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KAZAKHSTAN: Jailings under Administrative Code continue as new Codes signed

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Two new five day prison sentences have been imposed in two separate administrative cases against a Muslim and a Baptist exercising their freedom of religion or belief, Forum 18 News Service has learned. This brings to 12 the number of individuals so far known to have been given such jail terms in 2014. These cases continue as President Nursultan Nazarbayev signed into law a new Code of Administrative Offences and Criminal Code, which mainly take effect on 1 January 2015. Human rights defender Yevgeni Zhovtis, of the Kazakhstan International Bureau for Human Rights and the Rule of Law, described the new Codes to Forum 18 as being "like a baton, to use as a threat against those the state does not like". The new Administrative Code mainly replicates the old Codes' punishments of people exercising their freedom of religion or belief but also introduces new police powers, and the new Criminal Implementation Code's restrictions on people in jail mirror restrictions on exercising this human right throughout Kazakhstan.

Two new short-term prison sentences have been handed down in two separate administrative cases, Forum 18 News Service has learned. Ramil Nizamov, a 22-year-old Baptist, and a Muslim who asked not to be identified were each sentenced to five days' imprisonment for refusing to pay earlier fines for exercising the right to freedom of religion or belief. Their cases bring to 12 the number of individuals known to have been given such short-term prison sentences in Kazakhstan in 2014 so far.

These administrative cases continue as President Nursultan Nazarbayev signed into law a new Code of Administrative Offences, which mostly takes effect from 1 January 2015. He also signed into law a new Criminal Implementation Code (see below).

President Nazarbayev has also signed into law the new Criminal Code on 3 July and it was officially published on 9 July. The text of the Code has been condemned by human rights defenders. It has been used comparatively rarely to punish people exercising the right to freedom of religion or belief, but is currently being used in the cases of retired Presbyterian Pastor Bakhytzhan Kashkumbayev and atheist writer Aleksandr Kharlamov (see F18News 9 July 2014 http://www.forum18.org/archive.php?article_id=1976).

However, the Administrative Code is frequently used against people exercising the right to freedom of religion or belief (see eg. F18News 29 May 2014 http://www.forum18.org/archive.php?article_id=1963). Forum 18 has noted more than 150 known administrative fines in 2013 and nearly 50 in the first 10 weeks of 2014 alone (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

Five-day sentence

On 8 July, Judge Aslambek Koshenov of Petropavlovsk Specialised Administrative Court imposed a five-day prison term on local Baptist Nizamov under Administrative Code Article 524. This punishes "failure to carry out court decisions" with a fine or imprisonment of between five and ten days. The 8 July verdict, seen by Forum 18, claims that imprisonment was necessary, pointing to "the influence of the appointed punishment on the correction of the offender" as well as "warning against conducting further offences, both by the offender and others".

"During the hearing, our brother explained that he had not fulfilled the earlier court decision because he doesn't consider himself guilty," local Baptists told Forum 18 on 9 July, calling the punishment "unjust".

Nizamov is a member of a Petropavl [Petropavlovsk] Baptist Council of Churches congregation in North Kazakhstan Region. These Baptists refuse on principle to register their congregations with the state, and are frequent targets of administrative punishment for continuing to meet for worship and share their faith without state permission. He was imprisoned for refusing to pay a fine of 92,600 Tenge, 50 Monthly Financial Indicators (MFIs) handed down by the same court on 13 February. This is about 3,000 Norwegian Kroner, 375 Euros, or 500 US Dollars, which is equivalent to about one month's average salary for those in work.

His "offence" was to attend a Sunday morning meeting for worship on 26 January raided by the police. The fine was imposed under

Administrative Code Article 374-1, Part 2 ("Participation in the activity of an unregistered, halted, or banned religious community or social organisation") (see F18News 13 March 2014 http://www.forum18.org/archive.php?article_id=1937).

Appeal against fine rejected, bailiff initiates action

On 11 March, Judge Abai Ryskaliyev of North Kazakhstan Regional Court rejected Nizamov's appeal against the fine, according to the decision seen by Forum 18.

