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KAZAKHSTAN: Parliamentary adoption of restrictive laws imminent?

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

Two laws imposing severe restrictions on freedom of religion or belief could possibly be adopted by Kazakhstan's Senate, the upper house of Parliament, as early as next Thursday (29 September). Both laws passed through the Majilis, the lower house, in one day and reached a Senate committee the same day. One observer described the speed of passage to Forum 18 News Service as "unprecedented", and a Majilis press spokesperson was unable to say whether any laws had ever had a quicker passage. An official of the government's Agency of Religious Affairs confirmed to Forum 18 that the two laws would be considered at the Senate's plenary session on 29 September, but would not say if they would complete their passage within one session. Human rights defenders and some religious communities have already told Forum 18 of their deep concern at many of the provisions, which violate Kazakhstan's international human rights commitments. The first proposed law, a new Religion Law, would among other restrictions impose a complex four-tier registration system, ban unregistered religious activity, and impose compulsory censorship. The second proposed law amends nine legal provisions, and its changes to Article 375 of the Code of Administrative Offences and to the Law on the Rights of the Child could have a more far-reaching impact on freedom of religion or belief.

Two laws imposing severe restrictions on freedom of religion or belief could be adopted by Kazakhstan's Senate, the upper house of Parliament, as early as next Thursday (29 September), the date of its next plenary session, Forum 18 News Service has learned. The two laws, which reached Parliament on 5 September, passed through the Majilis, the lower house, in one day and reached a Senate committee the same day. One observer described the speed of passage to Forum 18 as "unprecedented", and a Majilis press spokesperson was unable to say whether any laws had ever had a quicker passage. Once adopted by the Senate, they would only require the signature of President Nursultan Nazarbaev to become law. Human rights defenders and some religious communities have already told Forum 18 of their deep concern at many of the provisions, which violate Kazakhstan's international human rights commitments.

The Senate's plan of work for the week of 26-30 September, published on the Senate website on 23 September, notes that the Working Group established to prepare the draft laws for submission to the full Senate will consider them on 26 September. On 27 September the Senate's Social and Cultural Development Committee, which is overseeing their passage, will consider them. A full Senate plenary hearing is scheduled for 29 September, but the plan of work does not indicate if the two laws will be adopted then. However, one observer told Forum 18 that, given the speed of the process, it is possible they will be adopted then.

An official of the government's Agency of Religious Affairs (ARA) confirmed to Forum 18 from the capital Astana on 23 September that the two laws would be considered at the 29 September Senate plenary session. But the official would not say if they would complete their passage within one session.

The current package of restrictive legislation appears to have been planned from at least September 2009 if not before (see F18News 8 October 2009 http://www.forum18.org/Archive.php?article_id=1360). But the two laws were first mentioned by President Nazarbaev on 1 September 2011 in his address to the opening session of Parliament. They were approved by the full Majilis on the morning of 21 September, with some minor changes, and that afternoon received their official presentation to the Senate, where they were assigned to the Social and Cultural Development Committee (see F18News 21 September 2011 http://www.forum18.org/Archive.php?article_id=1615).

The Organisation for Security and Co-operation in Europe (OSCE) has offered its assistance to the Kazakh authorities to ensure the new Laws' compliance with the country's OSCE commitments. However, the government has not taken up this offer (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608). A previous OSCE review of a 2008-9 draft package of restrictive laws – which appear to have provided a basis for the current drafts – found they did not comply with legal review of the 2008 draft legislation found that they did not comply "with international human rights standards, including in particular OSCE commitments" (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249).

Human rights defenders in Kazakhstan expected that a package of restrictive laws, along the lines of the 2008-9 package, would be re-introduced after the country stopped being 2010 Chair-in-Office of the OSCE (see F18News 17 March 2009).

http://www.forum18.org/Archive.php?article_id=1269).

What is the current package?

The first proposed law, a new Religion Law, would replace entirely the current Law, which was first adopted in 1992 and which has been amended a further eight times, most recently in July 2011. The current 1992 Law is officially titled "The Law on Freedom of Religious Confession and Religious Associations", but the new Law is officially titled "The Law on Religious Activity and Religious Associations".

The draft Religion Law would, if adopted, among other restrictions impose a complex four-tier registration system, ban unregistered religious activity, impose compulsory religious censorship and require both central and local government approval to build or open new places of worship.

The second proposed law - formally titled "The Law on introducing Amendments and Additions to several legal acts questions of Religious Activity and Religious Associations" – amends nine other Laws and legal provisions: the Code of Administrative Offences; the Code on the Health of the Population and Health Care; the Law on State Registration of Legal Persons; the Law on Non-Commercial Organisations; the Law on the Rights of the Child; the Extremism Law; the Law on Military Obligations and Military Service; the Law on Licensing; and the Law on State Property.

Most of the changes proposed in this Amending Law are minor and technical. However, changes to Article 375 of the Code of Administrative Offences and to the Law on the Rights of the Child could have a more far-reaching impact on freedom of religion or belief.

Both new laws would come into force ten days after their official publication.

"Historical role" of Hanafi Islam and Orthodox Christianity

The proposed new Religion Law defines the state as secular, bans the adoption of any faith as the state religion and declares all religious communities equal before the law. But the preamble states that the country "recognises the historical role of Islam of the Hanafi school and Orthodox Christianity in the development of the culture and spiritual life of the nation". It also notes that the country "respects other religions which have combined with the spiritual heritage of the nation".

Government officials have long spoken of a duopoly of Islam for ethnic Kazakhs and Orthodoxy for the country's Slavic population (mainly Russians), speaking of them – without any basis in law – as the country's "traditional faiths". The state-backed Muslim Board has pushed for the Hanafi school to be given a monopoly over Islam in Kazakhstan (see F18News 28 July 2011 http://www.forum18.org/Archive.php?article_id=1599).

Although the rest of the proposed new Religion Law makes no mention of any specific faiths, the four-tier registration system could in practice ensure that only the Muslim Board and the Russian Orthodox Church would be able to gain top-level, national registration (see below).

Compulsory re-registration

All religious communities are required to apply for re-registration under Article 24 of the draft Religion Law. Article 24 requires all registered religious organisations to revise their statutes to bring them into line with provisions of the new Law, provide confirmatory documentation that they meet the new criteria and re-register with the Justice Ministry or (for local religious organisations) its local branch. Failure to re-register within one year will lead to liquidation through the courts.

State officials have already threatened registered independent mosques that they will not be re-registered – and so will be banned – if they do not join the state-backed Muslim Board (see F18News 16 September 2011 http://www.forum18.org/Archive.php?article_id=1613).

Complex registration system in new Religion Law

Article 12 of the proposed Religion Law specifies four-levels of registration: national, regional, local and unregistered. All activity by those categorised as unregistered is banned. Local and regional organisations are only allowed to conduct activity in the geographic area they are registered in.

The three categories of registered religious organisations are allowed to teach their faith to their own members. However, only regional and national registered religious organisations will be allowed to, under Article 13, Part 3, train clergy in institutions established – with state approval – by religious organisations. Under Article 13, Part 3, they are allowed to establish "professional educational programmes to prepare priests". It remains unclear whether religious education not involving training of "priests" will be allowed.

These two differences – geographic area and training of clergy – appear to be the main differences between the three permitted types of religious organisations. Regional and national organisations must register with the Justice Ministry in the capital Astana.

- Unregistered activity banned

Article 3, Part 11 states that unregistered religious activity is banned. Communities which would be too small to register, which are unable to register, or which – like congregations of the Baptist Council of Churches – do not wish to seek state registration would then face punishment for any religious activity they undertook.

- Local organisations

Under Article 12, Part 2, local religious organisations need 50 adult citizen members within one region of the country or main town, and register with the local Justice Department.

- Regional organisations

Under Article 12, Part 3, regional religious organisations need 500 adult citizens who belong to at least two different registered local religious organisations (each with at least 250 adult citizens) located in two different regions or main towns. In other words, a regional religious organisation cannot be registered as such if its local registered organisations are only within one region. The regional organisation is only allowed to function in the areas where its local member organisations are based.

- National organisations

Under Article 12, Part 4, national religious organisations need at least 5,000 adult citizens from all regions of the country, the capital and all major towns (with at least 300 members in each of those territories). It also needs branches all over the country.

Article 15, Parts 5 and 6 require a national religious organisation to gain local registration of all its branches and provide the Justice Ministry with proof of this within one year if it wishes to retain its registered status.

The Majilis added a new Article 14, Part 4 requiring applications to register a regional religious organisation to present a full list of the founders of the local religious organisations whose members are founding the regional organisation.

What would be needed for registration?

Registering a religious organisation requires a statute that needs to be adopted at a meeting attended in person by all the adult citizen founders, according to Article 13, Part 1. The Majilis added the stipulation that would-be founders can attend only "at their own request". It remains unclear who will determine whether would-be founders have arrived at their own request. A religious organisation must have "a united faith; the carrying out of religious rites, ceremonies and preaching; religious education of its followers; and spiritual orientation of its activity".

Many of the terms used in both the draft laws – such as "a united faith" – are unclear and undefined. This leaves open the possibility of arbitrary official definitions and actions against groups which the state or officials dislike.

Article 14 requires religious organisations to include the religious faith in the name and bans the name from using terms already used by another registered community. It remains unclear if this would prevent the registration of more than one separate community of Muslims, Orthodox or Baptists, for example.

Under Article 15, all the founders of a religious community need to present their full details to the registering body, which is empowered to subject them to a thorough check (apparently to ensure that they are authentic). It remains unclear whether this might intimidate potential founders of religious communities the government does not like.

Article 16, Part 3 requires each organisation's statute to explain "the fundamental religious ideas, forms of activity of the religious association, particularities of its attitude to marriage and the family, education and health of the participants (members) of the given religious association and other people, and attitude to the realisation of the constitutional rights and obligations of its participants (members) and officials". It remains unclear how extensive this information would have to be and how state officials will determine whether any of these explanations are adequate or not.

Also to be presented with registration applications, under Article 15, Part 3, are copies of publications "revealing the emergence of and bases of the faith and containing information on the religious activity linked to it". The requirement to reveal the "emergence of the faith" also was added by the Majilis.

Article 16 requires each organisation's statute to specify the territory in which it operates (presumably in line with the restrictions

imposed depending on the level of registration).

Basis for state refusal to register a group

Article 17, Part 1 states that: "State registration of religious associations and state registration of their structural subdivisions (branches and representative offices) shall be refused in accordance with the laws of the Republic of Kazakhstan when the information contained in the charter and other documents is false, and/or if the created body is not recognised as a religious association on the basis of [state] religious examination."

Part 2 states that "Appeals against denials of registration may be made in court."

Suspension, closure, and restructuring of groups

Article 18, Part 1 states that: "Reorganisation of religious communities may be carried out in accordance with the laws of the Republic of Kazakhstan by way of merger, union, division, transformation, and separation by the decision of the body authorised by the constituent documents of a religious association, or by court order. A religious association can only be transferred to another religious organisation or a private institution. Organisations formed as a result of the reorganisation of religious associations may be registered as religious organisations if they comply with the requirements of this Law."

Part 2 states that: "Suspension of operations and disbandment of a religious association shall be carried out in accordance with the laws of the Republic of Kazakhstan."

Censorship

The proposed new Religion Law claims that everyone has the right to acquire and use "religious literature, other informational materials of religious content, and objects of religious significance at their own discretion". However, distribution of such literature and objects would only be permitted, according to Article 9, Part 2, in registered places of worship, approved religious education institutions and "special stationary premises determined by local executive authorities" (Akimats).

Article 5, Part 4 would require all Akimats in Kazakhstan to issue decrees, authorising which named local "special stationary premises" (bookshops) they have inspected and approved to sell religious literature and other material such as icons. It would be illegal for other bookshops and similar places to sell religious literature and other materials.

