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## CHURCH AUTONOMY IN KAZAKSTAN

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### I. INTRODUCTION

Speaking about church autonomy in Kazakstan, two important aspects should be considered. The first one is related to the religious affiliation of Kazakstan.

Kazakstan is the biggest country in Central Asia on territory and despite having part of its territory in Europe, it is often regarded as a Muslim country, or the country with strong Muslim sentiment. As it is known, in most Muslim states, religious and state institutions are closely connected. That does not give grounds to speak about religious autonomy as it is, or about its interpretation that is common in the West. However, in Kazakstan, Islamic characteristics do not apply.

Actually, Kazakstan is in the zone of traditional Islamic influence, but at the same time, it is located far from the universally recognized Muslim centers. Moreover, due to various reasons Islam in Kazakstan has not been developed similar to other Islamic countries.

Historically, Islam appeared and became widespread in the territory of Kazakstan much later than in other Asian countries. In different historical periods many tribes, dynasties, governments, professing pagan religions, Buddhism or Christianity had great influence in Kazakstan. Nomadic life used to prevail in the territory of Kazakstan for a long time and that was incompatible with orthodox doctrine. Under the influence of these and some

other factors, Islam in Kazakstan has not been developed the way it did in many other countries of the Asian region.

During the Soviet period Islamic positions as well as the positions of other religions were adversely affecting. It is important to mention that during the Soviet period Islamic organizations had not been a dominating religious force in Kazakstan. For example, much more numerous were Protestant organizations. Thus, in 1989, in Kazakstan there were only 46 Islamic communities while religious communities of Evangelical Christian-Baptist were 168 and Lutheran organizations were 171.<sup>1</sup>

Presently, in Kazakstan, we can distinguish two main confessions according to their roles and importance: Islamic organizations and the Russian Orthodox Church. In addition, traditionally strong influence belongs to Protestant organizations. After the split of the Soviet Union, many new religious movements which had not existed before, penetrated into Kazakstan.<sup>2</sup>

The second important aspect that is to be regarded when considering the matters of church autonomy in Kazakstan, is related to the Socialist past of the country. Kazakstan, like any other republics of the former Soviet Union used to be atheistic by nature. Religion in such countries was pronounced to be a temporary phenomenon, which in the process of socialist and communist institutional development would die out anyway. That is why the policy and practice of the state bodies' activity was just a struggle against religion and autonomy was out of the question.

Atheistic in nature, the state established the principle of religious organizations separation from state, and church from school. Under the separation, the church's non-interference into state affairs and non-interference of the state into church affairs was understood. In practice, such

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<sup>1</sup> V. Ivanov/Y. Trofimov, *Religii v Kazakstane (Religions in Kazakstan)*. Almaty, "Adilet" Law School 1999, at 49.

<sup>2</sup> According to the latest data, among 2000 registered religious organizations in the state, there are 1000 Muslim organizations, 220 Orthodox, 242 Evangelical Christian-Baptists and 166 are the new religious movements. In total there are about 6000 organizations, including both registered and non-registered ones. See: V. Ivanov/V. Trofimov, *Religii v Kazakstane (Religions in Kazakstan)*, Almaty, "Adilet" Law School, 1999, at 49. Among the new religious movements we can distinguish Worshipers of Krishna, the Korean Presviterian Churches and Charismatic movements.

non-interference used to be one-sided. Religious organizations did not play any part in the state or public life of the country. In its turn, all religious organizations were under the strict control of state bodies. The Church could not solve its problems on its own without control of the state bodies.

While analyzing Soviet religious legislation, one might see numerous examples of state bodies interference into internal church life, as well as significant limits of church autonomy in various kinds of religious organizations activity. Below there are the examples of such limits:

### 1. ORGANIZATIONAL LIMITS

religious activity of believers' organizations could be exercised only after being registered by a special state agency (Council on Religious Affairs under the Council of Ministers of the USSR);

religious meetings, congresses of religious organizations could be held only after being authorized by state bodies;

the state determined a standard internal structure of religious community ruling.

### 2. PROPERTY LIMITS

any religious community could use only one house of prayer;

all the property of religious organizations belonged to the state (it was nationalized);

building houses of prayer was allowed only after being authorized by state bodies, responsible for religious matters.

### 3. LIMITS OF RELIGIOUS AND COLLATERAL ACTIVITY

it was prohibited to conduct any kind of religious worship activity in state or non-state (non-religious) organizations;

material support of believers was prohibited;

charitable, humanitarian and publishing activities were prohibited.

#### 4. LIMITS OF A PRIEST'S ACTIVITY

the activity of priests was prohibited if they were not registered by the state bodies;

state authorities had the right to withdraw any person from the internal ruling bodies of religious communities.

the territory of priest's activity was limited.

Thus, churches and believers were under the strict control of state bodies. There were many other various limits, vetoes and extra duties which did not exist for other types of organizations and citizens.

## II. RELIGIOUS LEGISLATION AND CHURCH AUTONOMY IN POST SOVIET KAZAKSTAN

After the split of the Soviet Union in many former Soviet Republics, including Kazakstan, the new legislation about religious organizations was adopted. After many years of struggle between church and state, that new legislation established absolutely new relations between the two social structures. As a result of these new approaches, the liberalization of religious life took place. Religious communities and believers became free from the total state control and religious structures got the opportunity to decide on many religious and related matters on their own.

At the same time, state indifference to the matters of religion and church-state relations has still been traditional. It is expressed through lack of normative acts relating to the matters of religion, ignorance of peculiarities of religious associations and believers while regulating various matters. In a certain sense, indifference on the part of the state can also mean church autonomy's existence in the country. At the same time, lack of legal grounds does not mean state impossibility of interference into religious associations activity and in many cases to act on discretion. Unfortunately, such discretion in many cases contradicts the law. Speaking about legal grounds of believers and religious organizations, first of all, we emphasize the Constitution of the Republic of Kazakstan 1995<sup>3</sup>, in which article 22 states that everyone has the right to freedom of conscience and that the enjoyment

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<sup>3</sup> Konstitutsia Respubliki Kazakstan 1995 (Constitution of the Republic of Kazakstan 1995). Vedomosti Parlamenta Respubliki Kazakstan, 1996, No. 4.

of that right must not stipulate or limit, common to all mankind and civic rights as well as duties before the state.

One more article of the Constitution deals with religion. Article 5 secures the proposition that the activity of foreign religious organizations in the territory of the Republic, as well as the appointment of the religious organizations' leaders in the Republic by foreign religious centers are exercised at the discretion of relevant state bodies of the Republic.<sup>4</sup>

In compliance with this article, the activity of political parties on a religious basis is prohibited as well.

The basic legal document related to matters of religion, religious organizations and believers is the Law of the Republic of Kazakstan of February 15, 1992 "On Freedom of Religion and Religious Associations".<sup>5</sup>

Article 4 of the mentioned above law deals with the principles of church-state relations, which are also directly related to church autonomy. In compliance with this article, religious organizations are separate from the state. All religions are equal before the law. None of religions or religious organizations enjoy any advantages over others. Religious organizations do not exercise any state functions and the state does not interfere with religious organizations, unless it contradicts legislation. The state does not finance religious organizations.

Religious organizations do not participate in the electing of governmental bodies. The establishing of parties and other political formations of a religious nature are prohibited. Additionally, participation of religious organizations in the activity of political parties or their financial support are not permitted.

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<sup>4</sup> It is interesting to note the fact that the Russian Orthodox Church in Kazakstan succeeded in helping to secure limiting propositions for foreign organizations in the Kazak Constitution. At the same time, religious organizations of the Russian Orthodox Church in Kazakstan are themselves the structures of foreign religious organization, because they are subordinate to the Moscow Patriarchy. Thus, the Orthodox Church defended the limits regarding itself, not quite understanding it's status in Kazakstan.

<sup>5</sup> Zakon Respubliki Kazakhstan 1992 g. "O svobode veroispovedaniia i religioznykh ob edineniakh" (Law of the Republic of Kazakhstan "On Freedom of Religion and Religious Associations") (1992), Vedomosti Verkhovnogo Soveta Respubliki Kazakhstan, 1992, # 4.

The state encourages establishing a mutual tolerance and respect among the citizens, whether professing religion or not, as well as among various religious organizations.

In the legislation of Kazakstan, there are no legal definitions of church autonomy. As was mentioned above, it is mainly related to the fact that there was no church autonomy in the country for a long time. Correspondingly, there was no need to develop and consolidate the definitions. Various institutions and principles of church-state relations, which in other countries have been established for ages, are only beginning to develop in Kazakstan. Only a short post-Soviet experience of the religious communities' activity gives grounds to speak about actual appearance of church autonomy in the country.

The matters of church autonomy are closely connected with the principle of separation of religious organizations from the state, that is secured by law. However, that principle also existed in the Soviet legislation. Presently, it is not declarative in nature, but is actually exercised in practice as well.

This principle of separation does not mean that the state is not able to have influence on religious organizations. Authority of the state is revealed through the registration of religious organizations, establishing certain rules for their activity, making religious organizations and their leaders liable for any kind of delinquency. However, the state does not interfere into church internal affairs and the established limits are mostly connected with the external activity of religious communities and the necessity of the public order regarding security and citizen's interests. The same limits are established for other organizations of the state.

Apart of aforementioned, there are other documents where the matters related to religions, believers and their associations are reflected; they are civil, tax, criminal and other codes as well as various legal acts. Thus, for instance, Article 149 of the Criminal Code of the Republic of Kazakstan specifies the liability for preventing the right to freedom of conscience and infringing in their religious freedom. This article is a means of church autonomy protection, as it also forbids illegal interference into religious association's activity.<sup>6</sup>

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<sup>6</sup> Ugolovny Kodeks Respubliki Kazakstan, 1997 (Criminal Code of the Republic of Kazakstan, 1997). Vedomosty Parlamenta Respubliki Kazakstan, 1997, No. 15/16.

One of the problems is as follows: despite the existence of legislative propositions showing non-interference of the state into religious association's affairs, in practice such interference is permitted quite often. A similar situation in that, it is common, that the law seriously contradicts current practice not only in the sphere of church-state relationships. It is explained by various reasons, such as lack of stable legal institutions, insufficient legal training of administrative officials, contradictions in various laws etc. It is no mere chance that in this article one can encounter such terminology as "as a rule", "in general" because there are many particular examples when general rule does not work. The situation is worsened by the fact that in the society and among the believers, it is even more vivid that there is no confidence in the court system and in the possibility of solving problems by legal means.

Characterizing Kazak legislation, it should be noted that Kazakstan is still under the influence of liberal trends in the church-state sphere. It differs Kazakstan from other post-Soviet countries (for example Russia, Uzbekistan, Kyrgyzstan) where we can observe the return to the Soviet principles of interrelations between church and state. Strengthening of state control over religious associations on the part of the state, limitation of church autonomy, establishment of special bodies supervising religious association's activity are evident proofs of that.<sup>7</sup>

### III. INSTITUTIONAL AND INTERNAL ORGANIZATIONAL MATTERS OF CHURCH AUTONOMY

In Kazak legislation there is no such term as "church". The terms "religious association, organizations or community" are used instead. Religious organizations can function as registered or non-registered by state bodies. Registration is necessary in cases when religious organizations want to have the right of legal entity. The procedure of registration of a religious community as a legal entity, is exercised by the Ministry of Justice in the same way as the registration of any other organizations, without the special permission.

As a rule, religious communities decide their structure and ruling bodies according to their internal rules only . The government does not determine

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<sup>7</sup> Nowadays in Kazakstan there are no state bodies on religious affairs or other bodies, established specially to deal with the religious problems.

what kind of ruling bodies and their competence a religious community should have. At the same time, there exist some standard structures which state agencies recommend to religious communities when being registered, but these recommendations may concern the civil law status of religious associations only.

Religious communities are also generally independent in deciding upon appointment, election and abolition of their ruling bodies.

#### PROBLEMS

Sometimes, state bodies try to affiliate newly founded religious associations to the acting religious centers and to the big religious formations without taking into account the aforementioned association's intent. Firstly, such limits are connected with the position of state bodies, that are reluctant to consider carefully, the peculiarities of religious communities, as well as the position of main traditional religious organizations in the Republic that want to control the entire religious activity in the country, while trying to use the state as the instrument of reaching their own goals. For example, the Religious Moslem Administration in Kazakstan is the basic Islamic community in the country, holding to the Sunni trend and trying to control all Muslim organizations of the country. This is despite the fact that, some organizations hold to other trends in Islam. The Russian Orthodox Church (Moscow Patriarchy) prevents establishing other Orthodox organizations, which do not recognize the Moscow Patriarchy jurisdiction.

In Kazakstan unlike other countries, there is no obligation for religious organizations to be registered by state bodies. Although often, non-registered religious groups meet with the counteraction of state bodies. This is a violation of law as they demand the ban of a religious association's activity without being registered.

#### IV. TYPES OF RELIGIOUS ACTIVITY AND CHURCH AUTONOMY

##### 1. RELIGIOUS SERVICES, RITUALS AND CEREMONIES

Religious associations are free to arrange rituals, organize services and other religious events in the premises or in the areas which are their property.

Taking into account the fact that religious associations in Kazakstan are only beginning to become the owners, they often have to arrange their rituals in rented premises. In such cases a special permission from state officials are also not necessary.

Only if religious communities arrange their mass events in public places, outside their own or rented premises, at a cemetery, or believers' apartments, they do need to get special permission of the state bodies to arrange them.

The activity of some religious organizations (Jehovah's Witnesses, worshipers of Krishna, etc.) related to the active influence upon citizens arouses dissatisfaction among the population and traditional religious organizations. However, in this case, the state, as a rule, does not interfere in such activity and does not limit its extra activity.

## PROBLEMS

The lack of their own premises often makes religious communities rent buildings owned by the state, private organizations or citizens. In such cases, state bodies or certain administrative officials can give non-official instructions about refusal to leasing, especially concerning new religious movements, or those which in government opinion, are dangerous for the society.

### 3. RELIGIOUS TEACHING

In accordance with the law, the state system of education is separated from the religious communities. It means that teaching religious disciplines is allowed mainly in religious institutions. Religious communities are independent in deciding upon the curriculum and course duration, rules of admittance and other matters of the educational process.

Upon the agreement with the administration of state and non-state secular educational institutions, certain religious disciplines are permitted to be taught in secular organizations.

Religious schools, seminaries, academies have quite a different legal regime from secular educational institutions. Accordingly, this applies more to legislation regarding religious communities, rather than legislation on

education.<sup>8</sup> In contrast to other countries, religious educational institutions in Kazakhstan do not provide secular education, but are busy with training priests or providing only religious education.

#### PROBLEMS

Under the law, religious educational institutions as legal entities can be set up only by religious administrations (centers), i.e. national religious structures. Local religious communities are not authorized to set up religious educational institutions. Sometimes, taking advantage of such a situation, state agencies prohibit local communities to open Sunday schools, religious clubs, courses, seminars and other educational structures that act within the bounds of those communities not laying claim to the status of a legal entity.

In accordance with the increasing zeal of representatives of radical Islam, educational institutions which do not recognize the authority of recognized Moslem Administration appeared in the country. In these institutions, the ideas of Islamic fundamentalism are being taught and “warriors of Islam” are being trained.

In this case, one can observe certain problems, related to the implementation of the principle of church autonomy. Due to the legislation, the state is quite removed from the religious education system. As a result, there is a threat to state and public security, as the state cannot, without breaking the law, have influence on educational institutions of fundamental organizations, in such cases where they are within the bounds of the law. In case of establishing legislative limits, for the fundamental organizations, there would be a threat of imposing such limits on usual religious educational institutions as well. Therefore, the ways of solving the problem of the existence of radical educational institutions and spreading of Islamic fundamentalism are seen

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<sup>8</sup> In 1999 Kazakhstan passed a new Law “On Education” which was adopted but not fully implemented yet. This law secures the proposition regarding mandatory licensing of any educational activity in the Republic of Kazakhstan including the one which is being exercised by religious educational institutions. Such a situation would have been possible to explain in case religious organizations provided secular education. However, as already mentioned, religious educational organizations have quite a different purpose, that is training priests. In this sense, licensing of religious educational institutions means the limitation of church autonomy, because the state interferes into the internal affairs of religious organizations, permitting or prohibiting religious training. Moreover, currently the state, in reality is not ready for licensing such activity due to lack of sufficient knowledge, specialists and standards.

not so much in efforts of state institutions, but also of other societal forces, including “quiet and tolerant” traditional Islamic organizations.

#### 5. CHARITABLE ACTIVITY

Religious organizations are free to arrange various charitable, humanitarian and other similar socially important activities. The degree of state regulations in such cases is minimal.

At the same time, such charity is not encouraged by the state. Religious communities do not have any privileges or advantages unless they take part in charitable or other socially important activities. We can say that the principle of separation of religious communities from the state in its negative sense is vividly shown here. The church and state are really separated from each other to such an extent that they do not even attempt to cooperate in socially beneficial functions.

#### 6. PUBLISHING AND COMMERCIAL ACTIVITY

Religious organizations, if they are involved in publishing or commercial activity, fall under the general regime, established by the legislation on press or commerce, with respect to any organization. There are no special privileges, stipulated by status of such religious organizations. However, in accordance with the Law “On Religious Freedom and Religious Associations”, religious communities enjoy the exclusive right to set up enterprises to issue religious literature and to manufacture items for religious purposes.

#### V. PRIESTS AND CHURCH AUTONOMY

The state, as a rule, does not interfere into matters of calling (hiring, election) and dismissal priests and other people who are serving religious organizations. For better estimation of the significance of such interference, it would be useful to refer to the Soviet period.

During the Soviet period, the majority of individuals employed in religious organizations, had no right to make labor contracts or lay claim to social security. Priest’s appointment was submitted by state bodies and their activity was under strict state control.

Presently, individuals employed in religious communities on salary, have the same status as those who work in any other organization. Priests work in compliance with the labor law, but does not give them any privileges and does not take into account the specific character of their labor.

There are no limits for missionaries or any other religious activity of priests or believers if they are citizens of Kazakstan, even if they do not belong to any existing religious organizations in the country. Such limits exist for the activity of foreigners, who are liable to accreditation in state bodies.

#### PROBLEMS

One of the problems in this matter is connected with cases of calling priests from abroad. In compliance with Kazak legislation, a foreign citizen invited to work in the Republic of Kazakstan, needs to obtain a license from the state bodies. Such requirements are applied first of all to commercial organizations and are connected with the protection of the internal labor market. At the same time, in practice, the claims to obtain a license are raised also to religious communities. This means state interference into religious association's affairs which violates church autonomy in this matter.

#### VI. CONCLUSION

In summary, it should be noted that religious organizations in Kazakstan, following a long period of persecution and supervision by the state, are for the most part, free to solve their problems and are independent from the state. On the other hand, their independence can be enjoyed, unless they act within the frames of the law and do not bring any harm to state, society and citizens' interests.

At the same time, there are tendencies which show that the state is not satisfied with it's role as a passive observer, so it is going to play a more active part in the church-state relations through various limitations and applying vetoes to religious associations. Even some religious organizations, that are worried about mass penetration of foreign missionaries and representatives of non-traditional religious associations, are pressing the state to play such a role. The representatives of these traditional associations believe that the state will treat them more loyally and their church autonomy will not be violated.

The necessity of certain treatment to new religious movements must be admitted, that corresponds to some international and legal documents (it should be noted, that the majority of such trends do not set up any problems for the society and have their ancient history coming back to the history of other countries).

However, it is dangerous if this attention would be expressed through prohibitions and limitations. The experience and history of our country prove that the of existence and activity of religious organizations, which are problems for society, cannot be solved by mere administrative measures. The struggle with this ideology including a religious one by administrative measures, is good for nothing. As the very hard consequence of such a struggle, one can observe sufficient limits of religious freedom in general, as well as the rights of believers and their associations, both newly established and those existing over a long period of time.

Therefore, today one of the main goals in Kazakstan is to defend religious freedom and church autonomy that was obtained with great difficulty following a long period of persecution on all religions in the country.