PRELIMINARY REPORT ON CERTAIN ASPECTS OF INEQUALITY AND DISCRIMINATION IN THE REPUBLIC OF KAZAKHSTAN

Almaty, March 2015
**Introduction**

The LGBT Community... National (ethnic) minorities, language... Religion...

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Introduction

The purpose of this preliminary report is to identify the main areas, forms and causes of inequality and discrimination in the Republic of Kazakhstan through the analysis of the legislation, administrative and judicial practice, monitoring the situation in the society, as well as the formulation of appropriate recommendations for the Kazakhstan authorities.

The report is divided into two sections. Section 1 provides a brief analysis of the Kazakhstan legislation in respect of equality and non-discrimination. Section 2 addresses the situation in respect of various vulnerable groups: religious, ethnic and language through the lens of equality and non-discrimination, and brings attention to the group, the problem of inequality is largely due to the traditionalist attitudes of the Kazakhstan society - the LGBT community.

The report was prepared using the results of the study of the legislation of the Republic of Kazakhstan with respect to freedom of conscience and religion (faith), and analysis of the legislation of the Republic of Kazakhstan in the area of ensuring the LGBT rights to non-discrimination. The legislation was analysed as at 1 January 2015.

The report also summarises the law enforcement practice and makes reference to the recommendations of international treaty bodies.

In preparing the report, the primary data collection and sample survey of the media were made, the results of monitoring compliance with the right to non-discrimination of religious and ethnic minorities and the LGBT community done by monitors of the Kazakhstan International Bureau for Human Rights and Rule of Law were used.

It should be noted that, as in the entire former Soviet Union, the situation in the field of equality and non-discrimination in the Republic of Kazakhstan develops against the historical background, Soviet stereotypes and modern processes of construction of the national statehood. The conceptual systemic problems in the area of ensuring human rights and freedoms are typical of the legislation, institutional development and law enforcement. The political regime is authoritarianism of medium severity, but with a certain level of tolerance, elements of xenophobia and aggression manifest themselves in the society.

Accordingly, apart from the systemic changes in legislation, institutional development and improvement of the law enforcement practice, serious educational efforts should be taken, especially in the elementary, secondary and higher educational institutions, in order to foster a sustainable tolerant attitude towards different minority groups: ethnic, religious, sexual, etc.
1. **Brief Analysis of the Kazakhstan Legislation in Terms of Ensuring Equality and Non-discrimination** (as at January 2015)

1.1. **The Constitution of the Republic of Kazakhstan**

Pursuant to Article 14 of the Constitution of Kazakhstan:\(^1\)

1. Everyone shall be equal before the law and court.

2. **No one shall be subject to any discrimination** for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances”.

Section 2 of Article 24 of the Constitution of Kazakhstan states: “Everyone shall have the right to safe and hygienic working conditions, to just remuneration for labour without discrimination, as well as to social protection against unemployment”.

Further, section 3 of Article 5 of the Constitution of Kazakhstan prohibits “the formation and functioning of public associations pursuing the goals or acts directed toward a violent change of the constitutional system, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, and tribal enmity,...”.

Section 3 of Article 20 of the Constitution of Kazakhstan also contains a provision to the effect that “no propaganda or incitement of the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, and clannish superiority as well as the cult of cruelty and violence, shall be allowed”.

In the Commentary to the Report of the Republic of Kazakhstan on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)\(^2\), submitted to the UN Committee on the Elimination of Racial Discrimination, the group of non-governmental organisations\(^3\), in particular, made a number of assessments and recommendations regarding the absence of anti-discrimination legislation, anti-discrimination institutions and procedures in the country.

In particular, the Commentary states: "Despite the fact that the Constitution of the Republic of Kazakhstan prohibits discrimination on the grounds of origin, social, official or property status, sex, race, nationality, language, religious beliefs, convictions, place of residence or any other circumstances (Article 14, Article 24), and in the context of its prohibition the term "discrimination" is used in a number of international human rights treaties ratified by the Republic of Kazakhstan; and national legislation ... there is no legal definition of discrimination in the legislation of Kazakhstan”.

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\(^1\) See the Constitution of the Republic of Kazakhstan, adopted at the Republican referendum on 30 August 1995) (as amended as at 02 February 2011).

\(^2\) See CERD/C/439/Add.2, 14/05/04. Reports submitted by state parties in accordance with Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination. The third periodic report of the state parties were to be submitted in 2003. Addition. Kazakhstan. The document contains the consolidated initial, second and third periodic reports of Kazakhstan that were to be submitted on 25 September of 1999, 2001 and 2003, respectively.

\(^3\) See the Commentary to the Report of the Republic of Kazakhstan, as a member state to the International Convention on the Elimination of all Forms of Racial Discrimination submitted to the Committee for the Elimination of Racial Discrimination in accordance with Article 9 of the ICERD, 2004.
1.2. The study of the provisions of certain laws and regulations

Participation of Kazakhstan in international instruments preventing discrimination

Republic of Kazakhstan is a party to a number of major international treaties and agreements, which contain anti-discrimination provisions and regulations, including:
- The International Covenant on Civil and Political Rights (New York, 19 December 1966) (Article 26)\(^4\);
- The Optional Protocol I to the International Covenant on Civil and Political Rights (1976)\(^5\);
- The International Covenant on Economic, Social and Cultural Rights (New York, 19 December 1966) (Section 2, Article 2)\(^6\);
- The Optional Protocol I to the International Covenant on Economic, Social and Cultural Rights (2008)\(^7\);
- The International Convention on the Elimination of All Forms of Racial Discrimination (New York, 21 December 1965)\(^8\);
- The UN Convention on the Elimination of All Forms of Discrimination against Women dated 18 December 1979\(^9\);
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)\(^10\);
- The Convention on the Rights of Persons with Disabilities (2006)\(^11\);
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)\(^12\);
- The Optional Protocol I to the Convention on the Rights of the Child (2000)\(^14\);
- The Optional Protocol II to the Convention on the Rights of the Child (2000)\(^15\);

\(^5\) Ratified by the Law of the Republic of Kazakhstan dated 11 February 2009, No. 130-IV.
\(^7\) Decree of the President of the Republic of Kazakhstan concerning accession dated 23 September 2010, No. 1068.
\(^9\) The Republic of Kazakhstan has acceded to this Convention in accordance with the Law of the Republic of Kazakhstan dated 29 June 1998, No. 248-1, also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (New York, 6 September 2000).
\(^11\) Decree of the President of the Republic of Kazakhstan concerning accession dated 11 December 2008, No. 711.
\(^12\) Decree of the President of the Republic of Kazakhstan concerning accession dated 11 December 2008, No. 711.
\(^13\) Resolution of the Supreme Soviet of the Republic of Kazakhstan dated 8 June 1994 concerning accession.
\(^16\) Ratified by the Law of the Republic of Kazakhstan dated 20 July 1999, No. 444-1, the ratification instrument was registered by ILO dated 06 December 1999.
The Republic of Kazakhstan is not a member of the Council of Europe and has not acceded to and ratified the European human rights instruments.

Apart from the above, the Republic of Kazakhstan signed, acceded to and ratified a number of international treaties and bilateral and multilateral agreements that contain specific anti-discrimination provisions. These include:

- The Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949)\(^{17}\);
- The Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949)\(^{18}\);
- The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva, 12 August 1949)\(^{19}\);
- The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva, 8 June 1977)\(^{20}\);
- The Convention relating to the Status of Refugees (Geneva, 28 July 1951)\(^{21}\);
- The Right to Organise and Collective Bargaining Convention of the International Labour Organisation No. 98 (Geneva, 8 June 1949)\(^{22}\);
- The International Labour Organisation Equal Remuneration Convention, No. 100 (Geneva, 6 June 1951)\(^{23}\);
- The International Labour Organisation Convention concerning Protection and Facilities to be Afforded to Workers’ Representatives in the Undertaking, No. 135 (Geneva, 23 June 1971)\(^{24}\);
- The International Labour Organisation Convention concerning the Abolition of Forced Labour, No. 105 (Geneva, 25 June 1957)\(^{25}\);
- The Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963)\(^{26}\);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the Resolution of the UN General Assembly 39/46 on 10 December 1984)\(^{27}\);

\(^{17}\) The Republic of Kazakhstan acceded to the Convention in accordance with the Resolution of the Supreme Soviet of the Republic of Kazakhstan, No. 2060-XII, dated 31 March 1993.

\(^{18}\) The Republic of Kazakhstan acceded to the Convention in accordance with the Resolution of the Supreme Soviet of the Republic of Kazakhstan, No. 2060-XII, dated 31 March 1993.

\(^{19}\) The Republic of Kazakhstan acceded to the Convention in accordance with the Resolution of the Supreme Soviet of the Republic of Kazakhstan, No. 2060-XII, dated 31 March 1993.


\(^{21}\) On Accession of the Republic of Kazakhstan to this Convention, see the Law of the Republic of Kazakhstan dated 15 December 1998.

\(^{22}\) The Convention was ratified by Law of the Republic of Kazakhstan No. 118-II dated 14 December 2000, the ratification instrument was registered by ILO on 18 May 2001 (Source: ILOLEX - 29. 3. 2004).

\(^{23}\) The Convention was ratified by Law of the Republic of Kazakhstan No. 115-II dated 14 December 2000, the ratification instrument was registered by ILO on 18 May 2001 (Source: ILOLEX - 29. 3. 2004).

\(^{24}\) The Convention was ratified by Law of the Republic of Kazakhstan No. 113-II dated 30 December 1999, the ratification instrument was registered by ILO on 13 December 2000 (Source: ILOLEX - 29. 3. 2004).

\(^{25}\) The Convention was ratified by Law of the Republic of Kazakhstan No. 117-II dated 14 December 2000, the ratification instrument was registered by ILO on 18 May 2001 (Source: ILOLEX - 29. 3. 2004).

\(^{26}\) See the Resolution of the Cabinet of Ministers of the Republic of Kazakhstan, No. 506, dated 13 May 1994 “On the Accession of the Republic of Kazakhstan to International Conventions Adopted under the Auspices of the International Civil Aviation Organisation (ICAO)”.

- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 2002;
- The Convention on the Political Rights of Women dated 31 March 1953;
- The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998);
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted by Resolution 55/25 of the UN General Assembly on 15 November 2000);
- The UN Global Compact (initiated in 1999);
- The Agreement on the Secretariat of the Conference on Interaction and Confidence Building Measures in Asia (Almaty, 17 June 2006);
- The Treaty Establishing the Economic Union (Moscow, 24 September 1993);
- The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the States-members of the Commonwealth of Independent States (Kishinev, 7 October 2002);
- The Agreement on Providing Citizens of the Commonwealth of Independent States Access to the Educational Institutions on the Terms Granted to the Citizens of these States, as well as on Social Protection of Students and Teaching Staff of Educational Institutions (Cholpon-Ata, 16 April 2004);
- The Agreement on the Introduction and Application of Measures Affecting Foreign Trade in Goods, in the Common Customs Territory in respect of Third Countries (Moscow, 9 June 2009);
- The Agreement Establishing the Common Economic Space between the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Uzbekistan (Cholpon-Ata, 30 April 1994) (as amended by the Decision of the Interstate Council of the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan dated 17 July 1998);
- The Treaty on Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Republic of Kazakhstan (Moscow, 25 May 1992);
- The Agreement on Further Deepening of Economic Cooperation and Integration between the Russian Federation and the Republic of Kazakhstan (Moscow, 28 March 1994);

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35 The Agreement was approved by the Resolution of the Government of the Republic of Kazakhstan, No. 283, dated 14 April 2006.
37 The Agreement was ratified by the Republic of Kazakhstan in accordance with the Decree of the President of the Republic of Kazakhstan, No. 2332, dated 15 June 1995. The effective term of the Agreement was extended due to the entry into force of the Protocol on the Integration of the Central Asian Cooperation Organisation into the Eurasian Economic Community on 23 June 2006.
39 Came into effect on 07 October 1992.
- The Treaty on Friendship and Cooperation between the Republic of Kazakhstan and Ukraine (Kiev, 20 January 1994)\textsuperscript{42};
- The Agreement Establishing the Common Economic Space between the Republic of Kazakhstan and the Republic of Uzbekistan (Tashkent, 10 January 1994)\textsuperscript{43};
- The Agreement on Further Development and Deepening of Economic Cooperation between the Government of the Republic of Kazakhstan and the Government of the Republic of Tajikistan (Almaty, 22 November 1995)\textsuperscript{44};

However, Kazakhstan has not yet ratified the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Minsk, 26 May 1995) and the Convention on the Rights of Persons Belonging to National Minorities (Moscow, 21 October 1994), which contain a number of anti-discrimination provisions, and which were adopted and ratified by a number of CIS countries.

\textsuperscript{40} The Agreement was ratified by the Republic of Kazakhstan by the Resolution of the Supreme Soviet of the Republic of Kazakhstan No. 87-XIII on 16 June 1994. Came into force on 23 January 1998.
\textsuperscript{41} Ratified by Decree of the President of the Republic of Kazakhstan No. 2213 dated 20 April 1995 and came into force on 11 May 1995.
\textsuperscript{43} Ratified by Decree of the President of the Republic of Kazakhstan No. 1593 dated 14 March 1994 and came into force on 7 February 1995.
\textsuperscript{44} On Approval of this Agreement, see Resolution of the Government of the Republic of Kazakhstan No. 217 dated 20 February 1996 and Resolution of the Government of the Republic of Kazakhstan No. 447 dated 22 April 1999, and came into force on 1 October 2009.
\textsuperscript{45} It applied provisionally from the day of its signing and approved in accordance with the Resolution of the Government of the Republic of Kazakhstan No. 368 dated 19 March 1997.
\textsuperscript{46} Approved by the Resolution of the Government of the Republic of Kazakhstan No. 1123 dated 26 July 2000.
\textsuperscript{47} Approved by the Resolution of the Government of the Republic of Kazakhstan No. 494 dated 13 June 2007.
National legislation

As noted by a group of non-governmental organisations in the said Comments on the Report of the Republic of Kazakhstan on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the absence of the legal definition of the term "discrimination" in the legislation on any grounds referred to in the Constitution allows the law enforcement agencies to apply their own interpretation to this constitutional provision, and there is no guarantee that such interpretation would meet the requirements of the Article set out in the ICERD.

Unfortunately, over the past ten years, there has been no attempt to legislate the definition of the term "discrimination" in the Kazakhstan legislation.

Liability

Currently, a number of laws and regulations of Kazakhstan contain direct or indirect prohibition of discrimination on a number of grounds. In addition, the provisions on equality of all before law represent the indirect discrimination provisions. However, such prohibitions and the implementation of these legal provisions are not supported with any effective procedures for their implementation and the prevention of discrimination on these grounds.

For example, the Criminal Code of the Republic of Kazakhstan (the “Criminal Code”) which was in force until 1 January 2015, did not contain any articles criminalizing discrimination against persons for one reason or another.

The term "discrimination" was used in the text of the Criminal Code which had been in force until 1 January 2015, Article 141-1 entitled "Torture": “1. Intentional infliction of physical and/or mental suffering, committed by an investigator, by a person, conducting investigation or by any other official or with their incitement or with tacit agreement of any other person or purposely with their knowledge to extract information from tortured person or third party, either confession or to punish him for the offence, which he committed or in committing of which he is suspected, and also to intimidate or to enforce him or the third party, or for any reason, based on discrimination of any kind is punished by a fine ranging from two hundred to five hundred times the monthly calculation index or with the deprivation of right to hold certain positions for a term up to three years, or with the restraint of liberty for a term up to five years, or with the deprivation of freedom for the same term…”

In addition, the Criminal Code also contained an article, indirectly aimed at preventing discrimination - Article 141 entitled "Violation of equality of the rights of citizens": "1. Direct or indirect restriction of the rights and freedoms of the individual (citizen) on the grounds of origin, social, official capacity or property status, sex, race, nationality, language, religion, beliefs, place of residence, membership in public associations or any other circumstances is punishable by a fine of two hundred to one thousand times the monthly calculation index, or restriction of freedom for up to one year ... ".

Article 164 of the Criminal Code, which was in force until 1 January 2015 entitled "Inciting of social, national, tribal, racial or religious hatred" stated: "1. Intentional acts aimed at the inciting of social,

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49 See the Criminal Code of the Republic of Kazakhstan dated 16 July 1997 (as amended as of 03 July 2014).
national, tribal, racial or religious enmity or discord, insulting the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on the basis of their religion, beliefs, class, ethnic, tribal or racial origin, if such acts are committed publicly or with the use of mass media, as well as through the dissemination of literature and other media that promote social, ethnic, racial or religious enmity or discord, is punishable by a fine of up to one thousand times the monthly calculation index or correctional labour for up to two years, or deprivation of freedom for up to seven years ... ".

Finally, sections 2 and 3 of Article 337 of the Criminal Code entitled "Creation or participation in illegal public and other associations" establish: "... 2. The creation of a public association, proclaiming or actual pursuing of racial, ethnic, social or class, or religious intolerance or exclusivity, calling for the violent overthrow of the constitutional order, undermining the state security or attacks on the territorial integrity of the Republic of Kazakhstan, as well as the leadership of such association is punishable by correctional labour for a term up to two years, restriction of liberty for up to three years, or deprivation of freedom for a term of three to seven years, with disqualification to hold certain positions or engage in certain activities for up to three years ... ".

The legislator categorised this crime as the crime against the peace and security of the State, since hate speech is undermining the social principles and leads to the destabilisation of public and state life.

In the new criminal legislation of the Republic of Kazakhstan, the term "discrimination" is also used only in Article 146 of the new Criminal Code50 entitled “Torture”.

As far as all of the above articles of the Criminal Code which was in force until 1 January 2015, the new Criminal Code uses slightly different numbering and changed names, but the wording was preserved, however the sanctions were stiffened.

We have included below a comparative table of such articles.

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<tr>
<td>Article 141. Violation of Equality of the Rights of Citizens. 1. Direct or indirect restriction of rights and freedoms of a man (a citizen) on the grounds of origin, social, official capacity or property status, gender, race, nationality, language, religion, beliefs, place of residence, belonging to public association or any other circumstances is punishable by a fine ranging from two hundred to one thousand times the monthly calculation index or with the restraint</td>
<td>Article 145. Violation of Equality of the Rights of a Man and a Citizen. 1. Direct or indirect restriction of rights and freedoms of a man (a citizen) on grounds of origin, social, official capacity or property status, gender, race, nationality, language, attitude towards religion, beliefs, place of residence, belonging to public association or any other circumstances shall be punished by a fine ranging from three hundred times the monthly calculation index or with the correctional labour of the same value, or community</td>
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50 See the Criminal Code of the Republic of Kazakhstan dated 03 July 2014, which came into force on 1 January 2015.
of liberty for a term of up to one year.

2. The same offence, if committed by a person taking advantage of his office, or by a head of a public association, is punishable by a fine ranging from five hundred to two thousand times the monthly calculation index or with the restraint of liberty for a term not exceeding two years with or without the deprivation of the right to hold certain positions or to practice a certain activity for a term not exceeding three years.

| 2. The same offence, if committed by a person taking advantage of his office, or by a head of a public association, is punishable by a fine ranging from five hundred to two thousand times the monthly calculation index or with the restraint of liberty for a term not exceeding two years with or without the deprivation of the right to hold certain positions or to practice a certain activity for a term not exceeding three years. |
|:-----------------|:------------------|
| Article 141-1. Torture | Article 146. Torture |
| 1. Intentional infliction of physical and/or mental suffering, committed by an investigator, a person conducting investigation or by any other public official with their incitement, or by other person with their consent or acquiescence aimed to extract information from tortured person or third party, either confession or to punish him for the offence, which he committed or in committing of which he is suspected, and also to intimidate or to force him or the third party, or by any reason, based on discrimination of any kind shall be punished by a fine ranging from two hundred to five hundred times the monthly calculation index or with the deprivation of right to hold certain positions for a term up to three years, or with the restraint of liberty for a term of up to five years, or with the deprivation of freedom for the same term. |
| 2. If the same offence is committed: |
| a) by a group of persons or a group of persons in collusion; |
| b) more than once; |
| c) with the infliction of medium gravity harm to health; |
| d) with regard to a woman, who was pregnant knowingly to the liable person, or with regard to a juvenile, it is punishable by the deprivation of freedom for a term of up to seven years with the deprivation of the right to hold certain positions or to practice a certain activity for a term not exceeding three years. |
| 2. The same offence, if committed by a person taking advantage of his office, or by a leader of a public association, is punishable by a fine of up to from five hundred times the monthly calculation index, or with correctional labour of the same value, or community service for a term not exceeding three hundred hours, or arrest for a term not exceeding ninety days, with or without the deprivation of the right to hold certain positions or to practice a certain activity for a term not exceeding three years. |
| 2. If the same offence is committed: |
| a) by a group of persons or a group of persons in collusion; |
| b) more than once; |
| c) with the infliction of medium gravity harm to health; |
| d) with regard to a woman, who was pregnant knowingly to the liable person, or with regard to a juvenile, it is punishable by the deprivation of freedom for a term from three to seven years with the deprivation of the right to hold certain posts or to practice a certain activity for a term not exceeding three years. |
| 3. The same offence that resulted in infliction of serious harm to health or negligently in death of an
term not exceeding three years.

3. The same offence that resulted in infliction of serious harm to health or negligently in death of an injured person is punishable by the deprivation of freedom for a term from five to ten years with the deprivation of the right to hold certain positions or to practice a certain activity for a term up to three years.

*Note.*

*Physical and mental sufferings caused as a result of lawful acts taken by public officials are not considered to be a torture.*

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<tr>
<th>Article 164. Incitement of Social, National, Tribal, Class, Racial or Religious Enmity</th>
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<tr>
<td>1. Intentional offences, aimed at the incitement of social, national, tribal, racial or religious enmity or hatred, at the insult of national honour and dignity or religious feelings of citizens, and equally propaganda of extremism, superiority or inferiority of citizens on the grounds of their religion, state, national, tribal or ethnicity, if these offences have been committed publicly or with the use of mass media, and equally by means of dissemination of literature and other media, promoting social, national, tribal, class, racial or religious enmity or hatred is punishable by a fine of up to one thousand times the monthly calculation index or with the correctional labour for a term of up to two years, or with the deprivation of freedom for a term not exceeding seven years.</td>
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<td>2. The same offences, committed by a group of persons or more than once, or connected with violence or with the threat to use violence, and equally by a person taking advantage of his office or by a head of a public association shall be punished by a fine ranging from five hundred to three thousand times the monthly calculation index, or with the restraint of liberty for a term up to four years, or with the deprivation of freedom for a term from three to seven years with or without the deprivation of the right to hold</td>
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<tr>
<th>Article 174. Incitement of Social, National, Tribal, Class, Racial or Religious Enmity</th>
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<tbody>
<tr>
<td>1. Intentional offences, aimed at the incitement of social, national, tribal, racial, or religious enmity or hatred, at the insult of national honour and dignity or religious feelings of citizens, and equally propaganda of extremism, superiority or inferiority of citizens on the grounds of their attitude towards religion, state, national, tribal or ethnicity, if these offences have been committed publicly or with the use of mass media, and equally by means of dissemination of literature and other media, promoting social, national, tribal, class, racial or religious enmity or hatred is punishable by restraint of liberty for a term from two to seven years or with deprivation of freedom for the same term.</td>
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<tr>
<td>2. The same offences, if committed by a group of persons or more than once, or connected with violence, or with the threat to use violence, and equally by a person taking advantage of his office, or by a leader of a public association are punishable by the deprivation of freedom for a term from five to ten years with or without the deprivation of the right to hold certain positions or to practice a certain activity for a term up to three years.</td>
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<tr>
<td>3. The offences referred to in sections one and two of this Article that resulted in grave consequences are punishable by deprivation of freedom for a term from twelve up to twenty years with or without deprivation of the right to hold certain posts or to practice a certain activity for a term up to three years.</td>
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certain posts or to practice a certain activity for a term up to three years.

3. The offences referred to in the first or second parts of this Article that resulted in grave consequences shall be punished with the deprivation of freedom for a term from seven to twelve years with or without the deprivation of the right to hold certain posts or to practice a certain activity for a term up to three years.

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<th>Article 337. Creation or Participation in Illegal Public and Any Other Associations</th>
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<td>1. The creation or leadership of a religious or a public association, whose activity is connected with violence against the citizens or otherwise inflicting harm to their health, or inciting the citizens to refuse from fulfilling their civil duties or to committing any other illegal offences, and equally the creation or leadership of a religious party or a political party or a trade union, which are funded from the sources, which are prohibited by laws of the Republic of Kazakhstan shall be punished by a fine ranging from two hundred up to five hundred times the monthly calculation index, or by correctional labour for a term up to two years, or by restraint of liberty for a term up to six years, or by deprivation of freedom for the same term attendant by the deprivation of right to hold certain posts or to practice a certain activity for a term up to three years.</td>
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<td>2. The creation of a public association, declaration or actual implementation of racial, national, ancestral, social, state or religious intolerance or exceptionality, calling to the violent overthrow of the constitutional order, to undermine the state security or violate the territorial integrity of the Republic of Kazakhstan, and equally the leadership of a such association is punishable by correctional labour for a term up to two years, restraint of liberty for a term up to three years, or deprivation of freedom for a term from three to seven years attendant by deprivation of the right to hold certain</td>
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<th>Article 404. Creation, Leadership and Participation in Illegal Public and Any Other Associations</th>
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<tr>
<td>1. The creation or leadership of a religious or a public association, whose activity is connected with violence against the citizens, or otherwise inflicting harm to their health, or inciting the citizens to refuse from fulfilling their civil duties or to committing any other illegal offences, and equally the creation or leadership of a religious party or a political party or a trade union, which are funded from the sources, which are prohibited by laws of the Republic of Kazakhstan is punishable by a fine of up to six thousand times the monthly calculation index, or by correctional labour of the same value, or restraint of liberty for a term up to six years, or by the deprivation of freedom for the same term attendant by the deprivation of right to hold certain positions or to practice a certain activity for a term up to six years.</td>
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<td>2. The creation of a public association, declaration or actual implementation of racial, national, ancestral, social, state or religious intolerance or extremism, calling for the violent overthrow of the constitutional order, to undermine the state security or violate the territorial integrity of the Republic of Kazakhstan, and equally the leadership of a such association, is punishable by deprivation of freedom for a term from three to seven years attendant by deprivation of the right to hold certain positions or to practice a certain activity for a term up to three years.</td>
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<tr>
<td>3. Active participation in the activity of associations referred to sections one and two of this Article is punishable by a fine of up to six thousand times the monthly calculation index, or by correctional labour of the same value, or by the</td>
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As far as the Code on Administrative Offences of the Republic of Kazakhstan (the “Administrative Code”) which was in force before 1 January 2015 is concerned, it does not establish any administrative liability for discrimination, save for the discrimination on the ground of language in the labour relations. Pursuant to Article 82 of the Administrative Code entitled "Restriction of the rights of persons in the choice of language", "restriction of the rights of persons in the choice of language, discrimination on the ground of language is punishable by a fine on officials in the amount of five to twenty times the monthly calculation index...".

Sections 5 and 6 of Article 87 of this Administrative Code provide:

5. The placement by the authorised body on employment, a natural person and a legal entity providing labour mediation, as well as an employer of announcements of vacancies for employment containing **discriminatory** requirements in the workplace is punishable by a fine on a natural person, individual entrepreneurs, legal entities which are small-sized businesses or non-profit organisations in the amount of thirty, for individual entrepreneurs and legal entities, which are medium-sized businesses in the amount of fifty, for legal entities, which are large-sized businesses, in the amount of one hundred times the monthly calculation index.

6. The action referred to in section five of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, is punishable by a fine on natural persons, individual entrepreneurs, legal entities of small-sized business or non-profit organisations in the amount of fifty, for individual entrepreneurs and legal entities, which are medium-size businesses in the amount of one hundred, and on legal entities, which are large-sized businesses, in the amount of two hundred times the monthly calculation index."

However, section 5 of Article 62 of the Administrative Code attributes the following to the circumstances which aggravate liability for administrative offences: “The circumstances which aggravate the liability for administrative offences, shall include: ... 5) committing an administrative offence **by reason** of national, racial or religious hatred or enmity, revenge for lawful acts of others, as well as in order to conceal or facilitate the commission of any other offence,” however such provision can hardly be called prohibition of discrimination or its prevention.

Indirectly, Article 343 of the Administrative Code which was in force until 1 January 2015 entitled “Permission to publish information and materials aimed at inciting national hatred in mass media” can

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31 See the Code of the Republic of Kazakhstan on Administrative Offences dated 30 January 2001 (as amended as of 05 July 2014).
be attributed to the anti-discrimination provisions, which state: “Permitting to publish in print and other mass media the information and materials aimed at inciting racial, ethnic, social and religious hatred, advocating class exclusivity, war, calling for the violent overthrow of the constitutional order and the violation of the territorial integrity of the Republic is punishable by a fine on officials of the mass media in the amount of one hundred to four hundred times the monthly calculation index or an administrative arrest for a term not exceeding fifteen days attended with the confiscation of printed materials.”

Also, Article 344 of the same Administrative Code entitled “ Manufacture, storage, import, transportation and distribution of mass media products and any other products in the territory of the Republic of Kazakhstan” establishes:-

“1. Manufacture, storage, import, transportation in the Republic of Kazakhstan of the media products, which contain information and materials aimed at propaganda or calling for the forcible change of the constitutional order, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, incitement of social, racial, national, religious, class and tribal enmity, the cult of cruelty, violence and pornography is punishable by a fine on individuals of up to twenty, on officials and individual entrepreneurs, in the amount of up to twenty-five, and on legal entities, which are small or medium-sized businesses or non-profit organisations, in the amount of fifty to one hundred, and on legal entities, which are large-sized businesses, in the amount of one hundred to two hundred times the monthly calculation index attended by the confiscation of mass media products.

2. Distribution in the territory of the Republic of Kazakhstan of mass media products, which contain information and materials aimed at propaganda or calls for forcible change of the constitutional order, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, incitement of social, racial, national, religious, class and tribal enmity, propaganda and justification of extremism and terrorism, as well as disclosing the techniques and tactics of anti-terrorist operations at the time of performance thereof, provided that such acts do not contain elements of a criminal offence, is punishable by a fine on individuals, in the amount of fifty to two hundred times the monthly calculation index, on officials in the amount of one hundred to two hundred times the monthly calculation index or an administrative arrest for a term up to fifteen days, and on legal entities of small or medium-sized

...
businesses or non-profit organisations, in the amount of two hundred to three hundred, and on legal entities, which are large-sized businesses, in the amount of one thousand to one thousand five hundred times the monthly calculation index attended by the confiscation of products...”.

These are not, however, direct provisions prohibiting discrimination on any grounds, and accordingly establishing administrative liability for discrimination.

The situation has been slightly improved in the new Code on Administrative Offences of the Republic of Kazakhstan\textsuperscript{52}.

For example, a new Article 9 entitled “Equality before the law and court” appeared in the Administrative Code, stating: “All are equal before the law in the course of proceedings on administrative offenses. \textbf{No one shall be subjected to any discrimination} for reasons of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances”, which expressly uses the term “discrimination”, unlike Article 11 in the previous Administrative Code which did not mention such term.

Yet further, as in the case with the new Criminal Code, in the new Administrative Code, in some instances, the numbering and headings were slightly changed, but the wording of the articles was mainly preserved, however the sanctions were strengthened. In other instances new refined provisions were introduced.

Below is a comparative table of such articles.

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<td>None.</td>
<td>Article 9. Equality Before the Law and Court All are equal before the law in the course of proceedings on administrative offenses. \textbf{No one shall be subjected to any discrimination} for reasons of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances.</td>
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<tr>
<td>Article 82. Restriction of the Rights of Individuals in the Choice of Language Restriction of the rights of individuals in their choice of language, discrimination on the ground of language is punishable by a fine on officials of five up to twenty times the monthly calculation index.</td>
<td>Article 75. Responsibility for the Violation of Legislation of the Republic of Kazakhstan on Languages 1. Refusal by an official to accept documents, appeals of individuals and legal entities, as well as failure to consider thereof on their merits motivated by lack of knowledge of the language</td>
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\textsuperscript{52} See the Code of the Republic of Kazakhstan on Administrative Offences dated 05 July 2014, which came into force on 01 January 2015.
1. Violation of labour legislation of the Republic of Kazakhstan by an employer or an official, except for the acts referred to in section three of this Article, is punishable by a fine of five to ten times the monthly calculation index on officials, individual entrepreneurs, legal entities, which are small or medium-sized businesses or non-profit organisations, and of twenty to twenty-five times the monthly calculation index on legal entities, which are large-sized businesses.

2. The action (omission to act) referred to in section one of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, is punishable by a fine of twenty-five up to thirty times the monthly calculation index on officials, individual entrepreneurs, and legal entities, which are small

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**Article 87. Violation of Labour Legislation of the Republic of Kazakhstan**

1. Violation of labour legislation of the Republic of Kazakhstan by an employer or an official, except for the acts referred to in section three of this Article, is punishable by a fine of twenty times the monthly calculation index.

2. The acts referred to in section one of this Article, if committed repeatedly during a year after the administrative penalty, are punishable by a fine of forty times the monthly calculation index.

3. The violation of the requirements applicable to the placement of company details and visual information is punishable by a warning.

4. The action referred to in section three of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, is punishable by a fine of ten on officials, small-sized businesses and non-profit organisations, of twenty on medium-sized businesses, and fifty times the monthly calculation index on large-sized businesses.

5. Restriction of rights of individuals in their choice of language, discrimination on the ground of language is punishable by a fine on officials of twenty times the monthly calculation index.

6. The acts referred to in section five of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, are punishable by a fine of forty times the monthly calculation index.

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**Article 90. Labour Market Discrimination**

1. Employers permitting discrimination in the labour market showed in violation of the worker's right to equal pay for equal work are punishable by a fine of thirty times the monthly calculation index on officials, small-sized businesses and non-profit organisations, of sixty times the monthly calculation index on medium-sized businesses, and of one hundred times the monthly calculation index on large-sized businesses.

2. The action referred to in section one of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, is punishable by a fine of sixty times the monthly calculation index on officials, individual entrepreneurs, and legal entities, which are small or medium-sized businesses or non-profit organisations, of eighty on medium-sized businesses, and of one hundred and
or medium-sized businesses or non-profit organisations.

2-1. Any acts (omission to act), referred to in section one of this Article, if committed against minors, is punishable by a fine of fifty to seventy times the monthly calculation index on officials, individual entrepreneurs and legal entities, which are small or medium-sized businesses or non-profit organisations, and of one hundred to one hundred and fifty times the monthly calculation index attended by the suspension of licences for legal entities, which are medium-sized businesses.

2-2. The acts (omission to act), referred to in section 2-1 of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, are punishable by a fine of seventy up to one hundred times the monthly calculation index on officials, individual entrepreneurs, legal entities being small or medium-sized businesses or non-profit organisations, and of one hundred fifty up to two hundred times the monthly calculation index together with suspension of a licence on legal entities, which are large-sized businesses.

3. An employer guilty of non-payment of salaries in full and within the time limits prescribed by the labour legislation of the Republic of Kazakhstan, and equally of non-accrual and non-payment of interest for a term of delay in payment, is punishable by a fine of twenty up to fifty times the monthly calculation index.

4. The acts (omission to act), referred to in section three of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, is punishable by a fine of thirty times the monthly calculation index on natural persons, of fifty times the monthly calculation index on small-sized businesses or non-profit organisations, of one hundred times the monthly calculation index on medium-sized businesses, and of two hundred times the monthly calculation index on large-sized businesses.

5. Announcement by the authorised body on employment, an individual and a legal entity engaged in employment mediation, as well as an employer of employment vacancies containing discriminatory requirements in the workplace, is punishable by a fine of thirty times the monthly calculation index on natural persons, individual entrepreneurs, legal entities, which are small-sized businesses or non-profit organisations, of fifty times the monthly calculation index on large-sized businesses.
Just as in the Administrative Code, which was in force until 1 January 2015, the new Administrative Code contains provisions prohibiting acts motivated by rousing hatred and enmity (or discord) for various reasons, which can be, indirectly, deemed anti-discrimination measures.

The new Administrative Code also contains a provision recognising as an aggravating circumstance "the commission of an administrative offence motivated by ethnic, racial or religious hatred or enmity ..." (section 5 of Article 58 of the new Administrative Code).

Also prohibited are the manufacture, storage, import, transportation, and distribution in the territory of the Republic of Kazakhstan of mass media products containing information and materials aimed at inciting social, racial, national, religious, class and tribal enmity (Article 453 of the new Administrative Code).

However, these are not direct provisions prohibiting discrimination on any grounds, and establishing administrative responsibility therefor.

In that respect, the recommendation of non-governmental organisations of Kazakhstan, which in 2004 submitted its comments on the official government report to the UN Committee on the Elimination of Racial Discrimination stating that: "the definition of the term "discrimination" the corresponding to the one set out in ICERD should be introduced in the effective legislation. The practice of introducing such definitions in the legislation of Kazakhstan already exists. For example, following the recommendations of the UN Committee against Torture, the definition of the term "torture" in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by the Republic of Kazakhstan was introduced in the criminal legislation".

It is also necessary to establish administrative liability for discrimination against a person on any grounds.

Procedural guarantees
The prohibition of discrimination is present also in a number of laws and regulations of Kazakhstan.

For example, Article 21 of the Code of Criminal Procedure of the Republic of Kazakhstan (the “RoK CCP”)\(^{53}\) which was in force until 1 January 2015 entitled “Administration of justice on the principles of equality before the law and the court” states: “...2. In criminal proceedings, no one can be subjected to any discrimination on the grounds of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances...”

The identical provision is also found in the new Code of Criminal Procedure of Kazakhstan (the “RoK CCP”)\(^{54}\).

Article 21 of the new RoK CCP entitled “Administration of justice on the principles of equality before the law and the court” states:

"1. Justice shall be administered on the basis of equality of all before the law and the courts.
2. In criminal proceedings, no one can be subjected to any discrimination on the grounds of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances..."

Pursuant to Article 13 of the Code of Civil Procedure of the Republic of Kazakhstan\(^{55}\) entitled "Equality of all before the law": "... 2. In the course of civil proceedings, none of the citizens may be given preference, and none of them may be discriminated against on the grounds of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances...".

Prohibition of discrimination in labour legislation

A number of articles dealing with the prohibition of discrimination are present in the labour legislation of Kazakhstan\(^{56}\).

For example, in accordance with Article 4 of the Labour Code of Kazakhstan (the “RoK Labour Code”) entitled "The principles of labour legislation of the Republic of Kazakhstan": "... The principles of labour legislation of the Republic of Kazakhstan are as follows: ... 3) the prohibition of discrimination..."

Under Article 6 of the RoK Labour Code entitled "Freedom of labour": "Everyone has the right to free choice of work, or to agree freely to work without any discrimination and coercion, the right to dispose of his abilities to work, to choose a profession and occupation".

Pursuant to Article 7 of the RoK Labour Code entitled "Prohibition of discrimination in the labour market":

\(^{53}\) See the Code of Criminal Procedure of the Republic of Kazakhstan dated 13 December 1997 (as amended as of 04 July 2014).
\(^{54}\) See the Code of Criminal Procedure of the Republic of Kazakhstan dated 04 July 2014, which came into force on 01 January 2015.
\(^{55}\) See the Code of Civil Procedure of the Republic of Kazakhstan dated 13 July 1999 (as amended as of 27 June 2014).
“...2. No one shall be subjected to any **discrimination** in the implementation of labour rights based on gender, age, disability, race, nationality, language, property, social and official status, place of residence, confession, political convictions, race or class, or public associations. The authorised body on employment, natural persons and legal entities engaged in labour mediation, and an employer are prohibited to publish information about employment vacancies containing **discriminatory requirements** in the labour market.

3. Differences, exclusions, preferences and restrictions, which are dictated by certain job requirements or due to special care shown by the State to persons requiring enhanced social and legal protection shall not constitute **discrimination**.

4. Persons, who believe that they have been **discriminated** against in the workplace, may apply to a court or other authority in accordance with the **laws** of the Republic of Kazakhstan”.

What is noteworthy is the fact that the reference to the procedure for appeals in relation to discrimination in employment found in the legal database of the Republic of Kazakhstan placed on the website of the Ministry of Justice of Kazakhstan, is linked to the Law of the Republic of Kazakhstan, No. 221, dated 12 January 2007 “On the Procedure of Consideration of Appeals of Natural Persons and Legal Entities”.

In other words, discrimination is dealt with in the manner prescribed for ordinary administrative procedures, such as complaints about rude treatment, or the need to obtain certain information from a state agency, and not as a serious violation of human rights.

According to Article 22 of the RoK Labour Code entitled "Fundamental rights and duties of an employee": "1. An employee has the right to ... .15) equal pay for equal work without **discrimination** of any kind..."

Under section 2-1 of Article 25 of the RoK Labour Code entitled "Guarantees of equal rights and opportunities when entering in the employment contract":

“**When hiring, it is prohibited to make discriminatory requirements in the labour market on the grounds set out in section 2 of Article 7 of this Code.**

3. If the violation of equal rights and opportunities upon entering into the employment contract are established, an employer shall be held liable in accordance with laws of the Republic of Kazakhstan”.

Under Article 145 of the RoK Labour Code entitled "State guarantees upon employment": "**The State shall guarantee to the citizens in the field of employment: 1) protection against all forms of discrimination and equal access to a profession and work ...**".

Section 2 of article 10 of the Law on Employment entitiled "A private employment agency" states that "... 2. A private employment agency is obliged: 1) not to permit any form of **discrimination** ..."

We do not have any information with respect to judicial practice on matters concerning discrimination on various grounds in the labour market, which should not be viewed as the absence of discrimination but rather is attributed to the difficulty in proving discrimination in labour relations, low legal culture of citizens, and lack of confidence in the mechanisms of the protection of rights.

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Although we should point to the document entitled “The Requirements Applicable to the State of Health of Persons for Service in the Agencies of Internal Affairs” which clearly contains discriminatory provisions in the labour market with respect, for instance, to sexual minorities.\footnote{See the Order of the Minister of Internal Affairs of the Republic of Kazakhstan, No. 132, dated 31 March 2010 “On Approval of the Requirements Applicable to the State of Health of Persons for Service in Agencies of Internal Affairs”, registered in the Ministry of Justice of the Republic of Kazakhstan under No. 6175 on 15 April 2010.}

According to this document when assessing the readiness for military service, the non-traditional sexual orientation is a negative characteristic, which makes the person unfit to service.

Moreover, in accordance with Appendix 18 to such document, persons suffering from "personality disorder" showing "stable compensation of personal reactions" include those who have "... psychic infantilism, other personality disorders (transient, partial, sexual), which do not reach the level of psychopathy, characterised by persistent compensation (over 3 years) of the emotional and volitional, and other pathological manifestations, which are supported by documents issued by any medical institutions, educational institutions or from the place of work" as well as “\textit{any direct and indirect signs of the disorder in sex-role identification and sexual preferences, sexual orientation, presence of foreign bodies in the foreskin of the penis, introduced for the purpose of sexual stimulation, any history of suicide attempt and self-mutilation}.”

In other words, by this document, sexual orientation is viewed as a mental disorder.

As a result, on this ground people with non-traditional sexual orientation are either recognised unfit for military service in the agencies of internal affairs and any other law enforcement agencies and unfit to enter into special (military) schools, or in some cases, are fit for service out of ranks in time of peace or relevant limited category of the first degree in wartime.

\textit{Public health}

The anti-discrimination provisions relating to public health are contained in the Code of the Republic of Kazakhstan on People's Health and the Health Care System\footnote{See the Code of the Republic of Kazakhstan on People's Health and the Health Care System dated 18 September 2009 (as amended as of 03 July 2013.).}. Section 1 of Article 91 of the Code entitled "The rights of a patient" states that "\textit{in addition to the rights set out in Article 88 of this Code, a patient has the following rights: ... 2) to receive medical aid in the order or priority determined solely on the basis of medical necessity, without influence of any discriminatory factors}...".

Pursuant to subsection 4 of Article 112 of the Code entitled "\textit{State guarantees in the prevention, diagnosis and treatment of HIV and AIDS}", "\textit{The State guarantees to the HIV-infected and AIDS patients: ... 4) prohibition of any form of discrimination due to the nature of the disease} ...".

\textit{Social sphere (gender equality)}

A number of laws regulating the social sphere contain the anti-discrimination provisions in the social sphere.
More or less in detail the characteristics of discrimination are set out in the Law of Kazakhstan on State Guarantees of Equal Rights and Equal Opportunities for Men and Women.\(^{60}\)

For example, Article 1 entitled "The key terms used in this Law" states: "In this Law, the following key terms are used: ... 3) **discrimination** on the basis of sex means any restriction or infringement of human rights and freedoms, as well as belittling human dignity on the grounds of gender...".

Article 3 "The key objectives of the national policy in ensuring equal rights and equal opportunities for men and women," determines that "the key objectives of the national policy in ensuring equal rights and equal opportunities for men and women are: 1) to ensure equal rights and equal opportunities for men and women in all areas of public life; ... 4) the development and promotion of equality culture of men and women among the population, prohibition of **discrimination** on the grounds of sex ...".

Further, Article 4 of such Law is entitled precisely “**Gender discrimination**”, which establishes as follows:-

1. The laws and regulations aimed at restricting or infringing equal rights and equal opportunities of men and women may be challenged in court in the manner prescribed by the civil procedure legislation of the Republic of Kazakhstan.
2. Measures are not considered to be **discriminatory** on the grounds of sex if such measures are aimed at:
   1) the protection of motherhood, childhood and fatherhood;
   2) the protection of women in connection with pregnancy and childbirth;
   3) the increase in life expectancy of men; and
   4) the protection of women in the criminal, criminal procedural and criminal execution legislation. Differences, exclusions, preferences and restrictions dictated by job requirements or induced by special care given by the State to persons requiring enhanced social and legal protection shall not be **discrimination**.

Article 10 of the Law entitled "Participation of employers in ensuring equal rights and equal opportunities for men and women in the labour market" stated that:-

"... 4. **Individuals who feel that they have been discriminated against in the workplace, may apply to the authorities and organisations operating in the sphere of ensuring equal rights and equal opportunities for men and women.**

5. The employer may not create obstacles to an employee who filed a complaint with the competent authorities about instances of **discrimination** based on sex."

To solve the gender equality issue in Kazakhstan, a Strategy for Gender Equality in the Republic of Kazakhstan for 2006-2016\(^{61}\) was adopted. Such Strategy contains a number of definitions of “discrimination”. Specifically:

**Discrimination on the basis of sex means any restriction or infringement of human rights and freedoms, as well as belittling of human dignity on the grounds of gender. Gender discrimination is the most common type of discrimination.**

\(^{60}\) See the Law of the Republic of Kazakhstan, No. 223-IV 3PK, dated 8 December 2009 “On State Guarantees of Equal Rights and Equal Opportunities to Men and Women (as amended as of 03 July 2013).

\(^{61}\) See the Strategy of Gender Equality in the Republic of Kazakhstan for 2006-2016, approved by Decree of the President of the Republic of Kazakhstan, No. 1677, dated 29 November 2005.
Indirect discrimination means the acts not based on a formal distinction (restriction, exclusion) on the basis of gender, but the acts, which have different effect on men and women in terms of their exercise of the rights and freedoms.

Positive discrimination means possibility of introducing temporary special measures aimed at accelerating de facto equality between men and women. Granting of benefits upon the promotion, nomination to elected governments, employment, education of groups traditionally discriminated against on the grounds of sex.

Direct discrimination means discrimination with a specific reference to gender identity in order to use this in one's action.

Latent discrimination means intentional discrimination without direct reference to sex, but producing different results for persons of different sex”.

In essence, it is the only attempt to give a definition of the term “discrimination” in Kazakhstan's laws and regulations, albeit on the ground of sex only.

This strategy is an attempt to analyse the situation in relation to sex discrimination and develop a series of measures to prevent it, including through the application of the provisions of the UN Convention on the Elimination of All Forms of Discrimination against Women in court practice.

However, even after 6 years since the Strategy has been in existence its objectives in this respect remain unrealised.

At the same time, as mentioned above, discriminatory provisions are observed in some documents. For instance, non-traditional sexual orientation is seen as a mental disorder, and whilst the Kazakhstan psychiatry science itself does not see homosexuality as a disease, non-traditional sexual orientation is identified as gender identity disorder in some documents.

For example, paragraph 1 of the Rules for Medical Expertise and Gender Reassignment it is stated with respect to the persons with gender identification disorder62:

“1) social and psychological adaptation of persons with gender identity disorders means a set of medical, psychological and social measures aimed at facilitating the social adaptation of persons with gender identity disorder;

2) gender identity disorder (transsexualism) means the feeling of belonging to the opposite sex, desire to live and to be perceived as a person of the opposite sex, usually accompanied by a sense of inadequacy or discomfort of own morphological sex and desire for hormonal, surgical treatment, in order to make his/her body corresponds to the chosen sex inasmuch as possible...”.

Under paragraph 3 of the Rules:

“Gender reassignment is performed in several stages:

1) carrying out medical tests required for the medical expertise of persons with gender identity disorder in accordance with the list of medical analyses and documents necessary for the medical expertise of persons with gender identity disorder ...

2) inpatient medical expertise of a person with gender identity disorder in psychiatric institution;...”.

In relation to gender reassignment: "6. A person wishing to change his/her gender, shall submit a written application to the psychiatric institution at his place of residence “.

62 See the Resolution of the Government of the Republic of Kazakhstan, No. 1484, dated 7 December 2011 “On Approval of the Rules for Medical Expertise and Gender Reassignment for Persons with Gender Identity Disorder”.
Similarly, the non-traditional sexual orientation carries a negative connotation in the Concept of Moral and Sexual Upbringing in Kazakhstan63, where it is listed alongside the prostitution and the use of alcohol and drugs: "The teenage prostitution gained significant widespread. 40% of respondents who have sex received compensation for their sexual activity. Of all respondents, 0.5% mentioned the formed homosexuality, 1.3% of the respondents rated their orientation as a bisexual, 7.3% were unable to determine their sexual desires. 23.3% of the adolescents surveyed consumed alcohol 2-3 times a month or more, 4.3% use drugs."

Other

The prohibition of discrimination is established in the RoK Law on Refugees64, subsection 2 of Article 4, of which is entitled "The basic principles of the state policy on refugees" whose "The basic principles of the state policy on refugees are: ... non-discrimination on the grounds of social origin, race, ethnic origin, citizenship, religion and political beliefs during the refugee award process procedures for refugee status".

Under Article 3 of the Law of the Republic of Kazakhstan on the Legal Status of Foreigners65 entitled "The principles of the legal status of foreigners in the Republic of Kazakhstan": "...Foreigners in the Republic of Kazakhstan are equal before the law, regardless of their origin, social and property status, race and nationality, sex, education, language, religion, beliefs, type and nature of occupation."

The prohibition of discrimination is also established by paragraph 9 of the Charter of the Internal Service of the Armed Forces, Other Troops and Military Formations of the Republic of Kazakhstan66: "...Pursuant to the Constitution of the Republic of Kazakhstan, a soldier, as a citizen of the Republic of Kazakhstan, regardless of his official status, is entitled: ... to equal rights regardless of origin, social and property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances. Discrimination on these grounds is prohibited and punishable by law...".

Section 1 of Article 4 of the Constitutional Law on Elections67 of Kazakhstan entitled "Universal right of suffrage," states: "The universal right of suffrage means the right of citizens of the Republic to participate in the elections upon reaching the age of eighteen, regardless of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances.”

64 See the Law of the Republic of Kazakhstan, No. 216-IV 3PK, dated 4 December 2009 “On Refugees” (as amended as of 11 April 2014)
65 See the Law of the Republic of Kazakhstan, No. 2337, dated 19 June 1995 “On the Legal Status of Foreigners” (as amended as of 03 July 2014)
66 See the Charter of the Internal Service of the Armed Forces, Other Troops and Military Formations of the Republic of Kazakhstan, approved by Decree of the President of the Republic of Kazakhstan, No. 364, dated 5 June 2007 (as amended as of 15 April 2013).
The Law of the Republic of Kazakhstan On People’s Assembly of Kazakhstan\(^68\) also contains an anti-discrimination provision in subsection 2) of section 2 of Article 16 entitled "The powers of the members of the Assembly" stating that "in the carrying out their activities the members of the Assembly have the right to: ... participate in the development of draft laws and regulations related to inter-ethnic relations, exercise by citizens of their constitutional rights to use their native language and culture, the free choice of language of communication, upbringing, education and creative activity, non-discrimination on the basis of race, ethnicity or language...”.

Article 4 of the Republic of Kazakhstan on Culture\(^69\) entitled "The main objectives of the State in the field of culture," provides that "The main objectives of the State in the field of culture are as follows: ... 8) the adoption of measures to prevent in culture the propaganda or incitement of forced change of the constitutional system, violation of the integrity of the Republic of Kazakhstan, undermining state security, war, social, racial, national, religious, class and tribe superiority as well as the cult of cruelty and violence..."

The prohibition of discrimination is also contained in the Concept of Ethno-cultural Education in the Republic of Kazakhstan\(^70\) and the Concept of the Formation of National Identity of the Republic of Kazakhstan\(^71\).

The prohibition of discrimination, but only in relation to groups of visiting is also found in Article 46-17 entitled "The procedure for preventive visits" of the Law of Kazakhstan on the Procedure and Conditions of Detention in Custody of Persons Suspected or Accused of Committing Crimes\(^72\): "... 2. In forming groups for preventive visits none of the members of the national preventive mechanism shall be subject to any discrimination for reasons of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or any other circumstances."

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\(^68\) See the Law of the Republic of Kazakhstan, No. 70-IV 3PK, dated 20 October 2008 “On the Assembly of People of Kazakhstan” (as amended as of 04 July 2014).


\(^70\) The Concept of the Ethno-cultural Education in the Republic of Kazakhstan, approved by Order of the President of the Republic of Kazakhstan No. 3058 dated 15 July 1996.

\(^71\) The Concept of the Formation of National Identity of the Republic of Kazakhstan, approved by Order of the President of the Republic of Kazakhstan No. 2995 dated 23 May 1996.

2. Certain Cases of Inequality and Discrimination Against Some Minorities and Groups

2.1. Religion (confession)

The provisions of Kazakhstan legislation that are of a discriminatory nature

General provisions

While a number of Kazakhstan laws and regulations contain a wide range of anti-discriminatory provisions with respect to religion (confession), some provisions of Kazakhstan legislation may, however, be considered as discriminatory.

The legislation of the Republic of Kazakhstan in the area of the freedom of conscience and religion (confession) is mainly developing not towards the recognition, securing and protection of individual right to freedom of conscience and religion, but towards the legal regulation of this right as collective right, as the right to form a religious association and to carry out the religious activity.

It may seem incredible but the only law, which contains express provisions on protection of the right to freedom of conscience and religion (confession), besides the Constitution of the Republic of Kazakhstan, is the Law on the Legal Status of Foreigners.74

Pursuant to Article 13 of the Law entitled ‘Freedom of conscience’: “foreigners, who stay in the Republic of Kazakhstan, shall be guaranteed the freedom of conscience equally with the citizens of the Republic of Kazakhstan. Incitement of enmity and hatred on the grounds of religious beliefs shall be prohibited.”

However, the fundamental special legal act in this area in the Republic of Kazakhstan is not the law which contains the words “freedom of conscience and religion” in its name but the 2011 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations.”75

The definitions of the Law already indicate the purposes of such legal regulation. Legislators tried to define in as much detail as possible, the principal terms related to meeting the religious needs; many of these terms do not have a practical legal use, especially now when the matter is about the bringing to liability for the violation of restrictions imposed on the basis of these terms.

For example, the following definitions are used in Article 1 of the Law:

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73 The Analysis of Legislation of the Republic of Kazakhstan Concerning the Freedom of Conscience and Religion (Confession) in Terms of Compliance with International Standards (Kazakhstan International Bureau for Human Rights and Rule of Law with Financial Support of the Embassy of the Kingdom of the Netherlands in Kazakhstan, 2014) is used in this section.


“1) a place of worship (religious building) is a place designated for public worship, prayerful and religious meetings, acts of religious devotion (pilgrimage);
2) religious activity is the activity aimed at meeting the religious needs of believers;

... 
4) a religious association is a voluntary association of citizens of the Republic of Kazakhstan, foreigners and stateless persons united, in the manner prescribed by legislative acts of the Republic of Kazakhstan, on the basis of communion of interests to meet the spiritual needs; 
5) missionary activity is the activity carried out by citizens of the Republic of Kazakhstan, foreigners and stateless persons in the name of religious associations registered in the Republic of Kazakhstan, aimed at the propagation of religious doctrine in the territory of the Republic of Kazakhstan;...”.

As will be shown below, restrictions are imposed on the basis of these definitions contained in the Law and also in the administrative and criminal legislation; some of these restrictions are of an express discriminatory nature.

In addition, these definitions themselves raise questions in the context of international standards as to their serving as grounds for restrictions.

If the legislator determined the places of worship (religious buildings) as places for religious or church meetings, does it mean that such meetings may not be held in any other places? However, if that is the case, it will contradict international standards in respect of the exercise of both the right to freedom of conscience and religion (confession) and the right to peaceful assembly.

The term “religious activity” is defined in the Law so broadly that it suggests any activity of believers. Again, if the matter is about any restrictions on such activity, for example, restrictions on the place of the activity, it will contradict both international standards in the area of the right to freedom of conscience and religion and the principle of legal certainty and predictability.

The definition of the term “religious association” as voluntary association of citizens or foreigners formed “in accordance with the procedure established by law” means that any other association formed otherwise will be illegal. However, it contradicts international standards with regard to the exercise of the right to freedom of conscience and religion, both individually and jointly with others, without any interference of the State and also of the right to freedom of association.

The definition of the term “missionary activity” as activity aimed at propaganda of religious doctrine in the name of registered religious associations contradicts the international standards with regard to the right of each person and not just the right of a religious group to freely propagate his (her) religion as part of the right to freedom of conscience and religion itself. Moreover, it contradicts the international standards with regard to the right to freedom of expression as the right to disseminate any convictions, either philosophical, religious or others.

In other words, the key definitions of the Law themselves raise serious questions in terms of their use in legal sense.

Pursuant to Article 3 of the Law, the right to propagate a religious doctrine and carry out missionary activity should be exercised in accordance with legislation of the Republic of Kazakhstan.
First, this wording equals the propaganda of a religious doctrine (dissemination of religious convictions) and the missionary activity, which is inconsistent with the definitions accepted in international law and practice.

Second, this wording is to a certain extent contradictory to the definition of the term “missionary activity” given in Article 1 of the Law since, according to such definition, the religious doctrine may be propagated only in the name of registered religious associations, that is, an individual person does not have this right.

The same Article of the Law establishes that “the State: 1) shall not intervene in determination by a citizen of the Republic of Kazakhstan, a foreigner or a stateless person of his or her religious beliefs or religious belonging, ...”.

This wording is also inconsistent with the international standards since it only restricts the State intervention in determination by a person of his or her religious beliefs. However, the State must not generally intervene into the freedom of conscience and religion (confession), which, as has been stated above, includes both dissemination of religious beliefs and exercise of the right to freedom of conscience, individually and jointly with others, etc.

According to the notes and comments made on Kazakhstan legislation by ODIHR/OSCE, the UN convention bodies and various experts, a provision concerning the restriction of the right to freedom of conscience and religion (confession), which includes the religious activity in the meaning attributed to it in the Law, and concerning obligatory registration of religious associations is inconsistent with international standards. This provision deprives a person of his or her right to carry out religious activity, although the international law in this area is based on the wording “everyone has the right to freedom of conscience and convictions”, including religious convictions, and this right itself is interpreted rather broadly and contains a variety of powers related to religious activity.

The obligatory registration deprives the religious associations of the right to enjoy the freedom of conscience and religion that, for one reason or another, for example, for the reason of paucity, have failed to undergo the state registration.

As has been already noted on numerous occasions, it directly contradicts the international standards in respect of securing the right to freedom of conscience and religion (confession), which is vested in “everyone” in all of its aspects and, certainly, in any group irrespective of the number of its members.

In sections 12 through 15 of Article 3 of the Law, it is stated that “the activity of religious associations associated with violence against citizens of the Republic of Kazakhstan, foreigners and stateless persons or other damage to their health or dissolution of marriage between spouses (family disruption) or termination of kin relations, damage to morality, violations of the human and civil rights and freedoms, incitement of citizens to refusal to fulfil the duties envisaged by the Constitution and laws of the Republic of Kazakhstan and other violation of legislation of the Republic of Kazakhstan shall be prohibited.

13. The activities of religious associations forcibly involving citizens of the Republic of Kazakhstan, foreigners and stateless persons in their activity, including by way of charitable activity, and/or impeding their exit from a religious association, including through blackmail, violence or threat of violence, by using financial or other dependence of citizens of the Republic of Kazakhstan, foreigners and stateless persons, or by false pretences shall be prohibited.
14. No compulsion with regard to the alienation by the participants (members) of a religious association or religious adepts of their property in favour of the religious association, its heads and other participants (members) shall be permitted.

15. It shall not be permitted to take any decisions or perform any acts, by using religion and religious views, which are knowingly capable of disorganising the activities of State authorities, disrupting their continuous operation or lowering the level of governance in the country”.

Moreover, the fact that some provisions in these sections do not conform to the principle of legal certainty and predictability (for example, it is not quite clear what the phrases “performance of acts by using religion and religious views” or “lowering of the level of governance in the country” mean), other questions as to the method of such regulation also arise.

Illegal activity and administrative or criminal liability as well as sanctions for carrying out such activity are determined in two documents only, i.e. the Code on Administrative Offences of the Republic of Kazakhstan and the Criminal Code of the Republic of Kazakhstan. These are documents that determine what constitutes an administrative offence or a crime. The accuracy and certainty of wordings in the administrative or criminal legislation allow separating illegal behaviour from good behaviour and preventing an abuse of power.

The very general and obscure wordings of the administrative or criminal liability for violations of legislation generally concerning religious associations and religious activity, for acts committed in violation of uncertain legislation of the Republic of Kazakhstan, etc., which wordings are used both in the applicable and new Administrative Codes and Criminal Codes of the Republic of Kazakhstan, appear to be questionable.

They clearly contradict the principle of legal certainty and predictability, and that is why various Articles of the RoK Administrative Code and RoK Criminal Code concerning the right to association, peaceful assembly and freedom of conscience and religion (confession) are regarded as “political” by international and local human rights organisations.

The authorised body and other entities

The Law sets out the authorities of a special state body, which are substantially similar to typically controlling and supervisory functions.

For example, according to section 4 of Article 3 “the authorised body shall:

2) conduct the study and analysis of religious associations established in the territory of the Republic of Kazakhstan, missionaries and spiritual (religious) educational institutions;

4) carry out supervisory guidance of local executive bodies in the area of religious activity;

6) ensure the carrying out of religious expertises;

7) establish and maintain international cooperation with the authorised bodies of foreign states in the area of religious activity;

8) coordinate the activity of foreign religious associations in the territory of the Republic of Kazakhstan, the appointment of heads of religious associations in the Republic of Kazakhstan by foreign religious centres;
9) coordinate the activity of local executive bodies of oblasts, city of national status, the capital city in the area of religious activity and cooperation with religious associations;
10) develop and approve normative legal acts in the area of religious activity and religious associations which fall within its competence;
11) approve the regulations for determining the location of special fixed facilities for distribution of religious literature and other religious informational materials, religious items and premises for holding religious events outside of places of worship (religious buildings);
12) consider appeals of individuals and legal entities in relation to the violations of the legislation of the Republic of Kazakhstan concerning the religious activity and religious associations;
13) put forward proposals to the law enforcement agencies to ban the activity of individuals and legal entities violating the legislation of the Republic of Kazakhstan concerning the religious activity and religious associations.”

The list of powers for such legal regulation leaves no doubts: the carrying out control over all religious organisations in the territory of the Republic of Kazakhstan.

As well as being rather inefficient because of the need to maintain a large personnel (which personnel is constantly increasing as the number of religious associations increases) equipped with bureaucratic procedures, and to spend the State budget funds, it is also inconsistent with international standards and foreign practice where the key objective of the State is the non-intervention in the area of freedom of conscience and religion (confession); the law enforcement agencies should combat illegal activity by administrative or criminal law means within the framework of the general fight against crimes and offences, irrespective of whether this activity is religious or non-religious.

It is worthy of note that the powers of the authorised body, which are specified in sub-section 7 of section 4 of this Article, include cooperation with the authorised bodies of other states. This implies that our legislator believes that the authorised bodies for carrying out control over religious associations exist in all countries. Indeed, such bodies are available in the former Soviet Union countries but there are no such bodies with such powers in the majority of democracies. As specified in the section of this analysis concerning a foreign practice in the area of securing and protection of the freedom of conscience and religion (confession), some countries have structures in the form of councils or commissions that are typically non-government structures and that perform pure advisory and analytical functions.

The authorised body is the Agency for the Matters of Religions, which is established in accordance with the Decree of the President of RoK and the Resolution of the Government of RoK, dated 1 August 2011, and which has substituted the Committee for the Matters of Religions of the Ministry of Culture of the Republic of Kazakhstan. This Resolution has approved the Regulation on the Agency for the Matters of Religions.

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However, on 6 August 2014, the President of RoK issued the Decree “On Reforms of the Public Administration System of the Republic of Kazakhstan”\(^78\) according to which the Agency for the Matters of Religions was abolished, and the Committee for the Matters of Religions was established again and incorporated in the Ministry of Culture and Sport of the Republic of Kazakhstan.

The Resolution of the Government of the Republic of Kazakhstan, dated 23 September 2014\(^79\), then approved the Regulations on the Ministry of Culture and Sport, which now includes the Committee for the Matters of Religions. In fact, 3 years later, the authorities returned to the subordination structure of the authorised body for the matters of religions that existed before 2011.

All regulatory documents issued by the authorised body, which are available in the legal information system, still preserve their names, i.e. as they are issued by the Agency for the Matters of Religions; we, therefore, hereinafter refer to the previous name of the authorised body although we certainly mean the currently existing Committee for the Matters of Religions of the Ministry of Culture and Sport of the Republic of Kazakhstan.

Pursuant to section 13 of the Regulations “the mission of the Agency is to perform state regulation in the area of religious activity”.

Besides the Agency for the Matters of Religions, the Resolution of the Government, dated 30 January 2007, established a “Research-and-Development and Analytical Centre for the Matters of Religions” of the Ministry of Justice of the Republic of Kazakhstan\(^80\), which was later incorporated into the Agency. The objectives of the Centre include “the organisation of research and analysis of the processes of development of religious situation in Kazakhstan, information-and-analysis and scientific-and-methodological support to the activity of state authorities, organisations and citizens in the area of state-and-confessional relations, and conducting of a religious expertise”.

According to the Law on Religious Activity and Religious Associations, local executive bodies are also involved in carrying out control over religious associations.

Pursuant to Article 5 of the Law, the following matters fall within their competence, inter alia:
- implementation of the national policy in the area of religious activity;
- putting forward proposals to law enforcement agencies to ban the activity of individuals and legal entities violating the legislation of the Republic of Kazakhstan concerning the religious activity and religious associations;
- consideration of appeals of individuals and legal entities concerning violations of the legislation of the Republic of Kazakhstan concerning the religious activity and religious associations;

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- approval of the location of special fixed facilities for distribution of religious literature and other religious informational materials, religious objects, and also approval of the location of premises for holding religious events outside of places of worship (religious buildings);
- making decisions on the construction of places of worship (religious buildings), determination of their location and also conversion (change of the purpose of use) of buildings (facilities) into the places of worship (religious buildings);
- ensuring the review of the lists of citizens initiating the formation of religious associations;
- performing the registration of persons carrying out the missionary activity.

Based on these provisions of the law, one may conclude that the authorised body and local executive bodies (akimats) are charged with the functions of law enforcement agencies with regard to religious associations. Clearly such an attitude of the State stigmatizes religious associations, needless to say, individual believers.

In addition, the Boards for Religious Affairs, the regulations on which are approved by local executive bodies (akimats), are established at regional level.

Meanwhile, the formation of the Council for Relations with Religious Associations under the Government of the Republic of Kazakhstan\(^1\) is fully consistent with international and foreign practice.

Pursuant to section 5 of the Regulations on such Council\(^2\), its objective shall be “the development of proposals and recommendations on the matters of formation and implementation of guidelines of the State policy in the area of religious activity and cooperation with religious associations, strengthening of spiritual harmony in the society and harmonization of inter-faith relations”.

And, the principal objectives are:
“1) comprehensive and objective study, synthesis and analysis of religious situation in the country and trends of its development;
2) development of proposals for the formation of priority guidelines of the State policy in the area of religious activity and cooperation with religious associations;
3) informing the State authorities of the Republic of Kazakhstan of religious situation in the Republic and observance of the legislation of the Republic of Kazakhstan concerning the religious activity and religious associations;
4) coordination of the activity of the regional Councils for Liaising with Religious Associations; ...
6) strengthening of mutual understanding and tolerance between religious associations and provision of advisory assistance to them in accordance with legislation of the Republic of Kazakhstan”.

However, despite the long-term objectives and tasks of the Council, it comprises only two representatives of the religious associations themselves, who represent the major religious confessions: the Supreme Mufti and the Chairman of the Spiritual Directorate of the Muslims of Kazakhstan, and


the Head of the Eparchy of the Russian Church in the Republic of Kazakhstan and the Metropolitan of Astana and Kazakhstan.

This confirms, to a certain extent, the de facto inequality of religious associations in relationship with the State.

Religious expertise

The concept of “religious expertise” is featured in the Law as a separate concept.

Besides the fact that this concept itself is quite questionable from a legal point of view, the reasonableness of the international experts’ concerns about the entitlement of the state to estimate the acceptability of a religious doctrine is evident. Theological disputes and subjective opinions of individual experts-religious scholars are actually taken as a basis for making administrative law decisions whether or not to permit one religion (or beliefs) or another. Unreligious philosophical beliefs of one person (or a group of persons) or another may be subject to religious or other “philosophical” expertise with the same result. This constitutes the illegal interference of the State in the area of the freedom of thought, conscience, opinion and also the freedom of expression.

Pursuant to Article 6 of the Law, the following is subject to religious expertise: constituent documents and also other religious documents, spiritual (religious) educational programmes, religious informational materials and religious objects.

The Government of RoK has elaborated the Rules for Conducting the Religious Expertise, and the Agency for the Matters of Religions has issued the Instruction for Choosing Experts for Conducting a Religious Expertise.

Pursuant to section 2 of the Instruction, in order to conduct a religious expertise, the following persons may be chosen as experts, i.e. “the persons having: 1) higher or post-graduate education in the areas involving the matters of religious relations; 2) work experience (of not less than one year) in the areas involving the matters of religious relations;...”.

It is difficult to assess as to whether the person having a higher education and one-year experience in the area involving the matters of religious relations is capable to carry out religious expertises of high quality, which expertises entail legal consequences, but the practice has proven that, in the majority of cases, these expertises cause serious doubts in terms of their scientific validation.

It is suffice to mention that the leading Kazakhstan and foreign religious scholars have issued extremely negative opinions in respect of a wide range of expertises carried out by these experts.


According to the Rules (section 2) “the tasks of the expertise shall be:
1) determination of belonging of the content of an object to a particular religious doctrine, assessment of the content of the object based on the constituent documents, information on fundamentals of religious doctrine and religious ceremonies provided by a religious association;
2) verification of compliance of the forms and methods of activities of the religious association at the time of its State registration (re-registration) with its actual activities;...”.

Pursuant to sections 27 and 28: “27. On the basis of expert opinion, the Ministry of Justice of the Republic of Kazakhstan shall take the relevant decision on the State registration (re-registration) of a religious association in accordance with legislation of the Republic of Kazakhstan.
28. The local executive body of an oblast, city of national status, the capital city shall, on the basis of the expert opinion, take the relevant decision on registration (re-registration) of citizens of the Republic of Kazakhstan, foreign citizens and stateless persons, who carry out missionary activity in the territory of the Republic of Kazakhstan, as missionaries.”

The Republican State Institution “Research-and-Development and Analytical Centre for the Matters of Religions” of the Agency of the Republic of Kazakhstan for the Matters of Religions has developed the Guidance Manual on the Matters of Conducting a Religious Expertise.

This document is actually designed to deduce subjective opinions, which are then taken as a basis for legal conclusions on whether or not to register or refuse to register a religious association.

For example, the Guidance Manual establishes that: “in the course of a religious expertise, it shall be necessary to determine the conformity of the value system of the examined religious trend to the socially important values being customary in the society.
It shall be necessary to determine whether or not the rules laid down for the adepts of a religious doctrine comply with provisions of the legislation of the State”.

It is worthy of note that, according to the required qualification of experts, it is established by religious scholars, but not lawyers.

The manual further states that “an expert also needs to evaluate specific beliefs and cult actions, which are deemed socially undesirable though not prohibited by law, and to evaluate the probability of the negative impact of these beliefs and cult practices on the adepts of the doctrine and other members of the society.
Religious movements shall determine, as per their values and rules, their attitude towards society and also towards religious doctrines and religious associations that are perceived by it as part of this society.
There are two possible options of correlation of these systems: 1) a difference between the key values of the society and a new religious doctrine, with further depreciation of the former, shall be declared; 2) the public values, which, as claimed by a new doctrine, are sophisticated and are not properly complied with by the society and/or the religion legitimating it, shall be recognized.

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When analysing the attitude of a new religious association towards the society, its paradigms and values, an expert must expose the value and regulatory paradigms of the movement that regulate the social behaviour of its members...

In other words, the experts are entitled to take legally significant decisions concerning religious views with further prohibiting particular views through the refusal of registration of the religious associations expressing them.

In fact and according to the results of activity in the Republic of Kazakhstan, there have been restored the institute of censorship of literature and ideological control which is known since the Soviet times but that is prohibited by the Constitution of RoK, based on which a religious organisation may fail registration or re-registration.

It clearly demonstrates that the freedom of conscience and religion (confession) is not considered as an individual right since the experts would then need to study the religious views of each individual person. It concerns not only religious views but also unreligious, philosophical, scientific views, etc. The undesirability of one views or another may not serve grounds for their prohibition, including by way of refusal to register a religious association.

All this logical construction is breaking down if, in compliance with international standards, there is no obligatory registration of public associations, including religious associations.

In such a case, the fight against illegal behaviour is carried out by the criminal law means, within the framework of criminal or administrative liability for committing particular offences determined in full compliance with the principle of legal certainty and predictability and with due regard for presumption in favour of the protection of right, including the right to freedom of expression and freedom of conscience and religion (confession), and restrictions admissibility criteria.

As regards religious associations, either formal or informal, they should be freely formed and operate unless and until the elements of offence are found in their acts.

Religious associations as a separate type of legal entities

Besides the Law on Religious Activity and Religious Associations, religious associations are also specifically defined in other laws and regulations of the Republic of Kazakhstan.

Section 3 of Article 34 of the Civil Code of the Republic of Kazakhstan (General Part)\(^6\) states that “a legal entity, which is a non-profit organisation, may be created in the form of an institution, public association, joint-stock company, consumer co-operative, public foundation, religious association...”

This means that religious associations have been taken out of the generic definition of the term “public associations” only because of their religious focus.

The Civil Code of the Republic of Kazakhstan (General Part) has even a special article dedicated only to religious associations:

“Article 109. A religious association
1. A voluntary association of citizens united, in the manner prescribed by legislative acts of the Republic of Kazakhstan, on the basis of common interest to meet the spiritual needs, shall be recognized as a religious association...
3. Religious associations in the Republic of Kazakhstan, which have governing centres located outside the Republic, shall be registered by the departments of justice. Charters (regulations) of the governing centres may be taken as a basis for the charter (regulation) of such religious associations, unless they contradict the legislation of the Republic of Kazakhstan...
11. Special aspects of the legal status of religious associations shall be determined in accordance with this Code and legislative acts of the Republic of Kazakhstan.”

The wording used in section 1 raises certain doubts since, in order to satisfy their spiritual requirements, the citizens unite not only in religious associations.

Religious associations are also defined in the Law on Non-Profit Organisations87 where they are specified as a form of non-profit organisation along with the public association, and Article 15 of this Law that repeats Article 109 of the Civil Code of RoK (General Part) is dedicated to them.

Pursuant to Article 3 of the Law of RoK on Public Associations88, it does not apply to religious associations.

Among such non-profit organisations as a “public association”, there are political parties and trade unions. Special laws are issued in respect of them as well as in respect of religious associations. However, religious associations are only excluded from the scope of application of the Law on Public Associations.

Among all non-profit organisations of any forms, including public associations, religious associations only, along with political parties and trade unions, are excluded from the scope of application of the Law of RoK on Public Social Order89 (sub-section 7) of Article 1).

Even the Law of the Republic of Kazakhstan On Advertising90 states that “advertising of religious organisations and religious institutions which are not registered in accordance with the legislation of the Republic of Kazakhstan shall be prohibited” (section 5 of Article 6)…

The State has developed a full set of documents related to carrying out control over the religious activity and religious associations.

By the Resolution of the Government of RoK “On Approval of Standards of Public Services in the Area of Religious Activity” dated 24 February 2014\textsuperscript{91}, there have been adopted:

1) the standard of the public service “Coordination of the activity of foreign religious associations in the territory of the Republic, the appointment of the heads of religious associations in the Republic of Kazakhstan by foreign religious centres”;
2) the standard of the public service “Performance of registration and re-registration of persons carrying out missionary activity”;
3) the standard of the public service “Conducting a religious expertise”;
4) the standard of the public service “Issuing a decision on construction of the places of worship (religious buildings) and determination of their location, and also conversion (change of the purpose of use) of buildings (facilities) into the places of worship (religious buildings)”;
5) the standard of the public service “Issuing a decision on approval of the location of special fixed facilities for distribution of religious literature and other religious informational materials, religious items”;
6) the standard of the public service “Issuing a decision on approval of the location of premises for holding religious events outside of places of worship (religious buildings)”.

On the basis of these standards, the public service regulations concerning approvals and permits operate in each region (the capital, city of national status and oblast).

The standards and regulations contain the requirements and operating procedures of state authorities with regard to the provision of services in the area of religious activity, although these procedures may hardly be named services since they are more like the licensing, establishment of a strictly authorization-based procedure for carrying out religious activity.

Registration

In accordance with the \textit{Guidelines for Review of Legislation Pertaining to Religion or Belief}\textsuperscript{92} there are some fundamental issues relating to the acquisition of legal personality by religious associations:

- registration of religious organizations should not be mandatory per se, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits;
- individuals and groups should be free to practise their religion without registration if they so desire;
- high minimum membership requirements should not be allowed with respect to obtaining legal personality;
- it is not appropriate to require lengthy existence in the State before registration is permitted;
- other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned;


\textsuperscript{92} See the \textit{Guidelines for Review of Legislation Pertaining to Religion or Belief}. Adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004) and welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004) // Website of the Organization for Security and Co-operation in Europe. URL: http://www.osce.org/ru/odihr/13994.
- provisions that grant excessive governmental discretion in giving approvals should not be allowed; 
  official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, 
  should be carefully limited;
- the adoption of formal decisions on the limits of freedom of religion, which arose as a result of unclear 
  legislation or other reasons, should be strictly limited;
- intervention in internal religious affairs by engaging in substantive review of ecclesiastical 
  structures, imposing bureaucratic review or restraints with respect to religious appointments, and the 
  like, should not be allowed...;
- provisions that operate retroactively or that fail to protect vested interests (for example, by requiring 
  re-registration of religious entities under new criteria) should be questioned;
- adequate transition rules should be provided when new rules are introduced; 
- consistent with principles of autonomy, the State should not decide that any particular religious 
  group should be subordinate to another religious group or that religions should be structured on a 
  hierarchical pattern (a registered religious entity should not have veto power over the registration of 
  any other religious entity).

The legislation of the Republic of Kazakhstan is developing in exactly the opposite way.

According to the administrative and criminal legislation of the Republic of Kazakhstan a religious 
activity without registration of a religious association is prohibited on pain of punishment.

The law of the Republic of Kazakhstan “On State Registration of Juridical Entities and Record 
Registration of Branches and Representative Offices” provides a number of grounds for refusal of 
registration and re-registration of juridical entities and their branches (representations), including “1) 
violation of the procedure of establishment, re-registration and re-organisation of a juridical entity 
established by the legislative acts of the Republic of Kazakhstan, inconsistency of constituent 
documents with the Law of the Republic of Kazakhstan” (subsection 1 of Article 11).

But in addition to all the grounds for refusal of state registration, applicable to all juridical entities, for 
religious associations the Law provides “additional grounds for the refusal of state registration and re-
registration” which “established in the Law of the Republic of Kazakhstan On Religious Activity and 
Religious Associations” (Article 11).

Accordingly, as far as registration is concerned, religious associations are separated from all legal 
entities, and additional grounds for refusal apply to them.

Requirements and procedure of registration (re-registration) of religious associations are detailed in the 

93 See the Law of the Republic of Kazakhstan “On State Registration of Legal Entities and Record Registration of Branches 
and Representative Offices”, No. 2198, dated 17 April 1995 (as amended as of 2 July 2014) // The Adilet Legal 
Z950002198_.

October 2011 (as amended as of 5 December 2013) // The Adilet Legal Information System of Regulatory Legal Acts of 
the Republic of Kazakhstan. URL: http://adilet.zan.kz/rus/docs/Z110000483.
It should be noted that, as is the case with public associations, the legislation of the Republic of Kazakhstan divides religious associations into local, regional and republican (section 1 of Article 12). They differ by membership (local – at least 50 persons, regional – at least 500 persons and republican – at least 5,000 persons) and by territory (local – within the boundaries of one administrative territorial unit (oblast, the capital city or city of national status), regional – within the boundaries of two or more administrative territorial units (oblasts) and republican – within the boundaries of more than half of the administrative territorial units (oblasts) (sections 2 through 4 of Article 12).

These provisions are restrictive, and do not pursue any legitimate purpose, and are not proportionate. Moreover, they discriminate such type of a legal entity as religious association, as compared, for example, to commercial organisations to which such territorial principle does not apply.

The procedure for the formation of a religious association is very complex.

Thus, pursuant to section 1 of Article 13 of the Law “a religious association shall be formed on the initiative of the citizens of the Republic of Kazakhstan, who have reached the age of eighteen, convening a meeting (convention or conference) at which the decisions on formation of a religious association, its name, charter shall be made, and its governing bodies shall be formed. The citizens shall personally and voluntarily participate in the constituent meeting (convention or conference)”.

The Law prohibits the “the formation and activities of legal entities, which carry out religious activity, in any organisation and legal form other than a religious association” (section 4 of Article 13).

The Law also sets out the requirements as to the name of a religious association that must not “contain the religious belonging and status”, i.e. the territory of its activity (section 5 of Article 13).

The Law establishes an obligatory list of documents for the state registration of religious associations.

Besides an application for the formation of a religious association, these documents shall include: “1) the charter of a religious association signed by the head of the religious association; 2) the minutes of a constituent meeting (convention or conference); 3) a list of citizens initiating the formation of a religious association in soft and hard copy, in the form established by registration authority; 4) a document confirming the place of location of a religious association; 5) the printed religious materials interpreting the history of origin and fundamentals of a religious doctrine and containing information on the religious activity relevant to it; … 7) a decision on election of the head of a religious association, or in case of appointment of the head by a foreign religious centre, a document confirming the approval by the authorised body” (section 3 of Article 15).

For “registration of a regional religious association, a list of the members of each local religious association initiating the formation of regional religious associations, in the form established by registration authority, and also notarised copies of the charters of their local religious associations shall be provided additionally” (section 3 of Article 15).

A republican religious association “shall be obliged to submit to the authority carrying out registration the copies of documents confirming the record registration of their structural subdivisions
(branches and representative offices) with territorial departments of justice not later than a year from the date of its registration... in order to confirm its status” (section 5 of Article 15).

The Law also contains requirements for the charter of a religious association, which shall contain:

1) name, object and goals of activity;
2) location of religious association and territory in which it carries out its activity;
3) structure, procedure of formation, competence of its bodies of management;
4) rights and obligations of participants (members);
5) confessional identity, foundations of religious doctrine and relating information on religious activity;
6) conditions and procedure for admission to membership in a religious association, and withdrawal from it;
7) sources of property formation;
8) procedure for introduction of amendments and additions to the constitutional documents;
9) procedure for re-organisation and termination;
10) procedure for using the property in case of liquidation;
11) information about branches and representative offices” (section 1 of Article 16).

In its turn, “the information on fundamentals of a religious doctrine and religious activity must contain basic religious ideas, the forms of activity of the religious association, specifics of the attitude towards marriage and family, education, health of the participants (members) of this religious association and other persons, and the attitude towards the exercising of constitutional rights and obligations of its participants (members) and servants” (section 3 of Article 16).

Finally, pursuant to sections 8 through 10 of Article 15:

“8. The period of State registration (re-registration) shall be suspended for the duration of a religious expertise and review of the lists of citizens initiating the formation of a religious association in terms of compliance with the requirements of this Law.
9. The registration authority shall, within three business days of the date of taking the decision on suspension of the period of State registration (re-registration), submit the copies of documents required for conducting a religious expertise to the authorized body and copies of the lists of citizens initiating the formation of a religious association to the local executive bodies of oblasts, cities of national status and the capital for the purpose of their review.
10. Based on the results of review of submitted documents for compliance with legislation, conducted religious expertise and review of the list of citizens initiating the formation of a religious association, the decision on the State registration or refusal of State registration of the religious association shall be taken”.

It is important to note that the State registration of a religious association may be refused “if the association being formed has not been recognised as a religious association based on the results of the religious expertise” (Article 17).

The same requirements and registration procedures are set out in the Instruction for State Registration of Legal Entities and Record Registration of Branches and Representative Offices95 (section 4, sections

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95 See the Instruction for State Registration of Legal Entities and Record Registration of Branches and Representative Offices as approved by the Order of the Ministry of Justice of the Republic of Kazakhstan, dated 12 April 2007 (as amended as of 19 June 2013) // The Adilet Legal Information System of Regulatory Legal Acts of the Republic of Kazakhstan. URL: http://adilet.zan.kz/rus/docs/ V070004625_.

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13 through 17, section 38 and section 18 of Schedule 5, Schedule 11), and section 79 specifies that: “additional grounds for refusal of State registration and re-registration of a religious association, its structural subdivision (branch or representative office) in accordance with the Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations” shall be cases where information contained in the submitted constituent and other documents is false and/or the association being formed has not been recognised as a religious association based on the results of the religious expertise”.

The same requirements and procedures are also set out in the 2013 Resolution of the Government of the Republic of Kazakhstan “On Approval of Standards of State Services on the Matters of Registration of Legal Entities, Branches and Representative Offices”96.

The said registration procedures, and requirements for persons initiating the formation of a religious association, and grounds for refusal of registration constitute an apparent unfounded restriction of the right to freedom of conscience and religion (confession); they are not dictated by any legitimate purpose or need to exist in democratic society nor are they proportionate to a purported threat. They do not comply with international standards and create obstacles to the exercise of the right to freedom of conscience and religion.

In addition, it is unclear how the strict requirements as to the submission to State authorities of the lists of citizens-initiators or citizens-members of religious association in the number of at least 50 persons – for a local religious association, at least 500 persons – for a regional religious association and at least 5,000 persons – for a republican religious association, comply with section 1 of Article 19 of the Constitution of RoK stating that “everyone shall be entitled to determine and indicate or not to indicate his or her ethnicity, membership in a party and religious belonging”. It is obvious that, in this case, the indication of religious belonging is obligatory, which actually makes this constitutional provision inoperative.

The Law of RoK on Religious Activity and Religious Associations97 imposes additional restrictions on the heads of the branches of foreign religious associations.

Pursuant to Article 19 of the Law:
1. The carrying out of activity by the head of a religious association appointed by a foreign religious centre without approval by the authorized body shall be prohibited.
2. To approve a candidate for the post of the head of a religious association, the foreign religious centre shall submit to the authorized body the following documents:
   1) an application containing information on the candidate and his or her previous work in the foreign religious centre;
   2) a decision on appointment of the candidate as the head of the religious association operating in the territory of the Republic of Kazakhstan;


3) a copy of the passport or a certificate of identity of the candidate for the post of the head of a religious association ....
4. The authorised body shall refuse to approve the appointment by a foreign religious centre of the head of a religious association in the Republic of Kazakhstan, if his or her activity may create a threat to constitutional system, public order, human rights and freedoms, public health and morality”.

Religious practice

The important chapter of the Law of RoK on Religious Activity and Religious Associations\(^98\) is concerned with religious worships and, generally, religious activity.

