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KAZAKHSTAN: Legal amendments - no text, no OSCE review

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

Kazakhstan's Human Rights Ombudsperson called on 2 May for the parliamentary Working Group considering the wide-ranging amendments to the Religion Law and other laws to send them for an OSCE legal review. The Working Group head rejected this. The amendments, now adopted by the lower house, are likely to reach the Senate soon, but the public has no access to the text.

Wide-ranging amendments to Kazakhstan's Religion Law and a range of other laws that seem set to increase still further the already tight restrictions on the exercise of freedom of religion or belief were approved in the lower house of parliament, the Majilis, on 23 May. They are about to be sent to the upper house, the Senate, but officials there told Forum 18 they had not arrived by 30 May.

The text of the Amending Law has not been made public to anyone and parliamentary officials would not send it to Forum 18.

The Majilis has refused to state how many deputies had voted in favour of the Amending Law and how many against (if any). "It is a tradition that the Chair of the Majilis does not give voting figures and just announces the decision as to whether a law is adopted or not," the Majilis Press Service told Forum 18 (see below).

The Majilis Working Group which prepared the draft amendments rejected an appeal by Kazakhstan's Human Rights Ombudsperson Askar Shakirov that the text should be sent to the Organisation for Security and Co-Operation in Europe's Office for Democratic Institutions and Human Rights (OSCE ODIHR) in Warsaw for a legal review. Calls to send the draft for an OSCE or Venice Commission review had also come from civil society, Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and Rule of Law told Forum 18 (see below).

However, the Kazakh authorities have not requested a legal review of the amendments from either the OSCE, of which Kazakhstan is a participating State, or the Council of Europe's Venice Commission, of which it is a member.

The Kazakh authorities have ignored previous OSCE and United Nations recommendations to bring laws and practice into line with the country's human rights obligations (see below).

Once the Senate has received the Amending Law, the Social and Cultural Development and Science Committee will consider it in a Working Group. Once the Committee has approved it, the Amending Law will require two readings in the full Senate before being sent to President Nursultan Nazarbayev for signature into law (see below).

The wide-ranging Amending Law introduces for the first time "destructive religious movement" and "religious radicalism" as legal terms; increases state controls on the exercise of freedom of religion or belief still further; will ban state officials being founders or members of religious communities (though they will not be prevented from attending religious events); and seem set to make it more difficult for under 16-year-olds to attend meetings for worship (see below).

Human rights defender Zhovtis condemned the Amending Law as "conceptually wrong legislation". He stated that all the country's "legislation on religion has to be rewritten in full. It does not meet any international standards and obligations, undermines the principles of human rights law and restricts the right to freedom of religion or belief, sometimes denying it completely" (see below).

Zhovtis also noted that "the way the government is drafting such legal proposals and the way they are passing them through the Parliament has left very few hopes that there is any possibility to improve this piece of legislation" (see below).

Russian Orthodox and Catholic leaders have called for "competent experts" to be brought in at the final stage of consideration of the Amending Law (see below).

Did any deputy oppose Amending Law?

The Chair of the Majilis, Nurlan Nigmatulin, who presided over the Amending Law's first reading on 16 May and the final reading on 23 May, did not announce to the sessions how many deputies had voted for and against the amendments after either of the votes.

In neither session was the text of the Amending Law read out aloud.

"It is a tradition that the Chair of the Majilis does not give voting figures and just announces the decision as to whether a law is adopted or not," the Majilis Press Service told Forum 18 on 24 May. Press Service officials were unable to give Forum 18 the voting figures. Nor too were officials of the Majilis International Affairs, Defence and Security Committee, which had prepared the Amending Law for the full session.

Religion and Civil Society Ministry, Working Group, full Majilis

The wide-ranging draft Amending Law "Introducing changes and Additions to Laws on Questions of Religious Activity and Religious Associations" was prepared by the Religion and Civil Society Ministry in 2017 and agreed by other government bodies, including the Justice Ministry, Interior Ministry and National Security Committee (NSC) secret police (see F18News 29 November 2017 http://www.forum18.org/archive.php?article_id=2335).

The government handed the draft Law to Parliament in late December 2017. The draft was assigned to the Majilis International Affairs, Defence and Security Committee. The Committee formed a Working Group, chaired by deputy Mukhtar Yerman, which began a line-by-line consideration of the draft text on 6 February. Some members of civil society, including journalists and members of religious communities, were able to attend and some were able to speak at Working Group meetings.

The Working Group made extensive changes to the Religion and Civil Society Ministry text, according to drafts seen by Forum 18. However, the text finally approved by the Working Group and the Committee in April was not made public. The text appears to have been adopted unchanged by the full Majilis in the first and second readings on 16 and 23 May.

Working Group Chair rejects OSCE review

On 2 May, the Ombudsperson for Human Rights, Askar Shakirov, wrote to the Working Group Chair Yerman. Shakirov asked for his Committee to send the draft Law to the OSCE for a legal review, "given the considerable experience and support the OSCE ODIHR has given Kazakhstan in the field of legislative drafting", Dinara Ospanova, the acting head of the National Human Rights Centre in Astana (where the Ombudsperson is based), told Forum 18 in a written response on 29 May.

Yerman responded to Shakirov only on 28 May – after the Majilis had adopted the Amending Law. He merely informed him that the Majilis had adopted the Law and sent it on to the Senate, Ospanova told Forum 18. She added that Yerman had sent a similar letter to the Director of the OSCE ODIHR, Ingibjörg Sólrún Gísladóttir.

Ospanova did not explain why Yerman had rejected Ombudsperson Shakirov's suggestion to send the draft Law to the OSCE for review or why it had taken Working Group Chair Yerman nearly one month to respond.

She noted only that the drafter of the Amending Law, the Religion and Civil Society Ministry, had held "more than 2,000 events in various formats at the national and regional level" to "discuss" the proposed amendments.

Official accounts of such events indicated that officials merely told attendees at such meetings about some of the provisions, warning them that restrictions on exercising freedom of religion or belief were being tightened.

Ospanova ignored Forum 18's original request on 25 May for a copy of Ombudsperson Shakirov's letter to the Working Group Chair requesting the Committee to seek an OSCE review. In reply to Forum 18's repeated request, the National Human Rights Centre told Forum 18 on 30 May that "we cannot provide a copy of official documentation".

Azhara Suleimanova, who handles religious issues at the National Human Rights Centre, confirmed to Forum 18 on 24 May that Ombudsperson Shakirov had not himself requested a review of the Amending Law from the OSCE or the Venice Commission. However, she was unable to tell Forum 18 why not. She added that she was unable to discuss the content of the Amending Law or the current Religion Law.

Did Working Group members know of OSCE review request?

Forum 18 has been unable to find out if Working Group Chair Yerman distributed Ombudsperson Shakirov's letter to Working Group members or if the Working Group discussed the Ombudsperson's request for it to send the Amending Law to the OSCE for a legal review.

The Assistant to Deputy and Working Group member Akhmet Muradov said that he does not believe Muradov saw or knew of Shakirov's letter. "How could he have known about it?" the Assistant told Forum 18 on 30 May. "I didn't see it. It's possible Akhmet Muradov saw it in the Working Group." The Assistant did not know if the Working Group had discussed whether or not to send the Amending Law to the OSCE for a legal review.

Zhanat Kuanyshbayeva, a staffer of the Majilis International Affairs, Defence and Security Committee who worked on the text of the draft Law, said that she knew of Ombudsperson Shakirov's letter. "I don't know if it was given to deputies in the Working Group," she told Forum 18 on 30 May.

Kuanyshbayeva insisted to Forum 18 that according to procedure, a legal review of a Law can be initiated only before a draft has formally been submitted to parliament. "This Law was already in Parliament by the time the Ombudsperson wrote his letter." She was unable to say whether Yerman alone or the Working Group as a whole had chosen not to heed Shakirov's request to send the Law for an OSCE legal review.

The telephones of Yerman and of his Assistant went unanswered each time Forum 18 called on 30 May.

OSCE reviews, UN Human Rights Committee, human rights defenders ignored

Kazakhstan has a record of ignoring recommendations and reviews from Kazakh and international human rights defenders, the OSCE, and the United Nations (UN). There is no sign that Kazakhstan has taken these recommendations into account in drafting its latest restrictions on freedom of religion and belief.

For example, an October 2016 OSCE Preliminary Opinion criticised fresh proposed restrictions on the exercise of freedom of religion or belief – particularly over censorship of literature about religion and foreign travel for religious purposes. The Opinion called for them to be removed from the "extremism and terrorism" Amending Law then under consideration and from existing laws (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

The "extremism and terrorism" Amending Law, prepared by the NSC secret police, changed five Codes and 20 individual laws including the 2011 Religion Law. This came into force in January 2017 and imposed new restrictions on foreign religious travel and more explicit provisions banning and punishing the production or distribution of literature about religion. It also restricts the number of copies of publications about religion an individual is allowed to import "for personal use" without being subject to state censorship. Only one copy of any individual publication can now be imported without undergoing censorship (see F18News 5 January 2017 http://www.forum18.org/archive.php?article_id=2243).

The 2011 Religion Law was itself passed and signed into law despite strong criticism in a 2009 OSCE Legal Opinion. When the Religion Law came into force, the OSCE stated "that the legislation appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom" The ODIHR also stated that: "We reiterate the continued relevance of our 2009 Opinion", and that "ODIHR continues to stand ready to provide advice and assistance on bringing Kazakhstan's freedom of religion legislation fully in line with international standards and OSCE commitments" see F18News 13 October 2011 http://www.forum18.org/archive.php?article_id=1624).

Similarly, the broad and unclear formulation of Criminal Code Article 174 (which punishes "Incitement of social, national, clan, racial, or religious discord" and other unclearly defined actions) as well as other laws, and the prosecution of many people under Article 174 has been strongly criticised by: Kazakh human rights defenders, who have repeatedly called for Article 174 to be changed or abolished; the former UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association Maina Kiai; and the UN Human Rights Committee (see F18News 2 February 2017 http://www.forum18.org/archive.php?article_id=2252).

Despite ignoring UN Human Rights Committee recommendations on Kazakhstan's laws and state actions, the government has claimed that the Religion Law changes have been drafted in accordance with International Covenant on Civil and Political Rights (ICCPR) Article 18 ("Freedom of thought, conscience and religion"). But if adopted the changes would mean that Kazakhstan even more flagrantly than before breaks its binding international human rights law obligations to protect freedom of religion and belief and other human rights. In support of this, the drafters of the changes cite similar legal provisions violating human rights in Uzbekistan, Tajikistan, Turkmenistan, Azerbaijan and elsewhere (see F18News 29 November 2017 http://www.forum18.org/archive.php?article_id=2335).

Amending Law to Senate Social and Cultural Development and Science Committee

Officials of the Senate Chancellery told Forum 18 on 30 May that the text of the Amending Law has not yet reached the Senate from the Majilis. "They have 14 days from the day of its adoption to get the text to us," the official added.

Although the text had not yet arrived, the 28 May meeting of the Bureau of the Senate assigned the Amending Law to the Senate Social and Cultural Development and Science Committee, the Senate website noted the same day.

The Committee will assign the Amending Law to a Working Group, Committee officials told Forum 18. Committee chief consultant Kuanish Taibulatov will oversee the Law. No Working Group members have yet been appointed. Once the Committee has approved the Law, two readings in the Senate will be required for it to be adopted, officials added.

Wide-ranging amendments

As of the completion of consideration in the Majilis, the Amending Law now proposes 53 changes to three Codes and nine Laws, the Religion and Civil Society Ministry noted on its website on 23 May after the Majilis approved the Law. Many amendments are proposed to the 2011 Religion Law, as well as the Code of Administrative Offences and other Laws.

Religion and Civil Society Minister Darkhan Kaletayev (appointed by the President on 4 April) told the Majilis first reading of the Amending Law on 16 May that for the first time the terms "destructive religious movement" and "religious radicalism" were being introduced as legal terms.

"The introduction of such concepts, as well as a ban on the spreading of the ideologies of destructive religious movements, their attributes and external symbols, will facilitate the countering of the penetration into society of ideologies alien to our country," he told deputies.

One Majilis Working Group draft of the Law from early 2018 defined a "destructive religious movement" as "a conglomeration of religious views, ideas and teachings representing a threat to the protected rights and freedoms of an individual capable of weakening and/or destroying the moral foundations, spiritual and cultural values and traditions". Forum 18 has been unable to establish if this definition remains unchanged.

Officials often accuse religious communities they do not like of being "destructive sects" (see F18News 31 August 2016 http://www.forum18.org/archive.php?article_id=2212).

Kaletayev added that state officials would be banned from being founders or members of religious organisations. He insisted that this would not violate their "basic rights in the area of religion" as they would be allowed to attend religious events in their free time.

Official powers to monitor and control religious communities would be stepped up, including at District Administration level, Kaletayev told deputies. Police too would be given increased powers.

Other new restrictions in the Amending Law likely to be adopted by Parliament include: where religious education is allowed to take place and who by, with new punishments for "offenders"; new restrictions and punishments for those seeking religious education abroad; new punishments for disturbing a religious community's "internal order" (such as by saying the word "Amen" in mosques); even more restrictions on sharing beliefs, with a new specific ban on spreading the beliefs of an unregistered religious organisation; a new definition of the term "clergy" which could reduce the number of individuals allowed to share their faith, as well as disbar Jehovah's Witness young men from exemption from compulsory military service; require religious literature which does not pass the compulsory state censorship to be seized; and a ban on and punishments for holding religious weddings away from state-registered places of worship (except on grounds of sickness of one of the parties) (see F18News 29 November 2017 http://www.forum18.org/archive.php?article_id=2335).

Concerns

Many human rights defenders and religious communities have expressed concern during the drafting process about what they believe will be in the final text of the Amending Law.

Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and Rule of Law told Forum 18 he had decided not to participate in the Majilis Working Group preparing the Amending Law "because I see no practical use in discussing some new provisions of conceptually wrong legislation". He observed that "if we follow a 'harm reduction' strategy there is some sense in entering the discussions to try to make the provisions not so restrictive". However, he continued, "the way the government is drafting such legal proposals and the way they are passing them through the Parliament has left very few hopes that there is any possibility to improve this piece of legislation".

As well as the Amending Law further restricting freedom of religion and belief, the government has also introduced a number of other laws imposing further restrictions on the freedoms of expression, association and peaceful assembly (see <http://www.iphronline.org/kazakhstan-strikes-arrests-fears-new-restrictions-fundamental-freedoms.html>).

Human rights defender Zhovtis stated that all the country's "legislation on religion has to be rewritten in full. It does not meet any international standards and obligations, undermines the principles of human rights law and restricts the right to freedom of religion or belief, sometimes denying it completely."

Meeting in Almaty on 22 May (the day before the Majilis second reading), the head of the Russian Orthodox Church in Kazakhstan, Metropolitan Aleksandr (Mogilev), and the Vatican Nuncio Archbishop Francis Chullikatt discussed the "significant" issue of the new Law.

"Both sides agreed that, at the final stage of work on the new Law, it is also necessary to involve competent experts of the traditional religions of the country," the Russian Orthodox Church said on its website.

Russian Orthodox and Protestant leaders told the Majilis Working Group on 6 February of their objections to the way the provision over children's presence at worship meetings was then framed (see F18News 11 April 2018 http://www.forum18.org/archive.php?article_id=2368). (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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