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KAZAKHSTAN: Two repressive new laws sent to President for signature

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

Two new laws seriously restricting freedom of religion or belief were passed by Kazakhstan's Senate, the upper house of Parliament, today (29 September). Both laws now only need President Nursultan Nazarbaev's signature to become law. Previous similar laws were rejected by the Constitutional Council as "unconstitutional", and were also heavily criticised by an Organisation for Security and Co-operation in Europe (OSCE) Legal Opinion for breaking the country's human rights commitments. Both the current laws have been in preparation for many months, have been rushed through Parliament with great speed, and are now with the President for signature. Commenting on the previous OSCE Legal Opinion, Zhanna Onlasheva of the state Agency of Religious Affairs, who drafted the laws, told Forum 18 News Service that "We set out our position to the OSCE that we didn't agree with their view. We stuck to our position". The laws were passed as the Military Affairs Directorate of Almaty's Turksib District wrote to local religious communities, ordering them to "provide information on citizens on record as followers of non-traditional religions and radical religious views" - without being able to define what these are - and a Protestant was fined for praying for someone else's health.

Kazakh officials have refused to say if President Nursultan Nazarbaev will send two repressive new laws restricting religious freedom – which completed parliamentary passage in the Senate today (29 September) – for review by the Constitutional Council. Nazarbaev sent similar restrictive laws to the Constitutional Council in 2002 and again in 2009. On both occasions the Constitutional Council rejected them as violating Kazakhstan's Constitution. The State Legal Department of the Presidential Administration told Forum 18 News Service from the capital Astana that its head, Inna Akhmetova, was "too busy" to discuss the issue and no other official could comment. An official of the Constitutional Council told Forum 18 from Astana that it exercises only "passive constitutional control" over laws and has to wait until the President, the Prime Minister, the chairs of the Houses of Parliament, one fifth of the parliamentary deputies or a Judge asks for a review. "Unfortunately individual citizens cannot apply to us for a review of a law."

The two new laws severely restrict freedom of religion and belief (for details of their content, see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

The two laws were approved by the Senate today (29 September) in one session, the Senate website notes. Present to answer deputies' questions was Kairat Lama Sharif, the head of the government's Agency of Religious Affairs (ARA), which prepared the laws. He told the Senate that importing more than one copy of any religious book will require "expert analysis" by his agency.

"In view of the importance of these laws, deputies called for the holding of wide explanatory work among the population and the placing of information on this theme in nationwide and the regional media," the Senate website added.

"The vote was unanimous – all deputies voted in favour," the Senate press office told Forum 18. However, sources in Astana told Forum 18 that two Senate deputies abstained. Several deputies had called for consideration of the two Laws to be halted, given their concerns over the Laws' wide scope, but this was not accepted.

Zhanna Onlasheva, a specialist at the ARA who drafted these laws, told Forum 18 that the Senate made no changes to the texts approved by the lower house, the Majilis, on 21 September.

Long preparation in secrecy

Parliament has adopted these two new laws at what one observer told Forum 18 was "unprecedented speed". They were signed off on behalf of the government by Prime Minister Karim Masimov on 1 September, and by 21 September had completed their passage through Parliament's lower house, the Majilis. That same day they began their passage through the Senate, Parliament's upper house (see F18News 21 September 2011 http://www.forum18.org/Archive.php?article_id=1615). They now go to President Nazarbaev for signature.

However, despite the speed of parliamentary adoption, it seems they have been in preparation in secret since the Constitutional

Council ruled the previous proposed Law unconstitutional in February 2009 (see F18News 12 February 2009 http://www.forum18.org/Archive.php?article_id=1255). After that decision, 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 Organisation for Security and Co-operation in Europe (OSCE) (see F18News 17 March 2009 http://www.forum18.org/Archive.php?article_id=1269).

In September 2009 the government's National Human Rights Action Plan revealed plans to develop in the first quarter of 2011 amendments to the Religion Law and other legislation on freedom of religion or belief, for introduction in the fourth quarter of 2011, as has indeed happened (see F18News 8 October 2009 http://www.forum18.org/Archive.php?article_id=1360).

The draft legislation proposed in 2008-9 was, Forum 18 understands, postponed because of the bad publicity they would generate while Kazakhstan was OSCE Chair-in-Office in 2010. A member of the Senate, Garifolla Esim, told Forum 18 in June 2010 that a draft Law was being worked on (see F18News 18 June 2010 http://www.forum18.org/Archive.php?article_id=1458).

One of Onlasheva's colleagues in the then Religious Affairs Committee (which was renamed the ARA in May 2011) told Forum 18 in September 2010 that she had been "furiously working" on a new law over the previous month.

