

OVERVIEW OF THE SITUATION WITH RELIGIOUS FREEDOM WITH ANALYSIS OF LEGAL REGULATIONS IN THE REPUBLIC OF KAZAKHSTAN

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INTRODUCTION

Despite recent trends in Kazakhstan towards the liberalization and democratization of laws in the field of human rights protection, the question of ensuring the fundamental rights of citizens to freedom of religion is still pertinent. Existing laws to protect national security and counter-terrorism measures often restrict the rights of the believing part of the population and serve as a tool for strict state control of religious associations.

This study is a comprehensive analysis of national legislation in the field of religion: in particular, in the field of ensuring human rights to freedom of religion, identifying its shortcomings, and finding ways to improve laws in accordance with international standards.

This document presents the results of consultations with independent experts, members of religious associations, representatives of the authorized body the Committee for Religious Affairs of the Ministry of Information and Social Development of the Republic of Kazakhstan, and representatives of the academic community.

This document also contains recommendations and proposals for improving the legislation in the field of religion, in compliance with international standards.



Key conclusions and primary recommendations

The right to freedom of conscience means that this right is exercised by the individual and includes the ability, either independently or jointly with other citizens, to profess adherence to any religion or to not adhere to any religion. Consequently, the sectoral legislative act must contain guarantees for the individual exercise of the right to freedom of religion. The current Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" essentially narrows the constitutional norm on freedom of conscience;

reduces the right to freedom of religion to the activities of religious associations, or rather, establishes a framework for the activities of religious associations; and, according to its intended purpose, aims at regulating public and state security from possible illegal actions as a result of the exercise of the right to freedom of conscience.

In this regard, we recommend the following:

State the concept of "religious association" as follows: "Religious association is voluntary for citizens of the Republic of Kazakhstan, foreigners, and stateless persons, in accordance with the procedure established by the legislative acts of the Republic of Kazakhstan, united on the basis of their common interests to meet religious needs."

Revise the provisions of administrative and criminal legislation regarding the responsibility of religious associations, their leaders, and individual believers for violation of the current legislation, bringing them into alignment with the principle of legal certainty and predictability and the principle of proportionality (adequacy) to legitimate goals.

Cancel the mandatory registration of religious associations and ensure people's rights to freedom of religion, including in the absence of formal organizations, in accordance with the International Covenant on Civil and Political Rights.

Define specifically in the Law "On Education" and the Labor Code the right of a person to wear religious clothing, including head coverings, in an educational institution or at work (a student or an employee, respectively), without violating the rights of others.

Provide clear and precise formulations in the criminal legislation as grounds for bringing to account "inciting religious hatred" and propaganda of "religious extremism."

The following recommendations are given by some of the experts:

Exclude in the law on religious activity the norms on conducting an examination and holding worship services with notifications, which will contribute to the exclusion of administrative responsibility.

Reduce fines in the Code of Administrative Offenses for violation of religious legislation.

Treat religious organizations as ordinary non-profit organizations, giving them preferences and not obstacles.

Render it necessary to regularly conduct research in terms of registration of missionary work, in order to introduce recommendations and proposals into the law based on the actual situation. Increase the qualifications of employees, especially officials responsible for the formation and implementation of rights and freedoms.

Repeal law that has a discriminatory approach and remind the state of its three obligations: to respect, protect, and promote human rights.

Considering the above arguments, we recommend reviewing the current legislation, as well as developing a new Law "On Freedom of Religion in the Republic of Kazakhstan" to ensure and protect the right of everyone to freedom of conscience and religion in accordance with international standards and obligations of the Republic of Kazakhstan based on the recommendations of the UN Committee for human rights, experts of the Office for Democratic Institutions and Human Rights of OSCE and UN Special Rapporteur on Freedom of Religion and Belief.

ANALYSIS OF REGULATORY LEGAL ACTS IN THE FIELD OF FREEDOM OF CONSCIENCE AND RELIGION

The right to freedom of conscience and religion: constitutional, legal, legislative regulation and development trends

The Constitution of the Republic of Kazakhstan stipulates that "everyone shall have the right to freedom of conscience. The right to freedom of conscience shall not specify or limit universal human and civil rights and responsibilities before the state." (Article 22)¹.

This constitutional norm on freedom of conscience has found its development and concretization in the Law of the Republic of Kazakhstan dated October 11, 2011, No. 483- IV "On Religious Activities and Religious Associations" (hereinafter referred to as the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations"), in the preamble of which is written:

"This Law is based on the fact that the Republic of Kazakhstan asserts itself as a democratic, secular state, confirms the right of everyone to freedom of conscience, guarantees the equality of everyone regardless of their religious beliefs, recognizes the historical role of Hanafi Islam and Orthodox Christianity in the development of the culture and spiritual life of the people, respects other religions combined with the spiritual heritage of the people of Kazakhstan, recognizes the importance of

interfaith harmony and religious tolerance and respect for the religious beliefs of citizens"².

Questions have risen in the expert community regarding what caused such a legal regulation of highlighting the historical role of certain religions, "respect for religions that are combined with the spiritual heritage of the people of Kazakhstan." Who defines such a "spiritual combination"? Is this some kind of ideological setting for the subjects of legal relations?

In this vein, Elizabeth Sewell, Doctor of Law, notes that "in secular states and countries that maintain separation of church and state, constitutional prohibitions prevent the state from granting various kinds of privileges to a particular group solely on the basis of the historical or cultural role of this group or on the nature of its religion"³.

Professor Suren Avakyan notes that the secular nature of the state does not exclude its constructive cooperation with religious organizations, however, without interference in their activities and without intervention by the latter in the affairs of the state.

 $^{^1}$ Constitution of the Republic of Kazakhstan. Adopted by the People of Kazakhstan at the republican referendum on August 30, 1995 https://adilet.zan.kz/rus/docs/K950001000_

² Law of the Republic of Kazakhstan dated October 11, 2011 No. 483-IV "On Religious Activities and Religious Associations" https://adilet.zan.kz/rus/docs/Z1100000483

³ Sewell E. Comparative characteristics of secular states and the equality of religious organizations // Limits of secularity: a public discussion about the principle of secular state and ways to implement freedom of conscience / comp.: A. Verkhovsky. – M.: 2003. S. 53.

The material support of the state in relation to religions is also not ruled out, which is expressed mainly in the provision of buildings and other property, the allocation of land plots, and the provision of tax benefits⁴.

Although the Republic of Kazakhstan according to its Constitution claims to be a secular state, there is an attempt by the state to influence the religious sphere of society. In this vein, the events when a new Supreme Mufti was elected in Kazakhstan were interesting. On February 22, 2013, an extraordinary kurultai of the country's imams was held in Astana. The former mufti of Kazakhstan, Absattar haji Derbisali, in his speech literally mentioned the following: "A few weeks ago, I was invited by Nursultan Abishevich Nazarbayev, the President of our country. I said: 13 years pass. I want to transfer to scientific work. — I understand: — you came from there and want to return. — Yes, I want to return, I have really missed scientific work."

Does this dialogue not resemble a service conversation between a government official and a superior official? What is included in the content of the "secular state" concept, and where is the line between religion and the state?

It is obvious that the state cannot but be disturbed by the tendency of extremist movements to emerge. However, the state policy to prevent religious extremism should not violate the constitutional right of a citizen to freedom of religion and contradict the secular nature of the state.

As Professor Viktor Luchin has aptly noted, the church, like other mass associations of citizens, cannot eliminate the problems that concern society. However, religious associations can respond to them only by their inherent established means in accordance with the goals for which they are created. Under the conditions of the separation of religious associations from the state and the prohibition of their interference in the affairs of the state, their activities, no matter how noble are the goals they pursue, cannot be carried out with the help of the state or secular means or methods⁶.

In this connection, Kazakhstani political scientist Dosym Satpayev, referring to the experience of Central Asian countries, notes that the official muftiyats are too much under the control of the authorities. Instead of the natural role of an intermediary between the flock and the

authorities, they turn out to be a kind of state ministry for religion. The fact that they are headed by a clergyman, and not by an official, does not render them less bureaucratic⁷. This situation is not conducive to the implementation of an effective policy in the sphere of religious relations.

Since 1991, the religious situation in Kazakhstan has changed in that there has been an increase in the total number of religious associations. For example, on March 1, 2009, there were 3993 religious associations in Kazakhstan; then on January 1, 2011, there were already 4222 of them. This is according to official statistics. The confessions and denominations with the highest numbers are Islam, Orthodoxy, Protestantism and Catholicism.

In Kazakhstan the state's reaction to the current religious situation and the growth in the number of religious associations was to adopt on October 11, 2011 the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations,"8 which established increased requirements for the creation and state registration of religious associations. At the same time, Article 24 of the law established that religious associations are obliged to make appropriate changes to their organizational documents in accordance with the new requirements within one year from the date of the law's entry into effect. Upon the expiration of the specified period, legal entities that have not brought their organizational documents in accordance with the requirements of the law are liquidated in a judicial proceeding at the request of the authorized body.

"In 2014, Heiner Bielefeldt, the UN Special Rapporteur on freedom of religion or belief, visited the Republic of Kazakhstan and subsequently published a report on his findings and recommendations to align Kazakh legislation and law enforcement practices with international standards for protecting freedom of conscience and religion. Bielefeldt highlighted that the 2011 Law "On Religious Activity and Religious Associations" included restrictive elements that were contrary to international standards for freedom of religion or belief. The most significant issue was mandatory official registration, as the absence of this status for a religious community deemed it "illegal", resulting in adverse consequences for the exercise of the right to freedom of religion or belief.

⁴ Avakyan S.A. Constitutional law of Russia: Training course: In 2 volumes. V.1. – M.: 2005. S. 362.

⁵The former mufti of Kazakhstan spoke about the reason for his departure https://online.zakon.kz/Document/?doc id=31334721&pos=7;-3#pos=7;-3

⁶ Luchin V.O. Constitution of the Russian Federation. Implementation problems. – M.: 2002. S. 312.

⁷ Satpaev D., Umbetalieva T., Chebotarev A. et al. Molotov cocktail. Anatomy of Kazakhstani youth. – A.: 2014. – S. 155 – 156.

Law of the Republic of Kazakhstan dated October 11, 2011 No. 483-IV On Religious Activities and Religious Associations" // Gazette of the Parliament of the Republic of Kazakhstan, 2011. No. 17. Art. 135.

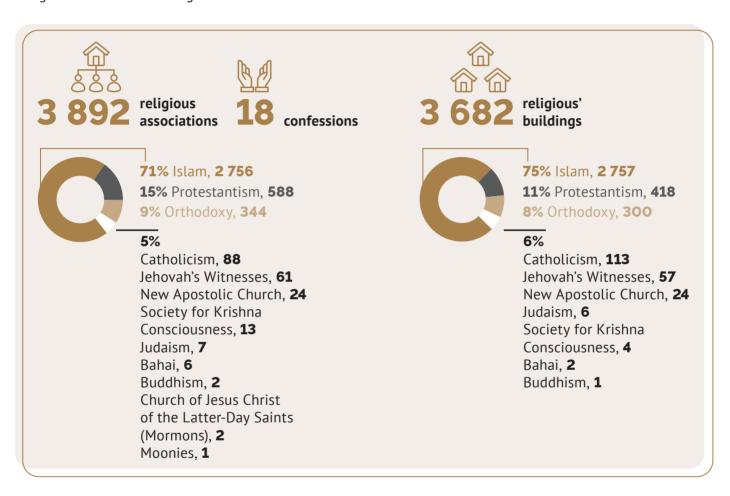
⁹ National Action Plan in the field of human rights in the Republic of Kazakhstan, 2017-2021. URL: https://bureau.kz/files/bureau/Docs/Docs%202017/Proekt-nac-plana-2017-2021.pdf

¹⁰ Podoprigora R.A. Re-registration of religious associations // Lawyer, 2012 No. 9. P. 32.

Even those communities that were officially registered still experienced legal uncertainty, mainly due to the government's restrictions on permitted religious activities based on predetermined issues and territorial boundaries. Overall, the 2011 Law assumed that the government's specific approval was necessary to exercise essential aspects of religious freedom, thereby turning the relationship between freedom and restrictions, which is typically understood in the context of human rights, on its head".

It is worth noting that the Special Rapporteur's primary recommendation was to "seriously amend the Law on Religious Activities and Religious Associations of 2011.

Professor Roman Podoprigora, an expert in the field of religion, lawyer, director of the Public Law Research Institute of Caspian University, in his critical analysis of this law from the point of view of the controversial practice of the procedure for re-registration of religious associations, different understanding of the norms of legislation, the short period of such re-registration, comes to the conclusion that "the majority of religious associations that have not undergone re-registration will not disappear, but will move to a different format of existence, and the state will need many more resources and efforts to influence them"¹⁰.



According to the open, official data of the Committee on Religious Affairs of the Ministry of Information and Social Development, as of fourth quarter of 2022, 3892 religious associations representing 18 confessions were registered in the country. These break down as follows: 2756 – Islam, 344 – Orthodoxy, 88 – Catholicism, 588 – Protestantism, 61 – Jehovah's Witnesses, 24 – New Apostolic Church, 13 – Society for Krishna Consciousness, 7 – Judaism, 6 – Bahai, 2 – Buddhism, 2 – Church of Jesus Christ of the Latter-Day Saints (Mormons), 1 – Moonies.

In total, there are 3682 religious' buildings throughout the country, of which 2,757 are mosques, 300 Orthodox churches, 113 Catholic churches, 418 Protestant prayer houses, 57 prayer houses of Jehovah's Witnesses, 24 prayer houses of the New Apostolic Church, 6 synagogues, 2 Baha'i prayer houses, 4 prayer houses of the Society consciousness of Krishna, and 1 Buddhist temple.

371 missionaries are officially registered, of which 296 are foreign citizens and 75 are citizens of Kazakhstan.

¹¹ Decree of the Government of the Republic of Kazakhstan dated December 31, 2020 No. 953 "On approval of the Comprehensive Plan for the Implementation of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2021-2023" https://adilet.zan.kz/rus/docs/P2000000953

As of April 1, 2020, there are 13 religious educational institutions in the country. The total number of students is 3381. Of these, 11 are of the Islamic persuasion (Nur-Mubarak University, 9 madrasah colleges, and the Islamic Institute for Imams' Advanced Training under the Spiritual Administration of Muslims of Kazakhstan), and 2 are of Christian orientation (Almaty Orthodox Theological Seminary and inter-diocese Higher Theological Seminary "Mary Mother of the Church" in Karaganda).

According to the results of the first quarter of 2020, 258 citizens continued their education in foreign theological educational institutions (including 130 people in recommended institutions and 113 people in dubious educational institutions). The most popular countries for spiritual education are the Arab Republic of Egypt (95), Turkey (66), the Kingdom of Saudi Arabia (57), and Jordan (17 people).

The Ministry of Science and Higher Education and local executive bodies annually allocate educational grants in the specialties "Islamic Studies," "Religious Studies," and "Theology". For the 2019-2020 academic year, 430 educational grants were allocated for these specialties¹¹.

According to the Order of the Minister of Education and Science of the Republic of Kazakhstan dated July 2, 2021, No. 316: "On the distribution of the state educational order for the training of personnel with higher and postgraduate education in the context of groups of educational programs for 2021-2022, 2022-2023, 2023-2024 academic years":

- → The state educational order for the training of personnel with higher education for the 2022-2023 academic year, in the context of groups of educational programs, allocated 200 grants in the specialty "Religion and theology".
- → The state educational order for the preparation of Masters for the 2022-2023 academic year in the direction of "Scientific and Pedagogical Master's Program" allocated 50 grants in the specialties "Religion and Theology," and 20 in Islamic Studies.
- State educational order for the preparation of PhD scholars for the 2022-2023 academic year, allocated 11 grants in the specialties "Religion and Theology" and 6 in Islam Education¹².

In the report "On Freedom of Religion in Kazakhstan" (Representation of the Konrad Adenauer Foundation in the Republic of Kazakhstan), with reference to open sources, it is noted that the activity of foreign donors can be traced in the field of education. In 2001, with the financial support of the Egyptian government, the Nur-Mubarak University of Islamic Culture was founded in Almaty¹³.

Roman Podoprigora, expert in the field of religion, director of the research institute of public law of the Caspian University, noted in an interview that "when the country became independent and the floodgates opened, a lot of preachers came here from Egypt, Saudi Arabia, Pakistan. The fact that Kazakhstan is experiencing problems from different directions is the consequence of missionary activity. Now the state is very much concerned about this issue and is trying to create its own system of training servants. It is assumed that only those who have been educated in Kazakhstan or in some friendly educational institutions can be servants in mosques" 14.

According to Danil Buglov, the fundamental problem of Kazakhstan, which is also characteristic of other post-Soviet countries, is the belief that religion a priori poses a threat, in particular, to the political structure and cultural identity. In this regard, at a certain stage, anti-cult organizations were active, which formed a certain public opinion, representing religious minorities as associations with selfish interests. Based on the understanding of religion as a potential threat to the political and cultural system, a certain internal policy is being formed, which ultimately limits human rights in this area.

Yevgeny Zhovtis, the legal scholar, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, is sure that there is a conceptual problem: the Constitution enshrines the right to freedom of conscience, but does not guarantee the right to freedom of religion and belief. This leads to the second problem, where the right to freedom of conscience and freedom of belief is seen as collective rather than individual.

Beimbet Manetov, the Head of the Department of Law Enforcement Practice in the Sphere of Religious Activities of the Committee for Religious Affairs of the Ministry of Information and Social Development of the Republic of Kazakhstan, sees the main danger in the dissemination of extremist materials of religious content, especially in the Internet space: "Now is the age of the Internet, and many people, especially the youth,

¹² Order of the Minister of Education and Science of the Republic of Kazakhstan dated July 2, 2021 No. 316 "On the distribution of the state educational order for the training of personnel with higher and postgraduate education in the context of groups of educational programs for 2021-2022, 2022-2023, 2023-2024 academic years" https://adilet.zan.kz/rus/docs/V2100023268

¹³ Helm T. "On freedom of religion in Kazakhstan": Report. Nur-Sultan, 2020. P. 27.

¹⁴ Transcript of an interview with R. Podoprigora on the topic "Freedom of religion in the Republic of Kazakhstan" // Helm T. "On freedom of religion in Kazakhstan": Report. Nur-Sultan, 2020. S. 42 – 43.

are looking for information, including religious content, in the Internet space and various public spaces. This can lead to receiving false information and falling under the influence of destructive religious movements. The use of social networks allows emissaries of international terrorist organizations to significantly expand their audience. In order to protect Kazakhstanis from the influence of propaganda, monitoring of the information space and theological examination is carried out. These measures are a necessary and important tool in countering religious extremism and terrorism".

A Kazakh theologian, wishing to remain anonymous, sees a problem in the excessive regulation and bureaucracy of the sphere:

66

We see de facto preferential policy towards certain religious associations, despite the constitutional principle of secularism and mutual distance between the state and religion".

Additionally, among the problems, the experts named excessive state administration, mandatory registration of religious associations, a ban on wearing special clothes for religious reasons in schools, problems associated with the distribution of religious literature, and missionary activities and the conduct of theological examination.



Issues of interpretation and implementation of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations": "religious activities," "religious association," "experts in conducting theological examination"

In practice, when registering religious associations and other non-profit organizations, there are problems with the proper understanding of the terms used in the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations".

Subparagraphs 2 and 4 of Article 1 "Basic Concepts Used in this Law" of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" define the concepts of "religious activity" and "religious association" as follows:

"Religious activity is an activity aimed at meeting the religious needs of believers."

"Religious association is a voluntary association of citizens of the Republic of Kazakhstan, foreigners, and stateless persons, in accordance with the procedure established by the legislative acts of the Republic of Kazakhstan, united on the basis of their common interests to meet spiritual needs".

"Religious activity" and "religious association" are phenomena of the same order, and the definition in the Law of their content through the concepts of "religious needs" and "spiritual needs" can cause in practice the incorrect application of the norms of the Law.

The Normative Decree of the Constitutional Council of the Republic of Kazakhstan dated February 11, 2009, No. 1 "On Verification of the Law of the Republic of Kazakhstan" "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on issues of freedom of religion and religious associations for compliance with the Constitution of the Republic of Kazakhstan" states that "technical, legal shortcomings of the Law create an opportunity for an ambiguous understanding of some of the provisions contained in it, which in practice can lead to arbitrary interpretation and inadequate application of this legislative act and, as a result, to unreasonable restriction of the rights and freedoms of a person and a citizen" 15.

¹⁵ Normative Decree of the Constitutional Council of the Republic of Kazakhstan dated February 11, 2009 No. 1 "On verification of the Law of the Republic of Kazakhstan "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on issues of freedom of religion and religious associations" https://adilet.zan.kz/rus/docs/S090000001_

Article 4 "Goals of non-profit organizations" of the Law of the Republic of Kazakhstan dated January 16, 2001, No. 142 "On non-profit organizations" states that "non-profit organizations can be created to … meet the **spiritual** and other **needs of citizens**…" ¹⁶ A religious association is a kind of non-profit organization, and the concept of "spiritual need" is broader than the concept of "religious need".

The activities of a religious association should be aimed precisely at satisfying "religious needs," while the activities of other non-profit organizations should be aimed at satisfying other spiritual needs of citizens.

A clear distinction at the legislative level of the goals of the activities of religious associations and other non-profit organizations will contribute to a uniform understanding of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" and the effective implementation of the right to freedom of conscience and religion.

Based on the foregoing, we propose subparagraph 4 of Article 1 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" be amended as follows:

"4) A religious association is a voluntary association of citizens of the Republic of Kazakhstan, foreigners, and stateless persons, in accordance with the procedure established by the legislative acts of the Republic of Kazakhstan, united on the basis of their common interests to meet religious needs".

The 2021 Religious Freedom Report (Kazakhstan), posted on the website of the US Embassy in Kazakhstan, notes that a religious organization can have the status of a republican, regional, or local organization. To register at the local level, an organization must submit an application to the Ministry of Justice with a list of names and addresses of at least 50 founders. Religious organizations have the right to carry out their activities only within the geographical area where they are registered if they do not have enough members to register at the regional or republican level. To register a regional organization, there must be at least two local organizations located in different districts, and each local association must have at least 500 members. Republican registration requires at least 5,000 members in total and at least 300 members in each of the 14 regions and cities of Nur-Sultan, Almaty and Shymkent. Only associations registered at the republican and regional levels have the right to open educational institutions for the training of clergy¹⁷. In particular, these are articles 12-19 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations".

"Associations of people based on religion are deprived of the right to legal existence only because their activities are not sanctioned by the state. In Kazakhstan, there is also a ban on the activities of unregistered public associations. Meanwhile, there are various public formations, including pro-government ones, that operate without being registered: the League of Nur Otan Party Supporters, the Inter-Party Council under the Mazhilis of the Parliament of the Republic of Kazakhstan, public councils under various state bodies, etc. Thus, religious associations are in an unequal position with other collective formations" 18.

According to paragraph 10 of Article 15 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations," "based on the results of verification of the submitted documents for compliance with the law, a theological examination, verification of the list of citizens initiating the creation of a religious association, a decision is made on state registration or on refusal of state registration of a religious association".

It should be noted that in accordance with clause 3 of the "Rules for Conducting Theological Examination," approved by the Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated December 30, 2014, No. 162, "the objects of examination include:

- constituent documents of religious associations
- documents of religious content (containing the structure, fundamentals of dogma, religious practice, forms, and methods of religious activity)
- spiritual (religious) educational programs
- religious information materials, religious literature, and objects for religious purposes" 19

According to paragraph 3 of Article 6 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations," "Theological expert examination shall be conducted by persons with special knowledge in the field of religious studies, and if necessary with the assistance of representatives of state bodies and other professionals".

According to paragraph 5 of the "Rules for Conducting Theological Examination," approved by Order of the

¹⁶ Law of the Republic of Kazakhstan dated January 16, 2001 No. 142 "On non-profit organizations" https://adilet.zan.kz/rus/docs/Z010000142_

¹⁷ Kazakhstan: Religious Freedom Report 2021 https://kz.usembassy.gov/ru/2021-report-on-international-religious-freedom-kazakhstan/

¹⁸ Analytical note on the existence of discriminatory regulations in the legislation of Kazakhstan based on the main aspects. Kazakhstan International Bureau on the Human Rights and Rule of Law. URL: https://bureau.kz/analiz/tekushii_analiz_zakonodatelstva/analiticheskaya-zapiska-o-nalichii-diskriminaczionnyh-norm-v-za-konodatelstve-respubliki-kazahstan-po-nekotorym-osnovnym-priznakam/

¹⁹ Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated December 30, 2014 No. 162 "On Approval of the Rules for Conducting Theological Examination" https://adilet.zan.kz/rus/docs/V1400010184

Minister of Culture and Sports of the Republic of Kazakhstan dated December 30, 2014, No. 162, "Involved in the examination are experts with higher and (or) postgraduate education in the direction of the humanities in one of the following specialties:

- religious studies
- theology
- Islamic studies, as well as experts with experience in the field of religious activities for at least two years" 20.

The wording "experts with experience in the field of religious studies for at least two years" is quite broad and allows arbitrary interpretation of this rule, when persons who in fact do not understand, are not versed, or have not deeply studied the area being examined can be involved in the theological examination.

Thus, according to clause 7 of the Rules for Conducting a Theological Examination, "The examination includes:

- determining whether the content of an object belongs to a particular dogma, researching whether the content of the object under study is axiologically neutral, and assessing the likelihood of a negative impact of religious views and cult practices on followers of the doctrine and other members of society.
- reviewing the objects of examination, considering the questions raised by the service provider. When reviewing the constituent documents of religious associations, the activities of religious associations are studied, including the forms and methods of their actual activity.
- 3. studying the object of examination, to identify contradictions with the norms of the Constitution and legislation of the Republic of Kazakhstan, as well as violations of the rights and freedoms of citizens of the Republic of Kazakhstan."

In fact, the involvement of a person without appropriate qualifications contains the risk that such an "expert" may come to faulty conclusions when "assessing the likelihood of a negative impact of religious views and cult practices on followers of the doctrine and other members of society".

Moreover, even the involvement of a certified expert carries the risk of errors at the stage of studying the object of examination in order to identify contradictions with the norms of the Constitution and legislation of the Republic of Kazakhstan and violations of the rights and freedoms of citizens of the Republic of Kazakhstan, since even certified lawyers cannot always adequately assess such issues.

We also support the opinion expressed by analyst D. Kussainov that the process of selecting experts should be more transparent, making mandatory the collective issuance of expert opinions, clearly regulating the process itself, and developing a clear mechanism for appealing expert opinions²¹.



We propose involving a group of experts in conducting a theological examination and conducting a comprehensive commission theological examination in the amount of at least three specialists, including those with a higher legal education and at least ten years of experience in the legal field.

An additional administrative barrier is the dependence of the registration of a religious association on the results of theological examination. The lack of clear criteria in the selection, competence, and qualification of experts contains the risks of violation of the right of citizens to freedom of religion.

According to the expert, who wishes to remain anonymous, the examination is justified. He is sure that a religious association must have signs, a structure, and an organization, otherwise destructive associations and currents will be registered and spread.

The opposite opinion is held by Roman Podoprigora. He believes that an examination is absolutely unnecessary. He claims, "everything that is carried out as an examination can be found in the literature and textbooks, and it does not need to involve state resources. Another issue is that there is the practice of international courts that say that absurd things that can be presented as beliefs must be distinguished from religious beliefs".

Danil Buglov does not see any special differences between spirituality and religiosity and does not understand who and why should determine it. "Freedom of religion and belief protects not only religion, but also beliefs," he says.



There may be some new religious associations, so the main criteria is the presence of self-identification".

²⁰ Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated December 30, 2014 No. 162 "On Approval of the Rules for Conducting Theological Examination" https://adilet.zan.kz/rus/docs/V1400010184

²¹ Kusainov D. Religious Expertise in Kazakhstan: Jihad Against "Incorrect" Literature? https://online.zakon.kz/Document/?doc_id=31643241&pos=5;-106#pos=5;-10



There are religious groups that differ in their practice and structure from the forms of religiosity we are accustomed to, but this does not mean that they are destructive. Moreover, the possibility of the formation of new religious movements cannot be ruled out, because this is an ongoing process."

Yerzhan Baibol has a different opinion. He believes that the purpose of the examination is not to obstruct, but to warn of a violation so that it can be corrected. Cases of refusal are not systemic. If the initiators do not agree with the conclusions of the examination and do not want to make changes to the documents submitted for examination, they may apply to the court.

Beimbet Manetov argues that the purpose of conducting a theological examination is not to find flaws in the charter of any religious organization, ban the import of certain literature, or infringe on human rights, but rather to establish the compliance of religious objects with the legislation of the Republic of Kazakhstan. He says,

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It is worth noting that the constituent documents of religious organizations can contain calls aimed at inciting inter-religious hatred and signs of religious extremism and terrorism, as well as infringements on the rights and freedoms of a person, depending on their religious affiliation or attitude towards it. Therefore, I believe that this measure is a necessary part of the registration of a religious association. In my opinion, these measures are fully justified".

According to another anonymous expert, in the post-Soviet space, theological examination is available almost everywhere, and so it is important that it is carried out with high quality, and that the religious scholars are competent. This should not be a state order; the examination should not be done by theologians who are focused on only one religion.

According to Yevgeny Zhovtis, who is a categorical opponent of the use of religious (as well as forensic-philological or linguistic) examination for legal purposes, firstly, the expertise of literature or information materials of religious content before they are distributed is unconstitutional, because it introduces censorship prohibited by the Constitution of Kazakhstan. Secondly, its use for legal purposes is discriminatory, because otherwise it would be necessary to examine any literature or any information materials, including philosophical (non-religious) and fiction, because it may also contain incitement to hatred or enmity, appeals to violence, justifying terrorism and violent extremism.

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Finally, religious studies experts, philologists and linguists are not lawyers, and even the inclusion of lawyers for commission examination does not change the situation.

Theological disputes should be left to scholarly theologians, research and educational institutions".

"And the court can invite experts and specialists who need to be given the same legal status, based only on scientific qualifications, to clarify the context and make a decision. Moreover, it equally needs to invite experts from both sides," Zhovtis said.



Administrative and criminal liability for violation of legislation on religious activity and religious associations

The issue of the complexity of registering religious associations is supplemented by the risks of bringing administrative and criminal liability for violation of the law on religious activities and religious associations.

The Comprehensive Plan for the Implementation of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2021-2023, approved by Decree of the Government of the Republic of Kazakhstan dated December 31, 2020 No. 953, states that "according to the information of the regional department of internal affairs in the first quarter of 2020, there are 64 instances of administrative offenses in the sphere of religious activity, of which 29 cases were under articles 453 and 489 of the Code of Administrative Offenses. The major part of the initiated cases relates to offenses of Article 490 of the Code of Administrative Offenses, such as holding religious rites and (or) meetings, and violation of the requirements for the importation, development, publication and (or) distribution of religious literature and other materials of religious content or religious items²².

According to the response of the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan, dated 09.11.2022, No. 2-20-22-17736 to the request of the Public Fund "North Kazakhstan Legal Media Center": "For violation of the legislation of the Republic of Kazakhstan on religious activities and religious associations (p. 490 of the Code of the Republic of Kazakhstan on Administrative Offenses), 117 persons brought to administrative responsibility in 2021, and 42 persons for 6 months of 2022".

The Code of the Republic of Kazakhstan dated July 5, 2014, No. 235-V ZRK "On Administrative Offenses" (hereinafter referred to as the Code of Administrative Offenses of the Republic of Kazakhstan – CAO RK) contains an article for violating the legislation of the Republic of Kazakhstan on religious activities and religious associations.



"Article 490. Violation of the legislation of the Republic of Kazakhstan on religious activities and religious associations

- 1. Violation of the requirements established by the legislation of the Republic of Kazakhstan for:
- 1) holding religious rites, ceremonies and (or) meetings
- 2) carrying out charitable activities
- importation, production, publication and (or) distribution of religious literature and other materials of religious content, religious items
- 4) construction of religious buildings (structures), conversion (change of functional purpose) of buildings (structures) into religious buildings (structures)
- entail a fine on individuals in the amount of fifty, and on legal entities in the amount of two hundred, monthly calculation indices with suspension of activities for a period of three months.
- 2. Interference with lawful religious activity, as well as violation of the civil rights of individuals on the grounds of their attitude to religion, or insulting of their religious feelings, or desecration of objects, structures, and places revered by followers of a particular religion, if all of the above actions do not contain signs of a criminally punishable act
- entails a fine on individuals in the amount of fifty, on officials in the amount of one hundred, and on legal entities in the amount of two hundred, monthly calculation indices.
- 3. Carrying out missionary activities without registration (re-registration), as well as the use by missionaries of religious literature, information materials of religious content, religious items without a positive conclusion of theological examination, or dissemination of the doctrine of religious associations unregistered in the Republic of Kazakhstan
- entails a fine on citizens of the Republic of Kazakhstan in the amount of one hundred monthly calculation indices, and on foreigners and stateless persons in the amount of one hundred monthly calculation indices with administrative expulsion from the Republic of Kazakhstan.

²² Decree of the Government of the Republic of Kazakhstan dated December 31, 2020 No. 953 "On approval of the Comprehensive Plan for the Implementation of State Policy in the Religious Sphere of the Republic of Kazakhstan for 2021-2023" https://adilet.zan.kz/rus/docs/P2000000953

- **4.** Carrying out activities by a religious association not provided for by its charter
- entails a fine in the amount of three hundred monthly calculation indices with suspension of activities for a period of three months.
- 5. Engagement in political activities by a religious association, as well as participation in the activities of political parties and (or) providing financial support to them, interference in the activities of state bodies or assignment of the functions of state bodies or their officials by members of religious associations
- entails a fine in the amount of three hundred monthly calculation indices with suspension of activities for a period of three months.
- Creation of organizational structures of religious associations in state bodies, organizations, or institutions, including healthcare and education organizations.
- entails a fine on officials in the amount of one hundred, and on legal entities in the amount of two hundred, monthly calculation indices.
- 7. Management of a religious association by a person appointed by a foreign religious center without the consent of an authorized body, as well as failure by the head of a religious association to take measures to prevent the involvement and (or) participation of minors in the activities of a religious association with the objection of one of the parents of a minor or their other legal representatives
- entails a fine in the amount of fifty monthly calculation indices with administrative expulsion from the Republic.
- Actions (inaction) provided for by parts one, two, three, four, five and seven of this article, committed repeatedly within a year after the imposition of an administrative penalty,
- entail a fine on individuals in the amount of two hundred, on officials in the amount of three hundred, and on legal entities in the amount of five hundred, monthly calculation indices with the prohibition of their activities".

In fact, the dispositions of the above possible types of "administrative offenses" are of a blanket nature and refer to the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations," the norms of which in practice can be widely interpreted by law enforcers.

For example, paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan "On Religious Activities and

Religious Associations" stipulates that "worship services, religious rites, ceremonies and (or) meetings are freely held (performed) in religious buildings (structures) and on the territory allotted to them, in places of worship, in institutions and premises of religious associations, cemeteries and crematoria, dwellings, public catering facilities, if necessary, subject to the observance of the rights and interests of persons living nearby. In other cases, religious events are carried out in the manner prescribed by the legislation of the Republic of Kazakhstan".

The wording "observance of the rights and interests of persons living nearby" is quite broad and contains risks of arbitrary interpretation in the process of application.

According to the authors of the analytical note on the presence of discriminatory norms in the legislation of the Republic of Kazakhstan, with some exceptions, Article 490 of the CAO RK includes liability for violations of prohibitions, restrictions, conditions stipulated by the Law on Religious Activities and Religious Associations. Accordingly, the provisions of the article are derived from the discriminatory norms of the above mentioned law and their elimination should lead to the decriminalization of activities²³.

The 2021 Religious Freedom Report (Kazakhstan), posted on the website of the US Embassy in Kazakhstan, draws attention to these problems: "The law authorizes local authorities to "coordinate" the location of premises for religious events held outside religious buildings. By law, religious activities may be held in residences, provided that organizers take into account the "rights and interests of neighbors". Sometimes the authorities interpret this provision as a requirement to obtain permission from neighbors".

The law prohibits coercion to convert to another faith or coercion to participate in the activities of a religious association or in the performance of religious rites. In addition, the law prohibits the activities of religious organizations associated with violence against citizens, or otherwise harming the health or morals of citizens and residents of the country, leading to involuntary divorce, or breaking of family ties, or violation of human rights and freedoms.

The law also prohibits actions that force citizens to shirk "the duties prescribed by the constitution and the law," but the definition of these duties is subject to broad interpretation by the authorities.

The law prohibits conversion methods that exploit potential converts' dependence on charitable aid.

²³ "Аналитическая записка о наличии дискриминационных норм в законодательстве PK по некоторым основным признакам". Казахстанское международное бюро по правам человека и соблюдению законности. https://bureau.kz/analiz/tekushii_analiz_zakonodatelstva/analiticheskaya-zapiska-o-nalichii-diskriminaczionnyh-norm-v-zakonodatelstve-respubliki-kazahstan-po-nekotorym-osnovnym-priznakam/

Moreover, the law prohibits coercion to participate in religious activities using blackmail, violence, threat of violence or physical threat ²⁴.

Page 7 of Article 3 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" states that "no one has the right, based on their religious beliefs, to refuse to perform the duties provided for by the Constitution and laws of the Republic of Kazakhstan".

As it is known, according to Article 36 of the Constitution of the Republic of Kazakhstan, "Defense of the Republic of Kazakhstan shall be a sacred duty and responsibility of its every citizen" (paragraph 1), and "Citizens of the Republic shall perform military service according to the procedure and in the forms established by law" (p. 2).

For example, the above-mentioned 2021 Religious Freedom Report (Kazakhstan) states, "According to Jehovah's Witnesses, some of their members who were conscientious objectors encountered difficulties in obtaining exemption from military service, although all cases were eventually resolved through dialogue with authorities. Jehovah's Witnesses representatives said that in some cases, local enlistment officers initially considered the certificates issued by the recruits' local religious communities to be insufficient evidence to exempt the young men from service. The communities then provided clarification of the applicants' eligibility for exemption as members of the religious group's clergy, as well as letters from the conscientious objectors formally asking to be released from military service".

The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) states, "The participating States

- (18.1) note that the United Nations Commission on Human Rights has recognized the right of everyone to conscientious objection to military service²⁵.
- (18.2) note recent measures taken by a number of participating States to allow exemption from compulsory military service on the basis of conscientious objection" 26.

Another problem is liability under Article 490 of the Administrative Code (distribution of religious literature). Ordinary citizens are held accountable for trying to sell the Koran or the Bible on sites such as "OLX" and "satu.kz" for financial gain, and not for the purpose of promoting religion. Putting the book up for sale for 5,000 tenge, they then have to pay the state 100,000 tenge as a fine. At the same time, the practice of punishment is very selective.

In this connection, the Specialized Court for Administrative Offenses of the city of Petropavlovsk made a decision to fine Rufiva Mustafina, a journalist and deputy of the city maslikhat, for 153,150 tenge (50 MCI) under the above article.

"I was fined for distributing religious material. The judge recognized as religious material an interview with the chief imam, which I published on the website and in the social networks of my publication. In an interview, the chief imam talks about the holiday of Kurban Ait, about the traditions of this holiday. Moreover, I have two examinations in my hands, the conclusion of which says that there is nothing preventing distribution in the interview," Rufiya Mustafina told Sputnik Kazakhstan.

She also noted that a specialist from the Department of Religious Affairs was invited to the second meeting, who explained to the court that it is possible to distribute such material if one receives permission from the imam.

"So, in my situation, he himself gave me this interview. Moreover, since July when the interview was published, no one has protested it. Moreover, the repost of this publication was made by the head of the department of internal policy of the city and the press service of the city akim. This journalist is perplexed" ²⁷.

After the coverage of this case in the media, the Judicial Collegium for Criminal Cases of the North Kazakhstan Regional Court, by its Decree dated December 06, 2022 (case No. 5999-22-00-3a / 296), canceled the decision of the court of first instance and released Mustafina R.R. from administrative responsibility due to the insignificance of the committed administrative offense, limiting itself to a "verbal warning." However, although the decision of the court of first instance was canceled due to "insignificance," the very fact of violation of the rights of journalists remains, which creates a negative precedent for law enforcers in other cases.

In another case, citizen A. was brought by the Specialized Court for an administrative offense to administrative responsibility under Article 490 (paragraph 1, sub-paragraph 3) on the fact of "distribution of religious literature, namely distribution of audio-video files of religious content on the social network "VKontakte" on a personal page" (Decree of the specialized court for administrative offenses of the city of Petropavlovsk North Kazakhstan region dated May 17, 2022, case No. 5915-22-00-3 / 2070).

²⁴ Kazakhstan: Religious Freedom Report 2021 https://kz.usembassy.gov/ru/2021-report-on-international-religious-freedom-kazakhstan/

²⁵ Kazakhstan: Religious Freedom Report 2021 https://kz.usembassy.gov/ru/2021-report-on-international-religious-freedom-kazakhstan/

²⁶ Recommendations for the analysis of legislation on religion or belief. Approved by the Venice Commission at the 59th Plenary meeting, Venice, June 18-19, 2004 – P. 54.

²⁷ In Petropavlovsk, a journalist was fined for an interview with imam https://inbusiness.kz/ru/last/v-petropavlovske-zhurnalistku-oshtrafovali-za-intervyu-s-imamom

The judicial act states that "despite the fact that no information and facts preventing the use and distribution on the territory of the Republic of Kazakhstan have been found, nevertheless, the personal page of citizen A. in the VKontakte social network is on an online platform that any user can find and use the information on it, that is, religious literature and other information materials of religious content are distributed".

The court ruling also notes, "This personal page of citizen A. in the social network "VKontakte" is not a religious building (structure) or a spiritual (religious) educational organization, and is not a stationary room in specially designated places by the akimat of the North Kazakhstan region, in which the distribution of religious literature or other information materials of religious content or objects of religious purpose is allowed".

In another case, the Kyzylzharsky District Court of the North Kazakhstan Region, by its decision dated April 13, 2022 (case No. 5950-22-00-3/196), brought to administrative responsibility citizen O. "for the dissemination of materials of religious content in the social network "VKontakte" from the account "N.A." by distributing photographic images and video files of religious content".

From the administrative offense case files, it follows that "citizen O. pleaded guilty to committing the said offense, explaining to the court that he did not specifically distribute materials of religious content. This was during the period of his studies in the madrasah, where he thus saved for himself about 6 years ago. His account is open, that is, public. Currently, these materials have been removed by him".

The court concluded, "The time limit for the prosecution in this case has not expired, since it is ongoing. Identified on February 7, 2022, and sent to court on March 29, 2022, that is, within a 2-month period".

The presented cases once again confirm the blurring of the boundaries between the human right to freedom of religion, the dissemination of information in any non-prohibited way, and an "administrative offence".

The requirement to distribute religious literature only in cult buildings and religious educational institutions, as well as in specially designated places determined by local executive bodies, increases the responsibility of religious associations, an anonymous expert believes. He is sure that this is done to prevent the import of extremist literature, which is officially prohibited: "For example, we buy medicines in a pharmacy, and not in a market. Why? Because we are worried about our physical health. This means that spiritual health also needs to be taken care of. If a person purposefully seeks literature,

then this is his choice, but if there is an imposition, then this, of course, is a violation".

Roman Podoprigora has a different opinion:



Why can philosophical literature be sold anywhere, but not religious literature? Try to make a distinction. For example, someone will say that Thomas Aquinas or a textbook on Islamic law is legal literature, and someone else will say that it is religious. These are such prohibitions that are associated with our desire to put up red flags".

Another expert, a theologian, is convinced that in an age when the internet has erased traditional information boundaries, the definition of specific places for the sale and distribution of religious materials is illogical: "There is no sense in doing this, since almost all literature of radical terrorist groups is already available in the open access on social networks".

Yerzhan Baibol believes that it is necessary to introduce such a concept as a warning, because in many cases this would be enough. He is also sure that it is worth reducing the size of fines.

Another anonymous expert believes that this measure is rather arbitrary because many religious texts have a cultural meaning, this is a historical heritage, and perhaps a person just wants to get acquainted with the ideology of a particular religion.

The Recommendations for the Review of Legislation on Religion or Belief, prepared and approved by the Venice Commission on June 18–19, 2004, state that With regard to legislation, it is important that laws focus on genuinely dangerous acts or commission of violence, and not unduly grant police powers to the State to suppress groups that are merely disfavoured or unusual"²⁸.

An example is the decision of the UN Human Rights Committee on the appeal of a citizen of Kazakhstan, Sergei Geller (message No. 2417/2014). He was the head of a duly registered local religious organization, the Society for Krishna Consciousness, in the city of Kostanay. In 2013, Geller organized a meeting of members of the Society for Krishna Consciousness, after which a religious ceremony was held in a room he had rented since 2011 specifically for religious events. The ceremony was interrupted by the police, who informed Geller that they had received complaints over

²⁸ Guidelines for legislative reviews of laws affecting religion or belief. Adopted by the Venice Commission at its 59th Plenary Session, Venice, 18-29 June, 2004.

the telephone about the event. The local court found the author guilty of holding a religious meeting outside the place of registration, without prior notice to the regional department of religious affairs, and fined him.

Later, the author complained to the UN Committee about the actions of the state that violated his right to freedom of religion. The Committee decided that the State party's authorities had imposed restrictions on the author's right to manifest his beliefs in community with others and that the imposition of a fine constituted a restriction on that right.

Other articles of the Code of Administrative Offenses of the Republic of Kazakhstan also contain elements of administrative offenses in which "religiosity" may have an additional feature.



"Article 453. Manufacture, storage, import, transportation, distribution on the territory of the Republic of Kazakhstan of media products, as well as others

- Production, storage, importation, transportation on the territory of the Republic of Kazakhstan of mass media products containing information and materials aimed at propaganda or agitation of a violent change in the constitutional order; violation of the integrity of the Republic of Kazakhstan; undermining the security of the state; war; inciting social, racial, national, religious, class and tribal hatred; or the cult of cruelty, violence, and pornography
- entail a fine on individuals in the amount of twenty, on officials in the amount of twenty-five, on small businesses or non-profit organizations in the amount of fifty, on medium-sized businesses in the amount of one hundred, and on large businesses in the amount of two hundred, monthly calculation indices, with the confiscation of media products.
- 2. Distribution on the territory of the Republic of Kazakhstan of mass media products containing information and materials aimed at propaganda or agitation of a violent change in the constitutional order; violation of the integrity of the Republic of Kazakhstan; undermining the security of the state; war; inciting social, racial, national, religious, class and tribal discord; propaganda and justification of extremism or terrorism; as well as revealing the technical methods and tactics of anti-terrorist operations during their conduct, if these actions do not contain signs of a criminally punishable act
- entail a fine on individuals in the amount of twenty, on officials in the amount of twenty-five, on small businesses or non-profit organizations in the

amount of fifty, on medium-sized businesses in the amount of one hundred, and on large businesses in the amount of two hundred, monthly calculation indices, with the confiscation of media products.

- **3.** Actions provided for by parts one and two of this article, committed repeatedly within a year after the imposition of an administrative penalty
- entail a fine on individuals in the amount of one hundred, on officials in the amount of one hundred and fifty, on small businesses or non-profit organizations in the amount of two hundred, on medium-sized businesses in the amount of three hundred, and on large businesses in the amount of one thousand five hundred, monthly calculation indices, with the confiscation of mass media products with the deprivation of a license to organize television programs and (or) radio broadcasting and the prohibition of the activities of a legal entity.
- 4. Manufacture, storage, import, transportation, or distribution on the territory of the Republic of Kazakhstan of other products that are not related to the mass media, containing information and materials aimed at propaganda or agitation of a violent change in the constitutional order; violation of the integrity of the Republic of Kazakhstan; undermining the security of the state; war; inciting social, racial, national, religious, class and tribal hatred; or the cult of cruelty, violence and pornography, if these actions do not contain signs of a criminally punishable act
- entail a fine on individuals in the amount of one hundred, on officials in the amount of one hundred and fifty, on small businesses or non-profit organizations in the amount of two hundred, on medium-sized businesses in the amount of three hundred, and on large businesses in the amount of one thousand five hundred monthly calculation indices, with confiscation of products.
- **5.** Actions provided for by parts three and four of this article, committed repeatedly within a year after the imposition of an administrative penalty
- entail a fine on individuals in the amount of two hundred, on officials in the amount of three hundred, on subjects of small entrepreneurship or non-profit organizations in the amount of three hundred and fifty, on subjects of medium entrepreneurship in the amount of four hundred, on subjects of large entrepreneurship in the amount of two thousand, monthly calculation indices, with the deprivation of the license for the organization of television and (or) radio broadcasting and the prohibition of the activities of the legal entity".



"Article 489. Violation of the legislation of the Republic of Kazakhstan on public associations, as well as leadership, participation in the activities of public, religious associations unregistered in the manner established by the legislation of the Republic of Kazakhstan, financing of their activities.

- Commitment by leaders, members of a public association or a public association of actions that go beyond the goals and objectives determined by the charters of these public associations
- entails a warning or a fine on legal entities in amount of one hundred monthly calculation indices.
- 2. Commitment by leaders, members of a public association or public association of actions that violate the legislation of the Republic of Kazakhstan
- entails a warning or a fine on legal entities in the amount of one hundred monthly calculation indices with the suspension of the activities of the public association for a period of three to six months.
- The action provided for by the first part of this article, committed repeatedly within a year after the imposition of an administrative penalty
- entails a fine on legal entities in amount of one hundred and fifty monthly calculation indices with suspension of the activities of the public association for a period of three to six months.
- 4. The action provided for by part two of this article, committed repeatedly within a year after the imposition of an administrative penalty
- entails a fine on legal entities in the amount of two hundred monthly calculation indices with the prohibition of the activities of the public association.
- Financing of political parties by foreign legal entities and international organizations, legal entities with foreign participation, state bodies and organizations, or charitable organizations
- entails a fine on officials in the amount of four hundred and on legal entities in the amount of two thousand monthly calculation indices, with confiscation of illegal donations.
- 6. Acceptance of illegal donations by a political party
- entails a fine in the amount of four hundred monthly calculation indices with confiscation of illegal donations and prohibition of the activity of a political party.
- 7. Non-publication of annual reports on the financial activities of a political party within the time limits and in the amount established by the legislation of the Republic of Kazakhstan

- entails a fine in the amount of two hundred monthly calculation indices with suspension of the activities of a political party for a term of up to six months.
- 8. Carrying out activities of a political party, its structural subdivisions (branches and representative offices) without re-registration in cases provided for by the legislation of the Republic of Kazakhstan
- entails a fine in amount of two hundred monthly calculation indices with prohibition of the activity of a political party.
- 9. Management of activities of public, religious associations not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as the activities of which are suspended or prohibited
- entails a fine in the amount of one hundred monthly calculation indices.
- **10.** Participation in the activities of public, religious associations not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as the activities of which are suspended or prohibited
- entails a fine in the amount of fifty monthly calculation indices.
- 11. Financing the activities of public, religious associations unregistered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as the activities of which are suspended or prohibited
- entails a fine in the amount of two hundred monthly calculation indices."

In addition to the administrative offenses described above, the Code of Administrative Offenses of the Republic of Kazakhstan in the Criminal Code of the Republic of Kazakhstan provides for the composition of criminal offenses, which indicate the sign of religiosity".



"Article 174. Inciting social, national, tribal, racial, class or religious hatred

1. Deliberate actions aimed at inciting social, national, tribal, racial, estates or religious hatred; to offend national honor and dignity, or religious feelings of citizens; as well as propaganda of the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, estates, national, tribal or racial affiliation, if these acts are committed publicly or using the media or telecommunications networks, or by manufacturing or distributing literature or other media that promotes social, national, tribal, racial, estates or religious strife,

- shall be punishable by a fine in the amount of two thousand to seven thousand monthly calculation indices, or by restraint of liberty for a term of two to seven years, or by deprivation of liberty for the same term.
- 2. The same actions committed by a group of persons, by a group of persons by prior agreement or repeatedly or accompanied by violence or the threat of its use, as well as committed by a person using his official position or by the leader of a public association, including using funds received from foreign sources
- shall be punishable by imprisonment for a term of five to ten years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term up to three years.
- The deeds provided for by paragraphs 1 or 2 of this article, committed by a criminal group or entailing grave consequences
- shall be punishable by deprivation of liberty for a term of twelve to twenty years, with or without deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years".

The Opinions adopted by the Working Group on arbitrary detention at its seventy-ninth session (21-25 August 2017) – Opinion No. 62/2017 regarding Teymur Akhmedov states:

"36. The Working Group concurs with the views expressed by the Human Rights Committee and the Special Rapporteur on freedom of religion or belief regarding the wording of article 174 of the Criminal Code. The definitions of "inciting social or class hatred" and "religious hatred or enmity" are formulated extremely broadly and lack the necessary degree of legal precision. In its current form, this provision poses a serious threat to the full enjoyment of the right to freedom of religion in Kazakhstan, as enshrined in article 18 of the Covenant. This case of Mr. Akhmedov testifies to the reality of this threat. Mr. Akhmedov's actions, which led to his criminal prosecution under Article 174 of the Criminal Code, were exclusively peaceful in nature. Even in their belated response, the Government of Kazakhstan did not provide a single example of violence or incitement to violence by Mr. Akhmedov. On the contrary, according to the government itself in its belated response, Mr. Akhmedov was prosecuted on the basis of witness testimony that he merely characterized other religions as "falsehood" and claimed that Jehovah's Witnesses were the only true religion, without any incitement to violence or inciting religious hatred".

As a result, the Working Group considered the imprisonment of Teymur Akhmedov to be arbitrary in nature,

since it is contrary to articles 2, 3, 7, 9 and 18 of the Universal Declaration of Human Rights and articles 2, 9, 18 and 26 of the International Covenant on Civil and Political rights and falls under categories II, III and V 29 .



"Article 183. Giving permission to publish extremist materials in the media

Giving permission to publish in the press and other mass media information and materials aimed at inciting national, tribal, racial, social, and religious enmity, promoting class exclusiveness, war, containing calls for a forcible seizure of power, forcible retention of power, undermining the security of the state, or forcibly changing the constitutional order, as well as violating the territorial integrity of the Republic of Kazakhstan

 shall be punishable by a fine in the amount of up to two hundred monthly calculation indices, or by corrective labor in the same amount, or by community service for a term of up to 200 hours, or by arrest for a term of up to 50 days, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to two years or without it."



"Article 404. Creation, leadership, and participation in the activities of illegal public and other associations

- Creation or leadership over religious or public association whose activities are associated with violence against citizens or other harm to their health, or with inducing citizens to refuse to perform civic duties or commit other illegal acts, as well as the creation or leadership of a party on a religious basis, or by a political party or a trade union financed from sources prohibited by the laws of the Republic of Kazakhstan
- shall be punishable by a fine in the amount up to six thousand monthly calculation indices, or correctional labor in the same amount, or restraint of liberty for a term up to six years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a term up to six years.
- 2. Creation of a public association proclaiming or in practice implementing a racial, national, tribal, social, estates or religious intolerance or exclusivity, calling for the violent overthrow of the constitutional order, undermining the security of the state or encroaching on the territorial integrity of the Republic of Kazakhstan, as well as the leadership of such an association

²⁹ Views adopted by the Working Group on Arbitrary Detention at its seventy-ninth session (21-25 August 2017). Opinion No. 62/2017 regarding Teimour Akhmedov (Kazakhstan) // A / HRC / WGAD /2017/62

- shall be punishable by imprisonment for a term of three to seven years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.
- **3.** Active participation in the activities of the associations specified in parts one or two of this article
- shall be punishable by a fine in the amount of up to six thousand monthly calculation indices, or by corrective labor in the same amount, or by restraint of liberty for a term of up to six years, or by deprivation of liberty for the same term".



"Article 405. Organization and participation in the activities of a public or religious association or other organization after a court decision on the ban on their activities or liquidation in connection with the implementation of extremism or terrorism by them

- Organization of public or a religious association or other organization in respect of which there is a court decision that has entered into legal force on the prohibition of their activities or liquidation in connection with the implementation of extremism or terrorism by them
- shall be punishable by a fine in the amount up to six thousand monthly calculation indices, or correctional labor in the same amount, or restraint of liberty for a term up to six years, or imprisonment for the same term, with deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years or without it, with expulsion from the Republic of Kazakhstan of a foreigner or a stateless person for a period of five years.
- 2. Participation in the activities of a public or a religious association or other organization in respect of which there is a court decision that has entered into legal force on the prohibition of their activities or liquidation in connection with the implementation of extremism or terrorism by them
- shall be punishable by a fine in the amount of up to two thousand monthly calculation indices, or correctional labor in the same amount, or restraint of liberty for a term up to two years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a term up to three years or without it, with expulsion from the Republic of Kazakhstan of a foreigner or a stateless person for a period of five years." Note. A person who has voluntarily ceased to participate in the activities of a public or religious association or other organization, in respect of which

there is a court decision that has entered into legal force to ban their activities or liquidate them in connection with the implementation of extremism or terrorism, shall be exempted from criminal liability, unless their actions contain a different corpus delicti (elements of crime)".

Religious extremism is international in nature and the fight against it must be carried out at the international level. In this connection, E. Karin in the book "Soldiers of the Caliphate: Myths and Reality", while exploring radical groups on the territory of Kazakhstan, concludes that the Kazakhstani Mujahideen were in special connection with the Caucasus Emirate, in particular with the propagandist of jihadism A. Tikhomirov (Said Abu Saad Buryatsky)²⁹. As it is known, the Islamic group ISIS declared a caliphate in the occupied territories of Iraq and Syria. The media reported that there are about 150 Kazakhstanis in Syria who migrated for jihad³⁰.

As a rule, increased attention to the activities of religious associations is justified by the protection of national security and the fight against terrorism and extremism. However, according to experts, one should see the line between religious freedom and security threats.

According to Roman Podoprigora, this line is very thin: "Respect for religious freedoms and the creation of a favorable regime for their activities is the reduction of risks and threats to national security, i.e., these factors cannot be contrasted, as if religious associations or their activity pose some threat to the national organization. The same danger can be posed by environmental organizations, sports and others; the question is not so much in identification, but in what they do".

Alexander Klyushev, the Head of the Association of Religious Associations of Kazakhstan, is sure that it is necessary to pay attention to international documents that indicate in which cases there may be restrictions if this is required to protect public order: "There are OSCE/ODIHR guidelines that reveal the interpretation of Article 18 of the International Covenant for Civil and Political Rights. There is no statement in international law that national security collides with freedom of religion and belief, it is only our post-Soviet ideology that formulated the principle of the intersection of these interests. Freedom of religion and belief should strengthen national security, and the lack of implementation of this right entails certain consequences or threats. If the state has some flaws and problems in terms of security, accordingly, it works on the repression of rights, and this only speaks to the weakness of the state itself".

Beimbet Manetov believes that there is a very thin line between religious freedom and national security.

³⁰ Political scientist told why Kazakhs leave to die for faith //news.mail.ru/inworld/kazakhstan/society/15296228/

As a rule, this concerns the activities of missionaries, the conduct of theological expamination, and the registration of a religious association. It's no secret that in many countries there are people who, hiding behind religion, use it for personal gain. However, each state has its own laws and regulations. It is necessary to consider many factors, including the mentality, location of the country, and the culture, as well as the fact that our country is multi-ethnic and multi-confessional. Of course, the Committee carries out relevant work in order to satisfy the rights and wishes of believers, but one should not forget about the problems and consequences that can violate the Constitutional system and undermine state security.

Aleksey Kildishov holds a contrasting viewpoint, firmly believing that between 1999 and 2019, the media propagated the notion that religion posed a threat to national security. The government endeavored to demonstrate that religion was a peril, and this inevitably impacted the public sentiment.

The anonymous expert sees the problem in law enforcement practice. If the organization does not call for the overthrow of power and discrimination, and does not carry hate speech, then in general everything should be all right.

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However, in our country the concept of "threat to national security" is often interpreted quite broadly, which causes certain problems.

Yevgeny Zhovtis believes that we are dealing with a discriminatory and stigmatizing attitude for completely incomprehensible reasons:



For example, religious literature is considered especially dangerous, although calls for violence or inciting hatred can be everywhere. The same 'Mein Kampf' is not religious literature, but that doesn't make it any less dangerous in terms of inciting hatred. Terrorist activity is not always associated with religion, so these two concepts cannot be connected with each other".

COMPARATIVE ANALYSIS OF THE CURRENT LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN IN THE FIELD OF RELIGION AND RELIGIOUS ACTIVITIES WITH INTERNATIONAL DOCUMENTS RATIFIED BY KAZAKHSTAN

The complex socio-cultural problem of secular society and religion is characteristic of the current state of civilization. In different countries, it has a special form and is solved in different ways³¹. According to Article 18 of the Universal Declaration of Human Rights, "Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in teaching, practice, worship and observance" ³².

The International Covenant on Civil and Political Rights³³ 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" (p. 1 article 18).

Paragraph 1 of General Comment No. 22. Article 18 (Forty-eighth Session, 1993) states that "the right to freedom of thought, conscience, and religion (which

includes the freedom to hold beliefs) in article 18.1 is farreaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant" (para. 1) ³⁴.

In paragraph 1 of Article 1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief dated November 25, 1981, states, "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have a religion or whatever 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" ³⁵.

³¹ Naumov S., Slonov N. From an atheistic state to a secular one // Free Thought, 2009. No. 9. P.49.

³² Universal Declaration of Human Rights adopted resolution 217 A (III) UN General Assembly of December 10, 1948 https://adilet.zan.kz/rus/docs/O4800000001 ³⁵ International Covenant on Civil and Political Rights, adopted by resolution 2200A (XXI) of the General Assembly of the United Nations on December 16, 1966. Ratified by the Law of the Republic of Kazakhstan dated November 28, 2005 No. 91 https://adilet.zan.kz/rus/docs/Z050000091_

³⁴ General Comment No. 22. Article 18 (Forty-eighth Session, 1993) // Recommendations for the Analysis of Legislation on Religion or Belief. Approved by the Venice Commission at the 59th Plenary meeting, Venice, June 18 – 19, 2004 – p. 44

³⁵ Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief dated November 25, 1981 https://adilet.zan.kz/rus/docs/08100000001

According to Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others" ³⁶.

In the practice of the European Court of Human Rights, there was a very interesting case "Kokkinakis v. Greece," ³⁷ when the European Court confirmed that "freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. Religious freedom implies the freedom to manifest one's religious beliefs not only in one's own community, "publicly" and among people who share the faith, but also "individually" and "in private," including in principle the right to try to convert one's neighbor to one's faith".

The Views adopted by the Human Rights Committee at its 112th session (7-31 October 2014) state:

"9.2 In relation to the author's claim under article 18 of the Covenant, the Committee recalls that article 18, paragraph 3 of the Covenant states that the right to freedom to manifest one's religion or beliefs may be subject to certain limitations, but only those prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Further, the right to freedom to manifest one's beliefs in worship, observance, practice and teaching encompasses a broad range of acts, including those integral to the conduct by the religious group of its basic affairs, such as the freedom to choose religious leaders, priests, and teachers, and the freedom to establish seminaries or religious schools. In the present case, the Committee notes that, not having been reqistered as a foreign missionary on behalf of his church, the author was convicted for conducting missionary activity, which consisted of preaching and praying and conducting meetings and religious rituals among the followers of the church. Consistent with its general comment No. 22, the Committee considers that those activities form part of the author's right to manifest his beliefs and that the conviction and sentence to a fine and deportation and the resulting loss of his residence permit constitute limitations of that right" ³⁸.

Regarding the extent to which the existing legislation in the field of freedom of religion and belief in Kazakhstan complies with international standards, the opinions of experts are divided.

Danil Buglov says the 2011 Law "On Religious Activity and Religious Associations" heavily regulates and restricts the right to freedom of religion and belief. For example, a person can profess religion alone, but not in public. If we talk about collective worship, then there are a lot of "buts": a group of people cannot do this if there is no registration. The mandatory registration procedure is also not easy, moreover, you need to gather a certain number of parishioners who are ready to become initiating citizens, and in order to gather them, you need to engage in missionary activity, which is also prohibited without registration, and in order to receive it, you need to be involved in any registered religious association. It turns out that it is impossible not to break this law. It is often easier for some small religious groups to operate outside the legal field and be forced to break the law. There are other restrictive norms, so our legislation does not comply with international law and documents ratified by Kazakhstan.

"Assessing the compliance of Kazakhstani law with international standards on a 10-point rating system, I would put it at 0, because initially the right to freedom of religion and belief is made dependent on the mandatory registration of a legal entity," Alexander Klyushev believes. "This immediately falls under the violation of Article 18 International Covenant on Civil and Political Rights".

Yerzhan Baibol is confident that, in general, Kazakh legislation complies with international standards. "But of course," he notes, "

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society does not stand still, and laws must reflect the real-life issues and demands of citizens. Therefore, it is necessary to constantly monitor and improve the current legislation.

³⁶ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 https://www.coe.int/ru/web/compass/the-european-convention-on-human-rights-and-its-protocols

³⁷ Kokkinakis v Greece (Kokkinakis v . Greece): Judgment of the European Court of Human Rights of 25 May 1993 (complaint no. 14307/88) https://europeancourt.ru/resheniya-evropejskogo-suda-na-russkom-yazyke/kokkinakis-protiv-grecii-postanovlenie-evropejskogo-suda/

³⁸ Views adopted by the Human Rights Committee at its 112-1 session (7-31 October 2014) // CCPR / C 112/ D /2131/2012

In addition, international standards in the field of religious freedom are very little disseminated in the Kazakh language, and there is also not enough literature and research in Russian. Most citizens may not be aware of international norms.

Another important point is that legislation may comply with international principles, but not be applied in practice due to insufficient knowledge. Therefore, it is necessary to train future specialists and improve the professional skills of officials who form and implement policies in the field of religion".

According to Beimbet Manetov, the current Law "On Religious Activities and Religious Associations" considers international experience, meets basic human rights standards, and is aimed at protecting freedom of religion and ensuring interfaith harmony in the country. In addition, this topic is regularly discussed during working meetings, including with international human rights organizations. In this connection, on December 29, 2021, separate "targeted" changes to religious legislation were adopted.

Firstly, the legislation used the term "religious information materials," but the content of the term was not disclosed. Now this concept is disclosed as meaning "printed, electronic, and other information of a religious nature on any tangible medium".

Secondly, the procedure for locating premises for holding religious events outside places of worship has been simplified. Now, religious associations can hold religious events outside religious buildings without waiting for a response from local executive bodies, provided that the necessary information is fully indicated (notifying).

Thirdly, now psychologists, sociologists and other specialists can be involved in conducting theological expamination. Prior to the adoption of the amendments, the examination was carried out only by theologians and religious scholars.

Fourth, the requirements for registration of regional religious associations have been simplified. If earlier it was necessary to merge religious associations from two or more regions, now one is enough. In addition, if previously it was required to merge two associations, each of which had at least 250 people, now one association can have 180 people, and the other 320.

However, an anonymous expert believes that the law of 2011 has become tougher compared to the law of 1992: "Just look at the title: the old law had the phrases "On freedom of religion, on freedom of conscience," but now these words are not there. Now the law regulates religious activity; the law is tough enough, and these are the remnants of the Soviet past, in order to control religion. Of course, when compared with UN documents, there are inconsistencies."



Head coverings and religious paraphernalia

One of the topical practical issues is the right of a person to wear a religious head covering. In constitutional law studies, the head covering is seen as a realization of the right to freedom of religion. In particular, they substantiate that a head covering is a duty prescribed by one or another creed, with which a woman, by virtue of her convictions, has the right to comply, or refuse to do so. And in this case, she may have moral (spiritual) responsibility, but not legal³⁹. It should be noted that the appearance of a woman in a public place with her head covered is provided not only by Sharia, but also by other religions.

Paragraph 1 of General Comment No. 22. Article 18 (Forty-eighth Session, 1993) states that "the observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group" (p. 4) ⁴⁰.

³⁹ See: Omarova Z.A. Head covering as a realization of the right to freedom of religion // Constitutional and municipal law, 2010. No. 2. C11.

⁴⁰ General Comment No. 22. Article 18 (Forty-eighth Session, 1993) // Recommendations for the Analysis of Legislation on Religion or Belief. Approved by the Venice Commission at the 59th Plenary meeting, Venice, June 18-19, 2004 – p. 45

In Kazakhstan, the topic of wearing a hijab periodically attracts public attention. "The Ministry of Education and Science of the Republic of Kazakhstan intends to ban the wearing of religious clothing in schools and universities. The profile department has already prepared a special bill. The innovation is still only being discussed, and the youth are already ready to organize protests against it" 41. The former Minister of Education and Science of the Republic of Kazakhstan, Zh. Tuymebaev, once said that it was forbidden for female students to wear hijabs in schools⁴². At the same time, on the issue of wearing religious clothing in educational institutions and opening prayer rooms, there was previously a letter from the Ministry of Education and Science of the Republic of Kazakhstan dated October 26, 2009, No. 3-02-4 / 2059, which indicated the impossibility of wearing religious clothing in educational institutions and opening prayer rooms in them.

The 2021 Religious Freedom Report (Kazakhstan) posted on the website of the U.S. Embassy in Kazakhstan notes, "In September, a group of 1,640 parents wrote an open letter to President Tokayev requesting legislative changes to allow girls to wear the kimeshek, a traditional Kazakh head covering, in school, and to allow prayer rooms in schools. In response, CRA Chairman Erzhan Nukezhanov told media on September 7 that the 2016 Ministry of Education decree on mandatory school uniforms for both public and private educational facilities remained in force, in accordance with the country's secular form of government. The decree does not permit students to wear traditional clothing" 43.

In accordance with paragraph 2 of Article 22 of the Constitution of the Republic of Kazakhstan, "the right to freedom of conscience shall not specify or limit universal human and civil rights and responsibilities before the state". This constitutional provision also applies to the right to education. Obviously, neither the law on education nor the order of the minister can cancel the constitutional right of a citizen to receive education.

No one shall be subject to any discrimination based on the attitude towards religion (clause 2, article 14 of the Constitution of the Republic of Kazakhstan). In accordance with subparagraphs 1 and 3 of paragraph 1 of Article 3 of the Law of the Republic of Kazakhstan dated June 07, 1999 "On Education," the main principles of state policy in the field of education are: "Equality of rights for everyone to receive quality education, and availability of education at all levels for the population, considering the intellectual development and psychophysiological and individual characteristics of each person".

The hijab is an integral attribute of a Muslim woman's clothing; without it, she cannot leave the house. Therefore, these individual characteristics of students should be considered when implementing educational policy. The opinion that no one can prohibit a person who wants to study in a secular school (not in a spiritual religious educational institution), but who professes Islam and therefore wears a hijab, from attending an educational institution and restricting the constitutional right to receive education, deserves its attention.

Former Minister of Justice of Kazakhstan R. Tusupbekov, earlier answering a question about wearing religious clothing, mentioned, "Taking into account the provisions of the Constitution and the law, the current legislation does not provide for any restrictions regarding clothing, including the hijab, for students of educational institutions" ⁴⁴. The exercise by individuals of their constitutional right to freedom of conscience, in whatever form the latter is expressed, cannot be the basis for limiting their legal personality guaranteed by Article 13 of the Constitution.

With the beginning of the 2017 academic year in Kazakhstan, the topic of school girls wearing head coverings in general education institutions has again become relevant⁴⁵. If not going into deep study of the issue of "religious clothing as a realization of the right to freedom of religion" ⁴⁶ (although such a position deserves its attention) and approaching the dispute from a purely legal point of view, then the following problematic points can be identified in this conflict.

Ex-Minister of Education and Science A. Sarinzhipov on January 14, 2016, by order No. 26, approved the "Requirements for compulsory school uniforms for secondary education organizations" ⁴⁷ (hereinafter referred to as "Requirements for school uniforms").

However, in this order, the texts of paragraph 13 in Kazakh and Russian were not identical. This problem had to be rectified urgently by the next minister, E. Sagadiyev ⁴⁸.

⁴¹ Educational institutions may prohibit wearing a hijab // http://www.zakon.kz/top_news/192577-v-uchebnykh-zavedenijakh-mogut-zapretit.html

⁴² The law prohibits emphasizing belonging to a particular faith – Ministry of Education https://www.kt.kz/rus/society/zakon_zapreshtaet_podcherkivatj_prinadle-zhnostj_k_opredelennoj_vere_minobrazovanija_1153498451.html

⁴³ Kazakhstan: Religious Freedom Report 2021 https://kz.usembassy.gov/ru/2021-report-on-international-religious-freedom-kazakhstan/

⁴⁴ The legislation of Kazakhstan does not prohibit wearing a hijab in educational institutions – Ministry of Justice https://www.kt.kz/rus/society/zakonodateljstvo_kazahstana_ne_zapreshtaet_nositj_hidzhab_v_uchebnih_zavedenijah_minjust_1153497946.html

⁴⁵ See for example: Urnaliev S. "In Uralsk, a trial is underway on the suit of the father of a schoolgirl who is not allowed to attend classes in a headscarf" https://rus.azattyq.org/a/28851310.html

⁶ See also: Gabdualiev M.T. Hijab in Kazakhstan – to be or not to be https://ia-centr.ru/experts/test/9517

⁴⁷ Order of the Minister of Education and Science of the Republic of Kazakhstan dated January 14, 2016 No. 26 "On Approval of the Requirements for Compulsory School Uniform for Secondary Education Organizations" http://adilet.zan.kz/rus/docs/V1600013085

⁴⁸ See also: Gabdualiev M.T. The tragedy of one ministry – 3: The four main problems of education in Kazakhstan http://press-unity.com/analitika/9732.html

Paragraph 13 of the "Requirements for school uniform" states:

"13. The inclusion of elements of clothing of religious affiliation of various confessions in a school uniform is not allowed".

Initially, the text of paragraph 13 of the "Requirements for school uniforms" in the Kazakh language was set out in the following edition:

"13. It is not allowed to add elements of clothing related to any confessions to the school uniform. In secondary education institutions, it is forbidden to wear any clothes that demonstrate religious affiliation (hijab, niqab, burqa, yashmak, Sikh turbans, Jewish head covering – kippahs, etc.), as well as the wearing of any religious paraphernalia (signs)" ⁴⁹.

As one can see, in the Kazakh language, paragraph 13 of the Requirements for school uniform specifically listed the types of clothing that were unacceptable for wearing in a secondary school: hijab, niqab, burqa, yashmak, Sikh turbans, Jewish head covering – kippahs, etc.

Minister of Education and Science E. Sagadiev, after the publication of this information on the Facebook social network, made changes to it.

As it is known, "the text of a regulatory legal act is set out in compliance with the norms of the literary language, legal terminology and legal technique, and its provisions should be extremely brief and contain a clear meaning that is not subject to different interpretations" (paragraph 3 of article 24 of the Law of the Republic of Kazakhstan "On legal acts") ⁵⁰.

What is meant by "elements of clothing of religious affiliation"? Crescent, cross or tumar on the neck of a schoolboy? A scarf or a kimeshek on a schoolgirl's head?

The following questions arise and need to be answered.

- How justified are the actions of school administrations to prevent schoolgirls from attending classes because they wear a head covering and thereby limit the right to receive a guaranteed secondary education in state educational institutions (p. 1, article 30 of the Constitution)?
- Why are the internal regulations of schools (albeit based on the relevant order of the Minister of Education and Science) placed above the Constitution and Laws of the Republic of Kazakhstan?

As early as December 10, 2010, long before the constitutional reforms of 2017, on the basis of a comprehensive analysis of this issue, amendments to paragraph 2 of Article 39 of the Constitution of the Republic of Kazakhstan were proposed ⁵¹. Law of the Republic of Kazakhstan dated March 10, 2017, No. 51 – VI ZRK "On amendments and additions to the Constitution of the Republic of Kazakhstan" ⁵² paragraph 2 of Article 39 of the Constitution of the Republic of Kazakhstan was reworded thus:

"2. Any acts capable of violating inter-ethnic and inter-religious harmony shall be recognized as unconstitutional".

Therefore, when applying paragraph 13 of the "Requirements for school uniforms", it should be borne in mind that the latest changes to paragraph 2 of Article 39 of the Constitution were not accidental and had their own addressee.

As it is known, in accordance with Article 78 of the Constitution of the Republic of Kazakhstan, "The courts are not entitled to apply laws and other regulatory legal acts that infringe the rights and freedoms of a person and citizen enshrined in the Constitution. If the court finds that the law or other regulatory legal act to be applied infringes upon the rights and freedoms of a person and citizen enshrined in the Constitution, he is obliged to suspend the proceedings and apply to the Constitutional Council with a view to declare this act unconstitutional" (and as of January 1, 2023, to the Constitutional Court of the Republic of Kazakhstan).

Considering that the constitutional rights of citizens (the right to receive a guaranteed secondary education, the right to freedom of religion) on the one hand, and the constitutional provision on the secular nature of the state (by which the Minister of Education and Science and the Administration of Educational Institutions justify their order) on the other hand, are on the scales in the resulting litigation, it can be assumed that the Constitutional Council of the Republic of Kazakhstan by its decision could determine whether paragraph 13 of "Requirements for school uniforms" complies with the Constitution of the Republic of Kazakhstan.

According to Roman Podoprigora, "The problem is that religious clothing is part of the right to freedom of religion, in this regard, of course, the state cannot prohibit this directly. Also, children of different religions study at the school, and such prohibitions affect their freedom of religion.

⁴⁹ http://adilet.zan.kz/kaz/archive/docs/V1600013085/14.01.2016

⁵⁰ Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V ZRK "On legal acts" http://adilet.zan.kz/rus/docs/Z1600000480

⁵¹ See also: Gabdualiev M.T. Hijab in Kazakhstan – to be or not to be https://ia-centr.ru/experts/iats-mgu/khidzhab-v-kazakhstane-byt-ili-ne-byt/

⁵² Law of the Republic of Kazakhstan dated March 10, 2017 No. 51-VI ZRK "On amendments and additions to the Constitution of the Republic of Kazakhstan" http://adilet.zan.kz/rus/docs/Z1700000051

The state must create alternatives so that religious associations themselves can organize schools where secular education would be presented, but at the same time would include all the rituals. This order is contrary to international standards.

An anonymous expert expresses the opposite opinion. He is sure that the ban on wearing religious clothes allows quaranteeing the principle of secularism, which is spelled out in the Constitution of the Republic of Kazakhstan: "We must not forget that we have many religious movements and ethnic minorities that are characterized by certain external attributes, then it turns out that they must be allowed to wear them? We have national schools and Sunday schools where they can study their native language or national culture. And in a secular school there should be a variety of worldviews, and the child should know and understand them, because they should live in this society. This does not limit the child's rights, but, on the contrary, expands the range of their opportunities for learning about the world around them".

There are various international experiences, – says Danil Buglov.

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Some developed countries prohibit the wearing of religious attire that obstructs student identification, while others have a compromise approach that allows partial face coverings. There is no clear consensus in the international community on the inadmissibility of banning the wearing of religious clothing in schools. However, such a ban raises many questions.

First, students also have the right to their own personal religious beliefs, and their parents can raise their children in a certain way. Secondly, the issue of access to education arises, because the parents of such children are forced to look for alternative ways for education, and if there are no funds for such ways, then this is an even more difficult issue. Therefore, at least for guaranteed access to education, a compromise is needed on the part of the state in this matter.

Alexander Klyushev believes that the existing norms are a frank struggle against religion as such: "In our constitution, the state guarantees complete secondary education, and if a person should receive this education only in a madrasah or a private school, then this is already discrimination based on attitude to religion even though the order says nothing about it".

According to Beimbet Manetov, at the request of the Law "On Education," students in secondary education organizations are required to comply with the requirements for compulsory school uniforms and internal regulations, and fulfill other obligations stipulated by the charter of the educational organization.

An anonymous expert asserts that a child should not be deprived of the right to receive an education:



The growth of religiosity in Kazakhstan is high. It makes no sense to ban something now. It was necessary to conduct a different policy in terms of secularism earlier".

Yevgeny Zhovtis notes that even the UN Committee does not have a unified position on this issue: "Because there is a so-called competition of rights: there is freedom of conscience for a particular person, there are rights and freedoms of others, and there is the secular nature of the state. All the time there is a need to balance these sometimes competing rights, where it is difficult to find the perfect balance.



The situation with secular schools is even more difficult. There is no satisfactory answer here, and the European Court of Human Rights has indicated that in relation to such moments there is some discretion of the state, based on culture, traditions and morality".

"Schools are a territory of secularism," says the theologian interviewed. He believes that the state has the right to establish standards, educational programs, and rules in them: "However, in this case, the question remains open - what is considered a religious attribute? A scarf that is sold everywhere or a traditional headscarf? Are they elements of religion or customs? Unfortunately, there is a problem when children are caught between two oppressive sides - religious parents and the school administration. I believe that this issue should be resolved taking into account the opinions of the schoolchildren themselves, especially high school students. Unfortunately, the question of religious elements in the school form has moved out of the legal sphere and is currently highly politicized. Sometimes non-interference gives more effective results than attempts at regulation".



Registration issues of religious associations

The Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" establishes that "the activities not registered in the established laws of the Republic of Kazakhstan in the order of religious associations, as well as any coercion of citizens of the Republic of Kazakhstan, foreigners and stateless persons in determining their attitude to religion, participation or non-participation in the activities of religious associations, in religious rites and (or) in teaching religion, is not allowed" (p. 11, article 3).

In accordance with paragraph 1 of Article 12 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations," "Religious associations with the status of local, regional and republican may be created and operate in the Republic of Kazakhstan".

According to paragraph 2 of Article 12 of the Law, "A local religious association is a religious association formed on the initiative of at least fifty citizens of the Republic of Kazakhstan, operating within the same region and city of republican significance and the capital".

The Recommendations for the Analysis of Legislation on Religion or Belief, prepared and approved by the Venice Commission on June 18-19, 2004, state:

- Registration of religious organizations should not be mandatory, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.
- Individuals and groups should be free to practice their religion without registration if they so desire.
- The acquisition of legal personality should not impose extremely high minimum membership requirements for any organization.
- Other excessively burdensome constraints or time delays prior to obtaining legal personality should be properly questioned 53.

Professor Roman Podoprigora noted in an interview, "The requirement to have at least 50 people who must be citizens of Kazakhstan, be of age, and be registered at the place of residence in the area where the association is created. Namely, this is a rather high figure for Kazakhstan, as you know, our country is not very densely populated, so it is quite difficult to find, say, 50

people in a village. Therefore, sometimes religious associations use such technologies as asking neighbors, friends, friends of friends, and so on" ⁵⁴.

He also considers compulsory registration one of the main problems and a gross violation of the right to freedom of religion: "Until 2005, there was no such mandatory registration in Kazakhstan and nothing happened; the world did not collapse. And today all this is criminalized and everyone who is not registered becomes criminals. According to my conservative estimates, a third of the religious structures in Kazakhstan are in the status of "unregistered." These are very rough estimates and grounds for good research. There is no such thing anywhere in Europe, if Belarus is not taken into account. Even in Russia, with all the rigidity of the legislation, there is no registration, but we still have this rudiment".

According to Yerzhan Baibol, registration is necessary, because if rituals are performed with an unlimited number of people, there should be responsibility for financial and legal issues.

Beimbet Manetov is sure that the procedure is necessary in order to consolidate property isolation, to act in civil circulation on their own behalf thereby acquiring the appropriate rights and obligations, and to conduct a dialogue and represent their interests before the state. Moreover, officially registered religious associations receive preferential conditions for taxation.

"I assume that compulsory registration was introduced to reduce religious associations," says Aleksey Kildishov.



Until 2011, we had more than 40 religious denominations; after the adoption of the law there were 18 of them. That is, more than half of the religious denominations did not pass registration, but simply "went underground".

⁵³ Recommendations for the analysis of legislation on religion or belief. Approved by the Venice Commission at the 59th Plenary meeting, Venice, June 18-19,

⁵⁴ Transcript of an interview with R. Podoprigora on the topic "Freedom of religion in the Republic of Kazakhstan" // Helm T. "On freedom of religion in Kazakhstan": Report. Nur-Sultan, 2020. S. 36 – 37.

From the perspective of Yevgeny Zhovtis, according to international standards, a person and a group of people should not ask permission for their existence. Therefore, any registration that is in fact a licensing is a violation of international standards. "There can be no registration," he mentioned. "Also, for many years I have been defending the position that no registration is a filter to prevent illegal activities. Extremist groups don't go to register, it doesn't even occur to them. In this sense, registration does not play any role, it is simply a procedure for obtaining the status of a legal entity. In all civilized democratic states there is no registration at all and never has been".

The 2021 Religious Freedom Report (Kazakhstan), posted on the website of the U.S. Embassy in Kazakhstan, indicates that according to local and international observers, authorities continued to impose restrictions on and conduct additional scrutiny of what the government considered "nontraditional" religious groups, including Muslims who practice a version of Islam other than the officially recognized Hanafi school of Sunni Islam, and some non-Lutheran Protestant Christian groups. The Council of Baptist Churches reported it continued to refuse on principle to register under the law, in keeping with its policy of maintaining a distance from the government. Community representatives reported authorities continued to closely monitor their meetings and travels and police followed and surveilled them, as in prior years 55.

In September, November, and December 2012, the Christian Center of Jehovah's Witnesses in Kazakhstan requested permission to import ten religious publications. However, the Agency for Religious Affairs, based on the conclusions of the theological expamination, refused to satisfy these requests.

Polat Bekzhan, Leon Weaver Jr. and Helmut Echtle filed a complaint with the UN Human Rights Committee about the violation of freedom of thought, conscience, and religion (communication No. 2661/2015). They intended to import religious literature into Kazakhstan for their own use and the use of their members, but did not receive a positive conclusion from the theological examination for this.

The authors argue that imposing a restriction or ban on the reproduction, distribution or sale of a book interferes with the exercise of the right to freedom of expression, and that such a restriction on religious publication infringes on freedom of religion. Thus, the decisions of the Agency for Religious Affairs to refuse permission to import religious publications infringed

on the rights of authors and all Jehovah's Witnesses as a religious minority.

On this basis, the Committee considered that the State party had failed to substantiate the need for restrictions on the practice of the authors' religion and concluded that the refusal to authorize the import of said religious publications was contrary to the freedom to manifest one's religion and therefore amounted to a violation authors' rights under article 18, paragraph 1, of the Covenant ⁵⁶. The Committee also noted that the State did not provide any examples that would show how the prohibited publications threatened any interests. The Committee recommended that the State party review legislation in the field of religion.

In the context of this study, it should be noted that in the ranking of countries in terms of the human freedom index, Kazakhstan ranked 75th out of 162 countries of the world. For Kazakhstan, the index was 6.99, which is lower than that of such EAEU countries as Armenia and Kyrgyzstan, but higher than that of Belarus and Russia, finprom.kz reports.

The Human Freedom Index (HFI) measures the extent to which people are restricted or coerced by the authorities. The HFI of countries is calculated on the basis of 76 indicators of personal, civil, economic freedoms, reflecting 12 areas of human activity:

- law supremacy
- security
- freedom of movement
- freedom of religion
- freedom of association and civil society
- freedom of expression and information
- freedom of choice of identity and personal relationships
- the size of the government
- the quality of the legal system and the protection of property rights
- access to safe money
- freedom of international trade
- regulation of business, labor, lending

The first seven areas are considered in the index of personal freedom. According to this index, Kazakhstan ranks 90th. The last five areas are considered in the index of economic freedom, in which the Republic of Kazakhstan took 73rd place. According to the index of personal freedom, Kazakhstan has a good score in the security section and in the freedom to choose one's identity and personal relationships – 9 out of 10, as well as in the field of freedom of movement – 8.3 out of 10 ⁵⁷.

⁵⁵ Kazakhstan: Religious Freedom Report 2021 https://kz.usembassy.gov/ru/2021-report-on-international-religious-freedom-kazakhstan/

⁵⁶ Views adopted by the Human Rights Committee in accordance with paragraph 4 of Art. 5 of the Optional Protocol on Communication No. 2661/2015 – June 10, 2015 //CCP R /C/130/ D /2661/2015

Tkazakhstan ranks 90th in personal freedom ranking https://kazislam.kz/kazahstan-okazalsya-90-m-meste-v-rejtinge-po-lichnoj-svobode/

Section 2.1.3. "Freedom of Religion" of the Report on the activities of the Commissioner for Human Rights in the Republic of Kazakhstan for 2021 indicates that in the reporting year, the Commissioner received 17 appeals from citizens on the protection of the right to freedom of religion, compared to 2020 figures (10 complaints) the number of applications increased by 70%.

Citizens' complaints on this issue can be divided into two groups:

- 1. citizens' complaints about the propaganda activities of religious organizations (12).
- 2. appeals of members of religious associations for assistance in protecting the activities of the organization (5).

Regarding the first category of appeals, the Commissioner received complaints from citizens on an individual basis, in the form of a collective appeal, and from human rights organizations. In 12 appeals, citizens complained that they were under ideological bombardment by a certain religious organization, which was carried out by sending letters through Kazpost, sending videos through instant messengers, and making daily calls. 3 collective appeals were sent by residents of

settlements from the Almaty region. According to the applicants, the actions of local religious associations have a psychological negative impact on the lives of rural residents and their families.

After repeated appeals, these cases were taken under control by the Ministry of Information and Social Development of the Republic of Kazakhstan (MISD RK). The Ministry recommended that representatives of the religious association carry out explanatory work with members of the religious community about preventing violations of citizens' rights, including by making phone calls to impose their religious views and sending letters through Kazpost.

As can be seen from the said Report, in 2021 the activities of the Human Rights Commissioner consisted in working with complaints from individuals who believed that they had been affected by the activities of religious associations. At the same time, the Report does not contain any analysis or conclusions regarding the current legislation on religious activities and religious associations related to the restriction of the right to freedom of religion.



Other issues of exercising the right to freedom of religion

The Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" establishes the mandatory registration of missionary activities and imposes special requirements for this procedure:



"Article 8. Missionary activity

- 1. Citizens of the Republic of Kazakhstan, foreigners and stateless persons carry out missionary activities after registration.
- 2. Registration of persons carrying out missionary activities is carried out by local executive bodies of regions, cities of republican significance, and the capital, within a period not exceeding thirty calendar days from the date of submission of documents. The term of registration is suspended during a theological examination to obtain an opinion on the materials submitted by the missionary.

- **3.** Missionaries on the territory of the Republic of Kazakhstan are required to undergo annual re-registration in local executive bodies of regions, cities of republican significance, and the capital.
- **4.** For registration, missionaries submit the following documents and materials to local executive bodies:
- 1) a copy of the passport or identity card
- 2) a statement indicating the territory and period of missionary activity
- 3) a document issued by a religious association for the right to carry out missionary activities on behalf of a religious association
- 4) a certificate of state registration (re-registration) of a legal entity and a copy of the charter of the religious association of which the missionary is a representative
- religious literature, other information materials of religious content, and religious items intended for missionary activities
 - "Foreigners and stateless persons in the Republic of Kazakhstan additionally submit the following documents for registration as a missionary to local executive bodies:

- a legalized or apostilled document certifying that the religious association represented by the missionary is officially registered under the laws of a foreign state
- 2) an invitation from a religious association registered in the Republic of Kazakhstan Documents issued by foreign states are submitted with the accuracy of the translation into Kazakh and Russian notarized in the Republic of Kazakhstan and the authenticity of the signature of the translator who performed the translation notarized in the Republic of Kazakhstan.
- 5. Citizens of the Republic of Kazakhstan, foreigners and stateless persons who have submitted documents for registration as a missionary are denied registration on the basis of a negative conclusion of a theological expamination, and also if their missionary activity poses a threat to the constitutional order, public order, human rights and freedoms, health, and morality of the population.
- **6.** The use by missionaries of materials of religious content and items for religious purposes is allowed after receiving a positive conclusion from a theological expamination.

The report "On Religious Freedom in Kazakhstan" (Representation of the Konrad Adenauer Foundation in the Republic of Kazakhstan) gives Jehovah's Witnesses in Kazakhstan as an example of how difficult it is for small religious communities in particular. Nine of them were prosecuted in 2018 for preaching their faith. The legal basis for this is again paragraph 3 of Article 490 of the Code of Administrative Odffenses of the Republic of Kazakhstan, which prohibits missionary activity without state registration. In addition, missionary literature and information materials are prohibited. Even their possession is punishable by a fine ⁵⁸.

Speaking of how to find a balance between missionary activity without registration (an administrative offense) and a simple conversation (discussion) about some issues of a religious nature, independent experts expressed the following opinions.

According to an anonymous expert, the missionary conversation has a specific goal – it is proselytism:

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Each religious association has as its task to spread its dogma. This is a healthy phenomenon that needs to be adequately responded to.



Conversations of a religious nature can be carried out not only in the context of a particular religion, but also between atheists and secular people in scientific circles. These are completely different concepts, between which there is no need to seek a balance".

Danil Buglov admitted that he does not know how to find a balance and whether it is necessary to look for it at all, because the law does not say where the specific line is drawn between talking about religion and missionary activity. "It is not clear, should I say that the purpose of my conversation is to involve in religion in order for it to be considered missionary activity and what will happen if during the course of the conversation a person accidentally "gets involved", although there was no such purpose initially? Any conversation on a religious topic can be summed up as missionary activity without registration, especially if one person tells another about his religion," he believes.

According to Alexander Klyushev, all modern religions aim to attract new followers, and registration of missionary activity is an obstacle to the realization of the right to freedom of religion, which belongs to every person by default.

According to another respondent, a theologian, finding a balance in this issue is extremely difficult:



If necessary, anyone who conducts a conversation or interview on religious topics can be punished. Even to the point where a person can be held accountable for an innocent greeting in connection with a religious holiday".

Yevgeny Zhovtis believes that if this problem is not approached in a discriminatory way, then this line is in the same place as any other line in the freedom of religions: "I can promote what I like, there is no ban on this and it's not a fact that it will be something harmless, no prior permission is needed for this, and religion is somehow singled out and subjected to completely unnecessary obligations".

The situation is also complicated by the fact that relations to determine the location of special stationary premises for the distribution of religious literature and other information materials of religious content and religious items are regulated at the level of by-laws (Instructions) ⁵⁹.

According to paragraph 2 Clause 2 of the said Instruction, "Special stationary premises for the distribution of religious literature and other information materials of religious content or religious items (hereinafter referred to as stationary premises), a capital stationary building or a separate part of it located outside of the religious buildings (structures), provided with trade, auxiliary, administrative and amenity premises, as well as premises for receiving, storing and preparing for the sale of religious literature, information materials of religious content, religious items".

Paragraph 8 of these Instructions deserves special attention, according to which "the premises for holding religious events are located in premises (buildings) and meet the following requirements:

- 1) total area from 20 to 100 square meters
- are provided with a sanitary facility
- 3) comply with regulatory legal acts in the field of sanitary and epidemiological requirements
- 4) are equipped with video cameras that provide a complete overview of the premises for holding religious events, with access to the security control panel".

As one can see, the requirement to comply with abstract legal acts in the field of sanitary and epidemiological requirements without specification allows the law enforcement officer to approach the interpretation of this norm quite broadly, and the requirement to equip a video camera is essentially an invasion of privacy and freedom of religion.

An important issue is ensuring the right to freedom of religion for convicts sentenced to deprivation of liberty.

"Instructions on creating conditions for the performance of religious rites by persons sentenced to deprivation of liberty," approved by Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated August 8, 2014, No. 503, in its main part regulates the procedure for visiting correctional institutions by clergy and the procedure for filing a corresponding application by the convict.

At the same time, only two points are assigned to the question of the individual performance of religious rites by convicts. Thus, according to paragraph 11 of the Instruction, "Individual religious rights are performed by convicts near their sleeping place in private time provided for by the daily routine of the institution". The premises for these purposes are not allocated.

In accordance with paragraph 14 of the Instruction, "The performance of religious rites by convicts should not interfere with the functioning of the institution, violate internal regulations, or infringe on the rights and legitimate interests of other persons serving sentences in accordance with Article 97 of the Penal Enforcement Code" 60.

The wording "infringement of the rights and legitimate interests of other persons serving sentences" is quite broad and contains the risks of infringement of the right to freedom of religion by the staff of the correctional facility. For example, the performance of a five-time prayer at a strictly defined time, starting from the first (before dawn) and ending with the last (night) can be interpreted as an infringement of the rights of other convicts to rest and sleep at night. Other situations are possible when convicts profess different religions and accordingly have different restrictions on the products they consume. Obviously, such a situation requires a clear regulation of the guarantees of the right to freedom of religion in places of deprivation of liberty, as well as the creation of special prayer rooms for convicts. This confirms the decision of the UN Human Rights Committee on the appeal of Modan Mukhlisov (communication No. 2457/2014) with a complaint about the discriminatory treatment of a prisoner and the application of penalties to him on religious grounds.

The author claims that while serving his sentence in the penitentiary in Arshaly, he became a Muslim. He prayed regularly, studied the Qur'an, and observed fasting. Because of his religious beliefs, the author was constantly subjected to discriminatory treatment by the administration of the Arshaly correctional facility. For example, the administration often and without any reason isolated him from other prisoners, denied him medical care and visits from relatives, and subjected him to other forms of moral pressure and ill-treatment. In addition, it constantly interfered with his religious practices, took away his religious literature, and all the time demanded that he shave his beard, which he believes identifies him as a Muslim.

⁵⁹ Order of the Minister for Religious Affairs and Civil Society of the Republic of Kazakhstan dated June 9, 2017 No. 89 "On approval of the Instructions for determining the location of special stationary premises for the distribution of religious literature and other information materials of religious content, religious items, as well as premises for holding religious events outside outside religious buildings (structures)" https://adilet.zan.kz/rus/docs/V1700015432

⁶⁰ Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated August 8, 2014 No. 503 "On approval of the Instructions for creating conditions for the performance of religious rites by those sentenced to imprisonment" https://adilet.zan.kz/rus/docs/V14C0009722

Mukhlisov continued to disobey the legitimate demands of the administration, and he was given an official warning that he could be prosecuted for disobedience. As a result, the District Court sentenced the author to one (additional) year's imprisonment for disobeying the requirements of the prison administration.

The UN Committee, having considered the complaint, concluded that in the present case the obstruction of the author's religious rituals did not constitute a violation of article 18, paragraph 1, of the Covenant. The Committee takes note of the State party's observation that all detainees are allowed to perform individual religious rites in their cells, as long as this does not interfere with the proper functioning of the correctional facility, and that the author actually tried to perform religious rites at the wrong time. The Committee considers that the maintenance of order in an institution implies the imposition of certain restrictions.

With regard to the requirement that the author shave his beard, the Committee notes that, although the State party argues that in accordance with the internal regulations of the institutions of the penitentiary system convicts must have a neat appearance, providing for a short haircut of the scalp up to one and a half centimeters (with the exception of convicted women), a neatly trimmed mustache, and a shaved beard, it does not explain why these measures are necessary.

The Committee considers that the State party has failed to substantiate restrictions on the author's demonstration of his religion and concludes that the general ban on the wearing of a beard, which is a means of expressing the Muslim faith, is contrary to the freedom to manifest one's religion and therefore amounts to a violation of paragraph 1 article 18 of the Covenant ⁶¹.

⁶¹ Views adopted by the UN Human Rights Committee in accordance with paragraph 4 of Art. 5 of the Optional Protocol on Communication No. 2457/2014 of 19 January 2021 // CCPR / C / 130 / D / 2457/2014

CONCLUSION AND PROPOSALS FOR IMPROVING LEGISLATION IN THE FIELD OF RELIGION AND RELIGIOUS ACTIVITIES

According to paragraph 1 of Article 22 of the Constitution of the Republic of Kazakhstan "Everyone shall have the right to freedom of conscience". At the same time, paragraph 1 of Article 12 of the Constitution of the Republic of Kazakhstan states that "human rights and freedoms in the Republic of Kazakhstan shall be recognized and guaranteed in accordance with this Constitution". In accordance with paragraph 2 of Article 12 of the Constitution of the Republic of Kazakhstan, "Human rights and liberties shall belong to everyone by virtue of birth, be recognized as absolute and inalienable, and define the contents and implementation of laws and other regulatory and legal acts".

The right to freedom of conscience means that this subjective right is exercised by an individual, i.e. enables a person to independently or jointly with other citizens

profess any religion, including freedom of religion, or not adhere to any religion. Consequently, the sectoral legislative act must first of all contain guarantees for the exercise by an individual of the right to freedom of religion.

The current Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" essentially narrows the constitutional norm on freedom of conscience and reduces the right to freedom of religion to the activities of religious associations, or rather, establishes a framework for the activities of religious associations and, according to its intended purpose, is aimed at regulating public and state security from possible illegal actions as a result of the exercise of the right to freedom of conscience.

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In practice, when registering religious associations and other non-profit organizations, there are problems of correct understanding of the terms used in the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations".

Subparagraphs 2 and 4 of Article 1 "Basic Concepts Used in this Law" of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" define the concepts of "religious activity" and "religious association" as follows:

"Religious activity is an activity aimed at meeting the religious needs of believers;

"Religious association is a voluntary association of citizens of the Republic of Kazakhstan, foreigners and stateless persons, in accordance with the procedure established by the legislative acts of the Republic of Kazakhstan, united on the basis of their common interests to meet spiritual needs".

When formulating the concept of "religious association" in the Law, we propose to state it in the following wording:

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"Religious association is a voluntary association of citizens of the Republic of Kazakhstan, foreigners and stateless persons, in accordance with the procedure established by the legislative acts of the Republic of Kazakhstan, united on the basis of their common interests to meet religious needs".

The existing procedure for selecting experts for conducting theological examination, the requirements for experts, is contradictory and contains the risks of arbitrary interpretation of the law in the process of application.

Thus, the wording of the Law "experts with at least two years of experience in the field of religious activity" is quite broad and allows arbitrarily interpretation of this provision, when persons who in essence do not understand, or do not deeply understand, the studied the area of expertise. In fact, the involvement of a person without appropriate qualifications contains the risk that such an "expert" may come to faulty conclusions when "assessing the likelihood of a negative impact of religious views and cult practices on followers of the doctrine and other members of society".

Moreover, even the involvement of a certified expert carries the risk of errors at the stage of studying the object of examination in order to identify contradictions with the norms of the Constitution and legislation of the Republic of Kazakhstan, violations of the rights and freedoms of citizens of the Republic of Kazakhstan, since even certified lawyers cannot always adequately assess such issues.

One of the solutions to this problem in the short term is to involve a group of experts in conducting religious studies (theological) examination and to conduct a comprehensive commission religious expertise with the participation of at least three specialists, including those with a higher legal education and experience in the legal field for at least ten years. The dependence of the registration of a religious association on the results of a religious expertise is an additional administrative barrier. The lack of clear criteria in the selection, competence, and qualifications of experts contains risks of discrimination against the right of citizens to freedom of religion.

However, we believe that the state's religious studies (theological) examination, which results in decisions on registration or refusal to register religious associations, missionaries, or the liquidation of a religious association, does not meet international standards. Moreover, religious studies (theological) examination provides many opportunities for abuse of power and discrimination and is incompatible with the protection of religious freedom. Thus, the examination is essentially censorship prohibited by the Constitution

In the future, we strongly recommend that the provision related to the conduct of religious expertise be excluded from the legislation of the Republic of Kazakhstan.



of Kazakhstan.



It is obvious that the state cannot but be disturbed by the trend towards the emergence of extremist religious associations. However, the state policy to prevent religious extremism should not violate the constitutional right of a citizen to freedom of religion, or contradict the secular nature of the state. The issue of the complexity of registering religious associations is supplemented by the risks of bringing to administrative and criminal liability violation of the law on religious activities and religious associations.

In accordance with paragraph 1 of Article 12 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations," «Religious associations with the status of local, regional and republican may be created and operate in the Republic of Kazakhstan".

According to paragraph 2 of Article 12 of the Law, "A local religious association is a religious association formed on the initiative of at least fifty citizens of the Republic of Kazakhstan, operating within the same region, city of republican significance and the capital". In practice, it is very difficult to implement this provision on the initiative of at least 50 citizens. The desire of the initiating members to gather the necessary number of citizens to create a religious association leads to the fact that they begin to attract other citizens into their ranks by persuasion. Often such initiatives contain the risk of administrative liability.



We recommend abolishing the mandatory registration of religious associations and ensuring people's rights to freedom of religion, including without the creation of formal organizations, in accordance with the International Covenant on Civil and Political Rights.



The CAO RK contains Article 490 for violation of the legislation on religious activities and religious associations, which are widely used in practice. For example, paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" stipulates that "worship services, religious rites, ceremonies and (or) meetings are freely held (performed) in religious buildings (structures) and on the territory allotted to them, in places of worship, in institutions and premises of religious associations, cemeteries and crematoria, dwellings, public catering facilities, and if necessary subject to the observance of the rights and interests of persons living nearby".

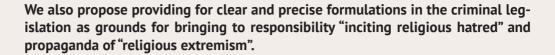
The wording "observance of the rights and interests of persons living nearby" is quite broad and contains risks of arbitrary interpretation in the process of application.

Other articles of the Code of Administrative Offenses of the Republic of Kazakhstan also contain elements of administrative offenses in which "religiosity" may have an additional feature (Articles 489, 453). The cases of administrative offenses described in this study once again confirm the blurring of the boundaries between the human right to freedom of religion, the dissemination of information in any non-prohibited way, and an "administrative offense".

In addition to administrative offenses in the Code of Administrative Offenses of the Republic of Kazakhstan, the Criminal Code of the Republic of Kazakhstan provides for the composition of criminal offenses, which indicate the sign of religiosity (Art. 174, 404, 405).



In this regard, we recommend reviewing the provisions of administrative and criminal legislation regarding the responsibility of religious associations, their leaders, and individual believers for violating the current legislation, bringing them in line with the principle of legal certainty and predictability and the principle of proportionality (adequacy) to legitimate goals.



Paragraph 7 of Article 3 of the Law of the Republic of Kazakhstan "On Religious Activities and Religious Associations" states that "no one has the right, based on their religious beliefs, to refuse to perform the duties provided for by the Constitution and laws of the Republic of Kazakhstan".

As it is known, according to Article 36 of the Constitution of the Republic of Kazakhstan, "Protection of the Republic of Kazakhstan is a sacred duty, and the duty of each of its citizens," (paragraph 1) and "Citizens of the Republic carry out military service in the manner and types established by law" (paragraph 2).

We recommend providing for the possibility of alternative military service based on religious and other beliefs, when it is possible for believers to perform military service with another type of socially useful activity (for example, in nursing homes, hospices, hospitals, etc.).

One of the relevant practical issues is the right of a person to wear a religious head covering. In constitutional law studies, the head covering is seen as a realization of the right to freedom of religion.

Thus, the wording of paragraph 13 of the "Requirements for school uniforms" – "elements of clothing of religious affiliation of various confessions" 62 is sufficiently broad and has led to its different interpretations.

Considering that the constitutional rights of citizens (the right to receive a guaranteed secondary education and the right to freedom of religion) on the one hand, and the constitutional provision on the secular nature of the state (by which the Minister of Education and Science and the Administration of Educational Institutions justify their order) on the other hand, are on the scales in the resulting litigation, it can be assumed that the Constitutional Council of the Republic of Kazakhstan (from January 1, 2023 – the Constitutional Court of the Republic of Kazakhstan) by its decision could determine whether paragraph 13 of "Requirements for school uniforms" complies with the Constitution of the Republic of Kazakhstan.

In the Law "On Education" and the Labor Code, we propose that the right of a person (a student or an employee, respectively) to wear religious clothing, including head coverings based on religious reasons, in an educational institution or at work without the

violation of the rights of others.

Based on the comprehensive analysis, on recommendations of experts, and on international standards in the field of protection of freedom of religion, we propose the development and adoption of the Law "On Freedom of Religion in the Republic of Kazakhstan."



We are grateful to the following experts who participated in the interview:

- **1.** Roman Podoprigora expert in the field of religion, lawyer, Director of the Public Law Research Institute of Caspian University,
- Danil Buglov religious studies scholar, expert in the field of religion or belief.
- **3. Alexander Klyushev** Head of the Association of Religious Organizations of Kazakhstan, expert in the field of religion or belief,
- **4. Yerzhan Baibol** expert in the field of religion, Master of Arts of the Academy of Public Administration under the President of the Republic of Kazakhstan,
- 5. Beimbet Manetov Head of the Department of Law Enforcement Practice in the Sphere of Religious Activities of the Committee for Religious Affairs of the Ministry of Information and Social Development of the Republic of Kazakhstan,
- 6. Aleksey Kildishov lawyer of the New Life Bible Center, Almaty, Deputy Director for External Relations, expert in the field of religious rights and freedom at the Association of Religious Organizations of Kazakhstan,
- 7. Yevgeny Zhovtis legal scholar, director of the Kazakhstan International Bureau for Human Rights and Rule of Law, member of the Board of the Human Rights Institute of the International Bar Association
- **8.** And to other experts who requested anonymity in their contributions to this study.





OVERVIEW OF THE SITUATION WITH RELIGIOUS FREEDOM WITH ANALYSIS OF LEGAL REGULATIONS IN THE REPUBLIC OF KAZAKHSTAN