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KAZAKHSTAN: New proposed legal restrictions on religion reach Parliament

By Felix Corley, Forum 18

The proposed new Religion Law which reached Parliament yesterday (5 September), if adopted in its current form, would impose a complex four-tier registration system, ban unregistered religious activity, impose compulsory religious censorship and require all new places of worship to have specific authorisation from the capital and the local administration. A second proposed Law imposing changes in the area of religion in nine other Laws would also amend the controversial Administrative Code Article 375, widening the range of "violations of the Religion Law" it punishes. The texts – seen by Forum 18 News Service – have been approved by Kazakhstan's Prime Minister Karim Masimov, but have not yet been published.

Kazakhstan's proposed new Religion Law, which the government sent to Parliament yesterday (5 September) and has been seen by Forum 18 News Service, would if adopted impose a complex four-tier registration system, ban unregistered religious activity, impose compulsory religious censorship and require both central and local government approval to build or open new places of worship. A separate proposed Amending Law, also seen by Forum 18, would amend nine other laws which touch on freedom of religion or belief, with a sweeping revision to Article 375 of the Code of Administrative Offences to punish a range of "violations" of the new Religion Law.

The Organisation for Security and Co-operation in Europe (OSCE) told Forum 18 on 2 September that the Kazakh Government has not asked for its assistance or asked for a legal opinion on the texts. However, the OSCE said it was ready to offer such assistance if requested (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608).

Both proposed laws were drawn up by the government's new Agency of Religious Affairs, which is headed by Kairat Lama Sharif. They were signed off on behalf of the government by Prime Minister Karim Masimov on 1 September, the day that President Nursultan Nazarbaev told the opening joint session of Parliament that they were to adopt harsh new restrictions to laws covering freedom of religion or belief. The President said they were necessary to "bring order to our house" (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608).

In his 1 September letter to Parliament endorsing the new Religion Law, Prime Minister Masimov said the changes were needed "in view of the contemporary religious situation with the aims of firm regulation of the sphere of activity of religious associations and the establishment of legal responsibility for violating the norms of legislation in the sphere of religious relations, as well as for the organisation of systematic work of state organs in the sphere of perfecting state-confessional relations".

Masimov highlighted the new list of documents needed for registration of religious organisations and more specific content religious organisations need to put in their statute, as well as new definitions of the terms "missionary" and "priest".

The texts of the two proposed laws have not yet been published. It remains unclear which Committee of Parliament will initially handle the two proposed laws.

Government's long-desired tighter restrictions

The proposed new Religion Law would replace entirely the current Law, which was first adopted in 1992 and which has been amended a further eight times, most recently in July 2011. Both the previous failed attempts to introduce harsher restrictions – rejected by Kazakhstan's Constitutional Council in 2002 and 2009 – took the form of sweeping amendments to the 1992 Law (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608).

While the current 1992 Law is officially titled "The Law on Freedom of Religious Confession and Religious Associations", the new Law is due to be officially titled "The Law on Religious Activity and Religious Associations".

The separate proposed Amending Law to amend nine other laws – formally titled "The Law on introducing Amendments and Additions to several legal acts questions of Religious Activity and Religious Associations" – includes several minor technical

changes to the Extremism Law and the Law on Non-Commercial Organisations. 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 religious communities if this Law is also adopted.

"Historical role" of Hanafi Islam and Orthodox Christianity

While the proposed new Religion Law defines the state as secular, bans the adoption of any faith as the state religion and declares all religious communities equal before the law, the preamble notes that the country "recognises the historical role of Islam of the Hanafi school and Orthodox Christianity in the development of the culture and spiritual life of the nation". It also notes that the country "respects other religions which have combined with the spiritual heritage of the nation".

Government officials have long spoken of a duopoly of Islam for ethnic Kazakhs and Orthodoxy for the country's Slavic population (mainly Russians), speaking of them – without any basis in law – as the country's "traditional faiths". The state-backed Muslim Board has repeatedly pushed for the Hanafi school to be given a monopoly over Islam in Kazakhstan (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608).

