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KAZAKHSTAN: Conviction annulled, yet still jailed on trial

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

Despite the Supreme Court annulling his conviction, prisoner of conscience Dadash Mazhenov was not acquitted but put on trial again. He rejects "propaganda of terrorism" charges for posting Islamic talks online. For a new "expert analysis", the court commissioned Roza Akbarova, whose assessments have helped convict three prisoners of conscience. Muslim prisoner of conscience Zhuldyzbek Taurbekov is to be transferred to a labour camp far from specialised medical care.

Although Kazakhstan's Supreme Court annulled lower and appeal court verdicts convicting Muslim prisoner of conscience Dadash Mazhenov of allegedly posting "propaganda of terrorism" online, a second trial on the same charges began in Kokshetau in February. The Supreme Court annulled the verdicts because the one "expert" who provided evidence that led to the original conviction was not qualified.

The Regional Court rejected a defence plea for Mazhenov to be released from Investigation Prison while the trial proceeds. It claimed that detention was necessary due to his "personality, and the heightened social danger of the actions he is accused of". Mazhenov, a 29-year-old father of one from Shchuchinsk in the northern Akmola Region, was originally arrested in April 2018 (see below).

On 29 April, Akmola Regional Court assigned to Roza Akbarova of the Justice Ministry's "Centre for Judicial Expert Analysis" the task of conducting a new "expert analysis" of Islamic talks Mazhenov had posted online in 2015 and later removed before the talks were banned in 2017 (see below).

Akbarova provided "expert analyses" which helped jail three prisoners of conscience between 2015 and 2017 for speaking about their beliefs with NSC secret police informers: Seventh-day Adventist Yklas Kabduakasov; Jehovah's Witness Teymur Akhmedov; and Sunni Muslim Satymzhan Azatov (see below).

Despite the Supreme Court's annulling of Mazhenov's criminal conviction, he is not regarded in law as innocent. "The presumption of innocence exists in Kazakhstan's legislation in a rather limited form," human rights defender Yevgeny Zhovtis commented to Forum 18. One impact is that Mazhenov remains on the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism". This means that any bank accounts he might have remain blocked (see below).

Mazhenov has stated that he was tortured in 2019 for marking Eid al-Fitr and praying the namaz (http://www.forum18.org/archive.php?article_id=2524) while he was held in a labour camp in the southern city of Shymkent. Officials say they have initiated a criminal case regarding his torture (http://www.forum18.org/archive.php?article_id=2570).

Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Kazakhstan is under a binding legal obligation to arrest and put on criminal trial any official suspected of torture (http://www.forum18.org/archive.php?article_id=2409). This does not seem to have happened yet in Mazhenov's case, and an official from the Shymkent Criminal Implementation Department insisted to Forum 18 that Mazhenov had caused his injuries to himself (http://www.forum18.org/archive.php?article_id=2570).

Meanwhile, despite at least three visits since his arrest to Almaty's Cardiology Centre for urgent treatment for his heart, 41-year-old Muslim prisoner of conscience Zhuldyzbek Taurbekov is to be transferred to a labour camp far from family and essential specialised medical care he needs. Colonel Tenizzhan Dzhaniybekov of the Interior Ministry wrote to Taurbekov's mother this is "with the aim of preventing him from committing new violations of the law" (see below).

This appears to violate the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules A/C.3/70/L.3), which state in part: "Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals .. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff."

Taurbekov and Mazhenov are among 24 known prisoners of conscience serving sentences for exercising their freedom of religion and belief (http://www.forum18.org/archive.php?article_id=2566), all of them Sunni Muslims.

In addition to these 24 current known prisoners of conscience, others currently known to be under restrictions for exercising freedom of religion or belief (http://www.forum18.org/archive.php?article_id=2566) are: sentenced to jail in absentia (3 Pentecostal Christians); serving restricted freedom sentences (6: 5 Sunni Muslims, 1 Jehovah's Witness); under post-jailing bans on specified activity (at least 16 Sunni Muslims); and still on the Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", whose bank accounts are blocked, after completing jail sentences (27: 26 Sunni Muslims, 1 Seventh-day Adventist).

