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KAZAKHSTAN: Muslim prisoner of conscience given nearly 5 years' jail and ban until end 2022 on exercising freedom of religion or belief

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

Kazakhstan has sentenced Muslim prisoner of conscience Saken Tulbayev to four years eight months jail in a labour camp and banned from exercising freedom of religion or belief from his scheduled December 2019 release until December 2022, Forum 18 News Service has learned. The 46-year-old Tulbayev was jailed despite his family and others insisting that evidence was planted by police and false witnesses produced. The ban on the unclearly phrased "activity directed at meeting the religious needs of believers" would appear, a Kazakh legal expert told Forum 18, to include praying alone or with others, reading the Koran or other religious literature, attending a mosque, or going on pilgrimages. Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law described the three-year ban on Tulbayev's freedom of religion or belief as "another total stupidity and total absurdity". He observed to Forum 18 that "it will be interesting how they will prohibit him from going to mosque and so on".

A human rights defender who attended the trial and family members have condemned the imprisonment of Sunni Muslim Saken Tulbayev, accusing prosecutors of planting evidence and using false witnesses, Forum 18 News Service notes. The 46-year-old Tulbayev – who has been in prison since 1 April – received a four year eight month prison sentence in Kazakhstan's commercial capital Almaty at the end of his long-running trial on 2 July.

Judge Arai Nugumanova also banned prisoner of conscience Tulbayev from exercising his freedom of religion or belief until December 2022, three years after his release.

Prayer technically banned?

Between his scheduled release from prison in December 2019 and December 2022, prisoner of conscience Tulbayev is now banned from the unclearly phrased "activity directed at meeting the religious needs of believers". This would appear, a Kazakh legal expert told Forum 18, to include praying alone or with others, reading the Koran or other religious literature, attending a mosque, or going on pilgrimages.

Article 50 of the new Criminal Code allows a ban on sentenced individuals conducting specific state, professional "or other activity" for between one and 10 years as part of a sentence. It remains unclear what specific exercise of freedom of religion or belief Judge Nugumanova has banned Tulbayev from conducting after he completes his prison sentence.

One Kazakh legal expert told Forum 18 that under Kazakh law a court can technically even ban someone from praying – even though this breaks international human rights law. Exercising freedom of religion or belief is defined in Article 1 of the 2011 Religion Law as "activity directed at meeting the religious needs of believers", the legal expert noted. The Religion Law also contains other wide-ranging restrictions on freedom of religion or belief (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). "If they regard prayer as 'meeting religious needs', then they could ban it, strictly speaking."

Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law condemned the three-year ban on Tulbayev's freedom of religion or belief as "another total stupidity and total absurdity". He noted that although Kazakh law allows such a ban – in defiance of the country's international human rights obligations – "it will be interesting how they will prohibit him from going to mosque and so on" he observed to Forum 18 on 8 July.

Too busy to explain freedom of religion or belief ban

Judge Nugumanova's assistant – who would not give her name – said the Judge would not be able to comment on her verdict. Asked whether the three-year ban until December 2022 the Judge imposed will prevent Tulbayev from praying or reading the Koran, or what other manifestations of freedom of religion or belief are banned, she said the Judge was too busy to be able to give

explanations.

"Absolutely fabricated"

One of prisoner of conscience Tulbayev's family friends, Askar Sattarov, insisted that the case was "absolutely fabricated". "Those who organised this spectacle committed fundamental mistakes," he told local KTK television immediately after the verdict was announced. "They have no understanding in questions of religion. For them, any person who engages in freedom of religion or belief is an extremist."

No funds for appeal

Judge Nugumanova had not yet completed the written verdict as of late on 7 July, her assistant told Forum 18 from Almaty's Bostandyk Court No. 2 at the end of the working day on 7 July. She said the 15-day period for lodging an appeal to Almaty City Court begins when Tulbayev's lawyer receives the written verdict.

Tulbayev's family told Forum 18 they have no money to fund a lawyer to appeal against the verdict. "The lawyer Zhandos Bulkhaiyr worked for free, taking only small amounts for expenses," Feruza Tulbayeva, Tulbayev's sister, told Forum 18 on 7 July. "He defended Saken well and we're very grateful to him, but he can't carry on working for no money."

Transfer to distant labour camp?

Tulbayev's family fear that if any appeal fails and the sentence comes into legal force, Tulbayev could be transferred to serve his sentence in a labour camp far from Almaty. "At the moment the prison is only 40 minutes away by bus, but if he's transferred for example to North Kazakhstan Region, he would be so far from us," Tulbayeva told Forum 18.

Prisoner of conscience Tulbayev is still being held at Almaty's Investigation Prison, to which he was transferred soon after his 1 April arrest:

Almaty Investigation Isolation Prison No. 1 LA 155/1

050004 Almaty Region

Almaty

Prospekt Seifullina 473

Kazakhstan

No family visits, beard shaved, no Koran – and no prayer mat?

Tulbayev's family have been allowed no private meetings with him since his 1 April arrest. The only time they could see him and talk very briefly with him was at court hearings. They have been able with great difficulty to hand in parcels for him at the prison with food, glasses and clothes (see F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072). It is unknown whether he has received all these parcels.

Following his transfer to the prison Tulbayev's relatives were twice refused permission to hand over a copy of the Koran for him and prison authorities have defended this denial to Forum 18. Also, his beard has been forcibly shaved and clothes changed (see F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072). Tulbayev also asked for a prayer mat. Family members told Forum 18 he remains without a Koran, but it remains unclear if he is now allowed a prayer mat or not.

Police "extremist" register

The 16 April indictment in Tulbayev's case – seen by Forum 18 - reveals that even before the criminal case was launched, he "is on the register of the Department for the Struggle with Extremism of Almaty City Police as an active member of the religious extremist organisation Tabligh Jamaat".

Tabligh Jamaat, a Muslim missionary movement, was banned as "extremist" in Kazakhstan by a court in the capital Astana in February 2013 (see F18News 12 December 2014 http://www.forum18.org/archive.php?article_id=2023).

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 [Taldyqorgha] 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).

Forum 18 has been unable to find out what being "on the register" of the Department for the Struggle with Extremism means, or how many people are subject to such police scrutiny. The man who answered the phone there on 7 July claimed to Forum 18 it was a wrong number, but refused to say which Department Forum 18 had reached or give any other number for the Department for the Struggle with Extremism.

Secret state surveillance

Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law notes that the police Department for the Struggle with Extremism compiles a list of individuals who according to its information are members or active participants in any organisation on the list of banned organisations (extremist, terrorist and radical). "The police then undertake secret surveillance of these people," he told Forum 18.

All religious or belief communities are thought to be under surveillance by the ordinary police and National Security Committee (KNB) secret police (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). Forum 18 knows of several prominent leaders of registered Protestant churches who have discovered over the past 10 years that the police and KNB secret police have placed them on a "signal register" (signalny uchets in Russian). In cases known to Forum 18 this then prevents them from changing their officially-registered place of residence, selling a legally-owned car, or gaining state child benefit for newly-born children (see eg. F18News 6 May 2011 http://www.forum18.org/archive.php?article_id=1568). Individuals under state surveillance are also subject to close scrutiny and questioning when leaving Kazakhstan.

KNB secret police surveillance can also lead to state attempts to discredit or blackmail people (see eg. F18News 16 April 2013 http://www.forum18.org/archive.php?article_id=1825).

First fined, then criminal case opened

Tulbayev, a devout Muslim, was fined in absentia on 30 December 2014 for preaching to passengers at a railway station in Oskemen and did not pay the fine. Such missionary activity without state permission is illegal, in defiance of Kazakhstan's international human rights obligations. On 10 February 2015 – unknown to Tulbayev – the criminal case against him was opened (see F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072). Prosecutors alleged that he had given a book and two copies of an 11-page leaflet to two young men outside an Almaty mosque after Friday prayers on 6 February. The young men are claimed to have "voluntarily" handed in the literature and were questioned by police on 10 February, according to the 16 April indictment.

