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RUSSIA: "Religious feelings" not offended – or the calm before the storm?

By Geraldine Fagan, Forum 18 (https://www.forum18.org)

Since a vaguely-worded Russian law criminalising "offending religious feelings" came into force on 1 July no prosecutions have followed, Forum 18 News Service notes. Alexander Verkhovsky's SOVA Center for Information and Analysis has reported only one associated incident, concerning a representative of the Saami people in Russia's Far North. Critics fear that the new amendments are so poorly defined that they could be used by anyone to prosecute actions they simply dislike. Verkhovsky, for example, thinks they will certainly be interpreted in a way that criminalises actions previously not treated as criminal. While understood as a concession to the Russian Orthodox Church (Moscow Patriarchate), there is considerable disagreement over the criminalisation of "offence to religious feelings" in both the Russian Orthodox Church (Moscow Patriarchate) and Russian society, Forum 18 notes. And not every legal initiative apparently motivated by the notion of "offending religious feelings" is progressing in Russia.

More than a month since a vaguely-worded law criminalising "insulting religious feelings" came into force in Russia on 1 July, no prosecutions have followed, Forum 18 News Service observes. Yet fears over the Law's restrictive potential persist. It is the most notorious legal measure concerning freedom of religion or belief to be adopted since President Vladimir Putin returned to the Kremlin in May 2012.

Alexander Verkhovsky – who monitors nationalism, xenophobia and threats to freedom of religion or belief in Russia – is so far unaware of any formal requests to state agencies for a criminal case to be opened due to "insulting religious feelings". "Perhaps they exist, who could possibly know?" he commented to Forum 18 on 9 August. "Many are waiting, I think, and it's summer."

Lawyer Inna Zagrebina of the Moscow-based Guild of Experts on Religion and Law is similarly unaware of formal complaints of "insulting religious feelings", she told Forum 18 on 14 August.

To date, Verkhovsky's Moscow-based SOVA Center for Information and Analysis has reported only one associated incident concerning a representative of the Saami people in Russia's Far North (see below).

Background

Signed into law by Putin on 29 June, the new amendments target "public actions, expressing obvious disrespect for society and committed with the intention of insulting the religious feelings of believers" (Criminal Code, Article 148) and "deliberate public desecration", damage or destruction of religious literature, items of religious veneration or ideological symbols (Code of Administrative Offences, Article 5.26).

The measures were initially seen as a proposed "blasphemy law", although they have never contained the Russian term "blasphemy" (koshchunstvo/bogokhulstvo). While newly controversial, "insulting religious feelings" was in fact previously a minor, administrative offence. Forum 18 is unaware of anyone having ever been charged with it.

The maximum punishments under Article 148 of the Criminal Code are now a fine of 300,000 Roubles (about 56,000 Norwegian Kroner, 7,000 Euros, or 9,000 US Dollars) or imprisonment for one year. This rises to 500,000 Roubles (about 93,000 Norwegian Kroner, 12,000 Euros, or 15,000 US Dollars) or three years imprisonment if the offence is committed in a place of worship. The maximum punishments under Article 5.26 of the Code of Administrative Offences are now a fine of 50,000 Roubles (about 9,300 Norwegian Kroner, 1,200 Euros, or 1,500 US Dollars) or 120 hours' compulsory labour.

Legislative initiatives concerning freedom of religion or belief have markedly increased since Putin's return in May 2012. But despite a general trend towards harsher restrictions, not all recent proposals negatively affecting religious freedom are being adopted (see F18News 15 August 2013 http://www.forum18.org/archive.php?article_id=1865). The increase in legislative initiatives appears at least partly due to activism by the Duma's Committee on Social Associations and Religious Organisations, after its chairship passed to Vladimir Zhirinovsky's Liberal Democratic Party in December 2011 (see F18News 19 August 2013 http://www.forum18.org/archive.php?article_id=1866).

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Like the "propaganda of non-traditional sexual relations" law banning among other things equating same-sex and heterosexual relationships, the "insulting religious feelings" law was also passed by the Duma on 28 June, signed by President Putin on 29 June, and came into force on 1 July. Verkhovsky of the SOVA Center has noted the laws' links with "the 'anti-opposition' campaign begun since Putin's return" (see F18News 19 August 2013 http://www.forum18.org/archive.php?article_id=1866)

Forum 18's citation of drafts and related documents follow those on the official website of Russia's Duma (parliament).

Criticism

Critics fear that the new amendments on "insulting religious feelings" (as also those on "propaganda of non-traditional sexual relations") are so poorly defined that they could be used by anyone to prosecute actions they simply dislike.

Verkhovsky thinks the "insulting religious feelings" amendments will certainly be interpreted in a way that criminalises actions previously not treated as criminal. Earlier, some "extremism" cases have centred on "insulting feelings", he pointed out to Forum 18 (see below), "but now the number of such cases should rise. Currently, many complaints by various religious, anti-religious and other groups against one another are sitting with the Public Prosecutor's Office, police or Investigative Committee, but now some proportion of these complaints will be 'set in motion'." Verkhovsky expects this "to lead to new unjust sentences, and to aggravate the whole situation."

Telephone numbers for Yaroslav Nilov, chair of the Duma's Committee on Social Associations and Religious Organisations, and Committee adviser Stepan Medvedko went unanswered whenever Forum 18 rang on 13 and 14 August. The Committee backed the new amendments on "insulting religious feelings".

In a 12 July interview on the Committee's official website, Nilov rejected the idea that the amendments would divide society. "On the contrary – when blasphemous, provocative acts with a religious subtext are being committed, the inaction of the state could divide society (..) if nothing is done, then society will begin to create order on its own, in the streets (..). Officials need an instrument that can preserve the stability of society."

Nilov further insisted that the amendments' terminology would not lead to extensive prosecutions. "The legal meaning [of "offending"] is humiliation of dignity expressed in an indecent way. Someone might think that a believer might be offended by an old woman coming to church without a headscarf, but that's not "offending". And I, for example, don't like it when they slaughter sheep on the streets of Moscow during the time of sacrifice on Kurban-Bairam (Eid al-Adha Islamic festival), but that's not "offending" in the legal sense."

With other critics of the measures against "insulting religious feelings", however, Verkhovsky of the SOVA Center suggested to Forum 18 that their interpretation "depends greatly upon the common sense of officials".

Lawyer Inna Zagrebina agrees. "The 'religious feelings' category is more philosophical than legal, so it isn't clear how courts will define what is meant by insulting religious feelings – but we can definitely say that it will be the subjective understanding of each judge," she explained to Forum 18. Zagrebina also predicted greater demand for linguistic and religious studies analyses in court cases, introducing yet more subjectivity. "We can only guess what the result will be."

Incidents

In the run-up to the amendments' adoption, several incidents suggested they might be interpreted very loosely. In October 2012, Rostov-on-Don Regional Public Prosecutor's Office considered complaints from unspecified religious believers demanding that a performance of the rock opera "Jesus Christ Superstar" at Rostov-on-Don Philharmonia be banned, SOVA reported. However, the Office rejected this demand, noting that the opera "was composed 40 years ago and is a recognised rock music classic translated into various languages and performed on many stages worldwide."

In St Petersburg, meanwhile, a theatre play of Vladimir Nabokov's novel "Lolita" was cancelled by its director in October 2012 after a group of Cossacks claimed it was "offensive to all decent people", SOVA reported.

While not a formal demand for a criminal case to be opened, the only attempt to use the new amendments so far appears to be a 11 July complaint from a representative of the Saami people in Russia's far northern Murmansk Region concerning a recent performance by a local dance collective, SOVA reported. The representative found various elements of the performance "offensive to the culture and identity" of the Saami people, including its incorporation of shamanic elements from the distant Russian republics of Buryatia and Kalmykia, and girls wearing male Norwegian Saami headgear.

Extension of "extremism"

While controversial, the amendments do not introduce anything essentially new. In particular, Verkhovsky of the SOVA Center

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points out that it is unclear how the new provision against "insulting religious feelings" differs from the "extremism" offence of "humiliation of human dignity (..) on account of a person's attitude towards religion" (Criminal Code, Article 282).

