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COMMENTARY: RUSSIA: Art curators' verdict not isolated instance - this is a system

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The conviction of art curators Yury Samodurov and Andrei Yerofeev is the most high-profile symptom of the problems flowing from Russian anti-extremism legislation, notes Alexander Verkhovsky, Director of the Moscow-based SOVA Center for Information and Analysis <<http://www.sova-center.ru>>, in a commentary for Forum 18 News Service <<http://www.forum18.org>>. This legislation has been used to target religious groups such as Jehovah's Witnesses and Muslim readers of the works of Said Nursi, suggesting that these uses of anti-extremism law are not isolated instances - this is a system. Only indifference to religion prevents people worried by restrictions on freedom of speech from noticing the growing proportion of anti-extremism cases relating to religion. Particularly disturbing is the precedence given to the catch-all legal concept of 'religioznaya roz'n' (religious discord) over the narrower 'religioznaya vrazhda' (religious enmity), as this allows criminalisation of legitimate criticism of others' worldviews. There must be, Verkhovsky argues, a re-examination of anti-extremism legislation, or at least a clear Supreme Court explanation conforming to international human rights standards.

The verdict in Moscow on 12 July convicting Yury Samodurov and Andrei Yerofeev for organising the Forbidden Art 2006 exhibition has not yet come into force, so there is still hope that it could be overturned on appeal. But - given the similar verdict in an earlier case over the Danger, Religion! exhibition - this hope is very weak. The case is the most high-profile symptom of the problems which have flowed from the 2002 Extremism Law and the uses to which it has been put. Previously the law has been used to target religious groups such as Jehovah's Witnesses and Muslim readers of the works of Said Nursi.

Free and open discussion, including criticism, of religious and non-religious views is an inalienable part of a free society. This is one of the areas in which the unbreakable link between freedom of religion or belief and other fundamental freedoms such as freedom of expression is most obvious. Yet today, this open discussion is more and more attracting repression. We are not talking about isolated instances which could be attributed to particular circumstances - this is a system. A very large - and growing - proportion of the cases of the unlawful use of anti-extremism legislation in Russia today are connected in some way with religion. And only society's general indifference to religion prevents the majority of people who are worried by restrictions on freedom of speech from noticing this.

At the same time, the universality of the anti-extremist legislation as a repressive mechanism has an ever wider impact on society. While one person might be spurred to protest, another is overwhelmed by fear. And this fear is seen ever more widely, including in the activity of religious communities.

Defence of "tolerance" used to attack fundamental freedoms

To the ordinary public, the Samodurov and Yerofeev verdict has several distinct aspects. These include: pressure against Samodurov as a well-known human rights defender (even if he left the Sakharov Museum over a year ago); pressure from the Russian Orthodox Church, although leading figures in the Moscow Patriarchate came to differing views over the prosecutor's demands that Samodurov and Yerofeev be imprisoned (the widespread impression that the Moscow Patriarchate initiated the prosecution is mistaken); and heightened tensions between the Orthodox Church and secularists, which noticeably got in the way of a public debate on the role of the Orthodox Church in society and the state.

Yet one aspect of the verdict is perhaps the most important: the way in which defence of an undefined "tolerance" is being used to attack freedom of religion or belief and so also other fundamental freedoms. How far freedom of expression in general and freedom of artistic creativity in particular can be limited is a subject of much debate. In this instance, I believe the particular to be less important than the general: for contemporary art, gesture (or expression) is in itself an artistic act. But, let us move beyond artistic expression and look at freedom of expression in all its forms.

Dangers of loosely defined law

Religious tolerance is not - and cannot be - prescribed as a legal requirement. Russian law bans certain forms of intolerance. The key

piece of legislation is the 2002 Law on Fighting Extremism, and Article 282 of the Criminal Code, which is linked to it (see F18News 27 April 2009 <http://www.forum18.org/Archive.php?article_id=1287>).

The 2002 Extremism Law bans, among other things, "incitement .. of religious discord [religioznaya rozn]"; "propaganda of the exclusivity, superiority or lack of equal worth of an individual on the basis of their .. religious .. adherence or attitude to religion"; and "the violation of the rights, freedoms and legal interests of an individual and citizen depending on their .. religious .. adherence or attitude to religion".

