



**ANALYSIS OF LEGISLATION OF THE REPUBLIC OF
KAZAKHSTAN ON REALIZATION OF THE RIGHT TO FREEDOM
OF RELIGION OR BELIEF WITH A VIEW TO IDENTIFYING
DISCRIMINATORY PROVISIONS IN IT**



**KAZAKHSTAN INTERNATIONAL BUREAU FOR HUMAN RIGHTS
AND RULE OF LAW**

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INTRODUCTION

Non-discrimination, along with equality before the law and the right to equal protection under the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Kazakhstan on 28 November 2005, obligates **each State Party to respect and to ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In General Comment No. 18 to the ICCPR (1989), the UN Human Rights Committee (UN HRC) note that *“the Covenant neither defines the term “discrimination” nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the Republic of Kazakhstan, provides that the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by the Republic of Kazakhstan, provides that “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

While these conventions deal only with cases of discrimination on specific grounds, the UN HRC believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

The UN HRC also notes that article 26 of the ICCPR provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 prohibits discrimination in law or in fact in any field regulated and protected by public authorities and it is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. When legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.

Provided that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”.

Therefore, the purpose of this analysis is to identify discriminatory provisions that exist in the legislation of the Republic of Kazakhstan in relation to the right to freedom of religion or belief and activity of religious associations, in terms of how different their legal regulation is, which does not meet the criteria of reasonableness and objectivity.

The analysis was carried out within the framework of the action titled “Fight against persecution and discrimination based on religion in Kazakhstan” performed by Kazakhstan International Bureau for Human Rights and the Rule of Law Public Association with financial support of “Stefanus Alliance International” (SAI, Norway).

Below are the normative documents of the Republic of Kazakhstan that have been used in the analysis:

1. Constitution of the Republic of Kazakhstan dated 30 August 1995.
2. The Civil Code of the Republic of Kazakhstan (General Part) dated 26 December 1994.
3. The Code of the Republic of Kazakhstan on Administrative Offenses dated 5 July 2014.
4. The Criminal Code of the Republic of Kazakhstan dated 3 July 2014.
5. The Penal Code of the Republic of Kazakhstan dated 5 July 2014.
6. The Law of the Republic of Kazakhstan dated 11 October 2011 “On Religious Activity and Religious Associations”.
7. The Law of the Republic of Kazakhstan dated 17 April 1995 “On the State Registration of Legal Entities and Record Registration of Branch Offices and Representative Offices”.
8. The Law of the Republic of Kazakhstan dated 31 May 1996 “On Public Associations”.
9. The Law of the Republic of Kazakhstan dated 23 July 1999 “On Mass Media”.
10. The Law of the Republic of Kazakhstan dated 16 July 2001 “On the Architectural, Town-Building and Construction Activity in the Republic of Kazakhstan”.
11. The Law of the Republic of Kazakhstan dated 8 August 2002 “On the Rights of the Child”.
12. The Law of the Republic of Kazakhstan dated 27 July 2007 “On Education”.
13. The Law of the Republic of Kazakhstan dated 27 December 2019 “On the Status of a Pedagogue”.
14. The Law of the Republic of Kazakhstan dated 13 July 1999 “On Countering Terrorism”.
15. The Law of the Republic of Kazakhstan dated 18 February 2005 “On Countering Extremism”.

The analysis was carried out by studying the provisions of various regulatory legal acts and identifying if they contained discriminatory elements, and is based on the legislation of the Republic of Kazakhstan in force as of 17 May 2021.

I. The Constitution of the Republic of Kazakhstan dated 30 August 1995

1. Article 5.5

Activities of foreign religious associations in the territory of the Republic as well as appointment of heads of religious associations in the Republic by foreign religious centres shall be carried out in coordination with the respective state institutions of the Republic.

The activity of foreign organizations within the territory of the Republic of Kazakhstan may be conditioned by the establishment of various structural divisions, and by the institute of a permanent establishment. However, only foreign religious associations have a provision that regulates their activity on the basis of agreement with government authorities.

The situation of appointments by foreign religious centres of the heads of their religious associations in Kazakhstan is pretty much the same. Only appointments of heads of religious associations are subject to agreement with government authorities.

II. The Civil Code of the Republic of Kazakhstan (General part) dated 26 December 1994

1. Article 34, paragraph 3

A legal entity that is a non-profit organization may be created in the form of an institution, public association, joint-stock company, consumer cooperative, public foundation, religions association and any other form which is provided for by legislative acts.

By its nature and organizational and legal form, a religious association is no different from a public association, i.e. non-commercial membership-based organization. However, in article 34, 36 and 43 of the Civil Code (General part) religious association are considered separately.

2. Article 109

1. A voluntary association of citizens who unite in accordance with the procedure stipulated in legislative acts, on the basis of their common interests for satisfying their spiritual needs, shall be recognized as religious associations.

3. Religious associations in the Republic of Kazakhstan, which have governing centres beyond the boundaries of the Republic, shall be subject to registration at the justice authorities. Charters (articles) of the governing centres may be used as a basis of charter (articles) of such religious associations, if they do not contradict legislation of the Republic of Kazakhstan.

9. A religious association shall have the right to own the assets which are acquired or created by it at the expense of its own resources, as well as those donated by citizens, or

organizations, or those transferred by the State, and acquired on any other grounds, which do not contradict legislative acts.

10. The participants (members) of a religious association shall not retain rights with regard to the assets which are transferred by them to that organization, including their membership fees. They shall not be liable for the obligations of the religious association and the religious association shall not be liable for the obligations of its members.

11. Special considerations concerning the legal status of religious associations shall be determined in accordance with this Code and legislative acts of the Republic of Kazakhstan.

The Civil Code of the Republic of Kazakhstan has an article (Article 109) which discusses religious associations. In doing so, in terms of the main elements of legal regulation this article is practically identical to Article 106 which speaks of public associations. The only difference between them is that a religious association is said to pursue a special purpose, which is it seeks to satisfy spiritual needs--although not only religious associations pursue this objective, many other organizations, e.g. in the area of education, arts and generally culture, pursue the same objectives. The second difference is that a religious association must be registered because it has managing centres outside the territory of Kazakhstan. So, even though public associations and religious associations are very similar in terms of their legal nature, the latter ones are separated out and are governed by a special legal act, the Law of the Republic of Kazakhstan dated 11 October 2011 «On Religious Activity and Religious Associations».

