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KAZAKHSTAN: More legal restrictions to reach parliament

By Felix Corley, Forum 18

Legal amendments to 4 Codes and 13 Laws (including the already restrictive Religion Law) about to reach parliament seem set to impose further controls and punishments for non-state-approved religious teaching, confiscate religious literature which fails to pass the state censorship, and allow religious organisations to be banned.

Further controls on and punishments for non-state-approved religious teaching, further restrictions on sharing beliefs, confiscation of religious literature which does not pass the compulsory state censorship and the possibility to ban religious organisations permanently for violating the already-restrictive Religion Law are in proposed amendments to a wide range of laws. The long-announced amendments would also double some administrative fines for exercising freedom of religion or belief.

Some communities are worried by a proposed new definition of "clergy", requiring them to have state-recognised higher theological education. Some fear that communities led by an individual without such state-recognised education could be at risk of enforced closure.

The amendments are likely to reach Parliament soon, probably in September. The Documentary Management Department of Parliament told Forum 18 on 18 August that no draft Law has yet reached Parliament and that it has not been informed about the draft Law.

To justify at least some of the harsh new measures, the drafters of the amendments cite similar legal provisions violating human rights in Uzbekistan, Tajikistan, Turkmenistan, Azerbaijan and elsewhere (see below).

4 Codes and 13 Laws to be amended

The proposed new punishments are part of a wide-ranging draft Law Introducing Amendments and Additions to Laws on Questions of Religious Activity and Religious Associations. The draft Law proposes amendments to 4 Codes and 13 Laws, including the 2011 Religion Law and the Administrative Code.

The draft Law would remove none of the existing restrictions on the exercise of freedom of religion or belief which have been repeatedly criticised by international organisations, human rights groups in Kazakhstan and abroad, and by many local people (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

The draft Law - together with a Comparative Table which provides comments on the amendments and additions - was made public in Kazakh and Russian on 14 August. It was prepared by the Religious Affairs Committee, part of the Religion and Civil Society Ministry.

The draft is likely to reach Parliament "in September or October", Bakhytzhan Kulekeyev, an advisor to the Religion and Civil Society Minister, told Forum 18 on 17 August. However, local observers told Forum 18 they believe the draft Law will begin consideration in the lower house of Parliament, the Majilis, in early September.

On 5 September 2011 a new Religion Law, and an Amending Law changing nine other laws and legal provisions including the Administrative Code were introduced into Parliament. Both were adopted very quickly, despite strong criticism from national and international human rights defenders, being signed into law by President Nursultan Nazarbaev on 11 October 2011 (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

No comment from Religious Affairs Committee

Kulekeyev refused to discuss the content of the current proposed amending Law, as he said he was travelling on holiday. Telephones at the Legal Department of the Religious Affairs Committee went unanswered each time Forum 18 called on 17 August. The aide to Marat Azilkhanov, Executive Secretary for the Religion and Civil Society Ministry, told Forum 18 the same day that Azilkhanov has no responsibility for religious affairs.

Nurbol Serikbekov, spokesperson for the Religious Affairs Committee, told Forum 18 on 18 August he could not comment on the draft amendments and referred all questions to Kulekeyev. He then claimed not to be able to hear and put the phone down. His mobile had been switched off when Forum 18 immediately called back.

Forum 18 was unable to ask why both the current Religion Law and other Laws, as well as the draft amendments violate Kazakhstan's international human rights commitments. It was also unable to ask whether the Religious Affairs Committee is inviting comments from religious communities, human rights defenders and ordinary people about the amendments and how any comments will be considered. It was also unable to ask whether the government will seek comments from the Organisation for Security and Co-operation in Europe (OSCE) or the Council of Europe's Venice Commission.

"Legal" restrictions?

A new Article 3, Part 2-1 of the Religion Law states that "Manifesting the freedom to profess religion or belief is subject only to limitations necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others".

The Comparative Table claims the addition has been drafted in accordance with the provisions of General Comment 22 of the United Nations Human Rights Committee on Article 18.3 of the International Covenant on Civil and Political Rights (ICCPR).

However, the Law both ignores the clause that any limitations must be "prescribed by law" and the same General Comment No. 22 paragraph 3 that ICCPR Article 18 "is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."

New, harsher punishments proposed

Increased fines have been proposed in amendments to Administrative Code Article 490, Part 1 ("Violation of the Religion Law"). Punishments for individuals who "conduct religious rites", charitable activity, import, publish or distribute religious literature or other items, or build or re-designate places of worship without prior state permission would face a fine of 100 Monthly Financial Indicators (MFIs), double the current fine. Registered religious organisations which commit the same "offences" would face an increased fine of 300 MFIs, and a ban on activity either for three months or - a new possibility for a first "offence" - permanently.

A fine of 100 MFIs (currently 226,900 Tenge - 5,400 Norwegian Kroner, 580 Euros or 680 US Dollars) represents about two months' average wage for those in work.

The amendments would once again grant the police the right to prepare records of an offence under many parts of Article 490. Only religious affairs officials have previously been empowered to prepare such records. The Comparative Table providing commentary claims that this has made it difficult to bring such prosecutions because religious affairs officials at a local level are absent.

Further punishments for religious teaching

A new Article 3, Part 4-1 of the Religion Law bans "teaching religious teaching outside religious education organisations". The Comparative Table cites similar bans in Uzbekistan, Tajikistan, Turkmenistan and Kyrgyzstan.

A new Article 490, Part 1, Point 5 would punish those who "teach religious teaching outside religious education organisations" with a fine on individuals of 100 MFIs. Registered religious organisations which violate this provision would face fines of 300 MFIs, and a ban on activity either for three months or permanently. Fines for a second offence within one year would be 200 MFIs on individuals, 300 MFIs on officials and 500 MFIs on religious organisations, with a ban on their activity.

The Comparative Table claims this is necessary as unspecified groups "sometimes spread [undefined] destructive ideologies" under the guise of foreign language teaching.

To support its views, the Comparative Table cites Article 241 of Uzbekistan's Administrative Code, which punishes unapproved religious teaching (see Forum 18's Uzbekistan religious freedom survey <http://www.forum18.org/archive.php?article_id=1862>). It also points to the punishment of an Uzbek imam in Namangan Region, Akhmadjon Eshmatov, in April for allegedly using language teaching as a cover for teaching about Islam. It similarly cites Article 474-3 of Tajikistan's Administrative Code (see Forum 18's Tajikistan religious freedom survey <http://www.forum18.org/archive.php?article_id=2138>).

A new Article 3, Part 18 of the Religion Law would restrict applying for religious education abroad to those who have already gained higher religious education in Kazakhstan, and only under international agreements. This restriction would not apply to members of registered religious organisations that do not have higher religious education facilities within Kazakhstan.

A new Administrative Code Article 490, Part 9 would punish "violations of legal requirements for Kazakh citizens to receive religious education in foreign states according to the established procedure" with a fine of 100 to 200 MFIs. Fines on individuals for a second offence within one year would be 200 MFIs.

Disturbing a religious community's "internal order"

A new Administrative Code Article 490, Part 10 would punish "violations of legal requirements for observance of the internal order of religious organisations". Individuals would face fines of 50 MFIs, and religious organisations 300 MFIs.

This appears to be targeted at Muslims who follow rituals and practices which are not in line with those espoused by the state-backed Muslim Board. Although this is nowhere enshrined in law, the state has given the Hanafi Sunni Board a monopoly on all Muslim activity. No communities outside the framework of the Muslim Board are allowed to exist. The Ahmadi Muslim community most recently applied for state registration in 2015. The Religious Affairs Committee rejected the application in July 2016. Its "expert analysis" claimed the group was not Islamic and should therefore remove the word "Muslim" from its name.

The Muslim Board's Council of Scholars approved new Regulations for the Internal Order of Mosques on 16 November 2016. This includes a ban on worshippers praying with the word "Amen" aloud. Numerous Muslims have been fined for this under Administrative Code Article 490, Part 2. This punishes: "Impeding lawful religious activity as well as violation of the civil rights of physical persons on grounds of their religious views or insulting their feelings or profanation of items, buildings and places revered by followers of any religion, unless there are signs of criminally punishable actions" (see F18News 28 March 2017 <http://www.forum18.org/archive.php?article_id=2267>).

"Spreading faith"

Article 3, Part 6 of the Religion Law defines individuals' rights to freedom of religion or belief. An amendment, while preserving the right to conduct "missionary activity" (only when within the narrow confines laid down by the Religion Law), removes an individual's explicit right to "spread" religious beliefs.

Article 3, Part 11 of the Religion Law already bans the activity of unregistered religious communities. A small addition would also explicitly ban the spreading of an unregistered religious community's religious teaching.

The Comparative Table complains that individuals facing administrative punishment for "missionary activity" have cited their right to spread their faith as set out in the current Religion Law Article 3, Part 6.

New "clergy" definition to restrict sharing faith and refusing military service?

An amendment to Article 1, Part 3 of the Religion Law defines "clergy" more closely. Gaining such a designation would require an individual to have religious education and to be appointed "on the basis of an order from the leader of a [registered] religious organisation and the signing of a work contract".

Some fear that this restriction on religious communities' choice of their own leader could be used to close down those whose leaders do not have state-recognised higher theological education. Without a state-recognised religious leader their activity could be deemed unlawful. Many religious communities have leaders without formal religious education that the state is likely to recognise.

The new definition appears to be aimed at reducing the number of individuals with the right to spread their faith without requiring personal state registration as a "missionary". It also appears targeted at Jehovah's Witnesses - who are already frequently fined for sharing their faith - as officials highlight their refusal to perform military service.

The Comparative Table laments that clergy can currently conduct "missionary activity" while "solely having in hand a certificate from a religious association recognising them as clergy, which contradicts the concept of 'missionary activity'."

"Introducing such required elements," the Comparative Table adds, "would exclude the illegal use of such status (for example in refusing military service)."

Whether the authorities aim to require Jehovah's Witnesses to conduct military service - their pacifist beliefs do not allow them to have any connection with the military - remains unclear.

Unapproved religious literature to be seized

A new Article 6, Part 5 of the Religion Law would specify that religious literature which is submitted to the Religious Affairs Committee for the compulsory state religious censorship but which is not approved is subject to "removal from circulation". The Comparative Table notes that at present the fate of such unapproved literature is not defined.

Children and religious freedom

A proposed amendment to Article 35 of the 2002 Law on the Rights of the Child would require written permission from both parents for a child to attend "religious services, religious rites, ceremonies and/or meetings", and/or for at least one parent to be present with them "or other legal representative with the exception of those studying in religious education establishments".

The Comparative Table says this is to bring the Law on the Rights of the Child into line with Article 3, Part 16 of the Religion Law.

A similar requirement for both parents to give written permission for their child to participate in a religious community and/or have at least one parent present would be added to Religion Law Article 3, Part 16.

Religious leaders who fail to prevent children from attending activities of their registered religious organisation without the written permission of both parents or guardians and/or without being accompanied by at least one parent face increased punishment. The "offence" has been moved from Administrative Code Article 490, Part 7 to Part 8, while the fine has been doubled to 100 MFIs.

Religious clothing ban and punishment

A new Article 3, Part 19 of the Religion Law bans wearing religious clothes that obscure the face, except when required in religious settings or for medical purposes.

An addition to Article 11 of the 2006 Culture Law would ban individuals from "using, wearing or distributing in public places outward attributes or items of clothing demonstrating an adherence to [undefined] destructive ideological movements".

An addition to Article 156 of the Administrative Code would punish those who violate these restrictions with a fine of 100 MFIs.

A new Administrative Code Article 490, Part 11 would punish those who wear clothes in public places that do not leave the face visible with a fine of 100 MFIs.

More serious measures to follow administrative punishment

An addition to Article 24 of the 2010 Prevention of Violations Law would allow "preventative measures" to be initiated against an individual for "having committed an administrative violation in the area of religious activity". "Preventative measures" range from a "preventative conversation" to deprivation of parental rights, being placed on a "preventative register" or "preventative restriction of freedom of movement".

An addition to Article 6 of the 2014 Law on Internal Affairs Agencies would similarly allow Police to issue written warnings, which would have to be carried out, to individuals who have "committed an administrative violation in the area of religious activity". Those who have been issued such written warnings are to be added to the list of those subject to fingerprinting, and having photos, video and sound recordings taken and biological and other samples taken.

The Comparative Table notes that this is necessary because such individuals are a "risk group" of getting involved in terrorism.

Greater official control

A new Article 4, Part 17 of the Religion Law requires the Religious Affairs Committee to "prepare and confirm checklists on the observance of the Religion Law in the activity of [registered] religious associations". A new Article 4, Part 18 would require the Religious Affairs Committee to prepare and publish on its website "the criteria for the evaluation of the level of risk" as to whether religious organisations are likely to abide by the Religion Law.

The Comparative Table claims these measures are aimed at "the effective carrying out of the duties of control within the competence of" the Religious Affairs Committee.

Proposed amendments to the 2001 Local Government Law would introduce requirements for administrations on a District level and their leaders to ensure state control of the activity of religious organisations in their area.

At present, each Regional Akimat (administration) has a Religious Affairs Department, which has the power to initiate punishments for violations of the strict state controls on religion. Internal Policy Departments in Regional and District Akimats also often interfere in the activity of religious organisations.

The changes - if adopted - would increase the formal requirements for District level officials to conduct surveillance on and interfere in local residents' exercise of the right to freedom of religion or belief. The Comparative Table claims that the current absence of control over exercise of freedom of religion or belief at a local level "creates certain difficulties in the timely collection of necessary information", especially given the remoteness of some locations.

An amendment to Article 31 would introduce requirements for District or small town administrations to "study and analyse the religious situation" in their area; "control the activity of religious associations" insofar as they comply with the Religion Law and "recommend the removal of any violations they discover"; approve the building of or re-designation of an existing building as a place of worship and its location after the leader of a registered religious organisation has submitted an application and after public hearings on the application.

An amendment to Article 35 would introduce requirements for Akims (administration heads) also to "study and analyse the religious situation" in their area, as well as to "study and analyse the activity of religious associations, missionaries, and religious educational establishments functioning in the area".

On the building or re-designation of places of worship, the Comparative Table claims that such places of worship have been built without permission and without "taking into account the views of the local population on the appropriateness of the building of a place of worship and an analysis of the possible consequences". It laments "the partial absence of data on the number and ethnic composition of the residents of a given settlement and the presence of potential believers".

The wording implies that officials believe that the state - not communities of individuals - should decide whether a place of worship is "appropriate", and that religion is directly tied to ethnicity.

"Extremism"

State rhetoric routinely mentions the exercise of freedom of religion or belief alongside "extremism" and "terrorism" (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>). The draft Law continues this pattern.

The Comparative Table makes specific reference to the State Programme to Counter Religious Extremism and Terrorism for 2017-2020 (see F18News 5 January 2017 <http://www.forum18.org/archive.php?article_id=2243>).

An addition to Article 15 of the 2012 National Security Law would require unspecified state bodies "to confirm a list and signs of destructive ideological movements".

A new Article 4, Part 16 of the Religion Law places the duty of confirming such a list on the Religious Affairs Committee "drawing on the results of a religious studies expert analysis".

An addition to Article 5 of the 2005 Law on State Grants would provide for state grants to organisations offering "measures to prevent religious extremism and terrorism". This would include grants to centres to help "those who have fallen under the influence of destructive and extremist religious movements", as well as those conducting "preventative informational work among the population".

No religious freedom for officials?

A proposed addition to Article 13, Part 6 of the Religion Law - and a parallel addition to Article 13 of the 2015 State Service Law - would ban state officials from being "initiators in the creation of, as well as participants and members of religious associations". The Comparative Table claims that this - and another addition banning officials from favouring a particular religious community in their official duties - are necessary to ensure the state remains secular.

An initial draft of the Code of Judges' Ethics - which sets out rules for judges' conduct inside and outside the courtroom - would have banned them from exercising freedom of religion or belief in their free time. However, when the Code was finally adopted in November 2016 the restrictions had been removed (see F18News 16 December 2016 <http://www.forum18.org/archive.php?article_id=2240>).

Other proposed amendments

The amendments would punish a range of other activity, only some which is related to freedom of religion or belief.

Couples and clergy would be punished if they have a religious marriage without first undergoing a state marriage, or who end a religious marriage without first ending their state marriage. (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>.

A printer-friendly map of Kazakhstan is available at <<http://nationalgeographic.org/education/mapping/outline-map/?map=Kazakhstan>>.

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