2018 arrest, conviction for posting Islamic talks online

Shchuchinsk resident Dadash Temirgaliyevich Mazhenov (born 28 September 1990) in 2015 posted on his VKontakte social media page four talks by Muslim teacher Kuanysh Bashpayev, but had removed them before a court in 2017 banned the talks as "extremist". (http://www.forum18.org/archive.php?article_id=2427)

In early 2018, the National Security Committee (NSC) secret police's 9th Department in Akmola Region launched a criminal case against Mazhenov. He was arrested on 23 April 2018.

The NSC also launched a criminal case against Galymzhan Abilkairov for posting some of the talks online before the ban. He was jailed for seven years, seven months in October 2018 (http://www.forum18.org/archive.php?article_id=2427).

Bashpayev himself was in April 2017 jailed for four and a half years to punish him for talks he gave on Islam between 2008 and 2011 (http://www.forum18.org/archive.php?article_id=2272). He had been arrested in October 2016 on his return to Kazakhstan from Saudi Arabia.

Burabai District Court sentenced Mazhenov on 16 November 2018 (http://www.forum18.org/archive.php?article_id=2435) under Criminal Code Article 256, Part 2. This punishes "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 - 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 Court sentenced Mazhenov to 7 years and 8 months in a general regime labour camp, plus a fee of 60,790.14 Tenge. He appealed against the conviction, but Akmola Regional Court left his prison term unchanged on 30 January 2019 (http://www.forum18.org/archive.php?article_id=2452). The Court did though reduce the fee he had to pay to 1,255 Tenge (30 Norwegian Kroner, 3 Euros or 3 US Dollars).

Burabai District Court convicted Mazhenov on the basis of the "expert analysis" of one of the three "experts" appointed by the state, Aigerim Seifullina (http://www.forum18.org/archive.php?article_id=2435). She claimed that the recordings he posted online constituted "propaganda of terrorism" by "spreading concepts justifying the use of violent acts on a religious basis". She added that the recordings contained no public calls to commit terrorism or to form organisations to conduct terrorism.

However, as the defence pointed out, Seifullina did not have the qualifications the state requires to provide "expert analysis" for use in court. Prosecutor Sansyzbai admitted to Forum 18 that the "expert" Seifullina, who had undertaken the only analysis that found fault with the materials Mazhenov had uploaded to his VKontakte page "had no diploma". But, Sansyzbai claimed (wrongly) on 6 May, "no one knew of this".

Mazhenov was convicted despite the two other "experts" commissioned by the NSC secret police concluding that the recordings Mazhenov posted online did not incite religious or other hatred and discord or the violent overthrow of the government (http://www.forum18.org/archive.php?article_id=2435).

On 25 February 2019, after the sentence entered legal force, Mazhenov was 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. 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 List for six or eight years after they complete their sentences. (http://www.forum18.org/archive.php?article_id=2409)

Supreme Court annuls guilty verdict, but orders new trial

Due to "expert" Seifullina's lack of the qualifications required to provide "expert analysis" for use in court, the General Prosecutor's Office appealed to the Supreme Court on 5 December 2019 to annul his convictions and to send the case for a new trial.

"The court placed as the basis of its guilty verdict the conclusion by the expert Seifullina," the General Prosecutor's Office noted in its appeal, seen by Forum 18. The appeal also pointed out that the lower court had refused to consider an independent assessment conducted at the request of the defence, which found no evidence of terrorism in the materials Mazhenov uploaded.

Before the General Prosecutor's Office appeal, the prison authorities transferred Mazhenov first from Labour Camp ICh-167/3 in Shymkent, where he was tortured (http://www.forum18.org/archive.php?article_id=2524), to Investigation Prison SI-10 in Kyzylorda.

On 21 January 2020, a panel of three Judges led by Abdrashid Zhukenov (head of the Supreme Court's Criminal Division) approved the General Prosecutor's Office suit. So they annulled both the November 2018 Burabai District Court decision and the January 2019 Akmola Regional Court decision, according to the decision seen by Forum 18.

