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KAZAKHSTAN: Two months' jail for religious meetings without state permission?

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

Leaders of religious communities who fail to gain or choose not to seek state registration will face up to 60 days' imprisonment if the new Criminal Code now in the upper house of Kazakhstan's parliament is approved in the current form, Forum 18 News Service notes. Those who attend such communities could face up to 45 days' imprisonment. The new Administrative Code, now in the Senate, also appears likely to continue current administrative punishments for exercising the right to freedom of religion or belief. The new Criminal Implementation Code – also in the Senate – bans building places of worship in prisons. "Significant changes to these Codes are unlikely now at this late stage," one human rights defender lamented to Forum 18. Asked why provisions of these Codes restrict individuals' rights to freedom of religion or belief, Telegen Dertayev, a consultant on the Senate's Legal Committee, insisted to Forum 18 that "we have religious freedom".

Those who lead meetings for religious purposes without state permission could face up to 60 days' imprisonment under provisions of the new Criminal Code now in the Senate, the upper house of Kazakhstan's Parliament. Those who participate in but do not lead this exercise of the human right to freedom of religion or belief could face up to 45 days' imprisonment, according to the current text seen by Forum 18 News Service.

These "offences" are currently punished with fines under the Code of Administrative Offences.

Another provision which would have prescribed punishments of up to four months' imprisonment for a second "offence" of sharing one's faith was removed during the Criminal Code's passage through the Majilis, the lower house of Parliament. Deputies argued that the "offence" is already punished under the proposed new Code of Administrative Offences.

Human rights defenders and members of religious communities remain highly concerned about such proposed punishments in the Criminal Code and the Code of Administrative Offences which has also passed through the Majilis. Both these new Codes – together with the new Criminal Implementation Code, which covers the treatment of prisoners and specifically bans building places of worship in prisons – are now being considered in the Senate.

"Significant changes to these Codes are unlikely now at this late stage," one human rights defender closely following developments told Forum 18 on 16 May. "They're likely to be completed and signed before the break for the summer holidays in early July. We say it's better for them not to be adopted at all, and if they are, we hope the harsh measures punishing religious activity won't be used."

Texts not published

No consolidated text of any of these three Codes as approved by the Majilis and now in the Senate have been published. For the Criminal Code a legal portal has published a comparative table of at least some Majilis amendments, but no full text.

Forum 18 has seen the text of the proposed new Criminal Code and the proposed new Criminal Implementation Code as approved by the Majilis and now in the Senate. However, it has been unable to obtain the text of the Administrative Code as approved by the Majilis and now in the Senate. Officials refused Forum 18's request for the text.

"We have religious freedom"?

Telegen Dertayev, a consultant on the Senate Legal Committee who is involved with these new Codes, said that reports of the Committee's meetings and of its Working Groups' meetings on these draft Codes would be published. However, he told Forum 18 from the capital Astana on 16 May that the public would not be able to attend these meetings unless they get special permission from the Legal Committee's leadership.

Dertayev said he does not know when the draft Codes are likely to reach the full Senate. But he pointed out that procedure requires

the Senate to complete passage of draft laws within 60 days of receipt from the Majilis.

Asked why provisions of these Codes restrict individuals' rights to freedom of religion or belief, Dertayev insisted that "we have religious freedom". He declined to discuss any specific provisions of any of the three Codes.

"Considerably restricting and harming human rights"

A total of 119 local human rights groups, individuals and international human rights groups signed a joint statement condemning the proposed new Codes as "considerably restricting and harming human rights". The statement, posted on the website of the Kazakhstan International Bureau for Human Rights and the Rule of Law on 22 April, noted that "the reasoned proposals from civil society were ignored".

"In complete contradiction with the Constitution and the norms of the International Covenant on Civil and Political Rights, Kazakhstan's laws unequivocally make the profession by an individual of a religion dependent on having several dozen, hundreds or even thousands of fellow-believers," the joint statement complains. "The draft Criminal Code harshens punishment for violating this undemocratic provision."

