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KAZAKHSTAN: Legal changes increase obstacles for holding religious events

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

As the regime declares a state of emergency and bans mass meetings in some areas, legal changes from 9 January increase the obstacles for holding religious meetings away from state-registered places of worship. Human rights defenders such as the Kazakhstan International Bureau for Human Rights and the Rule of Law have documented the regime's already severe restrictions on the right of peaceful assembly and to hold demonstrations. Orthodox Christmas night services (due on 6/7 January) in state of emergency areas have been cancelled.

On 29 December 2021, President Kasym-Zhomart Tokayev signed into law amendments to the Religion Law to make holding religious events away from state-registered places of worship more difficult. The amendments come into force on 9 January.

The new requirements come amid large scale nationwide demonstrations against the regime (<https://www.rferl.org/a/kazakhstan-toqayev-unrest-protests-government-resignation/31639961.html>). The protests were initially against fuel price rises, but have now embraced issues such as corruption and lack of democracy (<https://www.rferl.org/a/kazakhstan-protests-analysis-poverty-corruption/31641045.html>). President Tokayev declared a state of emergency and banned mass meetings (<https://www.hrw.org/news/2022/01/05/nationwide-protests-violence-rock-kazakhstan>) in some areas.

Night services for Russian Orthodox Christmas on the night of 6 to 7 January have been cancelled in areas under a state of emergency, according to Fr Yevgeny Ivanov, press secretary to the Russian Orthodox Metropolia in Kazakhstan. Such areas are Almaty, Almaty Region, Nur-Sultan and Mangistau Region, where the curfew runs from 11 pm to 7 am. "We intend to hold normal Christmas night services elsewhere, as well as day services everywhere," he told Forum 18 from Almaty on 5 January.

The Religion Law amendments do not change the current situation of religious communities without state registration having no permission to exist. All exercise of freedom of religion or belief by them remains illegal (see below).

Any state-registered religious community which wants to hold a pilgrimage or other event away from their own state-registered place of worship now has to have advance state permission for such an event, a burdensome process. Local officials are given many ways to arbitrarily refuse such requests. Some fear local police might also apply the new rules to regular worship meetings in rented venues (see below).

With the adoption of the new Religion Law amendments, state-registered religious communities are now required to:

- seek permission for such events from local administrations at least 10 working days in advance;
- and provide precise and exhaustive detail about the proposed event, some of which the religious community will find difficult to provide in advance. The precise details required include the date, start and end time, how people will get there, whether loud speakers will be used, and how many vehicles will be used as well as their travel route (see below).

It appears that only one-off special events registered religious communities want to hold away from their normal places of worship now require official permission in advance. The earlier version of the amendments would have required official permission for any meeting, including for meetings for worship in a rented venue (see below).

"Actually, they did not need to make the new rules," a legal specialist who wished to remain anonymous told Forum 18. "They just needed to apply the existing procedures for public gatherings (which are also problematic) (https://web.archive.org/web/20211204034631/https://bureau.kz/wp-content/uploads/2021/04/2021_report-pa.pdf) to religious events in public and open spaces". The Kazakhstan International Bureau for Human Rights and the Rule of Law has documented, in a report published on 6 April 2021, that the regime repeatedly severely restricts exercise of the right of peaceful assembly and to hold demonstrations (see below).

The legal specialist says everything will depend on how the police and other state agencies enforce the new law. "If they apply these new rules only in cases of religious services in public and open spaces (such as events in public squares or big congresses at a stadium), I do not see serious problems," the legal specialist told Forum 18. "If they apply these rules to regular religious services in rented buildings or offices, it will negatively impact many religious communities" (see below).

The legal specialist also questioned whether ordinary police officers would know that the new requirements would not apply to religious communities meeting in rented premises. Many Protestant, Jehovah's Witness, and Hare Krishna communities are among those which do not own their own buildings and meet in such premises. "Much will depend on the instructions of religious affairs authorities and the discretion of local or national officials" (see below).

Between 1 January and 31 August 2021, the regime fined at least 15 people (one twice) and three organisations for holding meetings for worship, hosting such meetings, maintaining places for such meetings, or holding other religious rituals without state permission. After a Muslim was fined for leading Friday prayers, a police officer told Forum 18: "It is not allowed to pray at any location unless it's approved." Challenged about open surveillance of Baptists meeting for worship, an official claimed: "This isn't spying, this is monitoring," adding "we go to mosques, churches". The Religion Law amendments do not change the legal framework which facilitates such violations of freedom of religion and belief (see below).

The amendments describe seeking permission for such religious events from local administrations as "notification". But as officials must give permission before such events are allowed, this represents a requirement for advance state permission to exercise human rights, one human rights defender told Forum 18 (see below).

The legal specialist also questioned why one-off religious events on the streets, away from a place of worship a community normally uses, require a special type of permission. "Such events would be more akin to demonstrations or processions," the legal specialist notes. "And for this we already have a Law on the Procedure for Organising and Holding Peaceful Meetings".

The amendments also include a new definition in Article 1 of the Religion Law of "informational material of religious content" subject to prior compulsory state censorship, which specifies "printed, electronic and other information of religious character on any device" (see below).

All the other provisions of the amendments on Visual Information and Religious Activity – which were prepared by the Culture and Sports Ministry - are directed at ensuring that announcements, advertisements and menus are published in both Kazakh and Russian. It remains unclear why the Religion Law amendments were included in amendments connected with language.

"They're behaving very strangely"

No election in Kazakhstan – including January 2021 parliamentary elections - has ever been found to be free and fair (<https://www.osce.org/odihr/elections/kazakhstan>) by Organisation for Security and Co-operation in Europe (OSCE) election observers. The Parliament has always been controlled by the ruling Nur Otan Party.

The process of preparing and considering these Religion Law amendments has been opaque. The Information and Social Development Ministry – whose role includes restricting freedom of religion or belief – initially included the amendments in a proposed new Law on Social Control made public in January 2021 (https://www.forum18.org/archive.php?article_id=2680). The Prime Minister's Office sent the draft Law for revision on 29 June 2021, ordering that the provisions amending the Religion Law be removed from that Law.

Yet the Religion Law amendments were suddenly added to amendments to Laws on Visual Information more than seven months after the Majilis had adopted the Visual Information amendments in the first reading and just before they were due for their second reading on 6 October 2021 (https://www.forum18.org/archive.php?article_id=2691). "They're behaving very strangely," one individual who has been monitoring the proposed amendments told Forum 18 from the capital Nur-Sultan in October 2021.

Amendments adopted

After the Majilis adopted the amendments on 6 October 2021 they were sent to the upper house, the Senate. After removing several provisions, the Senate's Plenary Session adopted the amendments in both their first and second readings (https://www.forum18.org/archive.php?article_id=2701) on 2 December 2021. After the revised amendments were adopted in their second reading, the Senate sent them back to the Majilis, the lower house.

On 8 December 2021, the Majilis approved the amendments as adopted by the Senate and sent them to the President. President Kasym-Zhomart Tokayev signed them into law on 29 December 2021, according to the presidential website. The text was published officially in Kazakh and Russian on 30 December 2021. They come into force on 9 January 2022, 10 calendar days after their official publication.

The telephone of Yerzhan Nukezhanov, chair of the Information and Social Development Ministry's Religious Affairs Committee (https://www.forum18.org/archive.php?article_id=2409), went unanswered each time Forum 18 called on 5 January 2022.

Beimbet Manetov, head of the Department of Law Enforcement Practice in the Field of Religious Activities at the Religious Affairs Committee, had led the work on the Religion Law amendments. He and other staff in the Department were on leave on 5 January, a colleague told Forum 18.

Already tight restrictions on exercising freedom of religion or belief

Against international law, the regime bans the exercise of freedom of religion or belief without state permission (https://www.forum18.org/archive.php?article_id=2409). Members of many religious communities have described the state registration process as "complex", "burdensome", "arbitrary", "unnecessary" and "expensive".

Even communities that have state permission need permission for the location of where they hold meetings for worship. Those who violate these provisions, and those who choose to meet for worship without seeking state permission, face punishment.

In February 2019, police raided a group of Hare Krishna devotees as they were meeting for devotional chants (https://www.forum18.org/archive.php?article_id=2464) in an Atyrau flat. The Regional Religious Affairs Department drew up a record of an "offence" against the community and sent it to court. However, the court sent the case back. The Department later withdrew the case. The raid came four months after the Hare Krishna community had gained state registration.

The regime also imposes tight restrictions on religious literature and other materials (https://www.forum18.org/archive.php?article_id=2409). Religious literature is subject to compulsory pre-publication censorship and – together with icons, pictures and jewellery with religious inscriptions - can be distributed only in state-approved venues. Sharing faith with others without state permission is also banned.

In January 2021, a court in Pavlodar fined Alyona Aidina for offering a copy of the Koran for sale online (https://www.forum18.org/archive.php?article_id=2634).

The regime has used state "expert analyses" of religious texts to target religious communities. Claims that reading Jehovah's Witness texts harms mental health led to Jehovah's Witness communities in March and April being ordered to pay over three years' average wages to plaintiffs. A Justice Ministry "expert analysis" was used to make the claims (https://www.forum18.org/archive.php?article_id=2634), which succeeded despite 63 per cent of the "analysis" being plagiarised and an academic analysis finding it "cannot be accepted as comprehensive, complete, scientifically based, or in accordance with the normative demands presented to the specialists for investigation".

New restrictions on religious meetings

The changes to the Religion Law make the ability of state-registered religious communities to hold events away from their state-registered places of worship more difficult.

Under a new Religion Law Article 7-1, any religious community which wants to hold a pilgrimage or other event away from their own place of worship must now get state permission for the event in advance.

A provision (added while the text was in the Senate) specifies that this permission requirement does not apply to religious events specified in Religion Law (https://www.forum18.org/archive.php?article_id=2409) Article 7, Part 2. This states: "Religious services, religious rituals, ceremonies and meetings can be held unobstructed in places of worship and at sites assigned to them, in shrines, in institutions and premises of [registered] religious associations, at cemeteries and in crematoria, homes, public eating venues in cases of necessity on condition of observing the rights and interests of people living nearby."

The Religion Law changes require state-registered religious communities:

- to seek permission for such events from local administrations at least 10 working days in advance;
- and provide precise and exhaustive detail about the proposed event, some of which the religious community will find difficult to provide in advance. The precise details required include the date, start and end time, how people will get there, whether loud speakers will be used, and how many vehicles will be used as well as their travel route.

Officials given many ways to arbitrarily ban religious meetings

Local officials are given many ways to arbitrarily refuse requests for permission to hold meetings. They have five working days from receiving the application to request extra information if they think the planned activity or the information supplied is not in accordance with state requirements.

The state-registered religious community would then have two working days to submit a revised application. If the community fails to lodge the revised application on time, or fails to remove any unspecified inconsistencies in the application, officials can withhold permission up to two calendar days before the meeting or event is due to take place.

Decisions on whether an application does not meet state requirements, has unspecified inconsistencies, or the information supplied is incomplete or unacceptable in any way, are made by state officials. The only possibility of appeal is to resubmit an application.

"Communities would have arranged transport and amplifying equipment, and advertised the event, and then at the last minute receive news that the local authority had banned it, when it would be too late to get their money back," one religious leader told Forum 18 in August 2021 (https://www.forum18.org/archive.php?article_id=2680).

The amendments describe seeking permission for such religious events from local administrations as "notification". But as officials must give permission before such events are allowed, this represents a requirement for advance state permission to exercise human rights (https://www.forum18.org/archive.php?article_id=2680), one human rights defender told Forum 18 in August 2021.

The legal specialist also questioned why one-off religious events on the streets, away from a place of worship a community normally uses, require a special type of permission. "Such events would be more akin to demonstrations or processions," the legal specialist noted. "And for this we already have a Law on the Procedure for Organising and Holding Peaceful Meetings".

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"Actually, they did not need to make the new rules," the legal specialist told Forum 18. "They just needed to apply the existing procedures for public gatherings (which are also problematic) to religious events in public and open spaces."

