

6 May 2008

KAZAKHSTAN: "A Law on Non-Freedom of Conscience"

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

Leaders of many religious communities have expressed serious concerns – in some cases without wishing to speak publicly - to Forum 18 News Service about active proposals in parliament to harshen the Religion Law and a number of other laws. Lutheran Bishop Yuri Novgorodov complained that "If adopted, this would be a Law on Non-Freedom of Conscience." Religious communities and human rights activists are especially concerned about: sweeping restrictions on "missionary activity" by anyone; state review of religious beliefs of registered communities; a ban and increased penalties on unregistered activity; compulsory re-registration of all communities; the impossibility of registering communities that work in several regions only (such as Russian Orthodox or Catholic dioceses); severe restrictions on smaller religious groups; a need for state permission to build places of worship; a requirement that children have written permission to take part in any religious youth event; and compulsory censorship of all imported religious literature. The new Law is being considered amid increasing official intolerance of freedom of thought, conscience and belief.

Leaders of a variety of religious communities have expressed serious concerns to Forum 18 News Service about the proposals now in parliament to amend the Religion Law and a number of other laws affecting religious activity. "This draft Law is very bad," one religious leader who preferred not to be identified told Forum 18 on 6 May. Another told Forum 18 the same day of his community's "mass of objections" to the draft. In a sign of what some religious leaders describe as "growing tension" around the subject of religion, a number of leaders were afraid to speak to Forum 18 about the new Law on the record.

However, one prepared to speak out was Bishop Yuri Novgorodov, who heads Kazakhstan's Lutheran Church, with 52 congregations in six of the country's regions and a seminary in the capital Astana. "If adopted, this would be a Law on Non-Freedom of Conscience," he told Forum 18 from Astana on 6 May. "It would destroy our whole organisation and our seminary, and the bishop would no longer be able to function as such."

Bishop Novgorodov particularly objected to the new rules that would require all existing registered communities to re-register under new requirements, which he criticised as having retroactive force. "If this draft is adopted, religious organisations should be allowed to keep their current legal status," he insisted to Forum 18. "Under the present draft, this would not happen."

Echoing Bishop Novgorodov's views were members of the Council of Churches Baptists, who declared that the draft Law "puts believers in Kazakhstan outside the law". And they added: "How can this be termed a law on freedom of conscience?" Franz Tissen, the head of the Baptist Union, another Baptist network, also criticised several provisions of the draft Law in a 16 April statement (see F18News 30 April 2008 http://www.forum18.org/Archive.php?article_id=1123).

Ninel Fokina of Almaty Helsinki Committee told Forum 18 on 15 April that human rights groups in Kazakhstan are also concerned over many provisions in the proposed new Law. "The new draft law would make it particularly hard for smaller religious groups to develop or even survive," she complained.

The draft Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Organisations – prepared by a group of parliamentary deputies - was approved for consideration by parliament on 2 April. If adopted, the new Law would amend numerous articles of the current Religion Law, the controversial Article 375 and one other article of the Code of Administrative Offences, as well as several other laws. The draft Law has already received the backing of Prime Minister Karim Masimov (see F18News 30 April 2008 http://www.forum18.org/Archive.php?article_id=1123).

Registration requirement

Although the draft Law requires only ten adult citizens to register a local religious association, one Protestant told Forum 18 that some parliamentary deputies have already begun to propose that this should be raised to 250, which would make it impossible for many if not most religious communities to register as associations.

Ban on unregistered religious activity

The draft Law maintains the ban on unregistered religious activity which was introduced in the 2005 amendments to the Religion

Law. As an official of the government's Human Rights Ombudsperson's Office and law professors Roman Podoprighora and Malcolm Evans have previously observed, international human rights standards "nowhere say that rights to free practice of religion extend only to registered religious communities" (see F18News 1 March 2006 http://www.forum18.org/Archive.php?article_id=735).

Missionary activity

The draft Law would amend Article 4-1 of the Religion Law to impose sweeping restrictions on "missionary activity", which is defined in a new Article 1-1 as "religious/educational activity" by local people or foreigners aimed at spreading a faith "in the name of a religious association outside the territory of its activity". This means that any individuals who decide to talk to others about their faith without getting permission from their registered religious community - or any unregistered communities that seek to spread their faith - will be committing crimes under the Code of Administrative Offences.

