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KAZAKHSTAN: New draft regulations outline official religious censorship

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

Kazakhstan's state Agency of Religious Affairs (ARA) has prepared – but not yet adopted – new regulations to implement the system of compulsory state censorship of almost all religious literature and objects. The Regulations for "expert analyses" will also apply to religious organisations' statutes. Without such ARA approval, religious books cannot be imported (apart from in small quantities) or distributed, and religious organisations will not be able to gain state registration. The draft Regulations – seen by Forum 18 News Service - make no provisions for any challenges to ARA's censorship decisions. They were presented to a closed 27 October meeting of about twenty senior government officials to devise plans for implementing that month's harsh new Religion Law. No one at the ARA was prepared to discuss the Censorship Regulations with Forum 18, or when they might be adopted.

Under draft Censorship Regulations prepared by Kazakhstan's state Agency of Religious Affairs (ARA), officials will have up to 90 days to conduct the compulsory state censorship of almost all religious literature and objects, as well as the statutes of religious organisations. The exception to this may be if a registered religious organisation prints literature, but both the Religion Law and the draft Censorship Regulations are unclear on this.

If the ARA rejects literature or objects before or after censorship, it will be an offence to import, produce or distribute it. If it rejects a religious organisation's statute, that community is unlikely to be registered by the Justice Ministry and its activity will be illegal and subject to penalties. Forum 18 News Service notes that the draft Regulations contain no mechanism for individuals, religious communities or publishers to challenge any ARA ban on such items. Forum 18 has been unable to find out when these draft Regulations are likely to be formally adopted, and if they will be adopted in their current form.

Under Article 38 of the March 1998 Law on Normative-Legal Acts, such regulations issued by central government bodies need to be registered with the Justice Ministry to enter into legal force. Article 38, Part 2 states that the Justice Ministry can refuse to register them if they "harm the rights and freedoms of citizens established by law".

Other regulations being prepared

In addition to the Censorship Regulations, the ARA is (together with various other state bodies) also preparing other regulations to implement October's harsh new Religion Law (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617). These include: regulations on how religious communities must register or re-register; how local and foreign citizens wanting to engage in whatever state officials define as "missionary activities" must register; how religious literature can be brought into prisons; how different religious communities relate; how and where places of worship are allowed to be built; where worship can take place outside registered places of worship; where religious books and materials are allowed to be sold; and what names religious communities are allowed to give to their places of worship (see F18News 7 December 2011 http://www.forum18.org/Archive.php?article_id=1644).

Censorship violates human rights commitments

While some individuals and religious communities say that government prior censorship of religious literature is required to prevent the distribution of texts inciting violence, others complain to Forum 18 that such censorship violates freedom of speech. They also fear that ARA officials will act arbitrarily and slowly to ban religious literature they do not like or which is associated with religious communities they do not like.

Kazakhstan's censorship regime directly violates its international human rights commitments, such as Paragraphs 16.9 and 16.10 of the Organisation for Security and Co-operation in Europe's (OSCE) Vienna Concluding Document of 1989. In 2010, Kazakhstan was OSCE Chair-in-Office. Paragraphs 16.9 and 16.10 read:

"(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

(16.9) – respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) – allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief" (see compilation of OSCE freedom of religion or belief commitments at http://www.forum18.org/Archive.php?article_id=1351).

First time censorship formally codified

The draft Censorship Regulations – drawn up following the new Religion Law – represent the first time the way the official state censorship of religious literature and other materials is conducted will have been codified. However, partial state censorship of religious literature imported into the country has existed for some years. In one case known to Forum 18, religious books imported into the country were held up in customs for months until the ARA gave permission earlier this year.

Religious communities have told Forum 18 that the ARA has stopped processing applications for censorship approval of religious literature. Officials have told religious communities in recent months that until the new Regulations have been adopted, permission for religious materials to be published or imported cannot be given.

Draft Regulations presented at closed meeting

The new draft Censorship Regulations – seen by Forum 18 – were prepared by the ARA in October. They were presented at a closed meeting of about twenty senior officials in the capital Astana on the afternoon of 27 October, very shortly after the two controversial Laws restricting freedom of religion or belief came into force (see F18News 19 October 2011 http://www.forum18.org/Archive.php?article_id=1627).

