charges," Rakhimberdin said. "If there were any Judge in Ridder with a minimum degree of honesty and independence, the indictment would be rejected as absurd and unfounded, and Kharlamov be acquitted."

Asked why such serious charges are brought for expressing opinions about religion, Judge Yelemesov refused to reply. He told Forum 18 that "when the Court makes the decision you can ask Kharlamov's lawyer for a copy and see our evaluation".

Another punishment for Kharlamov?

Marina Kaplunskaya, Kharlamov's partner, a Ridder resident, told Forum 18 on 25 July that he is being kept in Oskemen, "which is three and half hours' train ride, or about two hours' car ride from Ridder". She thought that "This is another punishment for him. I think the authorities are trying to reduce his contact with his friends and family."

Judge Yelemesov, asked why Kharlamov is kept in custody in Oskemen while he is being tried in Ridder, told Forum 18 that "there is no detention centre in Ridder, and so he is being kept in Oskemen."

Kaplunskaya was not given a chance to have a private conversation with Kharlamov at the 19 July hearing, and she only saw him in the Court where she could "only exchange short greetings" with him.

During Kharlamov's detention and psychiatric examinations he had after three months "lost 20 kilograms in prison and psychiatric hospital," his partner Kaplunskaya told Forum 18 on 12 June. "And they've put a restraining order on his flat." She had only been allowed to see him once – for five minutes - during his detention (see F18News 12 June 2013 http://www.forum18.org/Archive.php?article_id=1846). Since then, Kharlamov's weight has stayed stable. Although he looks pale, Rakhimberdin of the Kazakhstan International Bureau for Human Rights and the Rule of Law that Kharlamov is trying to stay strong and is defending himself.

Pastor also still in detention

Pastor Bakhytzhon Kashkumbayev, who leads Grace Church in the capital Astana, was arrested on criminal charges of "harming health" on 17 May and subsequently ordered detained on unclear charges. He is still in detention. As happened with earlier state allegations of the alleged administration of drugs in 2012 (see below), the state's 2013 allegations were repeated in hostile media coverage (see F18News 20 May 2013 http://www.forum18.org/Archive.php?article_id=1837).

As with Kharlamov, the "evidence" justifying the case and detention appears thin. Lyazzat Almenova, on whose health the authorities claim to be basing their case, 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 (see F18News 12 June 2013 http://www.forum18.org/archive.php?article_id=1846).

Pastor "totally innocent and has not harmed my health at all"

"The authorities forcibly put me in a psychiatric ward between 23 February and 13 March for psychological assessment, for the second time, to find me mentally ill in order to disregard my appeals and petitions in favour of Pastor Kashkumbayev as someone who is not answerable for my actions and words", Almenova told Forum 18 on 26 July. She added that "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".

She said that the second time she was in the psychiatric clinic she was treated "with caution and carefully. This may be because of international attention". But the first time she was put in the psychiatric clinic in 2011, "I was given injections that made me very apathetic and passive". She said that she was not told what she was being injected with.

The arrest of Pastor Kashkumbayev was supposedly part of a continuing police investigation of a July 2011 complaint by the mother of Almenova that it harmed her health, which allegations Church members have vehemently denied. As part of this action, two raids on his Church and on the unrelated New Life Church in Oral (Uralsk) took place in October 2012. In the months prior to the search and questioning, and afterwards, numerous hostile media articles appeared attacking the Church for supposedly administering alleged "hallucinogens" – in reality a non-alcoholic Communion drink – to members. Police displayed a curious lack of interest, during October 2012 questioning of Church members, in the allegations they were supposedly investigating (see F18News 19 October 2012 http://www.forum18.org/archive.php?article_id=1756).

Detention extended

Pastor Kashkumbayev was on 19 July transferred to Almaty City Detention Centre No. 2, from where he was supposed to be transferred to Almaty's Republican Scientific/Practical Centre of Psychiatry, Psychotherapy and Narcology, Kashkumbayev's son Askar and the Church's lawyer Riza Nurbayeva told Forum 18 on 25 July.

His transfer to Almaty came as a result of Astana Police Investigator Vyacheslav Glazkov's order for Kashkumbayev to undergo further psychiatric assessment in the in-patient Almaty Centre and his petition, supported by Astana City's Almaty District Prosecutor Office, to extend Kashkumbayev's custody for one more month, until 17 August. On 8 July this was granted by Judge Nurlan Bayakhmetov of Astana City's Almaty District Court No 2.

In the decision, seen by Forum 18, Judge Bayakhmetov argues that "based on the Criminal Procedure Code's Part 1 of Article 150 arrest as restraint is applied when a defendant is a suspect of a premeditated crime, for which the Law foresees a punishment in the form of imprisonment for a term of more than five years, also based on Part 2 of the Code's Article 153 in case it is impossible to complete the criminal investigation within two months as well as there no reasons to change or cancel the restraint order the term of arrest can be extended (..) up to six months."

Judge Bayakhmetov claims in his decision that the Court granted Investigator Glazkov's petition because "it is established the preliminary [police] investigation could not be completed within two months, since according to the 11 June forensic psychiatric assessment [of Kashkumbayev] it is necessary to conduct complete forensic psychological and psychiatric assessment of Kashkumbayev in an in-patient [clinic]".

Decision illegal?

Under the Criminal Procedure Code's Articles 89 and 90, Kashkumbayev's lawyer Nurlan Beysekeyev has argued that a Judge who approves an arrest of an individual, cannot take part in hearing the same case. Judge Bayakhmetov also approved the initial arrest of Kashkumbayev. His decision included strongly contested unproven prosecution claims, including that the Church administered drugs to members (see F18News 20 May 2013 http://www.forum18.org/archive.php?article_id=1837).

The Court has not responded to Beysekeyev's petitions.

Prosecutor Tlenchiyev insisted to Forum 18 that "there were no violations of the Procedure Code, and the authorities are very careful with this case, especially knowing that the case created an international resonance." However, he did not explain why Judge Bayakhmetov gave all the decisions for the arrest and the extensions of arrest.

Neither Judge Bayakhmetov nor Investigator Glazkov answered their telephones on either 25 or 26 July.

Hunger strike

Pastor Kashkumbayev on 18 July stated, in written complaints to national and international bodies including the United Nations (UN) Human Rights Committee, that "though I am 67 [born in October 1946] and I cannot boast of ideal health since I had a serious heart attack in 2011, have chronic otitis (inflammation) of both ears, varicose veins in my legs, chronic bronchitis, chronic gastritis, I am psychologically healthy."

Kashkumbayev expresses his fears in the complaint that "in order to make me mad they will inject me with special substances." He then says that "because of this I announce hunger strike and refuse to leave for the psychiatric ward."

His lawyer Nurlan Beysekeyev told Forum 18 on 26 July that on 18 July, one day before he was transferred to Almaty, Kashkumbayev told him that he will "go on hunger strike to achieve his son's and the lawyer official recognition by the authorities as his legal defenders, and his final release from prison, where he was put unlawfully". When Beysekeyev warned Kashkumbayev about "possible dangerous outcomes of the hunger strike for him, taking into account his poor health", Kashkumbayev stated that he is "even prepared to stop drinking water if need be".

Kashkumbayev also complained that he was not given the result of his psychological assessment from 11 June. He also told the UN Human Rights Committee that "it will not take much for the authorities to make me a 'vegetable', (..) I am begging you to protect me".

Neither Kashkumbayev's family nor lawyer are aware of what is now happening to Kashkumbayev, and whether he was transferred to the Almaty Psychiatric Centre. "We have not had any contacts with him since he was forcibly taken to Almaty Psychiatric Centre," Askar Kashkumbayev said. "When he was in Astana our lawyer could visit him, but not since he was moved to Almaty."

Why?

Prosecutor Alen Tlenchiyev of Astana's Almaty District on 25 July adamantly defended the decision to put Kashkumbayev in custody. Tlenchiyev also defended the decision to extend the term of the custody as well as the decision to subject Kashkumbayev to psychiatric assessment.

"Kashkumbayev is charged with the serious crime of inflicting serious harm on the health of citizens", he told Forum 18 from Astana on 26 July. He claimed that Kashkumbayev "prayed for the sick, and psychologically influenced" Church members, and that

"people's health was harmed as a total result of his actions."