The Kazakhstan International Bureau for Human Rights and the Rule of Law has documented, in a report published on 6 April 2021 (https://web.archive.org/web/20211204034631/https://bureau.kz/wp-content/uploads/2021/04/2021_report-pa.pdf), that the regime repeatedly severely restricts exercise of the right of peaceful assembly and to hold demonstrations. The report provides a detailed analysis of the regime's domestic legislation and practices compared with legally-binding international human rights obligations. This includes documenting all aspects of the preparation, organisation, and holding of peaceful assemblies by civil activists and the regime's hostility to such assemblies.

Between 1 January and 31 August 2021, the regime fined at least 15 people (one twice) and three organisations for holding meetings for worship, hosting such meetings, maintaining places for such meetings, or holding other religious rituals without state permission (https://www.forum18.org/archive.php?article_id=2685). After a Muslim was fined for leading Friday prayers, a police officer told Forum 18: "It is not allowed to pray at any location unless it's approved." Challenged about open surveillance of Baptists meeting for worship, an official claimed: "This isn't spying, this is monitoring," adding "we go to mosques, churches."

How will new amendments be implemented?

A legal specialist says everything will depend on how the police and other state agencies enforce the new law. "If they apply these new rules only in cases of religious services in public and open spaces (such as events in public squares or big congresses at a stadium), I do not see serious problems," the legal specialist told Forum 18 from Almaty on 5 January. "If they apply these rules to regular religious services in rented buildings or offices, it will negatively impact many religious communities."

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Violating human rights obligations

Kazakhstan's international human rights obligations require the regime to protect the right to freedom of assembly, and of the interlinked freedom of religion and belief. "The right to freedom of peaceful assembly can be enjoyed and exercised by individuals and groups (informal or ad hoc), legal entities and corporate bodies, and unregistered or registered associations, including trade unions, political parties and religious groups," states the Guidelines on Freedom of Peaceful Assembly ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e)), produced by the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe's Venice Commission.

"A prior notice requirement is a de facto interference with the right to freedom of assembly, and any such requirement should therefore be prescribed by law, necessary and proportionate," the OSCE/Venice Commission Guidelines add. "A notification regime should never be turned into a de facto authorization procedure. The procedure for providing advance notification to the public authorities should not be onerous or overly bureaucratic."

Similarly, the OSCE / Council of Europe Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (<https://www.osce.org/files/f/documents/9/9/139046.pdf>) note that under international human rights law: "State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization."

The Guidelines also note that this includes "pilgrimages and participation in assemblies and other religious events," and in paragraphs 5 to 9 outline the only legally permissible grounds on which the freedom can be limited. The regime's Visual Information and Religious Activity amendments ignore these grounds.

Separate proposed Religion Law amendments still current?

The Information and Social Development Ministry has separately prepared other draft amendments to both the Religion Law and the Administrative Code.

According to July 2021 drafts (https://www.forum18.org/archive.php?article_id=2680) seen by Forum 18, the Religion Law changes would remove the requirement for religious objects (such as icons, prayer mats, Koran stands, religious pictures or jewellery) to need state approval before they can be sold or distributed. Many people have been fined for offering such items for sale without state permission. The requirement for religious literature published by state-registered religious organisations to undergo state censorship before it could be published, distributed or imported would be removed. However, anyone else producing written religious materials would have to submit them for prior compulsory state censorship.

According to July 2021 drafts (https://www.forum18.org/archive.php?article_id=2680) seen by Forum 18, the Administrative Code changes would halve fines for some "offences" under Administrative Code Article 490 ("Violating the Religion Law") (https://www.forum18.org/archive.php?article_id=2753), and the possibility of a warning on the first occasion would be introduced. The Information and Social Development Ministry also prepared these amendments, and in August 2021 a Justice Ministry official told Forum 18 that "these amendments haven't been discussed and approved yet".

Officials at the Information and Social Development Ministry's Religious Affairs Committee were unavailable in January 2022 to answer questions, so it is unclear if the July 2021 changes to the Religion Law and Administrative Code are still being considered. If they are, other ministries and then the government as a whole would have to approve any draft laws before they are sent to Parliament for adoption. (END)

More reports on freedom of thought, conscience and belief in Kazakhstan (<https://www.forum18.org/archive.php?country=29>)

For background information, see Forum 18's Kazakhstan religious freedom survey (https://www.forum18.org/archive.php?article_id=2753)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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