Article 9, Part 3 would require that all imports of "informational materials of religious content" – apart from small quantities for personal use – be done only by registered religious organisations with prior approval from the ARA, which has to conduct an "expert analysis" of each title.

It does not appear that the production of "religious literature" or "other informational materials of religious content" within Kazakhstan is restricted, though Article 9, Part 4 requires each work to have the "full name" of the religious organisation which produced it.

This appears to exclude the possibility of private individuals or commercial companies producing such literature. Even were they to have that right, they would be unable to distribute such literature except through the approved venues specified in Article 9, Part 2.

"Expert analyses" – conducted by the ARA – are required not only for all "religious literature" or "other informational materials of religious content" imported for distribution in Kazakhstan, but also for any religious literature acquired by libraries in any institution or organisation. The exact terms of this requirement remain unclear. "Objects of religious significance" – presumably including crosses, crucifixes, Koran stands and vestments – and "spiritual (religious) educational programmes" would also, under Article 6, Part 3, be subject to an "expert analysis".

"Religious studies experts", as well as "when necessary" state officials, conduct such "expert analyses" on behalf of the ARA.

Restrictions on where meetings can happen

Article 7, Part 2 states that: "Worship services, religious rites, ceremonies, and/or meetings may be freely carried out in religious buildings and their assigned territory, in places of worship, offices and premises of religious associations, in cemeteries and in crematoriums, and inside homes and dining halls if needed on condition that they respect the rights and interests of nearby residents. In other cases religious activities are carried out in accordance with the laws of the Republic of Kazakhstan."

Apart from these limitations, which may bar meetings and activity outside of state-approved buildings, existing places of worship do not appear to face extra difficulties remaining in operation – provided their communities manage to gain or regain legal status.

Restrictions on new places of worship

Any new place of worship anywhere in Kazakhstan would, under Article 5, Part 5, require the approval both of the ARA in Astana and the local administration. This would cover not only whether a religious community can build, but exactly where, as well as whether a religious community could gain official change of usage for a building it wants to turn into a place of worship.

Restrictions on children's freedom of religion or belief

Several articles of the proposed Religion Law attack the freedom of religion or belief of children. Article 3, Part 16 requires leaders of religious organisations "to take steps to prevent the attraction and/or participation by underage children in the activity of a religious association if one of the child's parents or other of its legal guardians objects".

It remains unclear how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious community. It also remains unclear whether, for example, the country's Chief Mufti or one of the Orthodox bishops might become liable if a community under their jurisdiction does not take measures to ensure that every child who attends has the approval of both parents.

A separate amendment in the associated Amending Law would amend the Law on the Rights of the Child. A proposed addition to Article 19 reads: "The carrying out of services, religious rituals, ceremonies and/or meetings, as well as actions directed at spreading a faith, in children's holiday, sport, creative or other leisure organisations, camps or sanatoria is not allowed."

It remains unclear whether this would ban religious organisations from running children's summer camps.

Potentially particularly significant is one of the Amending Law's changes to Article 375 of the Administrative Code. This change makes it illegal to fail to prevent someone bringing a child to a religious meeting against the wishes of one of its parents.

This change opens the door to state pressure against children or young people, parents - even separated or divorced parents - and guardians involved in a religious community state officials dislike. It also potentially allows pressure against anyone involved in such communities, if children or young people attend the community's meetings.

Restrictions on sharing beliefs

Article 1, Part 5 of the new Religion Law defines "spreading a faith" as "missionary activity" and indicates that it is done "in the name of a religious organisation registered in the Republic of Kazakhstan", whether by a local citizen or a foreigner. Article 8, Part 1 states that all individuals engaged in spreading their faith must have registration, whether local or foreign. Such missionary permission needs to be renewed annually.

Only registered religious organisations can appoint "missionaries", who must act in the name of the organisation. All the religious literature they use to promote their faith needs to be presented when applying for their registration as missionaries.

What constitutes "spreading a faith" or "missionary activity" is undefined. This could – to take one example - potentially make any conversation about religious matters by unregistered people an offence.

Restrictions on foreigners

Under the proposed new Religion Law, all founders of religious communities must be Kazakh citizens. Foreign citizens, even with the right of legal residence in the country, appear not to have the right to be official founders.

Many long-term residents of Kazakhstan after the break up of the Soviet Union are technically foreign citizens. After legal residence in Kazakhstan for 15 years, marriage to a Kazakh citizen and with a two-year-old daughter, Russian citizen Leonid Pan was in mid-August denied his application to renew his residence permit because he volunteers to preach in his local Protestant church (see F18News 1 September 2011 http://www.forum18.org/Archive.php?article_id=1607).

Leaders of all religious organisations named by foreign religious organisations (such as Russian Orthodox or Catholic bishops) need the approval of the government's Agency of Religious Affairs, regardless of whether the appointed leader is a Kazakh citizen or not. Article 19, Part 1 specifically bans such foreign-named leaders from acting without ARA approval.

For foreign citizens to work as "missionaries" in Kazakhstan, they need (like local citizens) to have an invitation from a registered religious community in the country and need personal registration as a missionary. They also need a certificate proving that the religious organisation they represent is registered in their country of origin. It remains unclear what happens if a "missionary" is from a country where religious organisations are not subject to state registration.

Religious care in institutions

The proposed Religion Law allows religious care for those in institutions – including hospitals, prisons, or old people's homes – provided such care is not thought to obstruct the running of the institutions or violate the rights of other residents.

However, under Article 7, Part 4, only priests of registered religious communities can be invited to provide such care and conduct religious rituals.

Hidden slander?

While the proposed Religion Law appears to guarantee rights for registered religious organisations, many of the stipulations centre on possible violations of the Law such organisations should not commit. This can imply that all religious communities are potentially dangerous, and need extra legal controls which do not apply to other citizens – including criminals with no connection to any registered or unregistered religious community.

Article 3, Part 12 specifically bans the activity of religious organisations which use violence, harm people's health, break up families or encourage citizens not to carry out their legal obligations. It remains unclear whether for example the Russian Orthodox Church would be banned if it accepts young people into monasteries who then cut off ties with their families. It also remains unclear if this might also be used against religious communities, such as Jehovah's Witnesses, which reject military service.

Article 3, Part 13 bans religious organisations which force people to join or who ban members from leaving. Article 3, Part 14 bans religious organisations which force their adherents to hand over their property to the organisation or its leaders. Article 10, Part 2 specifically bans religious organisations conducting charitable activity from trying to use an individual's "material dependency" to pressure them to join.

Those seeking to conduct "missionary work" in Kazakhstan – whether local citizens or foreigners - would be denied permission under Article 8, Part 5 if such work "constitutes a threat to the constitutional order, social order, the rights and freedoms of the individual, or the health and morals of the population".

The Amending Law

The second law, an Amending Law, changes nine legal provisions including the Code of Administrative Offences. Five articles of the Administrative Code are changed.

A new Article 375 – to replace the current Article 375 which already punishes "violating the Religion Law" – makes much wider the violations of the Religion Law which would be subject to administrative punishment. However, many of the violations are undefined, including in Part 1: breaking the Religion Law; violating the provisions for holding religious rites, ceremonies, or meetings for worship; violating the procedure for conducting charitable activity; violating the procedure for importing, publishing or distributing religious literature and materials; building places of worship or changing a building's usage; or conducting missionary activity.

Penalties for breaking Part 1 of Article 375 are fines of 50 Monthly Financial Indicators (MFI) for physical persons, 100 MFIs for leaders of religious associations, and 200 MFIs for legal persons (groups with state registration) with suspension of their activity for three months.

The MFI is set annually, and since 1 January 2011 has been 1,512 Tenge (60 Norwegian Kroner, 8 Euros, and 10 US Dollars). This is just below one tenth of the official minimum monthly wage.