III. The Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations” dated 11 October 2011.

1. Article 3, paragraph 11

Activity of religious associations that are not registered in accordance with the laws of the Republic of Kazakhstan, as well as any coercion of citizens of the Republic of Kazakhstan, foreigners and stateless persons in determining the attitude to religion, to participate or not participate in the activities of religious associations, in religious ceremonies and (or) in religious instruction, are not allowed.

Religion-based associations of individuals are deprived of the right to legal existence only because their activity is not authorized by the state. In Kazakhstan, unregistered public associations are also prohibited. At the same time, there are various public structures, including pro-government ones, that operate just fine even without being registered: the League of Nur-Otan Supporters; the Inter-Party Council under the Majilis of Parliament of the Republic of Kazakhstan, public councils under various government agencies, etc.

Therefore, religious associations are at a disadvantage compared to other collective formations.

2. Article 3, paragraph 12

Activities of religious associations, associated with violence against citizens of the Republic of Kazakhstan, foreigners and stateless persons or otherwise causing harm to their health or with the divorce between spouses (family disruption) or termination of relationship, damage to morality, violation of rights and freedoms of human and citizen, motivating citizens to refuse to perform the duties, prescribed by the Constitution and the Laws of the Republic of Kazakhstan, and other violations of the legislation of the Republic of Kazakhstan, are not allowed.

The activity described in Article 3, paragraph 12, of the Law must be prohibited irrespectively of which organization is engaged in it. However, the legislation singles out specifically religious associations.

3. Article 3, paragraph 13

Activities of religious associations, forcibly engaging into their activities the citizens of the Republic of Kazakhstan, foreigners and stateless persons, including through charity, and/or preventing the secession from a religious association, including through the use of intimidation, violence or threats of its use, using material or other dependence of citizens of the Republic of Kazakhstan, foreigners and stateless persons or by deception shall not be permitted.

The activity described in Article 3, paragraph 13, of the Law must be prohibited irrespectively of which organization is engaged in it. However, the legislation specifically singles out religious associations.

4. Article 3, paragraph 14

Coercion of participants (members) of a religious association and religious followers to alienate their property for the benefit of the religious association, its leaders and other participants (members) are not permitted.

The rule that prohibits property to be alienated in favour of another individual or legal entity must apply to all citizens and organizations, both those who coerce and who are being coerced. For instance, an individual who is a member of a political party may not be coerced into alienating his/her property in favour of the said party. However, the prohibition contained in the legislation only applies to religious associations, their heads and participants (members).

5. Article 3, paragraph 15

Making decisions and performing actions using religion and religious beliefs, knowingly capable of disorganizing the work of the state authorities, disrupt their smooth functioning, reduce the degree of control in the country, shall not be permitted.

The activity described in Article 3, paragraph 15, of the Law must be prohibited irrespectively of which instrument is being used: religion, politics, ideology etc. However, the legislation specifically singles out religion and religious associations.

6. Article 3, paragraph 16

The head of a religious association is obliged to take measures to prevent involvement and (or) participation of minors in the activity of a religious association if one of the minor's parents or other legal representatives object.

Parents' objections to their child being engaged in an activity may arise in a wide range of scenarios: e.g. when a child practices a sport, plays music, or is engaged in a public or political activity. The law provides no obligation for the head of any such organization to take measures to ensure the child is not engaged or does not participate in the relevant activity, should one of his parents object to it. Such an obligation is only provided in the analysed law, and only in respect of religious associations.

7. Article 4, paragraph 13

The authorized body shall: ...

13) make proposals to the law enforcement agencies, to prohibit the activities of individuals and legal entities that violate the legislation of the Republic of Kazakhstan on religious activity and religious associations...

Article 5, paragraph 4

The local executive bodies of the oblasts, cities of the republican significance and the capital with respect to the issues of religious activities and interaction with religious associations shall: ...

4) make proposals to the law enforcement agencies to prohibit the activities of individuals and legal entities that violate the legislation of the Republic of Kazakhstan on religious activity and religious associations...

The activity of a legal entity may be subject to a ban on the basis of a sanction stipulated by the Code of the Republic of Kazakhstan on Administrative Offences (CAO) or in the procedure stipulated by Article 49, paragraph 2, of the Civil Code of the Republic of Kazakhstan (General Part) dated 26 December 1994. A claim seeking liquidation of a legal entity on the grounds stipulated in Article 49, paragraph 2, may be brought to a court of law by a state body which has been authorized to do so under the law. In both cases, a judgment is issued by the court. In other words, in the event of an administrative offense (CAO) or a gross violation of the law (Civil Code) many other legal entities are subject to regular procedures, without a special law that is being violated being separated out.

In the case of a violation of the law on religious activity and religious associations, the state body is given a special authorization to apply to law enforcement agencies (which, by the way, may not by themselves render a decision on banning the activity of an organization).

8. Article 5, paragraph 7

The local executive bodies of the oblasts, cities of the republican significance and the capital with respect to the issues of religious activities and interaction with religious associations shall: ...

7) approve the location of special stationary premises for the distribution of religious literature and other informational materials of religious nature, religious items, as well as agree on the location of premises for religious activities outside religious buildings (structures)...

In the Republic of Kazakhstan, literature may be distributed by various methods and in various forms. Under a general rule, literature and information materials are distributed following a decision by their owner, by the owner himself or by other organizations and citizens, based on a contract or other legal grounds.

It should be noted that there are certain restrictions and obligations in respect of retail sales of periodicals that publish erotic content (Article 14, paragraph 2 of the Law of the Republic of Kazakhstan dated 23 July 1999 “On Mass Media”. There are also certain restrictions on advertisement of alcohol and tobacco products; information on job vacancies that contains requirements that are discriminatory from a labour protection point of view; distribution of personal and biometric data; advertisement of a financial (investment) Ponzi scheme (Article 14 of the Law on the Mass Media). Restrictions are also found in the Law of the Republic of Kazakhstan dated 8 August 2002 “On the Rights of the Child” (see Article 39).

Those restrictions are explained by the needs of promotion of a healthy lifestyle, non-discrimination, protection of personal data and prevention of financial fraud, protection of children against information that may cause harm to their health and development. Hypothetically, one may accept that religious literature and other information content or artifacts of religious nature may contain the elements that would be banned under the Law on the Mass Media or the Law on the Rights of the Child. Such being the case, they will be subject to the provisions of those laws.

However, the ability to distribute religious literature, other information materials of religious nature, religious artifacts, is conditioned by the requirement for the premises in which the foregoing may be distributed to be pre-authorized, which is obviously discriminatory.

Just as discriminatory is the provision on the power of a local executive body to issue authorization for the location of a premise in which to hold religious rituals beyond the boundaries of cult premises (structures).