The 27 October meeting – chaired by Kazakhstan's State Secretary Kanat Saudabaev, who as Foreign Minister was OSCE Chairperson-in-Office – was also attended by ARA head Kairat Lama Sharif, as well as senior ministers and the heads of the National Security Committee (KNB) secret police and the Foreign Intelligence Service. The meeting outlined how the harsh new Law will be implemented (see F18News 7 December 2011 http://www.forum18.org/Archive.php?article_id=1644).

The meeting paid particular attention to moves to subjugate the Muslim community to the state (see F18News 29 November 2011 http://www.forum18.org/Archive.php?article_id=1640).

At Saudabaev's urging, the meeting ordered the ARA – together with the Justice Ministry, the Interior Ministry "and other plenipotentiary state agencies" – to adopt Regulations to implement the new Law on a variety of issues by 15 November, according to the minutes of the meeting seen by Forum 18.

However, as of 24 November, the ARA has not formally adopted the new Censorship Regulations or made public the draft text. No one at the ARA in Astana was prepared to discuss with Forum 18 on 24 November the content of the draft text or when it will be formally adopted.

Nor has the ARA yet formally adopted any regulations governing how religious communities will register or re-register. Under the new Religion Law, all religious communities must revise and resubmit their statutes to the registering body by October 2012 to be able to continue to function (see F18News 13 October 2011 http://www.forum18.org/Archive.php?article_id=1624).

Censorship mandated by new Religion Law

The prior compulsory censorship – or "expert analysis" – of almost all religious literature, other religious materials and statutes of religious organisations was mandated in the new Religion Law. This came into force in October (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Article 9, Part 3 of the Religion Law requires 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" by registered religious organisations 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. Also, religious literature and objects may only be distributed through state-approved venues for distributing religious literature. This is stated in Article 9, Part 2 of the Religion Law.

The Religion Law states that "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" are also, under Article 6, Part 2, subject to an "expert analysis".

Article 15 of the Religion Law implies that the statutes of all religious organisations applying for registration or re-registration will undergo "expert analysis".

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

What is in the draft Censorship Regulations?

Echoing provisions in the Religion Law, Article 5 of the draft Censorship Regulations specifies that religious associations' "founding documents", "documents determining the structure, the bases of the religious associations' religious teaching, religious practice, and forms and methods of religious activity", religious education programmes, "informational materials of religious content", as well as "objects of religious significance".

In what appears to be a grammatically confused sentence, Article 2 of the draft Regulations specifies that "expert analyses" will be conducted by the ARA "with the aims of establishing the conformity of the activity of religious associations with the legislation of Kazakhstan, of an analysis of literature and other materials of religious content and objects of religious significance".

– When is censorship applied?

"Expert analyses" are initiated, according to Article 10, when an individual or organisation asks for one from the ARA, when religious publications "arrive in a library" or reach the ARA, when religious communities or "missionaries" seek the compulsory registration, when any religious literature is imported (apart from small quantities for personal use) or when the head of the ARA orders one.

– Bans without censorship

Under Article 11, the ARA is empowered to refuse to conduct a "religious expert analysis" – in effect banning a publication or object – if an item belongs to an organisation that has been banned in Kazakhstan, if it is subject to an international or inter-governmental ban, if no "authentic translation" into Kazakh or Russian is provided or if the item presented is incomplete.

Forum 18 notes that the requirement to provide a full translation into Kazakh or Russian of all materials used for religious purposes in Kazakhstan – such as from Arabic, Old Church Slavonic, Hebrew, Latin, Polish, Armenian or Sanskrit – seems set to require much work from religious communities seeking to import such materials.

– Who conducts censorship?

The ARA uses its own employees "having special knowledge in the area of religion" as "experts" to conduct the censorship. However, under Article 7, the ARA can also bring in outside "specialists" from "state agencies, religious associations, social organisations, religious studies specialists, lawyers and other experts" if it needs to. "Experts" from abroad can also be used. The ARA provides the "expert" or "experts" with specific questions on the item to be examined.

Article 20 requires the "expert" or "experts" to "prepare a reasoned, scientifically-based, objective and full expert conclusion". They are required not to publicise their "expert analysis" or give any view publicly on the item they have examined.

The ARA is empowered, under Article 18, to seek further information about a book or object "experts" are examining from state agencies, religious or social organisations or (via the Foreign Ministry) foreign state bodies or international organisations.

– Timescale for censorship

Article 16 requires the "expert analysis" to be completed by the nominated "experts" within sixty days. However, it gives no deadline as to how quickly the ARA must assign to the "experts" any religious items presented for censorship. Article 17 allows for a further 30 days if any supplementary questions need to be answered.

When the "expert analysis" is of religious materials to be used by a local or foreign citizen conducting "missionary activity", the time taken to conduct the analysis does not count towards the specified period in which the application for the "missionary's" compulsory state registration must be considered, according to Article 24. The Religion Law does not clearly define "missionary activity", but states that this includes "spreading a faith". It also states that only individuals formally permitted by both the state and a registered religious organisation can engage in this activity (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

– Organisation's ideas and activities censored

When the statutes of a religious organisation applying for state registration are being examined, the time taken to conduct the analysis does not count towards the specified period in which such applications must be considered, according to Article 24 of the Censorship Regulations.

Article 16, Part 3 of the Religion Law 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 (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

– Second censorship by ARA after "experts"

Article 27 of the Censorship Regulations specifies that "expert analyses" are of purely "recommendatory nature". This implies that the ARA could make its own censorship decisions regardless of the recommendation of the "expert" or "experts".

Under Article 28, "the results of expert analyses" are to be published on the ARA's website "with the exception of cases specified in the law of Kazakhstan". However, it remains unclear whether the reasoning behind an approval or a ban on any specific item will also be published.

– Formal consequences of censorship

Article 29 of the draft Censorship Regulations specifies that the Justice Ministry – which is responsible for registering religious organisations under the new Religion Law – will take into account the "expert analysis" (presumably of a religious organisation's statute) when deciding whether or not to register it. It remains unclear what happens if the ARA's decision differs from that of the "expert" or "experts".

Article 30 specifies that the ARA takes into account the "expert analysis" (presumably of the literature presented by a would-be "missionary") when deciding whether it will approve a local or foreign citizen being granted permission to be a "missionary".

Article 26 specifies that "expert analyses" of items for criminal and administrative court cases are governed by other laws, but presumably the ARA's "conclusions" will be taken into account by courts.

This could be a reference to cases under Article 375 of the Code of Administrative Offences which, among other religious activity, punishes "violating the procedure for importing, producing, publishing and/or distributing religious literature or items of religious content". Under the amendments introduced to this Article in October, this is punishable by fines and, if done by a registered organisation, a suspension of the organisation's activity for three months (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Presumably, in such cases a court will ask the ARA as to whether an individual or religious community has produced or distributed religious literature or materials without undergoing the required prior censorship.

Building on earlier censorship

The new Religion Law, new penalties in the Code of Administrative Offences and the proposed new Censorship Regulations build on earlier state censorship of religious materials, mainly literature.

"Such controls were introduced gradually from about 2007," one individual involved in religious publication told Forum 18 from Almaty on 21 November. "However, now it is compulsory."

Initially, censorship mainly covered religious literature imported into the country. "Customs told us we had to get permission from the government's religious affairs officials," the Almaty source told Forum 18.

However, locally-produced material also began to be censored. In 2009, Anti-Terrorist Police seized Russian translations of the

Koran published locally by the Ahmadi Muslim community – whose charter allowed them to publish literature – from a bookshop in the northern city of Kostanay. Police claimed this was to allow the books to be "checked", and the bookshop chain involved then refused to stock the translation.

Later that year, the Justice Ministry's then Committee for Religious Affairs (a predecessor of the ARA) produced an "expert study" alleging that the Jehovah's Witness magazines 'The Watchtower' and 'Awake' "creates preconditions for the development of conflicts on inter-confessional grounds, for the aggravation of the religious and social-political situation in the society, [and] presents a potential threat for the security of the state" (see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1352). The authorities subsequently revoked the ban on the two magazines after Jehovah's Witness complaints.

In 2011, the ARA banned the visit to Kazakhstan of an Islamic author, Imam Shamil Alyautdinov of Moscow's Memorial Mosque. He had intended to present his new religious books in some Russian-speaking higher education institutions, and in bookshops. The ARA later claimed to have overturned the ban, but insisted his books would need to undergo the compulsory censorship (see F18News 21 October 2011 http://www.forum18.org/Archive.php?article_id=1628). (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>.

If you need to contact F18News, please email us at:
[f18news @ editor.forum18.org](mailto:f18news@editor.forum18.org)

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY