

## **Changes to Kazakhstan Criminal Law Seen as Threat to Human Rights**

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Renewed campaign on potentially far-reaching legal changes that are now before parliament.

Rights activists and international organisations have stepped up their criticism over an ongoing overhaul of Kazakhstan's criminal code and associated laws.

The country's parliament is debating a series of measures which critics say will restrict fundamental rights and undermine the effectiveness of the justice system.

In addition to proposed amendments to the main Criminal Code, the new Criminal Procedure Code will alter the way some cases are investigated, while the Criminal Procedures Implementation Code will change the treatment of prison inmates. Certain offences are being shifted from the Administrative Offences Code to the Criminal Code, implying stiffer penalties.

Despite numerous objections by rights organisations, all four legal codes passed their initial reading in the Majilis, the lower house of the parliament, in January and February, while the Criminal Code passed its second reading on April 9.

When the Majilis finishes with the new bills, they will go to the Senate, the upper house, for consideration before they go to President Nursultan Nazarbaev to be signed into law. The government hopes to finalise the work on all the bills before the summer recess so they can come into force by January 2015.

Some controversial amendments – such as the retention of the death penalty for acts of terrorism that result in loss of life – have caused particular alarm amongst rights defenders.

Although prosecutions for libel as a criminal offence rather than a civil matter have long been criticised as a dangerous restriction of free speech, the proposed Criminal Code will retain this provision.

Previously administrative offences like running an unregistered religious organisations, or taking part in a public gathering that has not been approved in advance by the authorities, are reclassified as crimes.

Last year, as the government submitted the bills to parliament, the United States-based watchdog Human Rights Watch warned the Kazak authorities that the proposed legislation did not comply with international standards.

The government has played down such criticism, preferring to focus on positive aspects of the new laws.

Presenting the changes to parliament at the end of last year, Deputy Prosecutor General Johann Merkel highlighted elements that he said would reduce the burden on the prison system.

These included wider use of alternative punishments such as fines, reclassifying a number of serious crimes as lesser offences, and making it easier for vulnerable people including pregnant women and minors to qualify for early release.

At an OSCE-supported two-day roundtable discussion on the legal reforms last month, Alik Shpekbaev, the head of the law enforcement department in the presidential administration, said the changes would enable Kazakhstan “to modernise its approach to law enforcement approaches and bring legislation into line with international standards and practices”.

At the same meeting, Natalia Zarudna, the head of the OSCE centre in Astana, urged the government to take a “human-rights-oriented approach” in shaping criminal justice reforms, and to engage legal professionals and civil society in an open debate about the planned changes.

Yevgeny Zhovtis, a leading rights activist and founder of the Kazakhstan Bureau for Human Rights and Rule of Law, told IWPR that the authorities were citing the threat of “extremism” to toughen provisions on civil society groups and religious activities.

Zhovtis, who was involved in drafting the existing criminal code back in 1998, said, “There are even provisions envisaging criminal responsibility for ‘provoking’ labour conflicts, which threaten to put an end to the work of independent trade unions and workers’ organisations. There are provisions envisaging the use of the death penalty even though there is an unlimited moratorium on capital punishment decreed by the president of Kazakhstan.”

Zhovtis said that, driven by fear of the “Arab Spring” uprisings and more recently events in Ukraine, the Kazak government was “going down the path of restricting freedom of assembly that is typical of dictatorships and authoritarian regimes”.

Amangeldy Shormanbaev, an expert with the International Legal Initiative, says that under the proposed Criminal Code, both participants in an “unauthorised” gathering and the owners of premises where it was held would be liable to prosecution. Speaking at a January round table to discuss the bills, Shormanbaev said that taking part in such a meeting and disobeying police could result in a prison sentence of up to two months, whereas previously it was up to 15 days as an administrative event.

Under the new criminal code, a police report will automatically trigger a criminal case involving a full-scale investigation, replacing the current practice of pre-trial inquiries where evidence is collected in order to determine whether prosecution is desirable.

Officials argue that this simplifies pre-trial criminal procedures and makes them more effective. But experts warn that abolishing the inquiry period will harm the rights of suspects, who would become the subject of a full-scale criminal case but still unable to hire a lawyer until they were formally charged.

Another provision means that leaders of NGO and religious organisations who fail to register their groups could face a jail term of up to six years.

This measure was singled out for criticism by United Nations Special Rapporteur, Heiner Bielefeldt, who used a recent trip to the country to call on the Kazak government to halt mandatory registration requirements for faith groups.

The continued existence of libel as a criminal offence has alarmed free speech campaigners. In February, a coalition of media NGOs calling themselves Article 20 published an appeal to Kazakhstan’s lawmakers urging them to drop this provision from the Criminal Code. (See also **Internet Censorship Worsens in Kazakhstan**.) The media development group Internews-Kazakhstan organised a meeting between industry experts and Majilis deputies as part of a campaign against the law.

Internews executive director Marjan Elshibaeva told IWPR that criminal libel law was often used to muzzle critical voices.

“Any criticism is considered libel. Even an article written to professional standards where a journalist presents opposing views could, if need be, interpreted as one-sided, when someone who dislikes it perceives it to be insulting,” Elshibaeva said.

Galymjan Khasenov, head of the prison service’s press department, told IWPR that he supported libel remaining on the books as a criminal offence as a deterrent to journalists who “present one-sided information without checking” and are “too lazy” to get an official reaction.

The draft Criminal Procedures Implementation Code includes changes to the rules that would cut visits by friends and family members and abolish prison parcels.

The authorities argue that this is needed to cut the high volume of contraband getting into prison. Khasenov said the monthly amount of money that convicts were allowed to spend in prison shops would be increased, and pregnant and breastfeeding women would still be allowed packages from home.

Regarding prison visits, Khasenov said they were in line with international standards, adding that in lower-security institutions the duration of family overnight visits would remain the same, whereas shorter visits would be extended up to six hours.

Zhovtis, who submitted his own assessment of the Penal Code to the parliamentary working group dealing with the bill, said he welcomed some of its positive aspects. He pointed to the introduction of a “National Preventive Mechanism” that would see prisons opened up to inspection by independent public commissions to prevent torture and the ill-treatment of inmates. This mechanism is set out in the optional protocol to the international Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

But other than that, Zhovtis said, the bill was based on outdated concepts of “restoring justice and correcting prisoners”, rather than the modern system of “maintaining the physical and psychological wellbeing of inmates with a focus on developing skills to help social rehabilitation”.

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