

8 October 2009

KAZAKHSTAN: Restrictive laws recycled

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

Kazakhstan's proposed new Administrative Code – which continues existing punishments for exercising freedom of religion or belief – has reached the country's Parliament today (8 October), Forum 18 News Service has found. Also, the new National Human Rights Action Plan has revealed the authorities' intent to introduce in 2011 a Law "on the introduction of amendments and additions to legislation on the guarantee of freedom of thought, conscience and religion". This is a similar title to a highly restrictive 2008-9 draft Law condemned by many Kazakh and international human rights defenders, and an OSCE Legal Opinion. Ninel Fokina of the Almaty Helsinki Committee told Forum 18 that "I believe they will draw on the previous text – this text is not dead, it's just sleeping at the moment." Vera Tkachenko of the Legal Policy Research Centre told Forum 18 that it was important for civil society to monitor the Government's legislative plans and engage in constructive dialogue.

Kazakhstan's proposed new Code of Administrative Offences – which proposes continuing existing punishments for exercising freedom of religion or belief without state registration – has been approved by the government and reached the country's Parliament today (8 October), the General Department of the Majilis (lower house) told Forum 18 News Service. "Unfortunately not many human rights activists pay attention to this Code – public attention is very low. Yet this is an important legal document, one of our country's fundamental legal codes," law professor Roman Podoprigrora of the Caspian Public University in Almaty told Forum 18 on 8 October.

When the current version of the Code was adopted in 2001, "people missed the violations of religious freedom and other rights that it contained", Professor Podoprigrora maintained. "I believe the draft new Code should go to the Organisation for Security and Co-operation in Europe (OSCE) for review, at least the two proposed Articles on religion."

At the same time, a new National Human Rights Action Plan has revealed plans to develop in the first quarter of 2011 amendments to the Religion Law and other legislation on freedom of religion or belief, for introduction in the fourth quarter of 2011. Human rights defenders fear that the same restrictive draft which was rejected as unconstitutional by the Constitutional Council in February 2009 could be revived by this plan. "I believe they will draw on the previous text – this text is not dead, it's just sleeping at the moment," Ninel Fokina of the Almaty Helsinki Committee told Forum 18 on 8 October. "Indeed, it could be even worse."

Fokina complained that her group had worked on the Freedom of Conscience section of the National Plan, but that the recommendations it had proposed for removing violations of human rights commitments in the area of religious freedom had been removed in the final version. "The Plan doesn't now say in which direction laws covering religion should be amended."

Vera Tkachenko, head of the Legal Policy Research Centre in Almaty, said she too did not understand why concrete recommendations are not included. "Lots of valuable recommendations on how to bring current laws into compliance with international human rights commitments were made by local civil society and by international partners during earlier consultations on amending laws on religion," she told Forum 18 from Almaty on 8 October.

She points out though that earlier moves to restrict religious freedom had the full backing of all the main government ministries and agencies. "The tendency of the government in this area over the past year is not very positive," she told Forum 18. "It is not excluded that restrictive provisions won't be presented again by the Government." She said it is therefore important for civil society to monitor the Government's legislative plans and engage in constructive dialogue.

Forum 18 was unable to reach Saginbek Tursunov, head of President Nursultan Nazarbaev's Human Rights Commission and a Majilis deputy who oversaw the preparation of the National Human Rights Action Plan, to find out why concrete recommendations were not included. Telephones at the Commission and at his office in the Majilis went unanswered on 8 October. Kanat Boranbaev of the Ombudsman's Office for Human Rights referred all enquiries about the Plan and the proposed new Administrative Code to Tursunov and his colleagues at the Commission.

Proposed Administrative Code continues existing punishments

Kazakh human rights defenders have indicated to Forum 18 that there are many problems with the proposed Administrative Code. In

the field of freedom of religion or belief, two Articles in the current Code attack people exercising this fundamental freedom. Article 374-1 – first introduced in 2005 - punishes leading, participating in or financing an unregistered religious community or social organisation. Article 375, a broadly framed article, punishes "violating the Law on Religion" (including by leaders who reject state registration) by communities whose activity "contradicts their aims and tasks" or which is not listed in their state-approved statutes, and by individuals who conduct "missionary activity" without a special licence from the state.

"Offences" under these Articles are punishable by fines of up to 300 times the minimum monthly wage and temporary or permanent bans on a religious organisation's activity. Foreign citizens or those without citizenship found guilty of conducting unauthorised missionary activity are liable to deportation.

The latest Justice Ministry draft – published on the ministry website on 10 September - leaves Article 374-1 unchanged, moving it to a new Article 443. The new Article 444 – which is set to replace Article 375 – removes several provisions of the original Article, but much of it remains in tact, including punishment for religious activity without state registration. In several places, new minimum penalties have been introduced alongside maximum penalties (see F18News 31 August 2009 http://www.forum18.org/Archive.php?article_id=1343).

Since the Justice Ministry's earlier draft of 20 July, one Part of the replacement to Article 375 has been removed entirely, the section punishing "violations of the law by religious organisations in carrying out their activity". The rest of these two Articles, moved to different numbers, remains unchanged.

Will punishments for exercising freedom of religion or belief be removed?

Forum 18 has been unable to find out if the draft text as approved by the Government, signed by Prime Minister Karim Masimov and presented to Parliament, is the same as the text posted on the Justice Ministry website on 10 September.

The Majilis General Department told Forum 18 that if the documentation of the draft Code presented by the Government to Parliament is in order, it will be registered within the next few days and will then be sent to the Majilis Legislative Committee to begin its passage.

Ardak Doszhan, head of the Justice Ministry's Religious Affairs Committee, told Forum 18 on 8 October – without apparent concern – that the new Administrative Code will largely carry over the provisions on religion in the current Code. Asked why, as the National Human Rights Action Plan agrees that banning unregistered religious activity violates international human rights commitments, the Administrative Code seems set to continue to punish it, Doszhan insisted this was not true. "We have an analysis that registration of religious communities is compulsory in many countries." He declined to name any such country.

The human dimension commitments of the OSCE – which Kazakhstan is due to chair in 2010 and whose commitments the country has promised to implement - specifically state that freedom of religion or belief can and should be exercised without a need for state registration (see F18News 22 September 2009 http://www.forum18.org/Archive.php?article_id=1351).

Religious communities – especially those who have been fined or banned under these Administrative Code Articles – as well as human rights defenders have told Forum 18 they believe these Articles should be scrapped rather than carried over into the new Code. The Articles are often used to punish religious communities without registration exercising the freedom of religion or belief Kazakhstan has promised to allow (see eg. F18News 29 September 2009 http://www.forum18.org/Archive.php?article_id=1355). Amongst the specific activities the authorities use the Articles against is social welfare and charitable work carried out by religious believers (see eg. F18News 6 October 2009 http://www.forum18.org/Archive.php?article_id=1359).

Kamal Burkhanov, a Majilis deputy who led the parliamentary Working Group in 2008 which prepared the harsh new Law rejected by the Constitutional Council, refused to discuss what approach he will take to the continuing punishments for religious activity in the proposed new Code. "I haven't yet seen the text," he told Forum 18 on 8 October.

Fokina of the Almaty Helsinki Committee and Professor Podoprighora are pessimistic, both believing the new Administrative Code will continue to punish freedom of religion or belief. "There is no reason to think deputies will consider this in a democratic or progressive way," Podoprighora told Forum 18.

"These two Articles punishing religious 'offences' look like the Articles from the Soviet era. We need another approach to this," he insisted. "Religious organisations should not be looked at as potential violators of the law. I don't see why there should be any special Articles on religion. Many other Articles cover general violations of the law."

Will condemned 2008-9 draft Law be recycled in 2011?

Kazakh human rights defenders told Forum 18, when the Constitutional Council condemned the 2008-9 Law, that they thought its provisions would be re-introduced after Kazakhstan ceases to fulfil the role of OSCE Chairperson-in-Office at the end of 2010 (see F18News 17 March 2009 http://www.forum18.org/Archive.php?article_id=1269). Forum 18 understands that shortly before

Parliament approved the Law, the then Foreign Minister Marat Tazhin – who is understood to be strongly in favour of it – suggested that the Law be postponed until after 2010.

Now the National Human Rights Action Plan – first published in late September on the Foreign Ministry website – indicates that the Justice Ministry is to "present to Parliament a draft Law on Introducing Amendments and Additions into Legislative Documents on the Securing of Freedom of Thought, Conscience and Religion" in the fourth quarter of 2011. Development of the Law is claimed in the Plan to start in the first quarter of 2011

The Plan states that the current Law violates Kazakhstan's Constitution and the country's international human rights commitments, including by making registration for religious communities more cumbersome than for other non-governmental organisations, by making registration compulsory, and by imposing restrictions on "missionary activity" and religious education. However, the Plan makes no commitment to remove these provisions and gives no mechanism for doing so.

Majilis deputy Burkhanov said it is unknown how the new Law will look. "This is a living process – discussion is continuing," he told Forum 18. Asked if the rejected previous Law will be revived, he responded: "How can I know?" But he termed the National Plan a "very serious document and a strategy approved by the President and Government". Asked why, as the Plan describes provisions of the current Law as violating the Constitution and international human rights commitments, it is not possible to remove those provisions immediately, he responded: "This is a process that requires government approval. So I won't answer."

By contrast, Doszhan of the Religious Affairs Committee resolutely denied that current Law violates the Constitution or Kazakhstan's international human rights commitments. He appeared to be dismissive of the National Human Rights Action Plan. "The Plan is only of a recommendatory nature," he told Forum 18. "If a state body initiates a Law, it goes into the Government's Legislative Plan. Amendments on religion are not in it. Nor have there been any discussions on it."

The 2008-9 draft Law

In 2008-9, Kazakhstan passed through Parliament a highly restrictive "Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations" – a similar title to that of the latest proposed Law in the National Human Rights Action Plan. The 2008-9 draft Law would have amended numerous articles of the current Religion Law, the Code of Administrative Offences and several other laws. It was very strongly criticised by a wide range of national and international human rights defenders, other OSCE participating States, and an OSCE Legal Opinion (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249).

Although the 2008-9 draft Law was eventually rejected, its contents provide an insight into the aspects of freedom of religion or belief officials are currently most hostile to. As with earlier legislation, legal specialists in Kazakhstan complained to Forum 18 that many of the provisions of the Law were ill-defined and allowed for broad interpretations which could be used to restrict freedom of religion or belief. Among the many new restrictions on fundamental freedoms, the text of the 2008-9 draft Law:

- for the first time explicitly banned all unregistered religious activity. Holding religious worship services, conducting charitable work, importing, publishing or distributing religious literature or building or opening places of worship, without state permission in violation of "demands established in law" would have been punished with a fixed fine of 50 times the minimum monthly wage. The Senate removed any judicial discretion in the level of fine;
- allowed indefinite delays in state registration of a religious community, if the registering body's expert opinion on the community's documents as well as founding documents was negative. Registered communities would also have had to provide the authorities every year with unspecified information on their activity;
- created three types of religious communities with some form of state status. One effect of these proposals would have been to bar two of Kazakhstan's four Catholic dioceses from retaining legal status. Small "religious groups" – the lowest level of registered community - would only have been authorised to carry out religious activity with existing members and would not have been allowed to maintain places of worship "open to a wide access". Nor would they have been allowed to conduct any activity to share their beliefs;
- allowed "religious groups" to only teach, propagate religious doctrines, and hold religious ceremonies and rituals "in their own circle", i.e. they would have been banned from spreading their faith. The Law did not clarify what "their own circle" meant. It was also unclear if new people joining a group would have been regarded as missionary activity;
- compelled "centralised religious groups" – the highest category – to be founded by a founders meeting. As Fr Vsevolod Chaplin of the Russian Orthodox Church pointed out to Forum 18, "in some religious traditions creating such organisations – like dioceses – takes place in another way";
- required both local and central religious organisations wishing to register to supply an account of their religious beliefs, practice and history, both of the faith as a whole and the individual community. They would also have been required to set out their attitude

to marriage and the family, education and the health of their adherents. "Religious expert assessment" was the necessary "basis" for a registration decision. Subject to "expert assessment" were all the documents submitted as part of an association's registration application, its religious literature and other religious objects. Such "religious expert assessments" were described as being conducted "with the participation of representatives of state bodies and religious experts" (who were not identified). Other specialists were allowed to be brought in as needed. The Religious Affairs Committee in the Justice Ministry in Astana would have conducted these assessments. The government was to draw up the procedure;

- banned the creation of religious organisations under any other legal framework than religious associations, except religious educational organisations. It is unclear if this meant that organisations such as the Bible Society – founded in 1995 and registered as a non-commercial organisation with representatives from a variety of Christian denominations on the board – would have been allowed to exist;

- made refusing to register a religious community, or activity that is not specified in the community's charter, punishable by a fine imposed on religious leaders of 100 times the minimum wage;

- banned anyone – whatever their religious or non-religious belief - from sharing their beliefs without: the written backing of a state-registered religious association; personal state registration as a missionary in a particular geographic location for a specified time; state permission to use all literature or other material that would have been used for the missionary activity; and, in the case of communities seen as foreign, documentation that the community had state registration where it's headquarters is located – even if no religious registration system existed in that country;

- restricted evangelism, or distribution of religious literature or informational materials, to fixed premises designated by local executive bodies:

- a wide-ranging and ill-defined clause, possibly written to make superficially alarming claims of "deception" against religious communities, stated: "Not allowed is the functioning of religious communities, religious groups forcibly involving citizens in their activity and/or [those] hindering [citizens] from leaving religious communities and religious groups by way of threats, inter alia, using violence or threat of using violence, by way of using material or other dependence of citizens or by way of deception." Why existing Kazakh criminal law is inadequate to deal with threats of violence, whatever their claimed motivation, is not explained. Similarly unexplained is why this Law does not punish acts of violence or deception by officials attacking freedom of religion or belief.

- faith-based charitable work, such as orphanages, social action, etc., was rendered very difficult to impossible by a ban on "charitable activity aimed at spreading religious teachings by exploiting material needs of citizens." Although ostensibly aimed at stopping the misuse of charity to recruit people into religious organisations, it could have made charitable or social work motivated by a religion or belief impossible;

- written permission was required from both parents or legal guardians for children to attend any religious event. As Fr Chaplin of the Moscow Patriarchate pointed out to Forum 18, "if a young person is walking past and goes into a mosque during prayers, this means the imam could be arrested." Fr Chaplin also observed that he himself was a believer when he was 13 years old, against the wishes of his parents;

- all religious literature imported into the country would have required approval through a "religious expert assessment", apart from some unspecified personal items. Any public library would require a positive "religious expert assessment" before it could enter in its stocks any book on religion. Distribution of religious literature would be banned in state bodies, educational and health establishments and within 100 metres of them and on public transport. Published religious literature must include the full name of the religious association publishing them. It remained unclear what happened with religious literature published by individuals;

- the Justice Ministry's Religious Affairs Committee was allowed to call for law-enforcement agencies to ban the religious activity of individuals and associations and to appeal to courts for the liquidation of religious associations which it believed had broken the Law. It would check the veracity of data submitted in registration applications. It would also need to "agree" the appointment by foreign religious organisations of any head of a religious association in the country or the work of any foreign religious organisation in the country;

- repeat "offences" would lead to a religious community being banned.

Religious associations would have had 18 months to re-register under the proposed new requirements. Religious organisations registered under different legal provisions would also have been required to register as religious organisations within six months. Given the illegality of any religious activity without registration, failure to retain registration would have led to the closure of a religious community.

Hostility to OSCE commitments and institutions

The 2008-9 draft Law clearly demonstrated hostility to OSCE human dimension commitments – which Kazakhstan as the 2010 Chairperson-in-Office is committed to implementing (see F18News 22 September 2009 http://www.forum18.org/Archive.php?article_id=1351).

The draft Law also showed that Kazakhstan is hostile to OSCE institutions, such as the Office of Democratic Institutions and Human Rights (ODIHR), carrying out their assigned mandates. Kazakh diplomats repeatedly - falsely - claimed that the OSCE had blocked publication of a legal review of the Law. Kazakhstan also consistently refused to make successive drafts and amendments of the Law available for open discussion. The ODIHR told Forum 18 that it had "recommended to the Kazakh authorities that the legal review be made public, as is normal practice" (see F18News 18 November 2009 http://www.forum18.org/Archive.php?article_id=1218). (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>.

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

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY