

18 November 2008

KAZAKHSTAN: New Law still in parliament and harshened

By Mushfig Bayram, Forum 18, and Felix Corley, Forum 18

Kazakhstan's Senate has significantly harshened the draft Law amending several laws on religion, before returning it to the Majilis, Forum 18 News Service has learnt. Officials are still refusing to make the draft text public, but Forum 18 has seen the latest changes. Among the increased restrictions on freedom of thought, conscience or belief, the Senate changed the draft text to require permission from both parents for children to attend any religious event, and removed judges' discretion over the level of fines imposed for violating the Religion Law. The draft Law already contains many restrictions, including only allowing religious literature distribution in permanent buildings designated by the state, and possibly endangering religious-based charitable activities. Kazakhstan has also not agreed to publication of an OSCE review of an earlier text of the Law, although the OSCE Office for Democratic Institutions and Human Rights told Forum 18 that it "has recommended to the Kazakh authorities that the legal review be made public, as is normal practice." Kazakh officials have refused to say when the Majilis will discuss the Senate changes, but Forum 18 has learned that this will be on 24 November – the same day a roundtable with OSCE experts is scheduled to begin.

Kazakhstan's restrictive new draft Law amending various laws on religion was returned to the Majilis (Lower Chamber of parliament) by the Senate (Upper Chamber) with further changes and amendments on 7 November. In a small but significant change by the Senate, the draft text now requires permission from both parents for children to attend any religious event, not merely events aimed at children as in the earlier draft, Forum 18 News Service has learnt. Independent sources told Forum 18 from the southern city of Almaty that the Majilis is due to discuss the changes proposed by the Senate on 24 November – the day that a roundtable with international experts is due to begin in the capital Astana.

The wide-ranging amendments to several laws on religion would – if implemented – seriously restrict freedom of religion or belief. The draft Law has drawn fierce criticism from human rights defenders and many religious communities within Kazakhstan (see F18News 6 May 2008 http://www.forum18.org/Archive.php?article_id=1125).

According to the text received by Forum 18, further changes made by the Senate were mostly minor and technical. However, they included an amendment to Article 5 of the Religion Law now requiring permission of both parents for children to be allowed to attend any religious meetings, rather than just meetings aimed at children.

Officials have sometimes in the past tried to stop children attending religious activities (see F18News 20 January 2005 http://www.forum18.org/Archive.php?article_id=494), as well as trying to inculcate fear in schoolchildren by telling them that prayer "causes death" and suicide bombers (see F18News 27 May 2005 http://www.forum18.org/Archive.php?article_id=571).

The Senate also amended the punishment to be handed down to those violating Article 375 Part 1 of the Code of Administrative Offences. In the previous text of this provision as approved by the Mejlis, 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. The Senate's version specifies a fixed fine for those found guilty of 50 times the minimum monthly wage, taking away from judges discretion to hand down a more lenient punishment in such cases.

However, the Senate removed the requirement that religious communities submit information on their activity annually to the competent state body and the state agency of statistics.

Human rights defender Ninel Fokina of the Almaty Helsinki Committee voiced her concerns over the Senate's amendments. She complained to Forum 18 on 10 November that they would "worsen even further the already harsh new religion law". She pointed to the new restrictions on the presence of children at any religious meeting. She also complained of the removal of the discretionary element in the fines judges must impose on people who violate the Religion Law. "The new changes to the Code of Administrative Offences will leave no room for judges to be flexible," she complained. Fokina said she had heard parliamentarians "explain this away", saying "this was done to eliminate possibilities for corruption on the part of judges."

Some of the proposed changes to the current law before it went to the Senate included a new classification of religious organisations

as religious groups and communities. Religious groups would be allowed to only teach, propagate religious doctrines, and hold religious ceremonies and rituals in their own circle, i.e. they would be banned from spreading their faith. The law does not clarify what "their own circle" means. It is also unclear if new people join a group whether it will be regarded as missionary activity.

It is proposed that the registration of a religious community could be put on hold without specifying for how long in case the registering body's expert opinion on the community's documents as well as founding documents was negative. It also demands registered communities to inform the competent authorities every year that continue their activity without specifying what that information should include. Evangelism or distribution of religious literature or informational materials is allowed only in fixed premises designated by local executive bodies.

The Religion Law's redrafted article 4 point 7 reads: "Not allowed is the functioning of religious communities, religious groups forcibly involving citizens in their activity and/or [those] hindering [citizens] from leaving religious communities and religious groups by way of threats, inter alia, using violence or threat of using violence, by way of using material or other dependence of citizens or by way of deception."

