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RUSSIA: Banning religious texts easy, unbanning them difficult

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

In mid-July, Russia's Justice Ministry finally deleted from its Federal List of Extremist Materials 50 Islamic texts among 68 banned in a 20-minute hearing in Orenburg back in March 2012. The 50 texts spent at least four months on the Federal List after they should have been removed, because the appeal judge did not explicitly reverse the original "extremism" designation, lawyer Timur Zaripov told Forum 18 News Service. Yet 11 of the 50 works are already banned in different editions. Of ten other religious texts removed from the Federal List after difficult and protracted efforts, seven (Muslim and Falun Gong) were soon re-banned. Three Jehovah's Witness brochures removed from the List in 2014 and 2015 have not been re-banned. Yet over 60 Jehovah's Witness texts remain on the Federal List, and successful appeals against "extremism" designations, whether before or after they come into force, are rare. Those possessing banned religious literature are often fined.

Nearly three and a half years after an Orenburg court ruled 68 Islamic texts "extremist", Russia's Justice Ministry has finally deleted 50 of them from its Federal List of Extremist Materials. Getting books and other items removed from the Federal List is a drawn-out and difficult process which can demand considerable resources from publishers and religious communities, Forum 18 News Service notes. Nor does removal offer any guarantee that a text will stay off the Federal List.

By contrast, adding items to the Federal List is straightforward for prosecutors and other officials. Orenburg's Lenin District Court ruled that the 68 Islamic publications were "extremist" in a March 2012 hearing lasting only 20 minutes. The decision remains the biggest single known banning of religious literature by a Russian court. It only became public, however, in June 2012 - after the period for appeals had passed (see F18News 19 June 2012 http://www.forum18.org/Archive.php?article_id=1713).

Although the Regional Court later accepted five appeals by authors and publishers, the delay meant that the District Court ruling could come into force in the meantime and be fulfilled by the addition of the 68 titles to the Federal List. This has led to numerous prosecutions and fines across Russia for distribution of the banned texts under Administrative Code Article 20.29 ("Production or mass distribution of extremist materials") (see F18News 31 March 2015 http://www.forum18.org/archive.php?article_id=2052).

Exclusions rare – and often short-lived

The exclusion of an item from the Federal List is a rare occurrence. Only 97 entries have been removed since the Federal List's public existence from 2007. This is out of a total of more than 2,900 entries as of late July 2015, many of which include multiple items. Anyone possessing items on the Federal List is liable to criminal prosecution (see Forum 18's Russia "extremism" religious freedom survey http://www.forum18.org/archive.php?article_id=1724).

Sixty of these 97 texts removed from the Federal List were religious texts: four texts related to the Falun Gong spiritual movement (removed in April 2009), three books by the late Turkish theologian Said Nursi (removed in May 2013), three Jehovah's Witness brochures (removed in March 2014 and April 2015), and the 50 Islamic texts in the Orenburg case. Of these 60, the Falun Gong and Nursi items have since been re-entered on the Federal List.

Any removal may also be short-lived, as a representative of Sözlery (which publishes Nursi's works) remarked to Forum 18 on 20 June, since prosecutors can bring a fresh suit against the same material. Even as Sözlery was appealing against a ban on their editions of three Nursi books in Krasnoyarsk, two of the titles were banned again by the same court in a second attempt by prosecutors, while the third was ruled "extremist" in Kaliningrad.

The impact of a verdict's reversal may also be limited by the banning of the same text in other editions, Forum 18 notes. Of the 50 items reprieved in Orenburg, 11 remain on the Federal List in different editions, outlawed by "extremism" rulings by courts in different parts of Russia. Individuals will therefore need to check the edition of a book carefully in order to avoid prosecution for mass distribution of "extremist" materials.

A 16 February decision by Kurgan City Court, for instance, banned three further editions (from 2006, 2009, and 2010) of Said bin Ali bin Waqf al-Qahtani's "Fortress of a Muslim", one of the works involved in the Orenburg bans. This is a collection of prayers and greetings for various situations (such as "What to say when entering the home", "Invocations for visiting the sick", and

"Invocations for travelling"). The same court outlawed another, 2004 edition on 6 April 2015. The book was also banned in two unknown editions by Ussuriysk City Court, Primorye, on 31 July 2014.

If an individual, religious organisation, or publishing house is aware of an "extremism" ruling before it comes into force (usually one month after it is issued), they may appeal against the decision. While the appeal is pending, the text should not be added to the Federal List. After a ruling comes into force, however, and the title is placed on the List, the process of challenging it becomes lengthier and more complicated.

Procedural burdens of getting material off the Federal List

Once material has been placed on the Federal List, the process of overturning the decision places a considerable burden on anyone who chooses to appeal, Forum 18 notes. This particularly affects individuals or religious communities which do not have access to the same resources as a publishing company might be able to command. Such appeals require legal expertise (which may not be easily available to all individuals or religious communities and which must usually be paid for). Those appealing may also have to pay for repeat "expert analysis" of the materials.

A significant investment of time and energy is also necessary. Repeat analysis can take months, and judges may take months to familiarise themselves with the case if a large volume of material is involved. Meanwhile, prosecutors may challenge any overturning of a ban, thus prolonging the case further. If the appeal is successful, the Justice Ministry may take anywhere from a few days to several months to respond to the court's removal order.

The complicated nature of the process leaves it vulnerable to procedural violations. The 50 Orenburg texts spent at least four months on the Federal List after they should have been removed, because the appeal judge did not explicitly reverse the original extremism designation, lawyer Timur Zaripov told Forum 18 on 19 June. In the meantime, religious believers, mosque communities and booksellers remained vulnerable to prosecution for "mass distribution" of any of these texts, even though the ruling which declared them "extremist" had been overturned in February.

According to Zaripov, "if all the documentation [regarding the ban] is submitted to a court, the court will most likely refuse to prosecute" in cases of distribution of these books. Forum 18 has nonetheless found at least two cases of fines imposed after the Orenburg Regional Court decision came into force (see F18News 15 May 2015 http://www.forum18.org/archive.php?article_id=2062).

Lawyers in the appeal case had to apply to Orenburg's Lenin District Court (which delivered the controversial original verdict in March 2012) to have the "extremism" designation reversed. They were successful in this at a hearing on 25 May, Svetlana Belinskaya, deputy chair of Orenburg Regional Court, told Forum 18 on 26 June. The Justice Ministry deleted the titles from the Federal List sometime between 13 and 19 July.

Forum 18 asked the Justice Ministry in early June why no Orenburg titles had as of then been removed from the Federal List. The Justice Ministry explained on 4 June that, if a verdict has already been fulfilled, any subsequent cancellation of that verdict should either explicitly reverse the original decision or send it back to the original ("first instance") court for a new consideration.

Orenburg Regional Court Judge Kira Annenkova's written verdict, drawing on new "expert" analysis, orders 18 items to be included on the Federal List. It makes no mention, however, of what should happen to the remaining 50 texts, although Article 445, Part 1, of the Civil Procedural Code states that a court "is obliged to resolve the question of reversing the enforcement of the judgment, or to return the case to the court of first instance" when ruling in appeal cases.

Article 445, Part 2, goes on to state that "If in a higher court judgment, decision or ruling there is no guidance on reversing the fulfilment of the [original] court verdict, the defendant is entitled to submit an application to the court of first instance". Lawyers attempting to have the Orenburg materials removed from the Federal List were therefore obliged to return to the city's Lenin District Court.

Lengthy and complicated

The case of the Jehovah's Witness brochures "Religion – The Bulwark Of Peace?" and "Be Zealous For True Worship" also illustrates how lengthy and complicated the process of having texts excluded from the Federal List can be. These brochures were banned by Factory District Court in Kemerovo in May 2011 and were not deleted from the Federal List until nearly three years later.

If representatives of religious organisations or publishers were not invited to participate in the original hearings as third parties, they may remain ignorant of the decision until the Federal List is publicly updated (which can take weeks or months after a ruling comes into force). This happened in the Orenburg case, where officials invited no representative of any of the publishers or authors to the original hearing in March 2012. Orenburg Regional Court overturned the original lower court in February 2015 on these grounds.

Jehovah's Witnesses in Kemerovo were also unaware of the ban on their two brochures until July 2011, when the Federal List was

updated and the window for appeals had passed. According to court documents of September and December 2011, Factory District Court and Kemerovo Regional refused to re-open the appeal period on the grounds that local Jehovah's Witnesses were only readers of the material, not the authors, publishers or distributors, and therefore had no right to make such a request.

In February 2012, however, Jehovah's Witnesses succeeded in getting the original ruling overturned at Kemerovo Regional Court, which sent it for re-examination with fresh "expert" analysis. This long-drawn-out process was eventually concluded in November 2013, when Factory District Court refused the prosecutors' suit (see F18News 10 April 2014 http://www.forum18.org/archive.php?article_id=1946). The Justice Ministry then took nearly four months to remove the titles from the Federal List.

The Kemerovo case was Jehovah's Witnesses' first successful challenge, after many years of trying, to the inclusion of their texts on the Federal List. The likelihood of success in such proceedings is low, as lawyer Zaripov pointed out to Forum 18 on 22 June. Very few "extremism" rulings are being reversed after they have already been fulfilled. The only other successful Jehovah's Witness appeal took place in Kursk in April 2015, when "What God Tells Us Through Jeremiah" was struck from the Federal List a year after being added.

Over 60 Jehovah's Witness texts remain on the Federal List, and successful appeals against "extremism" designations, whether before or after they come into force, are rare.

Getting on the Federal List

In contrast, including material on the Federal List is relatively straightforward. Any district, municipal, or regional court may decide that a book, leaflet, song, slogan, video, website or webpage has "extremist" content (see Forum 18's Russia "extremism" religious freedom survey http://www.forum18.org/archive.php?article_id=1724). A copy of the ruling is sent to the Justice Ministry, which then adds the item to the Federal List. The List itself may be viewed and searched on the Ministry's website. Updates are also published in "Rossiyskaya Gazeta", the Russian government's official newspaper.

Nevertheless, additions to the Federal List may take weeks or even months to become public. For example, the Jehovah's Witness website was added on 19 July 2015, although the Supreme Court issued its final "extremism" ruling on 2 December 2014 (a supervisory appeal has since been submitted – see F18News 20 March 2015 http://www.forum18.org/archive.php?article_id=2049).

This makes it difficult for publishers and religious communities, who may not have been informed of the extremism investigation and who learn of the verdict too late to submit an appeal within the one-month limit. Also, the Federal List contains so many items that checking whether a particular item is on the List can be very difficult or even impossible (see Forum 18's Russia "extremism" religious freedom survey http://www.forum18.org/archive.php?article_id=1724).

Decisions ruling material "extremist" are usually based on linguistic/psychological/religious analysis carried out either by official "experts" (police or FSB security service criminologists) or academics. Such analysis is intended to establish the presence or absence of "extremism" in the text or video (often statements of the alleged superiority or exclusivity of a particular religion or its adherents) or ascertain its closeness to material which has already been banned (ie. in a different edition).

Materials subject to "extremism" rulings may have been seized during "routine" checks of adherence to anti-extremism legislation (most common in mosques and Muslim shops) or raids of homes or places of worship (most common in Jehovah's Witness cases). The latter often occurs as a result of a tip-off from "concerned" citizens. Prosecutor's Office staff, Anti-Extremism Police, and the FSB security service may all be involved.

Consequences of being on the Federal List

Individuals, religious communities, and businesses found to be in possession of even a single copy of an item on the Federal List may be charged under Article 20.29 of the Administrative Code with mass distribution of "extremist" materials (see Forum 18's Russia "extremism" religious freedom survey http://www.forum18.org/archive.php?article_id=1724).

Since President Vladimir Putin signed into law amendments to the Administrative Code on 2 May, offences under this Article now carry increased fines for "juridical persons" (commercial concerns, publishers, media outlets, and religious organisations) of 100,000 to 1 million Roubles (see F18News 15 May 2015 http://www.forum18.org/archive.php?article_id=2062). Individuals continue to face fines of between 1,000 and 3,000 Roubles or up to 15 days' imprisonment. Fines for people acting in an official capacity range from 2,000 to 5,000 Roubles. (Each 1,000 Roubles is the equivalent of 140 Norwegian Kroner, 15 Euros or 17 US Dollars.)

Prosecutors may use convictions under Article 20.29 as evidence of "extremist" activity and seek to have a religious community dissolved on that basis. If entire communities are banned as "extremist" their former members can then face prosecution if they continue to meet, with the risk of imprisonment.

This has been the experience of Jehovah's Witnesses in Samara, Taganrog, and Abinsk (see F18News 6 March 2015

http://www.forum18.org/archive.php?article_id=2046), and a Muslim community in Borovsky village in Tyumen Region (see F18News 3 December 2014 http://www.forum18.org/archive.php?article_id=2020). (END)

For more background, see Forum 18's surveys of the general state of freedom of religion or belief 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.

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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