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KAZAKHSTAN: Offences a pretext for deportation?

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

Not only are the authorities deporting from Kazakhstan non-citizens with legal residence to punish them for exercising their right to freedom of religion or belief, they also appear to be using minor infractions non-citizens may have committed to deport them. Protestant Pastor Vyacheslav Li (whose wife and two young children are Kazakh citizens) was deported after committing eight administrative offences in the eight years he lived legally in Kazakhstan. "They used these administrative offences as a pretext to kick the pastor out of the country," human rights defender Yevgeny Zhovtis told Forum 18 News Service. "It is a violation of the principle of proportionality and a misuse of justice." The deputy district police chief denied to Forum 18 that Pastor Li had been singled out because of his religious affiliation. "We'd have done the same had it been a businessperson or whoever." Similarly, attempts were made to deport Russian Orthodox priest Fr Sofrony for alleged violations, but a court appears to have overturned the deportation order.

Human rights defender Yevgeny Zhovtis, of the Kazakhstan International Bureau for Human Rights and the Rule of Law, has condemned the July deportation of another religious leader who was not a Kazakh citizen. Unlike in other cases, Protestant Pastor Vyacheslav Li was deported for minor infringements of the law unrelated to his exercise of the right to freedom of religion or belief. "They used these administrative offences as a pretext to kick the pastor out of the country," Zhovtis told Forum 18 News Service on 3 October. "It is a violation of the principle of proportionality and a misuse of justice."

"They found a legal way to deport Vyacheslav," Pastor Li's wife Bota insisted to Forum 18 on 3 October. "They didn't want to show it was because of his religious activity. It was all done very professionally."

However, on 2 October, in a similar case, Almaty Regional Court appears to have overturned the deportation order on Russian Orthodox priest Fr Sofrony. The written decision is due to be issued by 7 October.

Looking for excuses?

Zhovtis is concerned that the authorities - in addition to deporting individuals simply for exercising their right to freedom of religion or belief - might be looking for excuses unrelated to exercising this freedom to deport others, as in the case of Pastor Li, making use of minor administrative infractions, such as driving offences.

Non-citizens who had legal residence in Kazakhstan have often been deported to punish them for their activity in religious communities. Baptist pastor Viktor Lim was ordered deported from Kazakhstan for leading a registered religious community and left in mid-August. The authorities had also been preparing to accuse him (as they have of other Protestant pastors) of using hypnosis in services. Lim, a stateless person, had lived in the country for 20 years and his wife and children are Kazakh citizens. The authorities classed his action as "illegal missionary activity" for which punishment is a fine and, for non-citizens, deportation (see F18News 30 September 2013 http://www.forum18.org/archive.php?article_id=1880).

In an earlier case, a Muslim was fined and ordered deported back to his home country elsewhere in Central Asia in November 2011, for occasionally leading prayers in his local mosque without being personally registered as a "missionary" (see F18News 13 December 2011 http://www.forum18.org/archive.php?article_id=1646).

Ordered deported

The 34-year-old Pastor Li led a local congregation of Grace Protestant church in Borovoe, a lakeside village in Burabai District of Akmola Region, north of Kazakhstan's capital Astana. He had moved to Kazakhstan from elsewhere in Central Asia in March 2005. He had a Kazakh residence permit valid until 2020, according to court documents seen by Forum 18. His wife, Bota Li, is a Kazakh citizen, as are their two young children.

In his eight years of legal residence in Kazakhstan, Pastor Li was fined eight times for violations of the Code of Administrative Offences, seven times in a personal capacity and on the last occasion as leader of his church. Four of these were for motoring offences, such as failure of him and his passengers to wear seatbelts, two for failing to abide by regulations covering the departure of

non-citizens from Kazakhstan, and one for tax offences. He was fined as church leader on 11 June when the fire service claimed that the church building did not have adequate fire safety measures.

Burabai District Police brought a civil case to court to have Pastor Li deported for repeated violations of the law. On 4 July, in a verdict seen by Forum 18, Judge Bayan Adilbekova upheld the police suit and ordered him deported at his own expense within five days of receiving the written verdict.

Pastor Li admitted he had committed the offences, but stressed he had always accepted the punishments immediately without appealing against them, and had always paid the fines promptly. He insisted that when he had violated travel procedures by failing to report his foreign travel when he went to Moscow to a conference, he had been unaware that rules for foreign citizens living in Kazakhstan had changed in January 2012.

The verdict notes that the fact that Pastor Li has a wife and children in Kazakhstan is irrelevant to the deportation decision.

During the hearing, Pastor Li's wife Bota spoke up to complain that the authorities wanted to deport her husband because of his role as Grace Church pastor, according to the verdict.

Judge Adilbekova denied absolutely to Forum 18 that Pastor Li's religious affiliation played any role in the decision to deport him. "It was of no significance at all," she insisted to Forum 18 from the district centre Shchuchinsk on 3 October. "I didn't even consider this." When Forum 18 pointed out that Pastor Li's wife had mentioned her suspicions during the hearing, the Judge claimed this had been raised only after the completion of the hearing.

Proportionate?

Asked whether it was a proportionate punishment to deport an individual with legal residency and a wife and family in Kazakhstan for administrative offences which he openly admitted, Judge Adilbekova responded: "All was done in accordance with the law."

Asked whether such a harsh punishment was usual for non-citizens who violate the Code of Administrative Offences on that number of occasions, the Judge responded: "It is the first time I have considered such a case." She declined to say whether the police are obliged to bring a deportation suit to court if a non-citizen has committed a number of administrative offences and paid the fines. "That's not a question for me."

Yerlik Borzhaksimov, deputy head of Burabai District Police, insisted that Pastor Li had to be deported because he committed administrative violations. "So we brought the case to court," he told Forum 18 from Shchuchinsk on 3 October. He denied that Pastor Li had been singled out because of his religious affiliation. "There was no religious subtext. We'd have done the same had it been a businessperson or whoever."

Borzhaksimov rejected suggestions that the punishment had been disproportionate, especially given that his wife and their young children are Kazakh citizens and remain in Borovoe without him. "Ask the court," he told Forum 18.

Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law rejects such arguments. "I believe minor administrative offences should not have a cumulative effect and be used for deportation of a foreigner who has a permanent residence permit," he told Forum 18. "This is a typical religious case. If everyone who was fined for minor violations of traffic rules in Kazakhstan were to be deported, there would be practically no foreigners left."

Hasty departure

Pastor Li was required to go to the Migration Police on 5 July, the day after the court ordered his deportation, his wife told Forum 18. They stamped his passport to say he was being deported. On 9 July Migration Police officers accompanied him to the airport and put him on a flight out of Kazakhstan. "He can't return for five years," Bota Li lamented.

She added that they had lodged an appeal against the verdict in late July. However, Akmola Regional Court sent the appeal back on 8 August, refusing to hear it, according to the Court website. Bota Li told Forum 18 she received official notification of this from the Regional Court about ten days after that. "It said the appeal could not be considered because the decision had been in line with the law," she told Forum 18.

"We're trying to continue legal moves," Bota Li added, "but what can we do? We're believers, so we'll pray."

Orthodox priest reprieved?

By contrast, Russian Orthodox priest Fr Sofrony (Pyotr Yevtikheyev) - a 44-year-old Russian citizen who has lived in Kazakhstan since 1991 - appears to have won his appeal against a 29 July court decision to deport him. The priest is well known in Kazakhstan for the orphanage for children and the home for old people he established next to his church in the village of Tuymebayev in Almaty

Region. The centres care for more than 100 children and more than 100 old people (see F18News 30 September 2013 http://www.forum18.org/archive.php?article_id=1880).

On 2 October, a panel of judges chaired by Judge Tlektes Barpibayev at Almaty Regional Court overturned the lower court decision that Fr Sofrony was to be deported, Kazis Toguzbayev of Radio Free Europe's Kazakh Service noted the same day, citing the priest's lawyer Vladislav Madzigon.

"Through this court decision, God is instructing me to work harder for the children and old people," Fr Sofrony told Radio Free Europe after the court decision.

At the end of the hearing, the judge read the substantive part of the verdict only, not the full decision. Forum 18 has viewed film of the judge reading the part of the decision annulling the 29 July deportation decision, filmed by the Eurasia television channel.

Forged documents?

Also present in court was Aliya Akhmedieva, the local representative of the Kazakhstan International Bureau for Human Rights and the Rule of Law. She noted in a statement after the hearing that the Migration Police did not attend. "At the hearing, it was established that many documents which figured in the case had been obvious forgeries."

Akhmedieva cited Fr Sofrony's second lawyer, Viktor Syomin, as complaining that among case documents that "showed signs of forgery and falsification" was a record of an earlier administrative punishment against him. Syomin said Fr Sofrony's lawyers would be pursuing this issue. Fr Sofrony also told the Bureau that he is seeking to identify those guilty of forging documents in the case.

Strangely, despite the video and oral testimony from those who heard the judge delivering the substantive part of the verdict, a written text of the 2 October decision which Forum 18 obtained from judicial sources says the court rejected the appeal and left the 29 July decision unchanged.

A specialist at the Regional Court chancellery for civil cases – who did not give her name – refused to explain which court decision was correct, the oral or the written decision. "Firstly you are not a party to the case," she told Forum 18 on 3 October. "And the court decision is not ready yet and is only issued five days after the hearing."

However, Yevgeny Drobyazko, spokesperson for the Regional Court, insisted to Forum 18 that the written text was a "mistake". "Yesterday's decision annulled the deportation," he told Forum 18 from the regional capital Taldykurgan [Taldyqorgha] on 3 October. "Today's written decision was a mistake." Asked how such a mistake could have arisen, he responded: "We don't understand. Maybe hackers got into our website."

Why the deportation attempt?

Officials refuse to explain why they lodged the deportation suit. "I can't discuss this – I don't have the right," Sultanat Ainakulova, an official of the Ile District Prosecutor's Office who took part in court hearings on the case, told Forum 18 on 3 October. "Ask the court." She then put the phone down. Forum 18 was thus unable to ask her if documents had been forged or falsified to help the case to deport Fr Sofrony.

No one at the Almaty Region Migration Police was prepared to discuss with Forum 18 on 3 October why it had sought to have Fr Sofrony deported. (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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