



Kazakhstan's Fulfillment of Its Commitments to Freedoms of Association, Belief, and Assembly

Contact:

Project Director Viktoriya Tyuleneva

tyuleneva@freedomhouse.org

Program Officer Nate Schenkkan

Schenkkan@freedomhouse.org

Freedom House

1301 Connecticut Ave.

Washington, DC 20036

+1 202 296 5101

www.freedomhouse.org

Freedom House is an independent watchdog organization dedicated to the expansion of freedom around the world. Freedom House acts as a catalyst for freedom through a combination of analysis, advocacy, and action.

*Freedom House has had a representative office in Kazakhstan for more than a decade. The organization works actively with Kazakhstan's civil society to monitor and analyze government compliance with international human rights standards, dialogue with government authorities to promote implementation of national mechanisms to safeguard human rights, and increase social awareness of human rights issues. Support for this report comes from the USAID-funded project **Kazakhstan's Strengthened Respect for Human Rights.***

Freedom House: Kazakhstan's Fulfillment of Its Commitments to Freedoms of Association, Belief, and Assembly

Executive Summary

1. Since its previous UPR in 2010, the government of Kazakhstan has taken steps contrary to its international human rights commitments in several areas, especially as regards freedoms of association, belief, and assembly. These steps are in contradiction to Kazakhstan's commitments as a signatory to the International Covenant on Civil and Political Rights (ICCPR), and to recommendations made to Kazakhstan by participating states in its 2010 UPR. This report describes steps taken since 2010 in these areas.

1.1. Furthermore, at the time of writing the government of Kazakhstan is preparing to complete a reform of the country's four key legal codes (Criminal Code, Criminal-Procedural Code, Criminal-Implementation Code, and Code on Administrative Offences). The draft Criminal Code that passed its first reading in parliament in January 2014 includes numerous changes that would further infringe on freedoms of association, belief and assembly. This code is expected to be adopted in its current form by July 1, 2014. This report describes these proposed changes, in order that participating states and the Office of the High Commissioner of Human Rights may raise concerns directly with the government of Kazakhstan during the review.

1.2. This report is the product of Freedom House's cooperation with local and international NGO partners, including an extensive consultation process with the Kazakhstani NGO UPR Coalition as a whole and with its member organizations.

Freedoms of Association, Belief, and Assembly since 2010

2. In its previous UPR of 2010 Kazakhstan received a number of recommendations concerning freedoms of association, belief, and assembly.

2.1 Norway and Holland urged the government to take steps to guarantee freedom of belief, especially for faiths considered non-traditional in the country; Mexico recommended abolishing requirements for registration of religious groups.

2.2 The United States recommended extending an invitation to the Special Rapporteur on Freedom of Religion and Belief at the earliest possible opportunity.

2.3 Sweden recommended speedily revising and implementing a new law on the right to assembly that would be less restrictive in terms of prior registration and the number of participants in an assembly.

2.4 Of these recommendations, only the one concerning the Special Rapporteur on Freedom of Religion and Belief has been fulfilled; an official visit to Kazakhstan is scheduled for spring 2014.

2.5 The other recommendations from Kazakhstan's 2010 UPR have not been fulfilled. On the contrary, the government has further restricted freedoms of association, belief, and assembly.

3. Freedom of association is protected under Article 23 of Kazakhstan’s constitution, but NGOs continue to face registration and other legal requirements that limit their freedom in practice. Membership associations are required to have 10 members to register at the local level; to register nationally they must have branches in over half of the country’s regions. Associations are required to clearly define the scope of their activity, and actions outside this scope can result in fines or suspension. Participation in unregistered associations can draw punishments ranging from fines to imprisonment.

3.1 In October 2011 Kazakhstan adopted a new law increasing registration requirement for religious associations, in direct contradiction of countries’ recommendations from the 2010 UPR. Under the new law, the activities of all religious communities are regulated by a specialized state body, the Agency for Religious Affairs under the Ministry of Justice. Religious organizations are required to have 50 members to register at the local level, 500 at the regional level, and 5000 at the national level. Registration is conditional on approval by state-appointed religious “experts,” who are not necessarily representatives of the religion under examination. Furthermore, this examination is expressly theological, meaning that experts’ religious opinions determine registration, rather than objective legal standards.