Such actions could lead to a ban on an organisation, publications and meetings, without the actions being in themselves a crime.

Criminal Code Article 282 defines the associated crime: "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 .. attitude to religion, .. conducted publicly or through the media".

Like any restriction on freedom of speech, these definitions can be criticised and can be (and are) misused, but mostly they are not unusual compared with restrictions in other European countries - with the exception of the concept of "incitement of religious discord [religioznaya rozn]".

The word 'rozn' in Russian could mean "hostility", as well as "discord" or refusal to accept another person's views. This last meaning can hardly represent something illegal, otherwise nothing would be left of freedom to share religious or non-religious views.

However, despite the use of two narrower terms - 'nenavist' (hatred) and 'vrazhda' (enmity) - in the description of extremist crimes in Criminal Code Article 282, many legal specialists, prosecutors and judges go instead by the Extremism Law's catch-all term, 'rozn'. Thus, while the Criminal Code speaks of inciting hatred to people on the basis of a religion, strong criticism of the religious or non-religious views that people may hold is seen as practically the same thing.

Criminalisation of "offending feelings"

Hatred of people and hatred of their views is clearly not the same thing. But in Russia criticising any views connected with religion can be a crime, even though criticism of other views is not a crime under Russian laws.

Likewise, offending religious feelings is equated with humiliating people on the basis of their religion. But "offending feelings" and deliberate humiliation of a person or persons are clearly not identical concepts. Any form of offence, whether personal or group, must be the subject not of criminal but civil proceedings (unless we are talking about slander, though this is a controversial issue). The criminalisation of "offending feelings" is helped by the way Russian law is poorly adapted for civil suits relating to this.

In the case of Samodurov and Yerofeev, the prosecutor and the judge's arguments against the exhibition were exclusively based on whether the exhibition insulted the feelings of Christians and desecrated what Orthodox consider holy. And even if it is beyond doubt that the exhibits were offensive and sacrilegious to many Christians (and to some other faiths), not all insult of a faith should be automatically legally interpreted as incitement of hatred against believers themselves.

Incitement to hatred against people must be proved in court. But the prosecutor failed to do this, perhaps because he did not understand that he needed to do so. But possibly because he could find no legal proof of incitement to hatred.

Interestingly, in his closing speech to the court the prosecutor considered it necessary to refer to the 1994 European Court of Human Rights (ECtHR) decision in the Otto Preminger Institute v. Austria case. But the two cases are fundamentally different. In Austria the issue was banning a film - not convicting the organisers personally of a crime. Had the Russian Prosecutor's Office indeed banned the exhibition it is likely that Russia could have subsequently won a case at the ECtHR in Strasbourg. However, in the Samodurov and Yerofeev case it is likely that Russia would lose a case brought before the ECtHR. Ironically enough, an administrative ban on the exhibition would have fully satisfied the Russian Orthodox Church's leadership.

Alleged "dangerous ideas" prosecuted

But the authorities followed a more brutal tactic. This choice was a result of the use of anti-extremist legislation to resist "intolerance" (or, more accurately, what is incorrectly labelled as such) by equating it with terrorism and hate crimes. Alas, it is impossible to say that only a few officials support this approach. The idea is widely spread in society that "dangerous ideas" - even if not accompanied by any incitement to hatred or violence against people - must be prosecuted no less harshly than crimes which are, or are thought without proof to be, linked with these ideas.

This approach is fully realised in moves against various Muslim groups which are not part of the state-recognised Islamic structures. Several of these groups were genuinely involved in violent crimes, several others promoted religiously motivated violence. Other groups could not provably be linked with violence, but it is understandable why the security agencies were suspicious of them.

But there are also cases where Muslim groups and movements were persecuted which clearly do not engage in or call for any violent activity, and are completely unconnected to terrorism. A good example are the Russian followers of the approach to Islam of the Turkish theologian Said Nursi, many of whose books are banned in their Russian translation (see eg. F18News 7 July 2010 <http://www.forum18.org/Archive.php?article_id=1464>). Often the only complaint against these books was that Nursi spoke disapprovingly of several other views, including some Islamic views (see F18News 28 January 2010 <http://www.forum18.org/Archive.php?article_id=1400>).

Exactly the same happened later with the ban on many Jehovah's Witness publications. The only major basis for the ban was the criticism they contained of other faiths. Many of the texts did not even contain such criticism, which merely reveals the apparently low qualifications of the prosecutors. On this basis one Jehovah's Witness community was banned (see F18News 8 December 2009 <http://www.forum18.org/Archive.php?article_id=1385>). Persecution of Jehovah's Witnesses using criminal law has now begun (see eg. F18News 7 July 2010 <http://www.forum18.org/Archive.php?article_id=1464>).

Authorities sometimes distinguish

One cannot say that the authorities as a whole and the security agencies in particular never distinguish between acceptable - even if unpleasant - polemics and criminal activity. The Moscow Prosecutor's Office repeatedly refused to launch a criminal case under Article 282 against the Russian Orthodox priest Fr Daniil Sysoev, who harshly criticised Islam. But he did not make insulting remarks about Muslims themselves, let alone incite violence against them. In full accord with the law, appeals by Muslim activists for him to face a criminal case were not accepted. (Fr Daniil was shot dead in his own church in November 2009, and security agencies subsequently stated that his murderer had been killed in a shoot-out.)

Another case was much more like that of Samodurov and Yerofeev. In 2006, several Russian newspapers republished, in full or in part, the infamous Danish caricatures of the Muslim prophet Mohammed. Two publications received an official warning over this from Rosokhrankultura, the government agency which then monitored the media, while another newspaper editor in Vologda faced a criminal case. The Vologda paper was closed by its owner after that, while the editor, Anna Smirnova, was found guilty under Criminal Code Article 282 and fined. On appeal her conviction was overturned and she was fully acquitted.

These examples give some grounds for hope in the Samodurov and Yerofeev case - even if there is no evidence yet for hope in the cases involving Jehovah's Witnesses and Muslim readers of Said Nursi's works. Prosecutors and judges were able to distinguish between clearly criminal incitement to violence and criticism of religious and other worldviews, even if some argued - on grounds which are impossible to legally prove - that they could be seen as "religious discord [rozn]", legally defined as extremism.

Key issue little understood

Most politicians, officials and commentators dealing with the Samodurov and Yerofeev case do not understand the crucial distinction that must be made between criticism of views and incitement to hatred and violence against particular people. This is vital to understanding the far less publicised but far more widespread and serious attacks on the freedoms of Jehovah's Witnesses and Muslim readers of Said Nursi's works - and perhaps in the future yet more Russians with "dangerous ideas".

This is clear even from the language used by almost all commentators: both supporters and opponents of the verdict state that Samodurov and Yerofeev have been convicted of "inciting religious discord [rozn]" - but ignore the dangerous lack of clarity of the word 'rozn', with its possible meaning of refusal to accept another person's views. This vital point is in no sense a minor legal quibble.

For fundamental freedoms to be defended, there must be a re-examination of anti-extremism legislation or, at the very least a clear and legally defensible explanation from the Supreme Court which conforms to international human rights standards.

The number of cases in which anti-extremism legislation is misused has not grown overall in the past two years. But the proportion of such cases related to freedom of religion or belief has jumped. The reasons for this ominous development are many, but one is indisputable: concern about poorly defined "intolerance" combined with a lack of desire or ability to consider this issue carefully and thoughtfully. Sadly, there is no reason to think this will change soon. (END)

- Alexander Verkhovsky, Director of the Moscow-based SOVA Center for Information and Analysis <<http://www.sova-center.ru>>, contributed this commentary to Forum 18 News Service <<http://www.forum18.org>>. Commentaries are personal views and do not necessarily represent the views of F18News or Forum 18.

Analysis of the background to Russian policy on "religious extremism" is available in two articles: - 'How the battle with "religious extremism" began' (F18News 27 April 2009 <http://www.forum18.org/Archive.php?article_id=1287> - and - 'The battle with "religious extremism" - a return to past methods?' (F18News 28 April 2009 <http://www.forum18.org/Archive.php?article_id=1288>).

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>.

For more background, see Forum 18's Russia religious freedom survey at <http://www.forum18.org/Archive.php?article_id=1196>.

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>.

A printer-friendly map of Russia is available at <<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=russi>>.

Alexander Verkhovsky, contributed this comment to Forum 18 News Service. Commentaries are personal views and do not necessarily represent the views of F18News or Forum 18.

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