Although the rest of the proposed new Religion Law makes no mention of any specific faiths, the four-tier registration system could ensure that only the Muslim Board and the Russian Orthodox Church would be able to gain top-level, national registration (see below).

Complex registration system in new Religion Law

Article 12 of the proposed Religion Law specifies four-levels of registration: national, regional, local and unregistered.

Article 3, Part 11 declares that unregistered religious activity is banned. Communities which would be too small to register, which are unable to register, or which – like congregations of the Baptist Council of Churches – do not wish to seek state registration would then face punishment for any religious activity they undertook.

Under Article 12, Part 2, local religious organisations need 50 adult citizen members within one region of the country or main town, and register with the local Justice Department.

Under Article 12, Part 3, regional religious organisations need 500 adult citizens who belong to at least two different registered local religious organisations (each with at least 250 adult citizens) located in two different regions or main towns. The regional organisation is only allowed to function in the areas where its local member organisations are based.

Under Article 12, Part 4, national religious organisations need at least 5,000 adult citizens from all regions of the country, the capital and all major towns (with at least 300 members in each of those territories). It also needs branches all over the country.

Regional and national organisations register with the Justice Ministry in the capital Astana.

Article 15, Parts 4 and 5 require a national religious organisation to gain local registration of all its branches and provide the Justice Ministry with proof of this within one year if it wishes to retain its registered status.

What would be needed for registration?

Registering a religious organisation requires a statute that needs to be adopted at a meeting attended in person by all the adult citizen founders, according to Article 13, Part 1. A religious organisation must have "a united faith; the carrying out of religious rites, ceremonies and preaching; religious education of its followers; and spiritual orientation of its activity".

Only regional and national registered organisations are, under Article 13, Part 3, allowed to establish "professional educational programmes to prepare priests".

Article 14 requires religious organisations to include the religious faith in the name and bans the name from using terms already used by another registered community. It remains unclear if this would prevent the registration of more than one separate community of Muslims, Orthodox or Baptists, for example.

Under Article 15, all the founders of a religious community need to present their full details to the registering body, which is empowered to subject them to a thorough check (apparently to ensure that they are authentic). It remains unclear whether this might intimidate potential founders of religious communities the government does not like.

Article 16, Part 3 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 adherents of the given religious association and other people, and attitude to the realisation of the constitutional rights and obligations of its 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.

Also to be presented with registration applications are copies of publications "revealing the bases of the faith and containing information on the religious activity linked to it".

Article 16 requires each organisation's statute to specify the territory in which it operates (presumably in line with the restrictions imposed depending on the level of registration).

Almost complete prior religious literature censorship

The proposed new Religion Law claims that everyone has the right to acquire and use religious literature. However, distribution of such literature would only be permitted, according to Article 9, Part 2, in registered places of worship, approved religious education institutions and "special stationary premises determined by local executive authorities".

Article 9, Part 3 would require that all religious literature imports – 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 within Kazakhstan is restricted, though Article 9, Part 4 requires each work to have the "full official name" of the religious organisation which produced it.

This appears to exclude the possibility of private individuals or commercial companies producing religious literature. Even were they to have that right, they would be unable to distribute such literature except through the approved venues specified in Article 9, Part 2.

"Expert analyses" – conducted by the ARA – are required not only for all religious literature 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 – would also be subject to an "expert analysis".

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

Restrictions on new places of worship

Existing places of worship do not appear to face difficulties remaining in operation (provided their communities manage to gain or regain legal status).

However, any new place of worship anywhere in Kazakhstan would, under Article 5, Part 5, require the approval both of the ARA in Astana and the local administration. This would cover not only whether a religious community can build, but exactly where, as well as whether a religious community could gain official change of usage for a building it wants to turn into a place of worship.

Restrictions on children

Several Articles of the proposed Law show concerns over children. Article 3, Part 16 requires leaders of religious organisations "to take steps to prevent the attraction and/or participation by underage children in the activity of a religious association if one of the child's parents or legal guardians objects".

It remains unclear how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious community. It also remains unclear whether, for example, the country's Chief Mufti or one of the Orthodox bishops might become liable if a community under their jurisdiction does not take measures to ensure that every child who attends has the approval of both parents.

A separate amendment in the associated Amending Law would amend the Law on the Rights of the Child. A proposed addition to Article 19 reads: "The carrying out of religious rituals and ceremonies, as well as actions directed at spreading a faith, in children's holiday, sport, creative or other leisure organisations, camps or sanatoria is not allowed."

It remains unclear whether this would ban religious organisations from running children's summer camps.

Restrictions on foreigners

Under the proposed new Religion Law, all founders of religious communities must be Kazakh citizens. Foreign citizens, even with the right of legal residence in the country, appear not to have the right to be official founders.

Leaders of all religious organisations named by foreign religious organisations (such as Russian Orthodox or Catholic bishops) need the approval of the Agency of Religious Affairs, regardless of whether the appointed leader is a Kazakh citizen or not. Article 19, Part 1 specifically bans such foreign-named leaders from acting without ARA approval.

For foreign citizens to work as "missionaries" in Kazakhstan, they need to have an invitation from a registered religious community in the country and need personal registration as a missionary. They also need a certificate proving that the religious organisation they represent is registered in their country of origin. It remains unclear what happens if a "missionary" is from a country where religious organisations are not subject to state registration.

Such missionary permission needs to be renewed annually.

Religious care in institutions

The proposed Religion Law allows religious care for those in institutions – including hospitals, prisons, or old people's homes – provided such care does not get in the way of running the institutions or violates the rights of other residents.

However, under Article 7, Part 4, only priests of registered religious communities can be invited to provide such care and conduct religious rituals.

Hidden slander?

While the proposed Law appears to guarantee rights for registered religious organisations, many of the stipulations centre on possible violations of the Law such organisations should not commit. This might leave those reading the Law with the impression that all religious communities are potentially dangerous and that any law-breaking should be controlled not by general laws which apply to everyone, but with extra legal controls specifically targeted at religious communities.

Article 3, Part 12 specifically bans the activity of religious organisations which use violence, harm people's health, break up families or encourage citizens not to carry out their legal obligations. It remains unclear whether for example the Russian Orthodox Church would be banned if it accepts young people into monasteries who then cut off ties with their families. It also remains unclear if this might also be used against religious communities, such as Jehovah's Witnesses, which reject military service.

Article 3, Part 13 bans religious organisations which force people to join or who ban members from leaving. Article 10, Part 2 specifically bans religious organisations conducting charitable activity from trying to use an individual's "material dependency" to pressure them to join.

Those seeking to conduct missionary work in Kazakhstan would be denied permission under Article 8, Part 5 if such work "constitutes a threat to the constitutional order, social order, the rights and freedoms of the individual, or the health and morals of the population".

Administrative Code punishment

The associated Law Amending Law amending nine other legal provisions would amend two Articles of the Code of Administrative Offences.

A new Article 375 – to replace the current Article which already punishes "violating the Law on Religion" – makes much wider the violations of the Religion Law which would be subject to administrative punishment. However, many of the violations are undefined, including for breaking the Religion Law, violating provisions for holding services, violating the procedure for importing, publishing or distributing religious literature, building places of worship or conducting missionary activity.

Violations of this Article mostly lead to fines, but could lead to bans of up to three months or even a permanent ban on a religious community. Foreigners who conduct violations would be subject to "administrative deportation" (as at present). Such deportation is also confirmed in the proposed amended Article 730.

The proposed Law would thus leave untouched the current Article 374-1 which punishes leading, participating in or financing an unregistered, halted or banned religious community or social organisation. Like the current Article 375, Article 374-1 has been heavily used to punish individuals and communities for exercising their right to freedom of religion or belief (see 1 September 2011 http://www.forum18.org/Archive.php?article_id=1607).

New licence required

While most of the other proposed amendments are more technical, a proposed amendment to the Licensing Law would add a requirement in Article 27, Part 15 that religious organisations which send people abroad for study in religious educational institutions would also require a state licence. (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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