In particular, Article 7 of the Law establishes that:

“1. Religious associations shall be entitled to maintain sacred spaces.
2. Public worships, religious rites, ceremonies and/or meetings shall be freely held (carried out) in the places of worship (religious buildings) and within territory allotted to them, in sacred spaces, facilities and premises of religious associations, cemeteries and crematoria, dwellings, public catering facilities, where necessary, subject to observance of the rights and interests of persons living nearby.
In other cases, religious events shall be held in the manner established by legislation of the Republic of Kazakhstan.
3. It shall be prohibited to hold (carry out) public worship, religious rites, ceremonies and (or) meetings or carry out missionary activity within the territory and in the buildings of:
1) State authorities and organisations except in the cases envisaged by sections 2 and 4 of this Article;
2) the Armed Forces, other troops and military formations, judicial and law enforcement agencies, other departments related to maintenance of public security, protection of human life and health;
3) educational institutions other than spiritual (religious) educational institutions;
4. In case of ceremonial needs, the clerical order of religious associations registered in the manner established by legislation of the Republic of Kazakhstan shall be invited to persons held in special institutions ensuring their temporary isolation from the society or custodial facilities, or persons being the patients of health organisations providing hospital care, or persons provided with social services in residential care facilities for the aged and disabled persons, at the request of these persons or their relatives. In such a case, religious rites, ceremonies and/or meetings must not hinder the operations of the specified organisations or infringe the rights and legitimate interests of other persons.”

Certain restrictions are imposed on the religious practices in places of deprivation of freedom and isolation.

Provided that in July 2014 the new Penal Execution Code of the Republic of Kazakhstan (RoK PEC) was adopted and came into force on 1 January 2015, it makes sense to compare the provisions of the new and old RoK PEC.

| COMPARATIVE TABLE OF THE ARTICLES OF OLD AND NEW (ADOPTED IN JULY 2014 AND BROUGHT INTO FORCE ON 1 JANUARY 2015) PENAL EXECUTION CODES OF THE REPUBLIC OF KAZAKHSTAN CONCERNING THE RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION (WORSHIP) |
|---|---|
| Penal Execution Code of the Republic of | Penal Execution Code of the Republic of |

\(^98\) Ibid.
<table>
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<tr>
<th>Kazakhstan dated 13 December 1997 as amended as of 05 July 2014&lt;sup&gt;99&lt;/sup&gt;</th>
<th>Kazakhstan dated 05 July 2014&lt;sup&gt;100&lt;/sup&gt;</th>
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<tr>
<td><strong>No.</strong></td>
<td><strong>Article 8. Public Participation in Correction of Convicted Persons</strong></td>
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<td>1. Boards of trustees and public monitoring councils, committees of parents of convicted persons, trade unions, labour collectives, public associations registered in accordance with the legislation of the Republic of Kazakhstan, religious associations, public and donation funds, political parties and other organizations may participate in correction of convicted persons.</td>
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<td><strong>No.</strong></td>
<td><strong>Article 9. Basis of the Legal Status of Convicted Persons</strong></td>
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<td></td>
<td>5. Convicted persons may not be subject to any discrimination on the grounds of origin, social, official and property status, gender, race, nationality, language, religion, beliefs, place of residence or any other circumstances.</td>
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<td>1. Convicted persons shall be guaranteed by freedom of conscience.</td>
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<td>2. Persons serving a sentence in the form of deprivation of freedom may invite ministers of churches of religious associations, registered in the manner, established by the legislation of the Republic of Kazakhstan upon their request or request of their relatives in case of ritual necessity. Administration of the institution shall create conditions for the performance of religious rites in the manner, determined by the authorized body in the scope of penal execution activity.</td>
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<td>3. Priests shall be allowed to convicted persons, detained in isolation wards, solitary cells, cells of high-security penal colonies, punitive and disciplinary units, as well as premises of cell type with condition of their</td>
<td>1. Convicted persons shall be guaranteed by right to freedom of conscience and religion.</td>
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<td>2. Performance of religious rites shall be voluntarily.</td>
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<td>3. When performing religious rites, the internal order of the institution or body executing the sentence shall be followed. Acts inciting convicted persons to refuse to fulfil their duties under this Code and other violations of the legislation of the Republic of Kazakhstan shall not be allowed.</td>
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<td></td>
<td>4. Convicted persons may invite priests of religious associations, registered in the manner, established by the legislation of the Republic of Kazakhstan upon their request or request of their relatives in case of ritual necessity.</td>
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<td>5. Administration of the institution or body executing the sentence shall create conditions for the performance of religious rites, as well</td>
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personal security.
4. Violently ill convicted persons, as well as persons convicted to death penalty shall be provided by possibility to commit all necessary religious ceremonies with involvement of priests at their request before execution of a judgement.
5. Performance of religious rites shall be voluntarily. It shall not violate internal order, as well as derogate from rights of other persons, serving sentence.

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<tr>
<th>No.</th>
<th>Article 16. Competence of the Authorised Body in the Field of Penal Execution Activity</th>
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<td>1. The authorised body in the field of penal execution activity shall approve:</td>
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<td>10) the regulations for creating conditions for the performance of religious rites by persons sentenced to deprivation of freedom;</td>
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<th>No.</th>
<th>Article 32. Visits to Penitentiary Institutions</th>
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<td>3. Mass media representatives, priests of religious associations and other persons shall have the right to attend penitentiary institutions on special permission of administration of these institutions or superior bodies.</td>
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**Article 21-8. Order of Preventive Visits**

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<td>2. No one of participants of the national preventive mechanism may not be subject to any discrimination on the grounds of origin, social, official and property position, gender, race, nationality, language, religion, beliefs, place of residence or any other circumstances upon groups’ formation for preventive visits.</td>
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<tr>
<th>Article 46. Order of Preventive Visits</th>
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<tr>
<td>2. No one of participants of the national preventive mechanism may not be subject to any discrimination on the grounds of origin, social, official and property status, gender, race, nationality, language, religion, beliefs, place of residence or any other circumstances upon group formation for preventive visits.</td>
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<tr>
<th>No.</th>
<th>Article 104. Rights and Obligations of Convicted Persons</th>
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<td>1. In the manner prescribed by this Code and the internal regulations of institutions along with the rights established by Article 10 of this Code, persons sentenced to deprivation of freedom shall have the right:</td>
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<td>2) to use the library, table-top games, musical instruments, periodical publications and</td>
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literature subscribed at the expense of the funds available on control cash accounts of temporary allocation of money in a certain period of time according to the order of day as well as religious literature, which received a positive opinion by religious expertise; …

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<tr>
<td>2. The receipt, subscription, storage and distribution of publications advocating violent change of the constitutional order, violation of the integrity of the Republic, undermining the security of the state, war, social, racial, national, religious, class and tribal superiority, and the cult of violence and cruelty, publications with pornographic content are prohibited to convicted persons.</td>
<td>2. The acquisition, subscription, storage and distribution of publications containing propaganda or agitation of violent change of the constitutional order, violation of the integrity of the Republic of Kazakhstan, undermining the security of the state, war, social, racial, national, religious, class and tribal superiority, the cult of violence and cruelty, publications with pornographic content are prohibited to convicted persons.</td>
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As noted above, the new RoK PEC prohibits discrimination against convicted persons on various grounds, including on the ground of religion. The freedom of conscience (Article 12 of the old RoK PEC) and the freedom of conscience and religion (Article 13 of the new RoK PEC) is guaranteed for them. Such wording in the new RoK PEC is more in line with the accepted definition of the international law.

The order of performance of religious rites in places of deprivation of freedom and confinement is established by the Regulations for Creating Conditions for the Performance of Religious Rites. It establishes the order of visits to convicted persons by representatives of registered religious associations (paragraphs 2-10). Individual performance of religious rites is permitted only near sleeping accommodation, and no separate rooms are designated (paragraph 11).

These restrictions violate the right to freedom of conscience and religion, as it implies its implementation along with others. Such a restriction is not dictated by the need to democratic society and it is disproportionate to the expected threat, even in respect to the prisoners.

As pointed out by the UN Human Rights Committee, “persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.”

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102 See the General Comment No. 22 (48): The right to freedom of thought, conscience and religion (Article 18), 1993 // Website of the Office of the High Commissioner for Human Rights. URL: http://www.ohchr.org/ru/HRBodies/Pages/TBGeneralComments.aspx.
Distribution of religious literature, other religious informational materials and religious items, and holding of events

The Law of RoK on Religious Activity and Religious Associations\textsuperscript{103} contains serious restrictions in respect of distribution of religious literature and religious items.

For example, pursuant to Article 9 of the Law:

“1. Citizens of the Republic of Kazakhstan, foreigners and stateless persons, religious associations shall be entitled to acquire and use religious literature, other religious informational materials, and religious items at their own discretion.

The religious items shall be the items, articles and things required for public worship, religious rites and ceremonies and also containing the elements of religious symbols.

2. Distribution of religious literature, other religious informational materials, religious items shall be allowed only in places of worship (religious buildings), spiritual (religious) educational establishments and also in fixed facilities specially determined by the local executive bodies of oblasts, cities of national status and the capital.

3. Any religious informational materials, other than those intended for personal use, may be imported into the Republic of Kazakhstan only by registered religious associations if a positive opinion of a religious expertise has been obtained“.

According to the Resolution of the Government of RoK on Certain Matters of Educational Activity\textsuperscript{104}, the funds of religious literature in educational establishments shall be formed only after obtaining a positive opinion of religious expertise (sub-section 3 of section 5).

Pursuant to sub-section 2 of section 1 of Article 104 of the new RoK Penal Execution Code, sentenced persons may use only the religious literature in respect of which a positive opinion of religious expertise is obtained\textsuperscript{105}.

On the basis of the provisions of the Law on Religious Activity and Religious Associations, the Chairman of the Agency of RoK for the Matters of Religions approved the Instruction for determining the location of special fixed facilities for distribution of religious literature and other religious informational materials, religious items and also premises for holding religious events outside of places of worship (religious buildings).\textsuperscript{106}


Section 3 of such Instruction further details:

“1) special fixed facilities for distribution of religious literature, other religious informational materials, religious items is the permanent fixed structure or its separate part located outside of places of worship (religious buildings), having commercial premises, utility rooms, administration and amenity rooms and also premises intended for acceptance, storage and preparation for sale of religious literature, other religious informational materials, religious items;
2) religious literature is the printed or electronic products (books, brochures) of religious contents (theological, theological-and-canonical, ritual-and-mystic, social-and-theological) intended for meeting the religious needs and other socially important needs of the population determined by religious values;
3) religious informational materials is the printed and electronic products not falling under the category of religious literature and containing religious information;
4) religious items is the items, articles and things required for public worship, religious rites and ceremonies and also containing the elements of religious symbols;
5) premises for holding religious events is the permanent fixed structure or its separate part located outside of places of worship (religious buildings) and intended for holding religious rites, public worship, religious ceremonies, and meetings”.

Section 4 of the Instruction states that “fixed facilities and premises for holding religious events shall be located inside of a freestanding building or shall constitute a freestanding building.”

Pursuant to section 5 “fixed facilities and premises for holding religious events shall not be located in:
1) the buildings of educational establishments other than spiritual (religious) educational establishments;
2) the buildings of State authorities, State institutions of the Armed Forces, other troops and military formations, judicial and law enforcement agencies, and penal system;
3) the buildings of state institutions and state enterprises that are not specified in sub-sections 1), 2) of this section”.

Pursuant to section 6 of the Instruction “fixed facilities and premises for holding religious events shall be located at a distance of not less than 500 metres from the buildings specified in sub-sections 1), 2) of section 5 of this Instruction, and not less than 200 metres from the buildings specified in sub-section 3) of section 5 of this Instruction”.

The location of all these facilities (premises) is determined by local executive bodies.

In accordance with the Law on Religious Activity and Religious Associations and such Instruction, regulations on approval of the location of special fixed facilities for distribution of religious literature, other religious informational materials and religious items have been issued in all regions of Kazakhstan (the capital city, city of national status and oblasts).

Thus, first, the State considers the religious literature and religious items as “dangerous” and subject to restricted distribution in strictly determined places.

The concerns for a secular nature of the State or national security and public order may not be followed by disproportionate interference of the State in the exercise of the right to freedom of
conscience and religion, restriction of the rights of believers, infringement of the right to freedom of expression.

These restrictions are obviously inconsistent with the principle of legal certainty and predictability, and are not necessary in democratic society, and are disproportionate to a purported threat.

Second, the distribution of religious literature only after obtaining a positive opinion of religious expertise is nothing else but the introduction of censorship that is prohibited by the current Constitution of the Republic of Kazakhstan. Pursuant to section 1 of Article 20 of the 1995 Constitution of RoK\(^{107}\); “Freedom of speech and creativity shall be guaranteed. Censorship shall be prohibited”.

Missionary activity

The Law of RoK on Religious Activity and Religious Associations\(^{108}\) practically equals the propaganda of a religious doctrine (dissemination of religious convictions) and missionary activity\(^{109}\) stating that the missionary activity is the propaganda of a religious doctrine in the name of religious associations registered in the Republic of Kazakhstan.

Generally, missionary activity (derived from the Latin word “missio” — mission, mandate), according to general conception, is the form of activity of religious organizations aimed at conversion of unbelievers or representatives of other religions. The document titled “Missionary Activity and Human Rights” of 2009 \(^{110}\) specifies that by the term “missionary activity” this document shall basically mean the activity concerning the communication of a religion or belief system by way of verbal messages or various similar acts inspiring the others to adopt this religion or belief system”.

Taking into account that there is obligatory registration of religious associations in the Republic of Kazakhstan and that missionary activity may be carried only by registered public associations, a wide range of questions with regard to such legal regulation arise.

Considering that missionary activity is the activity that relates to the propaganda of a religious doctrine and that may be carried out only by registered public associations, where would 50 persons required for registration of a local religious association, not to speak of 500 persons required for registration of a regional religious association or 5,000 persons required for registration of a republican religious association, come from? For voluntary formation of a religious association, the sufficient number of persons sharing these religious views is required for which it is necessary to propagate this religious doctrine, which, in its turn, is impossible without registration under current legislation of the Republic of Kazakhstan.


\(^{109}\) Ibid

\(^{110}\) See the Missionary Activity and Human Rights: Recommended Basic Rules for Missionary Activity (Framework for Development of Certain Codes of Conduct). The document is prepared by the project group for missionary activity and human rights. Oslo Coalition on Freedom of Religion or Belief, Oslo, November 2009 // URL: https://www.jus.uio.no/smr/ english/about/.../groundrules_russian.pdf.
Why is the ordinary religious activity of a religious association, which means the official recognition of this religion in the territory of this country, considered as missionary and the clerical order as missionaries, which requires additional registration?

Although it is a quite controversial question but we believe that, for the purpose of registration, it would be necessary to separate the religious activity relating to propaganda of a religious doctrine or religion, which is already present in the territory of this country, from the missionary activity as religious activity relating to propaganda of a new religious doctrine or new religion.

Considering the protection of the right to freedom of expression and distribution of information, including religious convictions, it does not certainly mean the need to set out any special registration requirements for propagators of new religious convictions (missionaries), including foreigners.

The Guidelines for Review of Legislation Pertaining to Religion or Belief\textsuperscript{111} states that "states properly have authority to impose regulations concerning entry into their country by foreigners. This typically involves granting visas of differing kinds. Countries may have legitimate reasons for excluding particular individuals from their borders. If individuals from particular religious belief backgrounds fall within neutral criteria (such as by constituting security risks or likely criminal behaviour), they legitimately may be excluded. However, if a State creates purely religion-based categories for exclusion, this may be inconsistent with the required religious neutrality of the State. Moreover, since such restrictions may make it difficult for a particular belief community to staff its organization as it sees appropriate, such restrictions may in fact operate as an intervention in internal religious affairs...

If legislation operates to constrain missionary activity, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved."

2. Registration of persons engaged in missionary activity shall be conducted by local executive bodies of oblasts, cities of national status, the capital city within the term not exceeding thirty calendar days from the day of submitting the documents. Period of registration shall be suspended during religious expertise to obtain conclusion regarding materials submitted by a missionary.
3. Missionaries in the territory of the Republic of Kazakhstan shall be obliged to pass annual re-registration with local executive bodies of oblasts, cities of national status, the capital.
4. For registration missionaries shall present to the local executive authority the following documents and materials:
   1) a copy of passport or identity card;
   2) an application with indication of the territory and the term of missionary activity;
   3) a document issued by the religious association for the right of carrying out of missionary activity on behalf of the religious association;”

4) a certificate of the State registration (re-registration) of legal entities and a copy of the charter of the religious association, which the missionary represents;
5) religious literature, other informational materials of religious contents, items of religious use dedicated to missionary activity.

For the purpose of registration as missionary, foreigners and stateless persons in the Republic of Kazakhstan shall additionally submit to local executive bodies the following documents:
1) a legalised or apostilled document certifying that the religious association, which the missionary represents, is officially registered under the legislation of a foreign state;
2) an invitation of the religious association registered in the Republic of Kazakhstan.

The documents issued by foreign states shall be submitted with their translation into the Kazakh and Russian languages; the accuracy of translation and authenticity of the signature of the translator, who has completed the translation, shall be notarized in the Republic of Kazakhstan.

5. The registration of citizens of the Republic of Kazakhstan, foreigners and stateless persons, who have submitted documents for registration as missionary, shall be refused on the basis of a negative opinion of religious expertise and also if their missionary activity constitutes a threat to constitutional system, public order, human rights and freedoms, public health and morality.

6. The use by missionaries of religious informational materials and religious items shall be allowed after obtaining a positive opinion of religious expertise”.

Proceeding from the list of requirements and restrictions, we actually deal with legal regulation similar to the “licensing” of a certain type of activity related to dissemination of religious convictions.

Moreover, in addition to the grounds for refusal of registration as missionary due to legitimate purposes (threat to the constitutional system, public order, human rights and freedoms, public health and morality), a negative opinion of religious expertise is yet another ground.

It violates a wide range of the international commitments of the Republic of Kazakhstan both in the area of the securing and protection of the right to freedom of conscience and religion (confession) and the protection of the right to freedom of expression, speech and distribution of information.

The prosecution for missionary activity without registration is inconsistent with the international commitments of the Republic of Kazakhstan, in particular, the OSCE commitments, according to which a free movement and contacts of citizens and also a free flow of information and ideas are of a paramount importance for preservation and development of free societies and prosperous cultures.

Moreover, missionary activity is directly specified in the Rules for Issuing Visas of the Republic of Kazakhstan.112

Pursuant to subsection 12) of section 2 of the Rules “missionary activity is the activity carried out by foreigners in the name of religious associations registered in the Republic of Kazakhstan, aimed at propaganda of a religious doctrine in the territory of the Republic of Kazakhstan.”

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112 See the Joint Order of the acting Minister of Foreign Affairs of the Republic of Kazakhstan, No.08-1-1-1/71, dated 5 March 2013, and the Minister of Internal Affairs of the Republic of Kazakhstan, No.175, dated 7 March 2013 “On Approval of the Rules for Issuing Visas of the Republic of Kazakhstan and also Extending and Reducing their Periods of Validity”. Registered with the Ministry of Justice of the Republic of Kazakhstan on 10 April 2013 under No. 8407.
The specific visa obtained by a person carrying out the “missionary activity” is called “missionary visa”.

Pursuant to paragraph 5 “A missionary visa” of the Rules:
“37. Persons going to the Republic of Kazakhstan for missionary purpose shall be issued visas of the “E1”, “E2” and “E3” categories. A visa of the “E3” category shall be issued upon availability of a visa support and documents confirming the relationship with persons applying for a visa of the “E2” category, with provision of a copy of the issued visa of the “E2” category. The validity period of this category visa must not exceed the validity period of the visa of key family member who holds a visa of the “E2” category.

38. Visas of the “E1”, “E2” and “E3” categories shall be issued upon availability of a visa support executed on the basis of invitation agreed with the authorized body carrying out the state regulation in the area of religious activity.

39. Visas of the “E1”, “E2” and “E3” categories shall be issued only in the foreign establishment of RoK located in the country of citizenship or permanent residence of a person obtaining the visa and, in case of its absence, in the foreign establishment of RoK accredited concurrently”.

Pursuant to section 119 of the Rules “The Ministry of Internal Affairs of RoK shall issue visas of the categories: 1) “E1”, “E2” and “E3” – on the basis of written request of the religious association registered in the territory of the Republic of Kazakhstan, agreed with the authorized body carrying out the state regulation in the area of religious activity. The validity of a visa shall be extended for a term of up to 180 days; ...”.

Foreign citizens carrying out religious activity and seemingly, first of all, missionaries who are not registered as missionaries are intentionally mentioned in the Regulatory Resolution of the Supreme Court of RoK on Expulsion of Foreign Citizens.113

Generally, this document is remarkable in that, besides the “traditional” violations of law by foreign citizens (i.e. provision of false information upon obtaining of documents, violation of the rules for crossing the border, violation of the rules for residence, restrictions on the use of labour force, etc.) resulting in their expulsion from Kazakhstan, the Kazakhstan legislation also contains a number of “political” grounds for the expulsion, which are specially determined in legislation:
“- the carrying out by foreigners, stateless persons, foreign legal entities and international organizations of the activity impeding and/or promoting the nomination and election of candidates, political parties that have put forward a party list, achievement of particular result in elections (Article 102-3)114;
- violation of legislation on public associations (Article 374)115;
- violation of legislation concerning the religious activity and religious associations (Article 375)116...”.


115 Ibid.

116 Ibid.
Upbringing of children and education

Pursuant to section 8 of Article 1 of the Law of RoK on Religious Activity and Religious Associations117 “the State: 1) shall not interfere in the determination by a citizen of the Republic of Kazakhstan, a foreigner or a stateless person of his or her attitude towards religion or religious belonging, or upbringing of children by their parents or other legal representatives according to their beliefs, except in cases where such upbringing jeopardizes the child’s life and health, prejudices his or her rights and limits his or her liability and also where it is directed against the constitutional system, sovereignty and territorial integrity of the Republic of Kazakhstan ...”

In addition, pursuant to section 16 of Article 3 “the head of a religious association shall be obliged to take measures to prevent the involvement and/or participation of minors in the activity of the religious association in case one of the minor’s parents or other legal representatives is against it”.

The analysis of Kazakhstan legislation concerning the right to bring up and educate children leaves a mixed impression.

For example, the Law of RoK on Education118 provides for “spiritual (religious) educational establishments – the educational institutions implementing professional educational programmes for training of the clerical order” (subsection 52) of Article 1), the enrolment in which, pursuant to section 10 of Article 26 “… shall be from among the persons having secondary education, in the manner established by the founder”.

Section 3 of Article 28 of the Law states that “the propaganda of race, ethnic, religious, social intolerance and exclusivity, dissemination of military or other ideas contradicting the generally accepted principles of international law and humanism in educational establishments shall be prohibited”.

Section 6 of Article 51 of the Law determines that “teaching employees shall be prohibited to use educational process for the purposes of political agitation, religious propaganda or incitement of pupils to acts inconsistent with the Constitution of the Republic of Kazakhstan and legislation of the Republic of Kazakhstan”.

Once again, the extremely vague definitions of the terms “religious propaganda” and “political agitation”, which have no strict legal interpretation, are used in this Law like in various other laws and regulations concerning the exercise of the right to freedom of conscience and religion. The uncertainty of these definitions, their inconsistency with the principle of legal certainty and predictability may result in holding a teacher liable for answering the questions of their pupils about religion or political process.


The secular nature of the State and the belief neutrality do not mean restrictions of the freedom of expression, statement of various political and religious views, especially considering the ideological variety stipulated in the Constitution of the Republic of Kazakhstan.

In addition, the equal mark between the “religious propaganda”, “political agitation” and “acts inconsistent with the Constitution” used in this wording seems quite questionable. The religious propaganda or, rather, the dissemination of religious convictions, and the political agitation or, rather, the dissemination of political views, do not contradict the Constitution.

Another issue is that the teacher must not be identified by the pupils with a particular political party or a particular religious community and must avoid agitation, either direct or indirect, for this political party or religious association.

However, it is impossible to avoid political or religious topics in communication between the teacher and the pupils.

The provision concerning the protection of the rights of children in the area of religion is contained in the Regulation for Foster Care\textsuperscript{119}, pursuant to its section 12 “in case of the placement of a child (children) in a foster care, the authority shall act in the best interests of the child taking into account his or her ethnic origin, belonging to a particular religion and culture, native language, capabilities to ensure continuity in upbringing and education”.

Meanwhile, pursuant to section 4 of Schedule 1 to the Rules for Registering the Persons Wishing to Adopt Children\textsuperscript{120}, the Housing Inspection Report in relation to Citizens Wishing to be Prospective Adopters should specify “intra-family mutual relations (characteristics of married life in the past and atmosphere in the family at present, personal qualities of adopters, interests, spare time occupation, worldview, attitude towards religion, upbringing, experience of communication with children, attitude towards adoption by close relatives)”.

As has been already noted, the clarification of attitude towards religion contradicts the following requirement of section 1 of Article 19 of the Constitution of RoK: “everyone shall be entitled to determine and indicate or not to indicate his or her ethnicity, party membership and religious belonging”.

This provision must be removed from this document.

Another problem of the legislation of the Republic of Kazakhstan in the area of freedom of conscience and religion (confession) is that it does not contain any guarantees of the exercise of this right in practice for the children themselves and not only their parents or foster parents.


Meanwhile, the Recommendations on the Analysis of Legislation concerning Religion or Confession\textsuperscript{121} specify that “the states shall be obliged to respect the freedom of parents and, where relevant, tutors-at-law in order to ensure the religious and moral upbringing (education) of their children according to their own convictions. The right of each child to the freedom of religion or confession must be protected in accordance with evolutionary capabilities of the child. This very protection is clearly mentioned in Article 5 of the Declaration on Liquidation of All Forms of Intolerance and Discrimination on the Basis of Religion and Convictions adopted by the General Assembly of the UN (1981) and Article 14 of the Convention on the Rights of the Child.

It is necessary ... to guarantee the achievement of the relevant balance between the autonomy of the child and the respect of the parent rights and the interests of the child. Problematic in this regard are the provisions of law that cannot attach an appropriate weight to the decisions of “adult” minors and also provisions that contradict the rights of the parents to manage the process of upbringing of children. There is no agreed international standard determining the age from which children may independently decide on their religion or confession. In case the law determines such age, it is necessary to take into account other laws of this state establishing the age of majority (such as laws on marriage, voting and obligatory school attendance)”.

\textbf{Liability}

The Law of RoK on Religious Activity and Religious Associations\textsuperscript{122} provides for “the liability for violation of the legislation of the Republic of Kazakhstan concerning religious activity and religious associations,” … “established by the laws of the Republic of Kazakhstan” (Article 23).

The administrative and criminal legislation of the Republic of Kazakhstan contains a wide range of grounds for holding an individual or religious organization liable for violation of the legislation concerning religious activity and religious associations.

Moreover, as noted in the comments of ODIHR/OSCE to the draft laws of Kazakhstan concerning national security, counteraction of extremist activity, etc., the wordings used in the laws are sometimes so obscure that any behaviour in the area of religious activity may be made by authorities a criminal offence.

Thus, the Law of the Republic of Kazakhstan on Counteraction of Extremism\textsuperscript{123} uses the definition of “religious extremism” that is the incitement of religious enmity or hatred including associated with violence or calls for violence and also use of any religious practice creating a threat to security, life, health, morality or civil rights and freedoms…” (section 5 of Article 1).


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It is rather difficult to give legal substance to the definition of the term “religious extremism”. Its evaluation is quite subjective and often constitutes illegal intervention in the freedom of expression. Spirited discussions on social-and-political or theological topics may lead to the straight-from-the-shoulder and emotional “political” language. And it is very important here to keep a fine line between the freedom of speech and expression and the prosecution for abuse of this freedom. That is why the wordings used in administrative and criminal laws must be accurate, clear and explicit to the maximum possible extent.

The concepts of “hate speech” and “hate crimes” are well developed in the international law and practice, which allow strict separation of the freedom of expression from the abuse of it.

However, Kazakhstan legislation uses the terms “extremism”, including “religious extremism”, “incitement of enmity or hatred” and also “religious practice creating a threat….”, according to the wording used in the Article.

It would seem that this provision of law is obviously contradictory to the principle of legal certainty and predictability.

It is worthy of note that the Shanghai Convention concerning the Fight against Terrorism, Separatism and Extremism ratified by the Republic of Kazakhstan contains the substantially more accurate and clearly defined term of “extremism”, which is any action aimed at forcible seizure of power or forcible retention of power and also forcible change of the constitutional system of the state, as well as violent encroachment against public security, including the formation for the above purposes of illegal armed groups or participation in them, and criminally punishable in accordance with national legislation of the Parties” (subsection 3) of section 1 of Article 1).

It makes sense to at least replace the obscure definition of “extremism”, including “religious extremism”, contained in Kazakhstan legislation with the definition used in the Shanghai Convention.

Also, it should be noted that the term “religious hatred and enmity” being more relevant to the term accepted in the international law is used in some Articles of the 2001 Administrative Code of RoK, the 2014 Administrative Code of RoK, the 1997 Criminal Code of RoK and the 2014 Criminal Code of RoK, while in other Articles the term “religious discord and enmity” or “religious discord” is used, which causes a certain confusion in the law enforcement practice.

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The Law further establishes that: “the state authority carrying out the state regulation in the area of religious activity shall conduct the study and analysis of the activity of religious associations formed in the territory of the Republic of Kazakhstan and missionaries, and hold outreach activities on the matters falling within its competence, and consider the matters relating to violations of the legislation of the Republic of Kazakhstan concerning the religious activity and religious associations, and shall put forward proposals to ban the activity of religious associations violating the legislation of the Republic of Kazakhstan concerning the counteraction of extremism” (subsection 1 of Article 6).

In other words, there actually operates a supervisory and control body in the area of religious activity that has wide powers and that substantiates its decisions and acts on the basis of legally obscure and subjective wordings.

The principle of the “presumption of guilt” of religious associations and missionaries is, in fact, reflected in these provisions of law since the activity of each religious association is subject to “study and analysis” for revealing “extremism”. This approach contradicts the international law and practice, and stigmatises religious groups.

If this idea is carried to the point of absurdity, then the activity of all citizens of the Republic of Kazakhstan, foreign citizens, stateless persons and refugees would need to be subject to “study and analysis” since there potentially may be the extremists among them, as it follows from the broad interpretation of this term.

It is obvious that these methods are both meaningless and ineffective, not to mention that they are also costly for the state budget.

The activity of law enforcement agencies and national security agencies relating to the fight against terrorism and extremism and, generally, against crimes, nowadays, is not associated with large-scale control of all citizens and their associations. These methods are mainly used in totalitarian “police” states often not yielding the desired outcome.

The establishment of special civil bodies for carrying out control over the activity of religious associations, the media and NGOs is the repetition of practice of totalitarian states, which is ineffective and contradictory to the international standards concerning the respect of human rights and freedoms in democratic society.

The Law on Counteraction of Extremism also contains provisions on recognising an organisation as extremist organisation.

Pursuant to Article 8 of this Law “...an organisation shall be recognised extremist if at least one of its structural subdivisions (branches or representative offices) carries out extremist activity with the knowledge of one of the management bodies of this organisation.”

Considering that the vague wording of the term “extremism”, including “religious extremism”, that religious expertises are subjective, the acknowledgement of one religious associations or another as extremist organizations may be quite arbitrarily and contradictory to the principle of legal certainty and predictability.
The idea of counteraction against “religious extremism” is also contained in the Concepts of the Informational Security of RoK up to 2016. Similar provisions and norms are also contained in the Law on National Security.

The terms like “public security” or “political security”, which are quite vague in a legal standpoint, are used in this law as well.

In particular, section 2 of Article 21 of the Law states that: “calls of citizens, including representatives of political parties and other public associations, for: ... 4) using the existing confessional differences and different religious views for political, extremist and terroristic purposes, shall be acknowledged as undermining the national security and entailing the liability established by law.”

The very wording “using of confessional differences for political ... purposes” raises questions as regards the wrongfulness of such behaviour.

In principle as referred to in the Guidelines for Review of Legislation Pertaining to Religion or Belief, “while State laws pertaining to national security and terrorism based on religion may well be appropriate, it is important that such laws not be used to target religious organisations that do not engage in objectively criminal or violent acts. The laws against terrorism should not be used as a pretext to limit legitimate religious activity.”

The administrative liability for the violation of legislation on religious activity and religious associations was established in a number of articles of the old administrative legislation and in the new Administrative Code adopted in July 2014 and brought into force on 1 January 2015.

Below is a comparative table of such articles.

| COMPARATIVE TABLE OF THE ARTICLES OF THE OLD AND NEW (ADOPTED IN JULY 2014 AND BROUGHT INTO FORCE ON 1 JANUARY 2015) CODES OF THE REPUBLIC OF KAZAKHSTAN ON ADMINISTRATIVE OFFENCES WITH RESPECT TO THE RIGHT OF FREEDOM OF CONSCIENCE AND RELIGION (WORSHIP) |
|-------------------------------------------------|-------------------------------------------------|


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<tr>
<td>Persons who committed administrative offences shall be equal before the law and they shall be subject to administrative liability, regardless of their origin, social, official and property status, race, nationality, beliefs, gender, language, religion and occupation, place of residence, membership of public associations as well as any other circumstances.</td>
<td>In the course of proceedings on administrative offenses all persons shall be equal before the law and courts. No one shall be subject to any discrimination on the grounds of origin, social, official and property status, gender, race, nationality, language, religion, beliefs, place of residence or any other circumstances.</td>
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<tr>
<th>Article 62. The Circumstances Which Aggravate Liability for Administrative Offences</th>
<th>Article 57. The Circumstances Which Aggravate Liability for Administrative Offences</th>
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<tr>
<td>The following shall be recognised as the circumstances which aggravate liability for administrative offences: … 5) commission of an administrative offence on grounds of national, racial and religious hatred or enmity, from vengeance for legitimate acts of other persons, as well as for the purpose of hiding another offence or facilitate its commission; . . .</td>
<td>The following shall be recognised as the circumstances which aggravate liability for administrative offences: … 5) commission of an administrative offence on ground of national, racial and religious hatred or enmity, from vengeance for legitimate acts of other persons, as well as for the purpose of hiding another offence or facilitate its commission; . . .</td>
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| Article 122. Violation of the Conditions of Election Campaigning | |
|-----------------------------------------------------------------||
| 1. Election campaigning by state agencies, local government bodies and their officials in the course of performing of their duties, members of the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan, employees of the agencies of national security, law enforcement agency, judges, members of election commissions, religious associations and distribution by the said persons of any election campaigning materials is punishable by a fine of twenty times the monthly calculation index on individuals, and of thirty times the monthly calculation index on officials. | |

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<tr>
<th>Article 343. Permitting the Publication of Materials Aimed at the Incitement of National Hatred in the Mass Media</th>
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<tr>
<td>Permitting the publication in press and any other mass media of information and materials aimed at the incitement of racial, national, social, and religious hatred which propagate class exclusiveness, war, and containing calls for the violent change of the constitutional order and undermining the territorial integrity of the Republic is punishable by a fine upon officials of mass media of one hundred to four hundred times the monthly calculation index or an administrative arrest for a term of up to fifteen days with the confiscation of printed products.</td>
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<tr>
<th>Article 344. Manufacture, Storage, Import, Transportation, Distribution in the Territory of the Republic of Kazakhstan of Products of Mass Media, As Well As Other Products</th>
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<tr>
<td>1. Manufacture, storage, import, transportation in the territory of the Republic of Kazakhstan of products of mass media containing information and materials aimed at the propaganda or incitement of the forcible change of the constitutional system, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, inciting social, racial, national, religious, class and tribal enmity, cult of cruelty, violence and pornography is punishable by a fine upon individuals of up to twenty times the monthly calculation index, upon officials, individual entrepreneurs of up to twenty-five times the monthly calculation index, upon legal entities, which are small or medium-sized businesses or non-profit organisations of fifty to one hundred times the monthly calculation index, upon legal entities, which are large-sized businesses, of one hundred to two hundred times the monthly calculation index, attendant by the confiscation of mass media products.</td>
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<tr>
<th>Article 453. Manufacture, Storage, Import, Carriage, Distribution in the Territory of the Republic of Kazakhstan of Products of Mass Media, As Well As Other Products</th>
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<tr>
<td>1. Manufacture, storage, import, carriage in the territory of the Republic of Kazakhstan of mass media products containing information and materials aimed at the propaganda or incitement of the forcible change of the constitutional order, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, inciting social, racial, national, religious, class and tribal enmity, cult of cruelty, violence and pornography are punishable by a fine upon individuals of twenty times the monthly calculation index, upon officials of twenty-five times the monthly calculation index, upon legal entities, which are small-sized businesses or non-profit organisations of fifty times the monthly calculation index, upon legal entities, which are medium-sized businesses of one hundred times the monthly calculation index, and upon legal entities, which are large-sized businesses, of two hundred times the monthly calculation index, attendant by the confiscation of mass media products.</td>
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2. Distribution in the territory of the Republic of Kazakhstan of mass media products containing information and materials aimed at the propaganda or incitement of the forcible change of the constitutional system, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, inciting social, racial, national, religious, class and tribal enmity, cult of cruelty, violence and pornography are punishable by a fine upon individuals of twenty times the monthly calculation index, upon officials, individual entrepreneurs of up to twenty-five times the monthly calculation index, upon legal entities, which are small-sized businesses or non-profit organisations of fifty times the monthly calculation index, upon legal entities, which are medium-sized businesses of one hundred times the monthly calculation index, and upon legal entities, which are large-sized businesses, of two hundred times the monthly calculation index, attendant by the confiscation of mass media products.
the Republic of Kazakhstan of other products
transportation

4. The acts referred to in sections one and two of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, is punishable by a fine upon individuals in an amount of one hundred times the monthly calculation index, upon legal entities, which are medium-sized businesses in an amount of two hundred times the monthly calculation index, and upon legal entities, which are large-sized businesses, in an amount of one thousand five hundred times the monthly calculation index, attendant with the confiscation of mass media products, the deprivation of the licence to engage in the activities associated with organising television programmes and/or radio broadcasting, and with the prohibition of the activities of the legal entity.

4. Manufacture, storage, import, transportation, distribution in the territory of the Republic of Kazakhstan of other products not related to mass media, containing information and materials aimed at the propaganda or incitement of a forcible change of the constitutional system, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, inciting social, racial, national, religious, class and tribal enmity, propaganda and apologizing for extremism or terrorism, as well as disclosing the techniques and tactics of anti-terrorist operations in the period of their execution, provided that such acts do not contain elements of a criminal offence, are punishable by a fine upon individuals of twenty times the monthly calculation index, upon officials of twenty-five times the monthly calculation index, upon legal entities, which are large-sized businesses, in an amount from one hundred to two hundred times the monthly calculation index, with the confiscation of mass media products.
not related to mass media, containing information and materials aimed at the propaganda or incitement of the forcible change of the constitutional system, violation of the integrity of the Republic of Kazakhstan, undermining the state security, war, inciting social, racial, national, religious, class and tribal enmity, cult of cruelty, violence and pornography, provided that such acts do not contain elements of a criminal offence, are punishable by a fine upon individuals of fifty to two hundred times the monthly calculation index, upon officials of one hundred to two hundred times the monthly calculation index or an administrative arrest for a term of up to fifteen days, upon legal entities, which are large or medium-sized businesses or non-profit organisations of two hundred to three hundred times the monthly calculation index, upon legal entities, which are large-sized businesses, of one thousand to one thousand five hundred times the monthly calculation index, with the confiscation of products. 5. The acts referred to in sections three and four of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, are punishable by a fine upon individuals in an amount of two hundred and fifty times the monthly calculation index, upon officials in an amount of one thousand five hundred times the monthly calculation index, upon officials in an amount of one hundred to one thousand times the monthly calculation index, upon legal entities, which are small-sized businesses or non-profit organisations in an amount of two hundred times the monthly calculation index, upon legal entities, which are medium-sized businesses in an amount of three hundred times the monthly calculation index, and upon legal entities, which are large-sized businesses, in an amount of one thousand five hundred times the monthly calculation index, with the confiscation of products. 5. The acts referred to in sections three and four of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, are punishable by a fine upon individuals in an amount of two hundred and fifty times the monthly calculation index, upon officials in an amount of three hundred times the monthly calculation index, upon legal entities, which are small-sized businesses or non-profit organisations in an amount of three hundred and fifty times the monthly calculation index, upon legal entities, which are medium-sized businesses in an amount of four hundred times the monthly calculation index, and upon legal entities, which are large-sized businesses, in an amount of two thousand times the monthly calculation index, attendant by the deprivation of a licence to engage in the activities of organising television and/or radio broadcasting and prohibition of activities of a legal entity.
### Article 363. Acts Provoking Violation of Law and Order During the State of Emergency
The acts which provoke the violation of law and order or incite national and religious enmity, the active impediment to the exercise by individuals and officials of their legitimate rights and obligations, and equally the malicious disobedience to a legitimate orders or demands of the bodies of internal affairs, national security, military servicemen, government officials or officers of public bodies, who perform their service duties or public duty associated with the protection of public order, or the acts that violate public order and peace of individuals, as well as the violation of legislation concerning administrative supervision committed in localities where the state of emergency is declared are punishable by a fine of up to ten times the monthly calculation index or administrative arrest for a term up to thirty days.

### Article 478. Acts Provoking Violation of Law and Order During the State of Emergency
The acts which provoke the violation of law and order or incite national and religious enmity, the active impediment to the exercise by individuals and officials of their legitimate rights and obligations, and equally the malicious disobedience to a legitimate ordinance or demand of the bodies of internal affairs, national security, military servicemen, government officials or officers of public bodies, who perform their service duties or public duty associated with the protection of public order, or the acts that violate public order and peace of individuals, as well as the violation of legislation concerning administrative supervision committed in localities where the state of emergency is declared are punishable by a fine of forty times the times the monthly calculation index or administrative arrest for a term up to thirty days.

### Article 374-1. Management, Participation in Activities of Public and Religious Associations, which are not Registered in accordance With the Procedure Established By the Legislation of the Republic of Kazakhstan, As Well As Financing of Their Activities
1. Management of activities of public, religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as which activities are suspended or prohibited is punishable by a fine of one hundred times the monthly calculation index.
2. Participation in the activity of public and religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as which activities are suspended or prohibited is punishable by a fine of fifty times the monthly calculation index.
3. Financing of the activity of public and

### Article 489. Violation of the Legislation of the Republic of Kazakhstan on Public Associations, As Well As Management, Participation in the Activities of Public and Religious Associations, Which are not Registered in accordance With the Procedure Established by the Legislation of the Republic of Kazakhstan, As Well As Financing of Their Activities
1. Heads, members of public associations or a public association guilty of committing acts that extend beyond the goals and objectives determined by the charters of such public associations are liable to a warning or a fine upon legal entities in an amount of one hundred times the monthly calculation index.
2. Heads, members of public associations or a public association guilty of committing acts violating the legislation of the Republic of Kazakhstan are liable to a warning or a fine upon legal entities in an amount of one hundred times the monthly calculation index, with suspension of a public association’s activity for a term of three to six months.
3. The acts referred to in section one of this Article,
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<tr>
<th>Religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as which activities are suspended or prohibited is punishable by a fine of two hundred times the monthly calculation index.</th>
<th>If committed repeatedly during a year after the imposition of an administrative penalty, are punishable by a fine upon legal entities in an amount of one hundred and fifty times the monthly calculation index, with suspension of a public association’s activity for a term from three to six months.</th>
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<tr>
<td>4. The acts referred to in section 2 of this Article, if committed repeatedly during a year after the imposition of an administrative penalty, and failure to cure the violations, are punishable by a fine upon legal entities in an amount of two hundred times the monthly calculation index, with prohibition of a public association’s activity…</td>
<td>9. Management of activities of public, religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as whose activities are suspended or prohibited is punishable by a fine in an amount of one hundred times the monthly calculation index.</td>
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<td>10. Participation in the activity of public and religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as whose activities are suspended or prohibited is punishable by a fine of fifty times the monthly calculation index.</td>
<td>11. Financing of the activity of public and religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as whose activities are suspended or prohibited is punishable by a fine of two hundred times the monthly calculation index.</td>
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### Article 375. Violation of the Legislation on Religious Activity and Religious Associations

1. Violation of the requirements established by the legislation of the Republic Kazakhstan to: performance of religious rites, ceremonies, and/or assemblies; charitable activities; import, production, publication, and/or distribution of religious literature and other materials of religious content (use), religious items; construction of religious buildings (places of worship), conversion (changing functionality) of buildings (places) to religious buildings (places of worship) is punishable by a fine upon individuals in an amount of fifty times the monthly calculation index, upon officials and leaders of religious associations in an amount of one hundred times the monthly calculation index, upon legal entities in an amount of two hundred times the monthly calculation index, with suspension of their activity for a term of three months.

2. Obstruction of lawful religious activity, as well as violation of civil rights of individuals based on religion or insult their religious feelings or desecration esteemed followers of particular religion items, buildings or places, provided that all the above acts do not contain elements of a criminal offence, are punishable by a fine upon individuals in an amount of fifty times the monthly calculation index, upon officials in an amount of one hundred times the monthly calculation index, upon legal entities in an amount of two hundred times the monthly calculation index.

3. Carrying out the missionary activity by the citizens of the Republic of Kazakhstan, foreigners and stateless persons without registration (re-registration), as well as the use by the missionaries of religious literature, informational materials of religious content and religious items without a positive conclusion of religious expertises is punishable by a fine upon the citizens of the Republic of Kazakhstan in an amount of one

### Article 490. Violation of the Legislation of the Republic of Kazakhstan on Religious activity and Religious Associations

1. Violation of the requirements established by the legislation of the Republic Kazakhstan to:
   1) performance of religious rites, ceremonies, and/or assemblies;
   2) charitable activities;
   3) import, production, publication, and/or distribution of religious literature and other materials of religious content, religious items;
   4) construction of religious buildings (places of worship), conversion (changing functionality) of buildings (places) to religious buildings (places of worship) is punishable by a fine upon individuals in an amount of fifty times the monthly calculation index, upon legal entities in an amount of two hundred times the monthly calculation index, with suspension of their activity for a term of three months.

2. Obstruction of lawful religious activity, as well as violation of the civil rights of individuals based on religion or insult their religious feelings or desecration esteemed followers of a particular religion items, buildings or places, provided that all the above acts do not contain elements of a criminal offence, are punishable by a fine upon individuals in an amount of fifty times the monthly calculation index, upon officials in an amount of one hundred times the monthly calculation index, upon legal entities in an amount of two hundred times the monthly calculation index.

3. Carrying out the missionary activity without registration (re-registration), as well as the use by the missionaries of religious literature, informational materials of religious content and religious items without a positive conclusion of religious expertises, spreading of religious doctrine of religious associations which are not registered in the Republic of Kazakhstan is punishable by a fine upon the citizens of the Republic of Kazakhstan in an amount of one hundred times the monthly calculation index, and upon foreigners and stateless persons in an amount of one hundred times the monthly calculation index, with deportation from the Republic of Kazakhstan.
hundred times the monthly calculation index, upon foreigners and stateless persons in an amount of one hundred times the monthly calculation index, with deportation from the Republic of Kazakhstan.

4. Carrying out activity which is not specified in the charter (regulations) of the religious association is punishable by a fine upon officials and leaders of religious associations in an amount of two hundred times the monthly calculation index, upon legal entities in an amount of three hundred times the monthly calculation index, with suspension of activity for a term of three months.

5. Engaging of religious associations in politics, and participation in activity of political parties and (or) providing them with financial support, intervention in the activity of the government bodies or appropriation of functions of the state bodies or their officials by members of religious associations, is punishable by a fine upon individuals in an amount of one hundred times the monthly calculation index, upon leaders of religious associations in an amount of two hundred times the monthly calculation index, upon legal entities in an amount of three hundred times the monthly calculation index, with suspension of activity for a term of three months.

6. Creation of institutional structures of religious associations in the state bodies, organizations and institutions, including health care and educational institutions is punishable by a fine upon officials in an amount of one hundred times the monthly calculation index, upon legal entities in an amount of two hundred times the monthly calculation index.

7. Managing of a religious association by a person appointed by a foreign religious centre without agreement with the authorised body, as well as the failure by a leader of a religious association to take measures to prevent involvement and/or participation of minors in the activity of a religious association, where one of the parents of the minor or his/her other legal representatives object, is punishable by a penalty in an amount of fifty times the monthly calculation index, with deportation from the Republic of Kazakhstan.

8. The acts (omissions to act) referred to in sections one, two, three, four, five and seven of this Article, if committed repeatedly during a year after the imposition of an administrative penalty are punishable by a fine upon individuals in an amount of two hundred times the monthly calculation index, upon officials in an amount of three hundred times the monthly calculation index, upon legal entities in an amount of five hundred times the monthly calculation index, with the prohibition on their activity.
punishable by a fine upon the citizens of the
Republic of Kazakhstan in an amount of fifty
times the monthly calculation index, upon
foreigners and stateless persons in an amount
of fifty times the monthly calculation index,
with deportation from the Republic of
Kazakhstan.
8. Carrying out of any activity prohibited by
the legislative acts of the Republic of
Kazakhstan by a religious association, as well
as failure to remedy violations on the basis of
which the activities of a religious association
have been suspended, within the prescribed
time limit is punishable by a fine upon
officials and leaders of religious associations
in an amount of three hundred times the
monthly calculation index, upon legal entities
in an amount of five hundred times the
monthly calculation index, with the
prohibition of their activities.
9. The acts (omission to act) referred to in
sections one, two, three, four, five and seven
of this Article, if committed repeatedly during
a year after the imposition of an
administrative penalty, are punishable by a
fine upon individuals in an amount of two
hundred times the monthly calculation index,
upon leaders of religious associations in an
amount of three hundred times the monthly
calculation index, upon legal entities in an
amount of five hundred times the monthly
calculation index, with the prohibition of their
activities.

Article 636. Officials Who Have the Right
to Draw Up Protocols of Administrative
Offences
1. The following officials shall have the right
to draw up protocols of administrative
offences in the administrative proceedings
considered by the courts:
1) duly authorised officials: …
of the authorised state body for religious
activity (Article 375 (sections two, six and
nine (where such offences are committed by
officials of the central state bodies); …

Article 804. Officials Who Have the Right to
Draw Up Protocols of Administrative Offences
1. The duly authorised officials shall have the right
to draw up protocols administrative offences in the
administrative proceedings considered by the
courts: …
55) of the authorised state body for religious
activity (Article 490 (sections two, six and eight
(when such offences are committed by officials of
the central state bodies); …
The analysis of the provisions of the old and new administrative legislation of RoK in relation to administrative responsibility for the violation of legislation on religious activity and religious associations shows that it has a clearly repressive character.

In addition to articles prohibiting discrimination in relation to religion (Article 11 of the old Administrative Code, Article 9 of the new Administrative Code, or determining the motive of religious hatred or enmity when committing an administrative offence as an aggravating circumstance (Article 62 of the old Administrative Code, Article 57 of the new Administrative Code) as well as establishing liability for impeding legal religious activity (section 2 of Article 375 of the old Administrative Code, section 2 of Article 490 of the new Administrative Code), the remaining articles of the administrative codes relate to administrative liability for specific administrative offences.

For example, a new Article 122 has been included in the new Administrative Code, which establishes the responsibility for election campaigning of a religious association. That is, now the campaigning is allowed for political parties, trade unions and all kinds of public associations, but prohibited for religious associations.

Despite the validity of protecting the secular nature of the State, the prohibition of creating political parties on a religion basis, prohibition for religious associations to support any political parties and candidates in elections to representative bodies is highly questionable, since the interests of believers of different confessions, as a relatively large social group, have the right to be reflected in the legislative and representative bodies of the State and in local representative bodies. Sections 1-3 of Article 374-1 of the old Administrative Code and sections 9-11 of Article 483 of the new Administrative Code include responsibility for managing or participating in the activity and financing of unregistered religious associations.

Thus, the activity of unregistered religious associations is prohibited on the pain of a punishment that does not meet international standards of securing the rights to freedom of conscience and religion (worship).

The administrative responsibility for the following activity does not conform to international standards of freedom of conscience and religion (worship) and freedom of expression, in particular, the principles of legal certainty and predictability, the principle of proportionality, necessity in a democratic society:
- violation of the requirements established by the legislation of the Republic Kazakhstan to performance of religious rites, ceremonies, and (or) assemblies; charitable activities; import, production, publication, and (or) distribution of religious literature and other materials of religious content, religious items;
- construction of religious buildings (places of worship), conversion (changing functionality) of buildings (places) to religious buildings (places of worship);
- carrying out missionary activity without registration (re-registration), as well as the use by the missionaries of religious literature, informational materials of religious content and religious items without a positive conclusion of religious expertises, spreading of religious doctrine of religious associations which are not registered in the Republic of Kazakhstan;
- carrying out activity which is not specified in the charter of the religious association;
- managing of a religious association by a person appointed by a foreign religious centre without agreement with the authorised body, as well as the failure by a leader of a religious association to take
measures to prevent involvement and/or participation of minors in the activity of a religious association, where one of the parents of the minor or his/her other legal representatives object.

All these restrictions are directly related to the invasion of the content of the right to freedom of conscience and religion and freedom of expression and namely the right to distribute their religious beliefs freely, without government interference.

These restrictions introduce censorship on religious literature.

A restriction on distribution of a religious doctrine of a religious association, which is not registered in the Republic of Kazakhstan, is devoid of any logic, as to a religious association to be registered, it is necessary to have a sufficient number of followers to register. Where would these “followers” receive information about a new religious doctrine if its distribution in the territory of Kazakhstan is prohibited prior to the registration of a religious association?

The administrative responsibility for carrying out activity which is not specified in the charter of the religious association also raises questions. An activity can be legal or illegal and, as for non-profit organisations, they operate in accordance with their mission, goals and objectives. It is difficult, and completely unnecessary to set out all activities which would help the religious association to achieve its goals and objectives in the charter. The only thing that a non-profit organisation is prohibited from doing is to generate income from its operations and allocate it among its members (participants). The types of activities carried out by religious associations which are not reflected in their charters may well be useful, including to the society.

The Civil Code of the Republic of Kazakhstan (General Part)\textsuperscript{134} establishes the following grounds for the liquidation of a legal entity: “systematically carrying out activity contradicting the statutory purposes of the legal entity; carrying out activity without an appropriate permit (licence) or activity prohibited by the legislative acts” (subsection 4 of section 2 of Article 49). This is not about activities which are not specified in the charter (non-authorised activities), but this is about activities contradicting the statutory purposes and objectives or activities without an appropriate licence or violation of applicable law. There is a logic in these provisions of the Civil Code, unlike the above-mentioned provisions of legislation on religious activity and religious associations.

Finally, the administrative responsibility for managing of a religious association by a person appointed by a foreign religious centre without agreement with the authorised body is unreasonable government interference in the affairs of a religious association and its organizational structure.

This has been indicated in the comments of the experts of ODIHR/OSCE, the decisions of the UN convention bodies and the European Court of Human Rights.

The ideas of restrictive legal regulation of the right to freedom of conscience and religion (worship), incorporated in the existing and new Administrative Codes of the Republic of Kazakhstan, have also been reflected in the criminal legislation.


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Given that the old Criminal Code of the Republic of Kazakhstan of 1997\textsuperscript{135} has been replaced with a new Criminal Code of the Republic of Kazakhstan of 2014\textsuperscript{136} since the beginning of 2015, we consider that it would be appropriate to provide a comparative analysis of these laws, so that one can evaluate the trends in the development of criminal legislation in terms of criminal prosecution for the violations of applicable law by priests and believers.

The table below shows the articles of the old and the new Criminal Codes of the Republic of Kazakhstan brought into force on 1 January 2015.

<table>
<thead>
<tr>
<th>COMPARATIVE TABLE OF THE ARTICLES OF THE OLD AND NEW (ADOPTED IN JULY 2014 AND BROUGHT INTO FORCE ON 1 JANUARY 2015) CRIMINAL CODES OF THE REPUBLIC OF KAZAKHSTAN WITH RESPECT TO THE RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION (WORSHIP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 14. Persons Who Are Subject to Criminal Liability</td>
</tr>
<tr>
<td>…</td>
</tr>
<tr>
<td>2. Persons guilty of committing crimes shall be equal before the law, regardless of their origin, social, official, and property status, gender, race, nationality, language, religion, beliefs, membership in public associations, place of residence, or any other circumstances.</td>
</tr>
<tr>
<td>Article 54. Circumstances Which Aggravate Criminal Liability and Punishment…</td>
</tr>
<tr>
<td>1. The following shall be recognised as circumstances which aggravate criminal liability and punishment:… f) the commission of a crime on grounds of national, racial, or religious hatred or enmity, out of revenge for lawful acts of other persons, as well as for the purpose to conceal any other crime, or to facilitate its commission;</td>
</tr>
<tr>
<td>…</td>
</tr>
<tr>
<td>Article 96. A Murder</td>
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<td>…</td>
</tr>
</tbody>
</table>


2. A murder: … l) for a motive of social, national, racial, or religious hatred, enmity, or revenge; ..., - is punishable by deprivation of freedom for a term from ten up to twenty years with or without confiscation of property, or by life-time deprivation of freedom with or without confiscation of property.

<table>
<thead>
<tr>
<th>Article 106. Deliberate Causation of Serious Damage to Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The deliberate causation of serious damage to health which is dangerous to a person's life, or which entailed a loss of eyesight, hearing, or a certain organ, or a loss by an organ of its functions, or which inflicted a permanent facial disfigurement, as well as causation of other damage to health which is dangerous to life, or which entailed a decline in health, combined with a considerable loss of general work capacity by not less than one third, or the complete loss of professional capacity, the guilty person being aware of that fact, or which entailed discontinuation of pregnancy, a mental disorder, causation of drug addiction or addiction to toxic chemical, …</td>
</tr>
<tr>
<td>2. … committed … h) on grounds of social, national, racial, or religious hatred or enmity; ..., - shall be punished by deprivation of freedom for a term from five to ten years.</td>
</tr>
<tr>
<td>3. The acts stipulated by sections one and two of this Article, which entailed a victim's death by negligence, or committed by a criminal group - shall be punished by deprivation of freedom for a term from eight to twelve years.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Article 107. Deliberate Causation of Damage to Health of Medium Gravity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Deliberate Causation of Damage to Health of Medium Gravity …</td>
</tr>
<tr>
<td>2. … committed … 6) on grounds of social, national, racial, or religious hatred or enmity; shall be punished by a fine in an amount of up to two thousand times the monthly calculation index, or correctional labour in the same amount, or restriction of freedom for a term of up to three years, or by deprivation of freedom for a term up to three years.</td>
</tr>
</tbody>
</table>
deprivation of freedom for a term of up to three years.

**Article 107. Excruciation**

1. The causation of physical or mental sufferings by way of systematic beating or by other violent acts, if it did not entail the consequences stipulated by Articles 103 and 104 of the present Code, …

2. … committed … f) on grounds of social, national, racial, or religious hatred or enmity, shall be punished by restriction of freedom for a term up to five years, or by deprivation of freedom for a term from three up to seven years.

**Article 110. Excruciation**

1. The causation of physical or mental sufferings by way of systematic beating or by other violent acts, provided it did not entail a serious damage to health or damage to health of medium gravity, …

2. … committed … 6) on grounds of social, national, racial, or religious hatred or enmity, shall be punished by restriction of freedom for a term of three up to seven years, or by deprivation of freedom for the same term.

**Article 141. Violation of Equality of citizens**

1. Direct or indirect restriction of the rights and freedoms of a man and a citizen based on motives of origin, social, official, or property status, sex, race, nationality, language, attitude towards religion, beliefs, place of residence, or his belonging to public associations, or based on any other circumstances shall be punished by a fine in an amount from two hundred up to one thousand times the monthly calculation index, or by restriction of freedom for a term up to one year.

2. The same act committed by a person with the use of his official position, or by the head of a public association, shall be punished by a penalty in an amount from five hundred up to two thousand times the monthly calculation index, or by restriction of freedom for a term up to two years, either with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years.

**Article 145. Violation of Equality of a Man and a Citizen**

1. Direct or indirect restriction of the rights and freedoms of a man and a citizen based on motives of origin, social, official, or property status, sex, race, nationality, language, attitude towards religion, beliefs, place of residence, or his belonging to public associations, or based on any other circumstances shall be punished by a fine in an amount of three hundred times the monthly calculation index, or correctional labour in the same amount, or community service for a term up to two hundred and forty hours or by detention under arrest for a term up to seventy-five days.

2. The same act if committed by a person with the use of his/her official position, or by the leader of a public association, shall be punished by a fine of up to five hundred times the monthly calculation index, or correctional labour in the same amount, or community service for a term up to three hundred hours or by detention under arrest for a term up to ninety days, either with or without the deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years.

**Article 160. Genocide**

Genocide, that is deliberate acts aimed at complete or partial destruction of a national, ethnic, racial, or religious group by murdering members of such a group, the causation of severe damage to their health, forcible prohibition of the birth of children, forcible transfer of children, forcible migration or the creation of other conditions of life which lead...

**Article 168. Genocide**

1. Genocide, that is deliberate acts aimed at complete or partial destruction of a national, ethnic, racial, or religious group by murdering members of such a group, the causation of severe damage to their health, forcible prohibition of birth of children, forcible transfer of children, forcible migration or the creation of other living conditions which lead to destruction of members of a given
<table>
<thead>
<tr>
<th>Article 164. Incitement of Social, National, Tribal, Racial, or Religious Enmity</th>
<th>Article 174. Incitement of Social, National, Tribal, Racial, Class or Religious Enmity</th>
</tr>
</thead>
</table>
| 1. Deliberate acts aimed at the incitement of social, national, tribal, racial, or religious enmity or antagonism, or at insult of the national honour and dignity, or religious feelings of citizens, as well as propaganda of exclusiveness, superiority, or inferiority of citizens based on their religious beliefs, or their class, national, genetic or racial belonging, if these acts are committed publicly or with the use of the mass media, or by way of distribution of literature or other information media propagandizing social, national, racial, or religious enmity or antagonism shall be punished by a fine of up to one thousand times the monthly calculation index, or by correctional labour for a term up to two years or deprivation of freedom for a term up to seven years.  
2. The same acts committed by a group of persons or committed repeatedly, or combined with violence or a threat to apply it, as well as committed by a person with the use of his/her official position, or by the head of a public association, - shall be punished by a penalty in an amount from five hundred to three thousand times the monthly calculation index, or by restriction of freedom for a term up to four years, or by deprivation of freedom for a term from three to seven years, either with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years.  
3. The acts referred to in sections one and two of this Article which entailed serious consequences, shall be punished by deprivation of freedom for a term from seven to twelve years either with or without destruction of members of a given group, shall be punished by deprivation of freedom for a term from ten to twenty years, or by life-time deprivation of freedom.  
2. The same acts committed in wartime, shall be punished by deprivation of freedom for a term from fifteen to twenty years, or by death penalty, or by life-time deprivation of freedom.  
3. The acts referred to in sections one and two of this Article if committed by a criminal group or entailed serious consequences, shall be punished by deprivation of freedom for a term from twelve to twenty years either with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years. | 1. Deliberate acts aimed at the incitement of social, national, tribal, racial, class or religious enmity or antagonism, or at offense to the national honour and dignity, or religious feelings of citizens, as well as propaganda of exclusiveness, superiority, or inferiority of citizens based on their attitude towards religion, or their class, national, genetic or racial belonging, if these acts are committed publicly or with the use of the mass media or information communication networks, or by way of production or distribution of literature or other information media propagandizing social, national, genetic, racial, class or religious enmity or antagonism, shall be punished by restriction of freedom for a term from two up to seven years, or by deprivation of freedom for a term from two up to seven years.  
2. The same acts committed by a group of persons, by a group of persons by previous concert, or committed repeatedly, or combined with violence or a threat to apply it, as well as committed by a person with the use of his/her official position, or by the head of a public association, - shall be punished by deprivation of freedom for a term from five to ten years, either with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years.  
3. The acts referred to in sections one and two of this Article if committed by a criminal group or entailed serious consequences, shall be punished by deprivation of freedom for a term from twelve to twenty years either with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years. |
| Article 183. Granting Permission for Publication of Extremist Materials in the Mass Media
Granting permission for publication in the press and the other mass media of information and materials aimed at the inciting national, tribal, racial, social, and religious enmity those which propagate class exclusiveness, war, and of those containing appeals to the forcible seizure of power, the forcible retention of power, undermining the state security, the violent change of a constitutional system and violation of the territorial integrity of the Republic of Kazakhstan shall be punished by a fine in an amount of five hundred times the monthly calculation index, or correctional labour in the same amount, or community service for a term of up to three hundred hours or by arrest for a term up to ninety days either with or without deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to two years. |
<p>| 1. Deliberate destruction or damage to someone else's property, which caused significant harm, … |
| 2. … committed … d) on grounds of social, national, racial, or religious enmity, - shall be punished by correctional labour for a term up to two years, or by restriction of freedom for a term of up to four years, or by deprivation of freedom for a term up to four years. |
| 3. The acts referred to in sections one and two of this Article which resulted in: a) the death of a person by negligence; b) destruction or damage to monuments of history, culture, nature complexes, or objects protected by the State, as well as objects or documents having a special historical, scientific, artistic, or cultural value, — shall be punished by deprivation of freedom for a term from three up to seven years. |
| Note. Significant damage shall be understood to mean an amount of damage which exceeds by one hundred times a monthly calculation |
| Article 202. Deliberate Destruction or Damage to Someone Else's Property |
| 1. Deliberate destruction or causation of damage to someone else's property, which caused significant harm, … |
| 2. … 4) committed on the grounds of social, national, racial, or religious enmity; …, - shall be punished by a fine in an amount from three thousand up to seven thousand times the monthly calculation index, or correctional labour in the same amount, or by restriction of freedom for a term from three up to seven years, or by deprivation of freedom for a term from three up to seven years. |
| 3. The acts referred to in sections one or two of this Article, which resulted in: 1) the death of a person by negligence; 2) causation of particularly gross damage, – shall be punished by deprivation of freedom for a term from five up to ten years. |</p>
<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 203. Deliberate Destruction or Damage to Objects Which Have an Outstanding Value</td>
<td>1. Deliberate destruction or damage to historical or cultural monuments, nature complexes, or objects protected by the State, as well as objects or documents having a special historical, scientific, artistic, or cultural value, … 2. … 3) committed on grounds of social, national, racial, or religious enmity, - shall be punished by deprivation of freedom for a term from five up to ten years. 3. The acts referred to in section one or two of this Article which entailed the death of a person by negligence, - shall be punished by deprivation of freedom for a term from seven up to twelve years.</td>
</tr>
<tr>
<td>Article 275. Abuse of Corpse of the Deceased or Desecration of Graves</td>
<td>1. Abuse of corpse of the deceased or destruction, damaging, or desecration of places of burial, tombs, or cemetery buildings which are intended for burial or commemoration ceremonies, … 2. … committed … c) on grounds of national, racial, or religious hatred or enmity; …, - shall be punished by restriction of freedom for a term of up to five years or by deprivation of freedom for a term of up to five years.</td>
</tr>
<tr>
<td>Article 314. Abuse of Corpse of the Deceased or Desecration of Graves</td>
<td>1. Abuse of corpse of the deceased or destruction, damaging, or desecration of places of burial, tombs, or cemetery buildings which are intended for burial or commemoration ceremonies … 2. … committed … 3) on grounds of national, racial, or religious hatred or enmity; shall be punished by a fine in an amount up to five thousand times the monthly calculation index, or correctional labour in the same amount, or by restriction of freedom for a term up to five years, or by deprivation of freedom for a term up to five years.</td>
</tr>
<tr>
<td>Article 337. Creation or Participation in the Activity of Illegal Public and Other Associations</td>
<td>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.</td>
</tr>
</tbody>
</table>

139 The minimum calculation index in the Republic of Kazakhstan for 2015 has been established in an amount of 1,982 tenge // Website of the electronic government. URL: http://egov.kz/wps/portal/Content?contentPath=/egovcontent/useful_info/ui_economy/article/article_mci_2012&lang=ru (date of visit: 21 October 2014).
carrying out extremism by them, in relation to which there is a religious association or another organisation in

1. Organisation of activities of the public or religious association or any other organisation in relation to which there is a legally effective court judgment prohibiting their activities or ordering liquidation in connection with carrying out extremism by them, - shall be

Kazakhstan, - shall be punished by a penalty in an amount up to six thousand times the monthly calculation index, or by correctional labour in the same amount, or by restriction of freedom for a term up to six years, or deprivation of freedom for a term up to six years with deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to six years.

2. Creation of a public association which proclaims or actually carries out racial, national, tribal, social, class, or religious enmity or exclusiveness, or which calls for the subversion of the constitutional order, disruption of safety of the state, or infringements upon the territorial integrity of the Republic of Kazakhstan, as well as the guidance of such an association – shall be punished by deprivation of freedom for a term from three up to seven years with deprivation of the right to hold certain positions or to engage in certain types of activity for a term up to three years.

3. Active participation in the activity of public associations indicated in the first or second part of this Article, — shall be punished by a penalty in an amount up to six thousand times the monthly calculation index, or by correctional labour in the same amount, or by restriction of freedom for a term up to six years, or deprivation of freedom for a term up to six years.

Article 337-1. Organisation of Activities of a Public or Religious Association or Another Organisation After a Court Decision Prohibiting Their Activities or Liquidating in Connection With Their Extremist Activities

1. Organisation of activities of the public or religious association or any other organisation in relation to which there is a legally effective court judgment prohibiting their activities or ordering liquidation in connection with carrying out extremism by them, - shall be

Article 405. Organisation and Participation in Activities of a Public or Religious Association or Another Organisation After a Court Decision Prohibiting Their Activities or Ordering Their Liquidation in Connection With Their Extremist or Terrorist Activities

1. Organisation of activities of the public or religious association or another organisation in relation to which there is the legally effective court decision prohibiting their activities or ordering their liquidation in connection with carrying out extremism or terrorism by them, – shall be
punished by a fine in an amount up to three hundred times the monthly calculation index, or by the deprivation of the right to hold certain positions or to be engaged in certain types of activities for a term from one year to five years, or by restriction of freedom for a term up to six years, or deprivation of freedom for a term up to six years.

2. Participation in the activities of the public or religious association or any other organisation in relation to which there is a legally effective court decision prohibiting their activities or ordering their liquidation in connection with their carrying out extremism, — shall be punished by a fine in an amount up to two hundred times the monthly calculation index, or by deprivation of the right to hold certain positions or to be engaged in certain types of activities for a term from one year up to five years, or by restriction of freedom for a term up to six years, or deprivation of freedom for a term up to six years.

Note. A person who voluntary ceased participating in activities of the public or religious association or any other organisation in relation to which there is a legally effective court decision prohibiting their activities or ordering their liquidation in connection with carrying out extremism by them, shall be released from criminal responsibility, unless another actus reus is present in his acts.

With regard to the General Part of the Criminal Code of RoK of 1997, it establishes the equality of all before the law regardless of their religious beliefs and convictions (section 2 of Article 14). This provision has been preserved in the Criminal Code of RoK of 2014 (section 4 of Article 15).

It also contains a provision stating that committing a crime motivated by religious hatred is an aggravating circumstance (sub-section f) of section 1 of Article 54 of the Criminal Code of RoK of 1997 and sub-section 6) of section 1 of Article 54 of the Criminal Code of RoK of 2014).

In the Special Part a series of crimes includes a motivation of religious hatred or enmity as qualifying indica.
These are such crimes as “A Murder” (sub-section) of section 2 of Article 96 of the Criminal Code of RoK of 1997 and sub-section 11) of section 2 of Article 99 of the Criminal Code of RoK of 2014); “Deliberate Causation of Serious Damage to Health” (sub-section h) of section 2, section 3 of Article 103 and, respectively, the sub- section 8) of section 2, section 3 of Article 106); “Deliberate Causation of Damage to Health of Medium Gravity” (sub-section f) of section 2 of Article 104 and, respectively, the sub-section 6) of section 2 of Article 107 of the Criminal Code of RoK of 2014); “Excruciation” (sub-section f) of section 2 of Article 275 of the Criminal Code of RoK of 1997 and sub- section 3) of section 3 of Article 314 of the Criminal Code of RoK of 2014).

In addition, Article 343 providing for administrative responsibility for “granting permission for publication of extremist materials in the mass media” of the Administrative Offenses Code of the Republic of Kazakhstan of 2001 has been deleted from the Administrative Offenses Code of the Republic of Kazakhstan of 2014 and transferred to the Criminal Code of RoK of 2014 (Article 183).

The old and the new Criminal Codes of the Republic of Kazakhstan contain two articles providing for criminal responsibility for illegal religious activity and activity of illegal religious associations.

According to Article 337 of the Criminal Code of RoK of 1997 and Article 404 of the Criminal Code of RoK of 2014, the criminal responsibility is provided for the creation or guidance of a religious or public association the activity of which is associated with violence against citizens or other damage to health, or with inducing citizens to refuse to perform their civil obligations or to commit other illegal acts, 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.

The wording “other illegal acts”, which is used in these Articles, does not correspond to the principle of legal certainty and predictability.

Article 337-1 of the Criminal Code of RoK of 1997 and Article 405 of the Criminal Code of RoK of 2014 provide for criminal responsibility for the organisation and participation in activities of a public or religious association or another organisation after a court decision prohibiting their activities or liquidating in connection with their extremist or terrorist activities.

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Due to an extremely vague concept of “extremism” from a legal point of view, which has been mentioned above, these criminal provisions may result in prosecuting leaders and members of religious associations on the most spurious grounds.

The position of governmental authorities and officials, mass media

Despite a certain level of tolerance being demonstrated by governmental authorities and officials in their rhetoric, however, the attitude towards the so called "non-traditional" religions is often rather hostile.

This is mirrored by the Address made by President of the Republic of Kazakhstan and the Leader of the Nation Nursultan Nazarbayev to the People of Kazakhstan "Strategy Kazakhstan’2050 New Political Course of the Accomplished State.”

In particular, that address says:

“...The Sixth. Religion in Kazakhstan in the 21st century. Today the pressing issue for Kazakhstan in the religious arena is religions that have not been traditionally practiced in our country. We have also seen an influx of people claiming to represent a non-recognized faith or belief. Some of the young people unconsciously accept these views due to a lack of immunity on the part of our society against pseudo-religious influence.

It is a fact that our Constitution guarantees freedom of faith. However, as you might know this is not unrestricted freedom as this would produce chaos. Everything should be a subject to the Constitution and our laws.

Everyone enjoys a freedom of choice. It is necessary to be very responsible in choosing religious preferences: lifestyle, households and, often whole lives depends on this choice. The activity of non-traditional sects and dubious pseudo-religious teachings needs to be severely suppressed...”

Although the Address goes on to speak reasonably of that “the fight against extremism should not be used as a witch hunt or to be used to fight religion. Whenever we contemplate religion we must adopt a thoughtful approach and proceed with extreme caution. It is not the States’ role to intervene on the internal affairs of religious communities. We remain steadfastly committed to the freedom of conscience, tolerance of traditions and principles”, the use of rather dubious, from the point of view of law, terms – “traditional” – “non-traditional”, “pseudo-religious”, “sects” and so on creates an expanse for negative perception of unpopular religious opinions, yet enjoying equal rights of existence.

Similarly in December 2013 at the session of the Council for Relations with Religious Associations under the Akimat Deputy Akim of North Kazakhstan Oblast in Petropavlovsk F. Kuanganov noted that "the region boasts a positive experience in preventive work aimed at counteracting the spread of pseudo-religions and extremist teachings but the religious situation needs to be kept under check”.

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In December 2013 in Almaty at the round table entitled ‘The Role of Mass Media in Reinforcing International Relations in Kazakhstan” the head of the Administrative and Analytic Department for Handling Religious Affairs’ Zhasulan Tazhibayev said:

"Unfortunately, rapid development of electronic mass media and promotion of values alien to Kazakhstanis have pushed out the traditional culture to the edges of the public life. Young people are beginning to forget their spiritual roots and traditions of the ancestors. They do not know the history of the world religions what opens up huge opportunities for speculating on religious topics and leaves a wide room for the activity of destructive teachings. The position of Kazakhstan’s traditional religions - Islam and Orthodoxy tends to weaken”.

While Kazakhstan mass media spreads the message about religious tolerance in Kazakhstan in the tideway of the state policy, however, negative publications on the so called “non-traditional” religions, detrimental or destructive sects and so on have not been rare.

For example, on 27 August 2013 Kazakhstani mass media disseminated information that following the initiative of the Agency for Affairs of Religion, the Public Fund “Yles 2020” opened the Republic Information Consulting Centre Hotline 114. The hotline receives information from citizens and organisations on all matters relating to the religious domain. At the same time, hotline operators provide consulting and psychological assistance to those who have suffered from destructive religious activity.

The Centre receives calls and provides advice in cases when:
- strange religious ideas are imposed upon;
- one becomes aware that dubious religious books, magazines, brochures, leaflets are distributed including in the streets, residential houses, apartments and transport;
- participation in religious rituals and events is insistently proposed and suspicious propaganda of religious nature is going on;
- you are bothered by suspicious meetings of religious nature;
- you have fallen under influence of dubious people or organizations of religious nature or are facing a difficult life situation due to religious problems;
- you seek advice and aid of specialists in the religious domain.
Consulting is confidentially provided 24 hours a day by professional lawyers, theologists, religious scholars and psychologists. Free calls from any destination in Kazakhstan are received”.

In its review Forum 18 pointed out to the establishment of the so called anti-sectarian centres that are directly funded and supported by authorities, and to “assaults” of authorities over the so called “non-traditional” religions thus building on attitude of hostility. Such communities include followers of the Society for Krishna Consciousness, Jehovah’s Witnesses, Protestants and other minor communities whom authorities dub as ‘destructive religious teachings.”

It is noteworthy that these communities are being dealt with and crackdowns, for example, are being taken against Baptists and Jehovah’s Witnesses by the police’s subdivisions for combating extremism, separatism and terrorism. The North Kazakhstani Regional Department of the police termed such crackdowns as ‘prompt proactive measures against the manifestations of religious extremism and terrorism.’

Apparently, this causes religious communities to be stigmatized.

In October, 2014 in a non-for public use letter that the authorities deny as existing although there are grounds to suggest that it does exist, Deputy Prosecutor of East Kazakhstan Oblast N.Bizhanov pointed out that since the activity of “non-traditional” religious communities does not abate it is required “to prepare and introduce new counteractions against religious activity of non-traditional religious teachings based on coordinated efforts of all local executive, law enforcement, authorised and competent authorities and institutions of the civil community”. In the letter, references were made to such teachings as Baptists, Pentecostals, Grace Church, New Life Church and Jehovah’s Witnesses.

**Interviews and results of monitoring**

Representatives of religious minorities are prosecuted for unregistered activities, public worships outside of religious buildings, dissemination of religious literature at unauthorised places, illegal missionary work and so on.

**General information**

As a new law on religious activity and religious associations came in effect in 2011 bringing forward considerably tightened requirements to registration of religious associations in Kazakhstan and mandatory re-registration of such associations during a year following the introduction of the new law hundreds of religious communities were liquidated in 2012-2013. For example, the Kostanai Oblast alone saw 25 religious communities closed down.

1. Yanyrash Kyzyl Meshit Kostanai
2. Kostanai Church of Evangelical Christians-Baptists KZhBI
3. Jewish Community of Kostanai
4. National Christian Chamber
5. Jewish Community of Rudny
6. Love Church
7. House of Father
8. Church of Evangelical Christian Baptists Lisakovsk
9. Umma Arkalyk
11. Church of Grace Light Love of Michurinskiy Village
12. Church of Evangelical Christian Baptists Resurrection Mendykarisnk District
13. Harvest Christian Non-Denominational Church Rudny Town
14. Harvest Christian Non-Denominational Church Fedorovak Village
15. Kostanai Church of Evangelical Christian Baptists Emmanuil
16. Local Spiritual Assembly of Bahai, Kostanai
17. Harvest Christian Non-Denominational Church of Nadezhdinka Village
18. Church of Evangelical Christian Baptists of Zabelovka Village
19. Church of Evangelical Christian Baptists of Zatobolosk Village
20. Church of Evangelical Christian Baptists of Moskovskoye Village
21. Church of Evangelical Christian Baptists of Arkalyk

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144 See: Information on reports by monitors of the Kazakhstan International Bureau for Human Rights and Rule of Law as well as information on non-governmental organization Forum 18 over the period of 2012-2014. The names of believers are quoted as abbreviated. Their full names may be found in the reports.
22. Harvest Christian Church of Taranovskoye Village
23. Resurrection Church of Evangelical Christian Baptists of the Kostanai Oblast
24. The United Apostles’ Church in Rudny
25. The Church of Archi-strategist Michael and other Heavenly Forces of Ethereal Cities of Kostanai in Siberian Ishim Eparchy of the Russian Orthodox Church Abroad

In December, 2013 on the eve of the International Day of Tolerance which is marked on November 16 annually following the initiative of the Kazakhstan Office of Freedom House and supported by it, the Youth Information Service of Kazakhstan (YISK) conducted a public opinion survey to get to know opinions of representatives of Kazakhstan’s non-traditional religions and human rights advocates on tolerance matters. The survey covered 272 visitors of Facebook and VKontakte most of whom are aged up to 30. When asked whether Kazakhstanis are tolerant to religions untypical of the country (Jehovah’s Witnesses, Baptists, Krishnaites, Ahmadians, etc.) and how far, 24.1% of the surveyed said that those religions need to be forbidden and outlawed. Another 34.5% proposed banning only those religious cultures which making a zombie out of people by swaying their psychological state. No ban but control over them and regulation of their activity must be in place is what 24.1% of the respondents were sure of. 7.8% opposed saying that no regulation and control is required while ideological opposition is required only. Another 9.8% insisted that no bans and restrictions must be in place and they need complete freedom of observing their religious rites.

Based on the data of the non-governmental organisation, Forum 18, at least 148 judgments against 121 persons with the payment of fines have been given in Kazakhstan so far in 2013:
- 20 persons were brought to justice under Article 374-1 of the Administrative Code (guidance, participation in activities of public and religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as financing of their activities);
- 57 persons were brought to justice under Article 374-1 (section 2) of the Administrative Code (participation in the activity of public and religious associations, which are not registered in accordance with the procedure established by the legislation of the Republic of Kazakhstan, as well as financing of their activities);
- 37 persons were brought to justice under Article 375 (section 1) of the Administrative Code (violation of the requirements established by the legislation of the Republic Kazakhstan to: performance of religious rites, ceremonies, and/or assemblies; charitable activities; import, production, publication, and/or distribution of religious literature and other materials of religious content (use), religious items; construction of religious buildings (places of worship), conversion (changing functionality) of buildings (places) to religious buildings (places of worship));
- 32 persons were brought to justice under Article 375 (section 3) of the Administrative Code (carrying out the missionary activity by the citizens of the Republic of Kazakhstan, foreigners and stateless persons without registration (re-registration), as well as the use by the missionaries of religious literature, informational materials of religious content and religious items without a positive conclusion of religious expertises);


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- 2 persons were brought to justice under Article 375 (section 9) of the Administrative Code (acts (inactions) provided for by the first, second, third, fourth, fifth and seventh part of this Article, committed repeatedly during a year after the imposition of an administrative punishment);
- 6 persons were brought to justice under Article 524 of the Administrative Code (for refusing to pay penalties handed down under Article 374-1 or Article 375 of the Administrative Code).

82 fines were imposed on members of the International Council of Churches of Evangelical Christian Baptists;
28 – on Jehovah's Witnesses;
9 – on New Life Church members;
6 – on Full Gospel Christians;
3 – on Hare Krishna devotees;
2 – on Pentecostal Christians;
1 – on a Grace Church member;
2 – on independent Protestants;
11 – on owners of bookshops and sellers of religious literature.

In almost all the cases the higher instances refused to reverse decisions of lower courts. Only in one case the appellate instance reversed the decision regarding the destruction of religious books; in another case the appellate instance reversed the decision regarding a three-month ban on the community's activity.

In March 2014 Forum 18 distributed its Religious Freedom Survey in Kazakhstan147 in which it pointed to the following serious violations: “making the exercise of human rights conditional upon state permission; systematically increasing the range of possible “offences” people can be punished for if they exercise freedom of religion or belief and related human rights; officials routinely violating the rule of law with impunity; closing down independent mosques, and continuing to seek to close other smaller religious communities; censorship of religious literature and items, including severe limitations on the numbers of premises where such literature and items can be distributed; the misuse of psychiatry against people the authorities dislike; exit bans and jailing imposed on those refusing to pay penalties for exercising freedom of religion or belief without state permission…”

The activity of unregistered religious associations

A pastor of unregistered Council of Baptist Churches in East Kazakhstan Oblast L. was subpoenaed to the Regional Police Department where he was handed a ruling stating that a criminal case was instituted against him pursuant to section 1 of Article 362 of the Criminal Code of Kazakhstan ‘Failure to Comply With a Court Ruling, Court Decision or Other Judicial Act’. A criminal case was opened against him because he refused to pay fines that have been previously imposed on him as the leader of an unregistered religious association. In August 2013, he was detained for 24 hours on the basis of a court’s decision. Later court marshals confiscated his belongings from his house to cover the fines imposed.

In October 2013, the administrative court in Ridder issued a judgment imposing a fine of 50 times the monthly calculation rates, or 86,000 tenge (approximately 430 euro) on a town resident for illegal establishment of a religious association. She moved to Ridder from Almaty in 2011 where she would attend an act of worship at a registered church. In Ridder she carried on practicing on her own. Gradually, other town residents joined her. The organisation had seven worshippers in total.

In November 2013, 16 police officers teamed up with reporters and an officer of the Department for Affairs of Religions in Uralsk T. Nygmetov had a crackdown on a house during a Sunday act of worship performed by an unregistered Union of Baptists Churches of Evangelical Christian Baptists (attended by 36 adults and 26 underage) with 11 Baptists being detained and taken to the Police Department. Some of them stood their own trial for their participation in an act of worship performed by an unregistered Union of Baptists. A Baptist B. said that he was threatened to be fired (he worked as a security guard in a school) as his employer was told by the police that he is a believer.

In November 2013, an administrative process was initiated against a C., a pastor of the International Council of Churches of Evangelical Christian Baptists in Aktobe for organising his brothers in faith to gather on Sundays without having their religious association registered.

In May 2014, two Baptists in the East Kazakhstan Oblast were punished by being detained for several days as they refused to pay fines for their assembly with their friends to pray together. In court the Prosecutor said that they could not get together for praying until they have their religious association registered.

In 2014 the number of the believers being arrested, mainly Baptists who refused to pay fines for their acts of worship without their religious association being registered amounted to nearly 20.

Acts of worship outside of religious buildings

In July 2013, a F., a Baptist in the village of Zaporozhije, Zhetsysu District, Akmola Oblast was charged with a fine of 86,550 tenge (430 euro) pursuant to Article 374-1, section 2 (violation of laws on public associations) of the Administrative Code of Kazakhstan. The fine was imposed for a Sunday act of worship in a private house of a F. and the police that carried out a crackdown called it illegal.

In Aktobe a dweller refurbished his house into a worshipping house for the religious association Christian Evangelical Pentecostals’ Church “The Source of Life”. Following a judgment of the Aktyubinsk Regional Court the house was to be reverted to its original status, which is a private house.

In September 2013, a T., an imam of the independent mosque Fatih was charged with offence pursuant to Article 375-1 of the Administrative Code of Kazakhstan “Violation of Laws on Freedom of Religion and Religious Associations”, and was punished by a fine of 50 times the monthly calculation index (425 euro). The Fatih Community was registered in September 2005 at the imam’s residential address. However, in 2012 the community failed to reregister because it refused to join the Spiritual Administration Department of Kazakhstani Muslims. On 24 August 2011 Aktobe based court issued a judgment that a T. may use his house only for residence and later, in October 2011 an oblast court upheld this judgment. On 27 November 2012 the Aktyubinsk regional economic court issued a judgment on the elimination of the Fatih mosque. However, the worshippers continued to gather in the imam’s house but on 19 July 2013 the house was raided by the police. Afterwards the administrative court found him guilty of committing the offence.
The leader of the Krishna Consciousness Society in the Kostanai Oblast of Kazakhstan G. was held administratively responsible for his performing act of worship in a gym hall. As the Department for Affairs of Religions of the Akimat of Kostanai region and Kostanai Regional Prosecutor’s Office specified in their responses to him in November 2013 religious rites outside of religious buildings can be performed only upon approval of local executive authorities. Without approval such an act of worship is an administrative offence. In this connection, G. approached a UN Special Rapporteur on freedom of religion or beliefs.

In December 2014 data on a T. that is an adherent of Harvest Church and was elected leader of a small community that would assemble in her house came from the Kostanai Oblast. During one of the gatherings her sister was displeased with an assemblage as she is not an adherent of the Harvest Church and called up the police. Police officers arrived demanding that a T. prepared an explanation. So, she was facing an administrative fine.

**Missionary outreach**

In August, 2013 Sh., the leader of the Movement of God Seekers in East Kazakhstan was banned to preach while D., a pastor of the Church of the 21st Century and musician was not permitted to sing Christian songs during the jubilee conference of the New Life Church as these citizens of Russia and Ukraine were not given any permission for missionary activity. Sh. was not allowed to preach in the church but she was allowed only to send her compliments to the gathering on the stage (without mentioning God and belief) while D. was banned to sing Christian songs in the church but only neutral songs (not about God, belief or anything relating to Christian). “They were warned at once that if they are to break this rule the consequences shall follow: the church will be fined and they will be deported out of the country for ever. A local pastor V. was made to sign a document that he was aware of this warning”.

In September 2013 a follower of Jehovah’s Witnesses B. was fined for ‘illegal missionary work’ for allegedly texting a message on the Internet inviting her friends to attend an act of worship. Thus, a few more representatives of the same community were fined. In one of the cases the judge said that a ban on the spread of one’s belief without being registered as a missionary is not a breach of the freedom of belief. Representatives of Jehovah’s Witnesses filed several complaints to the UN Human Rights Committee.

The followers of the religious organisation Jehovah’s Witnesses N. and M. were held administratively liable pursuant to section 3 of Article 375 (missionary activity pursued by citizens, foreigners and individuals without citizenship without registration) for their debates about religion with passers-by in the street. Both were issued a regulation demanding they pay a fine of 100 times the monthly calculation index (860 euro). Their appeals to the court remained dismissed.

In the Akmola Oblast a Kokshetau follower of the religious teaching Jehovah’s Witnesses was fined for illegal missionary activity, the press service of the regional court reported. The follower’s guilt was in that he went round flats talking about the religion. The Astrakhan Regional Court found him administratively responsible pursuant to Article 374-1, section 1 of the Administrative Code of Kazakhstan (management of and participation in the activity of unregistered…public religious associations as well as funding their operations) and was punished by a fine of 100 times the monthly
calculation index (KZT173,100 or 865 euro). The convicted filed a complaint but the Akmola Oblast Court left the decision of the Astrakhan Regional court in force.

In Petropavlovsk local pastors demanded to bring a syllabus of their preaching for the Akimat to review.

A. who came to the Kostanai Oblast from Almaty was held administratively responsible in November, 2013 for illegal missionary activity as he spoke at a gathering of the Krishna Consciousness Society.

A Polish citizen P. and his spouse, adherents of Jehovah’s Witnesses were deported from Kazakhstan for illegal missionary work. The spouses arrived in Aktobe in September 2013 where they started their missionary activity within the Christian Community of Jehovah’s Witnesses as the authorities said.

During the entire 2013-2014 the authorities prosecuted any preachers for their so called illegal missionary activity indicating that any spread of a belief by even a registered religious association needs to be supported with permission issued for a specific individual who preaches.

The dissemination of religious literature and materials

The Almaly District Court #2 banned the dissemination of a Russian translation of the book by a U.S. protestant Don MacCarry the Curing of Abrahaam’s Broken Family as it found “the elements of the kindling of a religious hatred” in it. The book was confiscated during a police’s crackdown on the Almaty Grace Church in April, 2012.

In March 2013, a convict I. appealed to the Kazakhstan International Bureau for Human Rights and Rule of Law pointing out to the problems connected with the study of religious literature at places of confinement as the administration bans the use of a player for listening preaching.

In August, 2013 the Agency for the Affairs of Religions banned on the import and dissemination of the Jehovah’s Witnesses religious organization’s periodicals – Watchtower and Wake up! Journals. In September, October and December, 2012 Jehovah’s Witnesses sent their journals for the Agency for Affairs of Religions to review in order to obtain approval for the import of the organization’s periodicals as is required by the Law on Religion. However, according to the Agency, publications in the Jehovah’s Witnesses’ editions do not meet Kazakhstani requirements to secularization of education and work from religion and contain a range of doctrines different from Biblical ones which can hurt the members of traditional churches.

In August 2013 two Baptists were fined by the Specialized Administrative Court of Burabay District of the Akmola Oblast for the spread of religious literature at non-designated places. The police reported that a sign board carrying the wordings ‘Christ has risen’ and ‘Jesus is alive, repent’ and ‘Repent and Believe in Gospel’ – on the other side as well as 16 brochures of religious nature – on the back side was seized from the detained.

In October, 2013 a crackdown on bookstores was carried out in Aktobe in order to check out on the possible selling of religious literature. A ruling being issued by the Akim allowed the sale of similar literature at eight places in Aktobe. The findings revealed violations at the Sham Sheriff bookstore that did not hold a permit for the sale of religious literature. A court’s ruling issued a fine of 200
monthly estimated rate, or nearly 350,000 KZT (nearly 1,750 Euro) to be paid by the bookstore’s owner.

In November, 2013 the court rejected an appeal filed by a protestant V. (a dweller of Zharminsk village) in East Kazakhstan against a ruling by Zharminak District Court of 24 September 2013 that fined him and in addition seized five Christian books (including the New Testament and the Psalms in Kazakh). The court issued a ruling destroying the books and two CDs confiscated.

In November 2013, a crackdown was carried out by the Prosecutor’s Office, the Department for Affairs of Religions and the Astana Internal Policies Department in Astana throughout places unsanctioned for religious literature. The findings ended in three administrative cases filed and 10 legal notices of law breaches awarded, i.e. the Prosecutor’s acts, and over 100 copies of religious literature seized. In Astana nearly 40 outlets of unsanctioned sales of religious literature were uncovered.

As for the Islam literature, any literature of non-Hanafit Sunnite teachings is actually forbidden.

**Discriminatory attitude**

In July 2012 A. indicated in his complaint he filed to the Kazakhstan International Bureau for Human Rights and Rule of Law in Kostanai that police officers would take discriminatory attitude towards him for he professes Islam and wears a beard.

In mid-2013 L., a pastor of the Grace Church was deported from Kazakhstan. L. is supposedly a Kyrgyz citizen. During eight years he had legally lived in Kazakhstan. He had a residence permit valid until the year 2020. He was forced to leave behind his wife and two children, who are citizens of Kazakhstan. The official cause of deportation is eight administrative offences over the period of his stay in Kazakhstan. Out of four offences are for violations of traffic rules, and two – for his failure to notify the migration police of his departures from Kazakhstan and one – for tax dodging. He was also fined as the leader of the church for breaking fire safety regulations. In all cases he paid fines without lodging an appeal.

In Almaty, according to S., a student of the Kazakh National Technical University named after Kanysh Satpaev, a listing of students who recite “namaz” began to be made at his dormitory in November 2013. One of the students who was put on the list said that he does not know what was the purpose behind the listing and what he is aware is only that “the listing is being made upon the directorate of the University”. Other students of the same University confirmed that their University is actually making up a list of students who recite “namaz”. The correspondent had a talk with one of the officers of the Kazakh University who is involved in making up a listing of such students. “The leadership has ordered to do the listing and we are doing so. What is the reason I do not know either”, a University officer said claiming anonymity. Representatives of University confirmed that the listings are being made in fact and declined sharing reasons why.

In December 2013, an unknown man attended an act of worship at the New Life Church recording the attendees with a concealed camera. When spotting him doing so, the pastor asked him why, the latter declined to introduce himself but other Church members stated that he is one of National Security Committee officers.
In the end of 2013, a Polish cardiologist, P. was fined and deported from Kazakhstan as he prayed at a gathering of Jehovah’s Witnesses and “spoke” with an accent.

Foreign citizens are generally restricted in their right to freedom of religion as their participation whatsoever is deemed illegal missionary work.

During 2013-2014 a few cases were referred to when Baptists and representatives of other churches were arrested as refusing to pay fines for “illegal missionary activity” or for the activity of unregistered religious associations.

In February 2015, K., a Baptist in Aktobe, was detained for five days due to his refusal to pay a fine imposed on him back in 2008.

Muslim communities who are not part of the Spiritual Administration of Muslims of Kazakhstan (practically an official community of Muslims of Kazakhstan enjoying the support of the government) experience substantial pressure and are prosecuted. Some of independent mosques failed to get registered (as Ahmadiyas) and some were named extremists.

Also, in January 2015, four members of a forbidden Tablighi Jamaat movement N., K., E. and I.E. were sentenced to a 20-month arrest each for involvement in the activity of the prohibited organisation.148

**High-profile cases**

During 2013-2014 Ridder in East Kazakhstan saw a headline making court proceeding in which A.Kharlamov was charged with committing a crime pursuant to section 1 of Article 164 of the Criminal Code of Kazakhstan (the inciting of religious hostile or hatred). A. Kharlamov, a reporter and human right activist from Ridder had a blog where he contemplated on the religion while being an atheist. A group of experts appointed by authorities to judge his publications came to a conclusion that 28 out of 36 articles written by him are qualified as fuelling religious hatred or enmity, specifically as one of his articles made a reference as a whole to “the ideology based on primitive ideas – notions, myths, lie and deceit”. An independent assessment made by the International Foundation for Protecting Freedom of Speech Adil Soz failed to find anything illegal in statements by A.Kharlamov. All his statements were the opinions of a man who sees religion from the atheistic point of view while he regards himself as a “scientific Christian”. A. Kharlamov was sent over for a compulsory medical psychiatric expertise that found him as criminally sane. Currently, the investigation into his case was suspended.

In mid-2013 an Astana pastor of the Protestants Church Grace B.Kashkumbaev was arrested. He was accused of committing a crime pursuant to section 1 of Article 103 of the Criminal Code of Kazakhstan, “of having psychological influence over the believers, including for using intoxicating substances in order to collect donations for the association”. According to the opinion of experts appointed by the authorities “in his actions pastor of the Grace Religious Organization B.K.Kashkumbaev employs methods and techniques of psychotherapeutic influence and psychological influence over the believers, including those affecting A. in the form of rational psychotherapy, suggestion with neurolinguistic programming elements and causing the adepts to fall into the state of altered conscience”. At the same time, the suffered did not bring any claims against the accused while

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it was the mother of the suffered who approached the police. Kashkumbaev was detained without a lawyer who would stand in for his interests throughout the whole proceedings and he was forbidden to have a Bible in a pre-trial detention centre. Originally, the pastor was accused of inflicting severe harm to one of the believers by means of hypnosis and later he was charged with extremism.

Experts of the Forensic Expertise Institute in Almaty found that the Grace Church employs psychotherapeutic techniques that may cause “substantial damage to psychic health of the believers”. The so-called “tithe” – donations as the experts insist has influence on “emotional realm, values, attitude and actions of people and may lead to psychological dependence”. Experts allege that the churchmen use techniques of psychological influence over the believers. According to the investigators, influence was exerted to cause donations to be made for the sake of the religious associations. Experts view these techniques as extremism, which, however, they believe to be moderate. Yet one of the aspects that as the experts state serves as a propaganda to undermine national security is the mention of political changes that took place in Ukraine since the Orange Revolution, behind which was allegedly one of the Protestants’ churches. The pastor himself and his followers say that accusations of gathering donations are groundless as similar donations are made at other religious organisations as well. The “tithe” is just the name of donations in the Protestants’ church.

2.2. National (ethnic) minorities, language

Recommendations of the UN Committee on the Elimination of All Forms of Racial Discrimination based on the results of consideration of the sixth and seventh periodic reports of the Republic of Kazakhstan concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

According to the information of the sixth and seventh periodic reports of the member States parties of the International Convention on the Elimination of All Forms of Racial Discrimination (the “ICERD”) provided by the Republic of Kazakhstan for the UN Committee on the Elimination of All Forms of Racial Discrimination (the “CERD”), “according to census data, Kazakhstan has more than 120 ethnic groups. At the beginning of 2012, there were more than 10 million Kazakhs (64.6 per cent), 3.7 million Russians (22.3 per cent), 314,000 Ukrainians (1.9 per cent), 494,000 Uzbeks (3.0 per cent), 238,000 people Uighurs (1.4 per cent), 203,000 Tatars (1.2 per cent) and 181,000 Germans (1.1 per cent)”.

The ethnic composition of the population of Kazakhstan by regions is given in the Table 1 below.

After 2004, when the Kazakhstan International Bureau for Human Rights and Rule of Law initiated preparation and, together with a group of Kazakhstan organizations for human rights prepared the Commentary to the Official Report of the Republic of Kazakhstan, the State party of the International Convention on the Elimination of All Forms of Racial Discrimination, submitted to the UN Committee on the Elimination of Racial Discrimination in accordance with Article 9, the Kazakhstan NGOs have not prepared such generalizing comments or “shadow” reports. Therefore, the recommendations of the CERD on the last report of the Republic of Kazakhstan concerning implementation of the ICERD have not included or considered the point of view of Kazakhstan organisations for human rights.

Nevertheless, many of the recommendations contained in the Concluding Observations of the UN Committee on the Elimination of All Forms of Racial Discrimination on the combined sixth and seventh periodic reports of Kazakhstan\textsuperscript{150}, are similar to those of Kazakhstan NGOs, including those presented in 2004.

In paragraph 6 of the Concluding Observations the CERD states: “While welcoming the adoption by the State party of legal provisions prohibiting racial discrimination, as contained in particular in the Constitution, Labour Code, Administrative Code and Codes of Civil and Criminal Procedure, the Committee reiterates its concern that the State party has not adopted comprehensive legislation to prevent and combat discrimination in all areas, including a definition encompassing both direct and indirect discrimination on the grounds of race and ethnic origin, which may lead to hindrances in access to justice for victims of racial discrimination (paragraph 1 of Article 1; paragraph 1 (d) of Article 2 and Article 6 of the ICERD).”

“Recalling its previous recommendation (CERD/C/KAZ/CO/4-5, paragraph 10), the Committee encourages the State party to continue its efforts to adopt a comprehensive anti-discrimination law, including a definition of direct and indirect discrimination, as stipulated in Article 1, paragraph 1, of the Convention, in order to ensure effective access to justice and appropriate remedies for victims of racial discrimination. The Committee requests the State party to disseminate relevant information to the public, in particular to minorities, about what constitutes discrimination and about available legal remedies for persons facing racial discrimination.”

Thus, again the CERD draws attention of the Kazakhstan authorities to the absence of specific anti-discrimination legislation, as noted in the first section of this report.

In paragraph 7 of the Concluding Observations the CERD also specifies that “it is concerned about the limited information provided and at the absence of annual statistics on the social and economic situation of each of the ethnic groups with reference to education, employment, health and housing. The Committee is also concerned about the lack of data on the ethnic composition of the prison population and on the representation of ethnic minorities in the civil service (Article 2).”

In this connection, it “recommends that the State party collect and publicize reliable statistical data on the social and economic situation of individual ethnic groups, disaggregated by areas where minority groups live in substantial numbers, in order to provide an adequate empirical basis for policies to enhance the equal enjoyment of rights under the Convention in Kazakhstan. The Committee also recommends that the State party collect data on the ethnic composition of the prison population and on the representation of minority groups in the civil service. The Committee requests the State party to provide it with such information in its next periodic report.”

The CERD in paragraph 8 of the Concluding observations specifies that “the State party has taken steps to facilitate, inter alia, the representation of ethnic minorities in the Lower Chamber of the Parliament and education in ethnic minority languages in public schools”, stating that “it is concerned that special measures seem to be perceived by the State party as aimed at introducing “artificial inequality” or unequal or separate rights for different ethnic groups (paragraph 4 of Article 1; and paragraph 2 of Article 2).”

In this connection, it “recommends that the State party amend its legislation to provide for the possibility of adopting special measures to promote equal opportunities and enhance strategies against inequality and discrimination, in accordance with paragraph 4 of Article 1, and paragraph 2 of Article 2 of the Convention.”

In paragraph 9 of the Concluding Observations, the CERD specifies that “the Committee is concerned about the underrepresentation of minorities, in particular non-Kazakh ethnic groups, in political life and decision-making at the municipal, district, regional and national levels, taking into account the 2012 elections data and the last census. Noting the electoral reforms of 2007 and the representation of minorities in the Assembly of the People of Kazakhstan (the People’s Assembly), the Committee is concerned about the continuing limited participation of minorities, in particular in both Houses of Parliament, the Mazhilis and the Senate.”
Table 1. Ethnic composition of the population of Kazakhstan by regions of Kazakhstan\textsuperscript{151}

<table>
<thead>
<tr>
<th>Name of Oblasts</th>
<th>All nationalities</th>
<th>Kazakhs</th>
<th>Russians</th>
<th>Uzbeks</th>
<th>Ukrainians</th>
<th>Uighurs</th>
<th>Tatars</th>
<th>Germans</th>
<th>Koreans</th>
<th>Azerbaycanis</th>
<th>Byelorussians</th>
<th>Turks</th>
<th>Dungans</th>
<th>Polacks</th>
<th>Kurds</th>
<th>Chechens</th>
<th>Tajiks</th>
<th>Bashkir</th>
<th>Others</th>
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<td>13,452</td>
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<td>1,058</td>
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</tr>
</tbody>
</table>

“The Committee is also concerned that the representation of ethnic minorities by nine deputies elected to the Mazhilis by the People’s Assembly is not fully proportionate to the size of the ethnic minorities. The Committee is further concerned at reports about significant underrepresentation of non-Kazakh ethnic groups in the civil service (paragraph 4 of Article 1; paragraph 2 of Article 2; and paragraphs (c), (e) and (i) of Article 5).”

Recalling its previous recommendations (CERD/C/KAZ/CO/4-5, paragraphs 11 and 12), CERD encourages Kazakhstan to:

“(a) ensure a fair and adequate representation of minority groups in political life and decision-making bodies at all levels by, inter alia, adopting special measures;

(b) establish in particular mechanisms for the election of members of the People’s Assembly and of the deputies nominated to the Mazhilis by the People’s Assembly in order to allow for the fair representation of minority communities and due consultation with them on matters affecting their rights;

(c) take effective measures to facilitate and increase the representation of non-Kazakh ethnic groups in the civil service, including by reviewing the occupational requirements for public sector jobs and limiting the requirement for mastery of the Kazakh language only to positions where it is essential;

(d) provide data in its next periodic report, disaggregated by ethnic group, on the representation of minority groups in political bodies and decision-making positions, and in the civil service.”

The Committee also pointed out to the fact that the Kazakhstan organisations for human rights had been noting for many years, that the Commissioner for Human Rights in the Republic of Kazakhstan “lacks adequate budgetary and human resources,” and the “mandate of the Commissioner excludes consideration of complaints against various State authorities.” In addition, “there have been no recent public reports on the Commissioner’s work against racial discrimination (paragraph 2 of Article 2).”

Recalling its general recommendation XVII (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that Kazakhstan:

“a) undertake legislative changes and strengthen the Commissioner’s mandate to effectively promote human rights and fight against all forms of racial discrimination;

b) provide the Commissioner with adequate financial and human resources, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134 of 20 December 1993;

c) take steps to ensure that the Commissioner enjoys public confidence and full independence;

d) make public the reports on the Commissioner’s work against racial discrimination on a regular basis.”

In paragraph 11 of the Concluding Observations, the CERD “while noting the information about the application of legislation against incitement to national, ethnic or racial enmity... expresses its concern at the absence of information about the measures taken to combat incidents of hate speech, in particular against non-citizens, including in the media and on the Internet (paragraphs 1 (a) and (d) of Article 2; paragraphs (a), (b) and (c) of Article 4; and Article 7).”
Therefore, “recalling its general recommendation XXX (2004) on discrimination against non-citizens and general recommendation XXXV (2013) on combating racist hate speech,” the CERD recommends that Kazakhstan “effectively investigate and, as appropriate, prosecute and punish acts of hate speech and take appropriate measures to combat hate speech in the media and on the Internet, regardless of the status of the perpetrators. The Committee also recommends that the State party take further measures to promote tolerance, intercultural dialogue and respect for diversity, with a focus on the role of journalists and public officials in that regard.”

Very important recommendations are contained in paragraph 21 of the Concluding Observations of the CERD.

In particular, it states that the CERD “notes with concern the low number of complaints and the absence of court decisions in administrative, civil and criminal proceedings on acts of racial discrimination, which are indicative of a lack of practical remedies for victims of such acts. While noting the reaffirmation by the State party of the direct applicability of the Convention in its domestic legal order, the Committee also notes with concern the absence of information on cases in which the Convention was applied by judicial and administrative bodies. Moreover, the Committee notes with concern the low number of cases in which discrimination was established by the Commissioner for Human Rights, as compared to the number of complaints of racial discrimination received, and the lack of support measures for victims to litigate in discrimination cases (paragraph 1 of Article 1; paragraphs 1 (d) of Article 2; Articles 4 and 6).”

Therefore, “recalling its general recommendation XXVI (2000) on article 6 and general recommendation XXXI (2005) on prevention of racial discrimination in the administration and functioning of the criminal justice system, the CERD recommends that Kazakhstan”:

“a) ensure effective remedies, including just and adequate reparation or satisfaction, through the competent national courts and other State institutions for any act of racial discrimination, by making appropriate use of the anti-discrimination legislation;

b) provide the Committee with data on the application of the Convention through judicial and administrative decisions in its next periodic report;

c) undertake a thorough analysis of the reasons for the low number of cases in which discrimination was established by the Commissioner for Human Rights and ensure that the Commissioner effectively investigates all complaints of racial discrimination;

d) implement measures to strengthen the legal aid system and provide assistance to individuals and associations to facilitate litigation in discrimination cases;

e) undertake training of public officials, including law enforcement officials, members of the judiciary and lawyers, concerning legal protection and safeguards against racial discrimination, drawing attention to the Committee’s general recommendation XIII (1993) on the training of law enforcement officials in the protection of human rights.”

As follows from the recommendations of the CERD, they mainly relate to systemic and institutional problems of the Kazakhstan legislation, institutions and law enforcement practice.

As for the discrimination at the “low” level, it has an implicit and latent character, and people, who face with it, prefer not to go to law enforcement agencies, organizations for human rights and the mass media, believing that by such appeals they only create more problems.
That mainly explains the low number of complaints and cases in which discrimination was established, which was highlighted in the Concluding Observations of CERD.

**Some facts from the interviews, monitoring reports and publications in mass media**

Information concerning discrimination based on ethnic and/or language principles is very scarce. While the problem of this nature does exist the discrimination is latent as mentioned above.

The information available suggests that a number of complaints relates to language matters due to the fact that the majority of citizens who are not Kazakh do not speak the State language which is Kazakh. Although the Russian language is to be used as the Constitution of Kazakhstan proclaims on a par with the State language as a whole this provision has not been observed in a number of cases. Citizens complain that answers to their inquiries are given by authorities in Kazakh that is not understood by a citizen N. and four more people who appealed to the Kazakhstan International Bureau for Human Rights and Rule of Law in the Pavlodar Oblast.

In December 2013, the Kazakhstan International Bureau for Human Rights was approached by a professor of an educational institution in the Mangistau Oblast who indicated that his educational institution is a mixed one but all meetings are held and orders are issued in the State language only and translation has never been done. And he does not speak the State language.

A 84-year old citizen Sukhin appealed to the Prosecutor’s office and the Kazakhstan International Bureau for Human Rights claiming severe treatment he received from doctors, who are actually Russians. He pointed out that the doctors gave him such treatment due to hostility towards him and him being Russian. “Would they (the akim and doctors) have treated any aksakal like that?”

The latest information came early February 2015 when an ethnical conflict between Kazakhs and Tajiks setting fire to houses and cars burned out throughout a few villages of Sary-Agash district in South Kazakhstan Region. The cause of fights and disorder was a killing of an ethnic Kazakh A. An ethnic Tajik N. was accused of the murder. He was on the run.

‘In the evening on February 5 a grouping of the youth who were fellow villagers of A. in the vicinity of the residence area of N. got down to violence resulting in a few cars burnt and turned over. The damage was caused to the neighbouring houses,’ an official statement of the Ministry of Internal Affairs ran. However, there are grounds to believe that this data are clearly underestimated.

For example, witnesses state that riots and skirmishes took place in at least three villages including Yntymak, Bostandyk and Enkes where approximately one third of dwellers were ethnic Tajiks. Supposedly, dozens of households, stores and cars belonging to Tajiks were set to fire or smashed. The scale of events was such as that authorities called up subunits of internal troops and armoured vehicles to support the police.

The officials, however, stated that there were no victims and the awareness building work was conducted among the old people and local villagers at meetings which were attended by the akim of the region, the first deputy of the Ministry of Internal Affairs of Kazakhstan and the head of the Internal Affairs Department.
2.3. The LGBT Community

The position of governmental agencies, officials and public figures as to the LGBT issues

It is noteworthy that governmental agencies or some officials in the Republic of Kazakhstan often refrain from any direct statements as to LGBT. Likewise, there are few public comments on this matter shared by the public figures.

However, a number of statements of some politicians and functionaries testify to that largely they convey a homophobic attitude, which is not surprising. In 2009 Kazakhstan was one of the nations that spoke against the UN Declaration on Gender Identity, thus demonstrating a certain official position at the international level.

Thus, for example, a deputy of the Mazhilis in the Kazakhstani Parliament V. Kosarev said when answering to a reporter’s question about gays that “Why are you trying to push a thought of the real existence of these seedy relations in our society? Homosexuals must not be. This must be acknowledged as a deformation of a human conscience. This is a propagation of misanthropical attitude that neo-colonizers have been pushing throughout all the nations in order to reduce the population.”

Although, another deputy of the Mazhilis of the Kazakhstani Parliament A. Soloviyeva was less categorical as she believes that nowadays Kazakhstan has more important matters to think about. “Hence, it is early to think of such matters as the same-sex marriages”, she said. She proposed that gays and lesbians should solve their family problems and property disputes with the help of law or mediation.

Nevertheless, another deputy of the Parliament A. Smail stated the following, “Unless we take measures now, we will not be able to stop it [homosexualism]. In Almaty there are 20 gay clubs already. In Astana there are four clubs! This is a shame! We will be waiting for the government’s reaction to the suggestion. If it does not appear then we, deputies, must voice this issue. A law needs to be adopted allowing them to be regarded as criminals.”

In turn, the akim of Almaty A. Yesimov was more tolerant when saying “Now about gays: the life changes and Almaty is a big city and there are all sorts of things here. Hence, we should not say that this is not happening to our nation. Probably, we should build on our awareness enhancing education work, starting from kindergartens. What to do if some citizens are inclined to this?”

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152 This section uses the Report on the results of the LGBT human rights monitoring in Kazakhstan based on non-discrimination principles (made by Kazakhstan International Bureau for Human rights and Rule of Law and supported by the funding of the Embassy of the Swiss Confederation in Kazakhstan, 2015).


154 Ibid.


156 See: The Akim of Almaty told about why the hippodrome does not function in the city and why 20 clubs do, 1 November 2013 // Website: Zakon.kz. URL: http://m.zakon.kz/4583953-akim-almaty-rasskazal-pochemu-v-gorode.html
At the same time, the reporter witnesses that the Akim “won applause of the attendees at the briefing of public servants”\textsuperscript{157} in Almaty, which speaks to the fact that the officials’ general opinion of LGBT is negative.

The akim of Astana, Kazakhstan’s capital and now the Minister of Defence of Kazakhstan I.Tasmagambetov cited an example when talking about information technologies, “This phenomenon reveals a mechanism for public vices and man-hateful ideas to transform into real life practice. This is how it works. At an early stage a topic, which has been once an unacceptable occurrence, is offered for discussions. Then it is masked with arguments about freedom of speech and freedom of thought or the interests of a nation. Over time after a “run-in” of its kind the conscience of people accepts this as anything common and relevant. The process ends up in fixing this occurrence as a norm of public conscience and laws. In the long run, the society will come to terms with it and accept a novelty/new law that consolidates and safeguards a once absolutely unthinkable. It suffices to recollect the germ of fascism that brought about the war and concentration camps.”\textsuperscript{158}

He said that an example of the effect of this technology on a global scale is non-traditional sexual relations, a subject that has been forbidden for centuries in the religious domain. ‘It has become more than just a political norm in a number of developed countries and undergone such transformation that the US Senate in California has approved the study of the history of achievements that representatives of non-traditional sexual orientation have made. I suppose you yourselves may observe that this subject is being “spun” in international mass media. Then reasonable sounds the question “What is next?”’

When asked by one of the visitors of his blog whether Kazakhstani gays may be enrolled in the army the then Minister of Defence of Kazakhstan A. Dzhaksybekov said, “No.” Then he went on, ‘The sexual desire disorder in the light of the requirements applicable to the health of people to enrol into the Army, other troops and military formations of Kazakhstan as of 28 December 2009 prevents from serving in the armed forces, other troops and formations’\textsuperscript{159}. It means the Ministry considers LGBT as individuals with the sexual desire disorder.

Early 2014 the possibility of punishing for homosexuality was discussed by the Parliament of Kazakhstan during the debates on the draft Criminal Code of Kazakhstan.

A deputy of the Mazhilis of the Kazakhstani Parliament B.Smagul proposed developing a draft law prohibiting homosexual relations. “I suppose it is necessary not only to tighten Article 11 of the Code of the Republic of Kazakhstan On Marriage and Family (individuals who are not allowed to contract a marriage (matrimony)) but also develop a draft law that eliminate homosexual relations and close up night clubs everywhere”, said Smagul voicing an inquiry delivered to the Prime Minister of Kazakhstan S. Akhmetov.\textsuperscript{160}

\textsuperscript{157} Ibid.
\textsuperscript{158} See: Tasmagambetov has uncovered a “brain washing plot” // Kazakhstan Portal NUR.kz. URL: http://news.nur.kz/kk/327719.html.
\textsuperscript{159} See: The Minister of Defense bans Kazakhstani gays to serve in the army, 13 June 2012 // Website: Asker.kz. URL: http://asker.kz/blog/army_news/302.html.
A deputy of the Mazhilis of the Kazakhstani Parliament Zh. Akhmetbekov stated that it is homosexuals who are guilty of an increased number of divorces nationwide.\footnote{See: Deputies: Homosexuals are to blame for an increase in divorces in Kazakhstani, 26 November 2014. // Site Gazeta.kz. URL: http://articles.gazeta.kz/articles/deputat-v-uvelichenii-razvodov-v-kazakhstane-vinovaty-gomoseksualisty-articleID406604.html}

In September, 2014 at the press conference in Almaty the leader of Public Movement Bolashak D. Babamuratov expressed his indignation as towards that “open discussions about the LGBT movement are considered by the society as normal. We went as low as to allow gays and lesbians to not conceal their orientation any longer. In supermarkets and other public places you may see many people of this sort – young people wearing colour pants. Since they are dressed up like that it means that they do not conceal their (sexual) orientation. I believe that a homosexual may be easily identified by DNA. A blood test may reveal a man who has such deviation”.

