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KAZAKHSTAN: Criminal cases for meeting, criticising Muslim Board

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

Kazakhstan has detained Kuanysh Bashpayev for criticising the state-controlled Muslim Board, and Satymzhan Azatov for meeting Muslims without state permission. Both face criminal charges of "inciting religious discord", as does atheist Aleksandr Kharlamov facing a possible new trial. Bashpayev's trial opens 14 February.

Kazakhstan's National Security Committee (NSC) secret police has arrested two Muslims for exercising freedom of religion and belief without state permission. Kuanysh Bashpayev (30-years-old) criticised the state-controlled Muslim Board and was arrested at Astana Airport in October 2016. Satymzhan Azatov (27-years-old) met with other Muslims without state permission in the capital Astana, and was arrested in early January 2017.

The NSC secret police has also arrested some of Bashpayev's former classmates from Medina University in Saudi Arabia, though their names are unknown, Muslims in Kazakhstan told Forum 18 on 31 January. Bashpayev has a Master's degree in Islamic theology from Medina.

Bashpayev's trial is due to begin at 10 am on Tuesday 14 February at Pavlodar City Criminal Court No. 2 under court chair Judge Kayirbek Yelemesov, a court official told Forum 18 on 6 February. Bashpayev faces up to seven years' imprisonment if convicted under Criminal Code Article 174, Part 1 ("Inciting social, national, clan, racial, or religious discord").

The NSC is still investigating Azatov under Criminal Code Article 174. He is in two-months' pre-trial detention in Astana's NSC Investigation Prison. In November 2016 he was fined under the Code of Administrative Offences for "unlawful" missionary activity. Two other Muslims, Nariman Seytzhonov and Bakhtiyorxon Soliyev, were at that time fined along with Azatov for the same "offence". Soliyev, a Tajik citizen, was also ordered to be deported (see below).

The NSC secret police in Astana also arrested and put into two months' pre-trial detention Jehovah's Witnesses Teymur Akhmedov and Asaf Guliyev, although Akhmedov needs hospitalisation for cancer treatment. Judge Akmaral Isayeva, who also approved Azatov's pretrial detention, claimed this was to defend a "civilised society" (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252).

New trial for atheist?

As well as the Bashpayev case, Judge Yelemesov has also been involved in the then Article 164 (equivalent of Article 174 of the current Criminal Code) case against atheist writer Aleksandr Kharlamov (see F18News 4 September 2013 http://www.forum18.org/archive.php?article_id=1871), including refusing to release him from a psychiatric hospital (see F18News 22 August 2013 http://www.forum18.org/archive.php?article_id=1871). One doctor told Kharlamov that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities" (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Officers searched Kharlamov's home in Ridder, East Kazakhstan Region, on 2 February 2017 as they appear to be preparing to bring him to trial again (see F18News 17 February 2017 http://www.forum18.org/archive.php?article_id=2258).

Criminal charges

The NSC secret police lodged charges against both Kuanysh Ablayevich Bashpayev (born 3 February 1987) and Satymzhan Bagytzhanuli Azatov (born 17 September 1989) of allegedly "inciting social, national, clan, racial, or religious discord" under Criminal Code Article 174, Part 1, prosecution and court officials told Forum 18. This Article punishes: "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".

Article 174, Part 1, which Bashpayev and Azatov are charged under, 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.

Kazakh human rights defenders, the United Nations (UN) Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association, and the UN Human Rights Committee have repeatedly criticised this and other broadly defined Criminal Code articles (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252).

If convicted, Bashpayev and Azatov are likely to be added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism". All known prisoners of conscience convicted under Article 174 have been added to this List, thus freezing any bank accounts they may have, without any additional due legal process. As individuals are not told when they are added to the List, they normally only find out they have been added when they or relatives attempt to withdraw money from their bank (see F18News 10 June 2016 http://www.forum18.org/archive.php?article_id=2187).

Ten alleged members of the Tabligh Jamaat Muslim missionary movement were added to the List between 17 and 31 January 2017, according to the Financial Monitoring Committee website. One, Kublandy Isatayev, was sentenced in Aktobe in October 2016 to one year's imprisonment. The other nine, led by Baurzhan Beisembai, were sentenced at a group trial in Oskemen in October 2016. Seven of these were given prison terms of between one and two and a half years. The other two each received one year's "restricted freedom" punishments (see F18News 20 October 2016 http://www.forum18.org/archive.php?article_id=2223).

Article attacks Bashpayev

On 7 January 2014, Almaty Central Mosque's website published an article commenting on a public debate involving local Salafi Muslim Oktam Zaurbekov. The debate was widely covered at the time in the local media. The article claims that Salafi Muslims - including Zaurbekov and Bashpayev - have "incited religious intolerance" by calling on Muslims not to follow the Hanafi school of Islam, which is the only form of Islam permitted in Kazakhstan (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

"They [Salafis] laugh at the official Imams and Muslim Board by portraying them as heretics, which is a provocation. Their call not to follow the Hanafi school established in Kazakhstan by calling it the plague of sectarianism is a provocation. They criticise Abu Hanifa [founder of the Hanafi school] and other great scholars of Islam, which is a provocation."

The article claims that Salafi Muslims are "sly", giving public support to Kazakhstan's President Nursultan Nazarbayev while opposing the Muslim Board. "It is a contradiction. Submission to the ruler means submission to his authorised representatives. In the religious sphere this authority was given to the Muslim Board."

The article refers to a 19 February 2013 statement of President Nursultan Nazarbayev, stating that "our President clearly demonstrated his position on the Muslim Board: the only officially recognised organisation of Islam in our country is the Muslim Board. The recently adopted Religion Law recognises the place and role of the Hanafi school in the spiritual life of the people. The President", the article continues, "personally asked the Muslim Board to make religious-legal rulings (fatwas) on urgent issues. This indicates the necessity of submission to the Muslim Board."

Even before the Religion Law was adopted, officials were insisting that all mosques independent of the state-backed Muslim Board must be closed. All Islamic literature that is not Sunni Hanafi is banned by the stringent state censorship. All mosques must have their imams appointed by the Muslim Board, and these imams must only read out sermons at Friday prayers which have been provided to them by the Board. All mosques must also give the Board 30 per cent of their income. Independent mosques strongly objected to these state-imposed restrictions (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The article also claims that "they [Salafis] go on not submitting to the [official] imams of mosques, and continue their activity in discrediting the Hanafi school. This in itself is a road to extremism and undermines the security of our country. Instead of supporting President and uniting around the Muslim Board, they undermine its authority."

Bashpayev's arrest

NSC secret police arrested Bashpayev at Astana Airport on 13 October 2016 as he returned to the country from Saudi Arabia. They immediately transferred him to Pavlodar. He has been held since then in Pavlodar City Police Investigation Prison.

Colonel Bekezhan Kalkomanov of Pavlodar NSC claimed to Forum 18 that Bashpayev had "insulted the religious feelings of Kazakhstan's traditional Muslims". He "said on the internet that it is not right for Kazakh Muslims to visit graves and pray for their

deceased relatives, which he thinks is idolatry", the Colonel told Forum 18 on 31 January.

Bashpayev "also spoke against the official representatives of Islam in Kazakhstan, the Spiritual Administration of Muslims of Kazakhstan [the Muslim Board], by which he tried to sow discord among the Muslims", Colonel Kalkomanov claimed.

In video and audio recordings of some of his sermons posted online, Bashpayev sometimes criticised the views of the Muslim Board. In the recordings Forum 18 listened to, there were no calls for the human rights of other people to be violated. Bashpayev's fellow Muslims described him to Forum 18 as "a peaceful believer who prayed for Kazakhstan and its leaders". They added: "His only guilt is to have explained the Koran's teachings on the internet and in private discussion with other Muslim believers."

Asked whether it is right to punish an individual for having a different view of Islam from that of the Muslim Board, NSC Colonel Kalkomanov replied: "This is not like the times in Kazakhstan immediately after the Soviet Union, when crowds would dictate their views. We are governed by laws and not subject to the views of crowds."

Colonel Kalkomanov then added that "if the Court sees mitigating circumstances in his life or actions, maybe they will give a suspended prison sentence."

Baurzhan Myrzakerov, Deputy Chief Prosecutor of Pavlodar Region, refused to say what Bashpayev allegedly did, apart from stating on 31 January "he is accused of inciting religious hatred".

Bashpayev's address in Investigation Prison is:

Pavlodarskaya Oblast

g. Pavlodar

ul. Tsiolkovskogo

Sledstvenny izolyator AP-162/1

Kazakhstan

Azatov's first trial

Meanwhile, in Astana, on 26 September 2016 an anonymous informer told the city's Anti-Extremism Police about an earlier meeting in a cafe, according to the subsequent court decision. "Azatov, together with between 40 and 50 Salafi Muslims, held an unauthorised religious discussion on 24 September from 4 pm to 7 pm."

Along with Azatov, Nariman Seytzhano and Bakhtiyorkhon Soliyev "conducted unauthorised missionary activity and propagated their radical religious ideas and beliefs." Azatov allegedly told the participants that "one needs to fear Allah and become a Muslim before one dies".

Prosecutors brought cases against all three men under Administrative Code Article 490, Part 3. This punishes: "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, and spreading the teachings of a religious group which is not registered in Kazakhstan". The punishment is a fine of 100 Monthly Financial Indicators (MFIs), with deportation if the individual is a foreign citizen.

Missionary activity can only be carried out by a state-approved person, from a state-approved religious community, who uses state-approved religious materials, in a place approved by the state (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

On 1 November 2016 Judge Kuralai Arkhabayeva of Astana's Specialised Inter-District Administrative Court fined Azatov the prescribed 100 MFIs or 212,100 Tenge under Administrative Code Article 490, Part 3.

Anti-Extremism Police Officer Damir Baybazarov, who led the case, refused to discuss it with Forum 18 on 1 February. Judge Arkhabayeva defended her decision. "He was involved in missionary activity without state permission", she told Forum 18 on 1 February. Asked why she gave such a large fine to Azatov for exercising his freedom of religion and belief, she replied "he had a lawyer".

Judge Arkhabayeva also fined Seytzhano the same fine as Azatov in a separate hearing on 1 November 2016. He was fined 100 MFIs or 212,100 Tenge under Article 490, Part 3.

Judge Kanat Imanaliyev of Specialised Inter-District Administrative Court imposed the same fine on Soliyev as Azatov and Seytzhonov on 21 October 2016. He also ordered him to be deported within five days, but Soliyev had already left Kazakhstan on 7 October.

On 23 November 2016 Judge Madeniyet Omarbekova of Astana City Court upheld the fine on Seytzhonov. In separate hearings the following day, Judge Kazima Aytkaliyeva of Astana City Court rejected the appeals of Azatov and Soliyev and upheld the fines. Soliyev's deportation entered into force on the same day, the court decision notes.

NSC secret police arrest Azatov

Astana NSC opened the criminal case against Azatov in late December 2016. Officers arrested Azatov in Astana in early January 2017.

Anti-Extremism Police officer Baybazarov, who led the earlier case against Azatov, told Forum 18 on 1 February that Astana NSC secret police opened the criminal case against Azatov. "The Anti-Extremism Police has nothing to do with it", he claimed.

Lieutenant Colonel Daniyar Tajigulov, Deputy Chief of Astana NSC's Investigations Division refused to discuss the case. "I do not know you and we will not discuss it with you over the phone," he told Forum 18 on 1 February. He then put the phone down.

On 6 January Judge Akmaral Isayeva of Astana's Saryarka District Court No. 2 agreed to the NSC request to have Azatov held in pre-trial detention for two months. Adilet (who refused to give his last name), Judge Isayeva's assistant, would give no further details of the case on 1 February and refused to put Forum 18 through to the Judge.

The address of Astana's NSC Investigation prison where Azatov is being held:

SIZO KNB g. Astana

010003 Astana

Ul. Shyntas 2

Kazakhstan

Judge Isayeva on 20 January similarly approved two month detention for Jehovah's Witnesses Teymur Akhmedov and Asaf Guliyev, although Akhmedov needs hospitalisation for cancer treatment. Judge Isayeva claimed the detention was to defend a "civilised society" (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252). The two Jehovah's Witnesses similarly face prosecution under Criminal Code Article 174 ("Inciting social, national, clan, racial, or religious discord"). Astana NSC is also leading the case against them (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252). (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