3.2 According to the Agency for Religious Affairs, implementation of the law resulted in the closure of more than 1400 religious associations, a 32% reduction in the total.¹ The number of registered confessions in Kazakhstan dropped from 46 to 17.² The law forced all churches, mosques, or synagogues to register under approved confessions. For Muslims, this means that only Sunni Hanafi mosques have been able to register, because that is the only form of Islam recognized by the Spiritual Board of the Muslims of Kazakhstan. Shiites and Ahmadi Muslims, among others, are excluded from legally practicing their religion because they are not registered as official confessions.

3.3 The law bans all unregistered religious activity, including activity by registered associations in a non-registered space. Thus registered believers may even be prosecuted for holding rites or conducting prayers in a private house, as a representative of the General Prosecutor’s Office confirmed to Freedom House in a meeting in February 2013.

3.4 Under the new law, missionary activities are also limited by strict registration requirements. As with registration, all proselytizing materials and literature may be used only after obtaining theological approval by state-appointed religious experts. Materials pertaining to an unregistered confession may not be distributed within Kazakhstan, which contradicts the Constitution of Kazakhstan’s ban on censorship (Article 20) as well as Kazakhstan’s international commitments.

3.5 Since the implementation of the law, dozens if not hundreds of believers have been held administratively responsible and subjected to other forms of government persecution for performing rites without registration or for disseminating their views and literature. In a number of cases, the Agency has launched court proceedings for the liquidation of religious communities which are considered to be operating in violation of legislation.³

¹ <http://newskaz.ru/society/20121025/4179139.html>, accessed March 13, 2014.

² http://www.stop-sekta.kz/index.php?option=com_content&view=article&id=238:-17&catid=54:2010-06-03-05-50-54&Itemid=55, accessed March 13, 2014.

³ See, for example, the cases of the Tatar-Bashkir Mosque, Abai District Mosque, and Tautan Molla Mosque; <http://www.refworld.org/country,,FORUM18,,KAZ,4562d8cf2,524d3dff4,0.html>, accessed March 13, 2014.

4. The right to establish political parties is also guaranteed by constitutional Article 23's guarantee of freedom of association, and codified by Law 334 "On Political Parties."⁴ Yet in the case of opposition parties, the law has become an insurmountable barrier. In order to register, a party must have an initiative group of 1000 members representing two-thirds of the country's regions, cities, and capitals. An organizing committee must then submit an application to the Ministry of Justice listing the initiative group and the party's assets and sources of assets. After receiving confirmation of this application, the initiative group must publish within one month in state newspapers notice of a founding conference, to be held within two months of the application confirmation (Law 334, Article 6). Within four months of the founding conference, the party must present documentation for registration to the government. Within six months of the conference it must register all its local offices and affiliates. Furthermore, the party must have no fewer than 40,000 members (Article 10). These complex procedures present numerous opportunities for government officials to withhold registration. For instance, in order to reject an application for registration, it is sufficient to find a few individuals from the 40,000 members who are willing to withdraw their signature, or who have died during the lengthy registration process, or left the country. This practice was used against the opposition party *Alga!*, whose party members visited offices of government officials for seven years trying every conceivable way to get registered, but without success.

4.1 Since its 2010 UPR, the government of Kazakhstan has taken further steps to limit freedom of association by actively crushing independent political activity. On December 21, 2012, a court held that *Alga!* was "extremist" and its activities were banned throughout the territory of Kazakhstan. This judgment was based on the trial of *Alga!* leader Vladimir Kozlov, who was convicted of inciting social hatred in Zhanaozen, leading to riots in December 2011 during which government forces killed more than a dozen citizens.⁵

4.2 Based on the conviction of Kozlov a court also banned a range of critical media outlets on the territory of Kazakhstan for "extremism": *Respublika*, *Vzglyad*, *Stan TV* news website, and the satellite television station *K+*.

4.3 Such practices towards the freedom of association, in particular the right to establish political parties, and towards freedom of expression, constitute a *de facto* ban on independent political activity.

5. As regards freedom of assembly, Article 32 of the Constitution of Kazakhstan guarantees the right of all citizens to hold peaceful meetings, rallies and demonstrations, street processions and pickets. However, Law 2126 regulating the exercise of the freedom of peaceful assembly⁶ still stipulates that Kazakhstani citizens must obtain permission from local authorities (akimats). The law states that

⁴ Law on Political Parties of July 15th, 2002 (with amendments of December 24th, 2012), http://online.zakon.kz/Document/?doc_id=1032141&show_di=1, accessed March 13, 2014.

⁵ Freedom House conducted extensive monitoring of Kozlov's trial (published as *Kozlov Case File*, December 2012), and found that it was marred by extensive violations of due process and fair trial. In addition, the charges against him were incoherent, in that they held he had "incited hatred against a social group," with the authorities of Kazakhstan held to constitute a "social group" akin to a race or religion.

⁶ Law of the Republic of Kazakhstan of March 17th, 1995 "On the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations in the Republic of Kazakhstan," http://online.zakon.kz/Document/?doc_id=1003508&search=%D0%BC%D0%B8%D1%80%D0%BD%D1%8B%D1%85%20%D1%81%D0%BE%D0%B1%D1%80%D0%B0%D0%BD%D0%B8%D0%B9%20%D0%BC%D0%B8%D1%82%D0%B8%D0%BD%D0%B3%D0%BE%D0%B2&spos=1&tSynonym=1&tShort=1&tSuffix=1, accessed March 13, 2014.

assemblies may be held only if certain requirements are met, including: 1) submission and approval of a special application ten days before the date of an assembly (Article 3); and 2) if requested by authorities, agreement to hold the assembly in a different time and area designated by the local authorities (Article 4). Such areas are typically located far from the city center, where the event will not be noticeable to the general public.

5.1 An assembly held without permission is considered to be a violation of the law, and its organizers are subject to administrative penalties. Only groups are allowed to apply to conduct a public assembly; there is no such right for individuals.

5.2 Kazakhstani law also regulates events organized by single individuals. Distributing leaflets, joining flash mobs, wearing T-shirts or carrying umbrellas with political signs or slogans, laying flowers at memorials are all considered to be “form[s] of expressing public, collective or personal interests and protest.” Any gathering where citizens discuss social or political issues requires permission from local authorities.⁷

Draft Legal Code Reform and Its Impact on Freedoms of Association, Belief, and Assembly⁸

6. At the request of President Nazarbaev on January 6, 2012 (# 51-14.20), the General Prosecutor initiated a reform of the country’s four key legal codes: Criminal Code, Criminal-Procedural Code, Criminal-Implementation Code, and Code on Administrative Offences (collectively referred to further as “the draft Criminal Code”).

6.1. On January 29, 2014, the Parliament of Kazakhstan considered the new draft Criminal Code in the first reading. Its adoption is expected by July 1, 2014. The new draft Criminal Code⁹ will in many cases exacerbate Kazakhstan’s already extremely repressive approach to fundamental rights and freedoms, including but not limited to freedoms of association, belief, and assembly.

7. As regards freedom of association, under the draft reform being a “leader of a public association” is considered a special aggravating circumstance and increases the penalty for a number of crimes (Articles 146(2), 174, 182, 254, 255, 401(2), 402, 403). A leader of a public association is defined as “a manager of a public association, as well as other participants of the public association who are capable, based on their influence and authority, to unanimously manage/influence the activity of such public association” (Article 3). This definition is very broad and can result in any member of a public association being considered by the government to be “a leader.” The current Criminal Code is less restrictive, only considering being a manager of a public association as an “aggravating circumstance.”

7.1 Article 401(2) covering “interference in the lawful activities of government bodies” is another example of how the draft Criminal Code discriminates against the leaders of public associations without

⁷ As only one example of the law’s application, in March 2014, activist Makhambet Abzhan was sentenced to 7 days’ detention for holding an unauthorized peaceful protest in front of the Russian Embassy in Astana against the occupation of Crimea (<http://rus.azattyq.org/archive/news/20140311/360/360.html?id=25292783>, accessed March 13, 2014).

⁸ This section is written based on an overview of the Draft Criminal Code provided to Freedom House by the International Center for Non-Profit Law on February 25, 2014 (see Annex 1 for overview as written).

⁹ http://online.zakon.kz/Document/?doc_id=31140848#sub_id=11, accessed March 13, 2014.

rational justification. The article's crime is very vague.¹⁰ It is not clear what would constitute interference into the government's activities from its provisions, and whether criticizing the government could be considered "interference." Furthermore, if interference constitutes a dangerous physical action then any person or organization who commits such actions would be liable under other criminal articles, irrespective of their leadership or membership in public associations.

7.2 Article 402 (1) of the draft Criminal Code also defines as a crime the establishment and management of religious or public associations, the activities of which are associated with violence to citizens or damage to their health and activities that facilitate civil disobedience or other unlawful actions. Article 402 (2) of the draft Criminal Code also defines as a crime the establishment of a public association which declares or implements in practice racial, nationalistic, family, social, clan or religious intolerance or exclusivity as well as the management of such associations. The phrase "implements in practice" is important because as in the Kozlov case, incitement charges have been used to repress legitimate political dissent. Article 402 would allow prosecution of public associations and their members at the broad discretion of government authorities who might subjectively find a public association "declaring" or "implementing" "intolerance or exclusivity." The vagueness of the article renders the legal implications of the article unforeseeable, which contradicts the principle of legal certainty.

7.3 Finally, a wholly new addition to the criminal code is Article 403, which will criminalize management, participation, and financing of the activities of unregistered public associations. The prohibition of unregistered associations is a direct violation of international treaties and conventions to which Kazakhstan is a party, in particular Article 22 of the ICCPR.¹¹ The internationally protected right to freedom of association includes the right to informal associations, i.e., groups without legal personality.¹² The prohibition of unregistered public associations under Kazakh law contradicts the very notion of freedom of association.

8. These articles of the draft Criminal Code that single out public associations also impact freedom of belief. As with public associations, membership or leadership of religious associations are also treated as aggravating circumstances for a variety of crimes that are already adequately penalized under existing criminal legislation (Article 402), and participation in an unregistered religious association is made a crime (403).

8.1 In addition, Article 404 of the draft code creates criminal liability for missionary activities. According to Article 404 any missionary activities conducted without registration (or without re-registration for those that previously had registration) as well as the use of religious literature, informational materials of a religious character, or objects with religious meaning without a corresponding conclusion of religious expertise are considered a crime and penalized with detention up to four months or deportation (for foreign citizens).

¹⁰ The full definition of the crime reads: "Interference in the lawful activities of government bodies or appropriation of their functions by the members of public associations, if such activities have caused substantial damage to the rights and lawful interests of citizens or organizations or interests of the society or state protected by law is considered to be a criminal offense."

¹¹ The International Covenant on Civil and Political Rights, ratified by Kazakhstan on 26 Aug 1998.

¹² As the Special Representative of the UN Secretary-General on Human Rights Defenders has stated, "Registration should not be an obligatory requirement. Civil society organizations should have the right to exist and to work without registration, if they do not want to register." A report submitted by the Special Representative of the UN Secretary General on human rights defenders, Hina Jilani, in accordance with UN General Assembly Resolution № 58.178 (October 1, 2004.), P. 21 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>).

8.2 Articles 401-404 limit freedom of association through measures more onerous than necessary for achieving legitimate aims, given the existing criminal legislation governing violent acts or acts inciting violence. The designation of leadership or membership in public associations as an aggravating circumstance and the compulsory registration of all public associations and religious organizations contradict the principle of proportionality.

9. As regards freedom of assembly, unlike Article 334 of the existing Criminal Code, where the offense is materially defined and criminal liability only follows such consequences as "the disruption of transport or substantial harm to the rights and legitimate interests of citizens and organizations," Article 398(1) of the draft Criminal Code defines criminal liability for merely the organization, conduct, or participation in an illegitimate gathering.

9.1. Moreover, Article 398(1) of the draft Criminal Code provides for additional criminal liability for "assisting the organization or conducting of such activities by providing facilities, communication means, equipment, transportation." This wording is imprecise. It will allow for a broad interpretation of the notion "assistance," and will create grounds for criminal prosecution, for example, of bloggers or people exchanging information on social networks, or of journalists and political activists during preparations for any meeting that could later be determined to be illegitimate because no permission from the authorities was obtained. This also violates the principle of legal certainty.

Recommendations

10. Kazakhstan's existing legislation and practice is highly repressive in terms of fundamental freedoms. The draft Criminal Code that is expected to be adopted this year will further continue this negative trend. Freedom House urges the following recommendations:

10.1 To eliminate the existing compulsory theological examination for religious materials and literature;

10.2 To eliminate the existing ban on unregistered religious activity, including on activity by registered associations in a non-registered space like holding rites or conducting prayers in a private house;

10.3 To adopt a new law on the freedom of assembly in compliance with international standards, including by lifting the requirement of request for permission ten days in advance before holding a public protest;

10.4 To promote political pluralism, including by eliminating bureaucratic obstacles to formation of new political parties;

10.5 To provide for the legal operation of unregistered public associations in legislation;

10.6 To eliminate from the draft Criminal Code Articles 398, 401, 402, 403, 404 as contradicting key principles of international law (the principles of legal certainty, non-discrimination, and proportionality).