



Kazakhstan

Legislative Analysis of Draft Religion Law: Fundamental Right to Religious Freedom in Jeopardy

Introduction

On 5 September 2011, Kazakhstan's proposed new Religion Law entitled "The Law on Religious Activity and Religious Associations" (Religion Law) was sent to Parliament for review and passage. As reported by Forum 18, Prime Minister Masimov endorsed the new Religion Law in his letter to Parliament, asserting that changes in the Religion Law were needed "in view of the contemporary religious situation with the aims of firm regulation of the sphere of activity of religious associations and the establishment of legal responsibility for violating the norms of legislation in the sphere of religious relations, as well as for the organization of systematic work of state organs in the sphere of perfecting state-confessional relations".¹

A second proposed Law imposing changes in the area of religion in nine other Laws would also amend the controversial Administrative Code Article 375, widening the range of "violations of the Religion Law" it punishes. Forum 18 News Service reports that this law entitled "The Law on introducing Amendments and Additions to several legal acts questions of Religious Activity and Religious Associations" (Administrative Code Law), which it was able to review, has been approved by Kazakhstan's Prime Minister Karim Masimov, but has not yet been published.

On 21 September 2011, the Lower House of Parliament, the Majilis, approved both the Religion Law and the Administrative Code Law. Only minor changes were made to the law in the Majilis and there was no debate on fundamental issues. The two laws were then given their initial presentation to the Social and Cultural Development Committee of the Senate. The legislation is moving forward with great speed in a rush to judgment, not allowing time for serious debate or review of the controversial and problematic provisions in the draft Laws. Forum 18 News Service reports that "privately many Majilis deputies were angry at provisions of the laws and the speed which the government is pushing the laws through Parliament, but no one voted against either law".²

¹ See, "KAZAKHSTAN: New proposed legal restrictions on religion reach Parliament".
http://www.forum18.org/Archive.php?article_id=1610.

² See, "KAZAKHSTAN, Two Repressive Laws heading through Parliament at Unprecedented Speed".

The INSTITUTE has obtained a copy of the Religion Law draft for this analysis. Review of the draft law by the INSTITUTE'S Legal Expert Committee leads to the conclusion that passage of this legislation would represent a serious setback for religious freedom in Kazakhstan. In the INSTITUTE'S opinion, the legislation contravenes Organization for Security and Cooperation in Europe (OSCE) and United Nations (UN) standards because it clearly discriminates against minority religious groups.

The draft Religion Law includes the following egregious provisions that violate human rights standards that Kazakhstan has agreed to follow. The Religion Law, if adopted, would:

- Require compulsory registration as a religious organization;
- “De-register” all religious organizations currently registered and force these organizations to “re-register”;
- Require all religious organizations to submit to a “religious study examination” where religious Scriptures and other documents are reviewed and impermissibly evaluated by the State;
- Ban all religious activity by unregistered religious organizations;
- Prohibit an unregistered religious organization to obtain any other legal entity status;
- Impose compulsory government censorship of religious literature by requiring evaluation and approval of religious literature before it could be shipped into the country for non-personal use or placed in a library;
- Restrict distribution of religious literature to religious buildings, religious educational institutions and “specifically identified stationary facilities identified by local executive bodies”;
- Require government approval to build or open new places of worship;
- Require registration of persons carrying out missionary activity -- no person may carry out missionary activity until so registered and no person will be registered unless they have been invited to perform missionary work by a registered religious organization;
- Require a minority religious community to meet onerous membership levels in order to register (minimum of 50 adult citizens) in complete contravention of United Nations and OSCE standards; and

- Impose restrictions and sanctions on religious leaders if children participate in activities of the religious organization when one parent or legal guardian objects.

In addition, Article 374-1 of the current Administrative Code punishes leading, participating in or financing an unregistered, or banned religious organization. This Article has been heavily used to punish individuals and communities for exercising their right to freedom of religion or belief.³ Forum 18 reports that the proposed Administrative Code Law includes a new Article 375 to punish any violations of the draft Religion Law – including for breaking the Religion Law, violating provisions for holding services, violating the procedure for importing, publishing or distributing religious literature, building places of worship or conducting missionary activity. Violations of this Article will result in fines, but could lead to bans of a religious community. Foreigners who conduct violations would be subject to "administrative deportation". Such deportation is also confirmed in the proposed amended Article 730.

The draft Religion Law and the Administrative Code Law are completely inconsistent with fundamental human rights. The recurring theme of the draft amendments is that they are structured in ways that would completely ban religious organizations or severely restrict religious activities; censor importation and restrict dissemination of religious literature; restrict foreign missionary activity; restrict the construction of new places of worship; and impose sanctions on religious leaders and organizations, including the banning of religious organizations, in a manner impermissible under international standards.

These harsh provisions appear to be fueled by discriminatory motives. On 20 September, Forum 18 reported that:

Officials of Kazakhstan's state Agency of Religious Affairs (ARA), the state-backed Muslim Board, and local administrations held public meetings in August and September in West Kazakhstan, Karaganda [Qaraghandy] and Aktobe [Aqtöbe] regions, praising the advantages of so-called "traditional religions" and warning of the alleged dangers of so-called "non-traditional religions". The ruling Nur Otan political party has also held similar meetings in West Kazakhstan. ARA regional departments and local administrations across Kazakhstan have distributed written questionnaires or verbally demanded that members of religious minorities provide detailed information on their activity - sometimes on a weekly basis.⁴

The Draft Religion Law Ignores Considered Legal Opinions Rejecting Strikingly Similar Legislative Provisions by the Kazakhstan Constitutional Council and the OSCE/ODIHR Panel of Religious Experts

³ See, KAZAKHSTAN: Expelled for preaching in own church, Forum 18 News Service, 1 September 2011.

⁴ Kazakhstan: To Prepare the Public for a Discriminatory New Law, Forum 18, 20 September 2011.

The proposed Religion Law would replace entirely the current Religion Law, which was first adopted in 1992. The two previous attempts by the government to pass harsh restrictions on religious activity were rejected by Kazakhstan's Constitutional Council in 2002 and 2009 because the provisions were found to be unconstitutional because they violated the right of equality for all under the law. Specifically, the Constitutional Council particularly cited Article 39 paragraph 3 of the Constitution in support of its judgment. This paragraph states that the "rights and freedoms stipulated by" various specific articles of the Constitution "shall not be restricted in any way". Among the articles listed is Article 14.2 stating "no one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances."

Likewise, the OSCE, through its Office for Democratic Institutions and Human Rights Advisory Panel of Experts on Freedom of Religion and Belief, provided advisory opinions in 2002 and 2009 noting the serious human rights defects to the proposed amendments to the Republic of Kazakhstan's 1992 law. The OSCE panel noted that the amendments included "a series of provisions that violate international human rights standards, Kazakhstan's OSCE commitments, and its own Constitution".⁵

The 2009 Analysis Prepared by the Advisory Panel of Experts on Freedom of Religion and Belief of the OSCE /ODIHR the Executive Summary at paragraph 21 notes the following deficiencies:

- a general pattern of structuring provisions in ways that impose impermissible limitations on manifestations of religion, in violation of applicable limitation clauses of international instruments;
- failure to fully respect the right of religious communities to acquire legal entity status;
- lack of clear standards for ascribing liability for wrongdoing of particular individuals to religious organizations;
- vague provisions which fail to comply with fundamental rule of law constraints because they are insufficiently precise and fail to give fair notice of what the law requires;
- inappropriate constraints on rights to express and disseminate religious beliefs;
- risks of non-neutral evaluation of the substantive content of religious beliefs;
- proscription of religious activities carried out by unregistered groups and on some of the religious activities of groups that have only "record registration";

⁵ Update of Analysis of Proposed Amendments to the Republic of Kazakhstan's Law on Freedom of Religion and Religious Associations Prepared by the Advisory Panel of Experts on Freedom of Religion and Belief of the OSCE /ODIHR 16 January 2002.

- the requirement of an excessive number of members in order to obtain legal entity status (50 for each local religious organization);
- inadequate protection of the right of religious communities to autonomy in structuring their own affairs;
- parental consent provisions that are overly rigid and could deprive mature minors of religious freedom rights and could impose liability on religious groups for unpredictable teenage behavior despite good faith efforts to respect parental wishes regarding involvement of their children in religious activities;
- excessive penalties for non-compliance with registration rules;
- transition provisions that fail to adequately protect vested rights of existing religious organizations.

In addition, the 2009 OSCE Legal Opinion states in paragraph 22 that:

Rather than facilitating religious freedom, the Proposed Religion Law's registration provisions create potential obstacles to the rights of many groups to acquire legal entity status. The Proposed Religion Law is structured to make it difficult for smaller groups to carry out the full range of religious activities in which such groups would reasonably be expected to engage.... Rights to engage in missionary work, while less restricted than in an earlier draft of the legislation, are still constrained. Re-registration of all religious groups is required, putting at risk existing organizations and vested property rights in the event re-registration is denied.

Unfortunately, despite extremely strong criticism by the Constitutional Council and the OSCE Panel of Religious Experts regarding the severe restrictions on religious freedom in the proposed 2002 and 2009 amendments to the Religion Law, strikingly similar provisions deemed unacceptable by the Constitutional Council and the OSCE Panel are included in the new draft Law.

To date, the Kazakh Government has not asked the OSCE/ODIHR Panel of Religious Experts for assistance or a legal opinion on the text of the Law. However, the OSCE stated to Forum 18 that it was ready to offer such assistance if requested.⁶

The INSTITUTE calls on the President and the Prime Minister of Kazakhstan to request that the OSCE provide a legal opinion regarding the draft Religion Law and the separate draft Administrative Code Law introducing amendments to several laws regarding religious associations. In light of the fact that strikingly similar provisions were previously found by the OSCE in 2009 and 2002 to violate international human rights standards that Kazakhstan is obliged to follow, review of the current draft Religion Law by the OSCE is

⁶ See Footnote 1.

critical. Kazakhstan should not ignore its international human rights obligations and commitments by passing defective legislation that will violate the rights to freedom of religion and freedom from religious discrimination.

KAZAKHSTAN'S INTERNATIONAL HUMAN RIGHTS COMMITMENTS

Kazakhstan is a participating state in the OSCE and has committed itself to honoring the OSCE commitments that were reached by common consensus among all of the participating states. Kazakhstan signed the Helsinki Final Act on July 8, 1992; it signed the Charter of Paris on September 23, 1992.⁷ These instruments contain extensive commitments and obligations related to freedom of conscience and belief. In addition, as a participating state in the OSCE, Kazakhstan has reaffirmed its commitment to human rights standards enunciated in the Universal Declaration of Human Rights.

Kazakhstan should consider itself bound by virtue of its membership in the OSCE to the series of CSCE/OSCE declarations on freedom of religion as set forth in the 1983 Madrid Concluding Document, the 1989 Vienna Concluding Document, the 1990 Copenhagen Human Dimension Document, the Charter of Paris and the 1994 Budapest Concluding Document. Although these OSCE norms are understood to be “political” as opposed to “legal” commitments, this distinction does not excuse Kazakhstan from failing to meet international human rights standards.

Kazakhstan is also a member of the United Nations and is thus bound by the UN Charter and UN Bill of Rights. Kazakhstan has also signed and ratified the UN International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the International Covenant on Civil and Political Rights.⁸ Article 18 (1) of the ICCPR states that: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.

The right to non-discrimination is a basic and pervasive feature of international human rights law. All the major human rights instruments guarantee that everyone is entitled to freedoms “without distinction of any kind such as...religion.” These standards are emphasized in UN human rights instruments such as the Universal Declaration of Human Rights and the ICCPR. As stated in one United Nations study:

The important guiding principle is that no individual should be placed at a disadvantage merely because he is a member of a particular ethnic, religious or linguistic group. Above all, in any multi-ethnic, multi-religious and multi-linguistic country, the strict application of the principles of equality and non-discrimination is an indispensable requirement for maintaining the political and spiritual unity of the

⁷ See: www.osce.org/general/participating_states/partstat.htm.

⁸ Kazakhstan signed the ICCPR 2 December 2003; it ratified the ICCPR 24 January 2006. Kazakhstan signed the Optional Protocol 25 September 2007 and ratified it on 30 June 2009.

State concerned and achieving understanding and harmonious relations between the various components of society.⁹

The United Nation's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is universally regarded as international customary law, even in the absence of a binding convention. Paragraph 2 of Article 2 defines "intolerance and discrimination based on religion or belief" as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

The Kazakhstan draft Religion Law clearly violates these principles of religious freedom and non-discrimination on religious grounds.

The Proposed Provisions Violate Fundamental Human Rights

a. Retroactive "De-Registration" Violates the Rule of Law

The draft Religion Law constitutes an *ex post facto* law by retroactively stripping minority faiths of their religious entity status and subjecting them to burdensome and arbitrary "re-registration" procedures even though they have been registered in Kazakhstan as religious entities for many years. This violates the Rule of Law. This type of retroactive provision was also a feature of Russia's 1997 Religion Law. Significantly, it was struck down by the Russian Constitutional Court on the grounds that an existing religious organization cannot be denied its rights through restrictive "re-registration" without violating the right to freedom of religion and association and the legal equality principle.

In his remarks to Parliament on 1 September urging passage of the draft Religion Law, President Nazarbaev claimed that it is necessary to make the Religion Law harsher. The current Religion Law declares that all religions and religious communities equal before the state.

A transparent aim of "de-registering" targeted minority religions is evident. The legislation is designed to discriminate against targeted faiths that are registered under the 1992 Religion Law by "de-registering" these organizations, subjecting them to arbitrary and impermissible evaluations of their religious activities and teachings upon "re-registration", and prohibiting any religious activity and legal entity status if the government refuses to "re-register" them.

⁹Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, p. 98, para.586, by Francesco Copotorti, Special Rapporteur of the Sub-Commission of Prevention of Discrimination and Protection of Minorities, UN Pub. No. E.91.XIV.2 (1979).

There is simply no need to “re-register” any Church. The 1992 Religion Law satisfies the needs of constitutionality. All Churches registered due to its provisions have an acquired right to exist and operate. “Re-registration” is against the accepted principles of law.

b. Prohibition of Religious Activity and Denial of Legal Entity Status for Un-Registered Organizations

Article 3 (11) of the draft Law prohibits an unregistered religious organization from conducting any religious activity. Registration is compulsory and if a religious organization is refused registration it may not legally go about its religious mission. Thus, the draft Religion Law relegates “un-registered” or “de-registered” religious communities to an inferior status by retroactively stripping them of the rights and privileges attached to the status of a registered religious organization.

There is no question that the right to freedom of religion and religious equality in Kazakhstan will be stripped away from currently registered religious organizations that are refused “re-registration”. These organizations will be prohibited from conducting *any* religious activities. And if they attempt to do so, they will be subject to sanctions, including fines and banning for repeated violations. These provisions operate as a “death sentence” on religious communities that are refused “re-registration” or choose not to register based on their religious beliefs.

This represents an egregious violation of the right to religious freedom and freedom from religious discrimination guaranteed by Article 2, 18 and 26 of the International Covenant on Civil and Political Rights, the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the OSCE declarations on freedom of religion as set forth in the 1983 Madrid Concluding Document, the 1989 Vienna Concluding Document, the 1990 Copenhagen Human Dimension Document, the Charter of Paris and the 1994 Budapest Concluding Document. The European Human Rights Court has also determined that State restrictions through excessive registration requirements violate the right to freedom of religion.¹⁰

The starting point for analysis of the scope of the right to freedom of religion is Article 18 of the Universal Declaration of Human Rights, which other instruments parallel:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his freedom of belief and freedom, either alone or in community with others and in public or private, to manifest his religious belief in teaching, practice, worship and observance.

Freedom of religion is thus recognized as a fundamental and inalienable right that may not be taken away by the State unless there are compelling reasons to restrict this right. This provision in the draft Law violates universally applicable human rights – rights not created

¹⁰ *Metropolitan Church v. Moldova* (44701/99) (13 December 2001), paragraph 118.

or bestowed by the State but instead inherently elements of the birth-right and dignity of humanity.

The most important finding by the United Nations on religion is Human Rights Committee General Comment No. 22 on Article 18 of the ICCPR, which guarantees freedom of thought, conscience and religion. This General Comment provides the Human Rights Committee's definitive interpretation of the right to freedom of religion. The Human Rights Committee finds that:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. *The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.* (Para. 2) (Emphasis supplied).

The ICCPR thus clearly guarantees the right to religious freedom for all and prohibits any attempt to discriminate against religions because they are small or are newly established in a State.

As the UN Human Rights Committee also noted in its General Comment regarding the right to religious freedom guaranteed by the ICCPR:

In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18.

The draft Religion Law provides no compelling reason why non-registered religious communities should be prohibited from practicing their religion and subject to sanctions, including banning, if they do so. That is because no legitimate compelling reason justifying such drastic action exists.

In its 2002 Opinion regarding the proposed amendments to the 1992 Kazakhstan Religion Law, the OSCE Panel of Religious Experts found similar provisions requiring compulsory registration, restricting religious activities by non-registered religious communities and sanctioning unregistered activity to be "*contrary to international law*". In finding the compulsory registration requirement to violate international law, the OSCE Panel of Religious Experts stated that:

Most OSCE countries do not *require* registration of religious organizations or impose sanctions on religious associations that fail to do so. No country outside of the former socialist bloc does so, and to the extent that some countries have retained these requirements, most are recognizing their problematic character and dropping

them. Major jurisdictions such as Russia, for example, have abandoned such requirements.