Article 14 reads: "Prohibited is charitable activity aimed at spreading religious teachings by exploiting material needs of citizens." Although ostensibly aimed at stopping the use of charity to recruit people into religious organisations, it could make faith-based charity work impossible.

For an analysis of the version approved by the Majilis in September, see F18News 14 October 2008 http://www.forum18.org/Archive.php?article_id=1202.

Akhan Bizhanov, the Chair of the Senate's Committee for Social and Cultural Development, who presented the amendments to the Senate, refused to discuss the latest amendments, referring Forum 18 to the Majilis. "I have no time to discuss the law with you," he told Forum 18 on 16 November from Astana. "I am having an important meeting."

The draft Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations – which aims to amend numerous articles of the current Religion Law, the Code of Administrative Offences and several other laws - completed its second reading in the Majilis on 24 September (see F18News 14 October 2008 http://www.forum18.org/Archive.php?article_id=1202).

On 31 October the Senate approved the draft in the first reading, the Senate website reported. On 4 November the Senate's Committee for Social and Cultural Development, which Bizhanov chairs, presented its amendments in a letter seen by Forum 18. On 7 November the Senate backed these amendments and sent the revised draft back to the Majilis for its approval, according to the Senate website. The website does not however clarify whether or not this was a formal reading.

Madi Beksultanov, the senior aide to Deputy Bizhanov, told Forum 18 that the Majilis should be looking at the changes made to the draft law by the Senate and then together with the Senate within a joint committee agree on the changes. "According to procedures, the Majilis has about a month to do this," he told Forum 18 on 16 November.

Asked what changes were made by the Senate, Beksultanov said he could not give out those details "since it was a working paper." "The Law will be published only after the President has signed it," he said. Parliamentary procedures do not specify publicising the drafts of laws, he added. Asked whether the discussion on 24 November in the Majilis would be final before the law goes to the President for signature, Beksultanov responded: "We do not know, as it will depend on the Majilis' decision."

Kamal Burkhanov, a member of the group of Majilis deputies working on the draft Law, told Forum 18 on 10 November that they had not had time to look at the draft law after it was returned. He said Majilis deputies were about to visit the country's regions to meet voters to discuss their current problems. He said that only after their return would they consider the draft law.

Deputy Burkhanov said that because the Senate was ahead of time in the schedule for considering the Law, the Majilis would now have "even more than the fixed 30 days." Asked about the text of the draft law he echoed Beksultanov, saying it would not be published until it was signed.

Aibatyr, a press officer of the Majilis, who did not give his last name, told Forum 18 on 16 November that they did not know when exactly the Majilis would discuss the law or whether it would be the final discussion. He referred Forum 18 to Deputy Burkhanov. However, neither Burkhanov nor other deputies from the Parliament were available to talk to Forum 18 on 16 November.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) review of the draft Law, which has already been handed to the Kazakh government, has not yet been published. "ODIHR has recommended to the Kazakh authorities that the legal review be made public, as is normal practice," ODIHR spokesperson Jens-Hagen Eschenbaecher told Forum 18 from Warsaw on 13 November. "We would welcome the publication of the review in the interest of an inclusive and transparent lawmaking process."

However, a diplomat at the Kazakh Mission to the OSCE in Vienna claimed to Forum 18 that the ODIHR's review of the draft Law

which the Kazakh government requested has not been published because the ODIHR agreed with the Kazakh government's opinion that the review "does not take account of the entire legal system in Kazakhstan ". "Both sides decided to reconsider," the diplomat told Forum 18 from Vienna on 14 November. "It's not a question of whether the government liked or didn't like the review."

In fact, the OSCE has been asking for publication of the review for some time. As Ambassador Janez Lenarcic, Director of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), said on 21 November, "the ODIHR would welcome the publication of the legal review" (see F18News 21 November 2008 http://www.forum18.org/Archive.php?article_id=1220).

The Kazakh diplomat went on to claim that OSCE experts will be taking part in "one more round" of consultations on the draft Law, adding that ODIHR will prepare a new review "which will probably be published". The diplomat insisted that civil society is being consulted over the draft Law. Asked how civil society in Kazakhstan can know what the OSCE's recommendations on the draft Law are if the review is not public, the diplomat merely repeated that civil society is being consulted through roundtable meetings. "Just because the OSCE review has not been published doesn't mean that all proposals from civil society aren't being taken into account." 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>).

Eschenbaecher of the ODIHR added that ODIHR experts are scheduled to visit Astana on 24-25 November for further consultations with "relevant authorities" on the review. The experts are due to meet representatives of the Senate and the Committee for Religious Affairs.

However, the meetings will take place at the same time that the Majilis is due to be discussing the draft Law.(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>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY