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KAZAKHSTAN: "The Administrative Code shouldn't punish the core practice of a faith"

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Two Articles of the Code of Administrative Offences which punish unregistered religious activity, missionary activity without state approval and activity not specifically mentioned in a community's officially-approved statute remain almost unchanged in the Justice Ministry's published draft text of a new Code, Forum 18 News Service notes. "Offences" under these Articles are punishable by fines of up to 300 times the minimum monthly wage and temporary or permanent bans on a religious organisation's activity. Justice Ministry officials told Forum 18 that the text is with the Presidential Administration for comments before being finalised, approved and sent to Parliament. "We want them to remove these two Articles entirely," a Council of Churches Baptist, whose communities have repeatedly been punished under these Articles, told Forum 18. "The Administrative Code shouldn't punish the core practice of a faith," an Ahmadi Muslim told Forum 18.

Kazakhstan should abolish entirely the two articles of the Code of Administrative Offences which punish peaceful religious activity, rather than carry them across almost word for word into the new version of the Code due to reach Parliament this autumn, human rights defender Ninel Fokina told Forum 18 News Service from the southern city of Almaty on 28 August. Her concern over the two Articles – which are included in the draft new text made public by the Justice Ministry – was echoed by members of religious communities which have been fined and banned under the current Code.

Vera Tkachenko, head of the Legal Policy Research Centre in Almaty, said the two Articles in the current and proposed new Administrative Code punishing religious "offences" are part of the "high level of state control" over the activities of non-governmental organisations, including religious communities. "For example there should be no requirement for registration and penalties for this should be removed from both the current and the proposed new Code," she told Forum 18 on 31 August.

Several Justice Ministry officials told Forum 18 from the capital Astana on 28 August that the draft text of the proposed new Code is now with the Presidential Administration for comments. Only once these are returned will the Ministry be able to complete the draft and pass it to the government for final approval before the text goes to Parliament.

Current Administrative Code articles violate religious freedom

The current Administrative Code includes two Articles punishing peaceful religious activity, which human rights defenders and religious believers have long argued violate Kazakhstan's international human rights commitments.

Article 374-1 punishes leading, participating in or financing an unregistered 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.

"Offences" under these Articles are punishable by fines of up to 300 times the minimum monthly wage and temporary or permanent bans on a religious organisation's activity. Foreign citizens or those without citizenship found guilty of conducting unauthorised missionary activity are liable to deportation.

The proposed new Code moves Article 374-1 to a new Article 451, while Article 375 becomes Article 452.

The officially-published draft of the proposed new Code leaves Article 374-1 unchanged as Article 451. It softens Article 375 – due to become Article 452 – in only two places: the fine for one provision is reduced from 100 times the minimum monthly wage to between 50 and 80 times; and removed as "offences" are "violating the rules for conducting religious events outside the place of location of the religious association" and "organising and conducting by servants of cult and members of religious associations of children's and youth meetings and groups not connected with the conducting of the cult" (Soviet-era wording that persists to this day).

All the other changes to Article 375 (Article 452 in the proposed new Code) make the provisions marginally harsher, removing the option of a warning instead of a fine in one case and imposing minimum in addition to the current maximum fines.

Fokina, who heads the Almaty Helsinki Committee, welcomes the removal of the punishment for creating children's and youth meetings. "This unclear formulation is being misused even today," she told Forum 18. But she laments the proposed imposition of minimum levels of fines. "In an ideal world a court could give a fine of just one or two months' average wages, but that would now be impossible."

Victims of these Articles echo criticism

Sharing Fokina's concern is Dmitry Yantsen, a member of a Council of Baptists congregation. "We want them to remove these two Articles entirely," he told Forum 18 on 28 August from the town of Temirtau in the central Karaganda [Qaraghandy] Region. "They are against the Constitution." He points out that Kazakhstan's Constitution guarantees freedom of religion and freedom of worship.

Council of Churches Baptists – who reject state registration on principle – have been particular targets of these two Articles. Their leaders have repeatedly been fined for leading unregistered religious worship and their congregations have repeatedly been banned, often for six month periods.

In addition, sentences under these two Articles lead to further harassment. Rejecting state accusations that meeting for worship without state registration is a crime, Council of Churches Baptists refuse to pay fines imposed by the courts. This often leads courts to send bailiffs to issue restraining orders on property or to confiscate items of value, including cars, calves and washing machines. Courts have also ordered that the fines be deducted at source from individuals' wages.

In several cases, refusal to pay fines or to halt worship by communities which have been "banned" has led Baptist pastors to face further charges under Article 524 of the Code of Administrative Offences (failure to carry out court decisions). Baptist pastor Vasily Kliver, who has been fined many times for leading unregistered worship, was given a five-day prison term in June 2009 for refusing to pay the fines, the fourth Baptist leader to be given a short sentence since 2006 (see F18News 9 June 2009 http://www.forum18.org/Archive.php?article_id=1309).

Also calling for the removal of these provisions punishing religious communities and individuals for practising their faith without registration is Nurym Taibek, spokesperson for the Ahmadi Muslim community. "We would prefer to see these changed. The Administrative Code shouldn't punish the core practice of a faith," he told Forum 18 from Almaty on 31 August. "We don't believe worship to God should require registration."

Taibek insists that religious communities should not be exempt from abiding by the law, but believes other criminal and administrative penalties already exist to prosecute any individuals who commit any genuine crimes in the name of religion. "There shouldn't be separate Articles that just cover religious communities and individuals."

Also complaining of the harsh impact of these two current Articles are the Jehovah's Witnesses. Their representatives pointed out to Forum 18 that in the western Atyrau Region, their adherents suffered heavy fines in 2007 and 2008 merely for conducting religious activity that was not registered. In June 2007 one Jehovah's Witness was fined 109,200 Tenge, (5,410 Norwegian Kroner, 670 Euros or 902 US Dollars) and five others half that amount under Article 374-1. In May 2008 one was fined 116,800 Tenge and seven others half that amount under the same Article.

In addition, Jehovah's Witness congregations in several places have been banned for six month periods under Article 375, although in two cases in South Kazakhstan Region in late 2008 Jehovah's Witnesses were able to have these bans overturned by the Regional Court (see F18News 19 December 2008 http://www.forum18.org/Archive.php?article_id=1233).

Jehovah's Witnesses declined to say whether they believed these Articles should be retained, amended or abolished when the new Administrative Code is adopted, stressing that they do not comment on "political issues".

In addition to fines and bans handed down under these two Articles, foreigners have been ordered deported for "illegal missionary activity". Among them have been foreign Muslims and Christians, while a Hare Krishna devotee was barred entry after the authorities claimed a court had found him guilty of the "offence" (see F18News 30 January 2009 http://www.forum18.org/Archive.php?article_id=1247).

On 14 August, Judge Yerlan Zakiryanov of Zerenda District Court in Akmola Region gave a small fine to 62-year-old Presbyterian pastor Kim Gyu under Article 375, Part 3 and ordered his deportation, according to the verdict seen by Forum 18. A Canadian citizen visiting Kazakhstan, Gyu had joined about 50 local church members on an outing to a nearby lake, praying before they began to eat in the open air. Officials characterised this as "illegal missionary activity".

Steadily increasing administrative penalties

The new Code of Administrative Offences would replace the one first adopted in January 2001 and repeatedly amended since then.

Article 374-1 was first introduced in July 2005 as part of harsh new "national security" amendments to various laws – including the Religion Law - which severely increased the controls on religion. Article 375 was amended at the same time to introduce the penalties for missionary activity. The amendments were strongly criticised at the time by human rights groups and by the Organisation for Security and Co-operation in Europe (see F18News 15 July 2005 http://www.forum18.org/Archive.php?article_id=608).

In 2006, an official of the government's Human Rights Ombudsperson's Office told Forum 18 that the Article 375 must be removed to bring the law into line with the International Covenant on Civil and Political Rights. Local Baptists and law professor Roman Podoprigora agreed with this view (see F18News 1 March 2006 http://www.forum18.org/Archive.php?article_id=735).

What further changes before draft Code reaches Parliament?

The website of the Justice Ministry – which posted the Russian-language text of the proposed new Code on 20 July – does not indicate whether this is the final Justice Ministry text or not. Mervert Kabylbaeva of the Ministry's Institute of Legislation told Forum 18 on 28 August that the Ministry drew up the text and has gained the backing of various government agencies, which she declined to identify, but has not yet adopted a final draft. She added that it cannot do so until it receives back the comments from the Presidential Administration, though she said these are expected soon.

"Once the comments from the Presidential Administration are received, the Ministry will then amend the text and pass it to the government for final approval before it goes to Parliament," she told Forum 18.

Nikolai Golysin of the Presidential Administration press office declined to say when the draft text would be returned to the Justice Ministry and what changes might be made to these two Articles in the draft. "The Presidential Administration gives no information on the procedure over draft laws until the President has signed them [after parliamentary approval]," he told Forum 18 from Astana on 28 August. "This is the internal affair of the Presidential Administration."

The press office of the Majilis, the lower house of Parliament, told Forum 18 on 28 August that a draft new Code would be considered like any other draft Law. It would be assigned to a Majilis Committee (probably the Legislation Committee), which would assign a working group to consider the text. The new Code would require three readings in the full Majilis before being sent on to the upper house, the Senate. Once approved by both houses it would then go to President Nursultan Nazarbaev to be signed into law.

Adopting an entirely rewritten Code was included in the government's legislative plan for 2009 adopted in February 2009. It said the Justice Ministry would present the draft text in June, the government would approve it in July and Parliament would approve it in September. However, it appears there has been some delay.

Tkachenko of the Legal Policy Research Centre laments that "the whole process of law-making is not transparent". She calls on Parliament to ensure "wide discussion" with experts, members of civil society, including religious organisations, and international experts before any new Administrative Code is adopted.

Fokina of the Almaty Helsinki Committee remains pessimistic, believing the new Code will be adopted with the restrictive provisions punishing peaceful religious activity. She adds that parliamentary deputies might introduce even harsher provisions of their own. "As a rule deputies introduce amendments increasing responsibility for 'offences', and the government doesn't object," she told Forum 18. "Here there's the fear that they'll sneak in new elements from the harsh Religion Law rejected in February."

She calls for "all the idiotic limitations and bans" to be removed not just from the current and proposed new Administrative Codes, but from the Religion Law also. (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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