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KAZAKHSTAN: "People don't have the right to distribute religious materials in any form whatsoever"

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

Courts fined at least 18 people in 2021 for distributing religious literature, texts, videos, audio and items in places and ways the regime declares illegal under its compulsory religious censorship. Most fines were of three weeks' average wages. "People don't have the right to distribute religious materials in any form whatsoever, whether text, video or audio," insists Kayrulla Kushkaliyev of Atyrau's Religious Affairs Department – which brought six prosecutions. The UN Human Rights Committee found an import ban on ten Jehovah's Witness publications violated Polat Bekzhan's rights.

Courts have fined at least 18 people in the first three months of 2021 for distributing religious literature, texts, videos, audio and religious items in places and ways the regime declares to be illegal under its compulsory religious censorship. Only one of the individuals, Council of Churches Baptist Nikolai Novikov – who was offering religious literature for free on the streets – had his fine overturned on appeal.

Most of the fines were of 35 Monthly Financial Indicators (MFIs), about three weeks' average wages for those in formal work, according to the court decisions seen by Forum 18. (A full list of the 18 known cases is below.)

Six of the prosecutions – all of people who had posted religious materials on their social media accounts – were in the western city of Atyrau on the Caspian Sea. Kayrulla Kushkaliyev, the head of the regional Religious Affairs Department – which brought the prosecutions – insisted that he was merely fulfilling the requirements of the Religion Law. "People don't have the right to distribute religious materials in any form whatsoever, whether text, video or audio," he told Forum 18 (see below).

The prosecutions continue as the United Nations (UN) Human Rights Committee found that the regime's censorship system caused a violation of the rights of Jehovah's Witness Polat Bekzhan and his colleagues in a decision made public on 26 March. The then Agency of Religious Affairs (now the Religious Affairs Committee in the Information and Social Development Ministry) banned the import of ten Jehovah's Witness magazines in 2012.

The UN Committee "considers that the freedom to prepare and distribute religious texts or publications forms part of [Bekzhan and his colleagues'] right to manifest their beliefs and that the refusal to permit the importation of the religious publications constitutes a limitation of that right".

The Committee also observed that the censorship requirement set out in the Religion Law "is also problematic in light of [International Covenant on Civil and Political Rights] Article 19, which guarantees 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers'."

The UN Committee said Kazakhstan should "review its legislation, regulations and practices" to ensure that such a violation cannot recur and inform it within 180 days of what steps it will take (see below).

A Foreign Ministry official told Forum 18 that Kazakhstan would respond to the UN Committee "in a timely manner" on "the measures undertaken to give effect to the Views" (see below).

Tight state-imposed religious censorship

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

Article 9, Part 2 of the Religion Law declares: "Distribution of religious literature, other informational materials of religious content and objects of religious designation is allowed only in [registered] places of worship, [registered] religious educational organisations

as well as in fixed premises specially designated by the local executive authorities."

Article 9, Part 3 allows for the import of religious literature by registered religious organisations only and only after it has undergone state censorship by the Religious Affairs Committee (part of the Information and Social Development Ministry). Individuals can bring in only one copy of any religious book for personal use only.

President Kassym-Zhomart Tokayev told the journalist Mukhamedzhan Tazabek, in an interview Tazabek posted on his Instagram account on 18 August 2019, that when he had been posted abroad during the late Soviet period, he had smuggled into the Soviet Union a copy of the Koran and recordings of Koranic suras (https://www.forum18.org/archive.php?article_id=2558) at the request of his father.

Most of those punished are fined under Administrative Code Article 490, Part 1, Point 3. This punishes: "Violating the requirements of the Religion Law for .. import, manufacturing, production, publication and/or distribution of religious literature and other religious materials, and items for religious use". The punishment for individuals is a fine of 50 MFIs, about one month's average wage for those in formal work.

Of the at least 134 administrative prosecutions in 2020 to punish 129 individuals (one twice), three charities and one company for their exercise of freedom of religion or belief, 88 were to punish activity related to sharing religious materials. In three cases in 2020, courts ordered seized religious books to be destroyed (https://www.forum18.org/archive.php?article_id=2634).

The regime also imposes tight restrictions on all meetings for worship. State permission is needed for a community to be allowed to meet and the location of any meeting also needs state permission.

Courts have continued to hand down fines in 2021 (https://www.forum18.org/archive.php?article_id=2634) to punish the exercise of freedom of religion or belief, including on those conducting meetings for worship, saying the word "Amen" aloud while praying in mosques, and teaching their faith.

UN Committee: Censorship requirements in Religion Law "problematic"

On 26 March 2021, the United Nations Human Rights Committee communicated to Kazakhstan and made public its findings (CCPR/C/130/D/2661/2015 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f130%2fD%2f2661%2f2015&Lang=en), adopted on 30 October 2020) that Kazakhstan violated the rights of Jehovah's Witness Polat Bekzhan – chair of the Jehovah's Witness organisation in the country - by refusing permission for the community to import ten religious publications in 2012.

The then Agency of Religious Affairs – which then operated the country's compulsory prior censorship of all published or imported religious literature – claimed the ten publications "reject the fundamental teachings of traditional Christianity", discouraged secular education and "can cause family breakup". Jehovah's Witnesses failed to overturn the ban through the courts and Bekzhan lodged a complaint to the UN Human Rights Committee in 2015.

The UN Committee noted the vagueness of the Agency's criticism of the publications and said that the ban on importing literature "interferes with the right to freedom of religion". It added that it "considers that the freedom to prepare and distribute religious texts or publications forms part of [Bekzhan and his colleagues'] right to manifest their beliefs and that the refusal to permit the importation of the religious publications constitutes a limitation of that right".

The UN Committee went on to note that although limitations are allowable in narrowly-defined circumstances, Kazakhstan has not shown "that this limitation of the right to manifest religion is proportionate to a legitimate purpose that it might serve".

"The reasons given for disapproving the importation of some of the [Jehovah's Witness] publications suggest there is ample room for disapproval for arbitrary or other prohibited reasons, such as disagreement by the State or other religions with the religious principles expressed in the literature," the Committee pointed out. "Furthermore, religious freedom is particularly necessary to protect the rights of those who adhere to unpopular beliefs."

The UN Committee considered that Kazakhstan "failed to justify the restrictions on the manifestation of the authors' religion, and concludes that the refusal of permission to import the religious publications in question is contrary to the freedom to manifest one's religion, and it therefore amounts to a violation" of the rights of Bekzhan and his colleagues.

The UN Committee also observed that the censorship requirements set out in the Religion Law which could lead to such literature import bans "is also problematic in light of [ICCPR] Article 19, which guarantees 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers'."

The UN Committee concluded by instructing Kazakhstan to remove the restrictions on importing the ten publications, give adequate

compensation to Bekzhan and his colleagues, and "review its legislation, regulations and practices" to ensure that such a violation cannot recur. It asked Kazakhstan to inform it within 180 days of "the measures taken to give effect to the present Views".

A Foreign Ministry official, who asked not to be named, told Forum 18 from the capital Nur-Sultan on 9 April that Kazakhstan has 240 days to inform the Committee "on the measures undertaken to give effect to the Views" from the date of receipt of 26 March. "60 additional days are provided in light of the COVID-19 pandemic", the official noted.

"The pertinent Kazakhstan state authorities are conducting relevant work and will provide a relevant follow-up reply to the Committee in a timely manner," the official added.

No one at the Information and Social Development Ministry and its Religious Affairs Committee would discuss why the regime imposes restrictions on individuals' access to and right to use and distribute literature and other materials related to religion.

The assistant to Deputy Information and Social Development Minister Marat Azilkhanov – who oversees religious affairs - told Forum 18 on 9 April that he was unavailable in a meeting that would last the rest of the day. Deputy chair of the Religious Affairs Committee Bauyrzhan Bekirov – the only senior official to answer the phone on 9 April – refused to answer any questions. "Ask the Foreign Ministry," he told Forum 18 before putting the phone down.

Punishing posting religious materials online without state permission

1) On 19 January, Atyrau Specialised Administrative Court fined Almaz Dyusenov 35 MFIs and imposed a ban of three months on unspecified activities under Administrative Code Article 490, Part 1, Point 3 for posting ten Islamic videos on his Instagram page, 1 in Kazakh and 9 in Arabic. An "expert analysis" found the recordings to be religious. The court decision notes that "it is established in law that distribution of materials of religious content is allowed only in strictly designated locations, of which the Instagram social network is not part".

2) On 16 February, Atyrau Specialised Administrative Court fined Gulmira Aytuganova 35 MFIs and imposed a ban of three months on unspecified activities under Administrative Code Article 490, Part 1, Point 3 for sharing material from the Koran on her VKontakte page.

3) On 16 February, Atyrau Specialised Administrative Court fined Medet Dosanov 35 MFIs and imposed a ban of three months on unspecified activities under Administrative Code Article 490, Part 1, Point 3 for sharing audio recordings from the Koran on his VKontakte page. An "expert opinion" of the Institute for Analysis of the Religious Situation and Religious Expertise of 25 December 2020 led to his prosecution.

4) On 22 February, Atyrau Specialised Administrative Court fined Shamil Dzhakhparov 35 MFIs and imposed a ban of three months on unspecified activities under Administrative Code Article 490, Part 1, Point 3 for sharing videos on his Instagram account about "the day of judgment, the holy month of Ramadan, one of the greatest sins – adultery, and on forgiveness", according to the "expert analysis".

5) On 26 February, Atyrau Specialised Administrative Court fined Asylbek Kanatov 35 MFIs and imposed a ban of three months on unspecified activities under Administrative Code Article 490, Part 1, Point 3 for posting suras from the Koran on his VKontakte page. A 12 January "expert analysis" had found the materials to be religious.

6) On 4 March, Atyrau Specialised Administrative Court fined Bolat Ensepov 35 MFIs and imposed a ban of three months on unspecified activities under Administrative Code Article 490, Part 1, Point 3 for posting on his Instagram account "sermons on gratitude to Allah, the benefits of faith, dreams, and the fact that everyone needs a Creator". A 12 January "expert analysis" had found the materials to be religious.

7) On 18 March, Satpayev City Court fined Nariman Nurgali 70 MFIs under Administrative Code Article 490, Part 3 for posting religious materials on his VKontakte page.

8) On 29 March, Temirtau Specialised Administrative Court fined Nazary Sadovin 70 MFIs under Administrative Code Article 490, Part 3 for posting Islamic materials on his VKontakte page.

Kayrulla Kushkaliyev, the head of Atyrau regional Religious Affairs Department – which brought six of these prosecutions – insisted that he was merely fulfilling the requirements of the Religion Law. "People don't have the right to distribute religious materials in any form whatsoever, whether text, video or audio," he told Forum 18 from Atyrau on 9 April.

Asked why individuals should be prosecuted for posting information about and their views on religion on their social media accounts, Kushkaliyev responded: "Courts examine these cases and take the decisions. I can't influence court decisions. If we [at the Religious Affairs Department] are violating the law, courts would bring a case against me and my specialists."

Punishing offering religious literature, items for sale online

1) On 5 January, Oskemen Specialised Administrative Court fined Boris Levchenko 35 MFIs (97,230 Tenge) under Administrative Code Article 490, Part 1, Point 3 for offering for sale online on the Olx.kz website a small metal cross, which a religious studies expert analysis determined was a religious object. An officer of the police's Department for the Struggle Against Extremism had discovered Levchenko offering the cross online. The court ordered the cross to be returned to him. Despite telling the appeal court that he is a pensioner with a low income and health concerns on 3 February the court left the fine unchanged.

2) On 6 January, Ekibastuz Specialised Administrative Court fined Askhat Kenesbayev 35 MFIs under Administrative Code Article 490, Part 1, Point 3 for offering for sale online on the Olx.kz website a copy of the Koran "which a religious studies expert analysis determined to be religious". Police had found him offering the book for sale during internet "monitoring". In court, Kenesbayev "acknowledged his guilt and explained that he did not know that it was not allowed to sell the book," the court decision notes. "He had put it up for 30,000 Tenge. He had no money. The book had been left by his mother." The court ordered the Koran to be returned to him.

3) On 14 January, Pavlodar Specialised Administrative Court fined Alyona Aidina 35 MFIs under Administrative Code Article 490, Part 1, Point 3 for offering a copy of the Koran for sale online on the Olx.kz website. An "expert" reported that the Koran "is religious literature, containing an exposition of the dogmas and precepts of the Muslim religion". The court decision notes that the restrictions on distribution of religious literature as set out in the Religion Law "ban the distribution of such literature by means of placing announcements on the Olx website". The court ordered the Koran to be returned to her.

4) On 12 February, Petropavl Specialised Administrative Court fined Vladimir Kolominsky 35 MFIs under Administrative Code Article 490, Part 1, Point 3 for offering for sale online on the Olx.kz website a copy of the Koran, which the Religious Affairs Department had found to be "religious literature related to the religion of Islam". The court ordered the Koran to be returned to him.

Punishing offering religious literature, items for sale, without state permission

1) On 2 February, Turkistan Specialised Administrative Court fined Kumiya Dadanova 35 MFIs and imposed a ban of three months on unspecified activity under Administrative Code Article 490, Part 1, Point 3 for offering religious materials for sale in a shop in the city's Kuanysh shopping centre. Officials discovered Dadanova offering the religious material for sale on 21 October 2020. An 11 January 2021 "theological examination" (in the words of the court decision) had found the books to be religious. A record of an offence under Administrative Code Article 490, Part 1, Point 3 was drawn up on 25 January.

2) On 17 March, Zhanaozen Specialised Administrative Court fined Maksat Dzhamiyev 35 MFIs and imposed a ban of three months on distributing religious literature under Administrative Code Article 490, Part 1, Point 3 for allowing religious literature to be sold in a shopping centre in the city.

3) On 26 March, Pavlodar Specialised Administrative Court fined Darya Porokhnya 35 MFIs under Administrative Code Article 490, Part 1, Point 3 for offering for sale on Koran in a shop in the Gulliver shopping centre. The 20-year-old told the court she did not know the Koran is religious. The court ordered the Koran to be returned to her.

Punishing offering free religious materials without state permission

1) On 18 January, Oral Specialised Administrative Court fined Council of Churches Baptist Nikolai Novikov 35 MFIs under Administrative Code Article 490, Part 1, Point 3 for offering religious literature for free on the streets. Police had filmed him offering copies of the New Testament in Kazakh and Russian and Christmas leaflets on 7 January. The books had not undergone a state "religious studies expert analysis", the court decision notes.

However, on 16 February, the appeal court annulled Novikov's fine at the request of the prosecutor, who argued that the police had not provided evidence to the court that the New Testaments and the Christmas leaflets were religious literature, and that the absence of sound on the police video meant that what Novikov had been saying was impossible to determine. The appeal court ordered the books and leaflets to be returned to him.

Punishing praying, reading religious literature without state permission

1) On 17 March, Aktau Specialised Administrative Court fined Erbolat Dzhuguniov 50 MFIs under Administrative Code Article 490, Part 1, Point 3 not only for praying the Friday namaz on 5 March in business premises but for reading religious literature, which the court deemed to be illegal distribution. Officials seized 12 books and 10 calendars, which the court ruled should be "confiscated in favour of the state".

(On 17 and 18 March, the same Aktau Specialised Administrative Court fined Khakimzhan Valishov and Odilzhan Ermetov 50 MFIs each under Administrative Code Article 490, Part 1, Point 1 for joining Dzhuguniov for the Friday prayers on 5 March.)

Punishing trying to import religious literature without state permission

1) On 19 February, Zhambyl District Court fined Kyrgyz citizen Dastan Kulashev 100 MFIs under Administrative Code Article 453, Part 4 for trying to import one religious book from neighbouring Kyrgyzstan which the Kazakh authorities deem to be "extremist". Court officials told Forum 18 that Kulashev had with him a book by a member of the Kandahlawi family, key figures in the Tabligh Jamaat Muslim missionary movement. The book was banned by a court in Astana in April 2008. They added that Kulashev had not attended the hearings in person, and has not appealed against or paid the fine. (END)

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

For more background, see Forum 18's Kazakhstan religious freedom survey (https://www.forum18.org/archive.php?article_id=2409)

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

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