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AZERBAIJAN: Latest repressive laws signed by President

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Following Azerbaijan's passage of its latest set of legal changes restricting and punishing the exercise of freedom of religion or belief, groups of people who produce or distribute religious literature or objects without going through the compulsory prior state censorship now face prison terms of two to five years, or maximum fines equivalent to nearly nine years' official minimum wage per person. Azerbaijan has been steadily increasing restrictions on freedom of religion or belief and punishments for exercising this human right in recent years, Forum 18 News Service notes. Censorship-related "crimes" have mainly been moved from the Code of Administrative Offences to come under the Criminal Code, and in the Administrative Code an "offence" of leading Islamic prayers by those who have studied abroad has also been introduced. Particularly significant is a wide range of massively increased fines for exercising the right to freedom of religion or belief, which many "offenders" would struggle to pay.

Groups of people who produce or distribute religious literature or objects without going through Azerbaijan's compulsory prior state censorship now face prison terms of two to five years, or maximum fines equivalent to nearly nine years' official minimum wage per person. The amendments to both the Criminal and Administrative Codes, signed into law by President Ilham Aliyev and published on the presidential website on 12 December, represent the third time in three years that punishments for exercising the right to freedom of religion or belief have been widened and increased. The amendments provide punishments for those who violate many bans created in the June 2011 Religion Law amendments.

The widened and increased penalties came into force just after six Jehovah's Witnesses from Gyanja were given massive fines for meeting for worship in a private home. Two Muslims in Absheron District who had hosted a religious meeting in their home were given official warnings (see F18News 14 December 2011 http://www.forum18.org/Archive.php?article_id=1647).

Azerbaijan has been steadily increasing restrictions on freedom of religion or belief in recent years. In 2009, the Religion Law was twice amended, and new punishments for exercising the right to freedom of religion or belief were introduced into the Criminal Code and the Code of Administrative Offences. In December 2010, fines for religious activity under the Administrative Code were increased up to 20 times from the previous levels (see F18News 7 January 2011 http://www.forum18.org/Archive.php?article_id=1527).

More amendments to the Religion Law, to increase state control on freedom of religion or belief, were signed into law on 4 July. These amendments, among other restrictions, raised the required number of adult founders for a religious community from 10 to 50, introduced new controls on religious education, and increased the controls that the state requires religious headquarter bodies or centres to have over all communities under their jurisdiction (see F18News 6 June 2011 http://www.forum18.org/Archive.php?article_id=1576).

New Criminal Code punishments

The latest Criminal Code amendments introduce several new "crimes" to the Code, which was first adopted in 2000 but which has been amended many times since. Such "crimes" – such as distributing uncensored religious literature – had previously only been punished under the Administrative Code. Criminal Code penalties for other existing "crimes" were increased.

– Increased censorship

The Criminal Code amendments introduced a new Article 167-2, to punish activity which used to be punished under the Administrative Code. Criminal Code Article 167-2.1 punishes: "Production, sale and distribution of religious literature, religious items and other informational materials of religious nature with the aim of import, sale and distribution without appropriate authorisation".

Punishments for first time offenders acting alone are a fine of 5,000 Manats (38,110 Norwegian Kroner, 4,900 Euros, or 6,360 US Dollars) to 7,000 Manats (53,370 Norwegian Kroner, 6,840 Euros, or 8,910 US Dollars), or up to two years' imprisonment.

Under Article 167-2.2, such an "offence" by a group of people "according to a prior conspiracy", by an organised group, by an

individual for a second time, or by an official, attracts a fine of between 7,000 Manats and 9,000 Manats (68,600 Norwegian Kroner, 8,800 Euros, or 11,450 US Dollars), or imprisonment of between two and five years.

The new fines in both the Criminal Code and the Administrative Code (see below) represent massive sums for most people in Azerbaijan. The presidentially-decreed official minimum wage has been 93.50 Manats (710 Norwegian Kroner, 90 Euros, or 119 US Dollars) per month since 1 December 2011.

The new Administrative Code Article 300.0.3 now punishes one censorship-related "offence": "Selling religious literature, objects and other informational materials of religious content outside specialised sale points without the consent of the relevant executive authority" [i.e. the State Committee]. Distributing or selling "religious literature, articles and other informational materials of religious content" to accompany religious propaganda by foreigners is also now liable to punishment under the Criminal Code, a new note to Administrative Code Article 300.0.4 declares (see below).

Azerbaijan has been particularly keen on increasing censorship, for example of booksellers, in recent years (see eg. F18News 12 April 2011 http://www.forum18.org/Archive.php?article_id=1561).

The censorship-related "crimes" now punished by Criminal Code Article 167-2 were until now punished under Administrative Code Article 300. Article 300.0.1 punished producing, importing or exporting religious literature, religious objects, and other information material without permission from the State Committee for Work with Religious Organisations; Article 300.0.2 punished circulating religious literature, religious objects and information material without State Committee permission; and Article 300.0.3 punished selling religious literature, religious objects and information material in places not approved by the State Committee for the sale of such religious material. With their replacement by Criminal Code Article 167-2 these three "offences" have been removed from the Administrative Code.

– Increased fines to increase state control

Criminal Code Article 168.1 punishes "Creation of a group carrying out activity under the pretext of spreading a religious faith and carrying out religious activity and by this illegally harming social order, or harming the health of citizens or violating the rights of citizens irrespective of the form of infringement, as well as distracting citizens from performance of duties established by law, as well as leadership of such a group or participation in it".

Fines under this Article (which from June 2008 had been between 100 and 500 Manats) have now been increased massively to between 7,000 (53,370 Norwegian Kroner, 6,840 Euros, or 8,910 US Dollars) and 9,000 Manats (68,600 Norwegian Kroner, 8,800 Euros, or 11,450 US Dollars). The maximum prison term for this "crime" remains two years.

Also increased by up to 10 times the previous amount are fines under Article 167 for obstructing others from conducting religious rituals. Other penalties of corrective labour remain unchanged. Fines under this Article had already been increased in June 2008. However, Forum 18 knows of no cases when state officials who have broken up religious services or banned them have been brought to court under this Article.

Fines under Criminal Code Article 167-1 for those who force individuals, including children, to take part in religious activity or religious education also increased dramatically. This Article was introduced in May 2009 (see F18News 3 June 2009 http://www.forum18.org/Archive.php?article_id=1305). Fines (previously between 500 and 1,000 Manats) have now risen to between 3,000 Manats (22,870 Norwegian Kroner, 2,930 Euros, or 3,820 US Dollars) and 5,000 Manats (38,110 Norwegian Kroner, 4,900 Euros, or 6,360 US Dollars).

For offences against a young person or by an organised group or an official, fines (previously 1,000 to 2,000 Manats) under Article 167-1 have now risen to between 7,000 (53,370 Norwegian Kroner, 6,840 Euros, or 8,910 US Dollars) and 9,000 Manats (68,600 Norwegian Kroner, 8,800 Euros, or 11,450 US Dollars).

Terms of imprisonment instead of a fine remain at present unchanged, with ordinary people being liable for up to two years' imprisonment, and officials being liable for between two and five years' imprisonment.

As with previous increased restrictions, the vague and wide ranging language used appears to be designed to allow officials the maximum number of possibilities to repress people exercising the right to freedom of religion or belief (see eg. F18News 3 June 2009 http://www.forum18.org/Archive.php?article_id=1305).

New Administrative Code punishments

In the separate law changing the Administrative Code, Article 300 – which punishes "violation of legislation on freedom of religion" - also saw its range of "offences" widened, though fines remained unchanged. The wording of these Articles often does not specify exactly what activities are covered by these "offences".

- Censorship

Now that liability for producing, importing or selling uncensored religious literature has been transferred to the new Criminal Code Article 167-2, with its much heavier penalties, the new Administrative Code Article 300.0.3 now punishes one censorship-related "offence": "Selling religious literature, objects and other informational materials of religious content outside specialised sale points without the consent of the relevant executive authority" [i.e. the State Committee].

Article 300.0.4, which punishes "religious propaganda" by foreigners or people without citizenship, remained unchanged. However, a note was added to this Article to the effect that distributing or selling "religious literature, articles and other informational materials of religious content" as part of this activity is liable to prosecution under the Criminal Code. No specific Criminal Code article is referred to.

- Study or visits abroad without state permission

The new Article 300.0.1 punishes: "Sending citizens abroad to study religion or exchanging religious figures without the permission of the relevant executive authority."

- Leading Islamic prayers by those who have studied abroad

The new Article 300.0.2 is specifically targeted at the Muslim community and punishes: "Carrying out religious ceremonies and rituals of the religion of Islam by citizens who have gained religious education outside the Republic of Azerbaijan."

This tightens up the 2009 changes to the 2009 Religion Law – introduced almost immediately after the Law itself – which specifically targeted the freedom of religion or belief of Muslims (see F18News 22 July 2009 http://www.forum18.org/Archive.php?article_id=1330).

- Penalties at present unchanged

Penalties under all provisions of Article 300 ("Violation of legislation on freedom of religion") remain unchanged. For the present, they remain:

- for individuals, whether Azeri citizens or foreigners, fines of 2,000 Manats (15,245 Norwegian Kroner, 1,960 Euros, or 2,545 US Dollars) to 2,500 Manats (19,055 Norwegian Kroner, 2,450 Euros, or 3,180 US Dollars);

- for officials, fines of 8,000 Manats (60,980 Norwegian Kroner, 7,840 Euros, or 10,180 US Dollars) to 9,000 Manats (68,600 Norwegian Kroner, 8,800 Euros, or 11,450 US Dollars);

- and for organisations, fines of 20,000 Manats (152,450 Norwegian Kroner, 19,600 Euros or 25,450 US Dollars) to 25,000 Manats (190,550 Norwegian Kroner, 24,500 Euros, or 31,800 US Dollars).

These fines had been increased up to 20 times under the December 2010 amendments to the Code of Administrative Offences. The December 2010 amendments had also widened the scope and increased the punishments under Administrative Code Article 299 ("violation of the procedure for creating or running religious organisations"), but this Article was not changed in the latest amendments (see F18News 7 January 2011 http://www.forum18.org/Archive.php?article_id=1527).

Presidential Administration initiative

The two laws amending the Criminal Code and the Code of Administrative Offences were prepared by the Department for Coordination of Law Enforcement Agencies in the powerful Presidential Administration, an official of the Department told Forum 18 in November. They were approved in a joint session of the Milli Mejlis (Parliament) Human Rights Committee and the Legal Policy and State Building Committee on 28 October (see F18News 1 November 2011 http://www.forum18.org/Archive.php?article_id=1632).

Both laws were passed in a single session of the full Milli Mejlis on 15 November. They were presented by Ali Guseinli, chair of the Milli Mejlis Legal Policy and State Building Committee. Deputies of or which support the ruling Yeni Azerbaijan party spoke up strongly for the harsh new punishments, according to local press reports.

"Today in Azerbaijan various religious sects and movements are increasing their propaganda," Ganira Pashaeva told her fellow deputies. "It is necessary to harshen the measures being adopted to put a halt to this." She also complained that individuals are exercising their right to freedom of religion or belief. "One person comes out of prison, another can't find work, so they call themselves religious figures and hold religious events." She insisted the state must take this seriously.

Another deputy, Musa Gasimli, even claimed the amendments were aimed at protecting the rights of religious believers.

Only three deputies failed to vote for the Laws. Most outspoken was Fazil Gazanfaroglu Mustafaev of the Great Formation Party, who complained that they amount to government censorship and a violation of "freedom of speech and freedom of education".

Once approved in the Milli Mejlis, the laws were sent to President Aliyev, who signed them into law, the presidential website noted on 12 December.

Necessary, proportionate?

Several members of religious communities denounced the new punishments as they were being considered in parliament. "Insanity is only increasing," one who asked not to be identified told Forum 18. Another – who also asked not to be identified – agreed: "I don't understand what they are trying to do" (see F18News 1 November 2011 http://www.forum18.org/Archive.php?article_id=1632).

Such criticism continued after the Milli Mejlis adopted the laws, including from the Deputy Director of Baku's Media Rights Institute, Khalid Agaliyev, according to Eurasianet of 16 November. He argued that the amendments violate the Constitution's articles 18 ("Religion and state"), 48 ("Freedom of Conscience"), 50 ("Freedom of Information") and 42 ("Right for education"). The measures further violate the European Convention on Human Rights and Fundamental Freedoms (ECHR), to which Azerbaijan is a signatory. The ECHR does not grant a right to restrict religious literature, he noted

"These amendments are already the 14th time that the parliament has changed religious legislation since 2001," Agaliyev told Eurasianet. "And every time, the amendments are about restrictions." He predicted that religious believers or human rights groups would seek to challenge the new Laws in the European Court of Human Rights (ECtHR) in Strasbourg.

The Media Rights Institute followed with a 15 December statement insisting that the state's censorship regime for religious literature violates individuals' human rights. "To issue such heavy penalties simply for exercising the right to freedom of expression cannot be considered proportionate to any legitimate purpose, and in all cases - as a violation of the right to freedom of expression protected by law - will harm the public interest."

Also criticising the new punishments was Ilgar Ibrahimoglu Allaverdiev. The Muslim community he leads was expelled by the police from the Juma Mosque in Baku's Old City in 2004.

"We believe these amendments are completely unwarranted," Ibrahimoglu told Forum 18 from Baku on 14 December. "Their approach is more reminiscent of the Soviet past than contemporary life. We are unambiguously for the full abolition of these Articles of the Criminal and Administrative Codes."

He said distributing religious books without undergoing state censorship was not "socially dangerous" and does not merit criminal punishment, let alone "such a harsh punishment".

Ibrahimoglu also objected to new provisions in the Administrative Code to punish those leading Muslim rituals who have gained their religious education abroad. "This is clearly discriminatory," he told Forum 18.

State Committee defends new punishments

Saleh Aslanov, spokesperson of the State Committee in Baku, refused to explain how the widened and increased penalties for religious activity could be justified. "The State Committee is not a legislative but an executive body," Aslanov told Forum 18 on 14 December. "For this reason we do not comment on court decisions or amendments to laws."

However, a 14 December statement posted on the State Committee website outlined the widened and increased punishments and defended them. "Research shows that violations of the law in this area in many cases are repeated by one and the same religious communities and individuals," the statement declared (without identifying any religious communities). "In many case these religious structures and individuals deliberately violating the provisions of the law, conduct religious propaganda and spread harmful religious literature. The appropriate state structures taking the necessary measures in connection with this are limited to small fines. From this point of view, it can be stated with certainty that improvement of the legal base in the sphere of religious activity will play an important role in preventing illegal religious propaganda, as well as establishing transparency in processes in the religious sphere."

State licences to sell religious books

Under the 2009 Religion Law amendments, new controls were introduced on where and who could sell religious books and introduced a system of licensing. Bookshop owners have long complained that the State Committee has failed to process applications for such licences. Yet officials have repeatedly warned those selling religious books without such licences (see F18News 12 April 2011 http://www.forum18.org/Archive.php?article_id=1561).

On 30 November, State Committee Chair Hidayat Orujev handed out the first licences to fifteen "specialised sale points", the State Committee website noted that day. Orujev stressed that licensing of sales of religious literature was necessary "to prevent alien influences". He said appropriate rules had been agreed with the Justice Ministry. He claimed that over the previous five years, the situation had been brought under control through "fundamental measures". He said this had sharply reduced the import of harmful religious literature.

Orujev said that in the first eleven months of 2011, his Committee had conducted "expert analyses" of 1,618 religious publications, as well as 167 religious manuscripts. He said the import of 43 harmful publications had been prevented.

Forum 18 asked the State Committee in writing in the afternoon of 14 December for a list of religious books which have failed to pass through its censorship. By the end of 15 December Forum 18 had received no response.

One religious community which has tried to challenge the State Committee's literature censorship decisions are the Jehovah's Witnesses. They currently have nine cases against the State Committee in various courts. "All the court decisions have been negative except one," they told Forum 18 on 14 December. While welcoming the one positive decision, they note that the State Committee has challenged this to the Appeal Court. No date has yet been set for the hearing.

Muslim Board complies with state pressure

The state-backed Caucasian Muslim Board – the only Muslim entity legally allowed to have Muslim communities – has complied with State Committee instructions to amend its statute. Head of the State Committee Orujev instructed the Muslim Board to amend its statute on 28 July. He said that the Board had not amended its statute after changes to the Religion Law in 2009 and needed "certain revision". He pointed out that the 2011 Religion Law amendments clearly subordinated all Muslim communities in Azerbaijan to the Board (as has long been the case) and the statute did not reflect its new powers. Orujev also complained about different calendars and services in mosques (see F18News 25 August 2011 http://www.forum18.org/Archive.php?article_id=1604).

Local news agencies reported on 30 November that the Muslim Board's statute now subordinates all Muslim communities in Azerbaijan to it. No-one from the Board was available to discuss the amended statute with Forum 18 on 15 December.

State Committee spokesperson Aslanov denied to Forum 18 in August that Orujev's demands represented state interference in the internal affairs of the Muslim community (see F18News 25 August 2011 http://www.forum18.org/Archive.php?article_id=1604). (END)

For more background information see Forum 18's Azerbaijan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1690.

More coverage of freedom of thought, conscience and belief in Azerbaijan is at <http://www.forum18.org/Archive.php?query=&religion=all&country=23>.

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.

For a personal commentary, by an Azeri Protestant, on how the international community can help establish religious freedom in Azerbaijan, see http://www.forum18.org/Archive.php?article_id=482.

A printer-friendly map of Azerbaijan is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Azerbaijan>.

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