

22 January 2014

KAZAKHSTAN: Criminal trial begins for 67-year-old pastor

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The criminal case launched against retired Presbyterian pastor Bakhytzhan Kashkumbayev in July 2011 finally reached a court in Kazakhstan's capital Astana today (22 January), Forum 18 News Service notes. The 67-year-old pastor has gone deaf in one ear and suffered heart problems during eight months in prison and psychiatric hospital. He rejects the charges of harming health, inciting hatred, propagating extremism and leading an organisation that harms others. The most serious charge carries a maximum ten-year prison term. The trial will resume after 31 January. Meanwhile, the criminal investigation of atheist writer Aleksandr Kharlamov in the town of Ridder continues. Deputy Head of East Kazakhstan Police Kadyrbek Nurgaliyev claimed to Forum 18 the criminal case against Kharlamov was suspended until the end of the "religious expert assessment" of his works. "Kharlamov should not worry, we are not intending to put him in prison."

Eight months after his arrest and despite his failing health, 67-year-old retired Presbyterian Pastor Bakhytzhan Kashkumbayev was brought from prison in handcuffs today (22 January) for the first hearing in his criminal trial in a court in Kazakhstan's capital Astana. He faces charges of harming health, inciting hatred, propagating extremism and leading an organisation that harms others, Forum 18 News Service notes. The charges carry a maximum penalty of eight, seven, ten and six years' imprisonment respectively. He denies all wrongdoing.

Meanwhile, the criminal investigation of atheist writer Aleksandr Kharlamov in the town of Ridder in East Kazakhstan Region on charges of "inciting religious hatred" continues. Prosecutors have commissioned further "expert analyses" of his writings on religion extracted from his computer after it was confiscated from him in February 2013 (see below).

Trial begins

Retired pastor Kashkumbayev's trial is taking place under Judge Gulzhakhan Ubasheva at Astana's Almaty District Court No. 2. Leading the prosecution case is Olzhas Shalabayev from Astana's Prosecutor's Office. Kashkumbayev is being represented by his lawyer, Nurlan Beisekeyev. Despite the trial already being underway, the lawyer has still not been given a copy of the indictment, Beisekeyev told Forum 18.

About 70 people were present in court to support retired pastor Kashkumbayev, among them foreign diplomats, one person present in Court today (22 January) told Forum 18.

Svetlana Glushkova, Astana correspondent of Radio Free Europe's Kazakh Service noted that Lyazzat Almenova – the main "victim" being presented by the prosecution – is being represented in court by her sister Guldana Almenova. Both sisters were present in court. Lyazzat Almenova has repeatedly told Forum 18 and others that she is not a victim and that she does not agree with her sister on this (see below).

The observer told Forum 18 that the Lawyer made several objections to the Court that the trial is "not fair", that Kashkumbayev is being kept in custody in "torturous conditions", and that he should have been operated on his ear already in November 2013 but the authorities did not allow this. The Court dismissed his objections.

After Beisekeyev had to leave the court at 5 pm for another case, the Prosecutor submitted a motion to the court to withdraw two of the charges against Kashkumbayev, those under Article 233-1 and Article 337 (see below).

The Court adjourned the trial until after 31 January, the deadline given to Lawyer Beisekeyev to study the case materials. The observer said that Beisekeyev was not satisfied with time given for study of the case and told the Court that it was "too short".

Judge Ubasheva ordered that a hearing be held on 3 February to determine what detention measures should be imposed on Kashkumbayev as the case proceeds. She ordered that the head of the medical unit at the Investigation Prison attend the hearing.

When the 17 volumes of case materials were presented to retired pastor Kashkumbayev in late December 2013, he was forced to study them alone to prepare himself for the trial, Glushkova of Radio Free Europe noted on 2 January. Beisekeyev had been

unavailable in hospital.

Criminal charges

Retired Pastor Kashkumbayev is facing five serious charges under four Criminal Code articles, according to case documents seen by Forum 18:

- Article 103, Part 2, Point a punishes "Intentional inflicting of serious harm to health" in relation to "two or more persons". Punishment is between four and eight years' imprisonment.

The main person whose health the state claims has been harmed has strongly rejected the charge and has stated in writing to Astana Prosecutor's Office that Kashkumbayev is innocent (see below).

- Article 164, Part 2 punishes "Deliberate actions aimed at the incitement of social, national, clan, racial, or religious hatred 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" when conducted "by a group of people or more than once, or when accompanied by violence or the threat of its use, or by a person using their official position or by a leader". Punishments range from a fine to imprisonment of up to seven years.

The alleged "religious extremism" is possession of two books entitled "Healing the Broken Family of Abraham" and "New Life for Muslims", his lawyer told Forum 18. Kashkumbayev faces two counts under this Article.

The Russian translation of "Healing the Broken Family of Abraham" by American Protestant Don McCurry is the only religious book known to have been banned as "extremist" in Kazakhstan. On 22 November 2012 Almaty's Almaly District Court No. 2 banned its publication, import and distribution in Kazakhstan. It found that the book contains "elements of incitement to religious hatred and discord" (see F18News 9 October 2013 http://www.forum18.org/archive.php?article_id=1885).

Atheist writer Kharlamov is being investigated under Article 164 Part 1, which punishes the same actions committed by an individual in a personal capacity (see below).

- Article 233-1, Part 2 punishes "propaganda of terrorism or extremism or public calls to conduct acts of terrorism or extremism" when conducted using one's official position. Punishment is imprisonment of between five and ten years.

- and Article 337, Part 1 punishes "creation or leadership of religious or social organisations whose activity involves violence against citizens or the causing of other harm to their health, or the incitement of citizens to refuse to carry out their civil obligations or to carry out other illegal activities, as well as the creation or leadership of parties on a religious basis or political parties and professional unions financed from sources banned by the laws of Kazakhstan". Punishments range from a fine to imprisonment of up to six years.

Earlier defence arguments rejected

On 10 January another judge at Astana's Almaty District Court No.2 rejected retired Pastor Kashkumbayev's suit to disqualify Judge Ubasheva of the same Court from hearing the trial, according to the decision seen by Forum 18. Under Article 90 of the Criminal Procedure Code she cannot do this as in 2012 she ordered the only person whose health the state claims was harmed to psychiatric examination, and thus became a party to the case. A September 2012 "expert assessment" of church member Lyazzat Almenova claimed regular attendance at church had led her to develop "paranoid schizophrenia". She herself and Church members have vigorously rejected such claims (see F18News 7 October 2013 http://www.forum18.org/archive.php?article_id=1884).

The Court also rejected the defence's plea to release Kashkumbayev from custody as he is old and, Beisekeyev told Forum 18 on 21 January, "needs an urgent operation on his ears. One has become totally deaf, and the other one hears with great difficulty". Kashkumbayev also has chronic heart problems.

An assistant to Nurlan Aben, the head of Astana's Investigation Prison where retired pastor Kashkumbayev is being held, dismissed any concerns over his health. While admitting that the retired pastor is not well, the assistant – who did not give his name – insisted to Forum 18 on 3 January that "he is under medical supervision of our staff". "He will not die," the assistant added.

Retired Pastor Kashkumbayev's prison address is:

Bakhytzhan Kashkumbayev

SI-12 (ETs 166/1)

Alash Tas Zhol street 30/1

010000 Astana

Kazakhstan

"The family is being on purpose isolated from Kashkumbayev"

Family members, including Kashkumbayev's wife Alfiya Kashkumbayeva, have seen Kashkumbayev only twice since 7 October 2013. On the second time, the 10 January 2014 hearing, family members and some international observers were expelled from the Court as defence arguments on the suitability of the Judge allegedly needed to be examined behind closed doors.

A person close to the family, who does not wish to be named for fear of state reprisals, and Kashkumbayev's lawyer Beisekeyev told Forum 18 that they do not think that the case is being tried fairly. "How can I believe that the authorities have good intentions? Kashkumbayev is old and in ill health, needs a medical operation, and is still kept behind bars", Beisekeyev observed. "The family is being on purpose isolated from Kashkumbayev to break him down", the family friend said.

Long-standing state hostility

Like atheist writer Kharlamov, retired Pastor Kashkumbayev has also been subjected to arrest, detention and forcible psychiatric examination. Despite facing criminal charges of allegedly harming a congregation member's health, 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" (see F18News 26 July 2013 http://www.forum18.org/archive.php?article_id=1860).

On 17 May 2013, Kashkumbayev was arrested and subsequently ordered to be held for pre-trial detention on unclear charges, apparently including praying and singing (see F18News 2013 http://www.forum18.org/archive.php?article_id=1837). While in pre-trial detention Kashkumbayev spent just over a month undergoing enforced psychiatric examination, from 5 August to 2 September, before being transferred back to pre-trial detention in Astana (see F18News 4 September 2013 http://www.forum18.org/archive.php?article_id=1871).

Just minutes after he was freed from Investigation Prison on 8 October 2013 to be transferred to house arrest, three police (or possibly KNB secret police) agents re-arrested Kashkumbayev on new criminal accusations of being an "extremist" or "terrorist". The police investigator Captain Vyacheslav Glazkov also forcibly – and illegally - deprived Kashkumbayev of his lawyer (see F18News 9 October 2014 http://www.forum18.org/archive.php?article_id=1885).

Raids part of same case

The authorities have long been seeking to punish the leaders of his Presbyterian Grace Church, but the reason or reasons for this remain unclear. Masked police searched the Church on 3 October 2012 and seized computers, valuables and religious books they insisted were "extremist" (though they could not explain what was "extremist" or who had declared them so).

As part of the same criminal case against retired Pastor Kashkumbayev, the same day prosecutors raided two other Protestant organisations in Astana. During the raid on the Bible League of Kazakhstan, they seized the computer belonging to its head, Igor Voronenko. During the raid on one of the city's Baptist churches, they seized copies of five books. Voronenko and Baptist pastor Gennadi Vrublevsky were accused of distributing "extremist" literature and on 7 December 2013 fined nearly four weeks' average wages each (see F18News 6 January 2014 http://www.forum18.org/archive.php?article_id=1912).

Nine days later the unrelated New Life Church in Oral (Uralsk) was raided in the same case (see F18News 19 October 2012 http://www.forum18.org/Archive.php?article_id=1756).

"Hallucinogens" smear

Police requested church members to give blood specimens to see if the Church uses "hallucinogenic" substances for Communion. The alleged "hallucinogens" were a commonly drunk local red tea used as a non-alcoholic communion wine. Police questioning at that time ranged far beyond the alleged "harm" they were supposedly investigating (see F18News 19 October 2012 http://www.forum18.org/Archive.php?article_id=1756).

After the October 2012 raids, detentions and confiscations, police told church members that a case had been opened on the complaint of a church member's mother on 21 July 2011 – almost 15 months earlier. The mother alleged that her daughter had suffered psychological harm after attending the church. Church members strongly denied these claims and noted that police displayed a curious lack of interest in the allegations they were supposedly investigating (see F18News 19 October 2012 http://www.forum18.org/Archive.php?article_id=1756).

Atheist writer still under criminal investigation

The "extremism" criminal case against atheist writer Kharlamov continues. "I have to report to police, but I don't need to do this every day," he told Forum 18 from his home in Ridder on 21 January. He must remain in the town and "should behave properly in public". But, he observed, "the release agreement does not specify what 'proper behaviour' is".

"Religious expert assessment"?

On 15 October 2013 Captain Alikhat Turakpayev of Ridder Police, who leads the investigation, gave Kharlamov a scanned copy of yet another "religious expert assessment" of his writings, Kharlamov told Forum 18. This claimed that his "views of the Christian religion can incite hatred, and thus can be described as extremist".

Kharlamov said that he immediately filed complaints against the "expert assessment" to the regional Police and the Prosecutor's Office, and asked for the criminal case against him to be closed. He told Forum 18 that he also wrote in his complaint that the "expert" employed by the state is not independent and can only produce results which will suit the state.

East Kazakhstan Regional Prosecutor's Office has not responded. Kadyrbek Nurgaliyev, Deputy Head of East Kazakhstan Police, responded to Kharlamov on 13 January 2014 in an official letter that "the case cannot be closed as it still is in the stage of judicial psychological expertise".

Captain Turakpayev refused to comment on the case. Asked by Forum 18 on 22 January why Kharlamov is being prosecuted for expressing criticism of religion, he replied that "I will not make any comments until the case is over". He refused to say when the case will be over, and whether there is any chance of Kharlamov being acquitted. Turakpayev then put the phone down.

Deputy Head of East Kazakhstan Police Nurgaliyev on 22 January claimed to Forum 18 the criminal case against Kharlamov was suspended until the end of the "religious expert assessment" of his works. He added that the 15 October 2013 "religious expert assessment" was "not final" and that there will be more "religious expert assessments".

"Kharlamov should not worry, we are not intending to put him in prison," Nurgaliyev claimed to Forum 18. "We just want to complete the case." He said that he does not know when the case will be closed. "The investigation will decide that."

"No-one suffered from what he wrote on religion"

Like retired Pastor Kashkumbayev, atheist writer Kharlamov has also been subjected to arrest, detention and forcible psychiatric examination. He was freed from prison on 4 September 2013 after nearly six months' pre-trial detention, having been arrested on 14 March. During that time he was held for a month in a psychiatric hospital (see F18News 4 September 2013 http://www.forum18.org/archive.php?article_id=1871).

While being held in psychiatric hospital, Kharlamov was not allowed to wear glasses or even have toothbrushes, allegedly on grounds of safety. He was therefore unable to read anything or clean his teeth (see F18News 12 June 2013 http://www.forum18.org/archive.php?article_id=1846).

One doctor told Kharlamov that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities". The criminal investigation against the 63-year-old continues under Criminal Code Article 164, Part 1 for allegedly "inciting religious hatred" (see F18News 7 October 2013 http://www.forum18.org/archive.php?article_id=1884).

Despite the state's criminal charge and continued "expert examination" of Kharlamov's writings, the police investigator responsible for the case, Captain Turakpayev, admitted to Forum 18 in April 2013 that "no-one suffered from what he wrote on religion". But Turakpayev refused to explain on what, if any, medically-relevant evidence he ordered two psychiatric examinations of Kharlamov (see F18News 18 April 2013 http://www.forum18.org/Archive.php?article_id=1826).

Systemic violations

The arrests, detentions and forcible psychiatric examinations of retired Pastor Kashkumbayev and atheist writer Kharlamov are part of a wider pattern of systemic Kazakh government violations of freedom of religion or belief and other human rights.

Two laws imposing severe restrictions on freedom of religion or belief and breaking the country's human rights obligations came into force in October 2011. A new Religion Law among other restrictions imposes a complex four-tier registration system, bans unregistered religious activity, and imposes compulsory state censorship of religious literature and objects. An expanded Administrative Code Article 375 ("Violation of the Religion Law") - replacing the previous Article 375 - was introduced at the same time in an Amending Law. It punishes a wide range of often unclearly defined "offences" with possible fines for individuals and groups with state-registration, and bans on the activity of "guilty" religious groups (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Since then, all mosques outside state control are being closed down. The imam and members of one of the independent mosques denied re-registration after intense state pressure - who asked not to be identified - told Forum 18 that when they met to discuss applying for new registration, officials "came out of nowhere" and threatened them with punishment (see F18News 2 October 2013 http://www.forum18.org/archive.php?article_id=1882).

Two Baptists were imprisoned for 48 hours each from 9 January 2014 in the northern Akmola Region, for refusing to pay fines handed down in 2013 to punish them for exercising freedom of religion or belief without state permission. Numerous fines continue to be imposed under Administrative Code Article 375 for this "offence" (see F18News 14 January 2014 http://www.forum18.org/archive.php?article_id=1915). In 2013 alone, more than 150 people are known to have been fined for exercising this internationally-recognised human right (see F18News 11 November 2013 http://www.forum18.org/archive.php?article_id=1895).

Among the many targets of state censorship of religious literature and objects, including bans on bookshops selling of such items without state permission, have been Russian Orthodox icons. After 12 icons and three Bibles were seized from a commercial bookseller in Oral (Uralsk) in West Kazakhstan Region, the bookseller is due to face an administrative court where he may be fined several weeks' average wages and the icons and Bibles might be ordered destroyed. "Everything is OK now – he has agreed not to sell religious materials," Salamat Zhumagulov, the state religious affairs official who seized the items, told Forum 18. Saktagan Sadvokasov, spokesperson for the state Agency of Religious Affairs claimed that "the Kazakh state must defend our citizens from harmful materials". Asked by Forum 18 whether he has known icons which are harmful, he replied that "we have experts to check icons" (see F18News 8 January 2014 http://www.forum18.org/archive.php?article_id=1913). (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=1352.

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.

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