A great number of other events that are held on premises and not related to a religion, do not require any consents or permits (that does not include events that are arranged and held in the conditions of an emergency, a lockdown, or other similar restriction). However, for some reason only religious events require a reconciliation with/consent of a government authority in order to be held on non-religious premises.

9. Article 5, paragraph 8

The local executive bodies of the oblasts, cities of the republican significance and the capital on the issues of religious activities and interaction with religious associations shall: ...

8) make decisions on the construction of religious buildings (structures), determining their location, as well as conversion (changing functional purpose) of buildings (structures) into religious buildings (structures)...

Construction of buildings (premises) in Kazakhstan is subject to general rules contained in the architectural and construction legislation, in particular the Law of the Republic of Kazakhstan dated 16 July 2001 «On the Architectural, Town-Building and Construction Activity in the Republic of Kazakhstan». There are various town-building projects within which the issues of how the buildings would be located are decided on.

The power of the local executive body under analysis is, in the essence, an additional administrative barrier, which must be overcome during construction of a religious building. And it only applies to religious buildings.

When it comes to resolutions determining the location of religious buildings, or repurposing buildings into religious ones, the situation is similar to what is described above. Such permits only apply selectively to religious buildings.

10. Article 5, paragraph 8

The local executive bodies of the oblasts, cities of the republican significance and the capital with respect to on the issues of religious activities and interaction with religious associations shall:

...9) ensure that the lists of citizens - initiators of religious associations are checked...

As a general rule, the lists of founders, initiators of various legal entities are subject to inspections/checks, which are carried out by the justice authorities or by the state corporation “A Government for the Citizens.” Interference of local executive bodies into the matters of checking the lists of citizens-founders of religious associations signifies a selective (discriminatory) approach.

11. Article 5, paragraph 8

... The local executive bodies of the oblasts, cities of the republican significance and the capital with respect to the issues of religious activities and interaction with religious associations shall:

...10) register the persons, carrying out missionary activity...

Please see the analysis in clause 16 in this section.

12. Article 6. Religious expert examination

1. The authorized body shall ensure the carrying out of religious expert examination on the following grounds:

- 1) appeals of individuals and/or legal entities to the authorized body;*
 - 2) delivery of religious literature and other informational materials of religious nature to the library collections of organizations the Republic of Kazakhstan, as well as to the authorized body;*
 - 3) appeals of individuals for registration as missionaries and for registration of religious associations;*
 - 4) importation of religious literature, informational materials of religious nature, except for literature, and materials intended for personal use in one copy of each item;*
 - 5) order of the head of the authorized body;*
 - 6) production, issue and distribution of religious literature and other information materials of religious nature.*
- 2. Objects of religious expert examination include the foundation documents, as well as other documents of religious nature, spiritual (religious) educational programs, and informational materials of religious nature and religious artifacts.*

A religious expert examination, among other, is conducted when:

- religious literature, other information materials of religious nature arrive at the library funds of organizations of the Republic of Kazakhstan, or at the authorized body;
- religious literature, information materials of religious nature are imported into the country;
- religious literature and other information materials of religious nature are produced, released and distributed.

Those provisions, essentially, introduce censorship which is prohibited under Article 20.1 of the Constitution of the Republic of Kazakhstan. Non-religious literature, information materials of non-religious nature, when imported or otherwise entering the turnover, are not subject to expert examination. An expert examination of the relevant literature and materials may be prescribed as part of a criminal or civil process, and during administrative offense proceedings. Such provisions speak of selectively negative attitude toward religious items specifically.

13. Article 7, paragraph 2

2. Public worship, religious rites, ceremonies, and/or meeting shall be held (take place) without hindrance in religious buildings (structures) and their assigned territory, in places of worship, offices and premises of religious associations, on cemeteries and crematoria, homes, and if necessary, in public catering facilities, subject to upholding the rights and interests of persons living nearby. In other cases, religious activities shall be carried out in accordance with the legislation of the Republic of Kazakhstan.

In accordance with Article 14 of the Civil Code of the Republic of Kazakhstan (General Part), citizens may engage in any activity, as long as it does not contradict the law. Religious

activity is not prohibited under the law. Nevertheless, unlike many other types of activity (creative, sports, scientific etc.), religious activity is restricted to special venues in which its separate elements may be conducted. Therefore, we are talking about a discriminatory approach in regulating such activity.

14. Article 7, paragraph 3

3. Conduct (commission) public worship, religious rites, ceremonies, and/or meetings, as well as the implementation of missionary activity shall not be permitted in the territory and buildings of:

- 1) state bodies, organizations, except as provided in paragraphs 2 and 4 of this Article;*
- 2) the Armed Forces, other troops and military formations, judicial and law enforcement agencies, and other services related to public safety, protection of life and health of individuals;*
- 3) the organizations of education, except for the spiritual (religious) educational institutions.*

Indeed, various organizations, depending on the nature of their business, may establish certain restrictions whose purpose is to ensure their normal functioning. However, generally such restrictions make sense when holding collective or large-number events or when certain functions must be performed which may not be interrupted by a religious service, rite or ceremony (e.g. surgery at a hospital, combat standby duty, etc.)

The provision under analysis prohibits holding any rites and ceremonies, even individual ones, which is discriminatory toward the believers. For instance, an employee or a soldier may engage in physical exercise, have a smoke break or a rest break, but he may not have a prayer (without disturbing others).

For the same reason, discriminatory is the prohibition to engage in religious activities at any educational institutions. Besides, one should take into account that educational institutions hypothetically may be created by religious associations as well (not necessarily as spiritual (religious) educational establishments). Prohibiting conducting rituals at such organizations (that do not interfere with the educational activity) seems ungrounded and discriminatory when compared to the opportunities to engage in other types of activity.

15. Article 7, paragraph 4

4. Priests of the religious associations, registered in accordance with the legislation of the Republic of Kazakhstan shall be invited to persons, confined to special institutions that provide temporary isolation from society, stayed in penal institutions, and those who are patients of health care organizations that provide hospital care, extending social services in nursing homes for the elderly and disabled, at their own request or at the request of their relatives in the case of ritual necessity,. In this performance of religious rites, ceremonies, and/or meetings shall not prevent the activities of these organizations, and violate the rights and legitimate interests of others.

This provision seems discriminatory in that only the priests from registered religious associations are invited. Individuals mentioned in this clause may hold religious beliefs that

are characteristic for unregistered religious associations among others, however it should not put them in disadvantaged position compared to those who are members of the registered religious associations or hold certain religious beliefs.

16. Article 8, paragraph 1

1. Citizens of the Republic of Kazakhstan, foreigners and stateless persons shall carry out missionary activity upon registration.

In accordance with Article 14 of the Civil Code of the Republic of Kazakhstan (General Part), citizens have the right to engage in any activity, as long as it does not contradict the law. Missionary activity is not prohibited under the law, however there is a mandatory requirement that it must be registered with the state authorities. Many other types of activities the citizens engage in (e.g. creative, sports, scientific etc.) are not required any permission from any government authority.

Besides, under Article 1, paragraph 5, of the Law, missionary activity is the activity carried out by the citizens of the Republic of Kazakhstan, foreign citizens, stateless persons, whose purpose is to disseminate a religious belief within the territory of the Republic of Kazakhstan with an ultimate objective of converting into a religion. Disseminating non-religious beliefs does not require any government-issued permits and is only conditioned by general rules of distribution of information that are set out, for instance, in the Law on Mass Media.

17. Article 8, paragraph 3

3. Missionaries in the territory of the Republic of Kazakhstan must reregister annually in the local executive bodies of the oblasts, cities of the republican significance and the capital.

This provision is a derivative of the requirement of mandatory registration of missionaries, and is still discriminatory because it imposes additional burden on the citizens because they engage in an activity based on their religious beliefs.

18. Article 8, paragraph 6

6. Use of religious materials and religious artifacts by missionaries shall be permitted subject to obtaining a positive conclusion of the religious expert examination.

The use by all other citizens of materials and items in their activity does not require any expert examination. This rule puts the missionaries at a disadvantage compared to other citizens.

19. Article 9, paragraph .2

2. Distribution of religious literature, and other informational materials of religious nature, religious artifacts, is permitted only in religious buildings (structures), spiritual (religious) educational organizations, as well as at specially determined premises, designated by the local executive bodies of the oblasts, cities of republican significance and the capital.

This provision sets forth places where religious literature, other information materials of religious nature, as well as religious artifacts may be distributed. As a general rule, non-religious literature, materials and items may be distributed at any place. Obviously, there are certain rules of how certain items should be distributed, which reflects their specific features and heightened standards of safety (e.g., weapons). Religious literature and other materials and items as mentioned above are not those objects that require special rules. However, the conditions for their distribution are unequivocally worse than for other literature and items.

20. Article 9, paragraph 3

3. Any religious literature and other informational materials of religious nature, except those intended for personal use in one copy of each item, shall be imported to the territory of the Republic of Kazakhstan by registered religious associations only subject to obtaining a positive conclusion of the religious expert examination.

Any other (non-religious) literature, information materials, may be imported without limitations. When it comes to religious literature and other information materials of religious nature, restrictions kick in which relate to:

- a) subject of import - only registered religious associations. The only exception is the individual citizens who may import one copy of each title;
- b) number of imported copies. As was mentioned above, individual citizens may import only one copy of each title for their personal use;
- c) purpose of import. Individual citizens may only import literature and materials for their own personal use;
- d) a preliminary condition for import – a positive conclusion of the religious expert examination should have been obtained.

Clearly such restrictions are discriminatory with respect to import of religious literature and other information materials of religious nature.

21. Article 9, paragraph 3-1.

3-1. The manufacturing, issue and distribution of religious literature and other informational materials of religious nature shall be permitted subject to obtaining a positive conclusion of the religious expert examination.

Production, publication and distribution of any other (non-religious) literature, information materials is not predicated on the results of an expert examination, therefore the turnover (production, publication, distribution) of religious literature and materials of religious nature is put at a disadvantage.

22. Article 9, paragraph 4

4. Religious literature and other informational materials of religious nature, produced and/or distributed by a religious association must contain the full name of the religious association.

There is no requirement to provide a full name of the subject that publishes or distributes religious literature and information materials of religious nature with respect to other (non-religious) literature and materials. Therefore, such a requirement puts the religious associations at a disadvantage.

23. Article 10, paragraph 2

2. When carrying out charitable activities use of the material dependence (needs) of the citizens of the Republic of Kazakhstan, foreigners and stateless persons in order to engage them in religious activities shall not be permitted.

Using material dependence for the purpose of engaging in an activity (however difficult it is to identify such dependence and cause-and-effect relationships) is impermissible as a general principle, so singling out religious activity in this context is discriminatory.

24. Article 12, paragraph 2

2. Local religious association shall be a religious association, established at the initiative of not less than fifty citizens of the Republic of Kazakhstan, acting within one oblast, the city of republican significance and the capital.

The number of citizens required for a local religious association to be created is way too high. Lesser numbers of citizens are required to establish other types of non-commercial organizations (except for a political party). Thus, it only needs one person to create an establishment or a foundation. Ten is the number of citizens required for establishing a public association which would be very close to a religious one in its nature. Such inflated numbers are discriminatory and a barrier to establishing the main types of religious associations.

Aside from that, the right of the citizens to establish public associations may be realized either directly, by individuals associating together, or via legal entities - public associations (except for political parties). As per Article 10 of the Law of the Republic of Kazakhstan dated 31 May 1996 "On Public Associations," both individuals and/or legal entities (public associations) may be the founders of a public association.

When it comes to religious associations, only individuals may be their founders (initiators).

25. Article 12, paragraph 3

Regional religious association is a religious association, established at the initiative of not less than five hundred citizens of the Republic of Kazakhstan, who are participants (members) of two or more local religious associations, consisting of at least two hundred and fifty citizens of the Republic of Kazakhstan from each of them, who represent at least two oblasts, cities of republican significance and the capital.

The rules of establishment of religious associations are discriminatory on the following grounds:

- a) there is a criterion of a threshold number that needs to be reached to be able to found a regional religious association;
- b) the number threshold criterion required for a regional religious association to be established is way too high;
- c) existing local associations that are legal entities are unable to establish a regional association.

As an example, no numerical threshold applies when establishing regional public associations that by their nature are similar to the religious ones.

On top of that, in the case of public associations, regional structures are created by opening branch offices or representative offices within the various administrative and territorial units (for which no members are necessary at all). When it comes to regional religious associations, there is no such possibility, which puts them at a disadvantage.

26. Article 12, paragraph 4

4. Republican religious association is a religious association, established at the initiative of not less than five thousand citizens of the Republic of Kazakhstan, representing all oblasts, the cities of republican significance and the capital, consisting of no less than three hundred citizens of the Republic of Kazakhstan in each of them, as well as having its structural subdivisions (branches and representative offices) throughout the Republic of Kazakhstan.

The rules of establishing Republican religious associations are discriminatory basically on the same grounds as the rules applying to regional religious associations, namely:

- a) there is a numerical threshold which a Republican religious association must meet in order to be established;
- b) the numerical threshold for a Republican religious association is way too high.

Same as with regional structures, there is no such threshold when Republican public associations are established which by their nature are similar to the religious ones.

Aside from that, the law assumes a process of establishing a Republican religious association whereunder the initially created religious centre opens its divisions (branch offices and representative offices) in various administrative and territorial units. Such a process excludes the possibility for the existing local or regional associations that are legal entities to establish a Republican association, thereby putting them at a disadvantage compared to other legal entities who have a larger degree of freedom in choosing their scenarios of building large organizational structures.

27. Article 13, paragraph 4

4. Establishment and operation of legal entities, engaged in religious activities in a different organizational and legal form, except as a religious association shall not be permitted, except for spiritual (religious) educational organizations.

Under Article 1, paragraph 2, of the Law, religious activity is an activity that is aimed at satisfying religious needs of believers.

Religious needs of believers may be linked not only to ritual activity but to other activities as well, such as charity or education. For such activities to be carried out, other organizational legal forms, such as a foundation, an establishment, or a public association, may be employed. The prohibition to use other organizational and legal forms when it comes to religious activity is discriminatory because it restricts the believers in their choice of a legal form that suits them the best. Aside from that, many other types of non-commercial activity also imply more flexible choices in terms of selecting an organizational and legal form.

28. Article 15, paragraph 3, sub-paragraph 5

3. An application for registration shall be submitted to the registering authority within two months after the decision on the establishment of a religious association. The application shall be accompanied by: ...

5) printed religious materials, revealing the origins and fundamentals of doctrine, and providing information about its associated religious activities...

Materials similar to those specified in this provision must be submitted only when a religious association is being registered. No other legal entities are required to provide such materials (except for political parties who must present their political program). Such a requirement is not only discriminatory but also nonsensical, because the information being asked could be easily found from publicly available sources.

29. Article 15, paragraph 8

8. The term of state registration (re-registration) shall be suspended for religious expert examination and checking the list of citizens-initiators of the religious association for compliance with the terms of this Law.

While interrupting the term of state registration when an expert (professional) opinion on the foundation documents needs to be obtained is directly stipulated in respect of all legal entities under Article 9 of the Law of the Republic of Kazakhstan dated 17 April 1995 "On the State Registration of Legal Entities and Registration of Branch Offices and Representative Offices," checking the list of citizens-initiators (members) only applies in the case of registration of religious associations and political parties (Article 15 of the Law on public associations).

This provision is not only discriminatory but also nonsensical as in any case, the term of state registration will be interrupted if the submitted lists need to be checked.

30. Article 15, paragraph 9

9. Within not later than three working days from the date of the decision to suspend the period of state registration (re-registration) the registering authority shall send to the authorized body a copy of the documents, necessary for the organization of religious expert examination, and to the local executive bodies of the regions, cities of the republican significance and the capital the copies of the lists of citizens - initiators of a religious association for checking.

Clause 9 is a continuation, in the procedural sense, of the discriminatory Article 15, paragraph 8 (see analysis in the previous clause).

31. Article 16, paragraph 1, sub-paragraph 5; Article 16, paragraph 3

1. Religious association shall operate under the charter that shall contain: ...

5) the religious affiliation, the fundamentals of doctrine and the information on its relevancy of religious activities; ...

3. Information on the fundamentals of doctrine and religious activities shall contain basic religious ideas, forms of activities of religious associations, particularities of the relationship to marriage and family, education, health of participants (members) of the religious association and other persons, attitude to the performance of the constitutional rights and duties of its participants (members) and ministers.

Such requirements to specify the particulars and details of the relevant (religious) activity only apply to charters of religious associations. Other legal entities are not required to go to such level of detail in their charters.

32. Article 17, paragraph 1

1. Refusal of state registration of a religious associations, registration of its structural division (branch or representative office) shall be carried out in accordance with the laws of the Republic of Kazakhstan, as well as in cases when the information, contained in the foundation and other submitted documents is incorrect and/or the establishing association is not recognized as a religious association on the basis of religious expert examination.

The provision under analysis contains additional grounds for denying registration of a religious association or its branch office or representative office: information in the submitted documents is false; the religious association is not recognized as such based on the results of a religious expert examination. Such additional requirements only apply to religious associations. Interestingly, the Law on the State Registration of Legal Entities and Record Registration of Branch Offices and Representative Offices speaks of the same (Article 11).

33. Article 19. State and foreign religious associations

1. Activities by the head of religious association, appointed by foreign religious centre without agreement of the authorized body, shall not be permitted.

2. In order to get approval of the candidate to the position of the head of a religious association, a foreign religious centre shall submit the following documents to the authorized body:

- 1) *an application, containing information about the candidate, his (her) previous activities in that foreign religious centre;*
- 2) *the decision to appoint the candidate as the head of a religious association, operating in the territory of the Republic of Kazakhstan;*
- 3) *a copy of the passport or identity card of the candidate for the position of the head of a religious association.*

Documents shall be submitted together with its translation into the Kazakh and Russian languages the correctness of which and the signature of the translator who translated such documents must be notarized in the Republic of Kazakhstan.

3. Documents, referred to in paragraph 2 of this Article shall be reviewed by the authorized body within thirty calendar days from the date of their submission.

4. The authorized body shall refuse to agree for the appointment by the foreign religious centre of the head of a religious association in the Republic of Kazakhstan, if his/her activities may pose a threat to the constitutional order, public order, human rights and freedoms, health and morals.

The requirement that the appointment of the head of a religious association must be agreed on with an authorized body exists only in respect of religious associations. Other non-commercial organizations are not under the obligation to follow such a requirement--which makes this provision discriminatory, both in terms of content and procedure.

IV. Law of the Republic of Kazakhstan “On the State Registration of Legal Entities and Registration of Branches and Representative Offices” dated 17 April 1995

Article 11. Refusal of registration and re-registration of legal entities, branches (representative offices)

«...Additional grounds for refusing state registration and re-registration of a religious association shall be established in the Law of the Republic of Kazakhstan «On Religious Activity and Religious Associations».

Of all types and organizational legal forms of legal entities, only religious associations have to deal with additional grounds for refusal of registration and re-registration.

V. The Law of the Republic of Kazakhstan dated 13 July 1999 “On Countering Terrorism”.

Article 1, paragraph 4

“4) an ideology of violence - system of public theories, viewpoints and ideas are justifying a violence as well as with appliance of terroristic methods and facilities for achieving of political, religious, ideological and other purposes...”.

Article 4, paragraph 3, sub-paragraph 5

“5) establish the rules of interaction between the internal affairs bodies, national security, the prosecutor’s office and the authorized body in the field of religious activity to counter religious extremism and terrorism in special and correctional institutions ...”.

Article 7, paragraph 21

“21) the authorized body in the field of religious activity shall ensure inter-religious consent, the rights of citizens to religious activity and interacts with religious associations in order to prevent propaganda of violence and terrorism ideology”.

International anti-terrorism treaties do not single out religion or religious activity as a separate threat from the point of view of fight against terrorism, but they do stipulate that discrimination on any grounds must be prohibited, including on the grounds of relation to a religion and religious affiliations. Article 5 of the 1999 International Convention for the Suppression of the Financing of Terrorism (which Kazakhstan adhered to on 2 October 2020) states as follows: “Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.” A similar wording is provided in the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (which Kazakhstan ratified on 14 May 2008).

Therefore, international anti-terrorism treaties that have been ratified by the Republic of Kazakhstan do not specifically separate out the considerations of religious nature which may justify the criminal acts of terroristic nature; instead, those are included in the list of various political, philosophical, ideological, racial, ethnic and other similar considerations.

Specifically singling out religion or religious activity as a factor of threat of terrorism is stigmatizing and discriminatory.

VI. The Law of the Republic of Kazakhstan dated 18 February 2005 “On Countering Extremism”.

Article 1, paragraph 1

“The following basic terms shall be used in this Law:

1) extremism means organization and/or commission of: ... incitement of religious hatred or discord, including those related to violence or incitement to violence, as well as the use of any religious practice, causing a threat to safety, life, health, morality or rights and freedoms of citizens (religious extremism) ...”

Article 6, paragraph 1, sub-paragraph 6

“1) the state body, carrying out the state regulation in the field of religious activity, shall study and analyse the activity of religious associations and missionaries being established in the

Republic of Kazakhstan, take information and promotional measures on issues, relating to its competence, consider the issues, concerning the violations of the legislation of the Republic of Kazakhstan on religious activity and religious associations, make suggestions on prohibition of activity of religious associations, violating the legislation of the Republic of Kazakhstan on countering extremism...

6) local executive bodies of oblasts (cities of republican significance, the capital), districts (cities of oblast significance) shall interact with public associations, study activity of established religious associations and missionaries in the relevant territories, create their data base, take information and promotion measures at the regional level on issues, relating to their competence, conduct a study and analysis of religious situation in the region..."

In her Report the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism based on results of her visit to Kazakhstan in 2019 identifies *"a number of significant human rights challenges resulting from the security, counter-terrorism and extremism frameworks that are operational in Kazakhstan. The Rapporteur finds that significant aspects of the criminal law concerning terrorism and extremism are broad and vaguely defined, impinging directly on fundamental human rights protected by international law, including but not limited to the rights to expression, movement, family life, and freedom of religion and belief. She is seriously concerned about the use of the term "extremism" in national law and practice. She highlights the use of article 174 of the Criminal Code and its application to the activities of civil society activists and religious minorities. She concludes that the broad formulation of the concepts of "extremism", "inciting social or class hatred" and "religious hatred or enmity" in national law are used to unduly restrict freedoms of religion, expression, assembly and association."*

And further in paragraph 15 of the Report it is noted: *"The Special Rapporteur notes her serious concern about the use of the term "extremism" in national law and practice... While there is acknowledgment of the challenges of violent extremism leading to terrorism in some Security Council resolutions, as evidenced in the Secretary-General's 2016 Plan of Action to Combat Violent Extremism, human rights treaty bodies have articulated concern about the use of the term "extremist activity", which she shares. She holds that the term "extremism" has no purchase in binding international legal standards and, when employed as a criminal legal category, is irreconcilable with the principle of legal certainty and is per se incompatible with the exercise of certain fundamental human rights. A former Special Rapporteur noted his concern when the term "extremism" was deployed, not as part of a strategy to counter violent extremism, but as an offence in itself... She finds that all of these concerns are relevant to the exercise of articles 174, 179 and 405, among others, of the Criminal Code."*

Finally, in paragraph 25: *"The Special Rapporteur expresses her profound disquiet at the impingement upon the absolute right of belief in the context of the broader right to freedom of religion or belief, resulting from the law and practice on extremism. Such a right exists independently of administrative approval... Limitations do not apply to belief per se and in*

situations in which they are applied under article 18 (3) of the International Covenant on Civil and Political Rights, they must be legally prescribed, clearly necessary, proportionate and non-discriminatory in intention and effect, and pursue a legitimate aim. In the name of preventing and countering extremism, and to preserve the secular nature of the country and its “religious moderation”, a number of measures have been adopted to regulate religion tightly that directly impinge on the right to freedom of religion and certain religious groups, as noted by the Human Rights Committee in its concluding observations in July 2016.”

VII. The Law of the Republic of Kazakhstan “On the Rights of the Child” dated 8 August 2002.

Article 4. Legal equality of children

1. All the children shall have equal rights independently of origin, race and national identity, social and material position, gender, language, education, relation to religious, residence place, health condition and other circumstances concerning a child and his (her) parents or other legal representatives.

Article 19. Right of a child to rest and leisure time

...5. Conduct of public worship, religious customs, ceremonies and/or meetings, as well as actions oriented to distribution of religious denomination in child health-improving, sport, creative and other leisure time organizations, camps and health resorts shall not be permitted.

Article 35. Child and religious

1. State shall guarantee non-interference to nurturing of a child based on religious world-view of parents or persons substituting them, compliance with traditions and commission of religious customs with participation of a child beyond the educational, pedagogic, medical and other similar institutions, with the exception of cases when such actions constitute a threat to life and health of the child, violate his (her) rights and restrict the responsibility.

2. In respect of children under majority age, the religious customs shall be committed with the agreement of parents or persons substituting them.

Enforcement measures on engagement of children in religion shall not be permitted.

Article 4 of the Law *On the Rights of the Child* guarantees the right to non-discrimination of the child on the basis of religion.

At the same time, Article 14 of the UN Convention on the Rights of the Child (CRC), ratified by the Republic of Kazakhstan on 8 June 1994, establishes:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.*

And Article 30 of the CRC guarantees: *"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."*

Balancing the respect for the rights of the child to freedom of religion, the rights of children belonging to religious minorities, the rights of parents and guardians, on the one hand, and the secular state on the other, especially when the criteria of admissibility of limitations is taken into account, is a very complex issue which requires a careful and thorough approach. Otherwise, a number of provisions may be considered as discriminatory.

