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KAZAKHSTAN: Muslim preacher the latest prisoner of conscience

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

Kazakhstan's trial of a Muslim prisoner of conscience, Saken Tulbayev, is due to resume sometime after 12 June at an Almaty court, Forum 18 News Service has learned. He has been detained as a prisoner of conscience since 1 April, having been first fined for preaching at a railway station without state permission. A criminal case based on 43 leaflets his family insists were planted during a three-hour police night raid on their home was then opened. Police produced "witnesses" that Tulbayev states he has never met. While in detention he is being denied a Koran and family visits and he faces up to seven years' jail if convicted. But a case against a Baptist, Nikolai Novikov, who refused to pay a fine for exercising freedom of religion or belief without state permission seems about to be closed after worldwide protests. "They told me there were so many appeals it seemed that half the world had written", he told Forum 18. The second criminal case against retired Pastor Bakhytzhan Kashkumbayev appears to have halted. But the case against atheist writer Aleksandr Kharlamov, who was detained in a psychiatric hospital, continues.

Kazakhstan's trial of a Muslim prisoner of conscience who exercised his freedom of religion or belief without state permission, Saken Tulbayev, is due to resume sometime after 12 June at a court in the commercial capital Almaty, Forum 18 News Service has learned. He has been a prisoner of conscience in detention since 1 April and his trial began in mid-May, seven weeks after his arrest. He denies the state's charges of inciting religious hatred and participating in a banned "extremist" organisation, the Muslim missionary Tabligh Jamaat movement. Tulbayev faces up to seven years' imprisonment if convicted.

"They want to finish the trial quickly," his sister Feruza Tulbayeva insisted to Forum 18. "We believe this case has been fabricated as my brother is not involved in anything and presents no harm to anyone."

"The case is connected to Saken Tulbayev's religious activity," Gulmira Kuatbekova, a lawyer who is observing the trial for the Kazakhstan International Bureau for Human Rights and the Rule of Law, told Forum 18 from Almaty on 27 May. She described the conducting of the investigation and start of the trial in Kazakh – a language Tulbayev does not understand well – as a violation of his rights.

UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association Maina Kiai has noted "a general unwillingness to properly protect human rights in the country, and of a sense of impunity by some officials". He also noted state intimidation of those he met (see F18News 25 February 2015 http://www.forum18.org/archive.php?article_id=2043).

Fined for Islamic preaching

Tulbayev, who will mark his 46th birthday on 16 June, has prayed the namaz (Muslim prayers) regularly for 20 years with no problem, his sister told Forum 18. "He goes to many mosques and speaks of himself as a "real Muslim". He is well known in Islamic circles and more widely around town." She said he is recognisable by his long beard and south Asian clothes.

Tulbayeva noted that her brother tries to travel to Pakistan for religious reasons for four months each year when he has money. He supports himself and his family by undertaking irregular work.

The authorities have already handed Tulbayev's case to court bailiffs for failing to pay a fine handed down in absentia in Oskemen in East Kazakhstan Region on 30 December 2014, to punish him for "missionary activity" without state permission 10 weeks earlier. But he has not been placed on the Justice Ministry's exit ban list barring him from leaving the country, unlike many others who have refused to pay fines imposed on them for exercising their right to freedom of religion or belief. These are for such "offences" as meeting for worship without state permission, or sharing religious literature which has not been censored by the state (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

At least 14 Baptists and Muslims are known to have in 2014 become short-term prisoners of conscience for refusing to pay fines for the "offence" of exercising their freedom of religion or belief without state permission (see eg. F18News 8 October 2014 http://www.forum18.org/archive.php?article_id=2004).

Tulbayev was punished for preaching to passengers at a railway station in Oskemen. Judge Edil Kuderbayev of Oskemen

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Specialised Administrative Court found Tulbayev guilty under the then Code of Administrative Offences' Article 375, Part 3, according to the decision seen by Forum 18. The court decision notes that although Tulbayev was informed of the trial he did not appear and gave no reason for his absence. The Judge fined him 100 Monthly Financial Indicators, 185,200 Tenge (then about 7,320 Norwegian Kroner, 820 Euros, or 1,020 US Dollars). Tulbayev did not appeal against the decision.

The then Article 375, Part 3 punished "Carrying out missionary activity without state registration (or re-registration), as well as the use by missionaries of religious literature, information materials with religious content or religious items without a positive assessment from a religious studies expert analysis".

Article 375, Part 3 has been incorporated into Article 490, Part 3 of the new Administrative Code, which added the new "offence" of "spreading the teachings of a religious group which is not registered in Kazakhstan" (which would technically embrace foreign religious officials at today's government-run "Congress of Leaders of World and Traditional Religions"). Article 490 and other parts of the new Administrative Code – which with the new Criminal Code have been strongly condemned by local human rights defenders - mainly came into force on 1 January 2015 (see F18News 21 July 2014 http://www.forum18.org/archive.php?article_id=1979).

Criminal case

A criminal case was opened against Tulbayev on 10 February, an unidentified security official told local agency Tengrinews on 28 May. He was charged under Criminal Code Article 174, Part 1 and Criminal Code Article 405, Part 2.

Article 174, Part 1 punishes "incitement of social, national, clan, racial, or religious hatred or antagonism" with imprisonment of two to seven years. This replaced the old Criminal Code's Article 164 under which both retired Presbyterian Pastor Bakhytzhan Kashkumbayev and atheist writer Aleksandr Kharlamov have been investigated (see below). Like most of the new Criminal Code, Articles 174 and 405 came into force on 1 January 2015 (see F18News 9 July 2014 http://www.forum18.org/archive.php?article_id=1976).

Article 405, Part 2 punishes "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" with a fine or up to two years' imprisonment.

Long jail terms, the shortest being 18 months, have been imposed on prisoners of conscience alleged like Tulbayev to be part of the banned Muslim missionary movement Tabligh Jamaat who exercise their freedom of religion or belief (see eg. F18News 14 January 2015 http://www.forum18.org/archive.php?article_id=2027).

The investigator on Tulbayev's case, Captain Dias Shortanbayev of Almaty City Police, refused to discuss anything with Forum 18. "I won't talk to you by phone," he kept repeating on 9 June, before putting the phone down.

Raid on family, planted evidence

At about 10.30 pm on 11 February, eight police officers raided the four-room flat in Almaty's Bostandyk District which he shares with his 82-year-old mother, his wife Rumina Fakhrudinova, two of his three children, his sister and her child. "They were looking for proof that my brother was a member of an illegal group," Tulbayeva told Forum 18.

"They found one 10-page brochure which he had picked up in a local mosque. Then as they were leaving, they claimed to have found 43 copies of a leaflet in Kazakh on top of the coat rack in the corridor – I was present in the flat and the leaflets were not there before. I would have seen them immediately had they been there."

The officers claimed to Tulbayev that he had been giving out leaflets outside a mosque at Friday prayers on 6 February. "He stated he didn't," Tulbayeva added.

The police – who filmed their three-hour search - finally left at about 1.30 am on the morning of 12 February, Tulbayeva said.

Accusations based on planted evidence

The two texts the police claimed to have found in the family's home formed the basis of the state accusations. "The first was printed on poor-quality paper, which anyone could find and read. The second, the leaflets, were in Kazakh which my brother can barely read. He couldn't have written them or even translated them."

Tulbayeva told Forum 18 that she had told the officers on film that the leaflets had been planted, and also wrote this on the record of the search that they were obliged to sign. She repeated this when police summoned her for interrogation on 21 March.

However, the police investigator sent the two texts for an "expert analysis". This concluded that they contained elements of

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"extremism", Tulbayev's lawyer told Kazis Toguzbayev of Radio Free Europe.

During one interrogation of Tulbayev, officers confronted him with several people who claimed to have received the leaflets from him. "This was the first time my brother had ever seen these people," Tulbayeva told Forum 18.

All the documents in the case were prepared in Kazakh, a language Tulbayev can barely understand. "We were brought up in a Russian-speaking family and, although he knows Urdu, English and Arabic in addition to Russian, his Kazakh is poor," Tulbayeva noted.

Prisoner of conscience arrested, denied family visits and Koran, beard forcibly shaved

On 1 April police summoned Tulbayev for what he thought would be a further interrogation. However, they arrested him and held him in a cell at the police station. Three days after his arrest, they took him to Bostandyk District Court No. 2 where, in a 15-minute hearing, Judge Shinar Yergaliyeva ordered he be held in pre-trial detention. He was then transferred to Almaty's Investigation Prison, where he has been held ever since. Judge Ardak Esheyev of Almaty City Court rejected his appeal against the detention on 15 April, according to the decision seen by Forum 18.

While prisoner of conscience Tulbayev is held in pre-trial detention, in line with normal procedure, Investigator Shortanbayev's permission is needed for family members to be allowed to visit him or pass on parcels. But he refused to allow any family visits and, Tulbayeva complained, "put all kinds of obstacles in the way of passing on warm clothing". Tulbayev's wife twice went to the police and waited for hours before getting a signature on the form to hand in a parcel. The family also wanted to hand in a copy of the Koran for him, but this was refused.

One of the prison's Deputy Directors, who refused to give his name, defended the denial of the Koran to prisoner of conscience Tulbayev. "The Religion Department of the Akimat [local administration] needs to give permission," he insisted to Forum 18 from the prison on 10 June. "If he gets that permission then it's not a problem."

The Deputy Director denied that this constituted censorship. "Even if it says Koran or Bible on the cover, maybe something else is written there," he claimed. "We don't have theologians here who can check." Strict censorship of religious literature, including severe limitations on where texts may be distributed, is imposed by the state (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Since his 1 April detention, Tulbayev has been required to wear secular clothes rather than the South Asian clothes he favoured. Officials also forcibly shaved his long beard, Tulbayeva told Forum 18.

Inspector Shortanbayev initially investigated Tulbayev under Criminal Code Article 174, Part 1. He later added accusations under Article 405, Part 2. The case was finally completed and handed over to Almaty's Bostandyk District Court No. 2 on 6 May.

Trial

Tulbayev's trial began under Judge Arai Nugmanova with an initial hearing on 22 May, with Kazakh designated as the language of proceedings, although she appears to have known he does not speak it well.

Other trials of people alleged to be part of Tabligh Jamaat have been surrounded in secrecy. Such trials in South Kazakhstan Region ended in December 2014 with a three-year prison sentence being imposed, and in Taldykorgan [Taldyqorghan] in Almaty Region five prison terms of between 18 and 20 months were imposed (see F18News 14 January 2015 http://www.forum18.org/archive.php?article_id=2027).

In contrast, access to hearings in Tulbayev's trial was open. Unlike many other court rooms, this courtroom does not have a cage, so Tulbayev did not have to sit behind bars to participate in the trial. He was brought to court in handcuffs, which were only opened in the courtroom, Toguzbayev of Radio Free Europe told Forum 18.

At the first hearing of the trial proper on 27 May, Tulbayev's lawyer Zhandos Bulkhaiyr lodged a suit to have the case sent back to prosecutors, as it had been conducted in Kazakh, which Tulbayev does not understand well, and to require the two texts (one of which Tulbayev denies having) to be analysed by an expert in theology. Bostandyk District Prosecutor's Office official Askhat Esenov called for this suit to be rejected, trial observer Kuatbekova told Forum 18. Tulbayev lodged a suit for the trial to be heard in Russian and to have all the case materials translated into Russian.

At the end of the 27 May court hearing, Tulbayev's wife was allowed to give him perfume for use in ritual purification before prayers, Tulbayeva told Forum 18.

When the trial resumed on the morning of 28 May, Judge Nugmanova the only one of Bulkhaiyr's request that was accepted was that the trial continue in Russian and that the case materials be translated into Russian. Prosecutor's Office officials promised to hand

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translations to the defence by 8 June.

Tulbayev's lawyer Bulkhaiyr told Toguzbayev of Radio Free Europe after the hearing that he was dissatisfied that the Judge had refused to send the case back to Bostandyk District Prosecutor's Office. Bulkhaiyr pointed to many legal violations in the way the Prosecutor's Office had prepared the case.

Next stage in trial

Tulbayev and his lawyer Bulkhaiyr received the translated case materials in early June. Judge Nugmanova has called a further meeting of the parties to the case on the morning of 12 June.

Despite repeated calls to Bostandyk District Prosecutor's Office between 27 May and 10 June, officials told Forum 18 each time that Esenov was out of the office.

Prisoner of conscience Tulbayev is being held in:

Almaty Investigation Isolation Prison No. 1 LA 155/1

050004 Almaty Region

Almaty

Prospekt Seifullina 473

Kazakhstan

New police target

Although Tulbayev's criminal trial is already underway, prosecutors appear to be targeting at least one other individual known to him for possible prosecution. Police have summoned Abdulaziz (last name unknown), apparently as a suspect, one source close to the case told Forum 18.

"This is really sad," the source told Forum 18. "He's a good man, has many children and little money. He's the only person who made a real effort to try to defend Saken."

"The appeals from around the world have had their effect"

The criminal case being prepared against Council of Churches Baptist Nikolai Novikov appears to be about to be closed. "The appeals from around the world have had their effect," he told Forum 18 from Oral (Uralsk) in West Kazakhstan Region on 10 June. "They told me there were so many appeals it seemed that half the world had written."

The case was opened under Criminal Code Article 430, Part 1. This punishes failure to fulfil a court decision over a period of more than six months with imprisonment or restricted rights for up to three years. Novikov had refused to pay a 2013 fine for offering uncensored religious literature on the streets. He has also refused to pay other fines he was given for exercising his freedom of religion or belief, as they are unjust (see F18News http://www.forum18.org/archive.php?article_id=2056).

Police Investigator Captain Aydin Ispolov visited Novikov on 9 June to take back the documentation on the case, Novikov told Forum 18. The Investigator said that the case was being closed and he would be informed of this in writing.

Oral Prosecutor's Office refused to discuss the case against Novikov with Forum 18 on 10 June.

Atheist's case drifts - but pastor's case closed?

Meanwhile, prosecutors have still not closed or presented to court the criminal case opened against atheist writer and campaigner Aleksandr Kharlamov in January 2013 (see F18News 18 April 2013 http://www.forum18.org/archive.php?article_id=1826). "There's no movement in the case – it's just drifting," he told Forum 18 from his home in Ridder in East Kazakhstan Region on 10 June. "They're following a policy not to convict me and not to close the case."

Kharlamov said the town Prosecutor's Office and the Regional Prosecutor's Office both denied that they are continuing the case against him, referring him to the General Prosecutor's Office.

Criminal cases are required to be completed within a certain deadline or be closed. However, cases can be suspended and then the period of suspension does not count towards the deadline on completing the case.

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Yet while the criminal case drifts with no resolution, Kharlamov remains under restrictions. He must live at home in Ridder and not leave the town without written permission from the state. When he went to Almaty in early 2015 to take part in a conference organised by the Kazakhstan International Bureau for Human Rights and the Rule of Law, he had to go to the police investigation department to get written permission, he told Forum 18.

By contrast, the second criminal case against Astana-based retired Presbyterian Pastor Bakhytzhan Kashkumbayev appears to have halted. It may have been closed because the deadline for completing such cases has expired, a source close to the case told Forum 18 on 10 June.

Inconvenient pastor and atheist?

The long-running investigations of Pastor Kashkumbayev and atheist writer Kharlamov - both in their sixties – were launched apparently to punish them for exercising the right to freedom of religion or belief (see F18News 9 July 2014 http://www.forum18.org/archive.php?article_id=1976).

Kashkumbayev and his Grace Church in Astana were under investigation from July 2011 (see F18News 19 October 2012 http://www.forum18.org/archive.php?article_id=1756) and Kharlamov since January 2013, when the criminal case was launched against him (see F18News 18 April 2013 http://www.forum18.org/archive.php?article_id=1826).

Kashkumbayev was convicted in October 2013 in the first criminal case for allegedly harming a church member's health – which allegation the member in question strongly denies, telling 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). The second case – which now appears to have been closed – was separated from the first during the trial, and he faced possible further punishment for allegedly harming another church member's health (see F18News 9 July 2014 http://www.forum18.org/archive.php?article_id=1976).

Kharlamov faces possible punishment for articles he wrote in defence of atheism. They both strongly deny committing any offence and the proceedings against them were marked by a lack of due legal process and malpractice by the authorities (see eg. F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

Both were detained in a psychiatric hospital for no medical reason, Kharlamov being told by a doctor that this was "because you are an inconvenient person for the authorities" (see F18News 7 October 2013 http://www.forum18.org/archive.php?article_id=1884).

On 22 August 2013, a joint letter by seven United Nations human rights rapporteurs raised "very serious concern" with the Kazakh government about the reports of the "detention and forced psychiatric confinement" of Kharlamov and another human rights defender and fellow victim of psychiatric misuse Zinaida Mukhortova.

In a 22 September 2014 response - made public by the United Nations on 19 February 2015 (HRC/NONE/2014/117) - the Kazakh government insisted that "No violations of rights of Zinaida Mukhortova and Aleksandr Kharlamov were established during the enquiries into the questions raised in the letter of the Special Rapporteurs". The response claimed that their rights under the International Covenant on Civil and Political Rights had not been violated. However, the response failed to justify such assertions. (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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