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KAZAKHSTAN: Government proposes retaining punishments for exercising religious freedom

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

Kazakhstan's proposed new Administrative Code continues current penalties for exercising freedom of religion or belief, Forum 18 News Service notes. The state-approved version being considered by Parliament continues existing fines and bans punishing individuals and religious communities operating without state-granted legal status or who conduct unregistered "missionary activity". Those classified as foreigners who conduct unapproved "missionary activity" are set to continue to face fines and deportation, as is currently being threatened in the case of a Kazakh-born Baptist. Also, a new offence of inciting an undefined "religious superiority" is included in the government draft. A Baptist jailed for three days in 2009 for unregistered worship told Forum 18: "What we want is simple: to be left alone to pray to God and to speak to others of God without any obstruction. We don't want any privileges or any discrimination in our favour." He said that in the 1990s they could worship freely, "but since 2000 this has been banned and that has been banned." Also, Kazakhstan has for the first time denied an Ahmadi Muslim missionary registration and a visa to work in the country. Government departments "send us to each other and no one wants to resolve this problem," the Ahmadis complained to Forum 18.

Kazakhstan's proposed new version of the Code of Administrative Offences continues the penalties for exercising freedom of religion or belief in the current Administrative Code, Forum 18 News Service notes. The government version presented to Parliament in late 2009 continues fines and bans to punish individuals and religious communities which function without legal status or conduct unapproved "missionary activity". Foreigners who conduct unapproved "missionary activity" are set to continue to face fines and deportation. A new offence of inciting "religious superiority" is included in the government draft.

The proposed Code has started being considered by the Legislative and Judicial-Legal Committee of the Majilis, the lower house of Kazakhstan's Parliament. The working group overseeing progress on the new Code is chaired by parliamentary deputy Serik Temirbulatov, his office told Forum 18 from the capital Astana on 8 February. However, Temirbulatov was not available that day to discuss any progress on the Code.

It is also unknown whether Parliament will ask for a legal opinion on the text from the Organisation for Security and Co-operation in Europe (OSCE), to help the text comply with the international human rights standards Kazakhstan has committed itself to. Forum 18 asked Temirbulatov in writing on 8 February, but has had no response.

Punishments now being handed down

The proposed new Code includes articles which are either identical to, or slightly altered from, articles in the current Code regularly used to punish people peacefully exercising their internationally recognised right to freedom of religion or belief.

The text of the current Article 374-1 of the Code ("leadership or participation in the activity of an unregistered social or religious organisation") remains unchanged (see below). Zhanna-Tereza Raudovich, a Baptist from Kyzylorda Region, was fined 100 times the minimum monthly wage on 20 January under this Article for hosting a Sunday service in her home.

The text of the current Article 375 of the Code ("violation of the Religion Law") has been slightly altered to modify some punishments but not the "offence" (see below). Another Baptist, Viktor Leven from Akmola Region, faces deportation after being found guilty of preaching at a worship service in September 2009, when he was a German citizen. He was punished under Part 3 of this Article ("carrying out missionary activity without local registration"), which prescribes a fine and deportation for foreigners or people without citizenship found guilty under this Article (see F18News 8 February 2010 http://www.forum18.org/Archive.php?article_id=1405).

Kazakhstan's record on human rights will be examined under the Universal Periodic Review (UPR) at the United Nations Human Rights Council in Geneva on the morning of Friday 12 February. As the current Chairperson-in-Office of the OSCE, it has taken on a particular obligation to uphold – and not break as under these Articles – OSCE human rights standards (see http://www.forum18.org/Archive.php?article_id=1351).

Government approves proposed Code

The proposed new version of the Code was approved by the Government in a decree of 30 September 2009 and sent to Parliament by Prime Minister Karim Masimov. Parliament initially refused to accept the text as not all the required documents were present (see F18News 5 November 2009 http://www.forum18.org/Archive.php?article_id=1372).

However, the Government added the extra documents and returned it unchanged to Parliament, where it was registered on 21 November 2009, according to the parliamentary website. It was then assigned to the Legislative Committee, which has already distributed the text to other Majilis Committees for their assessments. "The Committees have been given no deadlines to produce their assessments by," one parliamentary aide told Forum 18 on 8 February. Once the assessments are produced, the proposed new Code will be considered by Temirbulatov's working group before going for its first reading.