He went on to state that “in addition to the law banning gay propaganda we need to adopt a law against sodomy as it was the case in the Soviet times. We need these laws in order to have such people (homosexuals) feel ashamed of their bent in our society.”

At the same press conference, a reporter N. Iesmirza called LGBT representatives as ‘degenerates’ referring to the German fuehrer’s favourite rhetoric, “In order to preserve the purity of the Arian race, no incest should have been allowed. Hitler was against homosexuals”.\footnote{See: Kazakhstan seeks to ban gay propaganda and identifies gays through their DNA, 11 September 2014. // Site Russian Conservatism URL: http://русский консерватизм/perevody/kazakhstan-stremitsya-zapretit-gey-propagandu-i-vyyavlyat-geev-po-otkloniyam-v-ikh-dnk}

A new Criminal Code of Kazakhstan adopted in July 2014 and brought into force on 1 January 2015 does not contain any provisions that establish criminal responsibility for homosexual relations and non-traditional sexual orientation. However, statements quoted as being said by high-profile officials and deputies of the Parliament, politicians and public figures do not leave any doubts that they have negative attitude to LGBT.

At the same time, there are practically no positive public statements by public officials about LGBT.

Early 2015, the Parliament of Kazakhstan adopted the Law of Kazakhstan On the Protection of Children Against Information That Do Harm to their Health and Development and submitted it to the President for his signature. The law includes provisions that obviously discriminate against LGBT as it provides for a ban on any information products that promote violence and cruelty that provokes children to take up life threatening activities, including suicide, and contain scenes of pornographic, sexual and erotic import and promote unconventional sexual orientation. Hopefully this Law was declared unconstitutional on technical grounds by Constitutional Council of RK where it was sent by the President.

Mass media

Mass media does not so often cover the LGBT topic. However, out of several dozen publications having run over the last two years the majority have expressed negative attitude to LGBT.
The article entitled “Abay weeps… 10 per cent of the Kazakhstani population are gays and lesbians” published by the popular Internet newspaper Zona.kz said specifically, “Homosexuality is a depravity and the disease of the society that leads to the degradation of the mankind. It is alien to our cultural traditions and the regular Kazakh society will never accept this phenomena as natural”.

The article ‘A Window of Overton Opportunities’ states that “nowadays the representatives of LGBT in the Republic of Kazakhstan are ‘raising their heads’ and claiming their rights to lead an abnormal lifestyle. Referring to the “developed” countries they forget that some U.S. states provide for a sentence of up to 10 years and various fines for sexual relations with the same-gender man.

A huge scandal that was much covered in the mass media bringing the LGBT into the spotlight erupted as a poster portraying famous Russian poet Alexander Pushkin kissing Kazakh composer Kurmangazy was made by Havas Worldwide Kazakhstan. The order was placed by the LGBT community of Kazakhstan who represents the interests of people with non-traditional sexual orientation.

Immediately after that the social networks initiated boisterous discussions about the poster. The majority expressed their discontent believing that the project disgraces the lifestyle of great man of art and promotes non-traditional sexual orientation. The poster was referred to as ‘the trampling down of the honour of two peoples’.

What is noteworthy is that a suit against the advertising agency was filed by the Internal Policy Department of the Akimat of Almaty. It means that the authority got immediately “involved” in the process of holding the advertising agency responsible for improper advertisement. That is why following the suit the court fined the advertising agency with 314,000 tenge.

The arguments in the court’s ruling may be considered as homophobic. ‘For example, a disputable picture on the poster associates the people’s composer Kurmangazy Sagyrbayuly with persons of non-traditional sexual orientation while he is not such… The appearance of Kurmangazy on the poster distorts the image of the composer making it frivolous. This given circumstance is inferred from the form of delivery and the sense of the poster made. Hence, the court finds the picture of the People’s composer in the same form as discrediting the memory of the People’s musician and composer Kurmangazy Sagyrbayuly. The defendant did not take into account the fact that the production of the poster with an improper portraying of the People’s composer Kurmangazy Sagyrbayuly whose name is borne by the Kazakh National Conservatory and the Kazakh Academic Orchestra of the folks instruments tarnishes the honour of the People’s composer in the public opinion and breaks substantially non-property rights of the claimants who are the employees of the Conservatory, orchestra and Conservatory students as the art community”, the court’s ruling said.

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163 See: Abay weeps … 10 per cent of the Kazakhstan population are gays and lesbians. 16 November 2013 // Internet newspaper: Zona.kz. URL: http://www.zonakz.net/blogs/user/sarybaj_dujsembinov/28372.html
164 See: The Window of Overton Opportunities, 18 January 2014 // Website: Predictor.kz. URL: http://www.predictor.kz/
165 See: Advertisers Portray a Kiss of Kurmangazy and Pushkin. 25 August 2014 // The Republican Public Political Newspaper: Munayuly Astana. URL: http://www.m-astana.kz/article/view?id=1678
Another suit against the advertising agency was filed by the students and professors of the Kazakh National Conservatory named after Kurmangazy who found themselves insulted and connotations unacceptable. It means that the claimants considered that even the analogy with LGBT is insulting.

The editor in chief in the Rabat newspaper F. Sharafutdinov writes, ‘Over the past 40 years homosexuals have made, well, stunning achievements in the protection of their rights and freedoms. Do you want examples? As they say in Odessa “I have them!” In 1993 the World Health Organisation revised its qualification of diseases by crossing homosexuality out of the pathologies listing. This is a real threat to the family institution. We have noted that in many countries gay parades are becoming nearly a commonplace event. Ever more films, sites and various show programmes carrying gay-ridden subject matters, gay hosts and gay singers. This year the Eurovision was won by a bearded woman Conchitta, to the delight of many European democrats. For Western politicians it has become common to put a combat for the rights of sexual minorities on their pre-election programmes. And this is where the threat to traditional family values lies’.167

On the website of a group of donors the list of contraindications for blood donation and its components recognises as absolute contraindications (a rejection from donation regardless of a prescription of disease and treatment results) the infectious deceases, including AIDS, HIV infections and high risk groups (homosexuals, drug abuses, prostitutes).168

The Diapason newspaper reported an action by the Antigay Movement, “Activists have built up a brick wall in front of one of the city’s gay clubs and then made inscriptions on the wall reflecting their civic position towards non-traditional sexual minorities. The sense of the action was that with that symbolic wall they attempted to convey one very simple point to the society and representatives of sexual minorities – it is impossible to have a nuclear family with same-sex relations.”169

The Vremya newspaper reported that in Ust-Kamenogorsk the Okkupai-pedofiliay Movement appeared that “seizes those whom it considers perverts and re-educates them by means of “folks remedy methods” by threats, pretty strong words, urination and forced introduction to sex toys.”170 On the spur of the moment the movement would attack both supposed paedophiles and just gays.

On one of the popular law sites Zakon.kz a family psychologist S. Kim said commenting the spread of leaflets in Almaty with fluttering butterflies on them, “This propaganda is alien to our lifestyle. It is worthy paying attention to that such leaflets tend to appear more often near schools. A man is born as a male or a female. Hence, a denial of a certain gender is absolutely absurd. Those who disseminate such leaflets should be fined and the most zealous activists sent to prison.”171

168 See: URL: http://donors.kz/publ/mogu_li_ja_stat_donorom/1-1-0-1
See: URL: http://donors.kz/publ/mogu_li_ja_stat_donorom/1-1-0-1
However, in the *Central Asia Monitor* newspaper, B. Shakhmetov, doctor of medical science, professor of the Psychiatry, Psychotherapy and Narcology, chair at the Kazakh National University underlined that “homosexuality or bisexuality are irregular variants of behaviour but they are not considered pathologies any longer.”

Unfortunately, such professional assessments and explanations are not featured in the Kazakhstan press.

Even a more homophobic situation is shaping up in social networks. The overwhelming majority of groups in the social networks express a negative, hostile and aggressive attitude towards LGBT accompanied by threats and offences.

**Questionnaires and surveys**

Very rarely monitors managed to conduct a survey or get a completed questionnaire related to the LGBT situation, especially in the provinces. Despite there being no obvious signs of discrimination and prosecution by governmental or other social groups, the representatives of the LGBT community turned out to be very closed and reluctant to get in contact which reflected the general situation of ‘invisibility’ and ‘concerns’. Non-governmental Organisation “Amulet” assisted us greatly in collecting questionnaires.

It is expedient to use the data of the previous surveys when evaluating the results of surveys and questionnaires which makes it possible to measure up the situation in the dynamics.

In 2004 the Independent Agency “Politon” conducted a survey on how the Kazakhstani society views sexual minorities. Among the surveyed were reporters, public figures, politicians and human rights advocates. Some of the surveyed belonged to the LGBT community. Practically, all responded wished to remain anonymous.

The survey showed that the problem of sexual minorities from the point of view of their legalization at that time was not relevant in Kazakhstan. At the same time, various reasons were cited, ‘for some people whom it concerns this problem may be relevant while for Kazakhstani people as a whole it is not because there are not numerous. ‘This issue lies rather within a legal stratum’. ‘Nobody cares about that’. ‘There are not many of them’.

At the same time, the opinions of a number of people of non-traditional sexual orientation in Kazakhstan do diverge considerably. The majority believe that there are fewer of them, from 2-3 to 10%. Some surveyed, for example, suggested from 5,000-6,000 to 20,000 in Almaty alone. The surveyed who belong to sexual minorities themselves gave a far more “optimistic” view of “their numbers”. One of them stated that I think that 50-50. There are people whom you cannot expect to be as such but then they turn out to be …” The other said, “I am sure that there are quite few... I was surprised how massive it is! Many have it in a concealed form!”

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The results of the survey demonstrated vividly that there are no reliable data on the number of people of non-traditional sexual orientation. People conceal their affiliation to the sexual minority in the fear of publicity and negative public reaction. According to the given survey all the surveyed except quite few had a chance to deal with the sexual minority, however, largely with gays. Apparently, lesbians are more closed for the outside world. To the above question one of the surveyed noted ‘in the politics, business, mass media there are a lot of them as well as among statesmen’.

The issue is about whether or not individuals of non-traditional sexual orientation may be considered as normal in their own right has caused a kind of confusion due to the choice of the criteria of what is to be normal in one’s own right. One of the surveyed responded, “They believe that it is all right. Deviation in the way that nature gave a woman a man’s body or quite the opposite is considered by them as something unfair. There is a sort of fad in being abnormal. The thing is that our perception of being normal or abnormal changes. In the Ancient Greece love to a woman was deemed as something abnormal, filthy. I believe myself that it is normal”. The other said that “To some extent they are abnormal. But what is it a norm?” The majority of the surveyed concurred that gays are normal people in their own right. However, the opinions of why that person became a gay diverged. One surveyed believes that this is not a deviation and people may become gays due to ‘poor upbringing’. In any case the results of the survey showed that the society has rather superfluous perceptions of why people become gays and what the science has to say about the problem.

The surveyed pointed out that there is no national policy towards the sexual minority. Practically, all the people surveyed mentioned this problem. “Not only the State wants to notice the problem, it completely ignores it. For the State and the power the gays do not pose any danger”, one of the surveyed noted. Another one, however, stated that if persons of non-traditional sexual orientation are not prosecuted, this is also a state policy either. At the same time, another surveyed who belongs to the gays has pointed out to the need in developing the state policy, “It is required for sure. I believe that the issue needs to be considered of whether the gays must serve in the army, of course, or not. Well, here comes the question again. How can it be checked? There must be a State policy. Very often the rights of gays are abused I can see it by myself. For example, I am open but many do not know why I have left the television and why I do not want to come back as the TV channel’s image suffers and the society does not have an understanding yet. I mean a prejudiced attitude, very prejudiced”.

Practically, all the surveyed have unanimously seen the attitude of the Kazakhstani society towards the sexual minorities as negative. Only one surveyed noted that “I do not know - if judged by the mass media there is no such topic! They are by themselves and the society is by itself”. At the same time, all point out to more tolerant attitude to homosexuals among more educated population in the city and more intolerant among the rural people-traditionalists. At the same time, when asked about various ethnic groups one of the surveyed noted, “The nature does not choose whether you are Russian or Kazakh, she makes you a gay and here you go”. The most expanded answer to the said question was as follows, “At large, the Kazakhstani society has a negative attitude towards this problem. The rural population does not accept it at all. They believe them as outcasts. The city population is more tolerant until it does not concern the family. And in the family I know tragedies exist. Kazaks do not accept it at all among the citizens of their nationality while Kazakhs are more tolerant to homosexuals of another nationality. Slavic nationalities live with it more tolerantly when this happens they come to terms with it”. The majority of the surveyed stick to their point of view that the promotion of this issue in the society would lead to a conflict with religious leadership.

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Hushing up the problem is connected to the corresponding attitude of the mass media. Most of the surveyed noted that gays as a topic do not exist for the mass media, this topic does not attract their attention. As one of the surveyed noted, *There is no specific position. There is an overwhelming majority of reporters who attempt to deliver this information in passing with the elements of light jibing. However, these matters are not being covered in detail*."

In 2008 the Soros Foundation-Kazakhstan supported a study over the situation with LGBT in Kazakhstan. According to the results of the study a general conclusion was drawn.

A law-related analysis and a sociological analysis presented in the study-based report showed that “the Kazakhstani laws need changing and amending and that the society of Kazakhstan needs learning to be patient and to respect the rights of all the citizens, including those who belong to minorities. The republic has yet to go a long way before it attains complete tolerance and accept lesbians, gays, bisexuals and transgenders”.

The authors of the report also set out a series of special conclusions that we suppose it be reasonable to cite below.

«1. Since the criminal responsibility for ‘homosexuality’ has been excluded from the laws of Kazakhstan due to the introduction of a new Criminal Code of Kazakhstan the Republic’s laws do not contain any criminal law sanctions whatsoever unless it is not about acts of violence, intercourse forced into with an individual who has not come of age of consent and coercion into sexual intercourse.

2. The Republic of Kazakhstan is a party to a number of international conventions on human rights, specifically the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights that prohibit discrimination on any grounds, including as it may be inferred from one of the UN Committee’s resolutions on human rights this also relates to discrimination on the grounds of sexual orientation. Kazakhstan is also a participant of the International Convention on eliminating all forms of racial discrimination that in a similar fashion establishes the basic requirements to the ban and prevention of discrimination on any grounds.

3. The laws of Kazakhstan contain a ban on discrimination on a number of grounds, including those “on any other circumstances” which apparently include sexual orientation as well. However, the country has no special anti-discrimination law while the effective laws and regulations have no definition of the term “discrimination”. Nor there are anti-discriminatory institutions and procedures as was pointed out to by the UN Committee on eliminating all forms of racial discrimination when considering official reports on the performance of Kazakhstan in fulfilling the International Convention on eliminating all forms of racial discrimination.

4. The main characteristics of the Kazakhstani laws as to the way the rights of LGBT are secured are: no direct discrimination provisions for individuals of homosexual and bisexual orientation, likewise no mention of the rights of LGBT and no legal mechanisms to protect the group. In other words, the most substantial drawback of Kazakhstani laws in this area which should be acknowledged is the lack of a legal prohibition of discrimination on the grounds of sexual orientation in various legal spheres (first

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of all, in criminal law as well as labour law) which bring about preconditions for the violation of rights and cases of discrimination against LGBT in varied areas of the life. There is no court practice with respect to discrimination on the ground of sexual orientation and, in all appearance, such practice does not exist as yet.

5. Kazakhstani family laws do not recognise same-sex marriages and unions”.

Based on the sociological study of discrimination against LGBT in Kazakhstan quoted in a report of the Soros Foundation-Kazakhstan the following conclusions are made:

“1. Representatives of LGBT in Kazakhstan face discrimination and prejudiced attitude due to sexual orientation or gender identity in the everyday life. The manifestation of negative attitude to sexual minorities such as social rejection, attacks and violence often does physical, psychological and emotional harm to victims.

2. 81.2% of the surveyed pointed out that the society as a whole shows condemnation and disrespect to LGBT. To avoid any dangers that homophobes and transphobes pose, many LGBT are forced to conceal their sexual orientation/gender identity throughout their life.

3. As a result of discrimination and homophobia and transphobias lived out through their own personal experience a considerable part of LGBT is not inclined or concerned to open their sexual orientation in front of their employees, acquaintances and even relatives. However, every third of the surveyed said that at least once in a life she/he shared information on her/his sexual orientation or gender identity with anyone of the relatives.

4. As friends and relatives of the respondents came to find out about their sexual orientation/gender identity the attitude towards the respondents changed – from warm relationship towards and acceptance of an individual as he is up to complete rejection and alienation, hostility and violence.

5. The majority of the surveyed correspondents acknowledged the need to conceal their sexual orientation/gender identity from the wider public and employees to avoid dismissal and hostility from the side of leadership and employees. A few people complained during the survey about discrimination they experienced when being taken for the job; the majority of the surveyed (64.1%) said that they have never faced any obvious discrimination at workplace. Apparently, the indications of the discrimination being felt could have been even higher if LGBT had not concealed their orientation and gender identity due to the fear of conflict. Those manifestations of discrimination at workplace that were voiced by LGBT respondents included dismissal from workplace, rejection in career promotion due to sexual orientation as well as psychological pressure and social rejection from co-workers.

6. At schools and universities LGBT often suffer from physical violence and psychological pressure due to attacks and threats from pupils and teachers.

7. Due to the fear of being negatively perceived by the wider public the respondents conscientiously conceal their sexual orientation from neighbours and landlords. This strategy of survival is more or less effective (66.2% of the respondents noted that neighbours and landlords treated them ‘as anybody else’ as they were unaware of their orientation). However, it is completely obvious that LGBT individuals are quite vulnerable in terms of discrimination and derogation towards themselves from
neighbours and dwellers in their district. Some respondents stated that they became victims of prosecution of ‘street groupings’ and they were chased by homophobia-minded hooligans. Some respondents were forced to relocate to another city in order to avoid attacks and violence from local residents.

8. Similar patterned behaviour was found to be typical in the healthcare area. The majority of LGBT individuals conceal their sexual orientation and gender identity from doctors and other healthcare personal in order to avoid discrimination towards themselves. However, it should be noted that only 4% of the respondents noted less friendly attitude of medical personal towards them due to their sexual orientation when it was made known. Although the number of respondents sharing such negative experience was not high the examples of insult, refusal of treatment and even hostility of the medical personal they shared about caused concerns and pointed out to the need to pay attention to violation of professional ethics and rights of patients from the side of healthcare workers.

9. A big percentage of LGBT individuals (almost every fourth) experienced physical and psychological violence due to their sexual orientation or gender identity. Acts of violence included beating, light and medium damage to health, sexual harassment and raping. Among those who fell victims to people of other sexual orientation due to homophobic or transphobic violence every third had faced such violence more than three times. In the majority cases attackers and breakers of rights were individuals and sometimes those who are obliged to defend them which is police. LGBT are exposed to violence at any place: in the street, at workplace, schools and universities, cafes and clubs, on public transport, private flats, dormitories, army barracks and police stations. Practically, half of the cases of physical violence took place in the presence of witnesses.

10. When the homophobic and transphobic violence is reported to the police, the respondents have often faced inaction or even hostility from the law-enforcement personal. Some respondents noted that they underwent insults, threats even physical violence of policemen when they tried to file an application about attacks on the grounds of sexual orientation. Hostility of the police was one of the causes why the respondents do not have any trust in law enforcement agencies and as a whole are not inclined to declare the attack that occurred. Also the respondents noted that the fear of coming out is a cause of their reluctance to seek help from authorities.

11. Half of the surveyed of the LGBT community noted that they fall victim of psychological pressure due to their sexual orientation or gender identity. The respondents reported that they were a target for threats, insults and letters expressing hatred and disclosure of the information on their sexual orientation or gender identity against their will (i.e. forced declaration). In the majority of cases, abusers who have committed acts of psychological violence are private individuals. Secondly, the most frequent source of abuse cited was police officers.”

Among the most typical statements of the surveyed quoted in this study the following should be noted:

“Doctors (who seem to be educated people) do not want to give us medical care, always cheat with documents. Nor do I mention about guys. It is even more difficult for them. Absolutely everywhere there is a chance “to get it”. Even journalists would write something which makes you think that this country has to go a long way towards tolerance. It is simple. Just look at the dating websites. The Kazakhstan Internet segment practically has no resources for gays and lesbians to communicate. Although there are a huge number of suggestions like “intimacy for money.”
“...I want equality. Just imagine there is a citizen of the country. By law, there is no prohibition for him to be gay. It means he is free to do whatever he wants with his personal life. Moreover, the scientists proved quite a while ago that homosexuality is inborn. And a man cannot get married by love match in his country. Why? Isn’t it a violation of rights? It is understandable that the state which is not religiously motivated, can reason a ban on same-sex marriages with care for higher births, for example. But they cannot make a woman give birth if she does not want to. Or make a gay get married, again, who cannot be with a woman on physiological reasons. I am sorry but that is where ten per cent of divorces in the country come from. In general, they say that everything what is not prohibited is allowed. Then why are we not allowed to live the way we want?”

“We do not touch anyone and never solicit anyone to be like us. The statement that the percentage of HIV infected is on the rise due to gays is stupid. Just look at the statistics. Out of 100% infected gays account for 5%. The rest are drug abusers and those who were infected by doctors during blood transfusion. That is what the Muslims should fight with…”

“Today we could enjoy at least the possibility of coming out without fearing for our own life. Knowing that while in a conflict situation, we as any other citizens of the country will get fair and lawful protection from the law enforcement agencies rather than derision and open hatred. Hence I think for start we need to begin to educate on that tolerance that our government has been talking so much. And then when all see that there is nothing terrible about LGBT we may talk about marriages as well…”

One of the authors of this report fairly concludes that, “The analysis of the data on the position of LGBT in Kazakhstan makes us admit that as of today the rights of the representatives of the LGBT community are regularly violated. To change the situation it is necessary to eradicate fears the heterosexual part of the society holds of LGBT and the LGBT representatives – of the society. And it is where non-governmental organisations may play a substantial role. The more the country discusses this problem, seeks the ways to solve it, the faster it will exhaust. Thus far, there has been no platform to discuss homophobia, its consequences and influence over the society as a whole.

The danger of ‘two-way silence’ lies in that ‘live people and human fates are behind such notions as ‘homophobia’, ‘homosexuality’ and ‘discrimination’.”

Unfortunately, over the five years that have passed by since the writing of this report there have been little changes, as the results of the monitoring show.

The survey conducted by monitors – employees of the Kazakhstan International Bureau for Human Rights and Rule of Law and Non-Governmental Organisation “Amulet” does not claim to be a comprehensive social study due to a number of reasons mentioned above.

However, answers to the questions in the questionnaires do not make it possible to evaluate as a whole the situation with LGBT rights in terms of non-discrimination as the respondents’ answers (practically always anonymous) from different regions of the country do not differ very much from each other and basically are similar to the answers given in the studies in 2003 and 2009.

First of all, we will cite social and demographic information on a few dozens of the surveyed of the LGBT community.
The questionnaires were completed by approximately an equal number of women and men (48% and 52%, respectively).

The age of the surveyed was 18-25 years – 27%; 25-40 years – 68% and older 40 years - 5%. Thus, the main part of the surveyed was people of mature age.

The education level is secondary education – 19%; secondary special education– 21%; higher education – 60%.

Only 4% of the surveyed were married. Others were single or divorced which was not surprising as same-sex marriages and unions in Kazakhstan are not allowed.

Only 9% of the surveyed were not employed.

Sexual orientation of the surveyed was as follows: 44% consider themselves as gays; 35% - lesbians; 21% - bisexuals.

Transgenders and transsexuals did not participate in the survey.

Curious data came in by degree of openness of information on sexual orientation of the surveyed.

Although 12% of the surveyed stated that nobody knows about their sexual orientation and only 5% do not conceal it, in 53% of cases, only close friends (more often of homosexual orientation) know of their sexual orientation and in 30% of the cases closes friends and close relatives.

This data testify to that very high level of stigmatization of the LGBT community in Kazakhstan.

The level of their self-rating was also studied. Despite this level of stigmatization the indications of the self-rating of the LGBT surveyed were rather acceptable. 38% of the surveyed had a high level of the self-rating while 53% - medium and only 9% - low.

94% stated that they maintain, to a certain extent of regularity, relations with friends and other people of the same orientation and only 6% - do not.

At the same time, over 61% maintain contacts via the Internet rather than personally.

Rather eloquent are data on discrimination the surveyed have experienced. 25% alone stated that they have never faced discrimination in any form whatsoever; mainly due to the fact that nobody knows of their sexual orientation or a very limited number of people is aware of it. 75% of the surveyed have faced discrimination in the form of labelling, abuse and insults. 40% have experienced physical or psychological violence and 20% - refusal in medical assistance and 15% - discrimination in the police.

In the questionnaires the surveyed shared their negative experience if their non-traditional sexual orientation came to be known:
- the blackmailing of parents;
- homophobic attitude of officials, police officers and doctors;
- the betrayal of close relatives and threats they pose;
- humiliation and insults by neighbours, sometimes forcing to change residence;
- insult and humiliation by employers and colleagues at work, dismissal and pressure;
- physical and psychological violence.

One of the surveyed directly indicated, “In our city you cannot act openly if you are a gay. People normally treat prostitution – know where saunas, the streets and hotels are to pick up a girl. They treat well drug abusers and know where to buy a pot or anything else. But if they come to find out that you are a gay they may even kill you. To be a gay is something horrible and is what to be eliminated and never to be seen in the city...”

In March 2014, the site of Azzatyk Radio run an item “How is it like to be a gay in Kazakhstan?” A 30 year old resident of Almaty Maxat (the name is changed) and his partner dream of not having to conceal their sexual orientation one day.

Maxat says that to be a gay in Kazakhstan means to hide from oneself and lie to oneself and the society.

Below are few comments and evaluations that appear to be rather typical of the LGBT community in Kazakhstan:

“It is better not to tell anyone that you are a gay. Otherwise, they will pay you lesser than others for the same work or not promote or bully.”

“At school I had to experience bullying. It is not because that I differed in a way from the naturals but rather that I did not have girls at 15 when a teenager ‘must’ have girls.”

“As a whole we have a conservative society, mainly people who attempt to make gays choose ‘the true path’ or through them out of the house. Many gays and lesbians lie to themselves, break their life, get married in order not to cause any suspicions of the society or they do not want to declare that they are ‘representatives of non-traditional sexual orientation.”

“I understood that I am a gay when I was a child. I was ten. I understood by that I liked boys but it was easier for me to deal with girls. I had a different interest to the boys. It means it was the way how naturals have it in their life but quite the opposite.”

“If it were introduced into the law that a man cannot be prosecuted for his sexual orientation so that we could live safely in our country without being afraid that any moment we can be attacked on the quiet. The rights of a human being are the right to life without violence and prosecution. This is the right to marriage, family and children. We do not require legalization of same-sex couples. We do not require the right to adoption of children. We just want to live without fear.”

“Laws must protect gays from prosecution. Administrative or criminal responsibility need to be adopted for crimes against gays. In Kazakhstan if you come to law enforcement authorities the cops may say as well: come over here or we would be after you ourselves and beat you up! In our society it is appropriate to consider homosexuality as a disease but not treatment methods are indicated. In a 175 See: What is it like to be a gay in Kazakhstan? 14 March 2014 // Website of Azzatyk Radio. URL: http://rus.azattyq.org/content/lbgt-menshinstvo-kazakhstan/25296787.html
cinema gays are shown as people who lead a filthy lifestyle. In fact, there is nothing of that kind. Our life is as common as anybody’s else.”

“I am sure that gays do not bring in anything new in the depravity of the society. The moral principles are profoundly individual matters. A man may not be a guy but at the same time, a scoundrel. Or a man can be a gay and may be an active citizen who makes his contribution to the development of his country.”

He also talked about stereotypes of LGBT that exist in the Kazakhstani society.

“Not all of us are men of fashion and designers. We are interested in a fashion as much as anyone else. Take, for example, gay clubs. They also make their contribution to the disinfection of the society. They understand specificity and stage on vulgar shows where three men get undressed on the stage and so on. In fact, it does not come with the reality. Gays as well as naturals can be monogamous or polygamous. It depends first of all on a man himself.

There is an opinion that gays are all money bags and millionaires. It is not always the case. More often naturals say that gays have a higher IQ level than naturals. But I do not agree as do not want to discriminate anyone.

In Kazakhstan same-sex unions will never be perceived by the society as a family in its own right and hence many couples are forced to live separately. Many leave abroad to more tolerant countries. If I say that I do not want to leave abroad this will be not the truth. Understandably, Kazakhstan has not seen any improvement in the situation with the gays’ human rights. Or it even became worse.

The results of the monitoring in 2003, 2009 and the given analysis showed that the situation with LGBT rights in terms of non-discrimination does not change. The level of stigmatization of the LGBT community remains very high and homophobic attitudes run in authorities and the society while LGBT prefer to be “invisible” and remain “unheard”.

As the results of the present monitoring compared to the studies in 2004 and 2009 suggest and it was mentioned above the situation with LGBT human rights remains practically the same and characterised by the law-related problems and negative attitude of authorities and the society towards this social group as a whole and its representatives specifically.

However, one should note that the situation with LGBT in Kazakhstan is not as burning as in the neighbouring republics of Central Asia or in Russia.

Nonetheless, the observance of LGBT rights in Kazakhstan in terms of non-discrimination is far from international standards and call for serious improvements.