

Freedom of Religion and Belief in Central Asia: Trends and Challenges

“Human Rights – Rights of the Believer”

Central Asian Forum

Kyrgyzstan

Kazakhstan

Tajikistan

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Open Viewpoint Public Foundation

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«Human Rights—Rights of the Believer» Central Asian Forum

Bishkek 2015

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This compilation contains material from the Human Rights-Rights of the Believer Central Asia Forum. It includes reports on the situation and trends in the sphere of freedom of religion and belief in the Central Asian countries of Kazakhstan, Kyrgyzstan, and Tajikistan, as well as material from forum discussions, conclusions, and recommendations.

The opinions of the editorial board may not necessarily reflect the opinions of the authors of the publication.

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The Open Viewpoint Public Fund is a non-profit organization whose mission is the democratization of society and protection of human rights. Open Viewpoint began its work with a project to ensure the right to justice for people affected by criminal cases related to a clash between security forces and religious adherents in the city of Nookat in the Osh oblast in 2008. In 2010, as members of the Constitutional Council, Open Viewpoint representatives participated in the development of several laws included in the draft of the Constitution of the Kyrgyz Republic, including the section on human rights. Later work included bringing existing laws into accordance with the Constitution of the Kyrgyz Republic that was adopted June 27, 2010. Open Viewpoint conducts monitoring on the observance of human rights, research in the sphere of protecting the rights of vulnerable populations. The organization has conducted research on the freedom of religion, freedom of peaceful assembly, the right to access to information, rights of ethnic minorities, and international protection mechanisms. With the goal of improving processes in the sphere of human rights the organization holds seminars, conferences, and citizens forums to discuss society's most relevant problems. As a result of research on the situation of freedom of religion and belief, Open Viewpoint has published a series of publications in the Kyrgyz Republic. The majority of the organization's work is dedicated to education and information.

Contributors

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Preface

This compilation is based on reports presented at the Central Asian Forum held from July 29-31 2015 on the shores of the unique lake Issyk-Kul. The Human Rights-Rights of the Believer forum was dedicated to issues of freedom of religion and belief, and gathered experts, human rights activists, journalists, and representatives of religions organizations from Kyrgyzstan, Kazakhstan, and Tajikistan. Organizers of the event included the Open Viewpoint public foundation together with the Interfaith Council with financial support from the Norwegian Helsinki Committee. The UN Office of the High Commissioner for Human Rights provided assistance in organizing the participation of experts from Kazakhstan and Tajikistan. The primary goal of the forum was the creation of a platform for discussion for leading experts in the sphere of religion and human rights. Preparation, implementation, and discussion convinced forum participants of the relevance of the problems considered for all countries in the Central Asian Region.

In each report, expert touched on a wide range of rights to freedom of religion and belief. Reports present detailed information in the sphere of religious freedom in countries throughout the region, providing an overview of legal provision and practice implementing freedom of religion in Kazakhstan, Kyrgyzstan, and Tajikistan. Reports focus primarily on comparative analysis of national legislation of international standards and general tendencies of state policy in the religious sphere. Inconsistency between national legislation and international standards is characteristic in the region, as is state interference in internal affairs of religious organizations, in particular the appointment of the heads of Muslim religious associations. During open discussion, forum participants learned about achievements and problems in the sphere of religion throughout the region.

At the conclusion of the forum, participants made recommendations for improving legal regulation of the freedom of religion and belief in Central Asia in accordance with international obligations.

We hope that the proceedings and published reports from the Forum will attract public attention to the issues of freedom of religion and belief, contribute to further discussion, and enable better cooperation between the state and civil society as well as and provide common solutions for resolving problems.

Analysis of Trends in Legal Regulation of the Right to Free Conscience, Religion, and Belief in the Republic of Kazakhstan

Yevgeniy Zhovtis

Kazakhstan

Right to Freedom: Individual and Collective Rights

Fundamental political rights and civil freedoms, such as the freedom of speech and expression, association and peaceful assembly, and religion or belief are often violated in many countries of the world. Problems with their provision are often related to political context, the character of political regimes, and the level of social development. In the first place, it is necessary to define the sources of existing problems in the sphere of providing these rights.

(1) Problems arise already at the level of formulating a definition: the right, and freedom, or right to freedom. It is important in principle, that international legal documents use the term “right to freedom”. Not the right to expression and speech, not the right to associate, not the right to assemble, not the right to religion or belief, but rather the right to free speech, assembly, association, and religion or belief. The issue is that the right to associate, assemble, or religion should be provided by the state. The state provides these rights and establishes the rules for using these rights. The term “right to freedom” means a guarantee of non-interference from the state—this is an entirely different approach. Democratic governments *guarantee freedom* to associate, assemble peacefully, expression, and religion or belief and provide the right to this freedom. This approach guarantees freedom of choice and does not demand special laws on public association, the media, peaceful assembly, or religious activity. In contrast with democratic governments of Europe, Central Asian governments begin from the position of providing rights to associate, peacefully assemble, to express oneself and practice ones religion or belief, but while setting certain limits. The limitations are established arbitrarily and on the basis of state privilege. Thus, there are different approaches and varying methods of legal regulation.

(2) Another problem is the understanding that international law and international practice in human rights should be considered as norms and principles, rather than norms and rules. This is the realization of fundamental principles in human rights and a values approach. Without accepting that approach, which considers principles and values of human rights in at the legislative level it is impossible to provide basic rights and fundamental human freedoms and protect them from undue restriction by the state.

Why, despite having ratified international agreements on human rights (pacts, conventions, etc.) and according to their constitutions being member states of the OSCE, does national legislation

practically never align with law enforcement or rights protection in practice, even in the judiciary? The answer to this question lies in the political will to develop national legislation and law enforcement practice bringing them closer to fundamental principles of international standards. In several member states of the OSCE, including Kazakhstan, the principles above are not only not mentioned in legal documents but also rarely used in law enforcement, including the judicial practice. This approach does not guarantee that freedom of religion or belief will be guaranteed and protected in accordance with modern legal concepts.

(3) Further complications arise from the right *of every person* to freedom of conscience, religion, and belief, including to form, adhere to, choose, and change previous choices, as well as lawful behavior. This right is critical in the sphere of human rights and without it human rights lose a large part of their actual content while remaining declarations. Starting with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and ending with the constitutions of many states, situations falling into the area of freedom of religion or belief use the term *of every*. In this way rights granted are not collective but *individual rights to freedom*, including in collective form.

(4) The problem is that legislation and law enforcement practice are based on the understanding of freedom of conscience and related legal regulation conditions concerning “every person” is reduced to freedom of religion. As a result, legislation on freedom of conscience has become accepted as special, separate, and religious. Priority is given to religious groups and not the person who becomes an «appendage» to the faith, and the right “of every person” to freedom of conscience remains in the legal system as only a declaration. The Director of the Institute of Religion and Law from Russia A Pchelintsev¹ attempted to classify or divide the substantive characteristics of the right to freedom of religion or belief into two groups: individual and collective entitlements.

Individual Entitlements:

- 1) The right to hold any belief, including religious beliefs (practice any religion);
- 2) The right to not adhere to any belief or practice any religion;
- 3) The right to change belief or religion;
- 4) The right to create new ideologies or new religions;
- 5) The right to express and disseminate religious or other beliefs and act in accordance with them;
- 6) The right to receive religious or other, according to one's beliefs education of one's choice;
- 7) The right to provide religious or other ideological upbringing and education to one's children;
- 8) The right to protect one's children from religious or other ideological education or upbringing;
- 9) The right to have free access to places of worship;
- 10) The right not to give any oath contrary to a religious person or person with other beliefs;

¹Pchelintsev A.V. Freedom of Conscience and Religion as a Legal Institution. 2004. Available online at: www.ateist.ru/4r10.rtf

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- 11) The right to openly express one's religious or other beliefs with a neutral attitude from the state regarding laws concerning religion or other beliefs;
- 12) The right to privacy of one's religious or other beliefs;
- 13) The right to exemption from civic duties if they are contrary to the belief or religion of the citizen, and if necessary the right to substitute one duty for another.

Collective (joint) entitlements:

- 14) The right to free association in religious or other organizations, organized by ideological choice, which can be registered in the prescribed manner;
- 15) The right to establish and maintain freely accessible places of worship and assembly;
- 16) The right to express and disseminate one's belief, religion, and practices without any type of coercion or interference from the state and others;
- 17) The right to obtain and maintain places of worship, hold and visit religious services and events;
- 18) The right to manage associations formed on the basis of ideology by self-government and in accordance with the hierarchies and institutional structures, including electing, appointing, and changing personnel in accordance with internal requirements;
- 19) The right to produce, purchase, import, export, and distribute ideological and religious literature, print and audiovisual literature as well as other media, used for religious or other activities;
- 20) The right to create private schools and manage them, as well as conduct educational, cultural, charity, and social activities;
- 21) The right to seek and obtain voluntary material and material and financial assistance from individuals and legal entities to provide for activities.

(5) In many countries in the OSCE region legal regulation and law enforcement generally follow the path of imposing restrictions on the collective form of the right to freedom of conscience and religion. These restrictions are automatically distributed to “every person” meaning that for «every person» the possibility of using these rights takes form only within the framework of religious associations. Legal regulations in the countries of Central Asia, including Kazakhstan, have led to problems for “every person” that is a religious believer for the spread of his or her views, the acquisition and distribution of religious literature, religious education of children, and more.

In view of the above, we can conclude that legal regulation of freedom of conscience and religion or belief in Central Asia and Kazakhstan is based on a series of erroneous conceptual ideas, which are reflected in legislation and law enforcement practice.

Primary Contentious Issues of Kazakhstan Legislation in the Sphere of Guaranteeing Freedom of Conscience and Religion or Belief²

² This section uses analysis of RK legislation on freedom of conscience and religion (worship) and correspondence between standards (“Kazakhstan International Bureau for Human Rights and Rule of Law” 2014)

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Legislation of the Republic of Kazakhstan in the sphere of guaranteeing freedom of conscience and religion (worship) is developing, in general, but not towards the recognition, provision, and protection of individual rights to freedom of conscience and religion, but rather towards regulation of these rights as collective rights, such as the right to create religious associations and conduct religious activities.

(6) The only law beyond the Constitution of the Republic of Kazakhstan that contains provisions for freedom of conscience and religion (worship) is the Law on the Legal Status of Foreign Citizens.³ According to article 13 of this law, foreigners located in Kazakhstan are “*guaranteed freedom of conscience equally with citizens of the Republic of Kazakhstan. It is prohibited to incite hatred in connection with religious beliefs*”. The primary special regulatory act in this area for Kazakhstan is the RK Law on Religious Activities and Religions Associations from 2011.⁴ Based on terms and definitions given in the law, national legislation establishes restrictions, several of which have a discriminatory character. For example, the understanding of “religious activities” as determined by the law is so wide that it includes any activities of religious believers. However, the definition of place of worship (religious building) is contrary to international standards on the right to freedom of conscience and religion. The definition of “religious association” as a voluntary association of citizens or foreigners “established in a lawful manner” means that any other type of organization is illegal. However, this is contrary to international standards regarding the right to freedom of conscience and religion for individuals, as well as together with others without interference of the state, as well as the right to freedom of association.

(7) The definition of missionary activity, as activity aimed at disseminating doctrine on behalf of registered religious organizations, violates international standards in terms of the *right of every person*, and not only religious groups having the right to disseminate their religious ideas. Moreover, it violates international standards related to the right to freedom of expression as a right to distribute any views, philosophical, religious, or other.

(8) Observations and comments from the OSCE/ODIHR, UN treaty bodies, and many experts on Kazakhstan legislation have noted discrepancy between international standards with provisions against restricting the right to freedom of conscience and religion (worship). Mandatory registration deprives religious organizations of the right to enjoy freedom of conscience and religion, especially those groups with fewer adherents or those that for other reasons were unable to obtain state registration.

(9) Several provisions in legislation do not comply with the principle of legal certainty and predictability (for example, it is unclear what is meant by “*acts committed with the use of religion and religious beliefs*,” or “*reduction of controllability in the country*”) and there are other questions as to the method of this regulation. Applicable in national legislation the general and

³Law “On The Legal Status of Foreign Citizens” RK №2337 from 19 June 1995. Available online: <http://adilet.zan.kz/rus/docs/U950002337>

⁴Law “On Religious Activities and Religious Associations RK”. № 483-IV from 11 Oct. 2011. Available online: <http://adilet.zan.kz/rus/docs/Z1100000483>

vague wording does not comply with the principle of legal certainty and predictability, so a number of articles of the Code of Administrative Offences and the Criminal Code of the Republic of Kazakhstan concerning the right of association, peaceful assembly and freedom of conscience and religion (worship) are defined by international and local experts as “political”.

(10) The law provides for the creation of a specialized state body—the Agency for Religious Affairs,⁵ created in 2011. The agency’s mission is to implement state regulation in the sphere of religious activity. In addition to the Agency of Religious affairs a government order from 30 January 2007 created the Research and Analysis Center for Religious Issues of the Ministry of Justice of the Republic of Kazakhstan,⁶ which later became part of the Agency. The objective of the center is to “organize research and analysis of the process of development of the religious situation in situation, informational-analytical and scientific-methodological support for state bodies, organizations, and citizens in the sphere of church-state relations and conduct religious investigations and provide religious expertise”.

(11) According to the Law on Religious Activity and Religious Associations, oversight of religious associations is the purview of local authorities. Their responsibilities include: making proposals to the law enforcement authorities to ban activities of individuals and entities who violate the legislation of Kazakhstan on religious activity and religious associations; consideration of appeals of individuals and legal entities about violations of Kazakh legislation in the religious sphere; registration of missionaries, and other. On the basis of these provisions it can be concluded that the regional authorities for religious affairs and local municipal governments are assigned law enforcement responsibilities against religious groups. It is obvious this approach by the state stigmatizes religious associations.

(12) At the same time, the creation of a Council for Relations with Religious Associations under the Government of the Republic of Kazakhstan is fully in accordance with international and foreign practice.⁷ The purpose of the Council is “*to develop proposals and recommendations for the formulation and implementation of the main directions of state policy in the sphere of religious activity and interaction with religious associations, strengthening spiritual harmony in society, and the harmonization of inter-confessional relations.*”⁸ At the same time, in spite of the very long-term goals and objectives of the Council, the body itself only includes two representatives from the religious associations representing the largest religious denominations: The Supreme Mufti, Chairman of the Spiritual Administration of Muslims of Kazakhstan, and the head of the Metropolitan District of the Russian Church in the Republic of Kazakhstan, Metropolitan of Astana and Kazakhstan. This is an example of the clear inequality of religious organizations in relations with the state.

⁵ Government Order of The Republic of Kazakhstan №888 from 1 August 2011. “Agency on Religious Affairs RK” // <http://adilet.zan.kz/rus/docs/P1100000888>

⁶Government Order of the Republic of Kazakhstan “On the Creation of A Government Institution “Research and Analysis Center for Religious Issues” №72 from 30 Jan.2007. // <http://adilet.zan.kz/rus/docs/P070000072>

⁷⁷Government Order of the Republic of Kazakhstan “On the Creation of a Council for Relations with Religious Associations” from 6 May 2000. №683. Available at: <http://adilet.zan.kz/rus/docs/P000000683>.

⁸ Ibid P.5

Religious Expertise and Examination

(13) One specific institution highlighted in the law is the Institute of “*Religious Expertise and Examination*”. This institute of international experts is questionable from a legal point of view, and raises the question of the validity of granting the state the right to pass judgment on the acceptability of religious doctrine. In this framework, theological disputes and the subjective views of individual experts in religious studies underlie the legal and administrative decisions on the authorization or prohibition of a particular religion or belief. The same process can be used to subject a theological "philosophical" examination of secular philosophical views of a person or group of persons. This is an illegal intrusion of the state into the sphere of freedom of thought, conscience, belief and freedom of expression.

The Government of the RK developed rules for conducting religious investigations,⁹ and the Agency for Religious Affairs has developed protocol for the selection of experts for examinations.¹⁰ In accordance with point 2 of the protocol, to be an expert for conducting religious examinations, the person selected must be *an individual with higher or postgraduate education in areas related to religious affairs and with work experience (not less than one year) in working with religious affairs*. This selection process itself lends doubt to the quality of religious examinations and their scientific validity. It suffices to mention that a number of examinations completed by these experts produced extremely negative conclusions by leading Kazakhstan and international religious studies scholars.

The Research and Analysis Center for Religious Issues and Agency for Religious Affairs also developed a methodological framework for conducting religious investigations and examinations.¹¹ This framework prescribes methods based on subjective criteria, which can form the basis of legal decisions about registration of religious associations. Thus, experts have the right to make legally significant decisions relating to religious beliefs, with corresponding prohibitions of some faiths through the exclusion of registration of religious associations and their followers.

(14) In essence, and as a result of the Republic of Kazakhstan in establishing practices known in Soviet times but prohibited by the RK constitution, there is an institution of censorship of literature and ideological control, and as a result religious associations may not be allowed to register. This demonstrated that freedom of conscience and religion (worship) in the RK is not regarded as an individual right. The undesirability of certain attitudes must not serve as basis for their prohibition, including through the refusal to register religious associations. In accordance with international standards, mandatory registration of associations, including religions, should

⁹Government Order RK “On Approval of Rules for Religious Expertise and Examination and Repeal of Certain Decisions of The Government of the RK”. №209 from 7 Feb. 2012. // <http://adilet.zan.kz/rus/docs/P1200000209>.

¹⁰ Order by the Representative of the Agency of Religious Affairs of the RK №112 from 30 Oct. 2012. “On Approval of Protocol for Selecting Experts for Conducting Religious Expertise and Examination” // <http://adilet.zan.kz/rus/docs/V1200008116>.

¹¹Methodological framework for Issues of Conducting Religious Expertise and Examination. Almaty, 2013. RGU. “Scientific-Research and Analysis Center for Religious Issues” Agency of Religious Affairs of the RK.

not be required, and religious organizations, whether formal or informal should be free to establish themselves and act while their actions are not cause of unlawful activity.

Registration

(15) Religious associations in the RK are divided into local, regional, and national. For registration of a local religious association no fewer than 50 followers are required, for a regional—no fewer than 500, for a national—no fewer than 5000. These requirements are restrictive, disproportionate, and discriminatory against religious associations. According to administrative and criminal legislation of the RK, religious activity without registering a religious association is forbidden and subject to prosecution. The law of the RK on the state registration of legal entities¹² provides an entire range of grounds for refusal of registration and re-registration with the state of legal entities and their subsidiaries. In addition to all grounds for refusal for state registration for all legal entities, for religious associations especially legislation establishes additional grounds for refusal of registration and re-registration, established in the law “*On Religious Activity and Religious Associations in the Republic of Kazakhstan*” (P. 11). Thus, for registration religious associations face additional obstacles in registering officially.

(16) The new law on religious activity and religious associations that came into force in 2011 contained provisions on the mandatory re-registration, and as a result between 2012-2013 hundreds of religious organizations were eliminated. In September of 2013, the imam of the independent Fatikha mosque was prosecuted under Art. 375-1 of the Code of Administrative Offenses with a fine in the amount of 50 MCI (425 euros). The Fatikha association was registered in September 2005 at the home address of the Imam, but in 2012 the group was not allowed to re-register because it refused to join the Spiritual Administration of Muslims of Kazakhstan. Activity by unregistered religious associations is forbidden under threat of penalty, which does not meet international standards for providing the rights to freedom of conscience and religion (worship).

Religious Practice

(17) Determining place of worship and religious activities is difficult because of restrictions on the conduct of religious rites, ceremonies and meetings, missionary activity on site, and in buildings owned by the state. Meetings for worship in private homes are not allowed. In Aktobe, one group of resident renovated their homes to serve as houses of worship for the Christian Evangelical Pentecostal Church “Source of Life” religious association. By order of the Aktyubinsk regional court, the building must return to being used as its designation as a private dwelling.

¹²Law “On State Registration of Legal Entities and Accounting Registration of Subsidiaries and Representatives of the KR”. №2198 from 17 Apr. 1995., <http://adilet.zan.kz/rus/docs/Z950002198>.

(18) There are certain restrictions on religious worship in detention centers and prisons. The New Penal Code of the RK¹³ forbids discrimination against the convicted on the basis of religion, and they are guaranteed freedom of religion and worship (art 13.). Protocols¹⁴ regulate the order of visits to prisoners by representatives of religious organizations. Individual religious rites are only permitted near sleeping areas and no general areas are provided, which constitutes a violation of the right to worship in cooperation with others.

Dissemination of Religious Literature

(19) In accordance with the law on religious activity and religious associations and these protocols in all regions of Kazakhstan (the capital, main city, and the regions) orders were issued special stationary facilities for the distribution of religious literature, other informational materials of religious content, and religious items. Distribution of religious literature only after a positive review from religious examination is nothing more than the introduction of censorship, which is prohibited by the Constitution of Kazakhstan which states: “*Freedom of expression and creativity are guaranteed. Censorship is prohibited.*”¹⁵

(20) In November of 2013, a raid was conducted on the unsanctioned sale of religious literature by the prosecutor’s office and the Department of Religious Affairs, and the Office of Internal Affairs in the city of Astana. As a result 3 administrative cases were opened, 10 legal entities received warnings about violations of the law, and more than 100 copies of religious literature were seized. Authorities discovered around 40 points of sale of unsanctioned religious literature in the city of Astana. In the specific case of Islamic literature, practically all literature that is not of the Hanafi Sunni type is banned.

Missionary Activity

(21) Missionary work (from Latin mission-posting, assignment) as it is widely understood, is one type of religious activity that aims to appeal to non-believers or members of other religions. The law of the Republic of Kazakhstan on Religious Activity and Religious Associations¹⁶ practically equates the spread of worship with missionary activity,¹⁷ indicating that missionary activity is the dissemination of beliefs from religious associations registered in Kazakhstan. This provision is very contradictory. How are religious organizations supposed to be able to gather the minimal number of adherents required for registration when missionary activity to attract more members is allowed only for registered organizations? For the purposes of registration it is necessary to

¹³ Penal Code of the KR from 05 July, 2014. Available online: <http://adilet.zan.kz/docs/K1400000234>.

¹⁴ Order of the Ministry of Internal Affairs of the RK PK №503 from 8 Aug. 2014 “On Approval for Protocols for Creating Conditions of Worship for the Imprisoned”. Ministry of Justice of the RK 6 September, 2014. № 9722, <http://adilet.zan.kz/rus/docs/V14C0009722>.

¹⁵ Constitution of the Republic of Kazakhstan. Art. 20.

¹⁶ Law “On Religious Activity and Religious Associations in the RK”. №483-IV from 11 Oct. 2011., <http://adilet.zan.kz/rus/docs/Z1100000483>.

¹⁷ Ibid.

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distinguish between religious activity for spreading religions that already exist within the country and religious activity aimed at disseminating new doctrine.

(22) The state creates artificial barriers for missionary activity and the creation of religious associations. At the same time, legislation of the Republic of Kazakhstan is developing towards serious restriction of missionary activity as well. Between 2013-2014, authorities harassed any religious figures labeled as conducting so-called illegal missionary activity, explaining that disseminating doctrine requires a special permit for the specific individual distributing it, even for registered organizations. Furthermore, the use of missionary material with religious content and subjects of religious import is allowed only after positive review from the religious expertise and examination authorities. Beyond grounds for refusal of registration of missionaries related to legitimate concerns (threat to constitutional order, threat to public order and human rights, or threats to the health and morality of the population), review by religious examination and expertise authorities violates a number of international obligations.

Raising Children and Education

(23) According to the Law,¹⁸ the state must not interfere with the upbringing of children by their parents or other legal representatives according to their beliefs, except in cases when that upbringing threatens the life or health of the child, infringes upon his or her rights and limits his or her responsibility, as well as if it is directed against constitutional order, sovereignty, and the territorial integrity of the Republic of Kazakhstan. As part of this the *“leader of a religious association is required to take measures to prevent the involvement and (or) participation of underage minors in the activities of religious associations in the case of opposition of one of the minor’s parents or other legal guardian.”*¹⁹ At the same time recommendations from analysis of legislation indicate that the state is obliged to respect the freedom of parents and legal guardians to provide children with religious and moral education in accordance with their private beliefs. International standards about at what age children may independently decide their own beliefs regarding religion do not exist.

Liability

(24) The law of the RK on Religious Activity and Religious Association establishes *“liability for violating legislation of the Republic of Kazakhstan on religious activity and religious associations”* (art. 23). In the RK law on countering extremism²⁰ is used with the understanding of *“religious extremism”* as *“incitement of religious hatred or discord including activity associated with calls to violence, as well as any religious practice that calls for threats to security, life, health, and the morals, rights, and freedoms of citizens.”* The meaning of *“religious extremism”* is difficult to fill with legal content. Its assessment is often subjective and partially intrudes on the rights to freedom of expression. Given the very ambiguous term and definitions of

¹⁸ Law “On Religious Activity and Religious Associations of the RK”. №483-IV from 11 Oct 2011. Art. 1

¹⁹ Ibid

²⁰ Law “On Countering Extremism” art. 1, p. 5. <http://adilet.zan.kz/rus/docs/Z050000031>.

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“*extremism*”, including “*religious extremism*”, the subjectivity of religious evaluation and the recognition of certain religious groups extremist organizations may be quite arbitrary and inconsistent with the principle of legal certainty and predictability. In one example, in January 2015 four members of the banned movement Tablighi Jamaat were sentenced to 20 months in prison for participating in the activities of the banned organization.²¹

(25) It makes sense to at least replace the vague definition of extremism and included religious extremism, as they exist in Kazakhstan legislation with the definition used in the Shanghai Convention. In the Shanghai Convention, which has been ratified by Kazakhstan, the Declaration on Combatting Terrorism, Separatism, and Extremism²² provides a significantly clearer and more precise definition: “*‘Extremism’ is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.*”

(26) The activities of law enforcement agencies and national security agencies to combat terrorism, extremism in the world today are not connected with widespread control of all citizens and their organizations. The creation of specialized civil authorities to oversee religious organizations, media, and NGOs is an inefficient state practice and characteristic of totalitarian and authoritarian regimes. Despite the validity of protecting the secular character of the state, a ban on the establishment of political parties based on religion, or the support of those or other political parties and candidates for elections to representative bodies is highly questionable, since the interests of believers of various faiths have the right to be reflected in the legislative and representative bodies of national and local governments.

Conclusions

(27) At the base of many problems in the religious sphere are the conceptual representations of the content of the rights to freedom of religion or belief and how the state should ensure and protect these rights. Providing for national security, public order, the protection of constitutional order, health, morals, and rights and freedoms should be achieved following the fundamental principles of international human rights law. However, practice shows that often these goals are achieved by means that intrude upon the very essence of the right to freedom, depriving it to a great extent of its content. This creates an atmosphere of antagonism, conflict, and increases the risk of radicalization. Following the best modern forms and means of ensuring the right to freedom of conscience and religion or belief, promotion of tolerance, and understanding and non-discrimination in view of all the challenges facing the countries of Central Asia contributes to the development of democracy and peace in the region overall.

²¹ “January 2015 Media Survey: Freedom of Religion or Belief in Former Soviet States”. Media Collection “Forum 18”

²²Law “On Ratification of the Shanghai Convention on Combatting Terrorism, Separatism, ad Extremism RK” №316 from 18 Apr. 2002. Art 1. P. 1 pg 3, <http://adilet.zan.kz/rus/docs/Z020000316>.

Overview of Basic Problems for Realizing the Rights of Believers to Freedom of Worship in the Kyrgyz Republic

Dmitry Kabak

Kyrgyzstan

Regional Forum As Expert Discussion

The idea of holding a Central Asian Forum to serve as a platform for experts arose several years ago with the hopes of gathering experts from different countries of the region to discuss common trends and the situation in each country. The prospect of actually holding the forum became possible in 2015, thanks to the support of several organizations including the Norwegian Helsinki Committee, the UN Office of the High Commissioner on Human Rights, and human rights organizations and experts from Kazakhstan, Kyrgyzstan, and Tajikistan.

The Forum became a platform where experts had the opportunity to compare situations in the religious sphere in each country and discuss regional trends. Reports stimulated active discussion. For forum participants, problems of freedom of religion and belief in Central Asia are matters of both professional and practical interest. Participant attendees included members of the Public Advisory Council For Inter-ethnic and Inter-confessional Development under the President of the KR, as well as representatives from the Department of Ethnic and Religious Policy and Cooperation with Civil Society. For raising awareness and spreading information about issues of religion and faith the Forum invited members of the media, as well as representatives of organizations working towards the development of inter-confessional dialog.

Working within the Forum program, the Central Asian experts resolved to use OSCE recommendations for analyzing legislation on religion or worship.²³ This resolution was due to the status of the document, as Forum participants came from OSCE member states. OSCE recommendations impose obligations on member states, as well as provide an opportunity to choose uniform criteria in the implementation of policy in the religious sphere.

The organizers hoped that over the course of the forum it would be possible to complete a final document that summarized observations, conclusions, and recommendations in order to ensure freedom of religion and belief, promote development of inter-confessional dialog, and cooperation between governments and religious organizations.

²³Document from 28 September 2004. <http://www.osce.org/ru/odihr/13994>.

National Legislation in Kyrgyzstan on Freedom of Religion and Belief

In Kyrgyzstan, as well as in other Central Asian republics, the number of religious associations is growing. The characteristic dynamic of the growth of regional associations of citizens and diversity of religions is part of a trend of increasing religious diversity in the region. The situation in the sphere of freedom of religion and belief was reflected in Kyrgyzstan state policy.

The change of government in 2010 provided the opportunity to bring the Constitution of the Kyrgyz Republic and a range of laws of the KR into accordance with international UN human rights agreements. The landmark event, without which the changes could not have taken place, was the adoption by referendum of the new constitution on 27 June 2010. This new document includes a universal definition of freedom of religion and belief and accurately conveys the provisions of international UN human rights for which the Kyrgyz Republic is a party. All rights and freedoms are equally recognized both for believers and for persons who do not profess a religious belief. The adoption of a new constitution defined the most important direction of state policy in the sphere of human rights, and the task before the state and society is to ensure, in practice, guarantee human rights and freedoms, including the rights of believers.

The new version of the Kyrgyz Constitution adopted in 2010 included a full list of fundamental rights and freedoms, established certain rules and conditions, and determined the conditions for limiting the right to setting the relationship with the norms and principles of international law given the priority of human rights treaties over other international agreements. The 2010 Constitution strengthened the guarantee of freedom of religion and belief, along with other universal rights and freedoms respecting both believers and persons who do not profess any belief. Provisions of this Constitution prescribed universal provisions of freedom of religion and belief and also included the permissible limitations of rights in accordance with relevant UN human rights treaties.

Adoption of this new constitution prompted initiatives to bring national legislation into accordance with constitutional norms. So, from 2010-2011, the Ministry of Justice of the KR created a working group to identify and update existing laws to the new constitutional standards. Among the laws listed for updating was the law "On Freedom of Conscience and Religious Organizations in the KR". In order to avoid legal contradictions, it was decided to establish all universal human rights and freedoms related to religion in draft laws, and in relation to believers so that they would be able to use their rights in any area and in particular enjoy the right to religion and belief either alone or in community with others, and in public or private.

However, five years of the initiative to bring the law on religion into conformity with the 2010 Constitution has not yielded positive results. The current law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" was even in 2008 criticized by the Advisory Council of the OSCE ODIHR on freedom of religion or belief.²⁴ This is one of the reasons that Kyrgyzstan is still unable to ensure the recognition of all human rights and freedoms in the sphere of religion. Its provisions appear as vestiges, imposing a disproportionate restriction on the

²⁴ See Commentary on the Advisory Council of the OSCE ODIHR for Freedom of Religion and Belief for the draft Law "On Freedom of Conscience and Religious Organizations in the KR" 2008 (in English) online at <http://www.legislationline.org/documents/id/17622>.

number of rights and freedoms. The law was not only not brought into accordance with international human rights instruments of the United Nations to which the Kyrgyz Republic is a party, but in recent years has been amended to toughen requirements for the activities of religious organizations, ostensibly for the purpose of fighting prohibited organizations. Experience shows that those affected by these amendments have been organizations that follow the law and have registered officially.

State authorities sometimes view the exercise of universal rights and freedoms guaranteed by the constitution of the KR by religious believers negatively. The law leans toward repressive behavior and inhibits the realization of believers' rights and freedoms even if they are constitutionally guaranteed. The state body on religious affairs is driven more by the law on freedom of religion than the constitutional rights of believers, and as a result law-abiding citizens are among the believers can not use the full extent of universal human rights and freedoms.

Transformation of Individual Rights

In 2012, the KR law “On Freedom of Conscience and Religious Organizations in the KR”, passed in 2008, was amended with changes that do not correspond with ensuring freedom of thought, conscience, and religion in different spheres of life. According to this law, believers are entitled to their rights and freedoms in the religious sphere only after registering with the KR Ministry of Justice. This approach suggests that the law's authors introduced the mechanism of realization of individual freedom of religion or belief as a collective category - through the registration of a religious organization. Thus, the opportunity for believers to enjoy their rights and freedoms of believers comes only after the registration of a religious organization. At the same time the Constitution of the Kyrgyz Republic, in accordance with international human rights standards, considers each person the possessor of freedom of religion or belief: “Everyone has the right to profess, individually or jointly with others any religion or no religion”.²⁵ However, under current law, freedom of religion and belief is recognized as a collective right, which requires a group of 200 people (199 does not count) for registration.

It is crucial that the KR law “On Freedom of Conscience and Religious Organizations in the KR” provide the possibility for believers to enjoy their human rights and freedoms in varying aspects of life, regulating public relations connected with the public sphere and determining the authority of state authorities in providing freedom of religion and belief as values protected by the KR Constitution and international agreements. Violations of freedom of religion and belief or action related to wrongful acts on the basis of religion should be included in the Code of Administrative Responsibility of the Kyrgyz Republic or the Criminal Code of the Kyrgyz Republic through relevant provisions of the acts involving penalties or defining criminal offenses.

State Policy in the Religious Sphere

Issues related to religious policy fall under the Kyrgyzstan National Strategy for 2013-2017. Reform of state policy in the religious sphere is a subject of attention of the Defense Council. At a

²⁵ Constitution of the KR. Art.32, P.2, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913>.

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3 November 2014 meeting, the Defense Council adopted the “Concept for State Policy of the Kyrgyz Republic in the Religious Sphere for 2014-2020”. In his speech at the meeting, President Almazbek Atambayev said: "State regulation in the sphere of religion will only increase, but taking into account the fundamental principles of freedom of conscience and human rights."²⁶

The concept of the state policy in the sphere of religion provides for the development of state-confessional and inter-religious cooperation. Its purpose is to fill the universal standards of freedom of religion or belief with practical content. The concept reflects a fundamental aspect of the constitutional system that the state remain neutral and all religions represented in the Kyrgyz Republic receive equal treatment. Program measures make up the base of the concept which should ensure freedom of religion as well as all human rights and freedoms in relation to the faithful, seeing them as positive state obligations enshrined in the Constitution of the Kyrgyz Republic and the international human rights treaties to which the Kyrgyz Republic is a party.

In Kyrgyzstan, proselytizing is one of the causes of conflict between local communities and new religious organizations, particularly those with Christian Protestant affiliation. Public statements sometimes include notes of accusations against religious minorities, including that they are a threat because they disunite ethnic bonds. These types of statements provoke violence against religious minorities.

Freedom of Association

Freedom of association, in general, is guaranteed in the Kyrgyz Republic when three initiators form a public association, which, as desired, receives the right to create a legal entity with judicial authorities. Other cases refer to the requirements for creating associations related to religion. Conditions for registering with the Ministry of Justice in the Kyrgyz Republic require registration with the State Commission for Religious Affairs for the KR, and in general there has been an observed trend towards a restriction of religious association registration. When registering with the government religious organizations must have 200 initiator members, an artificial obstacle especially onerous for religious minorities. In recent years there have been attempts to increase the number of initiator members to 500, or requiring 200 people per territorial jurisdiction (not specifying whether that jurisdiction is the oblast, region, or locality), which contradicts the principles of constitutional order in Kyrgyzstan as a unitary state, the unity of its territory and the right of religious organizations to independently determine their organizational structures.

According to the law “On Freedom of Conscience and Religious Organizations in the KR” in Kyrgyzstan religious organizations have limited rights in creating unions, associations, and legal entities, with the exception of cases related to one denomination. Restrictions that exist in the law do not meet the grounds established for limiting rights as explained in the KR Constitution²⁷ or international UN human rights agreements.²⁸

²⁶ Available at: <http://www.president.kg/ru/news/4818>.

²⁷ Constitution of the KR. Art. 20, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913>.

²⁸ Concerning limitations stipulated by the Constitution of the Kyrgyz Republic and the international treaties on human rights in relation to freedom of religion and belief, freedom of association, freedom to seek, collect, receive and impart information, freedom of expression in any way, etc.

Freedom of Expression of Belief

In accordance with international standards, everyone has the right to express their religious and non-religious convictions publicly and privately. The Constitution emphasizes the equality of all religions before the law. However, contradictions in the law and its incompatibility with constitutional norms in practice violate freedom of expression. This applies, above all, to the ban on dissemination of doctrine (missionary activity) and public preaching by missionaries (which are often understood to be foreign nationals), whose time in the country and possibilities for visa extension are limited. Missionaries are vulnerable because, as foreign nationals, they face administrative expulsion (deportation). Moreover, bureaucratic procedures require periodic re-registration, which requires additional confirmation of their authority, associated paperwork, additionally limited by a maximum length of stay within the territory of the Kyrgyz Republic.

Protecting the Rights of Freedom of Religion and Belief: Experience of the Religious Community

Representatives of religious communities themselves rarely turn to judicial authorities in order to defend their rights for several reasons including stereotypical attitudes towards proselytizing and lack of trust. However, Kyrgyzstan does have an example of a religious community that has successfully defended its rights within the judicial system.

Based on the principles of freedom of belief it is possible to refuse military service. In Kyrgyzstan this right is accepted and enforced by the state through alternative service or a payment to the state budget. In 2014, the community of Jehovah's Witnesses filed a complaint with the Constitutional Chamber of the Supreme Court of the KR of its opposition to paying into the military budget. The Constitutional Chamber of the Supreme Court of the KR agreed with the complaint and decided that in issues of alternative non-military service and monetary payment, in cases of exemption people should be engaged in some government institution not affiliated with the KR Ministry of Defense.

Other examples of the protection and restoration of the rights of believers have also come from the Jehovah's Witness community. In 2014, in the Constitutional Chamber of the Supreme Court of the KR recognized as unconstitutional one statute of the law that violates the right to association. At the request of the community, a regulation on the harmonization of the list of founders of religious organizations with local keneshes (councils) has been canceled. The complaint was based on the fact that the right of association implemented by a group of believers is on the basis of their common beliefs, in which case local councils are irrelevant. The harmonization of lists of members of the organization is an interference with freedom of association and the self-government of religious organizations. The complaint was accepted favorably and that provision was abolished by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic as contrary to constitutional norms.

On Freedom of Religion and Belief in the Republic of Tajikistan²⁹

Muatar Khaidarova

Tajikistan

According to the Constitution of the Republic of Tajikistan, the country is a secular state. However, Tajikistan has observed an increase in the influence of Islam in all spheres of public life. The majority of the population observes Islam, with Sunni Islam being the primary denomination. A small portion of the population is Christian and other religions or not religious. According to evaluation by the Committee for Religious Affairs, which manages the traditions and religious life for the government of the Republic of Tajikistan, within the country 96.6% are adherents of Hanafism, which is part of Sunni Islam. Another 2.8% or 220,600 people are adherents of the Ismaili branch of Shia Islam. Only 0.6% of the population or 48,000 people are Christians or adherents of other religions, or not religious.³⁰

Review of National Legislation

Human rights and civil rights to freedom of religion and belief are regulated and protected by the Constitution of the Republic of Tajikistan, national legislation, and are recognized by Tajikistan in international legal agreements. Tajikistan has assumed obligations of the International Pact on Civil and Political Rights (ICCPR)³¹ key declarations of the UN General Assembly,³² and as a member state of the Organization for Security and Cooperation in Europe (OSCE) on the provisions contained in documents including the Final Act of the Helsinki Conference, the Vienna Concluding Document of the OSCE, and a number of other commitments from OSCE member states.

In accordance with article 26 of the Constitution of the RT every person has the right to independently determine his or her own religion, either alone or in a community, or choose no religion, participate in religious ceremonies and rights, and so on. In 2009 a law was passed entitled “On Freedom of Conscience and Religious Associations RT” that regulates relations in the field of human rights and freedom of thought, conscience, and religion, relations between the state and religious organizations, as well as the legal status of religious associations. The law on “On Regulation of Traditions, Celebrations, and Ceremonies in the Republic of Tajikistan” from

²⁹ This review was written by the author in a multi-sectional format containing the OSCE recommendations for legislation analysis on religion or belief by the OSCE/ODIHR. 2004. © M.S. Khaidarova

³⁰ See: www.din.tj

³¹ ICCPR, G.A. Res. 2200A (XXI), 16 дек.1966, UN Doc.A/6316, 6 I.L.M. 368 . The RT joined the ICCPR4 April 1999.

³² Universal Declaration of Human Rights. Resolution 217A (III) GA UN. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Resolution 36/55 GA UN from 25 Nov.1981.

2007 regulates religious rites and ceremonies such as circumcision, funeral rites and mourning, pilgrimage, and the place of celebrations and ceremonies, although these are the internal affair of believers or religious organizations.

Religion and Raising Children

Parents or guardians have the right to educate and raise their children in accordance with their religious views and considering the child's right to freedom of conscience. However, since 2011, children under 18 years of age in Tajikistan have been forbidden to attend mosques, including Friday prayers. The law "On the Responsibility of Parents for Raising and Educating Their Children RT" forbids the participation of underage children in religious activities, except for official religious education. Responsibility for violating the law falls on parents, and the law practically prohibits children from any form of religious life including attending mosque except for sanctioned religious education. Finally, the law's regulations limit the rights of children to dress in accordance with religious norms as well as regulating the right of parents to choose the names of their children.

According to the law "On Freedom of Conscience and Religious Associations" of the RT, religious education is allowed between the ages of 7 and 18 with parents' written consent at central and primary mosques, and only after they have obtained a state license. Education in foreign religious universities is allowed only after one has had religious education in Tajikistan and with the written consent of the Ministry of Education of the RT and the Committee for Religious Affairs of the Government of Tajikistan. This requirement is not in accordance with the ICCPR³³, which emphasizes, "policies or practices that restrict access to education are incompatible."

One leader of a religious organization described, anonymously, that after the law "On the Responsibility of Parents for Raising and Educating Their Children RT" was passed, members of the Committee for Religious Affairs told leaders of the Christian community at a special meeting that children under 18 should not attend church, and in case of violations there would be legal penalties.

In 2015, the president of the RT presented an initiative to include a subject of "religious conduct" to teach the history of religion into school curriculum from the 8th grade onwards. According to one member of the working group that developed the curriculum, the goal of this subject module is to provide information to you

"Since then, we have frequent inspections by officers of the Committee for Religious Affairs. We have to provide them with lists of children attending church, the written consent of their parents, and other information. We are ready to fulfill all their other demands, but to expel children from the churches we have no right. To meet their requirements, we must erase all church regulations that have existed for centuries. Priests cannot go for that."

Nazar Turdyev, Voice of Freedom, Dushanbe.

³³ ICCPR. Art.18. P. 2, <http://www.un.org/ru/docum>

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young people about the history of religions of the world and at the same time reduce unhealthy interest by the younger generation in various radical groups. The Committee for Religious Affairs, together with the Ministry of Education of the RT developed both the “Procedure for Organizing Religious Education in the RT” and “Procedure for Citizens of the RT Studying in Foreign Religious Educational Institutions.”

In practice, the only place where one can receive a formal religious education is the *Islamic University (now Institute)* and the *Islamic Gymnasium* in Dushanbe. The highest spiritual institution, the Islamic Institute of Tajikistan, trained over 1,450 students. Education is paid for by the state and by private tuition. The Islamic Gymnasium teaches children 14 and older. In addition to these two main schools of religious education, until recently there were 6 additional madrassas registered with the Religious Affairs Committee, but their activity was suspended by the Ministry of Education at the end of 2013 and they still have not received the license to begin operating again. In many cases, the living conditions of students in Islamic religious educational institutions, educational processes, and professionalism of religious teachers do not always meet the appropriate standards. It is noted that since 2014 authorities have repressed unregistered teaching of Islam across the country, actively pressing charges.

From 2015 data, 3,360 citizens of the RT have received religious education abroad in Iran, Saudi Arabia, Libya, Egypt, and of those 3,108 were returned to Tajikistan.³⁴ For clarification, Tajik girls and young women also study religion abroad, so about 5% of returnees were women.

Registration of Religious Organizations and Communities: Onerous Restrictions

Religious associations in Tajikistan function as religious communities and religious organizations. A *religious community* is a voluntary and independent association of citizens of the Republic of Tajikistan, formed to jointly commission worship and fulfill other religious needs. A *religious organization* is a voluntary and independent association of citizens of the Republic of Tajikistan formed for collective worship, religious education, and to disseminate religious beliefs.

According to legislation of the RT religious organizations are subject to state registration as a legal entity, and religious communities are subject to registration without a legal entity. By law, there must be no fewer than **10** founding members of a religious association who are citizens of the republic of Tajikistan, sharing a common religion and not less than **18** years of age. For state registration of a *religious organization* it is necessary to provide a series of documents from the Committee for Religious Affairs for managing the traditions and rites under the Government of the RT. Further more, according to the law,³⁵ registration with the state requires proof of existence by local authorities that the religious association and followers have existed for at least the last 5 years.

³⁴ Available at: <http://www.news.tj/ru/news/64-grazhdan-rt-vernuvshikhsya-iz-zarubezhnykh-medrese-podozrevayutsya-v-sovershenii-prestupleni>.

³⁵ Law “On Freedom of Conscience and Religious Associations RT” Art. 13

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In practice, local governments in the regions of Tajikistan rarely register non-Islamic religious associations on time without sufficient basis. This has been observed in the practice of Baptist Evangelical Christians, local members of the Baha'i faith, and others. Local governments often violate procedure for registration (the registration period) and there have been cases where the registration of religious organizations or communities has taken place only after appeal to the central state authorities. Additionally, religious associations may be refused state or legal registration if the name of the religious association offends public morality, or the national and religious feelings of citizens.

The recommendations of the OSCE state that excessively burdensome constraints or time delays in obtaining the status of a legal entity are unacceptable, as norms "providing the public agency the opportunity for excessive discretion in permitting." Since 2014, the suspension or closure of mosques continues, especially in rural areas. For example, in July 2015 in the Sughd oblast there were 136 cases of unregistered mosques having their activities suspended. These included some historical mosques, which had been in operation for 100 years.³⁶ In May 2014, authorities closed Muhammad, one of the most famous mosques in Tajikistan, which had been led by the family of Akbar Turajonzoda, a theologian and a charismatic leader during the Civil War in the mid-1990s. The trial against the brothers Akbar Turajonzod and Nuriddin Kahhorov for opposition Saidmikaram Abdukodirzod, the head of the Ulema Council of Tajikistan lasted for exactly one month. The plaintiffs had accused the country's chief mufti of "defamation and falsification of

The underlying principle of any system of registration should be to avoid unpredictable results, arbitrary enforcement, discrimination, bureaucratic delays, and lack of accountability in the actions of state authorities that took place in other countries that are trying to build similar structures.

U.S. Commission on International Religious Freedom "Challenge to Civil Society: Russia's Amended Law on Noncommercial Organizations"

statements by the Council of Ulemas," and the decision to close the mosque was made by the Committee for Religious Affairs, after an announcement of the Ulema Council, in December 2013. By the same decision Nuriddin and Mahmuddzhon Turajonzodah were removed from the post of khatib imam of that mosque.

In 2014 the state began video surveillance of mosques. However, even at the beginning of 2013 9 congregational mosques had video surveillance equipment installed. According to the representatives of one local government, the primary aim of installing video cameras around mosques was to maintain safety and prevent crime.³⁷

³⁶ Available at: <http://www.news.tj/ru/news/v-sogde-priostanovlena-deyatelnost-136-nezakonno-deistvuyushchikh-mechetei>

³⁷ Available at: <http://islamnews.tj/tajikistan/590>.

Interference of the State in Internal Matters of Religious Communities

The appointment of leaders of religious organizations: The Human Rights Committee established that “practice and teaching related to a particular religion or belief includes the freedom to choose religious leaders, priests and teachers.”³⁸ Similarly, Principle 16(d) of the Vienna Concluding Document provides that States Parties undertake to respect the right of religious communities to “select, appoint and replace their personnel in accordance with their respective requirements as well as with any freely accepted arrangement between them and their state.” This means that if a religious community wishes to bring government officials to participate in the appointment of their religious leaders, that such participation is permitted, but not in any other case. The UN General Assembly has confirmed both of these rights by proclaiming that “the right to freedom of thought, conscience, religion, or belief shall include, in particular, the freedom *to train, appoint, elect, or designate* by succession appropriate leaders called for by the requirements and standards of any religion or belief.”³⁹

However, according to the law “On Freedom of Religion and Religious Associations of the RT” selection of khatib imam and imams of mosques should be conducted with the agreement of the state authority on religious affairs (Art. 11, P. 6) S 2015.⁴⁰ The head speakers or khatib imam at each mosque receives a monthly government salary equivalent to 160-300 US dollars, depending on the importance of the mosque and the clergy of the Republic of Tajikistan working in religious associations, subject to legislation on labor, social security, taxes, and national insurance.

The State Determining the List and Text of Sermons of Religious Leaders

In order to combat radical Islam, Tajik authorities have created an approved a list of topics for sermons and published a special collection of sermons for Friday prayers for use by imams.

Religious Literature

The production, export, import, realization, and dissemination of religious literature and other materials of a religious nature is allowed only after *obtaining the approval of the state religious expertise and examination authority*.⁴¹ The import and export, production, and distribution of religious literature, as well as other objects and materials of religious purpose can be done only after receiving approval from this authority.

Freedom to Choose One’s Religion or Belief

Saidmukaram Abdukodirzod, the head of the Tajikistan Ulema Council in Kurgan-Tube, released data at a seminar for khatib imams of the Kurgan-Tube region of the Khatlon oblast that after the

³⁸General Comment 22.

³⁹ “Declaration on the Elimination of All Forms of Discrimination” Above approx. 5, Art 6 (emphasis added)

⁴⁰ Law “On Freedom of Conscience and Religious Associations RT” Art 11, P 6.

⁴¹ Ibid Art. 22.

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civil war in Tajikistan in the 1990s, about 150,000 Tajiks converted from Islam to other religions. Some non-Islamic organizations and their parishioners have experienced difficulties due to pressure from local authorities in different regions throughout the country. There have also been instances where local authorities have pressured non-Islamic organizations to not accept Tajiks and Uzbeks as parishioners, explaining that it could potentially cause scandals.

Wearing Religious Clothing in Public Places

One problematic issue is the right of Muslim women to wear headscarves in educational institutions. In relation to this matter schools, departments of education, and the Ministry of Education have opted for a restrictive policy.⁴² Currently, instructions from the ministry prohibit female children and female students from wearing the "hijab" in schools and educational institutions. Also, in practice, Muslims in Tajikistan may not wear the hijab or Islamic dress if they work in the public service and public institutions such as banks, and they are advised to avoid it in the schools as well. Police spend time with women conducting "explanatory work" in order to convince them not to carry "alien" clothing, such as headscarves and hijabs. However, many Tajik experts believe headscarves are more of a craze for Arabic culture rather than an indication of increasing religiousness in society. Since 2005, mosque leaders have prohibited women from attending mosques.⁴³ The Chairman of the Ulema Council said that the main reason for the ban is that mosques are lack suitable conditions for the presence of individual men and women.

The Islamic Center of the Ulema Council has established regulations for men wearing beards; these regulations were presented to the Committee for Religious Affairs of Tajikistan. From that point on, men have been allowed to wear beards no longer than a fist. However, people are not allowed to wear beards in public buildings. Between 2014 and 2015 in the capital and other cities 30 people were detained for wearing beards. One of the more well known incidents related to beards was with one athlete from the Khair soccer team. The Tajikistan Soccer Federation prohibited the athlete from participating in the country's championship games, despite the team having no complaints against the player or his appearance, because the Ministry of Internal Affairs took issue with it.

Religion and National Security

Experience worldwide has shown that an imbalance between national security and the strengthening of human rights protection leads in the long term to contrary results. If the state violates the proper balance its actions lose their legitimacy, which can only further enhance the trend towards radicalism and extremism. Therefore, finding the right balance is essential.

As part of strengthening national security and countering violent extremism and terrorism, the RT adopted a law entitled "On Combating Extremism." *Extremism* is defined as a manifestation of legal entities and individuals espousing for extreme forms of action that call for the destabilization

⁴² Available at: http://www.bbc.com/russian/international/2015/05/150511_tajikistan_beads

⁴³ Available at: www.refworld.org.ru/docid/531842054.html

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of the constitutional order in the country, the seizure of power and appropriation of its authority, and incitement of racial, national, social and religious hatred. *Extremist activities* are considered to be the planning organization, preparation, and completion of and actions aimed at these purposes.

Currently judicial decisions within the Republic of Tajikistan concerning terrorist or extremist activity within the republic affect 14 extremist and terrorist organizations for which Tajikistan is an attractive area of activity. They include “Al Qaeda”, “The East Turkistan Islamic Movement”, “The Taliban”, “The Muslim Brotherhood”, “Lashkari Taiba” “The Islamic Group”, “Dzhamiyati Islomin Pokiston”, “Dzhamiyati Tablig”, the “Sozmoni Tabligot” religious missionary organization (“Call to Islam”), “Free Tajikistan”, “The Islamic Movement of Uzbekistan” (and its radical wing “Dzhamaat Ansarullakh”), “Hizb-Ut-Tahrir”, “Salafiya”, and ISIS.

On 3 July 2015, a representative of the Ministry of Internal Affairs of Tajikistan appeared before observers of Friday prayers at the central mosque in Dushanbe. Colonel Barotali Khamidzoda warned that during the prayers no one would be allowed to leave the mosque, and those who did not attend services until the end would not be "a follower of Hanafi Islam and his act will be considered for punishment." ⁴⁴ Also, under the pretext of combating extremism in Tajikistan a ban on a number of Muslim groups has been upheld, along with similar bans for several Christian minorities such as Jehovah's Witnesses. ⁴⁵

It should be noted that certain provisions in legislation of the Republic of Tajikistan require a sharp increase in the minimum number of members for the registration of a religious organization. It has since become apparent that the introduction of this type of registration system is fraught with disastrous consequences for the free exercise of fundamental rights relating to freedom of religion or belief. Results have been restricted dissemination of religious literature, the prohibition of conducting religious ceremonies outside the approved places of worship, and restrictions on religious activity and religious freedom. State intervention in the internal affairs of religious organizations threatens to jeopardize Tajikistan's international human rights obligations.

⁴⁴ Available at: <http://rus.ozodi.org/content/mia-calls-prayers-dushanbe-be-hanafis/27107917.html>

⁴⁵ Available at: <http://www.hrw.org/ru/world-report/2015/country-chapters/131992>

Summary of Presentations and Discussion Participants at the Forum

Yevgeniy Zhovtis' report discussed the right to freedom and provided a review of the situation in Kazakhstan in the sphere of freedom of religion and belief. Freedom is a principle and a specific right. The right to freedom overlaps with the freedom of expression, freedom of peaceful assembly and association, and freedom of religion; all of which rely on a semantic structure. The state should not interfere in the freedom of religion or belief that can be exercised individually or with others. In some countries the law prescribes freedom as a collective right, i.e., individual rights in the legislation translated into the category of collective rights. International law considers freedom as a principle rather than a norm.

As one example, the dissemination of religious literature shows restriction when freedom turns into a truncated right. Why can general associations be registered after the 10th person or the first person, but religious associations require 50 or 500 people?

Dmitry Kabak considers in his report existing contradictions in the law of the Kyrgyz Republic related to the realization of the rights of believers to freedom of religion and belief. For example, the Constitution of the KR guarantees the provision of international standards of human rights, among the freedom of conscience as an individual right. However, the KR law “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic” fixes this right to groups of not fewer than 200 people. In addition, over the past 3 years several legislative initiatives have appeared repeatedly that attempt to increase the number of members of religious organizations to a 500-person minimum. Despite the fact that in 2010 the working group under the Ministry of Justice of the KR developed a draft law to guarantee all rights to believers, that draft was not presented to parliament for review.

The reporter highlights that in 2014 the right to freedom of religion as well as freedom of association was under threat of limitation due to restrictions from local governments that had refused various religious communities based on their lists of founders. However, a decision by the Constitutional Chamber of the KR cancelled these provisions at the appeal by the Jehovah's Witnesses organization.

Muatar Khaidarova (Tajikistan) discussed a range of issues in her report that prompted many questions and much discussion among forum participants. The report reviews the issues related to the realization of freedom of religion and belief in Tajikistan that deserve the most attention. She notes the following as of particular concern: inconsistency of domestic law with international mechanisms for the protection of the right to freedom of religion, the discriminatory features of the registration system for the establishment of legal religious entities and the complicated registration process that demands more documentation than other types of legal entities, excessive demands of minimum numbers of believers for opening mosques, undue interference in the internal affairs of religions as state interference in personnel matters of khatib imams, and

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unjustified restrictions of the rights of law-abiding believers in connection with the fight against extremism and terrorism. Laws in Tajikistan violate a number of international commitments, such as the Law of the Republic of Tajikistan "“On the Responsibility of Parents for Raising and Educating Their Children RT” violates the right of parents to educate their children in the spirit of their religion.

Discussion

The reports by Yevgeniy Zhovtis (Kazakhstan), Dmitry Kabak (Kyrgyzstan), and Muatar Khaidarova (Tajikistan) prompted many questions during the discussion. The majority of forum participants were interested in the rights to freedom and belief, state policy in the religious sphere, violations of the rights of believers, and international practice in managing multi-confessional societies.

Almaz Esengeldie (Kyrgyzstan): Why doesn't the state guarantee freedoms and actively interferes and creates restrictions? The state is afraid of religion, and doesn't have skills for managing it and uses the experience it has with prohibition.

Roman Podoprigora (Kazakhstan): Why is the state afraid to pass laws that guarantee freedoms?

Yevgeniy Zhovtis (Kazakhstan) I explained that the issue relates to the relationship between state and society. The principle of freedom is seen in many of the provisions of national law. The problem of relations between the state and society is that the state is considering society as an object, not a subject. Unfortunately threats are used as a management tool. In the current context, governments must use the management tools developed in democratic countries. Why, of all ideologies to control is religion chosen? The State sets its main task as controlling all aspects of society. One line is to ensure and guarantee freedom; the other is to fight against extremism and terrorism. The second line requires special legislation and instruments.

Shazada Orozova, (Kyrgyzstan): Does the government have experience with prevention in different areas, which can be used in the religious sphere?

Yevgeniy Zhovtis I paid attention to the experience of different countries. Dialog and exchanging experience is very important, that is, creating a space for dialog.

Dmitry Kabak (Kyrgyzstan): One can define the wrongful acts that are considered offenses or specify criminal offenses through the establishment of a crime. These actions are necessary to prohibit through relevant provisions of the Administrative Code and the Penal Code.

Khusanbai Saliev (Kyrgyzstan): Can freedom of religion be limited in connection with terrorism and extremism?

Yevgeniy Zhovtis: I touched on this problem related to principles and laws that should be clarified to avoid double interpretation.

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Dmitry Kabak: I explained that terrorism is a crime, and has nothing in common with freedom of religion and belief, as freedom of religion and belief are positive things and guaranteed by international and national rights. Another issue is that some groups can pursue a wrongful purpose under the guise of religion.

Artur Artemev (Kazakhstan): In your presentation you highlighted issues that relate to so-called “traditional” and “non-traditional” religions and those labeled as destructive sects. One example was the publication by Dvorkin in the RF.

Kayum Yusupov (Tajikistan) To add, in Tajikistan children under 18 years of age are not allowed to attend Friday prayers. When this provision is violated parents can be prosecuted. Additionally the Tajikistan Ulema Council adopted a resolution that until 40 years of age men can only wear a short beard. In universities women are forbidden from wearing the hijab and high-heeled shoes, as well as women in state facilities are prohibited from wearing hijabs and trousers.

Roman Podoprigora (Kazakhstan) I’m interested in the issues of registering mosques: should all mosques be part of the muftiyat?

Galina Kolodzinskaya (Kyrgyzstan) It was noted that at this stage state-confessional relations fall under the purview of the Spiritual Administration of Muslims in Kyrgyzstan as a dialog platform for various schools of thought within Islam that exist in Kyrgyzstan, including a Shiite mosque in Bishkek. So, undoubtedly, the tendency towards consolidating all mosques into the muftiyat exists.

Daniyar Sulaymankulov (Kyrgyzstan): There has been concern expressed that Evangelical Christians are often accused posing a threat to society. Can you explain why, or if there are any grounds or reasons causing such judgments?

Yevgeniy Zhovtis: The reason for the spread of those rumors, including rumors of threats, comes probably from some religious communities explaining the fight for congregations.

Atyrkul Alisheva (Kyrgyzstan) the spread of rumors about threads coming from Evangelical Christians is related to the idea that proselytizing is a factor in dividing ethnicities. The threat is seen as divisive to ethnic values and of risks for inter-religious conflict. We need to improve skills for managing a polycultural society.

Gennady Khonin (Kazakhstan): One opinion was expressed about the level of understanding of the basics of religion by public servants. Should officials have an understanding of religions?

Forum participants noted that in society and among government officials ignorance is not uncommon, and ignorance and lack of understanding of religion has a negative impact on the relations of officials and the believers of different faiths. A typical phenomenon in the society is an idea of the monopoly of the "traditional" faiths.

Aynura Bekbolotova (Kyrgyzstan): To what extent is there a mass movement and influence of Pakistan on women’s clothing, especially wearing the Hijab?

Participants discussed the increase in the number of young women and unmarried women wearing the hijab. As part of this it was noted that the hijab has become a type of fashionable trend. At the same time there are discussions in society of a type of national clothing that could serve as an alternative to the hijab.

Khysanbai Saliev (Kyrgyzstan) the question was raised about religious informational materials being connected with religious extremist materials. It used to be the norm that it was forbidden to distribute determined religious materials. New provisions of the law state that there will be criminal liability for possession of forbidden materials. So the question is, what is forbidden? The conclusions on issues relating to religious materials given by the State Commission for Religious affairs don't have a logical basis.

Indira Aslanova (Kyrgyzstan) Question on religious expertise and examination. The understanding of "religious expertise and examination" in global practice does not exist, and can only be found in post-soviet countries. Thus, the practice of expertise has different approaches. First of all, religious expertise supposes objectivity, but it is carried into a secular space. At the same time, in the national legal framework Kyrgyzstan terminology religious expertise is not defined.

Yevgeniy Zhovtis: noted that in practice quasi-scientific ideological examination can lead to the adoption of legal decisions. A good example is practice in Russia, where in 2011 the Supreme Court forbid questions of a religious nature posed to people who were not lawyers. A theological dispute, under no circumstances, can have legal implications. It is necessary to examine the legal side of things and to put questions of a legal nature. In another example a forensic examination gave a philological interpretation of the concept of "disobedience" that is fundamentally contrary to the legal practical approach. There are other examples of opinions of leading experts from other countries, but their opinion in our countries is not taken into account. *Almaz Esengeldiev* also confirmed that in the Russian Federation it is forbidden for religious leaders to discuss legal material.

Elmira Nogoibaeva (Kyrgyzstan) observed the *politicization* of the process and drew attention to the further process of *resovietization*. *Yevgeniy Zhovtis* also noted the problems of resovietization in societal relations, a return to soviet control of independent beliefs, or what is effectively censorship. *Muatar Khaidarova* added that in Tajikistan an Order by the Government of Tajikistan was passed "On Religious Expertise and Examination". This created an expert council that includes representatives of state institutions, religious associations, and academics. This expert council conducts initial and comprehensive examinations. Examinations can be on a voluntary or contractual basis, in which case the individual expert is liable. *Zhanara Askar Kyzy* noted that in Kyrgyzstan expertise and examination is not a basis for judges, however they could be to a greater degree. Judges take into account expert conclusions as documents of recommendatory character. Legally it would only be a call to violence.

Gulshaiyr Abdurasulova (Kyrgyzstan) drew participants' attention to the problems of fairness in judicial proceedings and effective measures for protection. This relates to issues of the independence of religious leaders. Additionally, the neutrality of the government was brought up and often mentioned was the question of ratifying inter-state loan and grant agreements aimed at

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developing different sectors. For example, in one agreement between the Kyrgyz Republic and the Islamic Bank, one provision holds that the Kyrgyz Republic agrees to abide by the rules of the Organization of the Islamic Conference to boycott against Israel.⁴⁶

Dmitry Kabak (Kyrgyzstan): Considering the principle that “Everything is permitted that is not forbidden”, one can define specific crimes or offenses under “extremism” and submit them to the Administrative Responsibility Code and the Penal Code.

Galina Kolodzinskaya (Kyrgyzstan) raised the question that in secular states of the Central Asian region they continue to follow soviet atheistic models of state-confessional relations, seeing different religious groups as a kind of ideological threat, although the majority of religious followers are law-abiding citizens.

Valeriy Vakhitov (Kyrgyzstan) raised the question on the incompleteness of some provisions of the KR law “On Combating Extremist Activity”. For example, before amendments made to the law in 2013, legal liability arose only in cases of *possession* of extremist materials with *intent to distribute*. However, after the changes, according to Article 13, the Law provides establishes legal liability of citizens simply for *possession* of extremist materials. The absurdity of this article lies in the fact that this provision will immediately criminalize judges and lawyers working on criminal cases related to extremism.

⁴⁶ For example, the credit agreement between the Government of the Kyrgyz Republic and the Islamic Bank of Development related to the 110 kW Aygultash-Samat project line and substation from July 4, 2007, providing a loan in the amount of 8 million Islamic Dinars.

Conclusions of The Central Asian Forum on Freedom of Religion and Conscience “Human Rights – Rights of the Believer”

Kyrgyzstan
Issyk-Kul, Kormundu Village

29-31 July 2015

The Central Asian Forum for Freedom of Religion and Belief for human rights defenders, representatives of religious communities, and representatives and experts on society from Kyrgyzstan, Kazakhstan, and Tajikistan was organized by the Open Viewpoint foundation with assistance from the Interfaith Council association and financial support from the Norwegian Helsinki Committee, the Office of the High Commissioner for Human Rights of the UN, the UNDP in Kazakhstan and Tajikistan, participation from members of the Public Advisory Council on Inter-Ethnic and Inter-Confessional Relations under the President of the Kyrgyz Republic, and members of the ODIHR Advisory Council (on freedom of religion or belief, freedom of peaceful assembly and association). The forum was held as part of the 40th anniversary of the Helsinki Final Act.

Forum participants discussed understandings of the content of the right to freedom of religion or belief and the role of civil society in state-confessional relations as part of fulfilling member state obligations for the OSCE to provide rights to freedom or belief. They also discussed cooperation between religious and human rights organizations to build a constructive dialogue with government authorities and local authorities in the countries of the Central Asian region on issues of religious freedom and the protection of the rights of those professing religious and other beliefs.

Contemporary trends in the religious sphere of post-soviet Central Asia indicate both old and new challenges. Control over religious life has continued to become more restrictive, radicalization of the population, the negative consequences of dealing with the threat of terrorism and extremism in the implementation of the constitutional rights of law-abiding believers and their associations, and participation Kazakhstan, Kyrgyzstan and Tajikistan to other international organizations or treaties that affect the realization of the right to freedom of religion and beliefs⁴⁷, as well as other issues of social and economic nature impede consistent solutions for the problems facing the Central Asian states in fulfilling their positive obligations to ensure the freedom of religion.

Forum participants noted that the observance and protection of human rights in the sphere of freedom of religion or belief is an important domestic political issue for each state and the subject of special attention of the international community. Experience of the international community confirms that the involvement of civil society in the implementation of the positive obligations of

⁴⁷ SCO Agreements, CSTO, and others.

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OSCE member States not only ensures the implementation of international standards on freedom of religion or belief in practice, but also creates an opportunity for a dialogue platform for the state and society to develop effective measures to address issues of common concern.

The countries of Central Asia have repeatedly expressed concern about the situation evolving in the religious sphere of their countries, as well as increasing threats from Afghanistan and the activities of religious extremist organizations. As a solution, the Central Asian states adopted a series of laws and amendments to the regulations, that have to a certain extent limited the freedom of religion or belief, and hindered the realization of the right to freedom of religion for law-abiding citizens and those living in the territory of these states.

In order to unite the efforts of States and civil society in addressing issues aimed at maintaining a stable development trajectory for society and strengthening the civil support and implementation of international commitments on freedom of religion undertaken by the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan, Forum participants noted the following:

1. In national legislation for the republics of Kazakhstan, Kyrgyzstan, and Tajikistan, as well in law enforcement practice, despite the existence of constitutional legal norms that determine that “every person has the right to freedom of conscience” rights are not considered as individual rights but as collective rights, such as the right to create a religious association or engage in religious activities. This interpretation, not in accordance with international standards and international legal thinking, *creates a special branch of “religious” legislation* that contains a whole range of limitations contrary to internationally accepted principles of international human rights and eligibility criteria restrictions on rights and freedoms.

2. National legislation in Central Asian Republics *does not distinguish between inner freedoms (forum internum) and external freedoms (forum externum)* related to freedom of conscience and religion.⁴⁸ These two freedoms are interlinked. In primary international instruments it is determined that “every person has the right to freedom of thought, conscience, and religion”, and this right as an inner freedom is an absolute right that cannot be infringed upon in any way.

The freedom “to have or adopt” a religion or belief entails the freedom to choose a religion or belief, including the right to change one’s religion or belief or to adopt atheistic views, as well as the right to retain one’s religion or belief. In any case, it seems that the right to “choose” or “to have or adopt” a religion is part of the absolute right to inner freedom, and any legislative provisions that establish any restrictions in this are incompatible with the nature of the protection of the right to inner freedom.

As for external freedom, everyone has the right to, either alone or in community with others and in public or in private, freely “...manifest one's religion or belief...” in worship, observance, practice and observance and teaching.”

⁴⁸Guidelines for Review of Legislation Pertaining to Religion or Belief. Approved by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004) and endorsed by the OSCE Parliamentary Assembly's annual meeting (Edinburgh, 5-9 July 2004). Available at: <http://www.osce.org/ru/odihr/13994>.

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The spectrum of religious activities protected by international law is quite wide. Accordingly, legislation which regulates only relations of worship, or individual elements of ritual activity is insufficient. Expression of religion or belief, in contrast to inner freedom, may be limited. However, such restrictions may be established only under strictly defined circumstances and according to the criteria of permissible restrictions.

Currently, this content and understanding of the right to freedom of conscience and religion cannot be found in legislation of Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan.

3. The wording of the legal norms in Article 22 of the Constitution of the Republic of Kazakhstan, which guarantees everyone the freedom of conscience, does not fully comply with international law that has developed the interpretation of freedom of religion or belief given as concepts with constitutional guarantees. The provisions of Article 32 of the Constitution of the Kyrgyz Republic, along with the provisions on the admissibility of restrictions on the rights of Article 20 and a child's best interests (Art. 16, p. 5), repeat the provisions of international human rights treaties, in particular Article 18 of the International Covenant on Civil and Political Rights and article 14 of the Convention on the Rights of the Child.

4. The primary normative legal act in the are of legal regulation of the right to freedom of conscience and religion⁴⁹ in Kazakhstan, Kyrgyzstan and Tajikistan contains a number of restrictions that do not meet the basic principles of international law in the field of human rights (the principles of the presumption in favor of the law, legal certainty and predictability, the and proportionality). This law and other statutes stemming from it aim at strict regulation of religious activities and violate the right of everyone collectively with others to have or disseminate religious and other convictions and act in accordance with them. This is a violation of the constitutional principle of separation of religious associations from the state and of disproportionate interference by the state in the affairs of religious communities, the right to freedom of association and freedom of expression, and the freedom to seek, receive, store and disseminate information

5. According to constitutional guarantees, the human and civil rights can only be limited and only by measure when it is necessary to protect constitutional order, preserve public order human rights and freedoms, and the health and morals of the population. Establishing mandatory registration for religious associations and in that way prohibiting sole individuals or small groups from enjoying their full right to freedom of conscience and religion does not meet legitimacy criteria, is not necessary in a democratic society and is disproportionate for these purposes.

The decision to allow or not allow state registration in the cases related to religion of the very connection with a religion will be one of the key elements of religious freedom.⁵⁰ While some

⁴⁹ Law "On Religious Activity and Religious Associations RK" №483-IV from 11 Oct. 2011 // <http://adilet.zan.kz/rus/docs/Z1100000483>. Law "On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic" №282 from 31 Dec. 2008. // http://www.religion.gov.kg/ru/legal_base. Law "On Freedom of Religion and Religious Associations of the RT". №615 from 12.03.2009 // www.adlia.tj/base/show_doc.

⁵⁰ Comments on the Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of religious freedom and religious organizations". Prepared by the Advisory Board

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restrictions on the activities of unregistered religious groups are legitimate and proportionate (due to their lack of legal status) such as opening a bank account or conducting any financial operation, unregistered religious groups are not able to engage in basic religious activities such as missionary activity; founding branches, hiring and opening to the public places of worship or religious meetings, and so on.

Because religious activity without registration attracts additional administrative or even criminal liability, these provisions of the law are a direct violation of the right to freedom of religion and as provided in Article 18 of the International Covenant on Civil and Political Rights, which enshrines the right to manifest one's religion or belief "in worship, performance of religious and ritual ceremonies, and teaching" either "individually or together with others."

6. Existing legislation contains serious restrictions on missionary activity, allowing it only on the basis of mandatory registration, which is interpreted as missionary activity for the religions already formally registered in the Republic of Kazakhstan, the Kyrgyz Republic and Republic of Tajikistan. The peaceful expression of one's beliefs is a key element of the right to "manifest" one's religion. Missionary activity is also protected by freedom of speech and the right to disseminate information. Such restrictions are unlawful, not necessary in a democratic society, disproportionate in relation to the legitimate purpose, and violate the right to freedom of religion and expression.

7. It is unjustifiable to establish high quantitative requirements for the establishment of religious associations. Kazakhstan requires 50 people for local associations, 500 people for regional associations, and 5000 for national associations; Kyrgyzstan requires 200 people and a geographic center, and Tajikistan requires 20-30,000 people to open a mosque in large cities and from 100-1000 in villages. Accordingly, if there are less than 100 residents of the establishment of the mosque is not feasible.

If it is assumed that for the implementation of missionary activity it will be necessary to obtain the right to establish, rent, and keep open publicly accessible places of worship or religious meeting and it will also be able to obtain legal status, it is important that the requirements for this official recognition be low in order to enable small groups to go about their normal religious activities.

The attempt to divide religious communities on local, regional, and national scales to perform religious activities only for registration by regions is discriminatory in comparison with other types of legal entities, except for public associations, which face the same discriminatory restrictions.⁵¹ This provision resembles the infamous Soviet-era "residence" requirement only to religious and public social associations.

8. Current legislation limits freedom of expression and the right to distribute religious literature and other informational materials of religious content or religious objects by: censorship (in the form of theological or theological expertise and examination), which is prohibited by the

of the OSCE / ODIHR on freedom of religion or belief. Conclusion - №: REL- KAZ / 125/2009. Warsaw, January 2009 // Available at: <http://legislationline.org/ru/documents/id/16325>. Комментарий к Закону Республики.

⁵¹ In the Kyrgyz Republic a public association can be created with only three people, while a religious organization (association of believers) requires 200 people.

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Constitution of the secular state; restrictions on the places where they can distribute religious literature and materials of religious content; restrictions on who can spread religious views and materials; as well as a requirement for the full name of the religious association on all religious materials. All of these restrictions are a serious breach of international law with regard to guarantees of both freedom of religion and freedom of expression.

9. Current legislation entitles the State to pass judgment on the admissibility of (appropriate) religious teachings by religious or theological examination, the results of which decisions lead to decisions about registration or refusal of registration of religious organizations, missionaries, or the elimination of a religious association. This is not consistent with international standards and international practice, except for the practice of some post-Soviet countries.

“Religious or theological expertise and examination” provides many opportunities for discrimination and abuse of power. This type of examination is incompatible with the protection of religious freedom. The right to freedom of religion as guaranteed in international law excludes any discretion on the part of the state in regard to the legitimacy of religious beliefs or the means of expression of these views.

10. The law of the Republic of Kazakhstan provides for the postponement of military service for students of spiritual (religious) educational institutions and conscription exemption for clergy of registered religious associations. However, it does not recognize the human right to conscientious objection to military service on religious or other beliefs, and does not provide for alternative military service. The Kyrgyz Republic recognizes the human right to conscientious objection to active military service on religious grounds, however, legislation governing the procedure for alternative service sets a standard according to which the believer must be a member of a religious organization, and be able to pay a set fee of 18 pay periods or equivalent indices. In November 2013 the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic recognized that the current law "On Universal Military duty in the Kyrgyz Republic, On Military and Alternative Service" in terms of the provisions of alternative service that do not comply with the Constitution and violate the right to freedom of religion and belief. However, up to the present, these provisions have not been revised. The Republic of Tajikistan does not recognize the human right to conscientious objection to military service on religious or other beliefs. The Special Rapporteur on freedom of religion or belief issued recommendations to address the issue of ensuring freedom of opinion and bring national legislation into conformity with the standards.

11. Existing administrative and criminal legislation of the Republics of Kazakhstan, Kyrgyzstan, and Tajikistan allow for administrative or religious responsibility for violations of the law concerning religious activity and religious associations. In some cases provisions have a vague formulations such as "violations of the law on religious organizations", "religious extremism" or "incitement to religious hatred and enmity", which do not comply with the principle of legal certainty and predictability.

12. Recommendations to the governments of Kazakhstan, Kyrgyzstan, and Tajikistan from the UN Committee on Human Rights, the Expert Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the UN Special Rapporteur on Freedom of Religion and Belief, that concern the abolition of compulsory registration of religious

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associations, alternative military service, call for revisions of the requirements for registration of missionary activity, interference in appointing leaders of religious communities, the practice of censorship of religious literature and others *have not been implemented in full*.

Recommendations

In relation to these, based on the review of international standards, and analysis of active legislation in the Republic of Kazakhstan, the Kyrgyz Republic, and the Republic of Tajikistan, in the sphere of freedom of conscience and religion participants of the Forum provide the following recommendations:

1. Revise national law in each republic so that it provides and protects the right of every person to freedom of conscience and religion in accordance with international standards and international obligations of OSCE member states.
2. Ensure that national legislation of the republics relating to freedom of conscience and religion (worship) guarantees inner freedom (*forum internum*) as necessary and establishes limits on external freedom (*forum externum*) only in observance with the limitation criteria accepted in international law.
3. Revise laws on religious activities and religious associations and acts associated with them and make them consistent with international standards, taking into account the recommendations of the UN Committee on Human Rights, experts from the Bureau for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, and the Special Rapporteur the United Nations on Freedom of Religion or Belief. Reflect the goal of law in its name: provision and protection of the right to freedom of conscience and religion.
4. Cancel mandatory registration of religious associations and ensure that legislation that concerns registration guarantees human rights to freely practice religion or religious beliefs, including without formal organization, as outlined in the International Pact on Civil and Political Rights.
5. If in order to receive benefits of any kind religious associations must be legal entities, decrease the minimum amount of members required for registering religious associations with the state to the same number as required for public associations (10 people in the Republic of Kazakhstan or 3 people in the Kyrgyz Republic and Republic of Tajikistan). Remove varying territorial status for religious or public associations, as it is a violation of the international right to free association.
6. Exclude from legislation on freedom of conscience and religion terms such as “sect”, “cult”, “traditional”, “non-traditional” and other negative connotations and ensure that any applicable terms exclude the possibility of discrimination or preference for any denomination or group professing a certain religion over others.
7. Ensure the independence of religious communities in determining their own organizational structure and management by eliminating management of religious associations from foreign

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centers on the authority of the official body of religious affairs. Regulate the process of missionary activity through provision of appropriate visas upon entry to the country.

8. Take measures to review national legislation of the Republic of Kazakhstan and Republic of Kazakhstan to provide for provisions of alternatives to military service. The law should establish the right to refuse participation in military service for religious or other beliefs, and establish an alternative. Revise the provisions of the legislation of the Kyrgyz Republic regulating the procedure of alternative service in accordance with the decision of the Constitutional Chamber of the Supreme Court.

Take all necessary measures in the Republic of Tajikistan to recognize the right to exemption from military service due to conscientious objection and adopt a special law to regulate the order and relations of relationships and related to continued alternative service.

9. Exclude control and supervisory and administrative functions of the authority of on religious affairs, limiting its powers and analytical and advisory work in the area of interaction between the state and religious associations.
10. Abolish the institution of “Religious and Theological Expertise and Examination”, leaving theological examination and discussion to academic institutions, universities, and religious centers.
11. Revise anti-extremist legislation in order to bring it into accordance with the International Pact on Civil and Political Rights and corresponding comments and recommendations from the UN council on human rights.
12. Revise the provisions of administrative and criminal law on the responsibility of religious communities, their leaders, and individual believers for the violation of the law, bringing them in line with the principles of legal certainty and predictability and proportionality as legitimate goals.
13. Ensure close collaboration with the UN Committee on Human Rights, the UN High Commissioner for Human Rights, the Special Rapporteur on Freedom of Religion or Belief, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, and the European Commission for Democracy through Law (Venice Commission) to bring the national legislation and law enforcement practices in the field of security and protection of the right to freedom of conscience and religion of Kazakhstan, Kyrgyzstan, and Tajikistan into agreement with international standards and obligations.

Freedom of Religion and Belief in Central Asia: Trends and Challenges

Central Asian Forum “Human Rights – Rights of the Believer”

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