However, the Supreme Court chose not to acquit Mazhenov, an option available under Article 494, Part 7 of the Criminal Procedural Code. Instead it chose one of the three other possible options – to send the case for a new trial in Akmola Regional Court.

Presumption of innocence exists in "rather limited form"

Although the Supreme Court overturned the lower court decisions in Mazhenov's case, "it was not an acquittal and he is considered still as a convict", Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law pointed out to Forum 18 on 6 May. "The presumption of innocence exists in Kazakhstan's legislation in a rather limited form."

"Dadash has been left dangling," his mother Irina Mazhenova complained to Forum 18. "He shouldn't have a criminal record at all right now."

Because the Supreme Court decision was not an acquittal, Mazhenov could not be removed from the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism", Zhovtis added.

Forum 18 sent the Financial Monitoring Committee a written question about Mazhenov's continuing presence on their List of individuals "connected with the financing of terrorism or extremism" before the beginning of the working day of 6 May. Forum 18 has received no response.

New trial

On 6 February 2020, two weeks after the Supreme Court decision, prosecutors sent the new criminal case against Mazhenov to Akmola Regional Court, according to court records. There it was assigned to a panel of three Judges, led by Askerbek Zhakulin and also including Askar Kulmagambetov and Roza Ertayeva. The prosecution case is being led by Darkhan Sansyzbai of Akmola Regional Prosecutor's Office.

In mid-February, the prison authorities began transferring Mazhenov from Kyzylorda to Investigation Prison SI-20 in Kokshetau, where he arrived on 12 March, his mother Irina Mazhenova told Forum 18.

The first hearing in his new trial was set for 28 February, but Mazhenov was not brought to court, his mother Irina Mazhenova told Forum 18. The first hearing was then held on 19 March which, because of the coronavirus outbreak was held online. Mazhenov participated from Almaty's Investigation Prison. Mazhenova complained that the sound for her and her son's lawyer kept being cut off.

"Expert" who helped jail at least three prisoners of conscience

At the second hearing of the trial on 29 April, Akmola Regional Court agreed to Prosecutor Sansyzbai's request to commission a new "psychological/philological expert analysis" of sermons Mazhenov had posted online. The Court allocated the "analysis" to Roza Akbarova, a deputy director of the Justice Ministry's Institute of Judicial Expertise in the capital Nur-Sultan, according to the decision seen by Forum 18.

"Akbarova is a pocket expert, of the same type as Seifullina," Irina Mazhenova complained to Forum 18. "She's someone who will be useful to them."

Akbarova has provided "expert analyses" which helped jail three prisoners of conscience for speaking about their beliefs with NSC secret police informers: Seventh-day Adventist Yklas Kabduakasov, jailed for two years in December 2015 (http://www.forum18.org/archive.php?article_id=2136); Jehovah's Witness Teymur Akhmedov, jailed for five years with a ban on "ideological/preaching activity" for three more years in May 2017 (http://www.forum18.org/archive.php?article_id=2277); and Sunni Muslim Satymzhan Azatov, jailed for four years eight months in July 2017 (http://www.forum18.org/archive.php?article_id=2296).

When Forum 18 pointed out that Akbarova's "expert analyses" had helped jail at least three prisoners of conscience, Prosecutor Sansyzbai defended the choice. "She is well-known and well-qualified," he told Forum 18 from Kokshetau on 6 May.

Akbarova refused to discuss her latest "expert analysis" task. "Under our law, you don't have the right to contact me," she claimed to Forum 18 from Nur-Sultan on 5 May 2020.

Conviction annulled, but still jailed during new trial

During the Akmola Regional Court hearing, Prosecutor Sansyzbai opposed defence appeals for Mazhenov to be freed from Investigation Prison while the trial proceeds. The Court rejected any such release, claiming that "given the information characterising Mazhenov's personality, and the heightened social danger of the actions he is accused of, the Judicial Board considers it necessary to leave the detention measure of being held on remand unchanged", the court decision notes.

Prosecutor Sansyzbai refused to explain why he supported Mazhenov remaining in prison, two years after his original arrest and despite the overturning of his conviction. "It was the court that took the decision to keep him in Investigation Prison," he told Forum 18.

Mazhenov's address in Investigation Prison:

Akmolinskaya Oblast

C01P3F7, g. Kokshetau

raion kirzavoda

ul. Nikitina 67

uchr. ETs-166/23 (SI-20)

Kazakhstan

Prisoner of conscience to be sent far from family, specialised medical care

Following the failure of his appeal on 9 April at Almaty City Court (http://www.forum18.org/archive.php?article_id=2565) against his seven-year jail term, the prison authorities are preparing to transfer seriously-ill Muslim prisoner of conscience Zhuldyzbek Abikenovich Taurbekov (born 20 September 1978) from Almaty's Investigation Prison. The City Court also rejected an appeal for him to be released early on grounds of health.

Taurbekov was arrested in October 2018 as one of a group of nine men who had taken part in a WhatsApp Muslim group (http://www.forum18.org/archive.php?article_id=2497). The authorities accused them of propaganda of terrorism and inciting hatred, charges all nine denied. An independent analysis of one of the messages found no incitement or aggression, while a second analysis found that the prosecution's "expert analysis" had been conducted "superficially".

Taurbekov, who is seriously ill, spent six days undergoing treatment for his heart in Almaty's Cardiology Centre in April 2020 (http://www.forum18.org/archive.php?article_id=2565). This was soon after Almaty City Court rejected his appeal, and was his third spell of treatment in the Centre since his arrest.

Taurbekov's mother Asemgul Zhaugasheva then appealed for her son to be allowed to serve his sentence in Almaty Region, either to remain in Almaty's Investigation Prison or to be sent to the nearby Zarechny Labour Camp, Radio Free Europe's Kazakh Service noted on 4 May. This would allow him to remain close to his family and to the specialised medical care he needs.

However, Colonel Tenizzhan Dzhanibekov, first deputy head of the Interior Ministry's Criminal Implementation Committee in the capital Nur-Sultan, wrote to Taurbekov's mother informing her that her son is to be transferred to Labour Camp ES-164/3 now that his sentence has come into force. This is "with the aim of preventing him from committing new violations of the law", according to the letter seen by Forum 18.

"In all other prisons in Kazakhstan are the conditions such that my son could get up to something, and only the prison in the north of Kazakhstan can reform him?" Zhaugasheva told Radio Free Europe.

This transfer to a distant prison of a prisoner requiring continuing medical attention appears to violate the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Mandela Rules, A/C.3/70/L.3 (http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)), which state in part: "Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals .. Clinical decisions may

only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff."

The regime has ignored the Mandela Rules before in relation to medical treatment. In January 2017, an Astana court ordered cancer sufferer and Jehovah's Witness Teymur Akhmedov to be held in pre-trial detention while he awaited criminal trial for sharing his faith with others. The Judge rejected defence pleas (including a doctor's report stating the need for hospitalisation) to have him transferred to house arrest so that he could gain treatment. The Judge claimed this was to defend a "civilised society". (http://www.forum18.org/archive.php?article_id=2252)

The general regime labour camp where Taurbekov is due to be sent is in Petropavl in North Kazakhstan Region close to Kazakhstan's northern border with Russia, more than 1,400 kms (875 miles) north of Almaty, which is close to Kazakhstan's southern border with Kyrgyzstan. Journeys from one prison to another can often take up to a month.

Colonel Dzhanibekov gave no reason for the decision to transfer Taurbekov so far from his family and the specialised medical care he needs, rather than to a general regime labour camp near Almaty. The telephone of the official who drafted the letter, M. Imakhanov, was not answered each time Forum 18 called on 6 May.

The telephone at the special department of Almaty's Investigation Prison LA-155/18 was not answered on 5 or 6 May.

Forum 18 was unable to find out whether Petropavl's ES-164/3 Labour Camp has the facilities to treat a prisoner with serious heart problems. Its telephones were not answered on either 6 May or 7 May (a public holiday). (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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