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RUSSIA: "Everyone has become much more cautious"

By Victoria Arnold, Forum 18 (<https://www.forum18.org>)

The authorities use two Administrative Code articles to confine the exercise of freedom of religion and belief to easily regulated places, and to limited numbers of people. "Where the boundaries of lawful behaviour lie is incomprehensible," a Hare Krishna lawyer told Forum 18.

Russian religious believers and communities continue to face prosecution for publicly exercising freedom of religion and belief. Forum 18 found 156 such prosecutions in 2017 and prosecutions have continued in 2018.

Almost any expression of freedom of religion and belief outside the place of worship of a state-recognised community may lead to fines, unless individuals or communities follow legal requirements that are unclear and which the authorities apply inconsistently. This imposes a large burden on individuals and organisations in fines, legal costs, and bureaucratic hurdles – particularly for smaller religious communities.

The authorities use two Administrative Code articles to restrict the exercise of freedom of religion and belief to easily regulated and monitored spaces (such as places of worship), and to limited numbers of people (such as existing members of religious communities).

The main instruments now used are the July 2016 "anti-missionary" legal changes, Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity").

In 2017, Forum 18 found 143 prosecutions under this Article, as against 13 under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket"). Article 20.2 was the previous main Administrative Code article used to restrict freedom of religion and belief in public (see below).

The use made by the authorities of the "anti-missionary" legal changes has led to widespread confusion and concern among religious communities. They are "worried because they do not know how to profess their religion and share it with others without violating the law", Pentecostal Union lawyer Vladimir Ozolin told Forum 18. He commented that "most Christians sharing their beliefs on the street do not even suspect that they are violating the law. They learn about this later, when employees of the competent authorities begin fabricating the case" (see below).

Hare Krishna lawyer Mikhail Frolov told Forum 18 that "the fines are large, and where the boundaries of lawful behaviour lie is incomprehensible .. Everyone has become much more cautious in their public actions" (see below).

Legal context

The July 2016 "anti-missionary" legal changes tightened the existing restrictions on exercising freedom of religion and belief in public, including on anyone and any organisation or religious group who could be said to engage in very broadly and imprecisely defined "missionary activity". The changes also heavily restricted the people who were permitted to carry out "missionary activity". Prosecutions using the July 2016 changes have mainly been brought under Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity") (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Prior to July 2016, prosecutions for the exercise of freedom of religion and belief in public were mainly brought under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket"), which is linked to the Demonstrations Law (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

"Where the boundaries of lawful behaviour lie is incomprehensible"

The "anti-missionary" legal changes exert a chilling influence beyond public spaces such as streets, squares, parks, and rented

buildings such as conference centres. This is where activities previously prosecuted under Administrative Code Article 20.2 have usually taken place. Law enforcement agencies now use Administrative Code Article 5.26 Parts 4 ("Russians conducting missionary activity") and 5 ("Foreigners conducting missionary activity") against the exercise of freedom of religion and belief in these public spaces, as well as in private homes and on the internet (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

"The fines are large, and where the boundaries of lawful behaviour lie, is incomprehensible," lawyer Frolov told Forum 18 on 16 April. "This could not but affect the behaviour of religious believers – everyone has become much more cautious in their public actions. The public activity of religious associations has decreased noticeably."

Lawyer Ozolin commented to Forum 18 on 12 April that "religious associations are also worried because they do not know how to profess their religion now and share it with others without violating the law. Churches face extra problems here, because no one knows what the permission to carry out missionary activity should look like – its form has not been established by law. In addition, state bodies do not conduct explanatory work and do not use warnings, but immediately issue fines."

He also noted that "most Christians sharing their beliefs on the street do not even suspect that they are violating the law. They learn about this later, when employees of the competent authorities begin fabricating the case."

Punishments

Fines under the various parts of Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") are: Part 1 for organising events – 10,000 to 20,000 Roubles for individuals, 15,000 to 30,000 Roubles for officials, and 50,000 to 100,000 Roubles for legal entities; Part 2 for organising events without formally notifying the authorities in advance – 20,000 to 30,000 Roubles for individuals, 20,000 to 40,000 Roubles for officials, and 70,000 to 200,000 Roubles for legal entities; Part 5 for participating in events – 10,000 to 20,000 Roubles for individuals (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

The authorities now prefer to mainly use Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity") and 5 ("Foreigners conducting missionary activity"). These fines are potentially much higher, and can be up to 50,000 Roubles for individuals and 1,000,000 Roubles for religious organisations. Foreigners can be fined up to 50,000 Roubles and (unlike under Article 20.2) may also be deported (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

A fine of 50,000 Roubles is over one month's average wage for those in formal work.

Forum 18 has found that judges have tended to impose the minimum possible fines. For example, in 2017 the most common fine for individuals convicted of breaking Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") was 5,000 Roubles, the lowest possible fine. For organisations the most common fine was 100,000 Roubles, also the lowest possible fine.

Most fines are minimum fines because most cases are first offences, without any aggravating circumstances, lawyer Frolov told Forum 18 on 16 April. If an individual reoffends, the penalty will be greater.

Of the 10 foreigners prosecuted in 2017 under Administrative Code Article 5.26, Part 5 ("Foreigners conducting missionary activity"), at least seven were convicted, with the most common fine also the minimum of 30,000 Roubles. Five were deported – three South Koreans, one Ghanaian, and one of unknown nationality.

Two foreign citizens prosecuted under Article 5.26, Part 5 in 2016 have since appealed to the European Court of Human Rights (ECtHR) in Strasbourg (see F18News 16 May 2018 http://www.forum18.org/archive.php?article_id=2377).

Social consequences

Social consequences also follow. "To be found guilty of committing an offence for a Christian means that they committed a misdemeanour that does not correspond to Christian values," lawyer Ozolin told Forum 18 on 14 March. "They are considered to be a lawbreaker. This is especially important for a pastor, as he preaches Christian values and encourages believers to observe the law, and certain norms and rules, while he himself is an 'offender'."

Ozolin was speaking about the sharp increase in the number of fines for meeting for worship on land not designated for religious use, such as in private homes (see F18News 20 March 2018 http://www.forum18.org/archive.php?article_id=2362). His comments also apply, however, to any conviction under Russia's increasing restrictions on the exercise of freedom of religion and belief.

"Of course, the situation is the same," Ozolin added on 12 April about convictions under Administrative Code Articles 5.26, Part 4 ("Russians conducting missionary activity"), Part 5 ("Foreigners conducting missionary activity"), as well as 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") (see Forum 18's

general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Convictions and appeals

Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and Part 5 ("Foreigners conducting missionary activity") has a higher rate of initial convictions than Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket"). In 2017, courts found 82 per cent of defendants under Administrative Code Article 5.26, Parts 4 and 5 guilty. This compares with 70 per cent of those punished under Administrative Code Article 20.2 between 2015 and 2017.

Defendants appealing against their sentences have a similar rate of success under both articles: 19 per cent under Administrative Code Article 5.26 Part 4 in 2017; and 17 per cent under Article 20.2 between 2015 and 2017. Prosecution appeals against acquittals under both Articles are usually (but not always) unsuccessful.

Following a December 2012 appeal to the Constitutional Court, the Court ruled that under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") notification of an event is necessary only if the authorities are required to provide health and safety measures. Also, the Religion Law was changed in October 2014 to clarify where religious events may be held (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Police and prosecutors have continued to bring charges for the exercise of freedom of religion and belief which required no notification on these grounds. But judges have often acquitted defendants on the basis of either the 2012 Constitutional Court ruling or the 2014 Religion Law change.

Why the shift to Administrative Code Article 5.26?

The main instrument the authorities now use to restrict freedom of religion and belief in public is Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity").

In 2017 Forum 18 found 143 prosecutions under this Article, as against 13 under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket"). Article 20.2 was the previous main Administrative Code article used to restrict freedom of religion and belief in public.

Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis in Moscow, attributes the decline in Article 20.2 prosecutions of religious believers "partly" to the "anti-missionary" legal changes. "Often, the police simply choose the law [under which to prosecute] at random", Verkhovsky commented to Forum 18 in July 2017. "The emergence of options leads to a redistribution" (see F18News 8 August 2017 http://www.forum18.org/archive.php?article_id=2305).

Forum 18 asked the Justice Ministry on 13 April 2018 if there had been a deliberate decision to use Administrative Code Article 5.26, Parts 4 and Part 5 instead of Article 20.2. Forum 18 received no reply as of the end of the working day in Moscow on 18 April.

The decrease in use of Article 20.2 is partly explained by the state's nationwide ban from March 2017 on Jehovah's Witnesses as allegedly "extremist" and the consequent cessation of their public activities (see F18News 18 July 2017 http://www.forum18.org/archive.php?article_id=2297). In 2017, no Article 20.2 cases involved Jehovah's Witnesses; in 2016 there were 10, and in 2015, there were 83.

Jehovah's Witnesses told Forum 18 that they had abandoned their normal practice of offering religious literature from stands in the street. This was because large quantities were impounded at the border, and a March 2016 change to the Demonstrations Law required notification to the authorities of a one-person "picket" if it used "prefabricated collapsible structures" such as stands and trolleys (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Pentecostal Union lawyer Ozolin told Forum 18 that he has also seen Article 20.2 cases "declining every year", with no appeals for help so far in 2018. He did not think there had been a deliberate decision to switch to using Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and Part 5 ("Foreigners conducting missionary activity").

"Article 5.26, Part 4 is just more relevant now, because the passions stirred by the Yarovaya [anti-missionary] laws have not abated yet," Ozolin said. "I am sure that if an offence is committed under 20.2, then charges are certainly brought under it."

The number of prosecutions under Administrative Code Article 5.26, Parts 4 and 5 also decreased in the latter part of 2017. This also appears at least partly attributable to the lack of Jehovah's Witness cases after the nationwide ban. The first half of 2017 saw 28 cases, but only two (from the same investigation) in the second half of 2017.

Some religious communities have familiarised themselves with the requirements of the "anti-missionary" legal changes and taken

steps to avoid prosecution. "We have now managed more or less to overcome the situation with Article 5.26, Part 4 ('Russians conducting missionary activity')," lawyer Ozolin told Forum 18. "Most religious associations (religious groups and organisations) issue citizens with so-called permission to carry out missionary activities, with which they walk without fear through the streets and invite people to church."

Can individuals share their beliefs?

Under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and Part 5 ("Foreigners conducting missionary activity") sharing beliefs is only possible if someone carries paperwork from a legally-recognised group or organisation. "Missionary activity" is so poorly defined that it can cover almost any exercise of freedom of religion and belief, meaning that people may not even be aware that state authorisation is legally required for what they wish to do – even though this requirement violates Russia's binding international human rights obligations.

The commonest grounds for cases under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and Part 5 ("Foreigners conducting missionary activity") is an individual's lack of documentation showing that they are authorised by their state-recognised religious association to perform missionary activity. The Religion Law also requires that they also carry proof of their organisation's registration or their religious group's notification to the Justice Ministry of its creation. The requirement for such notification also violates Russia's binding international human rights obligations (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Defendants often argue that they do not have such documents because they are exercising their constitutional right as individuals to share their own beliefs. Police, prosecutors, and judges, however, appear to be increasingly seeing individual religious expression as tied, by definition, to formally constituted and officially recognised groups and organisations, thus increasingly confining the freedom of religion and belief to an officially regulated and monitored sphere (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

For example, Council of Churches Baptists refuse on principle to register their congregations with the state as organisations. They and others see the July 2015 Religion Law requirement for religious groups to notify the Justice Ministry of their existence and membership as just another form of state registration (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Council of Churches Baptists cannot therefore have documents "authorising" them to carry out missionary activity, which frequently leads to prosecution. For example, Yevgeny Olkov was fined 5,000 Roubles on 25 August 2017 for handing out religious literature in the Altai Republic village of Kosh-Agach. According to the written decision from Gorno-Altai's Magistrate's Court No. 3, seen by Forum 18, Olkov "freely distributed information about his beliefs among village residents". The judge's verdict was based on Olkov's lack of documentation authorising his "missionary activity" and the local Justice Ministry's confirmation that he had submitted no notification of the creation of a religious group.

Kosh-Agach District Police telephones went unanswered when Forum 18 called to discuss the case on 16 April 2018.

2017 Administrative Code Article 5.26 prosecutions

Forum 18 found 143 prosecutions under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and Part 5 ("Foreigners conducting missionary activity") in 2017. These involved 135 individuals and 8 religious organisations, with 133 under Part 4 and 10 under Part 5.

Only 17 of these prosecutions resulted in acquittals, with 117 defendants being found guilty and fined. Judges returned five cases to police or prosecutors for technical reasons. Two cases were closed because the statute of limitations had expired, and two more were closed for unknown reasons.

Defendants appealed in 72 cases. Only 14 of these were successful, while 51 were unsuccessful and four were rejected without consideration. The outcome of three appeals is unknown. One defendant was sent for retrial, but was convicted again. Police and prosecutors appealed against eight decisions, but succeeded in having only one case returned for re-examination. That defendant's acquittal was subsequently overturned.

Forty-two of the 83 federal subjects of the Russian Federation saw at least one prosecution (not counting Crimea and Sevastopol). The highest figures were in: the Republic of Bashkortostan (17 cases); Sverdlovsk Region (9); Krasnodar Region (9); Nizhny Novgorod Region (7); Zabaikalsk Region (7); Chelyabinsk Region (6); Yamalo-Nenets Autonomous Region (6); Kirov Region (5); Oryol Region (5). There were four cases each in: the Republic of Tatarstan; Tver Region; Kamchatka Region; Tomsk Region; Bryansk Region; Voronezh Region; and Rostov Region.

Individuals or organisations belonging to the following religious communities were prosecuted: Protestant churches, including Pentecostals – 35; all Baptists (Baptist Union, Council of Churches, independent/unknown) – 35; Jehovah's Witnesses – 30; Society

for Krishna Consciousness (Hare Krishna) – 11; people associated with the Protestant Gideons Bible distribution group – 6 (all from the same investigation); Seventh-day Adventists – 4; Muslims – 4; other Hindu – 2; New Apostolic Church – 1; Jews (a Kabbalah teacher) – 1; the branch of the Russian Orthodox Church Outside Russia (ROCOR) which is not part of the Moscow Patriarchate – 1. The leader of a group interested in ancient Slavic culture, accused of propagating pagan beliefs on social media, was also brought to court. The religious affiliation of 12 individuals is unknown.

Of the 133 individuals brought to court under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and Part 5 ("Foreigners conducting missionary activity") in 2017, 35 were women and 96 were men, while the gender of four defendants is unknown.

2017 Administrative Code Article 20.2 prosecutions

Forum 18 found 13 prosecutions in 2017 to punish exercising freedom of religion or belief under Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket"). All of those prosecuted were individuals: two event organisers under Part 1; five people who organised events without formally notifying the authorities in advance under Part 2; and six event participants under Part 5.

This compares to 28 such prosecutions in 2016 (see F18News 5 July 2017 http://www.forum18.org/archive.php?article_id=2293), and 122 in 2015 (including three of communities) (see F18News 18 May 2016 http://www.forum18.org/archive.php?article_id=2179).

In 2017, there were in 10 convictions (all fines) and two acquittals (before appeals). Six fines were challenged in higher courts, but only one was overturned. The police also appealed against one acquittal, but this was unsuccessful.

Of the 13 prosecutions in 2017 found by Forum 18, three involved Hare Krishna adherents, three Council of Churches Baptists, and two other Protestants. Two cases were brought against activists holding traditional Adygey prayers beside a sacred tree (see below). Unusually, three Russian Orthodox (Moscow Patriarchate) believers were also prosecuted for protesting against the 2017 film "Matilda", which they say desecrates the memory of Tsar Nicholas II. The Moscow Patriarchate has canonised him as a "passion-bearer".

Of the 13 individuals known to have been prosecuted, only one was a woman.

These cases were initiated in eight Regions: Ryazan (three prosecutions from the same investigation); Buryatia Republic (two prosecutions from the same investigation); Krasnodar (two prosecutions from the same investigation); Udmurt Republic (two prosecutions). One prosecution each occurred in: the Republic of Bashkortostan; Perm Region; Tomsk Region; and Tyumen Region.

The total number of Article 20.2 cases increased sharply in 2017 to 816 cases from 387 in 2016 and 462 in 2015. These increases are mainly of mass prosecutions after anti-corruption protests of March and June 2017, as well as other rallies supporting opposition politician Aleksei Navalny.

Unexpected prosecutions

Prosecutions for exercising freedom of religion or belief under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") can come unexpectedly, for an event which has been regularly held with no previous problems. Two people in Krasnodar Region, Aydamir Basto and Ruslan Gvashev, were fined 10,000 Roubles each under Article 20.2, Part 2 and 5 respectively.

The event was a memorial for the dead of the 1817-1864 Russo-Caucasian War. It lasted about 15 minutes, and consisted of traditional Adygey prayers led by Gvashev at a tulip tree outside Sochi which the Adygey people consider sacred. Basto then distributed funeral cakes, before some of the 100 or so participants went to the shore and threw funeral wreaths into the sea. The same commemorations have been held on 21 May each year for many years.

Basto was found guilty on 24 May 2017 of organising the event without formally notifying the authorities in advance, and his appeal at Krasnodar Regional Court on 21 June 2017 was unsuccessful. Lazarev District Court sentenced Gvashev on 2 June 2017. On 2 August, Krasnodar Regional Court sent his case back for re-examination, but his conviction was upheld on 30 August. His second appeal on 16 October was unsuccessful.

Gvashev went on hunger strike for a time in protest. On 23 February 2018, the presidium of Krasnodar Regional Court decided that all previous rulings against him should remain in force.

Gvashev now intends to appeal to the Supreme Court and the ECtHR in Strasbourg, he told Caucasus Echo website on 2 March 2018.

Lazarev District Police telephones were busy when Forum 18 called on 16 April.

Inconsistent judgments

Judgments under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") can also be inconsistent, with differing outcomes for similar cases in different courts.

Protestant Ivan Golubenko was charged under Part 2 for distributing literature at a crossroads without formally notifying the authorities in advance. He was charged despite having notified the authorities, who had not replied to him. He was acquitted on 6 January 2017 because the judge at Lysva City Court (Perm Region) found that his actions were "religious service", which did not constitute picketing.

Council of Churches Baptists A. Sinyukov, Yu. Grechukha, and V. Bely, however, were each fined 5,000 Roubles under Part 5 for handing out literature near a bus stop. On 14 February 2017, the judge at Ryazan's Railway District Court decided that the location was "not intended for public religious events" and the defendants had "openly demonstrated [their] religious beliefs in a place which sees the mass passage of people, thus creating the danger of violation of public order, associated with moral and physical damage to the health of citizens".

Legal challenges

One Baptist pastor fined under Article 5.26, Part 4 ("Russians conducting missionary activity") has appealed to the Constitutional Court. On 13 March 2018, the Court ruled that "missionary activity" must involve the sharing of actual religious beliefs with non-members of a religious association, with the explicit aim of involving them as members. The Court did not rule on how to distinguish between a religious association's "missionary activity" and the personal sharing of beliefs by individuals. It is unclear what impact this ruling might have (see F18News 16 May 2018 http://www.forum18.org/archive.php?article_id=2377). (END)

Two foreigners punished in 2016 under July 2016 "anti-missionary" changes have appealed to the European Court of Human Rights in Strasbourg (see F18News 16 May 2018 http://www.forum18.org/archive.php?article_id=2377). (END)

For more background see Forum 18's surveys of the general state of freedom of religion and belief in Russia at http://www.forum18.org/Archive.php?article_id=2246, and of the dramatic decline in this freedom related to Russia's Extremism Law at http://www.forum18.org/Archive.php?article_id=2215.

A personal commentary by Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis <http://www.sova-center.ru>, about the systemic problems of Russian anti-extremism legislation, is at F18News 19 July 2010 http://www.forum18.org/Archive.php?article_id=1468.

A personal commentary by Irina Budkina, Editor of the <http://www.samstar.ucoz.ru> Old Believer website, about continuing denial of equality to Russia's religious minorities, is at F18News 26 May 2005 http://www.forum18.org/Archive.php?article_id=570.

More reports on freedom of thought, conscience and belief in Russia can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=10>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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