Article 4-1 would specifically ban missionary activity by such unapproved people and require even those conducting such activity in the name of a registered religious organisation to have personal registration as a missionary. The government would draw up an annual quota of missionaries broken down by Region on the recommendation of the Religious Affairs Committee, based on recommendations from each Regional administration.

Bishop Novgorodov of the Lutheran Church objects to these new bureaucratic restrictions. "I don't know why there is a ban on preaching God's word," he told Forum 18. Tissen of the Baptist Union describes them as an "absolute intrusion into the inner life of believers".

Who can and can't register?

Article 7, which describes the rights of registered religious associations, says that they can only be founded if they "conduct divine services, religious rituals and preaching and other religious ceremonies". The formulation of the requirement to conduct "divine services" appears to encompass theistic religions but may exclude other religions. Roman Podoprighora, a law professor at the Caspian Public University in the commercial capital Almaty, pointed out to Forum 18 that Buddhists, for example, might face difficulties because of this formulation. Members of Almaty's Buddhist community were not immediately available for comment.

Article 9 requires religious associations to submit with their registration application a description of the "basics of their faith", the history of the faith as a whole and the particular community, as well as their attitude to marriage, the family, education, the health of their adherents and their attitude to their adherents' civil obligations. It remains unclear why this information is needed, how much information is required on each point or who will decide whether information supplied is acceptable or not.

Article 9 extends the processing period for registration applications for communities "previously unknown in the Republic of Kazakhstan" to six months. Religious associations have to confirm to the authorities each year that they are continuing to function.

Article 8-1 would ban the registration of associations with the same or partially the same name as an existing registered religious association. It remains unclear whether this will ban independent Muslim, Orthodox or Jewish communities from registering, as well as various Baptist, Lutheran or Protestant denominations with similar names.

Centralised religious associations

Article 7 also divides registered religious associations into local and centralised associations. Local associations can function only within one of the country's 16 administrative units (the 14 provinces plus the cities of Astana and Almaty). Thus it would be illegal for one local association to cover Almaty city and region, for example. Caught up by this provision will be the Russian Orthodox and Catholic dioceses, which cover several Regions without being centralised organisations, or the Northern and Southern Kazakhstan Conferences of the Seventh-day Adventists – they will in future be illegal organisations if they continue to exist.

Under Article 7, centralised associations have to be founded by local associations that have functioned in at least half the country's administrative units (at least nine of the 16) for at least ten years. The government's Religious Affairs Committee will have to confirm that the founding meeting for the centralised association was conducted in accordance with the law. "We have communities in only six of the country's regions so this will destroy our organisation," Bishop Novgorodov of the Lutherans complained to Forum 18. "This Law does not acknowledge at all the traditional organisation of our Church."

Article 7 also bans the creation of religious organisations under any other legal framework than religious associations, except those founded by religious associations. It is unclear if this means that organisations such as the Bible Society – founded 14 years ago and registered as a non-commercial organisation with representatives from a variety of Christian denominations on the board – will be allowed to exist.

Article 4 of the draft Religion Law allows the state authorities to conduct an "expert assessment" of a religious organisation, with the possibility of suspending its activity while the assessment is underway. Such assessments are to be carried out by state officials, legal specialists, as well as members of religious and social organisations. Article 9 makes these assessments the basis for decisions

on granting or withholding registration. This means that members of one religious community could be involved in assessing the activity of other religious communities and proposing whether their activity should be allowed or not.

Restrictions on "religious groups"

The proposed new Religion Law would severely restrict the rights of "religious groups" – smaller communities that are required to gain formal registration (*uchetnaya registratsia* in Russian) with the local authorities. Article 4-3 specifies that members of such religious groups have the right "only within their circle to conduct religious rites and ceremonies, and study their religion and provide religious education" within premises belonging to their members and in the territory for which they have formal registration.

The Article specifically bans "religious groups" from publishing literature or producing religious products, "founding, opening or maintaining places for worship or religious meetings open for wide public access". It also bans any religious work outside the "religious group", imposing the same penalties through the Code of Administrative Offences as for unregistered religious activity.

Fokina of the Almaty Helsinki Committee particularly opposes these proposed restrictions on "religious groups". "Religious groups would not enjoy equal rights with religious communities and be very limited in their activities," she complained to Forum 18, "since they would not be allowed to rent public buildings but only function inside the homes of their members. It is discrimination and a serious limitation on religious liberties." Her concern is echoed by Tissen of the Baptist Union.

Places of worship

Article 12 of the proposed new Religion Law would require permission from the local authority for the construction of any new place of worship or adaptation of an existing building for religious use. "It is not clear who will determine which places of worship are acceptable," one lawyer who has worked on religious freedom cases told Forum 18 on 30 April.

Education and children

Article 5 of the proposed new Religion Law would require both parents (or guardians, with the permission of the care authorities) to give written permission for their children to take part in any religious event by a registered religious community aimed at young people.

Article 5 also would require religious educational establishments to register with the authorities with a detailed statute that includes a detailed organisational structure, the full curriculum, and even the language of education. Article 7 specifies that centralised religious organisations have the right to found religious educational establishments to train their clergy. Professor Podoprigora told Forum 18 that this implies that only centralised religious organisations therefore would have this right and that any other religious colleges would become illegal and would have to close down.

Lutheran Bishop Novgorodov told Forum 18 that given that his Church would not be able to register a centralised religious organisation its seminary in Astana would automatically have to close.

Religious literature

Religious literature would face tight controls. Only registered religious associations would be allowed to produce it, while Article 13 imposes compulsory prior censorship over all religious literature imported into Kazakhstan.

Donations

Article 16 of the proposed new Religion Law would ban all religious associations from receiving any anonymous donations and donations from any foreign organisations or individuals. It would also require a cash register machine to be installed to record all donations of whatever size, with donations to be monitored by local administration officials. "Religious organisations are supposed to be separate from the state," commented Bishop Novgorodov of the Lutherans, "so if we're not breaking any law, why should officials be checking this?" He also objected to the ban on foreign donations. "I don't understand this ban on mutual financial help from one church to another." Tissen of the Baptist Union echoes these concerns.

Fokina of the Almaty Helsinki Committee also ridiculed the requirement for cash registers which would work under the supervision of the Tax Ministry. "Probably no-one has seen a stranger idea," she told Forum 18. "It is ridiculous that the State would so closely scrutinise the charitable work and financial affairs of religious organisations."

Compulsory re-registration

Article 3 of the whole new draft Law now in parliament would require the re-registration of all religious organisations within two years of the adoption of the Law. The Religious Affairs Committee could go to court to seek liquidation if after two years an organisation fails to re-register or reorganise itself in line with the new Religion Law. Given that all unregistered religious activity is

banned, such liquidation would end a community's legal right to do anything. Only centralised religious organisations with associations in at least nine regions would be eligible to apply for re-registration.

Law professor Podoprigora told Forum 18 that the requirement for re-registration of all existing organisations is not fair. "If you take into account that organisations will have to register their legal addresses again, which will involve renting or acquiring new buildings in many cases, it is not difficult to see that those organisations with poor finances and low membership will suffer the most," he told Forum 18.

Penalties for unregistered religious activity

Asked why the draft Law is harsher in relation to unregistered religious activity than the existing law, Kayrat Tulesov, the deputy Chair of the Justice Ministry's Religious Affairs Committee, insisted to Forum 18 on 15 April that religious organisations functioning in Kazakhstan must respect its laws by being registered. "We will by all means facilitate organisations to register, and I don't see a problem there," he said.

Reminded of organisations such as Council of Churches Baptists - who refuse on principle to register with the State and would end up in a worse situation with huge fines and imprisonment, were the new draft law adopted - Tulesov declined all comment.

The new draft Law as a whole steps up punishments for unregistered and unapproved religious activity (such as religious services without registration, allowing children to attend religious youth events without written permission from both parents or opening a place of worship without permission). A revised Article 375 of the Code of Administrative Offences would punish such activity with fines on individuals of up to ten times the minimum monthly wage, and fines on organisations of up to one hundred times the minimum monthly wage and possibly a ban of up to six months on its activity.

Missionary activity without permission would lead to a fine of fifteen months' minimum wage on individuals, with foreigners also liable to administrative deportation. Organisations allowing such unauthorised missionary activity could also be banned for up to six months or permanently.

Repeat offences under Article 375 within a year could lead religious organisations to face fines of 300 times the minimum monthly wage and a total ban on their activity.

Law professor Podoprigora told Forum 18 that he could not imagine what the authorities would do with the unregistered Baptists and other communities that continue to meet for worship without registration. "Let's say they fine them once with those huge fines for unregistered activity, which they can't pay. They fine them a second and third time, what then? Will they kill them?" he asked. "I guess they will deport them or put them into prison."

The Law's wider context

Religious communities in Kazakhstan have been disturbed by increased official demands that they and their leaders complete highly intrusive questionnaires covering an extremely wide range of personal, political, religious and other matters, including who the close friends of leaders are (see F18News 25 February 2008 http://www.forum18.org/Archive.php?article_id=1093). Official demands that answers must be given to such questions violates the Kazakh Constitution (see F18News 25 February 2008 http://www.forum18.org/Archive.php?article_id=1092).

Attempts to encourage support for the draft Law are being made through the mass media, which is being used to encourage intolerance of religious communities (see F18News 30 April 2008 http://www.forum18.org/Archive.php?article_id=1123). This is supported by the climate of ongoing formal officially-incited intolerance of religious minorities, in a "State Programme of Patriotic Education," approved by a decree of President Nursultan Nazarbayev, and a Justice Ministry booklet "How not to fall under the influence of religious sects" (see F18News 3 April 2007 http://www.forum18.org/Archive.php?article_id=939). This intolerance is also incited through the mass media, which is being used by the state to encourage support for police raids on religious communities (see F18News 22 February 2008 http://www.forum18.org/Archive.php?article_id=1091).

Neither international human rights standards nor published Kazakh laws guide the actions of officials. Currently Kazakh law contradicts itself over whether or not registration is actually compulsory (see F18News 8 December 2005 http://www.forum18.org/Archive.php?article_id=701). But this has not stopped administrative arrests and fines of members of unregistered religious communities (see F18News 13 March 2007 http://www.forum18.org/Archive.php?article_id=931), or the activity of an unregistered Baptist congregation being suspended for six months (see F18News 23 April 2008 http://www.forum18.org/Archive.php?article_id=1117).

The administration of those rights supposedly guaranteed in Kazakhstan is open to serious criticism. For example, the Organisation for Security and Co-operation in Europe (OSCE) has found that court proceedings in the country do not offer the guaranteed right to a fair trial. In a February 2007 report on trial monitoring, the OSCE found that Kazakh court proceedings needed to offer "the right of the public to attend court, equality between the parties and the presumption of innocence" (see

<http://www.osce.org/astana/24153>). Similarly, legal experts have told Forum 18 that terrorism charges brought against 15 devout Muslims – which resulted in jail sentences of up to 19 and a half years – were not proven, and that at least fourteen of the accused are completely innocent (see F18News 8 April 2008 http://www.forum18.org/Archive.php?article_id=1110).

"Higher authorities" were said by one official, who preferred to remain unnamed, to be behind recent prosecutions of religious communities (see F18News 23 April 2008 http://www.forum18.org/Archive.php?article_id=1117). A Baptist leader was threatened with jail by a Justice Ministry official if congregations continued to meet, and was also told by officials not to appeal to either the United Nations (UN) or the OSCE. He was told that "Kazakhstan will be Chairman-in-Office of the OSCE in 2010, and it will then be of no use to you to talk to the OSCE" (see F18News 28 March 2008 http://www.forum18.org/Archive.php?article_id=1106). (END)

For a personal commentary on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=701.

More reports on freedom of thought, conscience and belief in Kazakhstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=29>.

A survey of the religious freedom decline in the eastern part of the Organisation for Security and Co-operation in Europe (OSCE) area is at http://www.forum18.org/Archive.php?article_id=806 and a survey of religious intolerance in Central Asia is at http://www.forum18.org/Archive.php?article_id=815.

A printer-friendly map of Kazakhstan is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=kazakh>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY