

УДК 327

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RELIGIOUS FREEDOM VERSUS STATE SECURITY IN KAZAKHSTAN

Abstract

The article covers issues of religious freedom and state security in Kazakhstan. It explores historical roots of religious freedom, analyzes the religious situation in Central Asia and the legal framework of Kazakhstan in religion

Keywords: *religious freedom, state security, traditional and non-traditional religions, radicalization.*

Аңдатпа

Мақалада діни бостандық және Қазақстанның мемлекеттік қауіпсіздік сұрақтары қарастырылады. Діни бостандықтың тарихи негіздері зерттеледі, сонымен бірге Орталық Азиядағы діни ахуалға және Қазақстанның дін саласындағы заң базасына талдау жасалынады.

Тірек сөздер: *діни бостандық, мемлекеттік қауіпсіздік, дәстүрлі және дәстүрлі емес діндер, радикализация.*

Аннотация

В статье рассматриваются вопросы религиозной свободы и государственной безопасности в Казахстане. Исследуются исторические корни религиозной свободы, а также анализируются религиозная ситуация в Центральной Азии и правовая база Казахстана в сфере религии.

Ключевые слова: *религиозная свобода, государственная безопасность, традиционные и нетрадиционные религии, радикализация.*

*"Everyone has the right to life, liberty and security of person."
The Universal Declaration of Human Rights, art. 3*

Introduction

Apart from economic crisis, the main problem for developed countries is how to implement religious freedom in public life. In secular states, where is the limit for religious freedom? Which are the red lines both for State and religious groups/persons? This is a very problematic issue because no country in the world is 100% Christian –nor Muslim, Jew or Buddhist– but their societies are multiethnic, multicultural and pluralistic from the point of view of beliefs.

The new Law on Religious Freedom –passed on October 2011– is the conclusion of a very long process plenty of dialogue and reflection on this issue. In fact, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) provided in 2009 a legal opinion on an earlier version of the law that included similar provisions, concluding that the rights of religious groups would be negatively affected, and the draft was subsequently rejected by Kazakhstan's Constitutional Council¹.

Is not a secret that Kazakh Government is worried about the radicalization of religious beliefs in its country, above all after the announcement of the complete withdrawal of international coalition in Afghanistan by the end of 2014. What will happen with Taliban? What will be the answer of civil society? Is growing extremism inside Kazakhstan? Is it being feed by radical foreign missionaries coming from Chechnya or Pakistan?

On the one hand not every believer is a terrorist², but on the other hand the State must have the proper tools in order to protect all their citizens, believers or not. This is why United Nations put them together in 1948 in the same article (n. 3) the "liberty –religious freedom included– and security of person".

What is exactly religious freedom?

Religious freedom is a very old issue in western countries. It is easy to find the roots of this liberty

¹ See Reynolds, Jeremy: "Kazakhstan Considers Restrictive New Religion Law", Religion Today, 1 May 2008, at <http://www.religiontoday.com/articles/kazakhstan-considers-restrictive-new-religion-law-11574580.html>. See also the REL-KAZ/125/2009 (Adv Council on FoRB): "Comments on the Law on Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on Issues of Religious Freedom and Religious Organizations", OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, January, 2009.

² In this field, it is useful to make distinction among some similar concepts. According to a scale, where the next step implies the compliance of the previous one, there are three main steps before arriving to the use of physical violence from the position of a believer. The first one is radicalization, which means desire of return to the roots, to the original faith; here –in searching a better practice of the own faith– there is nothing negative. The second step should be fundamentalism, which implies the construction of a new version of an old faith with political purposes; here it is rejectable only the manipulation of the faith but not the introduction of religious values inside the political arena because all in politics is under ideologization, so here religion would be reduced to a political ideology. The third step should be extremism, the employment of that ideology to justify the use of violence in order to defence those political objectives. The last phase is, ut supra, the direct use of violence.

seventeen centuries ago, in the year 313, with the Edict of Milan, which granted all persons freedom to worship whatever deity they pleased. There were, of course, other edicts of Tolerance, but they were also short-lived while the Edict of 313 lasted until the end of the Western Roman Empire (476 AD).

The following centuries see the return again of the ancient principle “one people, one faith” in which one “nation” could have only one faith, usually the king’s one. This principle provided homogeneous societies for security reasons. In this context must be understood the expulsion of Jews and Muslims from Spain in 1492 or the religion wars during the two following centuries (XVI-XVII) finished thanks to the Peace of Westphalia (1648) and its principle “*cuius regio, eius religio*” – that can be translated as “the whole region must have the faith of its Governor –, which was, obviously, an update of the principle “one people, one faith”. Nowadays, this principle is unacceptable.

This was maintained until the French Revolution, where religion was understood in a very negative way – as an instrument at the service of the political power and for political purposes – or, in the best case, was tolerated as a private issue for private use. And this kind of tolerance, in a negative sense, with a very negative conception and connotation of the religious issues, is the most widespread one: a citizen can be Christian, Jew, Muslim, atheist or whatever but this is a secret for his eyes only, or to be expressed inside his house or in the temple – church, synagogue, mosque, etc – but not in public life, not in the Parliament. Here there is more debate than around the former principle, it is not so clear if this idea – secret religion – is acceptable or not, because most of the Governments around the world are ultra-secularists and they don’t like to see religion acting in public life.

According to the art. 18 of the Universal Declaration of Human Rights, the content of religious freedom “includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”. As a derivative of the freedom of conscience – included in this article: “Everyone has the right to freedom of thought, conscience and religion” –, this right provides also protection so that people can have or not religion, that’s it, to be atheist or agnostic. So, first of all, every person has the right to practice a religion or not to practice it. This means that every person must be respected from the State side in his/her beliefs, but also the society must do it and the State must ensure this respect through the protection of the Law.

As a reflection of the freedom of movement there is a freedom to change creed. This implies that one person can receive information from other religions, which means that every religion should be preached freely. Following an old metaphor, in the market of religions there are many products and there should be freedom of expression to show the goodness of their own product –but not freedom to explain the badness of the other’s –, and there should be freedom to buy one or another, with only some warnings made by official authorities.

Finally, there must be freedom to show in public – of course also in private – the own faith. The only limitation is the security or public order. And here, who puts the limits? The answer is: the reason, the common sense of the authorities. In Spain, for example, is very common to see the streets occupied every month by a procession or ceremony, especially during Easter celebrations –not every day, not all the streets at the same time –. This right to manifest the own faith includes the right to teach it, but to whom? Only to the children or also to adults worshipping other creeds? The International Covenant on Civil and Political Rights (1966) explained and increased in its art. 18 the art. 18 cited supra, by saying that “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

As conclusion, it is necessary to remember that religious freedom – with all its contents – is a prerequisite for democracy, but, as every liberty, it has limits established by every country in order to ensure the correct implementation of this right and the others.

The regional context

For years, the neighboring countries of Kazakhstan – especially Uzbekistan and Kyrgyzstan – complained about the “excessive” religious freedom in Kazakhstan¹, arguing that due to that freedom groups of militants, violent Islamists, were flourishing in Kazakhstan while operating in Uzbekistan or Kyrgyzstan². Because of its tolerance, they were suffering terrorism³.

The main reason for cutting religious freedom in several surrounding countries is the fear of terrorism and the previous step –extremism–. In fact, State bodies competent to ban associations or political groups, have banned several groups –both terrorist and extremist in the same list–. Some of those groups are Al Qaeda, the Taliban, the East Turkistan Islamic Party, the Kurdish People’s congress, the East Turkestan Liberation Organization, the Islamic Movement of Uzbekistan (IMU), the Islamic Jihad Union, and Hizb ut Tahrir⁴. Jaishul Mahdi, Jund al Khilafah, Ansar Allah and Takfir wa al-Hijra have been banned more recently in Kirgystan⁵.

Before 9/11, there were some jihadist groups in Central Asia, there was radicalization coming from madrasas abroad –mainly from Pakistan, Egypt and Saudi Arabia–⁶, and State authorities created some bodies –such as SADUM⁷– and initiatives in order to curb extremism⁸. For instance, Pakistan’s Ulema Council, the Spiritual Administration of Muslims of Kyrgyzstan, Uzbekistan and Tajikistan accepted a fatwa (an indication) declaring the party Hizb ut-Tahrir as un-Islamic and its teachings as incorrect. Right after the independence (1991) the number of mosques and madrasas were very low, as it was the practice of Islam at that time. The number of pilgrimages was almost inexistent.

After the US intervention in Afghanistan, jihadist groups were reduced almost to zero –specifically, the IMU– but with the US intervention in Iraq, many radicalized Muslims were pushed to join this kind of groups, and nowadays they are active⁹.

Aside of jihadist and extremist groups, the legislation on religious freedom around Kazakhstan is tightened year by year, mostly because of fear of terrorist attacks. The case of Pakistan is some kind different because to the action against jihadist groups it adds the anti-blasphemy laws, whose main targets are, actually, Christian people¹⁰.

No modern country is immune from global terrorism and extremism and “All anti-terrorist organizations primarily fight against the most unpredictable and dangerous threat to peaceful

¹ “In Uzbekistan, there is strict control over religion and a lot of pressure against the so-called “unofficial” Islam. In Kazakhstan and Kyrgyzstan, religious policies are unclear. In Tajikistan, the government is attempting to lead the Muslim movement”. See Olimova, Saodat: “Confronting or Engaging Islam: Are there different approaches in Central Asian countries?”, Documentos CIDOB Asia, N. 26, February 2011.

² “As a result of the repressive methods used by the authorities in the subsequent crackdown, many HT members left Uzbekistan and moved to more open Central Asian states, thus becoming excellent missionaries for the movement. At first, many settled in the ethnic Uzbek regions of Kyrgyzstan and Kazakhstan, but the group’s activities have since expanded”. See Baran, Zeyno; Starr, S. Frederick and Cornell, Svante E.: “Islamic Radicalism in Central Asia and the Caucasus: Implications for the EU”, Silk Road Paper, July 2006, p. 23

³ “On several occasions, the Uzbek authorities chastised their counterparts in Kazakhstan for providing a safe haven for militants’ camps, where some suicide bombers for terrorist attacks in Uzbekistan’s capital were allegedly trained”. See Omelicheva, Mariya Y. (2011): Counterterrorism Policies in Central Asia. New York, Routledge, p. 117.

⁴ “By the judgment of the Supreme Court of the Republic of Kazakhstan from October 15, 2004: Al-Qaeda, The East Turkistan Islamic Movement, The Islamic Movement of Uzbekistan and The Kurdistan People’s Congress (Kongra-Gel); By the judgment of the Supreme Court from March 15, 2005: Asbat al-Ansar, The Muslim Brotherhood, The Taliban Movement, Boz Gourde, Jamaat mujahideen of Central Asia, Lashkar-e-Toiba and The Social Reform Society; By the judgment of the Court of Astana from November 17, 2006: Aum Shinrikyo and The East Turkestan Liberation Organization; By the judgment of the Court of Astana from March 5, 2008: The Islamic Party of Turkestan and Hizb ut-Tahrir”. See “The list of prohibited on the territory of the RK foreign organizations”, Agency for Religious Affairs of the Republic of Kazakhstan, at http://www.din.gov.kz/eng/press-sluzhba/spisok_terroristicheskix_i_jek.

⁵ See “Some religious groups recognized as extremist in Kyrgyzstan”, Interfax, 11 December 2012, at <http://www.interfax-religion.com/?act=news&div=10150>.

⁶ See “Central Asia: Islamist Mobilisation and Regional Security”, International Crisis Group Asia Report, N. 14, 1 March 2001.

⁷ See Khalid, Adeeb (2007): Islam after Communism: Religion and Politics in Central Asia. Berkeley/Los Angeles, University of California Press. See also “Les Islamistes d’Asie Centrale: Un défi aux Etats indépendants?”, Cahiers d’Asie Centrale IFEAC, n° 15/16 (2007). Paris, Maison Neuve & Larose.

⁸ See Kalanov, Komil and Alonso, Antonio: “Sacred Places and “Folk” Islam in Central Asia”, UNISCI Discussion Papers, N. 17, May 2008, at <http://www.ucm.es/info/unisci>.

⁹ See Alonso, Antonio: “Kazajstán: ¿Objetivo de ataques islamistas?”, Instituto Español de Estudios Estratégicos, Documento de Opinión 20/2012, 6 March 2012, at <http://www.ieee.es>.

¹⁰ The most famous cases of this persecution against Christians in Pakistan are the assassination of Shahbaz Bhatti –the Minister for the Minorities– and the imprisonment of Asia Bibi. See “Pakistan’s only Christian minister assassinated over blasphemy row”, The Telegraph, 2 March 2011, at <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/8356278/Pakistans-only-Christian-minister-assassinated-over-blasphemy-row.html>. See also Guerin, Orla: “Pakistani Christian Asia Bibi ‘has price on her head’”, BBC News, 7 December 2010, at <http://www.bbc.co.uk/news/world-south-asia-11930849>.

existence. Terrorism is not just a hazardous act; the very possibility of its rise is perilous [...] The terrorism threat map of Central Asia shows that areas of the spread of extremism are much bigger than the zone of terrorist activity. In other words, terrorism emerges and spreads in regions where extremist ideas and slogans are popular. Consequently, traditional measures to combat terrorism, which include military, or, say, special operations to eliminate terrorist groups, should be conducted at their core"¹.

So, what we have in the regional context is a very hard situation, with many extremist and jihadist groups, some of them very active ², and an international cooperation in the fight against terrorism and extremism also through international organizations such as the Collective Security Treaty Organization (CSTO) and the Shanghai Cooperation Organization (SCO), aside the NATO Partnership for Peace (PfP).

The Kazakh legal framework

In October 2011, Kazakh Parliament passed the new law on religious freedom³. But the legal framework on religious issues is wider in Kazakhstan. Starting from the very beginning, the Constitution recognizes that the country is secular – which means separation between State and religion, something very strange in a Muslim traditional country but not so strange in a post-soviet country ⁴ –. Apart from that, the Constitution says that religion is a very important part of the life of the citizens and they have the right to practice whatever religion or not to do it ⁵. The guiding principles of church-state relations reflected in the Constitution (arts. 5; 14; 19; 20) could be summarized as follows:

- The state and its institutions have no right to control their citizens' attitudes toward religion and to make considerations on the criteria of citizens in this area.
- The state should not interfere in the activities of religious organizations unless they violate the law.
- The state does not provide material support or any kind, including financial aid to religious organizations.
- Religious organizations cannot hold any state position.
- Religious organizations should not interfere in the affairs of state.
- The State carries out the tasks of ensuring the legality of the activities of religious associations.

The previous Law on freedom of worship and religious associations (1992) provides that all religions are equal before the law and that none may plead superior to others, to prevent the spread of fundamentalism. It established a number of channels and safeguards against religion meddle in state bodies, ensuring the separation of Church and State, while asking for their cooperation to build a fairer society.

The 2011 Law on religious freedom states that every religious association must be re-registered⁶; by doing so, the Government wants to be sure that every religious association is based on religion and not in ideology. This law has been criticized hardly by international organizations and foreign Governments⁷ and associations⁸ because State bodies make distinction among religions by dividing them into traditional and non-traditional ones in order to protect the citizens from sects –such as Scientology, Jehovah Witnesses and so on – and because the new law put under tight State control the life of religious groups.

¹ See Moon, Keith: "Solidarity in the Ongoing Struggle "For" Elimination of Terrorism", *European Dialogue*, 30 September 2011, at <http://www.eurodialogue.org/Solidarity-in-the-ongoing-struggle-for-elimination-of-terrorism>.

² See Chaudet, Didier: "Islamist Terrorism in Greater Central Asia: The "Al-Qaedaization" of Uzbek Jihadism", *IFRI Russie Nei Visions*, N. 35, December 2008, at <http://www.ifri.org/>.

³ "The Law of the Republic of Kazakhstan of October 11, 2011, N. 483-IV, On Religious Activity and Religious Associations" is the long name of this law.

⁴ "Art. 1.1: The Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state whose highest values are an individual, his life, rights and freedoms". See Constitution of the Republic of Kazakhstan at <http://www.constcouncil.kz/eng/norpb/constrk/>.

⁵ "Art. 22.1: Everyone shall have the right to freedom of conscience". *Ibidem*.

⁶ "To register as a regional religious organization, groups must have 500 members in each of two separate regions while national registration requires 5,000 members with sufficient representation in each of the country's oblasts. These requirements make it very difficult for smaller religious groups to register and nearly impossible for any religion except state-approved Islam or Russian Orthodoxy to register at the national level". See "Kazakhstan", 2011 Report on International Religious Freedom, US Department of State, at <http://www.state.gov/j/drl/rls/irf/2011/sca/192925.htm>.

⁷ See "Kazakhstan", 2011 Report on International Religious Freedom..., *op. cit.*

⁸ See "Proposed Religion Law in Kazakhstan Violates Religious Freedom", *Freedom House*, at <http://www.freedomhouse.org/article/proposed-religion-law-kazakhstan-violates-religious-freedom>. See also Corley, Felix: "Kazakhstan: Religious freedom fines multiply – criminal penalties to come?", *Forum 18 News*, 18 March 2013, at http://www.forum18.org/Archive.php?article_id=1814

But the law can be implemented in a tightest way or in a softest, cause there is a wide hairpin, huge State capacity to act let them act more freely or more watched. And law can be applied more focused on well known extremist groups –some mosques in the South or the West– than in non-extremist ones –Orthodox Church, Catholic Church, Muslim mosques in Astana, etc–. Of course, the new law recognizes the right to follow the own religion¹ and disseminate its ideas² but under the control of the authorized body³; it seems the Legislator was thinking more on “wahhabi” missionaries disseminating extremist literature and ideas than in Catholic priest or friars coming from Poland, Italy or Spain, but at the end, this is the same law for everybody. Must it be implemented equally, in the same way in both cases? The answer should be “no”, because two different situations must be treated in different ways, cannot be treated in the same way.

Conclusions

As conclusion, religious freedom and State security are two issues very important for democratic countries and both must be ensured by Law and by the State action. Also civil society is responsible of enjoying in a peaceful way the different freedoms, religious one included.

The terrorist attacks suffered by Kazakhs in the last years is not a specific problem but a general one for the whole Central Asian region and for surrounding countries, South Asian Afghanistan and Pakistan, India, China and Russia.

Kazakhstan has a very long and successful experience in combining multiethnic, pluri-religious society and peaceful coexistence: “With the positive experience it has achieved in keeping lasting peace and accord in a multicultural and multireligious society, Kazakhstan promoted tolerance and intercultural dialogue during its OSCE chairmanship. Likewise, that experience can be a significant asset in promotion of human rights protection mechanisms within the United Nations.”⁴

The 2011 Law on religious activities is a hard measure thought more for finishing with extremist groups than for regulating the normal life of peaceful religious associations, so it should be implemented in a different way for the previous than for the former. In this way the authentic religious freedom could be respected.

¹ “Art. 3.6: Everybody shall have the right to hold religious or other creed, promulgate it or to participate in the activity of religious associations and carry out missionary activity in compliance with the legislation of the Republic of Kazakhstan”.

² “Art. 8.1: National of the Republic of Kazakhstan, foreigners and stateless persons shall carry out missionary activity upon registration”.

³ “Art. 4.2: Authorized body [...] shall examine and analyze the activity of religious associations, missionaries, spiritual (religious) educational institutions set up on the territory of the Republic of Kazakhstan”. And “Art. 6.1.2: Authorized body shall ensure theological examination on the following grounds [...] delivery of religious literature, other religious information materials to the libraries of organizations in the Republic of Kazakhstan as well as to the authorized body”.

⁴ See A/67/122, Annex to the letter dated 6 June 2012 from the Permanent Representative of Kazakhstan to the United Nations addressed to the President of the General Assembly, Aide-memoire on the candidature of the Republic of Kazakhstan to the United Nations Human Rights Council for the period 2013–2015, 3rd of July of 2012, p. 5.