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KAZAKHSTAN: Two criminal cases continue as new Criminal Code signed

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

Retired Presbyterian Pastor Bakhytzhn Kashkumbayev and atheist writer Aleksandr Kharlamov – both in their sixties – are still being investigated on criminal charges, to punish them for exercising the right to freedom of religion or belief. Kashkumbayev – who has already been convicted in one criminal case – faces possible further punishment for allegedly harming a second church member's health. Kharlamov faces possible punishment for articles he wrote in defence of atheism. Meanwhile, President Nursultan Nazarbayev has signed into law Kazakhstan's new Criminal Code. Forum 18 News Service notes that a proposed possible broadening of the "crimes" people might be accused of for exercising the right to freedom of religion or belief is not in the final text. But the same "offences" seem likely to be in the new Code of Administrative Offences.

Criminal cases continue in Kazakhstan against at least two individuals apparently to punish them for exercising the right to freedom of religion or belief. The two men known to be under criminal investigation are retired Presbyterian Pastor Bakhytzhn Kashkumbayev (who has already been convicted in one criminal case) and atheist writer Aleksandr Kharlamov, Forum 18 News Service notes. Both vigorously deny any wrongdoing.

Forum 18 is aware of other members of religious communities who have been told by police or prosecutors that they are under criminal investigation, apparently to punish them for exercising the right to freedom of religion or belief. However, in these cases the individuals did not want publicity, insisting that the accusations were being resolved.

The criminal cases continue as President Nursultan Nazarbayev signed into law the controversial new Criminal Code, which mostly takes effect from the beginning of 2015. He also signed the new Code of Administrative Offences and the new Criminal Implementation Code, the final texts of which has not yet been made public (see below).

While criminal prosecutions to punish individuals for exercising the right to freedom of religion or belief are comparatively rare, administrative prosecutions – resulting in fines or up to ten-day imprisonments – are frequent (see F18News 29 May 2014 http://www.forum18.org/archive.php?article_id=1963).

Criminal case against Pastor Kashkumbayev

The 67-year-old Kashkumbayev, retired pastor of Grace Presbyterian Church in the capital Astana, is being investigated by the city's Prosecutor's Office of harming the health of another former parishioner, S. Kaliev. Kashkumbayev vigorously denies harming anyone's health during his ministry. He is being investigated under four Criminal Code Articles, according to case materials:

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

- Article 164, which punishes: "Incitement of social, national, clan, racial, or religious hatred or discord, insult to the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their religion, class, national, generic or racial identity, committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, clan, racial, or religious hatred or discord".

Part 2, which Kashkumbayev is charged under, punishes these actions "committed by a group of persons, a group with prior planning, repeatedly, with violence or threat of violence, or by an official, or by the leader of a public association". If convicted he faces five to 10 years imprisonment, "with deprivation of the right to hold specified positions or to engage in specified activity for up to three years".

- Article 233-1, Part 2, which 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, which 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.

The head of the Department overseeing the case against Pastor Kashkumbayev at Astana Prosecutor's Office, Ruslan Azambayev, refused absolutely to confirm that the criminal case is continuing or when it is likely to be concluded. "This is official information," he told Forum 18 on 9 July, refusing to provide any details. He referred further enquiries to Investigator Kanatzhan Kamalbek in his Department. However, his phone went unanswered the same day.

"Extra investigation"

This case was originally part of an earlier criminal case against Pastor Kashkumbayev, but was separated from it in January for separate "extra investigation" (see F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

Pastor Kashkumbayev's lawyer, Nurlan Beysekeyev, tried to challenge the 17 February decision by Judge Gulzhakhan Ubasheva of Astana's Almaty District Court No. 2 to send the case for further investigation. However, in a decision seen by Forum 18, on 30 April Judge Suleimen Ezhebekov of Astana City Court rejected the suit.

The original criminal case against Pastor Kashkumbayev was formally launched in February 2012, four months after his retirement. He was arrested in May 2013 and held in custody (including a month in enforced psychiatric detention) until the verdict in the trial was handed down on 17 February 2014.

Pastor Kashkumbayev was convicted under Article 103 of harming the health of another church member, Lyazzat Almenova, although she has repeatedly insisted to Forum 18 and to others that her health has not been harmed. He was given a four-year suspended prison term, was ordered to live under restrictions, and was ordered to pay the representative of his alleged "victim" large "moral damages" of 2 Million Tenge (65,800 Norwegian Kroner, 7,900 Euros or 10,800 US Dollars) (see F18News 17 February 2014 http://www.forum18.org/archive.php?article_id=1929).

Criminal case against atheist Kharlamov

The criminal investigation of Kharlamov, an atheist writer and public activist in the town of Ridder in East Kazakhstan Region, continues, he told Forum 18 from the town on 9 July. He is being investigated for articles he wrote in defence of atheism under Criminal Code Article 164, Part 1 for allegedly "inciting religious hatred", charges he vigorously rejects.

The case is now being led by Investigator Mirhad Aytkali of Ridder Town Police. He absolutely refused to discuss any progress on the case with Forum 18 on 9 July. The telephone of Denis Yelenbesov, head of the Investigation Department of Ridder Town Police, went unanswered the same day.

Kharlamov, who marked his 64th birthday on 2 July, remains under restrictions in Ridder. He must remain in the town and "should behave properly in public". Police have not returned computers they seized from him during a house search in February 2013, the month before his arrest, he told Forum 18.

"Investigator Aytkali hasn't told me when the case is likely to come back to court," Kharlamov told Forum 18. He insists that the criminal case against him should be closed. "But they don't want to do this because they would then have to investigate those who opened it against me – they would bear responsibility."

Kharlamov said he wants those responsible for launching the "illegal" case and the six months he spent in pre-trial detention in 2013 (including – like Pastor Kashkumbayev – one month enforced psychiatric detention) to be held to criminal account and forced to pay him damages. "Why forgive them?" he asked. "They're state criminals and they'll only do the same to others."

Police claim to have found 12 of Kharlamov's writings on religion in September 2012. Although they admitted to Forum 18 that no-one was harmed by these writings, police ordered a "psychological/philological expert analysis" of the texts. He was arrested in March 2013, and while being held in detention was sent to a psychiatric hospital. One doctor told Kharlamov that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities" (see F18News 7 October 2013 http://www.forum18.org/archive.php?article_id=1884).

Kharlamov's trial began on 19 July 2013 at Ridder City Court, but the case was sent back for further investigation on 13 August 2013. He was freed in September 2013 while the investigation continued (see F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

Criminal Code signed

The initial text of the new Criminal Code was prepared by the General Prosecutor's Office (see F18News 18 March 2013 http://www.forum18.org/archive.php?article_id=1814). It reached the lower house of Parliament, the Majilis, in October 2013. After completing passage in Parliament, it was sent to the President for signature on 18 June 2014. President Nazarbayev signed the new Criminal Code into law on 3 July, according to the presidential website.

The new Criminal Code was officially published on 9 July in the Kazakh-language paper Egemen Kazakhstan and the Russian-language paper Kazakhstanskaya Pravda.

Almost all provisions of the new Criminal Code enter into force on 1 January 2015.

President Nazarbayev signed into law the new Administrative Code and the new Criminal Implementation Code on 5 July, but the final texts of these have not yet been made publicly available. Both are expected to be officially published shortly (see F18News 21 July 2014 http://www.forum18.org/archive.php?article_id=1979).

Urgent pleas ignored

The President's decision to sign the new Codes came despite urgent pleas from local human rights defenders, including a last-ditch appeal from 172 groups and individuals, published on the website of the Kazakhstan International Bureau for Human Rights and the Rule of Law on 19 June. An earlier joint statement from 119 human rights defenders condemning the new Codes as "considerably restricting and harming human rights", and noted that "reasoned proposals from civil society were ignored" (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959)

Unchanged Criminal Code Article

Article 164 of the old Criminal Code has been taken unchanged into Article 174 of the new Criminal Code. The new Article 174 continues existing provisions which are used, as in the cases of Aleksandr Kharlamov and Pastor Kashkumbayev, to punish people for exercising the right to freedom of religion or belief.

- Article 174

Article 174 punishes: "Incitement of social, national, clan, racial, or religious hatred or discord, insult to the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their religion, class, national, generic or racial identity, committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, clan, racial, or religious hatred or discord".

Part 1 punishes these actions committed by individuals. If convicted, they face two to seven years imprisonment, or two to seven years restricted freedom. Typically, during sentences of restricted freedom individuals live at home, but are not able to leave their town or city without seeking permission. They are often also banned from visiting restaurants, cafes or places of public entertainment.

Part 2 punishes these actions "committed by a group of persons, a group with prior planning, repeatedly, with violence or threat of violence, or by an official, or by the leader of a public association". If convicted they face five to 10 years imprisonment, "with deprivation of the right to hold specified positions or to engage in specified activity for up to three years".

New Criminal Code Articles

Two Articles of the new Criminal Code continue existing provisions which could be used to punish people for exercising the right to freedom of religion or belief. Both are slightly amended versions of Articles already in the current Criminal Code.

None of the proposed new punishments in earlier Criminal Code drafts which would have widened the scope of the Code to punish exercising the right to freedom of religion or belief survived into the final version, Forum 18 notes.

- Article 404

The new Article 404 is entitled "Creation, leadership or participation in the activity of illegal social or other associations". This replicates exactly the crimes of the current Criminal Code Article 337, though with several increased penalties.

Part 1 of this Article will punish: "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".

The existing Criminal Code Article 337 was used in the trial of retired Pastor Kashkumbayev (see above).

Punishments for violating Part 1 of the new Article 404 will be a fine of up to 6,000 Monthly Financial Indicators (MFIs), or corrective labour "up to the same level", or up to six years' restrictions on freedom or imprisonment, with restrictions on holding specific posts or conducting certain unspecified activity for up to six years.

The MFI is set annually, and since 1 January 2014 has been 1,852 Tenge (60 Norwegian Kroner, 7 Euros, or 10 US Dollars). 50 MFIs are equivalent to about one month's average salary.

Part 2 of this Article will punish: "Creating social associations proclaiming or carrying out racial, national, clan, social, class or religious intolerance or exclusivity, calling for the violent overthrow of the constitutional order, subversion of state security, or infringing the state's territorial integrity, as well as leadership of such associations". This would be punished by imprisonment of between three and seven years, with restrictions on holding specific posts or conducting certain unspecified activity for up to three years.

Part 3 of this Article punishes "active participation" in Part 1 or 2 offences. This would lead to almost the same punishments as Part 1, though without any possible ban on conducting certain unspecified activity.

The new Code, like the Code it replaces, does not define clearly much of what is criminalised, including concepts such as "religious intolerance or exclusivity" and actions such as "proclaiming". This allows much scope for arbitrary official actions and prosecutions.

- Article 405

The new Article 405 of the Criminal Code is entitled "Organising or participating in the activity of a social or religious association or other organisation after a court decision banning their activity or their liquidation in connection with extremism or terrorism they have carried out".

Part 1 of the new Article punishes organising the activity of social or religious groups which have been banned for conducting extremist or terrorist activity with a fine or up to six years' imprisonment. Part 2 of this Article punishes those who participate in such banned extremist groups with a fine or up to two years' imprisonment.

This Article replicates almost exactly the crimes of the current Criminal Code Article 337-1, though with several increased penalties.

During the new Criminal Code's passage through parliament, the activity to be punished under this Article (which was numbered Article 403 in earlier drafts) was narrowed from that originally proposed (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959). Earlier provisions punishing leading, participating in or financing unregistered religious activity which does not involve terrorism or extremism seem likely to remain punishable (as at present) in the new Administrative Code.

However, "extremism" is frequently used by state officials to justify violations of freedom of religion or belief (see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1939). Similarly, state officials have refused to make public what they consider to be "extremist" in banned religious books and what books are banned (see F18News 6 January 2014 http://www.forum18.org/Archive.php?article_id=1914).

"In accordance with the humanisation of criminal legislation, several parts of Article 403 [405 in the final version] were excluded, with subsequent inclusion in the draft Code of Administrative Offences as administrative offences," the Senate Press Service claimed on 5 June as Senators made final amendments to the Criminal Code shortly before they approved it. (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=1939.

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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If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY