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KAZAKHSTAN: "This is not the end of the attempt to adopt such a law"

By Felix Corley, Forum 18

President Nursultan Nazarbaev of Kazakhstan will not be challenging the finding of the Constitutional Council that the proposed new law amending various laws on religion is unconstitutional. The Constitutional Council told Forum 18 News Service that the Presidential Administration has informed it that President Nazarbaev agrees with its finding and is not planning to challenge it. However, Nikolai Golysin, the President's deputy spokesperson, told Forum 18 that "the head of state has given no official information on this. I don't know what official gave these remarks to the Constitutional Council." Many in Kazakhstan remain wary, certain that officials will try again to impose harsh new restrictions on freedom of religion and belief. "This is not the end of the attempt to adopt such a law," Yevgeny Zhovtis, head of the Almaty-based Kazakhstan International Bureau for Human Rights and Rule of Law, told Forum 18. "I think they will try again." He believes fresh attempts could come in 2011 or 2012, after Kazakhstan has completed its chairmanship of the Organisation for Security and Co-operation in Europe (OSCE). "But I'm not sure that they won't try again in 2009."

Human rights defenders and religious communities have cautiously welcomed the decision by President Nursultan Nazarbaev not to challenge the finding of the Constitutional Council that the proposed new law amending various laws on religion is unconstitutional. The Constitutional Council insisted to Forum 18 News Service on 16 March that the Presidential Administration has informed it that President Nazarbaev agrees with its finding and is not planning to challenge it. "The Law violated the rights of Kazakh citizens, foreign citizens and people without citizenship in the area of freedom of religion. The President agrees with this assessment."

The Constitutional Council announced on 11 February its finding that the restrictive "Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations" violated the Constitution. President Nazarbaev had up to one month to challenge or accept the finding. The Constitutional Council's reasoning implied, although it did not explicitly state, that the current Religion Law is also unconstitutional and open to challenge (see F18News 12 February 2009 http://www.forum18.org/Archive.php?article_id=1255).

On 11 March, the Constitutional Council noted in a terse announcement on its website that it had already ruled that the Law approved by Parliament was "not in accord with the Constitution". It quoted the Presidential Administration as stating that President Nazarbaev agreed with the Constitutional Council decision and "does not intend to present an objection to it". It said the Constitutional Council's decision would be published in the official media.

Curiously, as of 17 March the Presidential website made no mention of the President's decision not to challenge the Constitutional Council's finding of the Religion Law's unconstitutionality. Several times a week, new presidential decisions are recorded on the website. Indeed, the website has made no mention of the proposed Law since it was adopted by Parliament in late 2008.

Even more strangely, Nikolai Golysin, the President's deputy spokesperson, told Forum 18 categorically on 16 March that the press service has no official information about any presidential decision and has made no official announcement. "The head of state has given no official information on this. I don't know what official gave these remarks to the Constitutional Council," he told Forum 18. "You're not the first to ask about this."

Many in Kazakhstan remain wary, certain that officials will try again to impose harsh new legal restrictions on freedom of religion and belief. "This is not the end of the attempt to adopt such a Law," Yevgeny Zhovtis, head of the Almaty-based Kazakhstan International Bureau for Human Rights and Rule of Law, told Forum 18 from Almaty on 15 March. "I think they will try again." He believes fresh attempts could come in 2011 or 2012, after Kazakhstan has completed its chairmanship of the Organisation for Security and Co-operation in Europe (OSCE), which will be at the end of 2010. "But I'm not sure that they won't try again in 2009."

Some Protestant leaders share Zhovtis' concern. "We have three years' grace before officials will adopt a new law with similar provisions," one Protestant who preferred not to be identified told Forum 18.

Forum 18 has learnt that, even before the Law was adopted by Parliament in late 2008, some extremely senior officials were alarmed

by international protests. They proposed to President Nazarbaev that he postpone such a law until after Kazakhstan has completed its chairmanship of the OSCE at the end of 2010.

One of the deputies of the Majilis (Lower House of Parliament) who initiated the rejected Law, Berik Bekzhanov, acknowledged to Forum 18 on 17 March that the Constitutional Council ruling cannot be challenged and that this version of the Law has come to a halt. Asked whether deputies like him who advocate tighter restrictions on religious activity will continue to push for such legal changes, he responded: "We don't know what we'll do – the question remains open."

Bekzhanov insisted that the current Law should be amended to tackle religious groups "which violate the rights of young people and others". "There must be a ban on a legal basis." Asked to identify religious communities that he had in mind, he specified the Jehovah's Witnesses. "They don't recognise secular laws, symbols of the state, won't undergo secondary education, won't defend the country and ignore their obligations as citizens," he alleged. "Such groupings shouldn't be allowed to exist." Asked if he believes they should be banned in law, he responded: "Yes, of course."

Bekzhanov also approves of the fining of Council of Churches Baptists who hold worship services without state registration. "They have violated the law," he told Forum 18.

Zhovtis of the Kazakhstan International Bureau for Human Rights and Rule of Law told Forum 18 that in mid-February, after the Constitutional Court made its ruling and before the President made his final decision, the Justice Ministry's Religious Affairs Committee held a round-table meeting in Astana where "practically all the ideas of the Law were again repeated and supported as if there were no decision of the Constitutional Council". He believes it was an attempt to influence the final decision of the President.

He added that a big international conference is being held in Astana on "destructive sects" where Aleksandr Dvorkin, "the notorious Russian 'specialist' and author of a number of xenophobic and aggressive books about sects", is the key "expert".

Zhovtis told Forum 18 that, given these moves, the decision not to adopt the Law will make "no difference" to the life of religious communities, insisting that life for them has not become easier. "The pressure is still underway." He believes officials will continue to crack down on religious communities that they do not like, including independent Baptists, Jehovah's Witnesses, independent Muslims and Hare Krishna devotees. "Where possible they will threaten, blackmail and discredit them," he told Forum 18. "It seems that the National Security Committee (KNB) secret police, backed politically from the top, has a special department to harass religious minorities jointly with the Prosecutor's Office and the Interior Ministry."

Recent pressure on religious communities known to Forum 18 includes continued administrative cases launched against Council of Churches Baptists for holding unregistered worship services and confiscation of their property for unpaid fines imposed to punish them for such services, the court-ordered closure of a Christian-run rehabilitation centre for alcoholics and drug-addicts and continued pressure on the Hare Krishna commune near Almaty to leave its site (see F18News 19 March 2009 http://www.forum18.org/Archive.php?article_id=1271).

Zhovtis also points out that the official press is still publishing "dirty articles" about "sects". "Maybe it is not so intense, as no such political request is coming from the top at this point, but it depends on the will," he told Forum 18. A media campaign against religious communities the authorities do not like was a key feature in the campaign to tighten legal controls on religious activity (see F18News 5 February 2009 http://www.forum18.org/Archive.php?article_id=1250).

An official of the Prime Minister's Office, who asked not to be named, told Forum 18 on 17 March that the Justice Ministry had drawn up the rejected Law. "All of this came from them," the official insisted. "They were responsible. It came from the Religious Affairs Committee and was channelled through the Justice Minister." The official said the Justice Ministry had drawn up the conclusion endorsing the Law which Prime Minister Karim Masimov had signed and sent to Parliament in spring 2008 (see F18News 30 April 2008 http://www.forum18.org/Archive.php?article_id=1123).

"No new Religion Law is in the government's plan of new laws, which covers the next three years," the Prime Minister's Office official noted. "But I don't know if the Justice Ministry has abandoned this Law or not."

Officials at the Justice Ministry's Religious Affairs Committee in Astana refused to discuss with Forum 18 whether or not work on new legal restrictions on religious activity is continuing. One deputy chair, Amanbek Mukashev, put the phone down as soon as Forum 18 introduced itself on 16 and 17 March. The other deputy chair Kayrat Tulesov referred all enquiries to the parliamentary deputies who he said were behind the Law. "It was their initiative," he told Forum 18 on 17 March.

However, the Justice Ministry press office told Forum 18 categorically on 17 March that work on the Law has stopped with the Constitutional Council ruling. "The Law won't be considered further – nothing is planned at present. It would only happen if parliamentary deputies initiate it." The press office insisted that the Ministry did not write the rejected Law and merely gave its expert conclusion on it. Asked how the Ministry could have approved a Law that was so clearly in contradiction to Kazakhstan's Constitution and international human rights commitments, the press office declined to comment.

The new Law had been widely criticised by a range of religious communities within Kazakhstan, as well as international bodies, including the OSCE (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249).

On 21 November 2008, the United Nations Special Rapporteur on Freedom of Religion and Belief, Asma Jahangir, had written to the Kazakh government pointing out that the Law "would impose undue restrictions on freedom of religion or belief". She highlighted the Law's continuation of the ban on unregistered religious activity, restrictions on missionary activity, controls on distributing religious materials, "theological analysis" of religious communities' registration applications, the ban on private religious education, "vague provisions" allowing for "abusive interpretation and discrimination on the part of the law enforcement authorities" and the lack of "public and open debate" on the 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>.

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