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KAZAKHSTAN: Seven years' restricted freedom for discussing faith

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

In a case brought by the KNB secret police, Seventh-day Adventist Yklas Kabduakasov was today (9 November) sentenced to seven years' restricted freedom by a court in Kazakhstan's capital Astana. He was found guilty of spreading "religious discord" by discussing his faith with a group of students who invited him to a flat rented by one of them. "My father's religious liberties and basic human rights were violated by the fact that he was kept under arrest without any grounds since 14 August and has now been sentenced," one of his sons Alibek Kabduakasov complained to Forum 18 News Service. The Prosecutor, the Judge and the KNB secret police all refused to discuss the case with Forum 18. Meanwhile, the auction to rent out the Din-Muhammad Mosque of Petropavl's Tatar-Bashkir community was abandoned as fewer than two bidders came forward. Community members welcomed the abandonment of officials' attempts to auction their Mosque to a third party against their wishes.

More than 12 weeks after his arrest by Kazakhstan's National Security Committee (KNB) secret police, Seventh-day Adventist Yklas Kabduakasov was this afternoon (9 November) sentenced to seven years' restricted freedom by a court in the capital Astana, Forum 18 News Service has learned. Both Kabduakasov and his community repeatedly denied prosecution accusations that he spread "religious discord" when discussing his faith with and offering Christian books to others.

"My father's religious liberties and basic human rights were violated by the fact that he was kept under arrest without any grounds since 14 August and has now been sentenced," one of his sons Alibek Kabduakasov, who acted as his public defender, complained to Forum 18 from Astana on 9 November after the sentence was handed down. He said that they are preparing to appeal against both the punishment and his "unlawful arrest".

Until 2022, Kabduakasov will have to live under close scrutiny. The Judge banned him from leaving the city, changing his place of residence or place of work without permission. She also banned him from visiting places of public entertainment, such as cafes, restaurants, bars, night clubs and discos.

In addition, Kabduakasov was ordered to pay about 150,000 Tenge (4,200 Norwegian Kroner, 450 Euros or 490 US Dollars) to cover the cost of the "expert analyses" of his statements that formed the basis of the prosecution. It remains unclear by when he will need to pay this or if this fee is still payable if he wins his appeal.

Judge Akmaral Isayeva of Astana's Saryarka District Court No. 2 handed down the sentence at the end of the 16th and final hearing of the trial, which began on the morning of 8 October (see F18News 13 October 2015 http://www.forum18.org/archive.php?article_id=2110).

After the sentence was announced, officials unlocked Kabduakasov's handcuffs and he was allowed to leave the courtroom at the end of the trial, those present told Forum 18. Radio Free Europe's Kazakh Service showed film of Kabduakasov being congratulated on his release from imprisonment outside the courtroom.

Kabduakasov's lawyer Gulmira Shaldykova told Forum 18 from Astana after the hearing that as soon as the Judge issues the written verdict, she will lodge his appeal to Astana City Court.

The 54-year-old Kabduakasov has eight children, of which the youngest – a son Daniil – was born on 12 September (while Kabduakasov was already in prison). His two eldest children are adults.

Secret police-led criminal prosecutions

The KNB secret police are the driving force behind a series of criminal prosecutions of individuals for exercising the right to freedom of religion or belief by talking to others about faith. In addition to Kabduakasov, particular targets since late 2014 have been adherents of the Tabligh Jamaat Muslim missionary movement.

Fifteen are known to have been convicted and sentenced to up to four years eight months' imprisonment since late 2014, while a further five are in pre-trial detention in Astana (see below). Like Kabduakasov, seven of the 15 already convicted were punished with sentences of restricted freedom (see F18News 13 October 2015 http://www.forum18.org/archive.php?article_id=2110).

In Central Asia Tabligh Jamaat members conduct house to house encouragement of Muslims to attend mosques and religious talks. The movement also sends members on short-term missions to other towns and villages, where they sleep in mosques and address local Muslims, both door to door and in the mosque. Male adherents are often identifiable by their beards and South Asian clothing. A close observer of Tabligh Jamaat in the region told Forum 18 that adherents in Kazakhstan follow this approach (see F18News 12 December 2014 http://www.forum18.org/archive.php?article_id=2023).

Arrest, trial, sentence

The KNB secret police had been closely monitoring Kabduakasov for a year before they arrested him in August 2015, appear to have rented the flat to which four students invited him for religious discussions, appear to have organised the secret filming of the meetings with at least two hidden cameras, and prepared the prosecution case.

Following Kabduakasov's 14 August arrest, the KNB secret police transferred him to the city's KNB secret police Investigation Prison. A court then ordered him held in two-month pre-trial detention. Christian books were seized from his home, while the Adventist Church he attends in Astana was also searched (see F18News 20 August 2015 http://www.forum18.org/archive.php?article_id=2092).

The KNB secret police Investigator, Senior Lieutenant Nurlan Belesov, prepared the case against Kabduakasov under Criminal Code Article 174, Part 2. This punishes "incitement of social, national, clan, racial, or religious discord" by repeat "offenders" with prison terms of between five and ten years.

The same Criminal Code Article 174 has also been used against civil activists. Two were arrested accused of inciting "national discord" and a third was warned in mid-October.

United Nations Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, expressed his "particular concern" about Criminal Code provisions, such as Article 174, which "pose serious risks of criminalizing and penalizing legitimate activities of associations". "The Code does not strictly define what is meant by 'incitement of discord', which may leave the term open for arbitrary interpretation," he warned in his 16 June report following his January mission to Kazakhstan (A/HRC/29/25/Add.2).

Once Investigator Belesov and the Prosecutor's Office had completed Kabduakasov's case, it was handed on 25 September to Saryarka District Court No. 2. The trial began on 8 October.

Investigator Belesov attended only one hearing in the case, before church members began to attend in large numbers to support Kabduakasov. Another KNB officer, Aydin (last name unknown), who has responsibility for controlling Christian churches, testified in one hearing. He wore a black mask and no name for him was given, those familiar with the case told Forum 18.

For hearings in the case, Kabduakasov was brought from the KNB investigation prison in handcuffs. These were unlocked for the hearings once he had been placed in the cage in the courtroom.

Although Kabduakasov was prosecuted under Article 174, Part 2, Judge Isayeva at the last minute changed the accusation to Article 174, Part 1. This carries a penalty of imprisonment or restricted freedom of between two and seven years. However, the change allowed her to give a restricted freedom sentence rather than a term of imprisonment. The Prosecutor had demanded seven years' imprisonment.

"Prosecution provided no evidence"

The prosecution alleged that Kabduakasov had insulted Islam during discussions with a group of students who had invited him to talk to them at a flat in Astana that one of them claimed to have rented.

The prosecution also alleged that Kabduakasov had pressured his subordinates at work to adopt Christianity and beat and dismissed those who refused to do so.

"The prosecution provided no evidence during the trial of any employee beaten by Kabduakasov, nor any facts of him dismissing his employees," Shaldykova, Kabduakasov's lawyer, insisted to Forum 18 on 9 November. She added that witnesses presented by the prosecution who stopped working for Kabduakasov "left their jobs voluntarily". The Court did "not prove that he is guilty of the charges," she noted.

Alibek Kabduakasov agreed. "None of these charges were proven in Court," he told Forum 18. "My father did not force anyone to

accept his faith - on the contrary, during his conversations with his employees he told them that it is their choice to become Christian or remain Muslim."

No comment

Prosecutor Asylzhan Gabdykaparov, who led the state prosecution in court, refused to discuss the case with Forum 18 on 9 November. Told Lawyer Shaldykova's argument, and asked what evidence of wrongdoing the prosecution produced in the trial, he responded: "No comments". When Forum 18 insisted, asking on what grounds Kabduakasov was given such severe punishment, Prosecutor Gabdykaparov put the phone down. Subsequent calls to him on the same day went unanswered.

