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KAZAKHSTAN: "The current Religion Law is also unconstitutional"

By Mushfig Bayram, Forum 18, and John Kinahan, Forum 18

Kazakhstan's Constitutional Council has announced that a restrictive draft Law severely restricting freedom of religion or belief is unconstitutional. President Nursultan Nazarbaev has up to one month to respond. Yevgeni Zhovtis, head of the Kazakhstan International Bureau for Human Rights and Rule of Law, told Forum 18 News Service that the Constitutional Council's judgement also implies that the current Religion Law is unconstitutional. The Constitutional Council referred to a part of the Constitution barring limitations on freedom of religion or belief, so "anyone charged with breaking the current Religion Law's limitations on religious freedom can cite the Constitutional Council's decision in court," Zhovtis said. "The court can then be asked to refer the current Religion Law to the Constitutional Council, for them to directly rule on the current Religion Law's constitutionality." A judge who tried a case involving unregistered Baptists has already welcomed the possibility of such a review. "It is also very important," Zhovtis told Forum 18, "that as well as looking at the draft Law, people also pay attention to the continuing violations by officials of everyone's freedom of religion or belief."

Kazakhstan's Constitutional Council announced on 11 February that the restrictive "Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations" is unconstitutional. Gulnara Baygeldy, the Council's press officer, told Forum 18 News Service from the capital Astana on 12 February that "now the President [Nursultan Nazarbaev] should decide to agree or disagree with us within 10 days." She declined to make further comments, or make the text of the Constitutional Council's judgment public. "Only after the President makes his decision can we make further comments," she told Forum 18.

The Chair of the Constitutional Council, Igor Rogov, made the announcement at a meeting in Astana widely shown on television and reported in the local media. He said that the proposed Law is not in accord with the Constitution and so "cannot be signed and brought into force".

President Nazarbaev has up to one month to respond to the decision. He can propose changes to the decision, but these must be supported by two-thirds of the Constitutional Council's members to take effect.

Rogov said the Constitutional Council particularly cited Article 39 paragraph 3 of the Constitution in support of its judgment that the draft Law is unconstitutional. This paragraph states that the "rights and freedoms stipulated by" various specific articles of the Constitution "shall not be restricted in any way". Among the articles listed is Article 14.2 stating "no one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances." Also listed is Article 19.1, which states that "everyone shall have the right to determine and indicate or not to indicate his national, party and religious affiliation."

Constitutional Council Chair Rogov said the draft Law violated the equality of all before the Law by giving different registration conditions for faiths "previously unknown in Kazakhstan". He added that the draft Law would also have infringed the rights of non-citizens by not specifically including legal residents who are not citizens as having equal rights.

Human rights defenders, religious communities, Kazakh and international human rights experts – including the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief - are strongly critical of the draft Law's many restrictions on fundamental human rights (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249).

Yevgeni Zhovtis, head of the Almaty-based Kazakhstan International Bureau for Human Rights and Rule of Law, told Forum 18 on 12 February that the Constitutional Council's judgement on the draft law also implies that the current Religion Law is unconstitutional.

He told Forum 18 that, as the Constitutional Council has indicated by its use of Article 39 paragraph 3 that the current Religion Law is also unconstitutional, the Kazakh Parliament should in principle scrap all its limitations on freedom of religion or belief. An example of the limitations, Zhovtis said, is the current Law's ban on the unregistered dissemination of religious views.

"Anyone charged with breaking the current Religion Law's limitations on religious freedom can cite the Constitutional Council's

decision in court," Zhovtis said. "The court can then be asked to refer the current Religion Law to the Constitutional Council, for them to directly rule on the current Religion Law's constitutionality."

Human rights defender Ninel Fokina, head of the Almaty Helsinki Committee, agrees that the current Religion Law needs to be examined. "The Constitutional Court decision was only about the proposed Law and has no retroactive effect," she told Forum 18 on 12 February. "But of course it does have an impact on the current Law." However, she pointed to the difficulty of finding 20 per cent of parliamentary deputies from both houses, or a judge, or a senior government member, who would be likely to refer the current Law to the Constitutional Council for a review.

"It is also very important," Zhovtis told Forum 18, "that as well as looking at the draft Law, people also pay attention to the continuing violations by officials of everyone's freedom of religion or belief."

Human rights defender Fokina told Forum 18 that these violations include officials repeatedly encouraging intolerance of religious minorities and freedom of thought, conscience and belief (see F18News 5 February 2009 http://www.forum18.org/Archive.php?article_id=1250). Officials often ignore Kazakh law in carrying out human rights violations, for example banning a Hare Krishna devotee from the country after a trial which apparently never took place (see F18News 30 January 2009 http://www.forum18.org/Archive.php?article_id=1247).

Facing particular harassment are members of the Council of Churches Baptists, who refuse on principle to register any of their congregations with the state. In Akmola Region, which surrounds Astana, Judge Larisa Seksenbaeva on 4 February fined the pastor of one of their congregations and banned the church. The judge imposed the punishment for unregistered religious activity under the Administrative Code's Article 375 paragraph 5. Council of Churches Baptists told Forum 18 that it is the first time a court in Kazakhstan has banned one of their churches permanently. Previously such bans were imposed for up to six months.

Pastor Nikolai Levin, who leads the church in Balkashino, was fined 12,500 Tenge (580 Norwegian Kroner, 65 Euros, or 85 US Dollars). Judge Seksenbaeva defended her decision. "We warned Levin about his unauthorised activity many times and fined him," she told Forum 18 on 12 February. She said Levin "unsuccessfully" appealed in the Akmola Regional Court against the previous court decisions to fine him. "Each time the Regional Court upheld the fines." Levin has again appealed against the fine to the Regional Court, she added.

Seksenbaeva insisted that the current Religion Law requires religious organisations to officially register. Told that Levin's congregation do not want to register to freely practice their religion, Seksenbaeva said she "understands" the situation but "cannot" help.

Law professor Roman Podoprigora, of the Caspian Public University in Almaty, has noted that Kazakh law contradicts itself on whether or not the registration of religious organisations is compulsory (see F18News 4 August 2005 http://www.forum18.org/Archive.php?article_id=625).

Judge Seksenbaeva, told by Forum 18 that the Constitutional Council's decision implicitly questioned the constitutionality of the current Religion Law, welcomed the possibility of asking for a Constitutional Council review of the current Law. "This is good news," she said. "Levin should include this in his complaint." She commented that such a review "would help the Panel [of judges in the Regional Court] to correctly and clearly interpret the norms of the Religion Law."

Zhanna Zhabagina, acting head of Sandyktau Justice Department, told Forum 18 from Balkashino on 3 February that they had talked to Levin several times in the past, explaining to him that registration "would help the church to function without much trouble". Asked whether Kazakhstan's Law requires communities to be registered to practice their religion, she responded: "I cannot positively answer that question." Zhabagina said that the Constitution gives freedom to people to freely exercise their religion, but the current Religion Law requires religious organisations to be registered.

Zhabagina said she understands that the Baptists do not want to register, but "our duty is to explain to people that it is easier to function once registered, and I don't really know what to say in this situation." She added that it is the court which decides these matters.

The fine on Pastor Levin followed a 25 January raid on the Balkashino Baptist church by Sandyktau district authorities (see F18News 3 February 2009 http://www.forum18.org/Archive.php?article_id=1248). The National Security Committee (KNB) secret police took part in this raid. A KNB officer showed Levin his identity card, but "because I did not have my glasses with me I could not see his name, and do not remember it," Levin told Forum 18. Officials asked questions about state registration, who the leader of the church was, how many people attended the services and when they were held. As he left the KNB officer told him "now we will meet often," Levin stated.

Another court case against Baptists for unregistered religious activity is continuing in Bulaevo in North Kazakhstan Region, Baptists told Forum 18. On 27 January the case against Galina and Tatyana Kiryushkina – two sisters aged respectively 68 and 76 – was returned by a court to Bulaevo Police for further investigation.

In the southern town of Kentau, Jehovah's Witness may be making progress in resolving their property problems (see F18News 19 December 2008 http://www.forum18.org/Archive.php?article_id=1233). On 21 January Kentau City Court closed the case brought for use of a property for worship, and on 26 January the Akim (head of the local authority) cancelled a decision made in June 2008 alleging violation of planning rules by using a house for religious purposes. However, Jehovah's Witnesses told Forum 18 on 11 February that "we are waiting for the City Architecture Department to authorise the use of the house." (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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