Besides, not only certain religious rituals involving children may pose a threat to the child's health and life or violate his/her rights and limit responsibility. Any other acts of such nature must be prohibited, yet the Law only singles out religious rituals.

VIII. The Law of the Republic of Kazakhstan "On Education" dated 27 July 2007.

Article 51, paragraph 5

5. Teachers carrying out professional activities in institutions of higher and/or postgraduate education shall be prohibited from using the educational process for the purposes of political agitation, religious propaganda or induction of students to actions contradicting the Constitution of the Republic of Kazakhstan and the laws of the Republic of Kazakhstan.

Maintaining a secular state may involve various measures, including legislative ones; however, equating discussing religious subjects with students to political agitation or enticing them to acts that violate the Constitution and legislation of the Republic of Kazakhstan is stigmatizing and discriminatory.

According to comments to Article 2 of the Law of the Republic of Kazakhstan On Mass Media, *"For the purposes of this Law, propaganda in mass media is understood to be the dissemination of views, facts, arguments and other information, including that which is deliberately biased, in order to form a positive public opinion of information that is prohibited by the legislation of the Republic of Kazakhstan and/or entice an unlimited number of individuals to commit an illegal act or omit an action."*

Information on a religion or religious activity is not something that is prohibited by the legislation of the Republic of Kazakhstan (except for those that have been recognized as

illegal by a court of law) and may not entice an unlimited number of individuals to commit an illegal act or omit an action.

IX. Law of the Republic of Kazakhstan “On the Status of a Pedagogue” dated 27 December 2019

Article 15, paragraph 2

“A pedagogue may not use the educational process for political agitation, for coercing the students and pupils into adopting political, religious or other beliefs or refuting them, for inciting social, racial, national or religious hatred, agitation that promotes exclusivity, superiority or inadequacy of citizens based on their social, racial, ethnic, religious or language affiliation, their relation to religion, including by exposing the students and pupils to false information on historical, ethnic, religious and cultural customs practiced by various ethnic groups and peoples inhabiting Kazakhstan, and for inciting the students and pupils to commit acts that contradict the Constitution of the Republic of Kazakhstan and its legislation.”

Keeping a state secular may involve various measures, including legislative ones; however, the principle of legal certainty and predictability must be strictly followed, in order to make sure discussions of religious matters are not equated to coercion to adopt or refute religious beliefs.

X. The Code of the Republic of Kazakhstan on Administrative Offences dated 5 July 2014

1. Article 489, paragraph 9

9. Managing public, religious associations that have not been duly registered under the legislation of the Republic of Kazakhstan or whose activity has been suspended or banned - shall be punished by a fine of one hundred times the monthly calculation index.

As was mentioned in the analysis of the relevant article of the Law on religious activity and religious associations (see clause 1 of section III of the Analysis), associations of individuals based on a religion are deprived of the right to exist legally only because their activity is not authorized by the state. The provision on liability of the heads of unregistered religious associations is a derivative of the discriminatory ban on activity of such associations.

Besides, the provision on liability in terms of managing suspended or banned associations is also discriminatory, because it only applies with respect to public and religious structures. There is no such liability in respect of, say, heads of commercial organizations.

2. Article 489, paragraph 10

10. Participating in the activity of public, religious associations that have not been duly registered in the procedure established in the Republic of Kazakhstan or whose activity has been suspended or banned - shall be punished by a fine of fifty times the monthly calculation index.

The provision on liability for participation in the activity of religious associations that have not been duly registered under the legislation of Kazakhstan is a derivative of the discriminatory ban on activity of unregistered religious associations (see clause 1 of section III of the Analysis).

Aside from that, the provision on liability for participation in the activity of suspended or banned associations is also discriminatory, because it only applies to public and religious structures. There is no such liability in respect of employees, officials, or participants in other types of legal entities.

3. Article 489, paragraph 11

11. Financing the activity of public, religious associations that have not been duly registered under the legislation of the Republic of Kazakhstan or whose activity has been suspended or banned - shall be punished by a fine of two hundred times the monthly calculation index.

The provision on liability for financing the activity of religious associations that have not been duly registered under the legislation of Kazakhstan is a derivative of the discriminatory ban on activity of unregistered religious associations (see clause 1 of section III of the Analysis).

Aside from that, the provision on liability for financing the activity of suspended or banned associations is also discriminatory, because it only applies to public and religious structures. There is no such liability in respect of financing of other types of legal entities.

4. Article 490.

With few exceptions, Article 490 provides for liability for violations of prohibitions, limitations, conditions as set forth by the Law “On Religious Activity and Religious Associations”. Accordingly, the provisions of Article 490 are derivative from the discriminative provisions of said Law and eliminating them should result of the relevant acts being decriminalized. Listed below are the references to the analysis of discriminatory provisions and their relation to the various elements of Article 490.

A. Section 1. Violating the requirements established by the legislation of the Republic of Kazakhstan to:

- 1) conducting religious rituals, ceremonies and/or congregations – paragraphs 13-14 of Section III of the Analysis;*
- 2) carrying out charitable activity – paragraphs 3, 23 of Section III of the Analysis;*
- 3) import, production, issue, publication and/or dissemination of religious literature and other materials of religious nature, religious artifacts – paragraphs 19-22 of Section III of the Analysis;*
- 4) building religious buildings (structures), conversion (changing functional purpose) of buildings (structures) into religious buildings (structures) - paragraph 9 of Section III of the Analysis - shall be punished by a fine for individuals - in the amount of fifty times the*

monthly calculation index, for legal entities - in the amount of two hundred times the monthly calculation index, with a suspension of activities for a period of three months.

B. Section 3. Carrying out a missionary activity without registration (re-registration); use by the missionaries of religious literature, religious information materials, and religious artifacts without a positive conclusion of a religious expert examination; preaching the teachings of religious associations that are not legally registered in the Republic of Kazakhstan - paragraphs 16-18 of Section III of the Analysis - shall be punished by a fine for citizens of the Republic of Kazakhstan in the amount of one hundred times the monthly calculation index, for foreigners and stateless persons - in the amount of one hundred times the monthly calculation index, with an administrative expulsion from the Republic of Kazakhstan.