The parliamentary website adds that assessments of the new Code are to be prepared by 30 October 2010.

Proposed new Code recycles current punishments

The Government's approved text of the proposed new Code, seen by Forum 18, leaves Article 374-1 unchanged, moving it to a new Article 451. The new Article 452 – which is set to replace Article 375 – removes several provisions of the original Article, but much of it remains intact, including punishment for religious activity without state registration. In several places, new minimum penalties have been introduced alongside maximum penalties.

New offences and punishments proposed

In addition, the new Code has made a small but potentially significant change of wording to Article 404 (which would replace Article 343 in the current Code) and Article 405 (which would replace the current Article 344). This would replace the present offence and punishments for publication or distribution of materials inciting "religious hatred" or "religious strife", with an offence and punishments for inciting "religious superiority".

What the concept of "religious superiority" means – along with the related concepts in the Article - is not defined in the proposed Code.

The new Article 404 would punish those who publish material in the media "directed at inciting social, racial, national, religious, class and clan superiority", as well as war, the violent overthrow of the constitutional order and breaking up the territorial integrity of the country. Part 1 of the new Article 405 would punish those who produce, import, store or distribute media or other publications advocating such views.

What does "superiority" mean?

A ban on advocating "war, social, racial, national, religious, class and clan superiority" is in Article 20 of Kazakhstan's current 1995 Constitution, and a ban on "religious hatred" or "religious conflict" is in Article 5. The current Administrative Code punishes incitement to "religious hatred" or "religious conflict". However, these concepts are all undefined.

Kazakhstan's Post Office follows the same wording as the Constitution in banning the sending of such items by post within the country and through its borders, according to the Post Office website.

The 1999 Media Law banned the use of the media for any advocacy of "war, social, racial, national, religious, class and clan superiority". Such advocacy was among the reasons given in Article 13 allowing a media outlet to be banned in court. The Law was amended in 2001 to introduce in Article 25 a provision making the editor of a publication responsible for any such advocacy.

It remains unclear - if the Majilis endorses the proposed new punishments in the new Administrative Code – whether individuals who argue that their faith is true and others are false would be subject to punishment under these Articles.

The internationally recognised right to freedom of religion or belief includes the right to criticise any or all religious or non-religious beliefs, and to share with others views on the superiority of a particular religious or non-religious belief over other religious or non-religious beliefs. As General Comment 22 on Article 18 ("The right to freedom of thought, conscience and religion") of the International Covenant on Civil and Political Rights (ICCPR) states, this freedom: "encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others". The ICCPR has been signed and ratified by Kazakhstan, and entered into force for the country on 24 April 2006.

Criminal Code use of "superiority"

Article 164 Part 1 of the Criminal Code is extraordinarily wide-ranging and criminalises: "Deliberate actions aimed at the incitement

of social, national, clan, racial, or religious enmity or antagonism, or at offence to the national honour and dignity, or religious feelings of citizens, as well as propaganda of exclusiveness, superiority, or inferiority of citizens based on their attitude towards religion, or their genetic or racial belonging, if these acts are committed publicly or with the use of the mass information media."

The remaining parts of this Article specify punishments for this offence. No definitions are offered for the concepts criminalised by Article 164.

This Article was used to convict a Protestant preacher, Sarybai Tanabaev, who was given a two-year suspended sentence in June 2009 in the southern city of Taraz (see F18News 5 November 2009 http://www.forum18.org/Archive.php?article_id=1372).

It was also used to prosecute Elizaveta Drenicheva, a Russian working as a missionary for the Unification Church (commonly known as the Moonies) in Almaty. She was given a two-year jail term in January 2009 but was freed two months later when the term was changed into a fine (see F18News 19 March 2009 http://www.forum18.org/Archive.php?article_id=1271).

Long-standing concerns over continuing penalties

Human rights defenders and religious believers have long complained to Forum 18 of the penalties for religious activity in the current Administrative Code and the proposed continuation of them in the new Code, calling for them to be abolished (see F18News 8 October 2009 http://www.forum18.org/Archive.php?article_id=1360).

Expressing concern is Yuri Rudenko, who in January 2009 became the third unregistered Council of Churches Baptist pastor to be jailed for three days for refusing to pay fines for unregistered worship imposed under the Code of Administrative Offences (see F18News 3 February 2009 http://www.forum18.org/Archive.php?article_id=1248).

Asked about the proposed new Code on 8 February, Rudenko told Forum 18 from Taldykurgan [Taldyqorghan]: "What we want is simple: to be left alone to pray to God and to speak to others of God without any obstruction. We don't want any privileges or any discrimination. But at present we're treated like law-breakers." He said that in the 1990s they could worship in Kazakhstan freely without obstruction. "But since 2000, this has been banned and that has been banned."

Human rights defenders are also worried. "There are many concerns we have about the proposed new Code – and not only about the punishments for religious activity," Vera Tkachenko, head of the Legal Policy Research Centre in Almaty, told Forum 18 on 2 February. "The Code is being prepared in some secrecy and there is no open discussion of it."

"The law is the law"

Ten members of a Baptist congregation in Oral (Uralsk) in West Kazakhstan Region were stopped by police on 2 January, when they were sharing their faith in the villages of Jambeyty and Olenty in nearby Syrym District. Local Baptists told Forum 18 on 13 January that the ten were taken to the local police station, questioned, fingerprinted and photographed. In addition, 31 Christian books and tracts were confiscated from them.

An official from the Syrym District Prosecutor's Office, who would not give his name, refused to discuss the case with Forum 18 on 8 February.

Agzhal Kuzhakhmetov from the local Justice Department, who was also involved in the case, insisted to Forum 18 on 9 February that police detained the Baptists after receiving reports from local people that they were sharing their beliefs. Asked why the authorities detained people for this reason, he responded: "I'm not against people sharing their faith – I'm a religious person myself. But the law is the law. The Religion Law bans missionary activity and distributing religious books. What's more, they must be registered."

Kuzhakhmetov told Forum 18 that one of the Baptists, Sergei Krasnov, had come to take back the confiscated books the previous day. Baptists confirmed this to Forum 18.

In similar instances between August and October 2009, members of the same group were detained and had literature confiscated during trips to the District to share their faith. Four were fined under Article 374-1 of the Administrative Code, the text of which remains unchanged in the proposed new Code (see F18News 26 October 2009 http://www.forum18.org/Archive.php?article_id=1367).

Muslim denied visa and registration

Meanwhile, Pakistani citizen Tahir Hayat has failed in his attempt to have his visa and registration as a missionary on behalf of the Ahmadi Muslim community in South Kazakhstan Region renewed for another year, the Ahmadi community complained to Forum 18 from Almaty on 8 February. He has been working in Kazakhstan since July 2008.

Hayat lodged his application with the Internal Policy Department of the Regional Akimat (administration) on 21 October 2009. However, in a response two days later, seen by Forum 18, Tazagul Aydarova, deputy head of the Department, merely listed the documents required for annual registration of a foreign missionary without explaining why she was not processing Hayat's application.

On 26 January Hayat again lodged his documents for registration. The Ahmadi community also wrote protests to Ardak Doszhan, the head of the Justice Ministry's Religious Affairs Committee in Astana, and other state bodies.

"Both departments send us to each other"

Asked on 8 February about the refusal to grant Hayat's one year missionary registration, Aydarova of the West Kazakhstan Internal Policy Department insisted that Forum 18 was "not properly informed" about the case. She said that on 4 February his missionary registration had been extended "as long as his visa is valid". "So he can continue to conduct his activity until then," she added, before saying she had to end the call because of a meeting.

However, the Ahmadi community told Forum 18 that registration was extended only until 27 February. "This is the problem. The Migration Police says that a permit is needed from the Akimat to extend the visa, while the Akimat says a visa is needed to extend the permit." Both his visa and registration now expire on the same day. "Both departments send us to each other and no one wants to resolve this problem," the Ahmadis complained.

The Ahmadi community told Forum 18 this is the first time one of their foreign missionaries has been denied registration and a visa to work in Kazakhstan. (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://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=kazakh>.

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