

31 July 2019

KAZAKHSTAN: Nine years' jail for online discussion group?

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

Eight Muslims face up to nine years' jailing each for participating in a WhatsApp religious discussion group. The NSC secret police initiated the criminal charges of "propaganda of terrorism" or "inciting hatred", which the defendants deny. The verdict is imminent. The case against the ninth – who is suffering serious heart problems – will be heard at a future trial.

Nine months after their October 2018 arrest, the long-running trial in Almaty of eight Muslims who participated in a religious discussion group on the WhatsApp messaging app is close to completion. The Prosecutor is calling for them to be jailed for up to nine years on charges of "propaganda of terrorism" or "inciting hatred". The men protest their innocence. An independent expert commissioned by one of the defence lawyers found no calls for terrorism, aggression or incitement to hatred.

Among the messages the group's participants circulated was one by Azamat Umbetaliyev, warning about innovations in religion. An analysis of the message - commissioned by his defence lawyer from Adil Soz (Free Word) International Foundation for Protection of Freedom of Speech – found: no incitement to hostility towards others based on their religious affiliation; no incitement to aggression or violence towards others based on their religious affiliation; no assertion or propaganda that anyone is superior or inferior to anyone else based on their religious affiliation (see below).

The Judge's assistant told Forum 18 on 31 July that the Judge has not set the date yet for handing down the verdicts. Those following the trial believe this could take place on 2 August.

More than 30 hearings have taken place since the trial started in an airless underground room at an Almaty court in March 2019. Because only eight of the original nine defendants could fit in the cage in the court room, the ninth was handcuffed to the bars on the outside of the cage. All the accused Muslims are aged between 27 and 40 (see below).

The case against the ninth Muslim defendant, Zhuldyzbek Taurbekov, was separated off on 3 July because of his heart problems which required hospital treatment. The family say his health suffered because of lack of medical attention during his eight-month detention in Investigation Prison and he now needs a heart transplant (see below).

Forum 18 was unable to find out when Taurbekov's new trial is likely to begin. Despite being transferred to hospital for two short spells in July, the judge has rejected all three of his family's appeals to have him transferred from Investigation Prison to house arrest (see below).

The case against the nine Muslims was brought and investigated by Lieutenant-Colonel Rakhat Rustemov of the National Security Committee (NSC) secret police in Almaty. He refused to talk to Forum 18 (see below).

"Our NSC keeps the court in its grip," one observer told Forum 18 on 30 July. "Before the trial hearings had even begun, a NSC officer said that agreement had been reached with the judge and prosecutor and said what prison terms the lads would get. And indeed months later it is now confirmed."

If convicted, the Muslims are also likely to be added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism". Being added to the List means that any bank accounts an individual may have are blocked with no further legal process. (http://www.forum18.org/archive.php?article_id=2409) Their families are allowed to withdraw only small amounts for daily living if they do not have other sources of income. Individuals remain on the Financial Monitoring Committee List for six or eight years after their sentence has expired.

Online surveillance

NSC secret police and ordinary police officers watch public and private communications on the internet and on messaging services. Individuals are frequently jailed or fined for exercising their freedom of religion or belief in messages about religion shared online, even when they contain no calls to violate the human rights of others.

In one recent criminal case, on 2 May, at the end of a closed trial, Judge Sabit Turekhanov of Shymkent's Al-Farabi District Court jailed 41-year-old Muslim Dilmurat Makhamatov for eight years. Kazakh police claimed he conducted "illegal preaching among Kazakhstanis via the internet" while in Saudi Arabia. Once he was back in Kazakhstan they revealed charges of "inciting religious hatred" and "propaganda of terrorism". (http://www.forum18.org/archive.php?article_id=2468) His friends reject the accusations. Shymkent City Court rejected his appeal on 26 June.

Makhamatov was added to the Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", thus blocking any bank accounts he may have, on 29 July.

At least 17 individuals are known to have been prosecuted under the Administrative Code in the first six months of 2019 (http://www.forum18.org/archive.php?article_id=2494) for posting religious materials online. Of these, 16 were convicted and fined.

Secret police arrest nine Muslims

The National Security Committee (NSC) secret police discovered a Muslim discussion group on the WhatsApp messaging app. The NSC claim they were alerted to the group on 18 October 2018 by an individual identified only as "B.K.Sh."

The NSC secret police Investigator, Lieutenant-Colonel Rakhat Rustemov, commissioned "expert analyses" of texts circulated in the discussion group. On 29 August 2018, he commissioned the "expert analysis" of the only text circulated by the youngest defendant, Azamat Umbetaliyev. This analysis was completed on 24 September 2018, according to case materials seen by Forum 18.