When told that Almenova – the only person whose health the authorities have claimed has been harmed – vehemently denies the authorities' claims, Tlenchiyev claimed to Forum 18 that "there are other people whose health were harmed who complained to the authorities." He refused to tell Forum 18 the number or names of the people, and whether they are members of the Church saying that "it is an investigation secret."

"Fishing for evidence"?

The state is also apparently preparing to bring the same "religious hatred" charges used against atheist writer Kharlamov against members of Pastor Kashkumbayev's Church. However, police have refused to provide more details of this. Police Captain Vyacheslav Glazkov told Forum 18 on 19 March that "no specific individuals are suspects at the moment" (see F18News 12 June 2013 http://www.forum18.org/Archive.php?article_id=1846).

Members of Grace Church in Astana, who wished to remain anonymous for fear of state reprisals, told Forum 18 on 25 July that several members and their pastor Dmitri Kan were summoned to the Astana office of the KNB secret police. This was since 15 July to be questioned about Church activities and Pastor Kashkumbayev. "Pastor Kan refused to visit the KNB without an official invitation, which was not presented to him but the other members did visit after they were verbally invited over the phone," one Church member said.

"It looks like the authorities are fishing for some evidence or some information that can be used against Pastor Kashkumbayev or the Church", they said. "But neither the Church nor any other members have been indicted or brought charges against so far."

Astana KNB secret police referred Forum 18 to their national press service. The officer who answered the phone (who would not give his name) on 26 July told Forum 18 that Kashkumbayev is "not being pressured for being a Kazakh Christian or a pastor". He refused to say why KNB officials in Astana interrogated Grace Church members. "Please send us your questions in writing, and we will answer."

Back in the USSR?

Asked why Kazakhstan subjects people who are not mad to psychiatric assessment, and whether this may be a return to Soviet-era misuse of psychiatry, Prosecutor Tlenchiyev stated to Forum 18 that the Criminal Procedure Code "necessitates such assessment in order to determine whether the suspects can be answerable for serious crimes".

Asked why the authorities have particularly targeted the cases of Kharlamov and Kashkumbayev to use this provision of the Criminal Procedure Code, Tlenchiyev claimed that the two were not the only persons to whom it was applied. "I can remember at least two other such cases recently," he said. He did not specify these cases, stating that he does not remember the details.

Kashkumbayev's son Askar and other members of Grace Church told Forum 18 that one reason for the authorities' use of psychiatry could be "an attempt to humiliate him in public eyes, and damage the image of the Church".

"This is not a serious case, and Investigator Glazkov achieved the extension of the custody to find more evidences to support the serious charges he brought against my father," Askar Kashkumbayev told Forum 18.

"He is trying to win time to find evidence which do not exist, because my father did not plan on making people sick and did not harm anyone. He may also hope that my father will be diagnosed as mentally ill so he can close the case now that there is so much international attention to it." This would allow the Pastor to be potentially confined in a psychiatric hospital.

"Our only hope is the support we can get from the wider public and international community. The local news media publish materials against my father. It looks like the authorities are intent on punishing my father," Askar Kashkumbayev told Forum 18.

Legal representative

Kashkumbayev's lawyer Beysekeyev also petitioned Astana City Court Appeal Board to cancel Investigator Glazkov's decision to conduct further psychiatric assessment of Kashkumbayev, as he was not provided with the result of the first assessment from 11 June, as well the decision of Almaty District Court No. 2 to extend the detention. No answer has been received.

However, Judge Viktoriya Semyonova, of Saryarka District Court No. 2 of Astana, on 26 July decided that Police Investigator Glazkov's "inactivity" was "unfounded", when he did not respond to Kashkumbayev's 1 June petition to recognise his son Askar as someone who can act on his behalf, and a 4 June petition to allow Askar and his lawyer Beysekeyev to read the case files. The Judge order Glazkov to "eliminate the violation immediately".

However, the Judge rejected the part of the petition asking for a cancellation of the appointment by the state of a lawyer for

Kashkumbayev after he was arrested.

Askar Kashkumbayev told Forum 18 that they will challenge this. "If the Court annulled the appointment of the state-provided lawyer, then this could mean the arrest of my father would be unlawful, which is why I think the Court did not satisfy our petition in this part." (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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