

29 January 2021

## RUSSIA: "The policy of expelling 'extremists and terrorists'"

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

*After serving sentences as "extremists" for meeting to study and worship, three former prisoners of conscience face expulsion. One was deported, one may be expelled later in 2021, and one remains in detention as he is now stateless and no country has agreed to take him. "I think that the authorities – that is, de facto, the security services – perceive this measure not as an additional punishment, but as a way to get rid of the problem," says Aleksandr Verkhovsky.*

Three people – two Jehovah's Witnesses and one Muslim - convicted as "extremists" for exercising their freedom of religion and belief have also suffered the deprivation of their Russian citizenship and the prospect of being forced to leave their homes. After already serving prison sentences for meeting to study their beliefs and for worship, one has been deported, one may be expelled later in 2021, and one remains in detention as he is now stateless and no country has yet agreed to take him in.

Jehovah's Witness Feliks Makhmadiyev was deported to Uzbekistan on 21 January, despite living in Russia since 2002. "We've tried to look at Feliks' expulsion from Russia without negative emotions," Yevgeniya Lagunova, Makhmadiyev's wife, commented to Forum 18 on 22 January. "Of course, it hurts, parting with family, with everything familiar in the country. I was born here, Feliks has spent most of his life here, here we started a family."

Another Jehovah's Witness, Konstantin Bazhenov, is likely to be deported to Ukraine later this year when his prison sentence is over (see below).

Bazhenov and Makhmadiyev, who were convicted together in Saratov in September 2019, were among the first Jehovah's Witnesses to be imprisoned after the 2017 Supreme Court ban on Jehovah's Witness activity. Interior Ministry officials deprived both men of Russian citizenship in April 2020.

Forum 18 asked Interior Ministry officials in Orenburg and Ulyanovsk Regions (responsible for overseeing Makhmadiyev's and Bazhenov's deportations) why the men were being expelled from the country they consider their home because of the authorities' attitude to their religion. Forum 18 has received no response to this question (see below).

Muslim Yevgeny Kim, who similarly lost his Russian citizenship after his conviction for studying the works of theologian Said Nursi, remains in limbo in a detention centre for foreign nationals nearly two years after completing his prison sentence. Kim, who was rendered stateless, was ordered deported to his birthplace of Uzbekistan – but Uzbekistan has refused to accept him as he has never held citizenship there. Multiple court appeals have failed, and Kim's request for documentation which would allow him to leave Russia legally for a third country has gone unanswered (see below).

Both Makhmadiyev and Kim were tortured, but contrary to binding international human rights obligations none of the suspect torturers have been arrested and put on criminal trial for torture (see below).

"The policy of expelling 'extremists and terrorists'"

"The policy of expelling 'extremists and terrorists' by depriving them of their previously acquired citizenship was laid down in the Yarovaya package [of anti-terrorism legislation in 2016] ([https://www.forum18.org/archive.php?article\\_id=2215](https://www.forum18.org/archive.php?article_id=2215)). Then, thanks to the strongest resistance, it was possible to remove this norm as anti-constitutional in essence," Aleksandr Verkhovsky of the Moscow-based SOVA Center for Information and Analysis told Forum 18 on 28 January.

The mechanism became law, however, with amendments to the Citizenship Law ([https://www.forum18.org/archive.php?article\\_id=2583](https://www.forum18.org/archive.php?article_id=2583)) in 2017.

"I think that the authorities – that is, de facto, the security services – perceive this measure not as an additional punishment, but as a way to get rid of the problem," Verkhovsky commented to Forum 18, adding that it is "undoubtedly" a federal-level measure. "There are not many people to whom this norm applies, but they will keep getting caught up in it, and in most cases they will be successfully expelled."

Continuing raids, prosecutions, jailings

The authorities carried out at least 86 house searches ([https://www.forum18.org/archive.php?article\\_id=2624](https://www.forum18.org/archive.php?article_id=2624)) – usually involving armed officials – between late October and mid-December 2020 across 16 regions of Russia. Raids, investigations, and criminal prosecutions continue against Jehovah's Witnesses and Muslims suspected of carrying on the activities of banned "extremist" organisations, with some raids including torture ([https://www.forum18.org/archive.php?article\\_id=2623](https://www.forum18.org/archive.php?article_id=2623)).

The most recent known raids on Jehovah's Witness homes were in Tambov Region in late December 2020, and in the Udmurt Republic on 21 January 2021. Three Muslims who met with others to study Islam with the writings of Said Nursi are known to be under criminal investigation in Tatarstan and Dagestan ([https://www.forum18.org/archive.php?article\\_id=2624](https://www.forum18.org/archive.php?article_id=2624)).

Eight Jehovah's Witnesses and one Muslim Nursi reader are serving labour camp terms ([https://www.forum18.org/archive.php?article\\_id=2619](https://www.forum18.org/archive.php?article_id=2619)) as "extremists".

Many other Jehovah's Witnesses are currently serving suspended sentences. Three have been convicted since the start of 2021. Receiving a suspended sentence means a convicted person must live under restrictions specified by the judge, regularly register with probation authorities, and avoid conviction for any other offence during the probationary period or risk being sent to prison.

Deprivation of citizenship: one Jehovah's Witness expelled

Feliks Khasanovich Makhammadiyev (born 14 December 1984) is now free after a total of 844 days behind bars – but has been deported to Uzbekistan, where he has not lived since 2002. He arrived in Uzbekistan's capital Tashkent by train in the evening of 21 January 2021, having been accompanied by police to the Russian border with Kazakhstan. His wife, Yevgeniya Lagunova (a Russian citizen), had travelled ahead by plane to meet him.

Uzbekistan is a serious violator of freedom of religion and belief (<https://www.forum18.org/archive.php?country=33>) and other human rights.

Makhammadiyev, like Konstantin Bazhenov, was among the first Jehovah's Witnesses to be jailed ([https://www.forum18.org/archive.php?article\\_id=2510](https://www.forum18.org/archive.php?article_id=2510)) after the 2017 Supreme Court ban on Jehovah's Witness activity ([https://www.forum18.org/archive.php?article\\_id=2297](https://www.forum18.org/archive.php?article_id=2297)).

Makhammadiyev was convicted on 19 September 2019 at Lenin District Court in Saratov ([https://www.forum18.org/archive.php?article\\_id=2510](https://www.forum18.org/archive.php?article_id=2510)) alongside five fellow Jehovah's Witnesses. They all received prison terms ranging from two to three and half years. After unsuccessful appeals at Saratov Regional Court on 20 December 2019, prison authorities sent five of the men to Orenburg's Labour Camp No. 1, and Konstantin Viktorovich Bazhenov (see below) to Labour Camp No. 3 in Dimitrovgrad (Ulyanovsk Region).

Impunity for torturers continues

Prison guards tortured Makhammadiyev and four other Jehovah's Witnesses from Saratov ([https://www.forum18.org/archive.php?article\\_id=2549](https://www.forum18.org/archive.php?article_id=2549)) when they arrived at Orenburg's Labour Camp No. 1 in February 2020. As a direct result Makhammadiyev had to undergo surgery and had a drain inserted to drain fluid from his lung. Tests showed that he also suffered a broken rib and a damaged kidney. Both the Federal Prison Service (FSIN) and the Orenburg Regional Prison Service told Forum 18 that no torture took place, the latter stating that "One of the convicts was injured through his own negligence".

Against binding international human rights obligations, no officials suspected of the torture of Muslim Yevgeny Kim and the four Jehovah's Witnesses have been arrested ([https://www.forum18.org/archive.php?article\\_id=2554](https://www.forum18.org/archive.php?article_id=2554)) or put on criminal trial for torture. Such impunity for officials who torture continues ([https://www.forum18.org/archive.php?article\\_id=2623](https://www.forum18.org/archive.php?article_id=2623)).

Orenburg Deputy Regional Prosecutor Andrey Vyazikov told Forum 18 on 26 February 2020 ([https://www.forum18.org/archive.php?article\\_id=2549](https://www.forum18.org/archive.php?article_id=2549)) that "on the basis of information received about the injuries of one of the inmates, a prosecutorial review has been organised", after which prosecutors would determine whether "unlawful methods of physical pressure" had been used against prisoners.

The local Investigative Committee refused on 30 December 2020 to open a criminal case against the suspect torturers of the five Jehovah's Witnesses, a spokesperson for Orenburg Region Prosecutor's Office told Forum 18 on 12 January 2021. Orenburg's Central District Prosecutor's Office overturned the December decision on 11 January 2021, but no final decision on prosecution has yet been made.

Stripped of Russian citizenship

Feliks Makhmadiyev was born on the territory of Uzbekistan when it was part of the Soviet Union, and, according to Jehovah's Witnesses, moved to Saratov in Russia with his mother in 2002, when he was still a minor.

Makhmadiyev renounced Uzbek citizenship in 2008, when he became a Russian citizen. Russian law requires anyone applying for Russian citizenship to attest that they will give up any other citizenship they hold. This does not appear to be strictly enforced.

The processing of such renunciation on the Uzbek side can be long and complicated, however, and requires ultimate approval from the President. It appears that this was never concluded in Makhmadiyev's case, meaning that he has not become stateless. Uzbekistan has therefore accepted him as a national.

Interior Ministry officials in Saratov Region stripped Makhmadiyev of his Russian citizenship in April 2020 ([https://www.forum18.org/archive.php?article\\_id=2583](https://www.forum18.org/archive.php?article_id=2583)), as a direct consequence of his conviction for continuing to meet for prayer and Bible study after the ban on Jehovah's Witness activity.

On 30 September 2020 at Saratov's Kirov District Court, Jehovah's Witness lawyers unsuccessfully sought to have the actions of the Saratov Region branch of the Interior Ministry (as the agency which granted and annulled Makhmadiyev's citizenship) ruled unlawful and its decision overturned. An unsuccessful appeal took place at Saratov Regional Court on 13 November 2020.

"A new stage of trials of separation and uncertainty"

On 31 December 2020, Makhmadiyev was released from Orenburg's Labour Camp No. 1 on completion of his sentence (3 years, reduced by time spent in pre-trial custody). He was taken to a temporary detention centre for foreign nationals and stateless persons in the village of Alabaytal, over 100 kilometres (60 miles) away.

"At the [labour camp] exit, they were waiting for Feliks," his wife Yevgeniya Lagunova told Forum 18 on 22 January 2021. "As well as police officers, there were representatives of the security services. They allowed Feliks to talk to me for a few minutes. When I was allowed to approach Feliks, he and I were as if in a dream. We hugged, asked each other quickly 'How are you?', then the happy moment of meeting ended, and there began a new stage of trials of separation and uncertainty."

The Department for Migration Issues at the Orenburg Region branch of the Interior Ministry set an internal deadline of 20 January for deporting Makhmadiyev, Jehovah's Witness spokesperson Yaroslav Sivulsky told Forum 18 on 15 January.

Uzbekistan's consulate in Kazan issued a certificate of return on the grounds that Makhmadiyev was still considered an Uzbek national. He is now beginning the process of obtaining a new Uzbek passport and documents, his wife told Forum 18 on 22 January.

"Of course, it hurts, parting with family, with everything familiar in the country"

Makhmadiyev is prohibited from re-entering Russia for eight years, until 2028, his wife told Forum 18. Forum 18 wrote to the Orenburg Region Interior Ministry before the start of the working day of 20 January 2021 to ask whether Makhmadiyev would be permitted to visit Russia and whether there is any way for him to regain permission to live in the country. Aleksey Ovsyannikov, head of the information and public relations department, replied on 27 January that he could not answer these questions because of the Federal Law on Personal Data.

"We tried to look at Feliks' expulsion from Russia without negative emotions," Yevgeniya Lagunova commented to Forum 18. "Of course, it hurts, parting with family, with everything familiar in the country. I was born here, Feliks has spent most of his life here, here we started a family."

Deprivation of citizenship: another Jehovah's Witness to be expelled this summer?

Officials also stripped Konstantin Viktorovich Bazhenov (born 10 May 1975) of his Russian citizenship in April 2020 ([https://www.forum18.org/archive.php?article\\_id=2583](https://www.forum18.org/archive.php?article_id=2583)), as a direct consequence of his September 2019 conviction for organising meetings for prayer and Bible study ([https://www.forum18.org/archive.php?article\\_id=2510](https://www.forum18.org/archive.php?article_id=2510)) after the ban on Jehovah's Witness activity.

Bazhenov received the longest sentence of the six defendants from Saratov – three and half years' imprisonment. Taking into account time spent in detention during the investigation and trial and before the verdict came into force, he is due to be released on 5 July 2021.

Bazhenov was born in Novgorod in northern European Russia, and moved as a child to Donetsk, in south-eastern Ukraine, when both Ukraine and Russia were part of the Soviet Union. After the dissolution of the Soviet Union, he took Ukrainian citizenship. In 2009, he returned to Russia and acquired Russian citizenship, as did his wife, Irina Bazhenova (who is from Ukraine). He did not give up his Ukrainian citizenship to do so.

On 23 September 2020 at October District Court in Belgorod, Jehovah's Witness lawyers unsuccessfully sought to have the actions of the Belgorod Region branch of the Interior Ministry (as the agency which granted and annulled Bazhenov's citizenship) ruled unlawful and its decision overturned. They challenged the ruling, also unsuccessfully, on 7 November 2020 at Belgorod Regional Court.

Bazhenov does not have a valid Ukrainian passport, Jehovah's Witness spokesperson Yaroslav Sivulsky told Forum 18 on 15 January 2021. Like Makhmadiyev, Bazhenov is therefore likely to be sent to a detention centre for foreign nationals before his deportation to Ukraine. If this happens, Sivulsky added, Jehovah's Witness lawyers will file an appeal against his detention.

Forum 18 wrote to the Ulyanovsk Region branch of the Interior Ministry on 19 January to ask whether Bazhenov will be detained upon release, whether there is any way he can legally stay in Russia as a Ukrainian citizen, and why he may be expelled from the country he considers his home because of the authorities' attitude to his faith. Forum 18 had received no reply as of 29 January.

No other Jehovah's Witnesses are known to have been deprived of citizenship.

Deprivation of citizenship: Muslim still in detention nearly two years after sentence ended

Yevgeny Lvovich Kim (born 5 October 1974) was sentenced in June 2017 to three years and nine months' imprisonment for organising meetings to study Islam ([https://www.forum18.org/archive.php?article\\_id=2290](https://www.forum18.org/archive.php?article_id=2290)) with the works of the late Turkish theologian Said Nursi.

Between Kim's arrest in December 2015 and his transfer to a labour camp in August 2017, he was detained in Investigation Prison No. 1 in Blagoveshchensk. While there, he was tortured in "the so-called 'press hut' ([https://www.forum18.org/archive.php?article\\_id=2332](https://www.forum18.org/archive.php?article_id=2332)), a special room where the necessary testimonies are beaten out [of inmates] by other detainees who are colluding with the prison administration", a fellow Muslim told Forum 18 in October 2017.

Against binding international human rights obligations, no officials accused of torture of individuals detained for exercising freedom of religion or belief have been arrested ([https://www.forum18.org/archive.php?article\\_id=2554](https://www.forum18.org/archive.php?article_id=2554)) or put on criminal trial for torture. Officials continue to torture with impunity, most recently during November 2020 raids on Jehovah's Witness homes in Moscow ([https://www.forum18.org/archive.php?article\\_id=2623](https://www.forum18.org/archive.php?article_id=2623)).

Kim was released on 10 April 2019, but Interior Ministry officials in Sverdlovsk Region (where Kim received his Russian passport in 2005) had stripped him of his Russian citizenship ([https://www.forum18.org/archive.php?article\\_id=2478](https://www.forum18.org/archive.php?article_id=2478)) and made him stateless in January 2019. Kim himself was unaware of this until the day before his release.

On the day he completed his prison term he was fined and ordered deported to Uzbekistan, his country of birth. The official reason for his deportation was that he did not have the correct documents – which officials had confiscated the day before the court decision.

This appears to have been the first time anyone was stripped of citizenship after being convicted under Russia's "anti-extremism" laws ([https://www.forum18.org/archive.php?article\\_id=2215](https://www.forum18.org/archive.php?article_id=2215)) for exercising the right to freedom of religion or belief.

Verkhovsky of the SOVA Center notes that Kim's case is confirmation that there is a national policy of depriving certain convicts of their Russian nationality: "If it were the local authorities deciding the issue, they would hardly be satisfied with such a solution, in fact, as his being kept indefinitely in the detention centre for foreign nationals, with accompanying lawsuits. But they are carrying out a common directive from above."

Kim remains in a detention centre for foreign nationals and stateless persons ([https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)) in Khabarovsk, more than a year and nine months after he was ordered deported to his birthplace of Uzbekistan, a country whose citizenship he has never held and which has therefore refused to accept him.

According to the Khabarovsk Regional Court appeal verdict of 29 September 2020, Kim's lawyer Lyubov Tatars (who has represented him in all Khabarovsk legal proceedings) has approached several countries to ask if they would allow Kim to travel there. Like Uzbekistan, South Korea refused to accept Kim (who is of ethnic Korean heritage). Ukraine, where he lived for some time, did not reply to Tatars. The Turkish Foreign Ministry has recommended that Kim personally submit a request for legal status in Turkey.

Because Kim is stateless, there is technically no country to which he can be deported, and so his deportation, as ordered by Khabarovsk's Railway District Court in April 2019, cannot be carried out.

ECtHR and Russian Constitutional Court rulings on stateless persons

In July 2014, the European Court of Human Rights (ECtHR) in Strasbourg ruled that Russia had violated the human rights of detained stateless persons ([https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)) under the European Convention for the Protection of Human Rights and Fundamental Freedoms by: the maintenance of inhuman conditions of detention; extended detention without the prospect of expulsion; and by denying detainees the right to appeal. The ECtHR ruled that Russia must ensure that these violations do not occur again and that it must ensure court oversight of the detention of stateless persons.

Citing the ECtHR judgment, on 23 May 2017 Russia's Constitutional Court found that two Administrative Code articles, including Article 31.9 ("Time limit on fulfilment of an administrative sentence"), were unconstitutional ([https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)). It directed the Duma, the lower chamber of parliament, to "amend the Administrative Code so that it ensures reasonable judicial control over the timeframes of the detention of stateless persons subject to forced expulsion in specialised institutions". This has not happened.

No reply to requests for documents recognising statelessness

On 5 December 2019, Kim's lawyer Tatarets wrote to the Department for Migration Issues at the Khabarovsk Region branch of the Interior Ministry, requesting that Kim be formally recognised as a stateless person (litso bez grazhdanstva). On 11 June 2020, Kim also wrote to the Department for Migration Issues ([https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)) with the same request. He also asked to be given identity documents enabling him to leave Russia voluntarily for Turkey.

Neither lawyer Tatarets nor Kim has received a reply.

The Khabarovsk Region branch of the Interior Ministry has not replied to Forum 18's questions sent on 20 January asking why Kim has not yet been given papers to leave Russia, and what his situation will be in April.

Deadlock

The written verdict, seen by Forum 18, from Kim's unsuccessful appeal to Khabarovsk Regional Court (decided on 29 September 2020 - see below) states that the Khabarovsk Region branch of the Interior Ministry appealed to the Main Administration for Migration Issues at the federal Interior Ministry for guidance shortly after Uzbekistan's 29 July 2019 refusal to accept Kim.

The federal Interior Ministry's reply of 29 January 2020, seen by Forum 18, recommends that Kim should attempt both to have his sudimost (legal status as a convicted person ([https://www.forum18.org/archive.php?article\\_id=2215](https://www.forum18.org/archive.php?article_id=2215))) annulled by a court, and to have the (administrative) deportation order lifted.

Kim, his lawyers, and even Khabarovsk Region bailiffs have tried various legal means to break the deadlock, so far without success – though two appeals are pending.

– Direct appeal against Administrative Code Article 18.8 Part 1.1 conviction

Kim also appealed directly against his April 2019 conviction ([https://www.forum18.org/archive.php?article\\_id=2478](https://www.forum18.org/archive.php?article_id=2478)) under Administrative Code Article 18.8, Part 1.1 ("Violation by a foreign citizen or stateless person of the residence regime of the Russian Federation, taking the form of the absence of documents confirming the right to residence in the Russian Federation"), which resulted in his deportation order.

His cassational appeal at the 9th Cassational Court in Vladivostok was unsuccessful on 10 June 2020. The Judge claimed that Kim had had from 29 January 2019 (the date that he was stripped of his citizenship) until 9 April 2019 (the date his passport was confiscated) to challenge the decision or obtain residence papers ([https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)) – even though officials had not told him he had been made stateless until 9 April, the day before his release.

- Sudimost annulment appeal

Kim applied to Industrial District Court in Khabarovsk in an attempt to have his sudimost (legal status as a convicted person ([https://www.forum18.org/archive.php?article\\_id=2215](https://www.forum18.org/archive.php?article_id=2215))) annulled with regard to his June 2017 conviction under Criminal Code Article 282.2, Part 1 ([https://www.forum18.org/archive.php?article\\_id=2290](https://www.forum18.org/archive.php?article_id=2290)) (a "serious offence" with a sudimost period of eight years after serving one's sentence) and Article 282, Part 1 (a medium-severity offence with a sudimost period of three years).

Criminal Code Article 282, Part 1 punishes "Actions directed at the incitement of hatred [nenavist] or enmity [vrazhda], as well as the humiliation of an individual or group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, or social group". Criminal Code Article 282.2 Part 1 punishes "Organisation of the activity of a social or religious association or other organisation in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity".

Industrial District Court refused Kim's request on 28 October 2020. He appealed unsuccessfully on 29 December 2020 at

Khabarovsk Regional Court. Khabarovsk Regional Court Judge Aleksandra Savvateyeva noted in her verdict of 29 September 2020 (therefore before the hearing at Industrial District Court) that, should Kim manage to have his sudimost annulled and present evidence that he would be accepted in Turkey, then he could appeal to court again to challenge his detention.

- Bailiffs' request

As the organisations responsible for ensuring court rulings are carried out, bailiffs' departments sometimes apply to courts in an attempt to resolve the legal limbo in which stateless persons find themselves.

On 6 May 2020 Bailiff Svetlana Fedyanina, of Khabarovsk Region Interdistrict Department of Bailiffs for the Fulfilment of Special Enforcement Proceedings, wrote to Railway District Court asking it to halt the fulfilment of the deportation order. The letter, seen by Forum 18, notes that "to deport Kim to the Republic of Uzbekistan is impossible, as he is not a citizen [of that country]", and gives as the basis for the request the 23 May 2017 Constitutional Court ruling. The bailiffs withdrew their request when Kim made his own similar appeal to the court.

On 20 August 2020, Khabarovsk Region Interdistrict Department of Bailiffs for the Fulfilment of Special Enforcement Proceedings wrote again to Railway District Court ([https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)) asking it to halt the fulfilment of the deportation order. The court refused.

- 9th Cassational Court appeal: attempt to end detention, halt deportation order, and compel officials to issue documents

On 27 October 2020, the Institute for Law and Public Policy also lodged a cassational appeal at the 9th Cassational Court in Vladivostok against lower courts' refusal to uphold an administrative suit against the Khabarovsk Region branch of the Interior Ministry. It is unknown when this appeal might be considered.

The suit challenged Kim's continued detention and requested the court to halt the deportation order and compel the Interior Ministry to issue documentation authorising Kim's presence in Russia.

Railway District Court in Khabarovsk twice rejected the suit without consideration (on 13 April and 24 August 2020), before eventually hearing and refusing it on 11 September 2020.

Kim's lawyer Lyubov Tatarets made an unsuccessful appeal at Khabarovsk Regional Court on 29 September 2020. Both the district and regional courts concluded that Kim's lack of Uzbek citizenship "does not preclude the possibility of his expulsion from the Russian Federation", and therefore "is not in itself grounds for his release from the [detention centre]."

The lower courts "simply ignored the position of the Constitutional Court" in an earlier deportation case, Aleksandr Maltsev, director of legal practice at the Moscow-based Institute for Law and Public Policy, who has taken up Kim's case, told Forum 18 on 25 January 2021.

"Let's see if the cassational court will listen to senior colleagues," Maltsev added. "It is saddening that the case has not been considered within the two-month period stipulated by law. The 9th Cassational Court has requested the file from Khabarovsk for examination; the decision [to consider the appeal] has not yet been made."

- Constitutional Court appeal

On 10 November 2020, the Institute for Law and Public Policy lodged an appeal on Kim's behalf at Russia's Constitutional Court. The appeal questioned the constitutionality of Administrative Code Article 18.8, Part 1.1 ("Violation by a foreign citizen or stateless person of the residence regime of the Russian Federation, expressed in the absence of documents confirming the right to reside in the Russian Federation") and Article 3.10, Part 5, which gives judges the right to detain people before deportation but does not impose any time limit.

Immediately after he was released from prison on 10 April 2019, Kim was taken to court under Article 18.8 Part 1.1, fined 3000 Roubles, and ordered to be detained until he could be expelled from the country.

Expulsion (administrativnoye vydvoreniye) is technically different from deportation (deportatsiya), as it is punishment for an administrative offence imposed by a court ruling. Deportatsiya is decided on by the migration authorities or the FSB security service's border service. The two concepts also differ procedurally.

The Constitutional Court is currently checking that Kim's appeal conforms to technical requirements [prinyatiye k proizvodstvu]. "This does not guarantee that it will be admitted for consideration on its merits [prinyatiye k rassmotreniyu]", Aleksandr Maltsev of the Institute for Law and Public Policy told Forum 18. "If the judge shares our opinion on the presence of serious constitutional-legal problems in Yevgeny's case, then the appeal will be admitted."

Maltsev added that, in 2020, the Constitutional Court considered 59 appeals (55 from citizens and four at the request of courts), but refused to admit a further 3,321 for consideration.

– European Court of Human Rights

Kim lodged an appeal against his original criminal prosecution (at the European Court of Human Rights (ECtHR) in Strasbourg in February 2018 (Application No. 8301/18). The ECtHR has not yet decided whether the case is admissible.

What will happen to Kim in April 2021?

Administrative Code Article 31.9 ("Time limit on fulfilment of an administrative sentence") – which, as noted above, has been found to be unconstitutional - places a time limit of two years on the execution of administrative punishments. Because Kim is stateless, there is technically no country to which he can be deported, and so his punishment as decided by Khabarovsk's Railway District Court in April 2019 cannot at present be fulfilled.

It remains unknown what will happen on 30 April 2021, two years after the expulsion order entered legal force.

There is no actual limit of two years on holding people in a detention centre for foreign nationals and stateless persons, Aleksandr Maltsev of the Institute for Law and Public Policy noted to Forum 18.

"Previous experience with such cases indicates that stateless persons [litsa bez grazhdanstva] are kept in detention centres even beyond the limits of the two-year period. There are still no certified stateless persons in Russia, therefore the law does not give a clear answer to [the question of] what will happen to Yevgeny. There is even the possibility that he will get out after two years and they will detain him immediately (since he will still not have documents), take him to court, and send him again to the detention centre. Legislation gives officials that possibility."

Khabarovsk Regional Court Judge Aleksandra Savvateyeva noted in her ruling of 29 September 2020 that the length of detention for people sentenced to expulsion "is determined by the time necessary to achieve enforcement of the decision .. as a result of which these persons, as a general rule, can be held in special institutions until their actual crossing of the state border".

Attempting to cross the Russian border in either direction without documents is a criminal offence under Criminal Code Article 322, Part 1. This carries a fine of up to 200,000 Roubles, an assigned work sentence of up to two years, or up to two years' imprisonment.

Forum 18 wrote to the press office of the Khabarovsk Region Bailiff Service and the Interdistrict Department of Bailiffs for the Fulfilment of Special Enforcement Proceedings before the start of the working day of 20 January, asking what will happen to Kim in April 2021 if he has not been deported by then. The press office replied on 21 January that only direct parties to enforcement proceedings (or their official representatives) have the right to such information.

Kim's detention centre address is:

680003, Khabarovskiy kray

g. Khabarovsk

ul. Repina 3

Tsentr vremennogo sodержaniya inostrannikh grazhdan

(END)

Full reports on freedom of thought, conscience and belief in Russia  
(<https://www.forum18.org/archive.php?query=&religion=all&country=10>)

For more background see Forum 18's survey of the general state of freedom of religion and belief in Russia  
([https://www.forum18.org/archive.php?article\\_id=2246](https://www.forum18.org/archive.php?article_id=2246)), as well as Forum 18's survey of the dramatic decline in this freedom related to Russia's Extremism Law ([https://www.forum18.org/archive.php?article\\_id=2215](https://www.forum18.org/archive.php?article_id=2215))

A personal commentary by Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis  
<https://www.sova-center.ru>, about the systemic problems of Russian anti-extremism legislation  
([https://www.forum18.org/archive.php?article\\_id=1468](https://www.forum18.org/archive.php?article_id=1468))

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments  
([https://www.forum18.org/archive.php?article\\_id=1351](https://www.forum18.org/archive.php?article_id=1351))

Follow us on Twitter @Forum\_18 ([https://twitter.com/forum\\_18](https://twitter.com/forum_18))

Follow us on Facebook @Forum18NewsService (<https://www.facebook.com/Forum18NewsService>)

All Forum 18 text may be referred to, quoted from, or republished in full, if Forum 18 is credited as the source.

All photographs that are not Forum 18's copyright are attributed to the copyright owner. If you reuse any photographs from Forum 18's website, you must seek permission for any reuse from the copyright owner or abide by the copyright terms the copyright owner has chosen.

© Forum 18 News Service. All rights reserved. ISSN 1504-2855.

---

If you need to contact F18News, please email us at:  
f18news @ editor.forum18.org

Forum 18  
Postboks 6603  
Rodeløkka  
N-0502 Oslo  
NORWAY