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KAZAKHSTAN: Proposed new Administrative Code to be reworked, existing penalties remain

By Felix Corley, Forum 18

In withdrawing from Parliament the controversial proposed new Code of Administrative Offences, the government was not responding to pressure from human rights defenders, an official and a law professor have separately told Forum 18 News Service. Bulat Beisov of the Justice Ministry's Legislation Department insisted the Code will be reworked and presented again to Parliament. Law professor Roman Podoprighora says the impact on human rights and religious freedom of the withdrawal of the proposed new Code is "neutral". He points out that the Code in force today already includes two Articles punishing non state-approved religious activity which are likely simply to be carried over into the new Code when it is presented once again. Beisov rejected any suggestion that the two Articles in both the current and withdrawn new Code violate international human rights norms by punishing people for unregistered religious activity.

The government's decision to withdraw from Parliament the controversial draft Code of Administrative Offences was not connected with the widespread criticism by human rights defenders and religious communities over provisions that violate Kazakhstan's international human rights commitments, Forum 18 News Service has learned. "It was withdrawn for other reasons, together with the draft Administrative Procedure Code, and they will be reworked and presented to Parliament again," Bulat Beisov, head of the Directorate of Criminal Legislation in the Justice Ministry's Legislation Department, told Forum 18 from the capital Astana on 8 September.

Law professor Roman Podoprighora of the Caspian Public University in Almaty agrees. "The government wasn't responding to pressure over human rights – the withdrawal merely reflects fierce arguments within different parts of the government over conceptual questions as to what should go in one Code and what in the other," he told Forum 18 on 8 September from Almaty. "The argument mostly focuses on the Administrative Procedure Code, but both were withdrawn together and will be presented again after redrafting."

Professor Podoprighora says the impact on human rights and religious freedom of the withdrawal of the proposed new Code of Administrative Offences is "neutral". He points out that the Code in force today already includes punishments for non state-approved religious activity which are likely simply to be carried over into the new Code when it is presented once again.

Vyacheslav Abramov, Deputy Director of Freedom House in Kazakhstan, welcomes the withdrawal of the proposed Code of Administrative Offences. "It's definitely a positive step as, instead of improving the situation, the new Codes would have made it considerably worse," he told Forum 18 from Almaty on 8 September.

However, he remains sceptical that the Government will introduce "perfect versions". "But we human rights defenders are ready for new discussions." He said human rights groups must continue to send the Government their comments in the hope that "at least some will make their way through" to improve the drafts.

Like Professor Podoprighora, Abramov also points out that for religious believers, the withdrawal of the new Codes "changes nothing" as the current Administrative Code Articles punishing peaceful religious activity remain in force. "Let's hope the Government will listen to the recommendations from civil society and change these Articles too in the new version," he told Forum 18. "Human rights defenders sent their proposals on this to the Government and Parliament a long time ago."

Codes withdrawn

The Government has long promised to revise these Codes. It sent its approved drafts to Parliament in November 2009, where they were handed to the Majilis (lower house) Legislative and Judicial-Legal Committee. A working group to prepare the texts had already begun its work, but neither draft Code had reached the full Committee, let alone a plenary session of the Majilis (see F18News 24 June 2010 http://www.forum18.org/Archive.php?article_id=1460).

The two draft Codes were withdrawn by the government on 6 August, the Majilis noted in its list of pending legislation published on

its website on 3 September. The decree withdrawing the Codes, signed by Prime Minister Karim Masimov, gave no reason for the decision.

Beisov told Forum 18 that the Justice Ministry is now redrafting the two Codes, but refused to discuss any time scale. "It will take as long as it takes," he told Forum 18.

Will Government seek OSCE review?

Asked whether this time his Government will seek a legislative review by the Organisation for Security and Co-operation in Europe (OSCE) – which it failed to do for the withdrawn drafts, despite pressure from human rights groups and religious communities – Beisov of the Justice Ministry said the texts "will definitely be available to the OSCE".

However, asked if the Government will request OSCE assistance in preparing a text in line with international human rights commitments, Beisov responded: "That decision will be taken above my level. But we have here in Kazakhstan many qualified legal experts."

Two members of the Majilis Legislative and Judicial-Legal Committee refused to comment on 8 September on whether the reworked Code of Administrative Offences will still include punishments for peaceful religious activity. Serik Temirbulatov, who had been chairing the working group preparing the Codes, told Forum 18 he was too busy to talk, while Ramazan Sarpekov told Forum 18 he was in hospital and unable to talk.

Articles punish religious activity

Human rights defenders and religious believers have long complained about two Articles of the current Code of Administrative Offences which violate religious freedom.

Article 374-1 – first introduced in 2005 – punishes leading, participating in or financing an unregistered, halted or banned religious community or social organisation.

Article 375, a broadly framed article, punishes "violating the Law on Religion" (including by leaders who reject state registration) by communities whose activity "contradicts their aims and tasks" or which is not listed in their state-approved statutes, and by individuals who conduct "missionary activity" without a special licence from the state.

The now-withdrawn Government draft would have retained Article 374-1 (renumbered as Article 451) in its entirety.

Article 375 (renumbered as Article 452) would have had some provisions deleted, but would still have punished: "refusal by leaders of religious associations to register them with state bodies, carrying out of activity by religious associations not in accordance with their statute, participating in the activity of or financing political parties, violating the rules governing holding of religious events outside the location of a religious association, organising of special children's or youth meetings not related to worship, and forcing individuals to carry out religious rituals". Also still punished would have been unauthorised missionary activity by foreign citizens or those without citizenship.

