

4 December 2020

KAZAKHSTAN: Court rejects seriously-ill prisoner's release plea

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

Despite serious heart problems, 42-year-old Muslim prisoner of conscience Zhuldyzbek Taurbekov was not on 26 November freed early. North Kazakhstan Regional Court rejected his appeal against an earlier denial, even though "his illness is on the list of illnesses for which prisoners should be freed" his lawyer told Forum 18. There are 17 known prisoners of conscience jailed for exercising freedom of religion or belief, all Muslim men.

On 26 November, North Kazakhstan Regional Court rejected the appeal by prisoner of conscience Zhuldyzbek Taurbekov against the denial of early release on health grounds. The 42-year-old Muslim – who is serving a seven-year jail term - is seriously ill and needs a heart transplant.

Prisoner of conscience 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=2565). The authorities accused them of "propaganda of terrorism" and "inciting hatred", charges all nine denied. An independent analysis found no evidence of this, while a second analysis found the prosecution's "expert analysis" had been conducted "superficially".

Because of his poor health, prisoner of conscience Taurbekov's trial was separated from that of the others. The other eight Muslims were jailed for between five and a half and eight years (http://www.forum18.org/archive.php?article_id=2498) on 5 August 2019.

The jailed Muslims are among 17 known prisoners of conscience who are currently in December 2020 thought to be serving jail sentences for exercising freedom of religion and belief (see full list at base of this article).

On 4 November 2020, a court in the southern city of Shymkent rejected the appeal from another of these nine Muslim prisoners of conscience, Azamat Umbetaliyev, for the rest of his five and a half year jail term to be commuted to a lesser form of punishment (see below).

On 2 December, a court in the western city of Aktobe rejected the appeal from yet another of the nine Muslim prisoners of conscience, Samat Adilov, for the rest of his five and a half year jail term to be commuted to a lesser form of punishment (see below).

However, in late October, one of the nine Muslim prisoners of conscience jailed as part of the same case had the rest of his five-year jail term changed to a restricted freedom sentence. Esim Suleimenov is now serving his sentence while living under restrictions at home (see below).

Taurbekov: Severe heart problems, has needed heart transplant since 2019

Since his October 2018 arrest, Zhuldyzbek Abikenovich Taurbekov (born 20 September 1978) has developed serious heart problems.

In July 2019, Taurbekov's mother and lay defender testified at his trial that he had been diagnosed as needing a heart transplant (http://www.forum18.org/archive.php?article_id=2497). The chief doctor of Pavlodar Labour Camp medical unit confirmed this diagnosis to Forum 18 in October 2020 (http://www.forum18.org/archive.php?article_id=2607).

"Due to his bad heart, Taurbekov has throughout this process had pulmonary edema," one source told Forum 18 on 3 November 2020. "When an exacerbation of pulmonary edema occurs, he cannot breathe in a horizontal position - that is, he cannot sleep lying down and breathe, because at such moments he can only breathe while sitting. And his heart is enlarged. And the release of blood sometimes drops to 9 per cent - compared to a normal rate of 66 per cent."

On various occasions in 2020 Taurbekov has been unable to breathe when lying down, the source added. "Critically, Taurbekov developed this symptom in prison, from which he is not being released under various pretexts."

A 26 August 2020 medical consultative commission assessment – cited in the 26 November 2020 North Kazakhstan Region Court decision (see below) – noted that Taurbekov suffers from dilated cardiomyopathy and arterial hypertension.

The United Nations (UN) 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)) apply to people who have been sentenced as well as those in pre-trial detention. Rule 27 states 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."

No official has been prepared to explain why a medical decision about a patient needing a heart transplant was being taken by a labour camp administration (http://www.forum18.org/archive.php?article_id=2607).

On 3 and 4 December, Forum 18 was unable to reach the head of Labour Camp ES-164/3 in Petropavl, Temirlan Valiyev, or the deputy head responsible for the medical condition of prisoners, Gulnar Baimukanova. Colleagues told Forum 18 that they were not in the camp or were at lunch, or the phone went unanswered.

Taurbekov: Still no hospitalisation

Taurbekov was recognised as a second-category invalid in October 2019 (http://www.forum18.org/archive.php?article_id=2565) while in pre-trial detention. This category includes those who suffer "persistent severe impairment of bodily functions" which reduce the ability to move, look after oneself or work.

Despite prisoner of conscience's Taurbekov's serious medical problems diagnosed in 2019, prison authorities did not hospitalise him for the heart transplant he needs, as the Mandela Rules require. On 23 September 2020 prison authorities transferred prisoner of conscience Taurbekov from Labour Camp ES-164/3 in Petropavl (http://www.forum18.org/archive.php?article_id=2607). After a train journey of more than 1,000 kms (630 miles), he arrived late on 27 September at Labour Camp AP-162/2 in Pavlodar, which has a medical unit.

The fact that Taurbekov - who is from the southern city of Almaty - has been imprisoned in Petropavl and then Pavlodar also violates the UN Standard Minimum Rules for the Treatment of Prisoners. Rule 59 declares: "Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation." Petropavl is 1,730 kms from Almaty by road, while Pavlodar is 1,500 kms from Almaty by road.

Prisoner of conscience Taurbekov's family are seriously concerned about the impact of this on his condition, as "the medical unit doesn't have the facilities to treat him, and doesn't even have appropriate medicine" (http://www.forum18.org/archive.php?article_id=2607).

Taurbekov: No medical documents, no early release

Taurbekov has been persistently seeking early release from prison on health grounds (http://www.forum18.org/archive.php?article_id=2607). However, on 7 October Judge Takhmina Sobirova of Petropavl City Court rejected his appeal, Radio Free Europe (RFE)'s Kazakh Service noted the same day.

In presenting her decision, Judge Sobirova claimed that "to rule on the appeal, the relevant medical documents are needed", but which were not present in the documents presented to court. Therefore, "consideration of the appeal on its merits was not possible". She added that her decision did not prevent a future application to be submitted.

Taurbekov's lawyer, Guliyev, said that the Pavlodar Labour Camp administration was at fault for failing to send the medical documentation to the court for the 7 October hearing. "Only the head of the camp takes the decision to send such documents to the court," he told Forum 18 from Almaty on 3 December. "They behaved as though the documentation was not ready."

Guliyev noted that the medical documentation was ready the day after the hearing.

Judge Sobirova refused to discuss why she did not adjourn the hearing until the Labour Camp provided the medical documentation. "I am not allowed to discuss my decision," she told Forum 18 from Petropavl on 4 December. "I have issued my decision and the individual has appealed against it."

The Judge also did not address the relevance to her decision of the Mandela Rules' clear statement (http://www.forum18.org/archive.php?article_id=2607) that: "Clinical decisions may only be taken by the responsible health-care professionals".

Present in court alongside the Judge was Prosecutor Ainagul Smagulova and an official from the Labour Camp. Joining the hearing online from Pavlodar Labour Camp was Taurbekov, an official of the Pavlodar Labour Camp, and from Almaty Taurbekov's lawyer,

Farkhat Guliyev.

Guliyev requested the court to issue a decision reprimanding the labour camp for failing to produce the medical documents, but the judge refused. The lawyer also told the court that Taurbekov's illness was among those included in an Interior Ministry decree as forming the basis for being released from prison. The lawyer warned that his condition was serious and neither the medical unit in the Pavlodar Labour Camp nor the Petropavl Labour Camp had a cardiologist.

Prosecutor Smagulova rejected the appeal for early release, arguing that the certificate that Taurbekov is a second-category invalid was valid only until 23 October and that no other relevant medical documents were in the file.

Forum 18 was unable to reach Prosecutor Smagulova to find out why she did not request that the hearing be postponed until the Labour Camp provided the medical documentation. Colleagues at North Kazakhstan Regional Prosecutor's Office told Forum 18 on 3 December that she could not be contacted because she is working remotely because of the coronavirus pandemic.

Taurbekov: Prison medical assessment not given to lawyer or family?

On 13 October, the prison authorities sent Taurbekov back to Labour Camp ES-164/3 in Petropavl, Taurbekov's mother Asemgul Zhaugasheva told RFE for a 14 October article.

The head of the camp's medical unit, Berik Smagulov, told RFE that a medical commission had confirmed Taurbekov's diagnosis but that it had found that he had "no progressive worsening of his condition" and therefore his case did not need to be considered by a judicial medical commission.

Guliyev, Taurbekov's lawyer, told Forum 18 that he has not been given a copy of the medical commission's assessment and was given only a summary of its conclusion. "It concluded that Taurbekov has an illness and needs treatment, but added that only if the treatment he is being given brings no result will it be necessary to release him."

Heart specialists have therefore been denied the chance to review the views of their non-specialist prison colleagues.

Taurbekov: Second appeal fails

Taurbekov appealed against the 7 October court decision rejecting his plea for early release. However, Judge Gulnara Bekenova of the panel for criminal cases at North Kazakhstan Regional Court rejected his appeal on 26 November, according to the decision seen by Forum 18. The decision was final and cannot be appealed.

Taurbekov's lawyer Guliyev told the hearing that all the medical documents should have been presented and pointed out that his client's illness is on the list of illnesses for which early release is prescribed. However, Daurenbek Mukushev of the Prosecutor's Office rejected these points and called for the 7 October decision to be upheld. He blamed the failure to present the full medical documentation at the earlier hearing to the fact that Taurbekov was then being held in Pavlodar, not in Petropavl.

"I believe the Regional Court took the wrong decision," Guliyev told Forum 18. "The court should have freed Taurbekov as his illness is on the list of illnesses for which prisoners should be freed."

Taurbekov's mother Zhaugasheva – who is also his public defender - told RFE for a 30 November article that she considered the decision unjust.

Temirlan Valiyev, the head of Labour Camp ES-164/3 in Petropavl, insisted to RFE that it would do everything to prevent Taurbekov's condition deteriorating. Valiyev said the camp administration had prepared documents extending Taurbekov's status as a second-category disabled person so that he can receive support.

Taurbekov's address in Labour Camp:

Severo-Kazakhstanskaya oblast

T01A4K9, g. Petropavl

ul. 1-Zarechnaya 100

uchr. ES-164/3

Umbetaliyev: Court rejects early release appeal

Abai District Court in the southern city of Shymkent rejected the appeal lodged by Muslim prisoner of conscience Azamat

Gaidarovich Umbetaliyev (http://www.forum18.org/archive.php?article_id=2607) (born 10 January 1992) for a commutation of the remainder of his term to a lesser of punishment.

Zh. Asanov, who was representing the Labour Camp, told the court that Umbetaliyev has been given no good conduct record, so it is impossible to assess his behaviour for a special commission to decide if he should be eligible for commutation of the rest of his sentence to a milder punishment. Umbetaliyev's representative insisted that he had "firmly put himself on the path of correction", had "sincerely repented", and paid all court-ordered fees from his original trial.

Prisoner of conscience Umbetaliyev was one of the men arrested with prisoner of conscience Taurbekov for participation in an online Muslim discussion group (http://www.forum18.org/archive.php?article_id=2497). Umbetaliyev was jailed for five and a half years in August 2019 (http://www.forum18.org/archive.php?article_id=2498).

Judge Askar Dusaliyev rejected his appeal on 4 November, according to the decision seen by Forum 18.

Umbetaliyev appealed against the 4 November decision to Shymkent City Court, his mother Anzhelika Belyayeva told Forum 18 on 2 December. No date for the hearing has yet been set.

Umbetaliyev is serving his prison term in the 31st zone of Labour Camp ICh-167-3 (http://www.forum18.org/archive.php?article_id=2607) in the southern city of Shymkent, where he works in the furniture workshop. Belyayeva stated that the Labour Camp head for a long time failed to send on Umbetaliyev's appeal for early release to court.

Umbetaliyev's address in Labour Camp:

160000, g. Shymkent

Abaisky raion

Temirlanskoe shosse 28

Uchr. ICh-167/3, 31 zona

Adilov: Court rejects early release appeal

On 2 December, a court in the western city of Aktobe rejected the appeal from another of the nine Muslim prisoners of conscience, Samat Asylkhanovich Adilov (born 28 August 1986), for the rest of his five and a half year jail term to be commuted to a lesser punishment.

Prisoner of conscience Adilov was one of the nine men arrested with prisoners of conscience Taurbekov and Umbetaliyev for participation in an online Muslim discussion group (http://www.forum18.org/archive.php?article_id=2497). Adilov was jailed for five years in August 2019 (http://www.forum18.org/archive.php?article_id=2498).

"The commission supported the move, but the court rejected it," Adilov's relatives told Forum 18 on 3 December 2020. "The NSC [secret police] must have said no." Relatives said Adilov will probably not appeal against the court decision.

Relatives say that as far as they know, Adilov is able to pray visibly and to have access to the Koran. Many Muslim prisoners of conscience jailed for exercising their freedom of religion or belief have stated that they are banned from reading the Koran and other religious books, and prevented from saying the namaz (http://www.forum18.org/archive.php?article_id=2409) (obligatory Muslim daily prayers).

Adilov's mother was last able to travel to the labour camp in Aktobe where he is being held in December 2019. "Since then, visits have been impossible because of coronavirus."

Adilov's address in Labour Camp:

Aktyubinskaya Oblast

g. Aktobe

Ul. Chekalina 44

Uchr. KA-168/2

Suleimenov: Prisoner of conscience transferred to restricted freedom

A court in Kyzylorda has ruled that one of the nine Muslims jailed in the case, Esim Kadirzhumanovich Suleimenov (born 1 February 1983), should have the rest of his five-and-a-half-year jail term commuted to a restricted freedom sentence. He was freed from prison ZK-169/5 in the city of Kyzylorda on 29 October, the prison service told RFE's Kazakh Service for a 6 November article.

Prisoner of conscience Suleimanov was one of the men arrested with prisoners of conscience Taurbekov, Umbetaliyev, and Adilov for participation in an online Muslim discussion group (http://www.forum18.org/archive.php?article_id=2497). Suleimenov was jailed for five and a half years in August 2019 (http://www.forum18.org/archive.php?article_id=2498).

Suleimenov told RFE on 6 November that he had behaved "evenly, calmly, did not disturb the order, had compliments".

For the rest of his sentence, Suleimenov has to live at home, is banned from visiting places of entertainment (such as restaurants and cinemas) and cannot move or leave his home town without permission. However, he is not banned from attending places of worship.

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List of 17 known prisoners of conscience

The 17 known individuals (all of them Sunni Muslim men) thought as of early December 2020 to be serving prison sentences to punish them for exercising freedom of religion or belief are listed below. They are listed in approximate reverse order of their expected date of release.

In addition to those serving jail terms, 3 individuals have been given jail terms in absentia, others are serving restricted freedom sentences, still more remain under post-sentence restrictions, and a much larger group continue to have their bank accounts blocked even though they have completed their sentences (http://www.forum18.org/archive.php?article_id=2566).

- 1) Dadash Temirgaliyevich Mazhenov; Sunni Muslim; born 28 September 1990; arrested 23 April 2018; sentenced 16 November 2018 Burabai District Court; Criminal Code Article 256, Part 2; appeal rejected 30 January 2019 Akmola Regional Court; 7 years and 8 months in a general regime labour camp plus fee of 60,790.14 Tenge (reduced on appeal to 1,255 Tenge), plus bank accounts blocked. Supreme Court annulled earlier decisions (but did not acquit him) 21 January 2020 and sent case for new trial. Sentenced 13 October 2020 Akmola Regional Court; Criminal Code Article 256, Part 2; 7 years and 8 months in a general regime labour camp plus fee of 134,599 Tenge.
- 2) Bolatbek Dyusenbekovich Nurgaliyev; Sunni Muslim; born 12 December 1978; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 256, Part 2 and Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 8 years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.
- 3) Ernar Samatovich Samatov; Sunni Muslim; born 19 March 1980; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 256, Part 2 and Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 7 and a half years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.
- 4) Beket Tastanbekovich Mynbasov; Sunni Muslim; born 10 January 1983; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 256, Part 2 and Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 7 and a half years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.
- 5) Dilmurat Sultanmuratovich Makhamatov; Sunni Muslim; born 19 February 1978; arrested 19 December 2018; sentenced 2 May 2019 Shymkent's Al-Farabi District Court; Criminal Code Article 174, Part 2 and Article 256, Part 2; appeal rejected 26 June 2019 Shymkent City Court; 8 years in a general regime labour camp, plus bank accounts blocked.
- 6) Galymzhan Ramazanovich Abilkairov; Sunni Muslim; born 29 January 1988; arrested 23 April 2018; sentenced 19 October 2018 Burabai District Court; Criminal Code Article 256, Part 2; appeal rejected 26 December 2018 Akmola Regional Court; 7 years and 7 months' jail term, plus bank accounts blocked.
- 7) Zhuldyzbek Abikenovich Taurbekov; Sunni Muslim; born 20 September 1978; arrested 27 October 2018; sentenced 6 January 2020 Almaty's Almaly District Court; Criminal Code Article 256, Part 2 and Article 174, Part 2; appeal rejected 9 April 2020 Almaty City Court, 7 years in a general regime labour camp plus "compensation" of 48,100 Tenge plus court fees of 112,295 Tenge.
- 8) Nazim Alimzhanovich Abdrakhmanov; Sunni Muslim; born 10 March 1988; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 5 and a half years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.

8) Samat Asylkhanovich Adilov; Sunni Muslim; born 28 August 1986; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 5 and a half years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.

9) Zhasulan Meiramovich Iskakov; Sunni Muslim; born 22 October 1984; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 5 and a half years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.

10) Azamat Gaidarovich Umbetaliyev; Sunni Muslim; born 10 January 1992; arrested 27 October 2018; sentenced 5 August 2019 Almaty's Almaly District Court; Criminal Code Article 174, Part 2; appeal rejected 20 November 2019 Almaty City Court; 5 and a half years' imprisonment plus "compensation" of 48,100 Tenge plus court fees, plus bank accounts blocked.

11) Abdukhalil Abdukhamidovich Abduzhabbarov; Sunni Muslim; born 6 April 1975; arrested 18 February 2017; sentenced 16 August 2017 Oral City Court; Old Criminal Code Article 164, Part 3 (equivalent to Article 174, Part 3 of new Code); 8 year prison term, plus bank accounts blocked.

12) Nariman Kabdyrakhmanovich Seytzhano; Sunni Muslim; born 2 May 1989; arrested 15 January 2017 (after earlier arrest in Kyrgyzstan); sentenced 9 June 2017 Kokshetau City Court; Criminal Code Article 174, Part 1; appeal rejected 16 August 2017 Akmola Regional Court; 5 year prison term, plus 91,693.58 Tenge fee, plus bank accounts blocked.

13) Satymzhan Bagytzhanuli Azatov; Sunni Muslim; born 17 September 1989; arrested 4 January 2017; sentenced 10 July 2017 Astana's Saryarka Court No. 2; Criminal Code Article 174, Part 1 and Article 256, Part 1; appeal rejected 12 September 2017 Astana City Court; 4 year and 8 month prison term, plus bank accounts blocked.

14) Abilai Aidarly Bokbasarov; Sunni Muslim; born 12 February 1991; arrested 13 August 2018; sentenced 9 January 2019 Balkhash City Court; Criminal Code Article 405, Part 1; no appeal; 3 years' imprisonment in a medium-security institution, plus 5-year post-prison ban on right to engage in religious activity, plus bank accounts blocked.

15) Iliyan Raiymzhan; Sunni Muslim; born 8 February 1992; arrested April 2017; sentenced 1 August 2017 Tekeli City Court; Criminal Code Article 405, Parts 1 and 2; appeal rejected 19 September 2017 Almaty Regional Court 4 year prison term, plus 2 and a half years' post-prison ban on exercise of religious freedom, plus bank accounts blocked.

16) Bakhytzhhan Esimkhanovich Baimusayev; Sunni Muslim; born 15 November 1963; arrested at end of trial; sentenced 4 April 2017 Sairam District Court; Criminal Code Article 405, Part 1; no appeal; 4 years' imprisonment, plus 4-year post-prison ban on activities, plus bank accounts blocked.

17) Abduvakhab Salibekovich Shakirov; Sunni Muslim; born 21 December 1962; arrested at end of trial; sentenced 4 April 2017 Sairam District Court; Criminal Code Article 405, Part 1; no appeal; 4 years' imprisonment, plus 4-year post-prison ban on activities, plus bank accounts blocked.

(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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