"Expert analysis"

On 10 February Captain Dias Shortanbayev, Deputy Head of the Investigation Department of Almaty Police, commissioned an "expert analysis" of the book and the 11-page leaflet from Almaty's Institute of Judicial Expertise. After 10 hours of analysis, "experts" Kadyrkul Yesilbayeva and Dinara Musina presented their conclusion (seen by Forum 18) to Shortanbayev the following day.

The "experts" concluded that the mostly Russian-language book – "Fazail Amali" by Muhammad Yusuf Kandhlawi, published in Russia in 2007 – did not incite religious hatred or call for the overthrow of the constitutional order. They found that the leaflet (in both Kazakh and Russian) did incite religious hatred, though it did not call for the overthrow of the constitutional order. They concluded that both the book and the leaflet contained ideas from the banned Tabligh Jamaat movement. Testimony at the trial from an official of the state-backed Muslim Board contradicted this claim (see below).

Raid

At about 10.30 pm on the evening of 11 February, police raided the four-room flat in Almaty's Bostandyk District which Tulbayev shares with his 82-year-old mother, his wife Rumina Fakhruddinova, two of his three children, his sister Feruza Tulbayeva and her child. During their three-hour search, officers confiscated notes and booklets. On leaving the flat, they also claim to have found 43 copies of a leaflet which Tulbayeva insisted to Forum 18 had been planted (see F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072). The raid was filmed by the police, but the recording shown in court has breaks in it – attributed by the police to battery problems (see below).

On 12 February Captain Shortanbayev sent the further texts they confiscated or claimed to have confiscated from Tulbayev for "expert analysis". The 13 March analysis from the same Institute of Judicial Expertise, which took 20 hours to compile, was conducted by the same Musina and another "expert", Bibigul Zhumasheva.

The analysis concluded that two of the texts (a Russian-language brochure "The Bloody Legacy of Wahhabism" and an 11-page leaflet calling for the creation of a caliphate) contained incitement to religious hatred. None of them contained calls for the overthrow of the constitutional order.

Tulbayev's family insisted to Forum 18 that "The Bloody Legacy of Wahhabism" is widely available in mosques and Tulbayev must have picked up a copy there. They insist the 11-page leaflet was planted by police.

No comment

Captain Shortanbayev declined absolutely to discuss the case he prepared against Tulbayev on every occasion Forum 18 called him, including on 7 July.

Musina declined to comment on her "expert analyses" or her subsequent testimony during the trial. "We don't have the right to give such commentary," she told Forum 18 from Almaty on 7 July. But she insisted that "we are independent experts who take no side in a case".

Asked about the lawyer and family's insistence that the 11-page leaflet for which prisoner of conscience Tulbayev was prosecuted was a Wahhabi, not a Tabligh Jamaat text, she stood by what she had written in her analysis. Testimony at the trial from an official of the state-backed Muslim Board contradicted her claim (see below). She insisted that she had no knowledge of the provenance of the texts. "We analyse what we are presented with."

Charges

On 1 April Tulbayev was arrested and held at the local police station. After a court ordered he be held in pre-trial detention, he was transferred to Almaty's Investigation Prison, where he has been held ever since. Prisoner of conscience Tulbayev was charged under Criminal Code Article 174, Part 1 and Criminal Code Article 405, Part 2. 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 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 F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072).

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.

The case was prepared in Kazakh, a language Tulbayev's family insist he does not speak well. It was finally completed and handed over to Almaty's Bostandyk District Court No. 2 on 6 May.

Trial

The trial began at Bostandyk District Court No. 2 in Kazakh with an initial hearing on 22 May, with a further hearing on 27 May. It was only from the 28 May hearing that the language of the hearings was changed to Russian at Tulbayev's lawyer's request. The prosecution was then ordered to translate all the case materials into Russian.

Prisoner of conscience Tulbayev was brought to and taken from each hearing in handcuffs, and even remained handcuffed during some hearings.

The state-sponsored "experts", Musina and Zhumasheva, had difficulty answering defence lawyer Bulkhayir's questions in court, but insisted the 11-page leaflet was a Tabligh Jamaat text. Judge Nugumanova eventually acceded to the lawyer's request to allow a Muslim theologian to be questioned. Alai Adilbayev, a member of the state-backed Muslim Board's Council of Scholars, told the court that the leaflet was not from Tabligh Jamaat but was of Salafi Muslim content.

Like Tabligh Jamaat, Salafism is banned in Kazakhstan (see F18News 29 November 2011 http://www.forum18.org/archive.php?article_id=1640). Publications from this school of Islamic thought are banned and those who possess them prosecuted (see F18News 17 April 2015 http://www.forum18.org/archive.php?article_id=2056).

Tulbayev insisted that the 11-page leaflet contradicted his religious views and had been planted by police. The video recording of the search, which has frequent breaks and was shown in court, depicts a systematic search of the Tulbayev family flat. But suddenly at the end Captain Shortanbayev allegedly remembered they had forgotten to search the entrance hall, Kazis Toguzbayev of Radio Free Europe noted on 2 July. When Shortanbayev returned to the hall, he "found" the 11-page leaflet. He also "found" 43 copies of a leaflet in Kazakh, which Tulbayev cannot read (see F18News 10 June 2015 http://www.forum18.org/archive.php?article_id=2072).

Questioned in court, investigator Captain Shortanbayev explained the frequent breaks in the video recording as due to battery problems.

Testifying on Tulbayev's behalf was Muhammad Khusein-haji Alsabekov, a Chechen imam who heads the Sharia and Fatwa Department of the Muslim Board and a long-time friend. The Muslim Board is the only public expression of Islam allowed in Kazakhstan and controls all of the community, only permitting Sunni Hanafi Islam (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

At the final presentation of the case on 29 June, prosecutor Askhat Esenov demanded a five-year prison sentence. Tulbayev denied inciting religious hatred and said that as Tabligh Jamaat is not a formal organisation he cannot be a member of it.

At the 11th and final hearing on 2 July, Judge Nugumanova found prisoner of conscience Tulbayev guilty on both charges and sentenced him to four years and eight months' imprisonment in an ordinary regime labour camp. She also banned him from exercising freedom of religion or belief for three years after his release from jail.

Observing almost all the hearings in the trial for the Kazakhstan International Bureau for Human Rights and the Rule of Law was the lawyer Gulmira Kuatbekova.

Throughout the case, and again on 7 July, colleagues at Bostandyk District Prosecutor's Office claimed to Forum 18 that prosecutor Esenov was out of the office.

Prisoner of conscience Tulbayev "not guilty"

"Saken is not guilty – the case was fabricated," human rights defender Bakhytzhan Toregozhina of Ar.Rukh.Khak – who attended three hearings of the trial – told Forum 18 from Almaty on 6 July. She noted that although Tabligh Jamaat was banned in Kazakhstan in 2013, "it is understood that believers can't stop believing".

Toregozhina said it was not proved in court that Tulbayev had spread Tabligh Jamaat ideas. "The leaflets he had allegedly distributed were not from Tabligh Jamaat but purely Wahhabi, with whom Tabligh Jamaat adherents do not agree," she told Forum 18. "Unfortunately, this is not the first time here that leaflets have been planted on religious believers. Saken is very cautious, and what he says can be trusted. He is not guilty."

Toregozhina said a case should be lodged to the United Nations Human Rights Committee under Article 18 ("Freedom of thought, conscience and religion") and Article 26 ("Equality before the law") of the International Covenant on Civil and Political Rights. "There is also reason to complain under Article 14 ('Right to a fair trial')". She said that before such a complaint, all legal defence mechanisms within the country must be gone through. (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 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 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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