On 27 October 2018 the NSC secret police arrested nine participants in the group in various parts of Kazakhstan. They were all taken to the NSC's Investigation Prison in the southern city of Almaty. Some of the men already knew each other, but others had never met and had only ever communicated via the group.

On 29 October 2018, Almaty's Specialised Inter-District Investigative Court ordered the men held in pre-trial detention, according to case documents seen by Forum 18.

Those arrested were:

- 1) Nazim Alimzhanovich Abdrakhmanov (born 10 March 1988)
- 2) Samat Asylkhanovich Adilov (born 28 August 1986)
- 3) Ernar Samatovich Samatov (born 19 March 1980)
- 4) Zhasulan Meiramovich Iskakov (born 22 October 1984)
- 5) Beket Tastanbekovich Mynbasov (born 10 January 1983)
- 6) Bolatbek Dyusenbekovich Nurgaliyev (born 12 December 1978)
- 7) Esim Kadirzhumanovich Suleimenov (born 1 February 1983)
- 8) Zhuldyzbek Abikenovich Taurbekov (born 20 September 1978)
- 9) Azamat Gaidarovich Umbetaliyev (born 10 January 1992)

On 29 May 2019, once the trial was already underway, the nine men were transferred from the NSC's Investigation Prison in Almaty to the police's Investigation Prison LA-155/18 in the city's Turksib District. The nine Muslims are still being held there.

The men's current prison address:

050054, g. Almaty

Turksibsky raion

Ul. Krasnogorskaya d. 73

Uchr. LA-155/18

Terrorism, incitement accusations

The NSC secret police initially investigated the Muslims under Criminal Code Article 174, Part 2. This punishes (http://www.forum18.org/archive.php?article_id=2409) "Incitement of social, national, clan, racial, or religious 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 discord". Punishment under Part 2, when such actions are carried out by a group of people, is a jail term of between five and ten years.

The NSC later began investigating several of the defendants also under Criminal Code Article 256. This punishes (http://www.forum18.org/archive.php?article_id=2409) "Propaganda of terrorism or public calls to commit terrorism", which includes the production, storage for distribution or distribution of [unspecified in the Article] specified materials, carries a punishment of five to nine years' imprisonment plus confiscation of property. If committed by an individual using a state or non-state official position, or with the use of the mass media or other communication networks, or with foreign support, or in a group, the punishment is seven to 12 years' imprisonment with confiscation of property.

The prosecution commissioned four "expert analyses": a religious studies analysis; a philological analysis; and two political studies analyses, one from the capital Astana (now Nur-Sultan), the other from Almaty.

The indictment alleged that the nine men "acting with a common intention, aware of the illegality of their actions .. actively discussed religious themes .. deliberately made radical statements which represented propaganda of terrorism and incitement of religious discord".

The NSC accused Nurgaliyev of founding the group in December 2013 for the "propaganda of terrorism and the ideas of Salafism", as well as to "increase the number of adherents of this movement", according to the 18 February 2019 indictment, seen by Forum 18. It said he had recruited the other eight Muslims to the group, which had 171 members.

The prosecution accused the four oldest men – Taurbekov, Nurgaliyev, Mynbasov and Samatov - under both Criminal Code Article 256, Part 2 and Article 174, Part 2. It accused the other five – Abdrakhmanov, Adilov, Iskakov, Suleimenov and Umbetaliyev – under Criminal Code Article 174, Part 2.

Families, lawyers reject accusations

Of the state-nominated "experts", only Gulnara Mukhatayeva from Almaty found fault with Umbetaliyev's one repost to the group. "The political studies expert from Nur-Sultan found nothing at all," his mother Anzhelika Belyayeva told Forum 18. "Only the specialist politologist Mukhatayeva didn't like the word 'fight' in my son's text. But you can fight using knowledge. This text was from the Saudi theological scholar, Saleh Al-Fawzan."

On 14 February 2019, Galym Nurpeisov, Umbetaliyev's lawyer, commissioned an expert analysis of the text he had circulated from Almaty-based Adil Soz (Free Word) International Foundation for Protection of Freedom of Speech. It assigned the task to Rakhilya Karymsakova, who has 46 years of experience as a philologist and 15 years as a compiler of expert analyses.

In her analysis, completed on 15 March and seen by Forum 18, Karymsakova concludes that the text Umbetaliyev reposted to the group warned Muslims of what the original author regarded as the dangers to the Muslim community of innovation in religion.

Karymsakova stated categorically that the text contained: no incitement to hostility towards others based on their religious affiliation; no incitement to aggression or violence towards others based on their religious affiliation; no assertion or propaganda that anyone is superior or inferior to anyone else based on their religious affiliation.

The lawyer Nurpeisov and four of the defendants' parents held a press conference at the Almaty office of the Kazakhstan International Bureau for Human Rights and the Rule of Law on 3 June (<https://www.youtube.com/watch?v=L8uSlwqV8UU>), when the trial had already been underway for nearly three months. They complained about what they regarded as the unobjective handling of the prosecution case. They also complained of NSC secret police pressure on the defendants' families.

Prison, hospital, prison, hospital, prison, hospital, prison

On 27 June, one of the defendants, 40-year-old Zhuldyzbek Taurbekov, was taken to the hospital casualty department with apparent heart problems, Radio Free Europe noted on 15 July. On 1 July he was transferred to the intensive therapy department at the city's cardiology centre.

On 6 July he was taken back to the Investigation Prison. However, that night he was returned to the hospital casualty department in serious condition. On 13 July he was again transferred to the intensive therapy department. On 15 July he was again returned to the Investigation Prison, where he was put in its medical unit.

Asemgul Zhaugasheva, Taurbekov's mother and also his lay public defender, told Radio Free Europe that his health was seriously harmed by the lack of medical attention in the Investigation Prison. However, Erlan Uzakov, Deputy Head of the Criminal-Implementation Department for Almaty, which oversees prisons, insisted to Radio Free Europe that Taurbekov was being given "all necessary help" in Investigation Prison.

At the final session on 31 July, Taurbekov's mother, Zhaugasheva, told the court in some distress that her son had been taken again to the cardiology centre the previous day. He was taken back to the Investigation Prison after four hours. She added that he is in need of a heart transplant.

Forum 18 was unable to reach officials at the Investigation Prison's Special Department on 31 July.

Because of the state of his health, the case against Taurbekov was separated off from those of the other eight defendants on 3 July, after the trial had been underway for nearly four months. Despite being transferred to hospital for two short spells in July, Judge Imankulov rejected his family's three appeals to have him transferred from Investigation Prison to house arrest.

Taurbekov is facing charges under both Criminal Code Article 256 and Article 174. Forum 18 was unable to find out when his new trial is likely to begin.

Trial begins

Once Lieutenant-Colonel Rustemov of the NSC secret police had completed his investigation, he handed the case to Almaty City Prosecutor's Office to prepare it for court.

The Prosecutor's Office handed the case against the nine Muslims to Almaty's Almaly District Court on 27 February 2019, according to court records. The case was assigned to Judge Kairat Imankulov.

The trial itself began on 12 March. More than 30 hearings were held between then and the final full day of the trial on 31 July, according to court records. The trial was held in an airless, underground court room. When the defendants arrived in the court room, the guards took handcuffs off them and locked them in the court room cage.

For at least one of the hearings, one of the defendants was held outside the cage because of lack of space, and was instead handcuffed to the bars, journalist Kazis Toguzbayev of Radio Free Europe's Kazakh Service, who attended many of the later hearings, noted on 5 June.

Four successive prosecutors have led the case against the defendants in court, the most recent being Maksat Daurbayev. In her closing address to the court on 31 July, Anzhelika Belyayeva, the mother of the defendant Umbetaliyev and also his lay public defender, accused Daurbayev of incompetence, falling asleep during one hearing and laughing at the court.

Forum 18 was unable to reach Almaty City Prosecutor Berik Zhuiriktayev, the City Prosecutor's Office Press Service or Prosecutor Daurbayev on 31 July. Their phones went unanswered.

In the final hearings on 31 July, Prosecutor Daurbayev demanded a nine-year prison term for Nurgaliyev, Mynbasov and Samatov under both Criminal Code Article 256 and Article 174, Radio Free Europe noted after the hearing. He demanded a seven and a half-year prison term for the other five – Abdrakhmanov, Adilov, Iskakov, Suleimenov and Umbetaliyev – under Criminal Code Article 174, Part 2.

Forum 18 was unable to find out when Judge Imankulov is likely to issue his verdicts. The Judge's assistant told Forum 18 on 31 July that the Judge has not set the date yet for handing down the verdicts. Those following the trial believe this could take place on 2 August. (END)

Full reports on freedom of thought, conscience and belief in Kazakhstan
(<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=2409)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (http://www.forum18.org/archive.php?article_id=1351)

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