Judge Isayeva, who heard the case, also declined to comment. "Please call the Press service for comments," she told Forum 18 from the court on 9 November, when Forum 18 asked why such severe punishment was given to an individual to punish him for exercising his right to freedom of religion or belief. Calls on the same day to the Press Service, as well as to Yerlan Tasyrov, the Chair of the Court, went unanswered.

Lawyer Shaldykova told Forum 18 that secret police Investigator Belesov not only prepared the charges but also represented the prosecution.

The KNB secret police officer who answered Investigator Belesov's phone on 9 November wrote down Forum 18's question of what evidence Investigator Belesov had of Kabduakasov beating his employees or dismissing them for not accepting his faith. However, the officer (who did not give his name) refused to answer or put Forum 18 through to the Investigator.

Where are the five Astana pre-trial detainees?

Meanwhile, where five Muslims accused of membership of the Tabligh Jamaat missionary movement are being held remains unknown. The five – Bolatbek Kozhageldinov, Khalambakhi Khalym, Nurzhan Nuradilov, Erbolat Omarbekov and Kubaidolla Tyulyubayev - were arrested in Astana in late September and were ordered held in pre-trial detention for two months (see F18News 13 October 2015 http://www.forum18.org/archive.php?article_id=2110).

A KNB secret police investigator is preparing criminal cases against the five under Criminal Code Article 405, Part 1. The Article punishes "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 punishes organising such activity, with a fine or up to six years' imprisonment.

An official of Saryarka District Court No. 2 – where the five had been ordered imprisoned for two months in late September – told Forum 18 on 9 November that prosecutors have not yet presented criminal cases against the five to the court.

Officials of the Police Investigation Isolation Prison in Astana told Forum 18 that the five have never been held there. One official insisted that if the KNB secret police is investigating the case they will be in detention at the city's KNB Investigation Prison.

An official of Astana's KNB Investigation Prison refused to confirm or deny to Forum 18 on 9 November that the five Muslims are being held there.

What has happened to appeal?

The appeal lodged on behalf of 30-year-old prisoner of conscience Orazbek Apakashev on 13 October appears to have got nowhere. Arrested in March and held at Karaganda's KNB Investigation Prison, Apakashev was sentenced by Temirtau City Court in the northern Karaganda Region to three years' imprisonment on 29 September for alleged involvement in Tabligh Jamaat (see F18News 13 October 2015 http://www.forum18.org/archive.php?article_id=2110).

Karaganda Regional Court told Forum 18 on 9 November that no appeal has reached the court. An official of Temirtau City Court told Forum 18 the same day that Judge Natalya Shchegletova – who handed down the sentence and to whom the appeal would initially be sent – was away on leave from 2 to 16 November. "She would probably be dealing with this after her return," the official said.

Attempt to auction Din-Muhammad Mosque fails

Officials who put up for auction the Din-Muhammad Mosque of Petropavl's Tatar-Bashkir Mosque community closed the auction on 5 November, according to the auction announcement on the website of the Finance Ministry. It noted that the auction did not take place as fewer than two parties put forward bids to rent the Mosque for three years.

Officials refused state registration to the Mosque community and have been seeking to oust them from the place of worship they renovated with their own hands in the 1990s.

The auction had been launched on 20 October without the knowledge of the Mosque community, which found out about it only by chance a week later. As bidders for the Din-Muhammad Mosque were restricted to registered religious organisations, only one was eligible to apply: the state-backed Muslim Board. This is the only Muslim organisation the state has allowed to gain legal status in the entire country, although the Law does not prevent more than one Muslim organisation gaining state registration (see F18News 2 November 2015 http://www.forum18.org/archive.php?article_id=2115).

Members of the Tatar-Bashkir Mosque community expressed their relief to Forum 18 that their place of worship had not been auctioned to a third party. (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