After Nizamov failed to pay the fine, court bailiff Raushan Ablayeva launched moves against him to recover the money on 14 April, according to case materials seen by Forum 18. On 18 April, she issued an order banning him from disposing of any of his property. On 2 June, she issued a "temporary ban" on Nizamov leaving Kazakhstan and ordering the case to be handed to court.

One summons by bailiff Ablayeva ordering Nizamov to present himself on 18 June was headed "APPEAR IMMEDIATELY!!!!" It warned him that he would be banned from leaving Kazakhstan and have his property seized if he failed to pay. Such exit bans are routinely imposed. As human rights defender Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law has noted, this "double punishment" is not governed by any law (see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/archive.php?article_id=1939).

"What else should I do?"

Bailiff Ablayeva acknowledged that Nizamov had only been punished for attending a religious meeting, but insisted that it is not her role to assess the validity of court decisions. "I acted in accordance with the law," she insisted to Forum 18 on 10 July. "What else should I do?" She also defended the five-day prison term handed down. "I was there in court participating in the hearing."

Judge Koshenov's assistant refused to put Forum 18 through to him on 10 July. "We don't have the right to do so." But she defended the five-day prison term Koshenov had handed down on Nizamov. "He failed to fulfil a court order."

Another five-day jail sentence

A Muslim has also, like Nizamov, been given a five-day prison term in early summer under Administrative Code Article 524 ("Failure to carry out court decisions"), according to the verdict seen by Forum 18. This person's offence was to fail to pay earlier fines for publishing and distributing religious literature which has not undergone the compulsory state censorship. Kazakhstan operates a severe censorship regime against all literature relating to religions or beliefs and where such texts can be distributed (see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/archive.php?article_id=1939).

"It's our Muslim faith not to complain," the individual told Forum 18 after the term of imprisonment had been completed. "We trust in Allah." The Muslim asked not to be identified.

The Muslim is also on the Justice Ministry's exit ban list for refusing to pay fines.

Another "anti-extremism" raid, another fine

Another Council of Churches Baptist, Maksim Volikov, was punished for hosting meetings for worship without state permission in his home in the village of Shalkar, in North Kazakhstan Region. "Anti-Extremism Police" and other officials raided his home during Sunday worship on 25 May.

"Halting the service, they began to ask questions: Who are you? What are you doing here? Where did you get your religious literature?" local Baptists complained to Forum 18 on 28 June. "They didn't react when we asked them not to interfere with the course of the worship service, instead demanding that we write statements." Police drew up a record of an "offence" against Volikov of leading an unregistered religious community.

On 27 June, Judge Mubarek Ramazanov of Aiyrtau District Court No. 2 found Volikov guilty of violating Administrative Code Article 374-1, Part 1. He fined him 185,200 Tenge, 100 MFIs, twice the amount Nizamov was fined which is equivalent to about two months' average salary for those in work

Volikov considers the fine unjust and intends to appeal to the Regional Court, local Baptists told Forum 18.

Administrative Code signed

The proposed text of the new Administrative Code was prepared by the Justice Ministry (see F18News 18 March 2013 http://www.forum18.org/archive.php?article_id=1814). It reached Parliament's lower house, the Majilis, in November 2013, and after completing parliamentary passage was sent to President Nazarbayev for signature on 18 June 2014. (Parliament is overwhelmingly dominated by the presidential Nur Otan party.) He signed the new Administrative Code into law on 5 July,

according to the presidential website.

The new Administrative Code was officially published on 12 July in the Kazakh-language paper Egemen Kazakhstan and the Russian-language paper Kazakhstanskaya Pravda.

Almost all provisions of the new Administrative Code enter into force on 1 January 2015.

Codes "violate the principle of justice"

President Nazarbayev's decision to sign the new Codes came despite urgent pleas against his decision from local human rights defenders. This included a last-ditch appeal from 172 groups and individuals, published on the website of the Kazakhstan International Bureau for Human Rights and the Rule of Law on 19 June.

The human rights defenders pointed out that the Administrative Code Article punishing "violation of the law on public associations" allows groups to be officially suspended or banned from meeting even for technical violations "or for any legal activity not specified in their statute". "This legal provision arouses particular concern in relation to religious communities," they warn.