The human rights defenders' statement also condemned provisions of the proposed Administrative Code which would punish even those social and religious groups which have state permission to exist, but which commit "even the slightest violation of a technical nature", with suspension of their activity. They could also be punished for any activity outside their registered statute. "This provision arouses particular concern especially in relation to religious associations," the human rights defenders' warn.

In violation of Kazakhstan's international human rights obligations, the exercise of freedom of religion or belief without state permission is already banned (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

New Criminal Code punishments

The proposed text of the new Criminal Code was prepared by the General Prosecutor's Office (see F18News 18 March 2013 http://www.forum18.org/archive.php?article_id=1814). It reached the Majilis in October 2013. It was approved on second reading there on 9 April 2014 and sent to the Senate on 17 April, according to the Majilis website. The Senate website gives a deadline for adopting the new Code of 15 June. Almost all provisions of the new Code would come into force on 1 January 2015.

The new Criminal Code is being handled by the Senate's Legal Committee. The Working Group initially considering the draft is led by Senator Dulat KUSDAVLETOV.

New penalties

Two new Articles introduce new penalties for exercising the right to freedom of religion or belief.

- Article 402

A new Article 402 is entitled "Creation, leadership 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".

The existing Criminal Code Article 337 was used in the trial of retired Presbyterian Pastor Bakhytzhan KASHKUMBAYEV (see F18News 22 January 2014 http://www.forum18.org/archive.php?article_id=1918).

Punishments for violating Part 1 of the new Article 402 would be a fine of up to 6,000 Monthly Financial Indicators (MFIs), or corrective labour "up to the same level", or up to six years' restrictions on freedom or imprisonment, with restrictions on conducting certain unspecified activity for up to six years.

The MFI is set annually, and since 1 January 2014 has been 1,852 Tenge (60 Norwegian Kroner, 7 Euros, or 10 US Dollars). 50 MFIs are equivalent to about one month's average salary.

Part 2 of this Article would punish: "Creating social associations aimed at the incitement of racial, national, clan, social, class or religious intolerance or exclusivity, calling for the violent overthrow of the Constitutional order, subversion of state security, or infringing the state's territorial integrity, as well as leadership of such associations". This would be punished by imprisonment of

between three and seven years, with restrictions on conducting certain unspecified activity for up to three years.

Part 3 of this Article punishes "active participation" in Part 1 or 2 offences. This would lead to almost the same punishments as Part 1, though without any possible ban on conducting certain unspecified activity.

- Article 403

A new Article 403 of the Criminal Code is entitled "Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation".

Parts 1 to 3 are completely new as criminal "offences", being currently punished under Administrative Code Article 374-1 (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939).

Part 1 of the new Article 403 punishes leaders of social or religious communities or associations which are unregistered, suspended or banned with fines of up to 200 MFIs, corrective labour "up to the same level", up to 180 hours of community service or up to 60 days' 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 45 days' 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 60 days' 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.

New administrative offences

The proposed text of the new Administrative Code was prepared by the Justice Ministry. It reached the Majilis in November 2013. It was approved on second reading there on 30 April 2014 and sent to the Senate on 12 May, the Majilis Legal Committee told Forum 18 on 15 May. The Senate website gives a deadline for adopting the new Code of 10 July.

The new Administrative Code is being handled by the Senate's Legal Committee. The Working Group initially considering the draft is led by Senator Lyudmila Poltorabatko.

Azamat Bekperov, the official representing the Justice Ministry in the Senate Working Group consideration of the new Code, refused to give Forum 18 a copy of the text as approved by the Majilis. He said the Working Group is due to begin its consideration in the week beginning 19 May.

It is clear from other documentation that the wide range of punishments for exercising the right to freedom of religion or belief continue in the new Code's Article 475. The Justice Ministry draft which was sent to the Majilis in late 2013 includes an eight-point Article 475 which replicates many of the provisions of the current Article 375 (see below). It remains unclear whether any of the provisions of this Article have been amended during the Code's passage through the Majilis.

One bizarre provision of the 2013 Justice Ministry draft of the new Code's Article 475 specifies fines on and deportation of anyone named to head a foreign religious organisation in Kazakhstan without the approval of the government's Agency of Religious Affairs or leaders of religious organisations who fail to take measures to prevent young people from participating in religious activity against the wishes of their parents. This could lead – if adopted in the 2013 version – to a court ordering the deportation from Kazakhstan of a Kazakh citizen.

Asked about why the new Code appears to be continuing the punishments for exercising the right to freedom of religion or belief which are included in the current Code, Bekperov declined to comment. "The text was agreed by the government as a whole," he insisted to Forum 18 from Astana on 15 May. "It is too late for us to organise amendments."

Proposed Criminal Code Article 404 dropped

A proposed Article 404 of the Criminal Code was entitled "Violation of the legislation on religious activity and religious associations". This Article, which would have been entirely new in the Criminal Code, would have punished "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 with

punishment of up to four months' detention (see F18News 18 March 2013 http://www.forum18.org/archive.php?article_id=1814).

However, this proposed Article was withdrawn during the proposed new Criminal Code's passage through the Majilis. The Majilis' Legal Committee ruled that these "offences" were already covered by Article 475 of the proposed new Administrative Code and so voted to exclude it.

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. Two cases where an individual was subject to criminal punishments were Protestant Pastor Vissa Kim, as well as Sergei Mironov (see F18News 1 April 2010 http://www.forum18.org/Archive.php?article_id=1428).

New Criminal Implementation Code

The proposed text of the new Criminal Implementation Code was prepared by the Interior Ministry. It reached the Majilis in October 2013. It was approved on second reading there on 23 April 2014 and sent to the Senate on 30 April, according to the Majilis website. The Senate website gives a deadline for adopting the new Code of 1 July. Almost all provisions of the new Code would come into force on 1 January 2015.

The new Criminal Implementation Code is being handled by the Senate's Legal Committee. The Working Group initially considering the draft is led by Senator Yermek Zhumabayev.

Article 13 covers "the rights of those sentenced to freedom of conscience and religion". It states that participation in religious rites is voluntary, adding that in carrying out religious rites, "the rules of internal order of the institution are to be observed". At the request of prisoners or their relatives, "in cases of ritual necessity" a priest from a registered religious organisation is invited. Article 32 specifies that priests, journalists and others need "special permission from the administration of these institutions or higher bodies" to visit places of detention.

The prison administration "secures the conditions for carrying out religious rituals", as well as guaranteeing the security of the priest. Article 16 specifies that the state body in charge of the penitentiary system draws up "an instruction for creating conditions for the carrying out of religious rites by those sentenced to deprivation of freedom".

However, Article 13 Part 6 states categorically: "The construction of places of worship (buildings) on the territory of institutions or organs implementing punishments is banned."

Article 104, which covers the "rights and responsibilities of those sentenced", notes that prisoners have the to read "religious literature which has received a positive conclusion of a religious studies expert analysis".

Article 110 specifies that prisoners may have literature, but bans them from having literature of certain types, including "extremist" literature and literature promoting "social, racial, ethnic, religious, class or tribal superiority". (The final clause of this Article – which would have banned prisoners from having religious literature of their own while in prison – was removed during the proposed Code's passage through the Majilis, Forum 18 notes.)

Under Article 8, registered religious organisations are among groups able to assist in monitoring prisons, rehabilitating prisoners and proposing improvements to the prison system.

Forum 18 notes that the Code's controls on exercising the right to freedom of religion or belief in places of detention mirror those in the country more widely. Religious literature must be censored in advance by the government's Agency of Religious Affairs, while only registered religious communities are recognised.

However, as many of these provisions appear to be vaguely worded, how they are implemented will determine whether Kazakhstan's prisoners will be able to avail themselves of their right to freedom of religion or belief.

Soon after the harsh 2011 Religion Law and other legal amendments were adopted, the authorities began closing mosques and Russian Orthodox prison chapels (see F18News 15 November 2011 http://www.forum18.org/archive.php?article_id=1636).

One human rights defender told Forum 18 that prisoners already face difficulties having religious literature.

Current Administrative Code articles

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. Such punishments are frequently deployed, with 46 known such fines in the first ten weeks of 2014 alone (see Forum 18's Kazakhstan religious freedom survey http://www.forum18.org/archive.php?article_id=1939). (END)

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>.

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1939.

For a personal commentary from 2005 on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

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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