Registration requirements themselves do not violate international law governing freedom

of religion, so long as the requirements are administered impartially and are not unduly burdensome. But to the extent that...the Draft Amendments constitute a politically 'safe' or 'discreet' method of banning religious groups that are not in favour with the government, such provisions will constitute a violation of all international covenants and treaties prohibiting religious based discrimination. Further, Principle 16.3 of the 1989 Vienna Concluding Document guarantees the right of individuals and religious communities to receive "recognition of the status provided for them in their respective countries."¹¹

Yet, the government once again is proposing legislation that would prohibit religious activity and sanction any activity by unregistered organizations. Such defiance of internationally accepted human rights standards should not be countenanced.

Article 13 (4) of the draft Religion Law also prohibits a religious organization from obtaining legal entity status if denied "re-registration". Thus, such organizations would not be able to open bank accounts, to purchase property, build churches, protect their rights in legal proceedings, own assets or have paid staff or ministers.

Laws that attempt to deny base religious entity status to religious communities have been universally condemned by the OSCE, European Human Rights Court and the United Nations because they contravene basic rights to religious freedom and freedom of association.

History is replete with examples of laws which constrain individual religious practice by denying recognition to certain religious organizations. The OSCE, in a document entitled *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*,¹² emphasizes the importance of permitting religious groups to achieve registration status without discrimination because such communities cannot operate without such status.

Moreover, as noted above, history has provided all too many examples of States that have utilized registration laws to monitor and repress religious life. Both the mundane needs and the specter of more extreme abuses underscore the need for protection provided by OSCE commitments that assure that religious communities will be able to exercise their religious freedom rights through legal entities.¹³

¹¹ Analysis of Proposed Amendments to the Republic of Kazakhstan's Law on Freedom of Religion and Religious Associations Prepared by the Advisory Panel of Experts on Freedom of Religion and Belief of the OSCE /ODIHR, 2 March 2001 at 8.

¹² Office for Democratic Institutions and Human Rights (ODIHR) Background Paper 1999/4 presented at the OSCE Review Conference in September 1999.

¹³ OSCE Review Conference, September 1999.

Because of the critical nature of achieving legal personality, a series of decisions of the European Court of Human Rights has recognized that such a status is one of the most important aspects of the right to association,¹⁴ and that the right to association extends to religious associations. Undue restrictions on the right to legal personality are, accordingly, inconsistent with both the right to association and freedom of religion or belief. In *Metropolitan Church of Bessarabia v Moldova*, the Human Rights Court held that denial of legal entity status to the Church violated the right to freedom of association and freedom of religion, noting that “the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 [right to religious freedom] affords.”

Likewise, the OSCE Advisory Panel of Experts on Freedom of Religion or Belief and the Venice Commission note in their joint publication *Guidelines for Review of Legislation Pertaining to Religion or Belief* that the type of legislation being forwarded by this Bill violates the right to religious freedom.

It is difficult to imagine that there is a pressing social need for registration that is compelling enough to make proscribing protected religious conduct a "proportionate" response. Moreover, it is difficult to say that registration of small informal groups is "necessary in a democratic society" when the unanimous experience in most democracies is to the contrary. In most cases, such registration requirements typically operate to penalize law-abiding groups and to drive others underground. Any social gains are at best marginal, but the costs to religious freedom are substantial.¹⁵

Although not a signatory to the European Human Rights Convention, Kazakhstan has agreed to comply with international human rights standards through its own Constitution. Article 8 provides that “[t]he Republic of Kazakhstan shall respect principles and norms of international law.” Therefore, decisions of the European Human Rights Court, though not binding on Kazakhstan, are instructive in laying out international religious freedom standards.

The draft law’s approach also contravenes the European Court of Human Rights’ application of a fundamental human rights policy of the European Community to religious freedom issues – “the need to secure true religious pluralism, an inherent feature of the notion of a democratic society”.¹⁶ Similarly, the Court has emphasized the importance of “pluralism, tolerance and broadmindedness, without which there is no democratic society”.

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As the Court has stressed, since religious entities exist in the form of organized structures, “the autonomous existence of religious communities is indispensable for pluralism in a

¹⁴ *Sidiropoulos v. Greece* (1998); *United Communist Party of Turkey v. Turkey* (1998); *Gorzelik v. Poland*, § 55 (2001).

¹⁵ *Guidelines for Review of Legislation Pertaining to Religion or Belief*, prepared by the OSCE Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the Venice Commission (2004) Section 5.1.2.

¹⁶ *Manoussakis Others v. Greece*, (59/1995/565/651) (26 September 1996), paragraph 44.

¹⁷ *Manoussakis*, paragraph 41.

democratic society and is thus an issue at the very heart of the protection which Article 9 affords".¹⁸ It would frustrate this policy of "true religious pluralism" and result in arbitrariness and unfair discrimination to exclude minority faiths from attaining the same rights and benefits as other religions simply because they are smaller or new to Kazakhstan.

c. Arbitrary and Discriminatory Evaluation of Religious Literature for Purposes of "Re-Registration" and Prior to Importation

Article 6 of the draft Religion Law impermissibly allows an (undefined) "authorized body" (according to Forum 18 this will be the Agency for Religious Affairs) to ensure the carrying out of "religious study examinations" by "persons holding special knowledge in the field of religious studies, with the assistance, when necessary, of representatives from government bodies and other professionals". The proposed legislation provides no criteria for these "religious study examinations". This thus allows virtually unfettered discretion by the government or its agents to evaluate religious doctrines and activities and then approve or deny an application for "re-registration" based on such evaluations in direct contravention of international religious freedom standards. Such a system is a blueprint for discrimination.

This provision is strikingly similar to the language in the prior amendments to the 1992 Law that were rejected by the Constitutional Council and the OSCE Panel. As the OSCE noted:

It is unclear from the face of the draft amendments which governmental agency constitutes the "authorized public body." Whatever body is ultimately authorized to make such judgments, however, has no clear standards to guide it, with the result that arbitrary government enforcement seems unavoidable. Conduct so clearly protected by both freedom of religion and freedom of expression norms should not face the risk of arbitrary enforcement in this manner.¹⁹

Article 9 (3) of the draft Religion Law would require that all religious literature imports – apart from small quantities for personal use – be done only by registered religious organizations with prior approval from the "authorized body" which first must arrange for an "expert analysis" ("religious study examinations" by "persons holding special knowledge in the field of religious studies, with the assistance, when necessary, of representatives from government bodies and other professionals") of each title. Likewise, an expert analysis must be obtained before such literature is allowed to be stocked in any institution and organization library. The exact terms of this requirement and the standards for evaluation are undefined and remain unclear.

¹⁸ *Metropolitan Church v. Moldova* (44701/99) (13 December 2001), paragraph 118.

¹⁹ Analysis of Proposed Amendments to the Republic of Kazakhstan's Law on Freedom of Religion and Religious Associations Prepared by the Advisory Panel of Experts on Freedom of Religion and Belief of the OSCE /ODIHR, 2 March 2001 at 7.

Articles 6 and 9 contravene the right to religious freedom guaranteed by Article 18 of the ICCPR and the OSCE accords by providing for evaluations of religious texts that will inevitably lead to censorship and discrimination.

This empowerment of government agents with broad administrative discretion on matters of religion was one of the three “serious problems” identified by the OSCE Panel of Religious Experts in their March 2, 2001 Analysis regarding proposed amendments to Kazakhstan’s 1992 Religion Law (Report at 2).

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief makes it quite clear that necessary articles and materials related to religious rites and communications and writings in matters of religion and belief are included within the ambit of freedom of religion. Article 6 of the Declaration states that the right to freedom of religion or belief shall include, *inter alia*, the following freedoms:

- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;

Articles 6 and 9 also flout clearly delineated human rights standards in religious registration cases developed by the European Court of Human Rights in a series of decisions over the last two decades. These standards mandate government neutrality, non-discrimination, religious pluralism and non-evaluation of religious belief.

In furtherance of the policy of “true religious pluralism”, the European Human Rights Court has instructed governments “to remain neutral and impartial” and has been loath to accept any restrictions on religion, viewing any contested measures with “strict scrutiny”.²⁰ The European Court has also criticized and struck down measures that vest officials with “very wide discretion” on matters relating to religion.²¹ In criticizing broad discretion in one case, the Court held that “*the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.*”²²

Instead, the Court determined that officials should be limited to verifying, “whether the formal conditions laid down are satisfied”. It stressed that seemingly innocuous administrative action restricting the rights of minority religions operated as a “lethal weapon against the right to freedom of religion.”²³ The Court also emphasized: “in

²⁰ *Metropolitan Church*, paragraph 117; *Manoussakis*, paragraph 44.