Among other concerns, the human rights defenders note that other Administrative Code punishments for those exercising their right to freedom of religion or belief "violate the principle of justice". They add that they also violate Article 22 of Kazakhstan's Constitution, which declares that "Everyone has the right to freedom of conscience." Article 39 of the Constitution specifies that "in no circumstances can the rights and freedoms specified in .. Article 22 be subjected to restrictions."

An earlier joint statement from 119 human rights defenders condemned the new Codes as "considerably restricting and harming human rights", and noted that "reasoned proposals from civil society were ignored" (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959)

Harsh punishments "like a baton, to use as a threat"

Human rights defender Zhovtis, of the Kazakhstan International Bureau for Human Rights and the Rule of Law, noted to Forum 18 on 21 July that "unfortunately, Kazakhstan continues to flagrantly violate the freedom of religion or belief guaranteed for its citizens by its Constitution and its international human rights obligations."

Zhovtis commented on the new Codes providing for harsh punishments for people merely exercising their freedom of religion or belief. He hoped that the state will not use these punishments "as often as in the past". He described the Codes as being "like a baton, to use as a threat against those the state does not like", noting that "the situation in Kazakhstan of human rights in general and freedom of religion or belief in particular is getting worse".

What is in the new Administrative Code?

The main articles in the old Administrative Code used to prosecute people exercising their freedom of religion or belief have been Articles 374-1 ("Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation") and 375 ("Violating the Religion Law"). Article 375 was greatly expanded in 2011 at the same time that a restrictive new Religion Law was passed through Parliament. All these laws and the state's implementation of them break Kazakhstan's international human rights law obligations (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

The new Administrative Code's Articles 489 and 490 mainly replicate the old Code's Articles 374-1 and 375. But Article 489 introduces a new police power to fine people without an initial court hearing. Previously, only courts could impose fines to punish individuals for exercising the right to freedom of religion or belief.

Other parts of the new Code – like the old Code - also affect freedom of religion or belief. Article 804, for example, allows (as the old Code permitted) the state Agency of Religious Affairs to both accuse people or organisations of violating a law and prepare cases for prosecution.

Article 489 introduces new summary police powers

Article 489, like the old Article 374-1, mainly deals with public associations. But its Parts 9, 10 and 11 deal with religious groups also, and mainly replicates the relevant parts of the old Article 374-1. However, Article 489 also introduces a new police power to fine people without an initial court hearing.

It is possible to challenge Article 489 fines under the new police powers through the courts or a Prosecutor's Office. However, this process is more difficult than (as with Article 490 court convictions - see below) lodging an appeal to a higher court against a lower court decision.

Article 489, Part 9 gives police officers the right to fine individuals with no court hearing. It punishes: "Leadership of an unregistered, halted, or banned religious community or social organisation" with a fine of 100 monthly Financial Indicators (MFIs).

The MFI is set annually, and since 1 January 2014 has been 1,852 Tenge (about 60 Norwegian Kroner, 7 Euros, or 10 US Dollars). 50 MFIs are currently equivalent to about one month's average salary.

Article 489, Part 10 also gives police officers the right to fine individuals with no court hearing. It punishes: "Participation in an unregistered, halted, or banned religious community or social organisation" with a fine of 50 times the MFI.

Article 489, Part 11 yet again gives police officers the right to fine individuals with no court hearing. It punishes: "Financing an unregistered, halted, or banned religious community or social organisation" with a fine of 200 times the MFI.

Article 490

Article 490 ("Violation of the Religion Law") mainly replicates the old Article 375, but adds a new offence of "spreading the teachings of a religious group which is not registered in Kazakhstan". The Article states:

"- Part 1. Violating the requirements of the Religion Law for:

- 1) conducting religious rites, ceremonies and/or meetings;
- 2) carrying out charitable activity;
- 3) import, production, publication and/or distribution of religious literature and other religious materials, and items for religious use;
- 4) construction of religious buildings, and changing the profile (functional purpose) of a building into a religious building;

shall result in a fine on physical persons of 50 times the MFI;

and on legal persons [communities with state permission to exist] of 200 times the MFI with suspension of their activity for a term of three months.

- Part 2. Impeding lawful religious activity as well as violation of the civil rights of physical persons on grounds of their religious views or insulting their feelings or profanation of items, buildings and places revered by followers of any religion, unless there are signs of criminally punishable actions,

shall result in a fine on physical persons of 50 times the MFI;

and on legal persons of 200 times the MFI.

- Part 3. Carrying out missionary activity without state registration (or re-registration), as well as the use by missionaries of religious literature, information materials with religious content or religious items without a positive assessment from a religious studies expert analysis, and spreading the teachings of a religious group which is not registered in Kazakhstan,

shall result in a fine on Kazakh citizens of 100 times the MFI;

and on foreigners and stateless persons of 100 times the MFI with administrative deportation from Kazakhstan.

- Part 4. A religious association carrying out activity which is not defined in its charter,

shall result in a fine of 300 times the MFI with suspension of activity for three months.

- Part 5. Engagement by a religious association in political activity as well as participation in the activity of political parties and/or rendering them financial assistance, interference in the activity of state agencies, or the assumption by members of religious associations of the functions of state agencies or officials,

shall result in a fine of 300 times the MFI with suspension of activity for three months.

- Part 6. Creation of organisational structures of religious organisations in state agencies, organisations and entities, as well as in organisations carrying out health care and education,

shall result in a fine on officials of 100 times the MFI;

and on legal persons of 200 times the MFI.

- Part 7. Leadership of a religious association by a person assigned by a foreign religious centre without the consent of the authorised state agency,

as well as the leader of a religious association not taking measures not to allow the involvement and/or participation of under age children in the activity of the religious association when one of the parents or their other legal representatives objects,

shall result in a fine of 50 times the MFI with administrative deportation from Kazakhstan.

- Part 8. Actions or lack of actions resulting in repeated breaking of Parts 1, 2, 3, 4, 5 and 7 of this Article, repeated within one year of an administrative penalty being imposed,

shall carry a fine on physical persons of 200 times the MFI;

on officials of 300 times the MFI;

and on legal persons of 500 times the MFI with banning of their activity."

- Deportation from Kazakhstan for Kazakh citizens?

Part 7 – unlike the relevant part of the old Article 375 - imposes fines on and deportation of anyone breaking that part of Article 490. This could theoretically lead to a court ordering the deportation from Kazakhstan of a Kazakh citizen.

Zhovtis of the Kazakhstan International Bureau for Human Rights and the Rule of Law told Forum 18 that he thinks that this is "just carelessness on the part of the officials working on the text. Probably deportation will only be imposed if the concerned person is a foreigner or a stateless person."

As is usual with Kazakh law (including the new Criminal Code) many of the Administrative Code's "offences" are not precisely defined leaving much room for arbitrary official actions (see F18News 9 July 2014 http://www.forum18.org/archive.php?article_id=1976). Article 490 Part 7, like the old Article 375, facilitates 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 allows pressure against anyone involved in such communities (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Criminal Implementation Code signed

The Criminal Implementation Code governs conditions for those serving criminal sentences, including the extent to which they are or are not allowed to exercise their right to freedom of religion or belief while imprisoned.

The initial text of the new Criminal Implementation Code was prepared by the Interior Ministry and reached the Majilis in October 2013 (see F18News 16 May 2014 http://www.forum18.org/archive.php?article_id=1959). After completing its parliamentary passage, it was sent to President Nazarbayev for signature on 13 June 2014. He signed the new Criminal Implementation Code into law on 5 July, according to the presidential website. It was officially published on 11 July in the Kazakh-language paper Egemen Kazakhstan and the Russian-language paper Kazakhstanskaya Pravda.

Almost all provisions of the new Code enter into force on 1 January 2015.

What is in the new Criminal Implementation Code?

The Criminal Implementation Code covers how people convicted of breaking the Criminal Code are to be treated while under punishment. International law defends the right of prisoners to freedom of religion or belief, and the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan in 2006, states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Article 10, Paragraph 1). This specifically includes those held in prisons, detention camps or correctional institutions (General Comment 21 on ICCPR Article 10).

Among other relevant United Nations standards is the 1955 Standard Minimum Rules for the Treatment of Prisoners, which state: "Access to a qualified representative of any religion shall not be refused to any prisoner" (Rule 41, Part 3). The Standard Minimum Rules also stipulate that: "So far as practicable, every prisoner shall be allowed to satisfy the needs of his/her religious life by attending the services provided in the institution and having in his/her possession the books of religious observance and instruction of his/her denomination" (Rule 42).

Yet – as with other Kazakh laws – provisions of the Criminal Implementation Code break Kazakhstan's international human rights obligations. For example, no part of the ICCPR or the Standard Minimum Rules restrict prisoners' rights to freedom of religion or belief to only those prisoners who adhere to religious or belief groups the state has given registration to.

The wording of the Criminal Implementation Code allows much scope for arbitrary official interpretation, allowing prisoners' exercise of their right to freedom of religion or belief to be restricted. Among its provisions are:

- Prohibition on freedom of religion or belief without state permission

Article 13 of the Criminal Implementation Code covers "the rights to freedom of conscience and religion of those sentenced". It states that participation in religious rites is voluntary, adding that in carrying out religious rites, "the internal regulations of the institution are to be observed".

Article 13 also states that at the request of prisoners or their relatives, "in cases of ritual necessity" clergy from a registered religious organisation can be invited to visit the prisoner. No definition of "ritual necessity" is given. All exercise of freedom of religion or belief without state permission is banned (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). Article 13 extends this prohibition on non-state-registered activity to prisons. Under Article 8, registered religious organisations are among groups able to assist in monitoring prisons, rehabilitating prisoners and proposing improvements to the prison system.

Article 32 states that clergy, journalists and others need "special permission from the administration of these institutions or higher bodies" to visit places of detention.

The prison administration, Article 13 states, "secures the conditions for carrying out religious rituals", as well as guaranteeing the security of the clergy. Article 16 specifies that the state body in charge of the prison system draws up "an instruction for creating conditions for the carrying out of religious rites by those sentenced to deprivation of freedom".

- Places of worship banned

In a departure from the vague wording used when the Code outlines what might be permitted, the Code uses clear language in a prohibition. Article 13 Part 6 categorically states: "The construction of places of worship (buildings) on the territory of institutions or organs implementing punishments is banned". Although this is not explicitly stated, it would appear that the designation of specific rooms for prayer is also banned. Prison mosques, churches, and prayer rooms which existed in 2011 were rapidly closed by the authorities at the same time the latest Religion Law and then-Administrative Codes' Article 375 were expanded and passed through Parliament (see F18News 11 November 2011 http://www.forum18.org/archive.php?article_id=1635).

- Censorship extended to cover prisoners' literature

Article 104, which covers the "rights and responsibilities of those sentenced", notes that prisoners have the right to read "religious literature which has received a positive conclusion of a religious studies expert analysis". Such "expert analyses" are a central part of Kazakhstan's strict censorship regime covering the whole country (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Article 110 specifies that prisoners may have literature, but bans them from having literature of certain types, including "extremist" literature and literature promoting "social, racial, ethnic, religious, class or tribal superiority".

"Extremism" is frequently used by state officials to justify violations of freedom of religion or belief. Similarly, state officials have refused to make public what they consider to be "extremist" in banned religious books and what books are banned (see F18News 6 January 2014 http://www.forum18.org/Archive.php?article_id=1914).

An earlier draft clause of Article 110, which would have banned prisoners from having their own religious literature in jail, was removed during the Code's passage through the Majilis.

Forum 18 notes that the Criminal Implementation Code's restrictions on exercising the right to freedom of religion or belief in prisons mirror restrictions on exercising this human right throughout Kazakhstan. (END)

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>.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1939.

For a personal commentary from 2005 on how attacking religious freedom damages national security in Kazakhstan, see F18News

http://www.forum18.org/Archive.php?article_id=564.

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.

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