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The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief

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KAZAKHSTAN: New punishments for unapproved religious activity in controversial draft Law

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

Kazakhstan's controversial amendments to various laws affecting religion or belief reached the Senate on 29 September after being approved by parliament's lower house and are now with the Senate's Committee for Social and Cultural Development. Committee chairman Akhan Bizhanov three times refused to tell Forum 18 News Service whether the new Law aims to increase state controls on the activity of religious communities and individuals. The text of the Law as approved by the lower house – and seen by Forum 18 – would for the first time explicitly ban unregistered religious activity, ban sharing beliefs by individuals not named by registered religious organisations and without personal registration as missionaries, require all registration applications to be approved centrally after a "religious expert assessment" of each community's doctrines and history, and impose a wider range of fines on individuals and communities and bans on religious communities who, for example, conduct activity not specifically mentioned in their charter. Groups without full registration would not be able to maintain publicly-accessible places of worship.

The latest known version of Kazakhstan's controversial amendments to various laws affecting freedom of religion or belief imposes new administrative punishments for "religious offences", Forum 18 News Service notes. Repeat "offences" – if the current draft is adopted – would lead to a religious community being banned. Such "offences" would include a community doing something not expressly mentioned in its charter.

The new amendments – as approved in the lower house of parliament, the Majilis, on 24 September - are now with the Senate before going for signature by President Nursultan Nazarbaev. The text as approved by the Majilis – which Kazakh officials refuse to open to public discussion – would impose numerous restrictions on freedom of thought, conscience and belief.

Among numerous restrictions, if adopted in the current form the Law would for the first time explicitly ban unregistered religious activity. Kazakh officials have long sought to achieve this (see F18News 4 August 2005 http://www.forum18.org/Archive.php?article_id=625). They frequently claim – in defiance of current written law – that such activity is already illegal, while obstructing registration applications (see F18News 3 October 2008 http://www.forum18.org/Archive.php?article_id=1198).

The latest text would also ban anyone from sharing their beliefs without both the written backing of a registered religious association and also personal state registration as a missionary. Restricting the freedom to share beliefs has the public backing of President Nazarbaev and other state officials (see F18News 5 February 2008 http://www.forum18.org/Archive.php?article_id=1081).

Three types of religious communities with some form of state status are proposed. One effect of these proposals is that they would bar two of Kazakhstan's four Catholic dioceses from retaining legal status.

The draft Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations – prepared by a group of parliamentary deputies - was approved for consideration by parliament on 2 April. The new Law aims to amend numerous articles of the current Religion Law, the Code of Administrative Offences and several other laws. The draft Law, which received the backing of Prime Minister Karim Masimov, passed its second and final reading in the Majilis on 24 September (see F18News 29 September 2008 http://www.forum18.org/Archive.php?article_id=1194).

The draft Law was then passed to the Senate, whose website notes that it was received on 29 September and that the Constitution allows it to be considered until 27 November. The website notes that the draft is now with the Senate Committee for Social and Cultural Development, which is headed by a Senator from Almaty, Akhan Bizhanov. Only once the Committee has considered it will it go to the full Senate.

Bizhanov and staff of his Committee repeatedly refused to give Forum 18 a copy of the latest text of the Draft, insisting that it was still being "worked on". Curiously, at a roundtable organised by the Senate Committee in Almaty on 7 October, those present were given a comparative table of proposed amendments which dated back several months. Forum 18 has obtained a copy of the text, as approved by the Majilis, from other sources.

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Told about the concerns of many human rights defenders and religious communities in Kazakhstan, Bizhanov brushed these aside. He claimed to Forum 18 from the capital Astana on 8 October that "there is time" for such views to be heard before the Law is finally adopted. Kamil Burkhanov, who led the Majilis Working Group, also claimed to Forum 18 on 10 June that any criticisms would be taken into account (see F18News 10 June 2008 http://www.forum18.org/Archive.php?article_id=1141).

Bizhanov of the Senate claimed that the 18 religious communities represented at the Almaty roundtable "generally supported" the proposed Law, though he conceded that there had been some criticisms. The Organisation for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) supplied – at Kazakh government request - a legal review of the draft Law on 10 June. The draft Law ignores the suggestions contained in the OSCE / Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief (see http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282004%29028-e).

Asked whether the new Law aims to increase state controls on the activity of religious communities and individuals, Bizhanov three times refused to answer. "I can't speak for the whole Senate," he told Forum 18, before saying he had no more time to talk.

Several legal specialists in Kazakhstan have complained to Forum 18 that many of the provisions of the draft Law, including new offences and penalties to be included in the Criminal and Administrative Codes, are ill-defined and allow for broad interpretations which could be used to restrict religious freedom.

The Law is symptomatic of systematic Kazakh official hostility to freedom of thought, conscience and belief, despite frequently repeated state claims of official religious tolerance.

New punishments for religious activity

The draft Law as approved in the Majilis heavily amends Article 375 of the Code of Administrative Offences, an article that punishes "violations of legislation on freedom of conscience and religious organisations". Fines have been increased and closure of religious organisations – both temporary and permanent – would become easier.

Under Part 1 of Article 375, holding religious services, conducting charitable work, importing, publishing or distributing religious literature or building or opening places of worship in violation of "demands established in law" would lead to fines for individuals of up to 50 times the minimum monthly wage, 100 times for religious leaders and 200 times for religious communities (with up to a six-month ban on their activity).

Under Part 2 of Article 375, refusing to register a religious community or activity that is not specified in the community's charter would lead to religious leaders being fined 100 times the minimum wage, with religious communities fined 200 (with up to a six-month ban on their activity).

Under Part 3 of Article 375, organising religious activity for children without the approval of both their parents or legal guardians would lead to fines for individuals of up to 50 times the minimum monthly wage, 100 times for religious leaders and 200 times for religious communities (with up to a six-month ban on their activity).

Part 4 of Article 375 punishes those who profane religious sites and objects of other faiths.

Part 5 of Article 375 punishes those who conduct "missionary activity" without personal registration and in violation of procedures. Citizens would be fined 50 times the minimum wage, while foreigners and those without citizenship would be fined 100 times and would be "administratively" deported.

For those who violate any parts of the Article (except for Part 4) within a year of a previous administrative penalty for the same offence or for religious communities that fail to remove a violation which led to the temporary banning of their activity would lead to fines for individuals of 100 times the minimum wage for individuals, 300 for religious leaders and 400 for religious organisations (together with a ban on all their activity).

The draft Law leaves untouched Article 374-1 of the Code of Administrative Offences, which punishes unregistered religious activity.

A proposed amendment to Article 636 would allow "the representative of the state body in the area of the rights of citizens to freedom of religious conscience and cooperation with religious associations" to draw up legal records of violations of Articles 374-1 and 375 which could be used in court. Prosecutors remain authorised to launch administrative cases.

The only change to the Criminal Code is to widen the application of Article 336 – which punishes "obstruction of the legal activity of state agencies" by social organisations – to include religious organisations. It remains unclear if, for example, refusing to register a religious organisation or to complete intrusive official questionnaires at the demand of officials or to allow police to conduct even

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an unapproved raid, would be punishable by this article.

Religion Law amendments

The most crucial amendment to the Religion Law is to specify categorically that unregistered religious activity would be illegal. Article 4 Part 1 declares: "An association of citizens engaged in religious activity is obliged to undergo registration in the form either of a religious association or a religious group. Not allowed is the activity of religious associations or religious groups not registered under the procedure established by the law of the Republic of Kazakhstan."

Although officials have often told religious communities that unregistered religious activity is illegal, and punishments for such unregistered activity already exist in the Administrative Code, nowhere has a ban on such unregistered activity previously been set out formally. Indeed, such a ban would violate Kazakhstan's international human rights commitments, which nowhere specify that religious activity requires prior state approval.

Religious groups – which are forced under Article 4-3 to seek local registration ("uchetnaya registratsiya" in Russian) – are specifically not given legal status. They would only be authorised to carry out religious activity with existing members and would not be allowed to maintain places of worship "open to a wide access". Nor would they be allowed to conduct missionary activity. No mention is made of how many members such religious groups can or must have.

Religious associations – which are divided into "local" and "central" – would have greater rights. Article 7 specifies that local religious associations would require at least 50 adult citizens as founders. Central religious associations would require as founder registered local religious associations in at least five of Kazakhstan's 16 administrative units. Religious affairs officials would need to certify that the local founding religious associations were abiding by the law.

Catholic officials told Forum 18 that their diocese of Karaganda functions in only two regions (Karaganda and East Kazakhstan), while the Apostolic Administration of Atyrau functions in only four regions (Aktobe, Atyrau, West Kazakhstan and Mangistau). This means that if the new Law is approved as currently framed, two of their dioceses would no longer be able to retain legal status.

Article 9 requires both local and central religious organisations wishing to gain registration to supply an account of their religious beliefs, practice and history, both of the faith as a whole and the individual community. They would also be required to set out their attitude to marriage and the family, education and the health of their adherents.

Article 9 also declares that a "religious expert assessment" is the necessary "basis" for a registration decision. Subject to "expert assessment" are all the documents submitted as part of an association's registration application, its religious literature and other religious objects. Article 4-4 specified that such "religious expert assessments" are conducted "with the participation of representatives of state bodies and religious experts" (who are not identified). Other specialists can be brought in as needed.

Article 6-1 specifies that the Religious Affairs Committee in the Justice Ministry in Astana conducts such assessments. This would mean that every religious community seeking legal status would need the prior approval of one Ministry in the capital. The government is to draw up the procedure.

Article 7 also bans the creation of religious organisations under any other legal framework than religious associations, except religious educational organisations. It is unclear if this means that organisations such as the Bible Society – founded 14 years ago and registered as a non-commercial organisation with representatives from a variety of Christian denominations on the board – will be allowed to exist.

Article 12 would require permission from the local authority for the construction of any new place of worship or adaptation of an existing building for religious use.

Specifically banned would be "missionary activity" – defined in Article 1-1 as spreading one's faith "in the name of a religious association outside the territory of its activity" - without state registration. As religious groups are specifically banned from conducting such activity, only registered religious associations are authorised to seek the local registration (uchetnaya registratsiya) required before any individual could conduct such missionary activity. It remains unclear whether even a member of one local religious association could address members of another religious association in another town without such personal local registration.

Article 13 of the new Law would also impose tight restrictions on religious literature. Apart from a few personal items, all religious literature imported into the country would require approval through a "religious expert assessment". Any public library would require a positive "religious expert assessment" before it could enter in its stocks any book on religion. Distribution of religious literature would be banned in state bodies, educational and health establishments and within 100 metres of them and on public transport. Published religious literature must include the full name of the religious association publishing them. It remains unclear what happens with religious literature published by individuals.

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The draft Law would increase the powers of the Religious Affairs Committee in the Justice Ministry. Article 6-1 would allow it to appeal to law-enforcement agencies to ban the religious activity of individuals and associations and to appeal to courts for the liquidation of religious associations which it believes have broken the Law. It would check the veracity of data submitted in registration applications. It would also need to "agree" the appointment by foreign religious organisations of any head of a religious association in the country or the work of any foreign religious organisation in the country.

Article 16-1 requires religious associations to confirm each year that they continue to operate and to provide yearly financial, statistical and tax reports. Failure to provide these and other information would lead to a court application to have their legal status removed.

If approved by the Senate and the President, the Law would come into force ten days after its official publication. Religious associations would then have 18 months to re-register under the new requirements. Religious organisations registered under different legal provisions would be required to register as religious organisations within six months. Given the illegality of any religious activity without registration, failure to retain registration would lead to the closure of a religious community.

The Law's wider context

The draft Religion Law is being considered in a climate of officially-incited intolerance of religious minorities, in a "State Programme of Patriotic Education," approved by a decree of President Nazarbaev, and a Justice Ministry booklet "How not to fall under the influence of religious sects" (see F18News 3 April 2007 http://www.forum18.org/Archive.php?article_id=939). This intolerance is also incited through the mass media, which is being used by the state to encourage support for both the draft Law (see eg. F18News 10 June 2008 http://www.forum18.org/Archive.php?article_id=1141) and police raids on religious communities (see eg. F18News 22 February 2008 http://www.forum18.org/Archive.php?article_id=1091).

The authorities seem particularly keen to deprive minority religious communities of places of worship and other buildings. Communities so targeted have included Protestants and Hare Krishna devotees (see eg. F18News 20 August 2008 http://www.forum18.org/Archive.php?article_id=1174).

Religious communities in Kazakhstan have also been disturbed by increased official demands that they and their leaders complete highly intrusive questionnaires covering personal, political, religious and other matters, including who the close friends of leaders are (see F18News 25 February 2008 http://www.forum18.org/Archive.php?article_id=1092).

The administration of those rights supposedly guaranteed in Kazakhstan is open to serious criticism. In a February 2007 report on trial monitoring, the OSCE found that Kazakh court proceedings needed to offer "the right of the public to attend court, equality between the parties and the presumption of innocence" (see http://www.osce.org/astana/24153).

Similarly, legal experts have told Forum 18 that terrorism charges brought against 15 devout Muslims - which resulted in jail sentences of up to 19 and a half years - were not proven, and that at least fourteen of the accused are completely innocent (see F18News 8 April 2008 http://www.forum18.org/Archive.php?article_id=1110). (END)

For a personal commentary on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=701.

More 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.

A survey of the religious freedom decline in the eastern part of the Organisation for Security and Co-operation in Europe (OSCE) area is at http://www.forum18.org/Archive.php?article_id=806 and a survey of religious intolerance in Central Asia is at http://www.forum18.org/Archive.php?article_id=815.

A printer-friendly map of Kazakhstan is available at http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=kazakh.

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