C. Section 7. Managing a religious association by a person who has been appointed by the foreign religious centre without consent of the authorized body; failure by the head of a religious association to act to prevent minors from being involved and/or participating in the activity of a religious association when one of the parents of the minor, or his/her other legal representatives, object to such involvement and/or participation - paragraph 1 of Section I, paragraph 33 of Section III, paragraph 6 of Section III of the Analysis - shall be punished by a fine in the amount of fifty times the monthly calculation index, with an administrative deportation from the Republic of Kazakhstan.

XI. The Criminal Code of the Republic of Kazakhstan dated 3 July 2014.

Article 404

1. Creation or guidance of a religious or public association the activity of which is associated with violence against citizens or other causation of damage to their health, or with inducing citizens to refuse to perform their civil obligations or to commit other illegal actions, as well as the creation or guidance of a party on a religious basis or a political party or a trade union which are financed from sources prohibited by laws of the Republic of Kazakhstan, — shall be punished by a fine in the amount up to six thousand times the monthly calculation index, or by correctional labour in the same amount, or by restriction of liberty for a period up to six years, or by imprisonment for the same period, with deprivation of the right to hold certain positions or to engage in certain types of activity for a period up to six years.

Article 405

1. Organization of the activity of a public or religious association or any other institution, in relation of which there is a court decision, entered into legal force, on prohibition of their activity or liquidation in connection with carrying out by them the extremism or terrorism - shall be punished by a fine in the amount of up to six thousand times the monthly calculation index or correctional labour in the same amount, or restriction of liberty for a period up to six years, or by imprisonment for the same period, with deprivation of the right to hold certain positions or to engage in certain types of activity for a period up to five years or without

it, with deportation foreigners or stateless persons beyond the borders of the Republic of Kazakhstan for the period of five years.

2. Participation in the activity of a public or religious association or any other institution, in relation of which there is a court decision, entered into legal force, on prohibition of their activity or liquidation in connection with carrying out by them the extremism or terrorism - shall be punished by a fine in the amount of up to two thousand times the monthly calculation index or correctional labour in the same amount, or restriction of liberty for a period up to two years, or by imprisonment for the same period, with deprivation of the right to hold certain positions or to engage in certain types of activity for a period up to three years or without it, with deportation foreigners or stateless persons beyond the borders of the Republic of Kazakhstan for the period of five years.

An activity that involves violence toward citizens or other damage to their health, or coercion into refusing to carry out their citizen duties or committing other illegal acts, must be prohibited irrespectively of which organization or individual engages in it. Accordingly, the management of such organization as well as culpable individuals must be brought to accountability irrespectively of whether they are members of or participate in the activity of such organizations. Similarly, any organizations and individuals must be brought to accountability for engaging in terrorism and violent extremism.

However, Article 404 and 405 specifically single out public and religious associations.

XII. The Penal Code of the Republic of Kazakhstan dated 5 July 2014.

In paragraph 34 of the Report the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism based on results of the visit to Kazakhstan in 2019 it is noted that *“The Special Rapporteur was informed that, previously, prisoners convicted of terrorism and extremism offences were held in centralized locations, in which a range of sentencing stipulations were available to them (including, family visits), but a change of practice in 2017 means that such prisoners are now distributed among pretrial detention centres of mixed regime. Overall, the Special Rapporteur is concerned that the detention and prison regimes of individuals accused or convicted of acts of terrorism are de jure (through the application of exemptions and permitted discretion) and de facto subject to exceptional rules. She underscores that terrorism offences are not subject to bail provisions or early release. Furthermore, although according to the law individuals convicted of acts of terrorism are subject to the same rules as individuals convicted of other crimes, in practice, the decision to engage them in a deradicalization programme and thus keep them separate from the regular prison population dictates the detentions centres in which they*

carry out their sentences. Moreover, it is extremely concerning to the Special Rapporteur that the prison regime to which they are subjected reduces privileges, such as family visits (which often take place only once a year), recreation and exercise periods, and follows from a categorization of “detrimental trajectory”, which is separate from their willingness to openly and assiduously take part in the deradicalization programmes. The Special Rapporteur also received credible information on the regular use of solitary confinement for prisoners charged with these offences. She notes that the medical, social and psychosocial effects of prolonged isolation can be severe, and that solitary confinement and similar forms of deprivation of human contact for a prolonged period of time amount to inhuman or degrading treatment...”

And in paragraph 35 of the Report, it is noted that “in the Special Rapporteur’s view, both the exceptionality of the regime and the withdrawal of privileges based on a subjective evaluation do not comply with international law standards. She is concerned that religious beliefs and practices are being used as a placeholder in the classification of radicalization. As the prisoner cannot materially rebut the assigned classification or challenge the criteria used to define radicalization, this may amount to both direct and indirect discrimination on the grounds of religious belief.”

Article 104, paragraph 1

1. Together with rights established by Article 10 of this Code, in the manner provided by this Code and internal regulations of the institutions, the persons convicted to deprivation of freedom shall have the right to:

...2) use a library, table games, musical instruments, periodical publications and literature made out at the expense of the funds being on controlled cash accounts of temporary money allocation in a time determined by the order of the day, as well as religious literature received a positive opinion of religious expert examination.

The Law on religious activity and religious associations does not contain a definition of religious literature. Therefore, an assumption may be made that religious literature includes canonical texts that comply to the relevant philosophy and moral dogmas of the given religion; however, it is not only that, as practice shows. This term also covers various scientific research in the field of religion, texts by religious scholars and even literature that draws its stories and characters from canonical texts. It appears that all this literature also must be subject to a religious expert examination, and may not be used without a positive conclusion of such an examination. Using any other (non-religious) literature is not predicated on the result of any examination, which puts religious literature at a disadvantage.

CONCLUSION

The legislation of the Republic of Kazakhstan contains a great number of discriminatory provisions working against people of faith and religious associations in their attempts to realize their right to freedom of religion or belief, whatever forms they take. The religious associations are at a disadvantage compared to other non-commercial and commercial legal entities.

Generally, the legislation is based on a stigmatizing assumption that religion, religious associations and religious activity pose a threat and thus require legal regulation and must be limited.

Based on the assumption that discrimination in the area of the right to freedom of religion or belief must be understood, *inter alia*, as any difference, restriction or preference which is based on a religion and has as its purpose or consequence the diminishing of recognition, use or realization by all citizens and on an equal basis of certain rights and freedoms, and if such differences do exist they must be based on reasonable and objective criteria so that justifiable objectives may be reached, then it becomes obvious that an entire number of provisions that apply to people of faith, religion, religious associations, and religious activity, are objectively discriminatory and fail to meet said criteria.

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