Russia's 2002 Extremism Law also allows prosecution for the vague "incitement of religious discord [rozn]", Forum 18 notes. Along with another of the 2002 Law's definitions of "extremist activity" - "propaganda of exclusivity, superiority (..) on the basis of attitude to religion" – this has long been used against claims that a particular religion or belief is superior to others, a fundamental part of the internationally recognised right to freedom of religion or belief (see Forum 18's "extremism" Russia religious freedom survey at http://www.forum18.org/archive.php?article_id=1724).

Indeed, it is the 2002 Law that has most recently been used against the incident widely believed to have triggered the drive for tougher legal measures against "insulting religious feelings": the February 2012 performance of a short "punk prayer" by feminist art collective Pussy Riot immediately in front of the iconostasis in Moscow's Cathedral of Christ the Saviour (see F18News 15 October 2012 http://www.forum18.org/archive.php?article_id=1754).

Footage of the "punk prayer" and other material from Pussy Riot's blog was added to Russia's Federal List of Extremist Materials on 17 July, and is thus banned from distribution nationwide. The material – on several of the blog's pages – was determined "extremist" by Moscow's Zamoskvoretsky District Court on 29 November 2012, a ruling upheld by Moscow City Court on 30 January. The website of the popular Moskovsky Komsomolets newspaper received an "extremism" warning in June for featuring footage of the "punk prayer", ITAR-TASS news agency reported.

The Federal List already includes numerous texts used by Falun Gong practitioners, Jehovah's Witnesses and Muslims, particularly works by the Islamic theologian Said Nursi (see most recently F18News 15 July 2013 http://www.forum18.org/archive.php?article_id=1858).

Vague proposals

Submitted to the Duma on 26 September 2012, the original draft of the new Law enjoyed cross-party backing, including from pro-Kremlin United Russia parliamentarians. Sponsors included Deputies Yelena Mizulina (A Just Russia Party), Sergei Gavrilov (Communist Party), current and former Religion Committee chairs Sergei Popov (United Russia) and Yaroslav Nilov (Liberal Democratic Party), and Liberal Democratic Party leader Vladimir Zhirinovsky.

The initial text of the proposals (draft law no. 142303-6) would have punished offence or desecration only if targeting "religious associations professing religions constituting an integral part of the historical heritage of Russia's peoples" – a phrase from the 1997 Religion Law's preamble. This preamble formally has no legal force but is widely interpreted informally as referring to state-favoured organisations within the four faiths of Orthodoxy, Islam, Judaism and Buddhism (see Forum 18's general Russia religious freedom survey at http://www.forum18.org/Archive.php?article_id=1722).

At a 4 October roundtable hosted by Russia's Public Chamber, several speakers criticised this particular phrase in the draft (see F18News 15 October 2012 http://www.forum18.org/archive.php?article_id=1754).

Draft hardly changed

Published on its website on 23 October, the Public Chamber's assessment of the draft's original text declined to support it for reasons including vague terminology and duplication of offences covered under "incitement of hatred [nenavist] or enmity [vrazhda], as well as humiliation of human dignity" (Criminal Code, Article 282). Responding to concerns over the proposals raised at a 12 November meeting of the presidential Human Rights Council, President Putin promised to ask parliamentarians not to rush. As a result of this exchange, consideration of the draft was postponed until March 2013, Vedomosti newspaper reported.

Meanwhile, condemnation of the proposals continued to mount. A 23 January meeting of the presidential Human Rights Council called for the draft to be withdrawn. A 27 January assessment of the draft published on the government's website failed to support it. With other critics, the government noted duplication of the existing Criminal Code and pointed to the lack of definitions for "ideological symbols" and "religions constituting an integral part of the historical heritage of Russia's peoples".

Yaroslav Nilov, the Religion Committee chair, then announced that the draft would be broadened to apply "to all religious organisations, both traditional and non-traditional", Izvestia newspaper reported on 14 February. Yet this proved to be the only concession to the drafts' critics, despite their intense opposition: prominent lawyer Genri Reznik, for example, dismissed the proposals as "a disgrace" whose authors were suffering from "legal insanity".

After the draft received preliminary approval on its 9 April first Duma reading, Nilov maintained that deputies had rejected the original text, "understanding and sharing the concerns of the draft's critics," ITAR-TASS news agency reported on 15 April. Yet the final, amended text approved on 21 May (second) and 11 June (third) readings differs little from the original wording, Forum 18 notes. In particular, its core concept of "insulting the religious feelings of believers" closely resembles the initially proposed "public offence to the religious convictions and feelings of citizens", and is supplemented by the similarly vague "obvious disrespect to

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society".

Putin signed these proposals into law, despite agreeing at the November 2012 Human Rights Council meeting that "feeling" is "not a legal term, of course". The Law came into force on 1 July.

Divided opinion

While understood as a concession to the Russian Orthodox Church (Moscow Patriarchate), there is in fact considerable disagreement over the criminalisation of "insulting religious feelings" in both the Russian Orthodox Church (Moscow Patriarchate) and Russian society, Forum 18 notes.

One of the few in favour of the proposals at the October 2012 roundtable hosted by the Public Chamber and broadcast via its website was Patriarchate representative Fr Vsevolod Chaplin. He continued to support the draft into 2013, telling Izvestia in March that "the feelings of believers must be protected, as well as items that they venerate and their worship services. That is the will of the people, and I think the state is listening to it."

Pointing out that no legal consensus exists on the difference between polemic, comedy, satire and "insulting religious feelings", however, prominent Orthodox cleric Protodeacon Andrei Kurayev has warned that a legal provision on the last of these would become "a stick in the hands of whoever is in power". Writing on Pravmir.ru website in late September 2012, he explained that his view was shaped by Soviet experience, and commented that "the hands of Church people – activists, publicists, lawyers – will weave a rope that will eventually choke ourselves."

According to a 3 July poll by Russia's independent Levada Centre, 55 per cent of respondents were either in favour or inclined to favour the new amendments, with 37 per cent against or inclined against, and 8 per cent undecided.

Related draft law stalls

Despite their appeal to populist sentiment, not every legal initiative apparently motivated by the notion of "insulting religious feelings" is progressing in Russia, Forum 18 observes. Proposed to the Duma by Liberal Democratic Party deputies Igor Lebedev and Sergei Ivanov on 26 October 2012 – and also backed by the Duma's Religion Committee - draft amendments to the 1997 Religion Law as well as the Code of Administrative Offences would have punished with a fine performance of "religious rituals accompanied by violent action towards a person or animal" if in public but outside buildings or sites designated for worship (draft law no. 161207-6).

Clearly, the reference to violence against a person was unlikely to enter law; the amendments appeared motivated by rising public complaints about the ritual slaughtering of sheep in urban spaces on the annual Islamic festival of Kurban-Bairam (Eid al-Adha).

The draft law has stalled, however. In an undated assessment in response to a December 2012 request, the Duma's Legal Department dismisses its proposals as unconstitutional. An 18 January assessment by the Duma's Committee on Constitutional Law and State Building similarly declined to support the draft, finding in it numerous flaws such as the absence of an explanation for "violent action towards a person or animal" (END)

For more background, see Forum 18's surveys of the general state of religious freedom in Russia at http://www.forum18.org/Archive.php?article_id=1722, and of the dramatic decline in religious freedom related to Russia's Extremism Law at http://www.forum18.org/Archive.php?article_id=1724.

The Economist's review of Geraldine Fagan's book "Believing in Russia - Religious Policy after Communism" (Routledge, 2013) is available here http://www.economist.com/news/books-and-arts/21571111-new-look-religion-post-1991-russia-question-faith. The book's comprehensive overview of Russian religious policy argues that continuing failure to resolve the question of whether Russia is to be an Orthodox country with religious minorities or a multi-confessional state is destabilising the nation.

An analysis of the way that the Russian authorities have used the Pussy Riot case to intensify restrictions on freedom of religion or belief is at F18News 15 October 2012 http://www.forum18.org/Archive.php?article_id=1754.

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.

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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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