²¹ *Manoussakis*, paragraph 45.

²² *Manoussakis*, paragraph 45; *Metropolitan Church*, paragraph 117.

²³ *Manoussakis*, paragraphs 41, 50-51.

exercising its regulatory power in this sphere and in its relations with various religions, denominations and beliefs, the State has a duty to remain neutral and impartial”; this duty of neutrality “*is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs.*”²⁴

As the Court has determined that the government may neither assess the merits of religious practices and beliefs under Article 9, nor favor some religions over others, then the Kazakhstan government surely may not apply the Religion Law to provide privileges to some religious organizations while imposing hindrances on others based on assessments of such practices and beliefs.

d. Repressive Membership Requirements

Under Article 12, Part 2, local religious organizations need 50 adult citizen members within one region of the country or main town, and register with the local Justice Department. Under Article 12, Part 3, regional religious organizations need 500 adult citizens who belong to at least two different registered local religious organizations (each with at least 250 adult citizens) located in two different regions or main towns. The regional organization is only allowed to function in the areas where its local member organizations are based. Under Article 12, Part 4, national religious organizations need at least 5,000 adult citizens from all regions of the country, the capital and all major towns (with at least 300 members in each of those territories). It also needs branches all over the country.

This does not meet international human rights standards. The joint publication by the Venice Commission and the OSCE Panel of Religious experts entitled *Guidelines for Review of Legislation Pertaining to Religion or Belief* finds that the types of onerous requirements contained in the current provision contravene human rights standards, noting that:

High minimum membership requirements should not be allowed with respect to obtaining legal personality.

The member requirement represents the necessity of gathering the signatures of at least 50, 500 or 5,000 members for a religious group to be able to apply for local, regional or republican registration status. Thus, newly-founded religious communities with less than 50 members in one region are deprived of the right to manifest their religion through practice, teaching or worship and deprived of the right to be registered as legal entities.

The OSCE Panel of Experts criticized the requirement of 50 adult citizens (up from 10 in the 1992 Law) in its advisory opinions on the rejected amendments to the 1992 Law.

The complexity of registration is increased by requiring at least 50 founding adult citizens (up from 10 in the 1992 religion law). Since Kazakhstan (like many of its neighbors) has only required 10 founding members for years, it is hard to

²⁴ *Metropolitan Church*, paragraph 117.

demonstrate that the heightened membership requirement is really necessary. Yet under international standards, a constraint on religious activity is permitted only if it is strictly necessary to further legitimate state objectives in a small number of enumerated categories. (*See, e.g.*, Article 18(3) of the International Covenant on Civil and Political Rights.) It is important to remember that many religious organizations are structured on a congregational basis and may worship in small religious communities that do not have 50 or even 20 adults. Yet these groups have a right under international norms of freedom of religion or belief and freedom of association, as well as under OSCE commitments, to acquire legal entity status. Failure to grant such status when requested clearly impairs the ability of religious groups to acquire or lease places of worship, to obtain bank accounts, to hire employees, and in general to carry out their legitimate religious affairs. Significantly, increasing the minimum membership requirement is likely to be counterproductive from the standpoint of addressing problems issues of public safety and order.²⁵

The draft law, by setting a minimum of 50 signatures for “de-registered” minority religions to apply for “re-registration”, actually prevents them from obtaining registration and the basic rights that follow from it. Religious communities newly established in Kazakhstan as well as denominations organized in small congregations would therefore be deprived of the right to manifest their religion under sanction of the law. They would also be deprived of the possibility to become legal entities and to conduct their affairs fairly.

e. Repressive Requirements for Foreign Missionaries

Pursuant to Article 8 of the draft Religion Law, foreign citizens may only work as “missionaries” in Kazakhstan if they have an invitation from a registered religious community in the country and have personally and successfully registered as a missionary. They also need a certificate proving that the religious organization they represent is registered in their country of origin. In addition, foreign missionaries “shall be refused registration on the basis of a negative conclusion of the religious study examination and also if such missionary activity presents a threat to the constitutional order, public order, human rights and freedoms, public health and morals”. Any unregistered foreign missionary activity is prohibited and, under Article 374-1 and Article 375, unauthorized missionary activity may be sanctioned by fines and deportation.

These harsh provisions violate international religious freedom norms. The OSCE Panel of Religious Experts identified these restrictions, which were included in the prior amendments as a “serious problem”. The Panel noted that:

In any event, administrative impositions upon missionary activity are not consistent with Kazakhstan’s commitments under the Charter of Paris, which states generally that “free movement and contacts among our citizens as well as the free flow of

²⁵ See Footnote 3 at 7.

information and ideas are crucial for the maintenance and development of free societies and flourishing cultures.”

f. Repressive Restrictions on Distribution of Religious Literature

Pursuant to Article 9 (2) of the draft Law, “distribution of religious literature and other information materials with religious content” is allowed only in religious buildings, religious educational institutions, and “stationary facilities identified by local executive bodies...”

The net effect of such restrictions is to empower the State to “localize “and “contain” the practice of religion as the State deems fit. This would violate the Helsinki Final Act, the Charter of Paris, the ICCPR and multiple other international covenants guaranteeing freedom of expression, freedom to disseminate religious ideas and freedom of association. These international covenants and treaties guarantee the right to uninhibited dissemination of religious literature and materials “regardless of frontiers”.

As the UN Human Rights Committee has noted in its definitive interpretation of the right to religious freedom under Article 18 of the ICCPR:

The practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools *and the freedom to prepare and distribute religious texts or publications.*

Likewise, Article 6 of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief states that the right to freedom of religion or belief shall include, *inter alia*, the following freedoms:

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas.

Although these rights may be restricted by the state if it can identify concrete and pressing social interests so strong as to override religious freedom, there is a very strong presumption under international law in favor of proselytism and in favor of allowing free importation and distribution of religious literature. Yet, these rights and these presumptions are completely ignored in the draft Religion Law.

g. Repressive Restrictions on Children

Article 3 (16) requires leaders of religious organizations "to take steps to prevent the attraction and/or participation by underage children in the activity of a religious

association if one of the child's parents or legal guardians objects".

As noted by Forum 18, "It remains unclear how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious community. It also remains unclear whether, for example, the country's Chief Mufti or one of the Orthodox bishops might become liable if a community under their jurisdiction does not take measures to ensure that every child who attends has the approval of both parents".

The OSCE Panel of Experts noted the problems with similar attempts to sanction religious groups for the participation of mature minors. The Panel noted:

It must also be remembered that a religious group should not be subjected to sanctions where a child seeks to participate in its activities and the group is not aware of objections from parents or guardians. Of course, subject to these considerations, care should be taken to avoid subjecting anyone to compulsion in matters of religion. *See* Article 18(2) of the International Covenant on Civil and Political Rights.²⁶

The Panel also noted that where a child—particularly a mature minor—seeks to learn about alternative religious outlooks, but the parents object, imposing liability could violate the rights of the child as spelled out in Article 14 of the Convention on the Rights of the Child.

If construed to mean that parents could not teach religious principles to their children where such religious principles differed from what a child might be taught at government sponsored schools, the draft amendments would not conform to fundamental rights of religious education as set forth in the Vienna Concluding Document.

h. Repressive Restriction on Building New Places of Worship

Under Article 5 (5), any new place of worship in Kazakhstan would require the approval of the Agency for Religious Affairs and the local administration. This approval would be necessary not only as to whether a religious community can build, but exactly where, as well as whether a religious community could gain official change of usage for a building it wants to turn into a place of worship. No standards or criteria are provided regarding how these administrative decisions will be made.

This provision provides excessive administrative discretion to the government, identified as a "serious problem" by the OSCE Panel of Experts in its 2002 Analysis of the proposed amendments to the Kazakhstan 1992 Religion Law. If adopted, this provision will inevitably lead to discrimination, with favored faiths granted worship permits and targeted faiths denied such permits in violation of the anti-discrimination provisions in the ICCPR, UN Declaration, UDHR and OSCE Accords.

²⁶ See Footnote 3 at 6.

Conclusion

Passage of this repressive legislation would represent a serious setback for religious freedom in Kazakhstan. The Religion Law contravenes OSCE and United Nations standards that Kazakhstan is bound to follow because it flagrantly discriminates against minority religious groups. In the INSTITUTE'S opinion, the draft Religion Law is completely inconsistent with fundamental human rights as it contravenes the principles of equality and non-discrimination.

The INSTITUTE urges Kazakhstan to request the assistance of the OSCE Panel of Religious Experts to review the draft Religion Law so that the panel may advise the government of Kazakhstan regarding the compatibility of the provisions of the proposed legislation with OSCE standards and international human rights law.

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