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KAZAKHSTAN: Religious freedom fines multiply – criminal penalties to come?

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

If adopted in its current form, Kazakhstan's proposed new Criminal Code would allow those who lead unregistered religious communities to be imprisoned for up to three months, and those who share their faith for up to four months. The draft text – seen by Forum 18 News Service – is expected to be approved by the government in May and presented to parliament in July, Ruslan Toktagulov of the General Prosecutor's Office, who is coordinating preparation of the draft, told Forum 18 from Astana. A new Code of Administrative Offences is expected to reach parliament in the autumn, but no draft has been published. Eighteen individuals are known to Forum 18 to have been found guilty under the Code of Administrative Offences in 2013 for exercising their right to freedom of religion or belief. Ten were fined two months' average wages, seven were fined one month's average wage and the other was warned.

Amid continuing administrative fines to punish people for exercising their right to freedom of religion or belief, officials have insisted to Forum 18 News Service that new versions of both the Criminal Code and Code of Administrative Offences "could allow more freedom". However, the draft text of the Criminal Code as of 15 March – seen by Forum 18 – for the first time makes exercising freedom of religion or belief a criminal offence. Individuals who lead unregistered religious communities could face up to three months' imprisonment, with a possible four-month prison term for those who spread their faith. The draft text of the Code of Administrative Offences has not been made public. Both new Codes are set to be adopted by the end of 2013.

Eighteen individuals are known to Forum 18 to have been found guilty under the Code of Administrative Offences between 1 January and 12 March for exercising their right to freedom of religion or belief. Some were punished for leading unregistered religious communities, others for offering religious literature on the streets and others again for sharing their faith with others. Ten were fined 100 Monthly Financial Indicators (MFIs) – about two months' average wages. Seven were fined 50 MFIs, while one – a registered disabled man – was given an official warning (see below).

In the case of one of those fined, the judge ordered that 121 religious books – including Bibles – should be destroyed. This has caused widespread concern (see F18News 14 March 2013 http://www.forum18.org/Archive.php?article_id=1813).

While in the past many of these administrative prosecutions were brought by the Prosecutor's Office, many of the cases this year have been brought by local Departments of the government Agency of Religious Affairs (ARA), a right it has had since October 2011.

New proposed criminal penalties

The proposed text of the new Criminal Code is being prepared by the General Prosecutor's Office. A draft text was issued for public consultation on 10 January. Officials continued to work on it and a new text – described as "final" – was prepared by the General Prosecutor's Office on 15 March. The General Prosecutor's Office provided Forum 18 with the text on 18 March. Three new Articles introduce new penalties for exercising the right to freedom of religion or belief.

A new Article 403 of the Criminal Code is entitled "Leadership of or participation in the activity of unregistered or banned public or religious associations, as well as financing of their activity". Parts 1 to 3 are completely new.

Part 1 of this Article punishes leaders of such associations with fines of up to 200 MFIs, corrective labour "up to the same level", up to 180 hours of community service or up to three months' detention. Part 2 of this Article punishes those who participate in such activity with fines of up to 100 MFIs, corrective labour "up to the same level", up to 120 hours of community service or up to two months' detention. Part 3 of this Article punishes financing such activity with a fine of up to 200 MFIs, corrective labour "up to the same level", up to 180 hours of community service or up to three months' detention, with the possibility also of confiscation of property.

Part 4 of the new Article punishes organising the activity of social or religious groups which have been banned for conducting

extremist or terrorist activity. Part 5 of this Article punishes those who participate in such banned extremist groups. These two Parts of Article 403 replicate almost exactly the crimes of the current Criminal Code Article 337-1, though with several increased penalties.

A new Article 404 of the Criminal Code is entitled "Violation of the legislation on religious activity and religious associations". This Article is entirely new.

This Article would punish "Carrying out of missionary activity without registration (or re-registration), as well as the use by missionaries of religious literature, informational materials of religious content or objects of religious significance without a corresponding positive religious studies expert conclusion" if such activities have been conducted within one year of punishment for the corresponding administrative offence. Punishments are a fine of up to 300 MFIs, corrective labour "up to the same level", up to 240 hours of community service, or up to four months' detention. Foreigners convicted under this Article could be deported and banned from re-entry within five years.

A new Article 402 is entitled "Creation or participation in the activity of illegal social or other associations". This replicates exactly the crimes of the current Criminal Code Article 337, though with several increased penalties.

Part 1 of this Article would punish "Creation or leadership of religious or social organisations whose activity involves violence against citizens or the causing of other harm to their health, or the incitement of citizens to refuse to carry out their civil obligations or to carry out other illegal activities, as well as the creation or leadership of parties on a religious basis or political parties and professional unions financed from sources banned by the laws of Kazakhstan". Punishments would be a fine of up to 6,000 MFIs, corrective labour "up to the same level", up to six months' restrictions on freedom or imprisonment, with a ban on conducting specified activity for up to six years. Under Part 3 of this Article, "active participation" would lead to similar punishments, though without any possible ban on activity.

Part 2 of this Article would punish creating social associations calling for racial or religious hatred or exclusivity, or violent overthrow of the state.

Although criminal punishments have often been threatened against individuals exercising their right to freedom of religion or belief, criminal code charges have not often been brought (see F18News 10 February 2010 http://www.forum18.org/Archive.php?article_id=1407). One case where an individual was subject to criminal prosecution was of Protestant pastor Vissa Kim (see F18News 1 April 2010 http://www.forum18.org/Archive.php?article_id=1428).

New Criminal Code "in parliament by July"

Ruslan Toktagulov of the General Prosecutor's Office, who is coordinating preparation of the draft new Criminal Code, told Forum 18 that the 15 March text is the latest version and will soon be published on the General Prosecutor's Office website for public consultation.

"State bodies are currently agreeing the text and we expect to get government approval for the final text in May," Toktagulov told Forum 18 from Astana on 18 March. "The proposed text will be in parliament by July."

Toktagulov listened as Forum 18 listed many of the administrative cases where members of a variety of religious communities have been fined up to 100 MFIs for meeting for religious worship without state registration or for sharing their faith with others. He listened as Forum 18 pointed out that such individuals could in future be punished under the Criminal Code for such activity. Asked why such people should be punished at all, let alone under the Criminal Code, he did not respond.

Asked what the aim of Articles 402, 403 and 404 is, Toktagulov insisted they are aimed at preventing "extremist" activity. Asked why the Articles are not more narrowly defined so that only "extremist" activity is subject to punishment, not peaceful exercise of the right to freedom of religion or belief, he was again silent.

New administrative offences?

In parallel with the new Criminal Code, Kazakhstan is also preparing a new version of the Code of Administrative Offences. Unlike the new Criminal Code, which is in the hands of the General Prosecutor's Office, the new Code of Administrative Offences is being prepared by the Justice Ministry.

"State bodies are still discussing the draft text," Mira Zarmanova, head of the Justice Ministry's Criminal Legislative Department, told Forum 18 from Astana on 18 March. She said she expected the draft text to be published for public discussion in May or June, and that a completed text would go to parliament in September or October.

The Justice Ministry's Isidor Borchashvili, Head of the Working Group preparing the draft, told Forum 18 the same day that some parts of the proposed new Code have already been drafted. "We aim to complete work on the text on 9 April."

Article 374-1 and Article 375 in the current Code of Administrative Offences punish exercising the right to freedom of religion or belief, in violation of Kazakhstan's international human rights commitments (see below).

Neither Zarmanova nor Borchashvili was prepared to say whether these punishments are likely to remain in the new Code – or indeed be made harsher. "I am not authorised to discuss the content," Zarmanova told Forum 18.

Forum 18 outlined to Borchashvili from court decisions a number of the many current administrative punishments handed down to individuals who meet for worship in unregistered communities or who share their faith with others. He listened, but refused to say if such punishments will continue. "I have no relation to court decisions," he insisted to Forum 18.

Told that any punishments introduced into the new Code of Administrative Offences are almost certain to result in court-imposed decisions, Borchashvili repeated his insistence that he had nothing to do with court decisions.

"Certain positive moments have been introduced in the new Code," Borchashvili insisted. "We will take positive experience from Europe. The new Code will be better [than the current Code], it will give more freedom." He declined to explain why he believes this.

Current Administrative Code articles

Article 374-1 of the Code of Administrative Offences bans leading, participating in or financing an unregistered, halted or banned religious community or social organisation (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Administrative Code Article 375 was greatly expanded, along with the Religion Law, in September 2011 to include many new often unclearly defined "violations". These include: breaking the Religion Law; violating the provisions for holding religious rites, ceremonies, or meetings for worship; violating the procedure for conducting charitable activity; violating the procedure for importing, publishing or distributing religious literature and materials; building places of worship or changing a building's usage; conducting missionary activity; failing to prevent someone bringing a child to a religious meeting against the wishes of one of its parents; leading a religious organisation at the nomination of a foreign religious organisation without Kazakh state approval; carrying out of missionary activity by Kazakh citizens, foreigners and persons without citizenship without registration (re-registration); and the use by missionaries of religious literature, informational materials of religious content or objects of religious significance without a positive assessment by a state religious studies "expert analysis" (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

An addition to Administrative Code Article 636, passed with the Religion Law, gives the ARA the right to prepare for prosecution cases under Article 374-1 and 375 (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Known fines in 2013

Officials at the General Prosecutor's Office Committee on Legal Statistics told Forum 18 from Astana on 18 March that they were not authorised to give information by telephone on how many individuals in Kazakhstan had been prosecuted in 2012 or 2013 under Code of Administrative Offences Articles 374-1 and 375. Forum 18 submitted a request for this information in writing the same day.

Even before the scope of Article 375 was greatly extended in late 2011, its use was widespread. In the first half of 2011, 39 people were punished under this Article, with seven further cases being referred back to prosecutors for more investigation, Kazakhstan told the United Nations Human Rights Committee in July 2012 (CCPR/C/KAZ/CO/1/Add.1). It did not give disaggregated statistics for the number of people punished under Article 374-1.

At least 18 individuals are known to have been found guilty in 2013 under Articles 374-1 and 375. Most penalties have been a fine either of 50 MFIs or 86,550 Tenge (3,350 Norwegian Kroner, 450 Euros, or 575 US Dollars); or 100 MFIs or 173,100 Tenge (6,700 Norwegian Kroner, 900 Euros, or 1,150 US Dollars). A fine of 100 MFIs is currently equivalent to nearly two months' average wages as measured nationwide by the state.

According to court decisions seen by Forum 18 and court websites, known fines imposed in 2013 under Articles 374-1 and 375 are:

1 and 2. Nadezhda Shefer and Natalia Lashova, Jehovah's Witnesses, each fined 100 MFIs under Article 375, Part 3, on 15 January at Aktau Administrative Court, Mangistau Region (see F18News 22 January 2013 http://www.forum18.org/Archive.php?article_id=1792). Mangistau Regional Court upheld the fines on 8 and 11 February.

3. Dana Abekenov, Baptist, fined 50 MFIs under Article 375, Part 1 on 21 January at Aktobe Specialised Administrative Court, Aktobe Region.

4. Roman Pugachev, Baptist, fined 100 MFIs under Article 374-1, Part 1 on 28 January at Ualikhan District Court, North Kazakhstan Region (see F18News 5 February 2013 http://www.forum18.org/Archive.php?article_id=1798).
5. Aleksandr Pukhov, Baptist, fined 100 MFIs under Article 374-1, Part 1 on 28 January at Petropavl Specialised Administrative Court, North Kazakhstan Region (see F18News 5 February 2013 http://www.forum18.org/Archive.php?article_id=1798).
6. Aleksandr Kerker, Baptist, fined 100 MFIs under Article 374-1, Part 1 on 30 January at Taiynsha District Court, North Kazakhstan Region (see F18News 5 February 2013 http://www.forum18.org/Archive.php?article_id=1798).
7. Fauzi Gubaidullin, Baptist, fined 100 MFIs under Article 374-1, Part 1 on 12 February at Shymkent Specialised Administrative Court, South Kazakhstan Region.
8. Yuri Bronitsky, Baptist, fined 100 MFIs under Article 374-1, Part 1 on 12 February at Almaty Specialised Inter-District Administrative Court.
- 9 and 10. Sergei Krasnov and Dmitry Isaev, Baptists, each fined 50 MFIs under Article 374-1, Part 2 on 12 February at Oral Specialised Administrative Court, West Kazakhstan Region.
11. Serkali Kumargaliyev, Baptist, fined 50 MFIs under Article 374-1, Part 2, on 18 February at Oral Specialised Administrative Court, West Kazakhstan Region.
12. Pavel Leonov, Baptist, fined 100 MFIs under Article 374-1, Part 1, on 4 March at Ayagoz District Court, East Kazakhstan Region. He appealed against the decision.
13. Vyacheslav Cherkasov, Baptist, fined 50 MFIs on 5 March at Burabai District Specialised Administrative Court, Akmola Region. The court also ordered 121 books and other literature confiscated from Cherkasov to be destroyed. This appears to be Kazakhstan's first court-ordered religious book burning. He appealed against the decision (see F18News 14 March 2013 http://www.forum18.org/Archive.php?article_id=1813).
14. Viktor Nelepin, Baptist, was found guilty and given an official warning under Article 374-1, Part 2, on 6 March at Oral Specialised Administrative Court, West Kazakhstan Region. Had he not been a second-category invalid with three young children, he would have been fined.
15. Sergei Krasnov, Baptist, fined 50 MFIs under Article 374-1, Part 2, on 7 March at Oral Specialised Administrative Court, West Kazakhstan Region. This was his second fine for religious activity in 2013.
16. Viktor Maksin, Baptist, fined 50 MFIs under Article 374-1, Part 2, on 7 March at Zelenovsky District Court No. 2, West Kazakhstan Region.
- 17 and 18. Valeri Alekseev and Nikolai Kokotov, Jehovah's Witnesses, each fined 100 MFIs under Article 375, Part 3 on 12 March at Mamlyut District Court, North Kazakhstan Region.

Expected cases

On 14 March, an administrative case against Sergei Chuvashkin, Jehovah's Witness, under Article 375, Part 3, prepared by the local ARA Department, was handed to Esil District Court, Akmola Region.

Between 4 and 18 March, administrative cases against Andrei Rakin and Andrei Korolev, Jehovah's Witnesses, under Article 375, Part 3, prepared by the local ARA Department, were handed to Kokshetau Specialised Administrative Court (see F18News 14 March 2013 http://www.forum18.org/Archive.php?article_id=1813).

Council of Churches Baptists told Forum 18 on 18 March that six administrative cases against their members have been handed to court.

No prosecutions of officials?

After a 20 January raid by the local police and the police Department for the Struggle against Extremism, Separatism and Terrorism on a Protestant church in the central Karaganda [Qaraghandy] Region, Pastor Aygul Kdirniyazova wrote to Satpaev's Prosecutor's Office, complaining that the raiders had violated Article 375 by interrupting a religious service. Yet no action is known to have been taken against the police responsible for this breach of the law (see F18News 5 February 2013 http://www.forum18.org/Archive.php?article_id=1798). (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.

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