Professor Podoprigora was one of those who presented a written analysis of how these Articles violate Kazakhstan's international human rights commitments and calling for them to be abolished almost in their entirety (see F18News 24 June 2010 http://www.forum18.org/Archive.php?article_id=1460).

Justice Ministry official rejects criticism

Yet Beisov of the Justice Ministry vigorously rejects suggestions that these two Articles of the Code now in force or the draft new Code just withdrawn by the Government violate international human rights standards, even over the punishment of religious activity simply because it is not authorised by the government.

"I wouldn't say there are any deficiencies or violations of international norms in these Articles," Beisov insisted to Forum 18. "Everyone can pray, but a religious organisation or association is a different matter." Told that international human rights norms make no mention of any requirement to register with the government before a religious community can function and told that many countries practice this by not requiring such registration – including Russia, Ukraine and Norway – he responded: "I think you are looking at this from a completely different angle."

Official agencies regard punishing individuals who violate these two Articles as vital. The website of Pavlodar Regional Police for example lists identifying "offenders" under these Articles as two of the nine "basic tasks" of its Department for the Fight against Extremism, Separatism and Terrorism.

Wide use of administrative penalties

Article 374-1 and Article 375 have often been used to punish religious activity, particularly by Council of Churches Baptists, who reject on principle any demands that they register with the state. Many have been fined and, after refusing to pay such fines, some of their pastors have been given short-term detentions. They have also been used to punish Muslims, as well as Jehovah's Witnesses in earlier years.

However, Council of Churches Baptist Dmitry Janzen says he knows of no such prosecutions in the previous two months. "It seems a bit quieter," he told Forum 18 from Temirtau on 8 September. "But though there have been no court cases, police and local officials continue to visit, summon, question and watch."

Janzen cited a visit by three police officers to his church's Sunday service on 8 August, during which a wedding also took place. "They didn't disturb the service, but drew up a record of an administrative violation which they refused to show to us." He added that officials have also examined closely all the documents related to ownership of the Temirtau church's worship building.

Janzen also pointed to the case of Nikolai Levin, a pastor in Balkashino in Akmola Region. He was questioned by the Regional police Department for the Fight against Extremism, Separatism and Terrorism in June after earlier pressure to register from local administration officials (see F18News 23 June 2010 http://www.forum18.org/Archive.php?article_id=1459).

After Forum 18's calls to local officials, Janzen said, Pastor Levin had received a "very angry call" from a local official who asked why he had brought his case to international attention. However, the local official was soon overridden by a more senior regional official, who instructed that Levin be left unpunished until after the end of the year.

Punishments overturned or ignored

Despite the frequent punishments handed down under Article 374-1 and Article 375, and the continuing attempts to impose further punishments by police officers, the National Security Committee (KNB) secret police and prosecutors, the authorities often find it difficult to follow through on the punishments. Religious believers prepared to challenge the punishments right through the judicial system can have them overturned.

Council of Churches Baptists routinely refuse to pay fines, and court executors often struggle to find property they are able to seize from them. Restraining orders have been handed down on livestock, but these are rarely seized.

Baptist Viktor Leven was ordered deported in 2009 under Article 375 for leading a church service while he was still a German citizen (see F18News 24 June 2010 http://www.forum18.org/Archive.php?article_id=1460). However, Janzen told Forum 18 that while officials still threaten to do so they appear reluctant to fulfil their pledge.

On 17 March, the Supervisory Judicial Collegium for Civil and Administrative Cases of Kazakhstan's Supreme Court in Astana reviewed the fine of 100 times the minimum monthly wage handed down on Zhanna-Tereza Raudovich under Article 374-1 Part 1 for hosting a small Sunday worship service in her home. She was given a "verbal reprimand" instead (see F18News 24 June 2010 http://www.forum18.org/Archive.php?article_id=1460).

On 10 March the same Collegium of the Supreme Court had overturned the punishments handed down to two visiting Jehovah's Witnesses, 82-year-old American Theodore Jaracz and 69-year-old Canadian John Kikot. Both were detained by police and counter-terrorist police in Almaty in May 2008 after giving a 30 minute "pastoral discourse" at a Jehovah's Witness meeting. They were both found guilty by an Almaty court under Article 375 Part 3, each fined 15 times the minimum monthly wage and ordered deported. They were both barred from reentering Kazakhstan for five years (see F18News 30 January 2009 http://www.forum18.org/Archive.php?article_id=1247).

On 17 June 2008 Almaty City Court rejected their appeal, but they took the case further. Eventually, in an 11 February 2010 protest seen by Forum 18, Kazakhstan's Deputy General Prosecutor Askar Sekishev wrote to the Supreme Court asking it to annul the penalties as the two visitors had committed no offence.

However, although the Supreme Court vindicated Jaracz and Kikot, it did not publicise the verdict until 11 August, when a statement on its website and on the website of the General Prosecutor's Office made the information widely available. "They did this only when we insisted," one Jehovah's Witness told Forum 18 from Almaty on 8 September. "We wanted people to know they were innocent of any wrongdoing."

Yet it remains unclear if the two men have had their five-year entry ban overturned. "The lower court wrote to the Interior Ministry department in Almaty asking them to ensure this, but we don't know if it has been done. They have not written to us to say they have done this."

In other cases, courts themselves recognise that prosecutors and the police have exceeded their powers in trying to punish religious believers. Police and prosecutors brought a case against a Jehovah's Witness in Akmola Region in December 2009 under Article 342

("violation of the law on the media") for allegedly illegally distributing Jehovah's Witness publications. However, the court rejected the case as unfounded and sent it back, Jehovah's Witnesses told Forum 18. (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=1352.

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 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.

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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