As noted above, the Amending Law also changes Article 375 to allow the possibility of pressure against the parents or guardians of children or young people, as well as anyone involved in a religious community state officials dislike.

- "Missionary activities" scope expanded and punishments increased

Among the many changes and additions to Article 375, a revised Part 3 now punishes: "The carrying out of missionary activity by citizens of the Republic of Kazakhstan, foreigners and persons without citizenship without registration (re-registration), as well as the use by missionaries of religious literature, informational materials of religious content or objects of religious significance without a positive assessment of a religious studies expert analysis".

The fine for this "offence" under Article 375 Part 3 is for Kazakhstani citizens 100 MFIs. Article 375, Part 9, punishes such offences committed again within a year with fines of 200 MFIs. The punishment for foreigners and stateless persons under Article 375, Part 3, is 100 MFIs with deportation.

The previous Article 375, Part 3 made no mention of "missionaries" using unapproved literature or other religious materials. It handed down fines for missionary activity without local registration ("uchetnaya registratsiya" in Russian) on citizens of up to 15 MFIs, with similar fines for non-citizens together with deportation from Kazakhstan. No provisions were present for increased fines

for repeat "offenders".

- Other "offences" and punishments

Other "offences" and punishments in the new Article 375 include leading a religious organisation at the nomination of a foreign religious organisation without state approval.

Violations of Article 375 mostly lead to fines, but could lead to bans of up to three months or even a permanent ban on a religious community. Foreigners who conduct violations would be subject to "administrative deportation" (as at present). Such deportation is also confirmed in the proposed amended Article 730.

An addition to Article 636 would give the ARA the right to prepare cases to be sent to court for violations of Article 374-1 and Article 375.

The proposed Amending Law would thus leave untouched the current Article 374-1 which punishes leading, participating in or financing an unregistered, halted or banned religious community or social organisation. Like the current Article 375, Article 374-1 has been heavily used to punish individuals and communities for exercising their right to freedom of religion or belief (see eg. F18News 1 September 2011 http://www.forum18.org/Archive.php?article_id=1607).

- New licence to educate required

Most of the other proposed changes in the Amending Law are more technical. But an amendment to the Licensing Law would add a requirement in Article 27, Part 15 that religious organisations which send people abroad for study in religious educational institutions must also require a state licence.

This restricts Article 11 of the Religion Law's apparent blanket permission for state-registered religious organisations to send students abroad for study. Organisations which do not have state registration cannot either exist or have permission to send students abroad.

Religious communities' concerns

Almost all religious communities of a wide variety of faiths that Forum 18 spoke to declined to give any on-the-record comments about the two draft Laws. Privately, members of religious communities have expressed deep concern (see F18News 21 September 2011 http://www.forum18.org/Archive.php?article_id=1615).

Frants Tissen, head of Kazakhstan's Baptist Union, wrote to all its member churches on 20 September, the day before the Majilis approved the Laws. He expressed concern about new restrictions on children's participation in religious activity, registration, religious literature and missionary activity. He called for all member churches to hold "prayer and fasting" on 30 September.

Another Baptist grouping, the Kazakhstan branch of the Baptist Council of Churches – a 50-year-old grouping of Baptists across the former Soviet Union – also issued a statement of concern about the new Laws. "Many provisions of the Law severely restrict the life and service of believers," it warned in a 22 September letter to all its member congregations, seen by Forum 18. It expressed concern about restrictions on services in private homes and holding children's camps, and the increased administrative punishments for religious activity. And especially important for a community that chooses not to apply for state registration, it expressed alarm at the "complete ban on unregistered churches".

The Council of Churches called all its members to conduct "prayer and fasting" on 27 September and to appeal to President Nazarbaev and to the Chair of the Senate, Kairat Mami, not to adopt the Laws. It lamented that the speed of the Laws' adoption did not allow the churches time to organise a collective letter. (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=1352.

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 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://education.nationalgeographic.com/education/mapping/outline-map/?map=Kazakhstan>.

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