Onlasheva told Forum 18 that she had read carefully the detailed review of the 2008-9 package of laws by the OSCE (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249). "We set out our position to the OSCE that we didn't agree with their view," she said. "We stuck to our position." She said she was "not authorised" to discuss any further aspects of the new laws.

Kazakh officials disliked the OSCE review, claiming wrongly in 2008 that the OSCE was responsible for delays in publishing it (see F18News 21 November 2008 http://www.forum18.org/Archive.php?article_id=1220).

What is in the new laws?

The first law, a new Religion Law, replaces 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, among other restrictions, imposes a complex four-tier registration system, bans unregistered religious activity, imposes compulsory religious censorship and requires both central and local government approval to build or open new places of worship. All religious communities will be required to re-register or face liquidation through the courts (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

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 (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

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

Restrictive laws defended at OSCE meeting

As they had in 2002 and again in 2008, the OSCE this year again offered Kazakhstan its legal assistance to ensure the new laws' compliance with the country's international human rights obligations. However, the Kazakh authorities have failed to seek such help (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608). The OSCE review of the 2008-9 draft package of restrictive laws 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).

Usen Suleimenov, "Deputy Head responsible for human dimension issues" at the Kazakh Delegation to the OSCE, told Forum 18 on 28 September from Vienna that he has had no response to his request for information from the Foreign Ministry in Astana as to whether - and if so when - Kazakhstan might seek a legal review from the OSCE. "I have no information."

The laws' passage through the Senate coincides with the 2011 OSCE Human Dimension Implementation Meeting in Warsaw, attended by ARA deputy head Ardak Doszhan. He claimed on 27 September that since 2010 "the situation has changed", with the

state facing a terrorist threat, including from some groups "governed by religious slogans", and unrest in prisons. He failed to explain why this required severely restricting everyone's freedom of religion or belief, or why laws which deal with terrorism were not already adequate. Doszhan also did not explain how passage of the laws implemented OSCE commitments, for example the Astana Commemorative Declaration statement relating "the maintenance of peace to the respect for human rights and fundamental freedoms" (see F18News compilation of OSCE commitments on freedom of religion or belief at http://www.forum18.org/Archive.php?article_id=1351).

Heightened government pressure on religious communities

Religious communities of a variety of faiths have complained to Forum 18 of heightened pressure in recent months. The pressure has been accompanied by frequent media coverage of the activity of alleged "dangerous sects" and officially-sponsored meetings warning of such groups.

The authorities in Karaganda [Qaraghandy] Region have pressured legally registered independent mosques to join the government-supported Muslim Board. All the mosques have refused to do this (see F18News 16 September 2011 http://www.forum18.org/Archive.php?article_id=1613).

Agency of Religious Affairs (ARA) regional departments in Almaty, South Kazakhstan (Shymkent), Aktobe [Aqtobe] and Karaganda Regions have re-started the practice of demanding that religious communities complete intrusive questionnaires. In some cases, demands have been made for reports and information on a weekly basis (see F18News 20 September 2011 http://www.forum18.org/Archive.php?article_id=1614).

A wave of raids has taken place in Karaganda Region in September on worship services of Baptist Council of Churches congregations, who choose to meet without state registration. One leader was fined nearly ten months' official minimum wage and further administrative punishments are expected (see F18News 27 September 2011 http://www.forum18.org/Archive.php?article_id=1618).

Jehovah's Witnesses have failed to overturn a seven-day prison sentence and a fine handed down to punish a religious meeting in a private home in Kyzylorda in May. The home owner was threatened with the seizure of her home if she did not stop hosting religious meetings. She has lived in the home – which she owns – since 1969. Similarly, the Ahmadi Muslim community in Shymkent has failed to overturn the court-ordered closure of its mosque (see F18News 27 September 2011 http://www.forum18.org/Archive.php?article_id=1618).

What are "non-traditional religions"?

Religious communities and human rights defenders have expressed concern to Forum 18 over the growing use of the term "non-traditional religions", even though it is nowhere defined in law.

On 5 September, the Military Affairs Directorate of Almaty's Turksib District wrote to local religious communities. In a letter signed by its head Lieutenant-Colonel Rashid Isaev, and seen by Forum 18, it ordered them to "provide information on citizens on record as followers of non-traditional religions and radical religious views". It said this was needed because of the forthcoming call-up to military service.

The letter said the order came from the Coordinating Council of Military Organs of Administration and Criminal Prosecution, a body that brings together officials from security bodies, including the Military Prosecutor's Office, Defence Ministry, Interior Ministry and KNB secret police.

Lt. Col. Isaev was not present when Forum 18 called on 23 September. However, Zhambulat Bauliev, who drafted the letter, insisted to Forum 18 the same day that it had been sent "to all religious communities in our district on orders from above". Asked to explain the letter, he maintained that "young people on record among the Catholics and Muslims as radicals" needed to be reported.

Asked what constituted "non-traditional religions", Bauliev appeared unable to answer immediately. After audibly consulting his colleagues, he insisted these were unregistered communities "functioning without a licence, that is sects". Asked to identify some, he and his colleagues eventually named Jehovah's Witnesses and the Protestant New Life Church. When Forum 18 pointed out that many communities of both are listed on government websites as having state registration, he said he did not know.

Bakhjan Syzdykov, an aide to Kazakhstan's General Prosecutor, was unable to explain what the Coordinating Council of Military Organs of Administration and Criminal Prosecution meant by "non-traditional religions". "I understand that there are sects in Islam, for example, which are considered non-traditional," he told Forum 18 from Astana on 28 September. However, he was unable to identify any law where such a term is defined. He suggested Forum 18 should speak to the Military Prosecutor's Office and put the phone down.

Fined for praying for man's health

Pastor Yerzhan Ushanov of the New Life Protestant Church in Taraz in Jambyl [Zhambyl] Region of southern Kazakhstan is challenging a heavy fine imposed on 5 September for allegedly harming the health of a man who he prayed for in May, charges he denies. New Life church members described the accusation to Forum 18 as "absurd". They pointed out that the National Security Committee (KNB) secret police had initiated a similar case under the same Criminal Code Article against another local Protestant pastor which led to a fine in April 2010, though this was later overturned by the Supreme Court (see F18News 5 July 2011 http://www.forum18.org/Archive.php?article_id=1590).

Judge Nurlan Dauylbaev of Taraz Court No. 2 found Ushanov guilty of violating Criminal Code Article 111, Part 1 ("causing severe damage to health due to negligence"), according to the verdict seen by Forum 18. He fined the pastor 196,560 Tenge and ordered him to pay court fees of 5,000 Tenge, a total of 201,560 Tenge (7,836 Norwegian Kroner, 1,000 Euros or 1,364 US Dollars). The maximum penalty under Article 111, Part 1 is two years' imprisonment.

The court found that in praying for healing for Aleksandr Kireev, Pastor Ushanov used "methods of psycho-therapeutic and medico-psychological influence on people with non-medical goals, which could lead to harm to the psychological health of individuals who have taken part in the given seances".

The accusation against Pastor Ushanov claimed that Kireev had suffered headaches and memory lapses, had become "unsure of himself", and had lost eight kilogrammes in weight.

Testifying for the prosecution was Lyazzat Bazarbayeva, a psychiatrist from the Republican Scientific/Practical Centre of Psychiatry, Psychotherapy and Narcology in Almaty. She told the court her centre had begun examining the case in response to a 1 June request from Galymzhan Zhumashev of the Jambyl regional KNB secret police. She claimed that after her colleagues examined Kireev, they diagnosed that he was suffering from "obsessive-compulsive disorder". Bazarbayeva claimed this was a direct result of attending Pastor Ushanov's church.

Testimony from Zhumashev of the KNB in court revealed that he had initiated the criminal case on 21 June after an alleged complaint about the pastor's treatment of Kireev lodged by his wife.

Pastor Ushanov insisted to Forum 18 on 29 September that Kireev "did not suffer at all" from his prayers. He pointed out the KNB secret police's close scrutiny of him and his church since at least 2009.

Pastor Ushanov said he regards the sentence as unjustified and lodged his appeal to Jambyl Regional Court on 16 September. Court officials told him to expect the appeal hearing in mid-October. "I'm optimistic about the outcome, but if necessary I am prepared to take my case to the Supreme Court."

Zhumashev of the KNB secret police was reluctant to explain the KNB's involvement in the case. "I don't know you," he told Forum 18 from Taraz on 29 September. Asked how Kireev's health suffered in the wake of Pastor Ushanov's prayers, he responded: "I don't know." Asked whether Kireev had been or is being treated by psychiatrists, he responded: "I don't know his health situation." Zhumashev denied suggestions that the KNB was targeting a religious community it does not like. "Why should we persecute believers?" He then put the phone down.

Forum 18 was unable to reach Bazarbayeva of the Republican Scientific/Practical Centre of Psychiatry, Psychotherapy and Narcology. The Centre in Almaty told Forum 18 on 28 September that she was abroad on holiday. (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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