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The right to believe, to worship and witness
The right to change one's belief or religion
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RUSSIA: Community service order, 31 initial fines in 46 cases for public religious events over 4 months

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

In the last four months of 2015, at least 45 individuals and one religious organisation are known to have been brought to court under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") for exercising their right to freedom of religion and belief in public space. Most were Jehovah's Witnesses offering religious literature on the streets, but Mormons, Hare Krishna devotees, Baptists and a Muslim were also prosecuted. These prosecutions led to 31 fines and one sentence of community service (before appeals), according to an analysis by Forum 18 News Service, continuing an increasing trend from 2015. Fines were, in some cases, nearly two-thirds the average monthly wage and nearly twice the average monthly pension. These can place a heavy burden on the poor, elderly, and unemployed. Prosecutions at least partly stem from pressure from Russia's federal government to "minimise the public activity of citizens", Hare Krishna lawyer Mikhail Frolov commented to Forum 18.

Increasing numbers of individuals across Russia are facing prosecution for expressing their beliefs in public under legislation which provides little clear explanation of how "violations" may be committed, Forum 18 News Service has found. Charges often result in lengthy court proceedings and fines, in some cases, of nearly two-thirds the average monthly wage and nearly twice the average monthly pension. These can place a heavy burden on the poor, elderly, and unemployed.

46 known prosecutions in four months

Based on Forum 18's analysis of available court verdicts, 45 individuals and one religious organisation are known to have been brought to court under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") between the beginning of September and the end of December 2015 for exercising their right to freedom of religion and belief in public space. These prosecutions led to the imposition of 31 fines and one sentence of community service (before appeals). Fourteen defendants were initially acquitted.

This compares to 37 known prosecutions between May and August 2015 (see F18News 4 November 2015 http://www.forum18.org/archive.php?article_id=2117), 16 between January and April 2015, and 23 in the whole of 2014.

Despite legal changes in 2012 and 2014 which give judges concrete grounds for dismissing cases in which the law has been misapplied by police, the situation remains confusing. Different judges apply these changes inconsistently, which can result in conviction in one court and acquittal in another for identical offences.

A clear discrepancy also exists between how religious adherents themselves view their public activity (as "meetings for worship or other religious purposes") and how it is perceived by state agencies (as "public events" on a par with political demonstrations, most often as picketing – see below).

Finally, legislation still does not explicitly address the conduct of public religious activities which are not "worship .. rites or ceremonies" (such as handing out religious literature or discussing beliefs in public places). This leaves a grey area of public space in which religious events are neither freely permitted nor expressly forbidden. This puts the onus on individuals themselves to determine whether it is necessary to notify the authorities of an event (see below).

Twenty-six of the 46 verdicts found by Forum 18 were challenged in higher courts. These included four attempts by the prosecution to appeal against acquittals. Five fines and one acquittal have so far been overturned, while two cases remain unresolved as of 22 February 2016, with appeal hearings still pending.

With their potential for large fines, the likelihood that police or prosecutors will challenge acquittals, and the possibility that appeals at the regional/republic level will result in re-trials, cases under Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") place a heavy burden on defendants in terms of time, energy, and money – even if they are ultimately exonerated.

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Individuals or religious communities who wish to or whose beliefs require them to share the tenets of their faith in public, beyond the confines of a place of worship, are particularly vulnerable to prosecution under Administrative Code Article 20.2.

From September to December 2015, Forum 18 found: 33 prosecutions of Jehovah's Witnesses; four of members of the Church of Jesus Christ of Latter-day Saints (commonly known as the Mormons) as part of the same case – all acquitted; three of Hare Krishna devotees; three of Baptists; and one of a Muslim leader. The religious affiliation of two people charged under Article 20.2, Parts 2 and 5 remains unknown.

The only religious organisation known to have been charged in this period was the Society for Krishna Consciousness of Izhevsk (Republic of Udmurtia). It was fined 70,000 Roubles under Article 20.2, Part 2, for holding a religious procession after submitting notification only of Indian dance and singing. However, it was exonerated on appeal. As the event's organiser, Aleksandr Korepanov, had already been convicted for the alleged violation in July 2015, this case indicates that it is possible for both organisations and individual organisers to be charged for the same offence.

In addition to these 46 prosecutions for exercising freedom of religion or belief in public spaces in Russia, similar prosecutions have occurred in Russian-annexed Crimea (see F18News 5 January 2016 http://www.forum18.org/archive.php?article_id=2137).

Article 20.2

Administrative Code Article 20.2 is linked to the Demonstrations Law and punishes the "violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket". Its eight parts cover a variety of offences, but only Parts 1, 2, and 5 are known by Forum 18 to have been used against people who exercise freedom of religion or belief.

As well as individuals promoting their beliefs, members of public associations and political parties (such as Communists marking Lenin's birthday), political demonstrators, and individuals protesting against social problems (such as rising utility costs) may also face charges under Article 20.2.

In the last four months of 2015, Forum 18 found 21 prosecutions under Part 2, 15 under Part 5, and 10 under Part 1. These were derived from a total of 29 separate investigations (15 under Part 2, nine under Part 5, and five under Part 1).

Parts 1 and 5 of Article 20.2 cover general violations of the "established procedure" for public events and complement each other, the former focusing on organisers, the latter on other participants. Conviction under Parts 1 and 5 brings a fine of 10,000 to 20,000 Roubles or compulsory labour (community service) for up to 40 hours. Officials of organisations may also receive a fine of 15,000 to 30,000 Roubles under Part 1, and organisations themselves may be fined 50,000 to 100,000 Roubles.

Part 2 specifically targets the organisation of events without formally notifying the authorities in advance. For individuals, this carries a fine of 20,000 to 30,000 Roubles, compulsory labour (community service) of up to forty hours, or detention for up to 10 days. Officials may be fined 20,000 to 40,000 Roubles, and organisations 70,000 to 100,000 Roubles.

These are substantial fines compared with the average monthly wage in Russia (33,347 Roubles in November 2015) and especially with the average monthly pension (12,400 Roubles in 2015). Currently, 33,347 Roubles is about 3,900 Norwegian Kroner, 415 Euros, or 450 US Dollars, and 12,400 Roubles is about 1,450 Norwegian Kroner, 155 Euros, or 167 US Dollars.

Many of those prosecuted under Article 20.2 are elderly Jehovah's Witnesses. Judges sometimes acknowledge defendants' difficult financial position by reducing fines for pensioners and the unemployed.

All those convicted between September and December 2015 received fines, except for one sentence of 20 hours' community service imposed by Sovietsk City Court in Kaliningrad Region.

Prosecutions are usually initiated by the police and in some instances by prosecutors' offices. According to written verdicts, members of the public sometimes alert officials to supposed "offences" upon seeing individuals handing out religious literature or setting up a stand to display it in the street. Other investigations are based on monitoring of "compliance with anti-extremism legislation".

If "extremist" religious literature is found, individuals face charges under Article 20.29 ("Production or mass distribution of extremist materials") of the Administrative Code (see F18News 14 October 2015 http://www.forum18.org/archive.php?article_id=2111).

In one case found by Forum 18 between September and December 2015, the FSB security service informed the prosecutor's office that Jehovah's Witnesses, "with the aim of attracting new adepts, planned to hold a public event with the distribution of religious literature among the population" of Sibai in Bashkortostan.

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Although no religious organisations or individuals have been prosecuted so far, multiple convictions under Article 20.2 can now lead to criminal charges under Article 212.1 ("Repeated infringement of the established procedure for organising or conducting a gathering, meeting, demonstration, procession, or picket") of the Criminal Code, introduced in July 2014 (see F18News 2 March 2015 http://www.forum18.org/archive.php?article_id=2044). Two political protesters are known to have been convicted under this article.

In addition to administrative and possible criminal charges, individuals may also face difficulties in legally challenging members of the public who obstruct authorised religious events. Hare Krishna lawyer Mikhail Frolov described to Forum 18 how "radical Orthodox activists" disrupted a fully approved Hare Krishna event in Podolsk, blocking the procession and shouting through megaphones "that we were sectarians and so on".

"So far, the prosecutor's office has refused to open a case [under Articles 20.2 and 5.38 ("Illegal obstruction of public events")]", Frolov explained. "We challenged the refusal in court, and the court found the refusal unlawful and has sent our application to the Prosecutor's Office for re-consideration."

Because of a public holiday in Russia on 22 February, Forum 18 was unable to contact the prosecutor's office in Podolsk to find out why a case was not opened against those who disrupted an authorised public event.

Effect of recent legal changes

The Religion Law was amended in October 2014 to clarify in which places religious events may be freely held, and to state that "public worship and other religious rites and ceremonies" conducted outside such places and "in conditions which require the adoption of measures to ensure public order and safety" should be carried out under the procedure established for holding meetings, processions and demonstrations", ie. according to the Demonstrations Law.

In December 2012, the Constitutional Court ruled, in response to two complaints from Jehovah's Witnesses (see F18News 15 August 2013 http://www.forum18.org/archive.php?article_id=1865), that notification of an event need only be submitted if the authorities are required to provide health and safety measures.

Despite these legal changes, police and prosecutors persist in bringing charges against individuals for carrying out public religious activity, often on a very small scale. Judges, however, do not always agree, and evidence from verdicts shows that the 2012 ruling and 2014 amendments are giving judges firm grounds for acquittal.

Between May and August 2015, Forum 18 found four cases which should not have been initiated under the new amendments. All involved Jehovah's Witness events held in loaned or rented properties (a category added to the list of places where religious worship may be held without hindrance).

Between September and December 2015, Forum 18 could find only one such case – A. Kalashnikov was acquitted of failing to submit notification of a Jehovah's Witness service held at a rented House of Culture in Kameshkovo (Vladimir Region). In her ruling of 23 October, Judge Galina Malinovskaya cited both the 2014 amendments and 2012 Constitutional Court ruling as grounds for her decision.

Similarly, in overturning the fine imposed on the Society for Krishna Consciousness of Izhevsk for holding an "unauthorised" procession, Judge Natalya Mashkina also invoked both legal changes and ruled that the local administration had not shown that notification was required at all. The Society's lawyer, Frolov, remarked to Forum 18 on 17 February that this was "A very bold formulation, which makes life easier for religious associations".

Inconsistency of judgments

Many of the 46 prosecutions found by Forum 18 were based on very similar incidents, which can result in conviction and punishment in one court and exoneration in another. For example, in Komsomolsk-on-Amur, Jehovah's Witnesses O. Kozlova and I. Parkhomuk were charged with unlawful picketing for standing with a literature stand outside a shop at the edge of a city square. Judge Nadezhda Tatun acquitted both of them at Central District Court on 16 December. The judge cited the 2012 Constitutional Court ruling, and concluded that "The need to notify the competent public authorities or local authorities of such a public religious event, and bear other burdens established by legislation, on the strength of the mere fact that the event is held outside places designated for the purpose, constitutes illegal interference of the state in the sphere of freedom of conscience".

For V. Sharabanova and M. Zakhvatayeva, however, a similar "offence" in Tulun in Irkutsk Region resulted in guilty verdicts on 23 and 24 September. The two Jehovah's Witnesses set up a stand with religious literature outside the town's bus station and were also charged with holding an illegal picket. Judge Lidiya Shevchuk of Tulun City Court decided that "Since the purpose of picketing .. is to draw attention to a picketed object or to a particular problem, [the defendants'] actions, trying to attract the attention of the public by means of visual agitation, are a public event - a picket". She added that "the open demonstration of religious beliefs may annoy or give offence to those who profess a different religion or no religion, and if taking place outside religious buildings or structures or

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specially designated places or premises, certain religious activities, by virtue of their mass nature – may prevent the normal operation of transport or public or non-governmental organisations". Sharabanova and Zakhvatayeva were each fined 20,000 Roubles. The 2015 average monthly wage in Irkutsk Region was 32,067 Roubles. The women appealed unsuccessfully against their convictions at Irkutsk Regional Court on 18 November.

The telephone in Judge Shevchuk's office at Tulun City Court went unanswered on 18 and 19 February when Forum 18 called to ask why the distribution of literature could be considered a picket.

Jehovah's Witness lawyers have emphasised to Forum 18 that in such cases neither the law nor the circumstances differ, and Jehovah's Witness believers act "identically" in all regions. The Council of Churches Baptists also note that "In many cases, it depends on the attitude of the judge".

Lengthy, complex cases

Some defendants must undergo lengthy, complicated, and often unpredictable legal proceedings before their cases conclude.

For Jehovah's Witness I. Korobelnikova, it was nearly four months from 7 September, when the Omsk anti-extremism police submitted her case to Kuibyshev District Court, to the final appeal court verdict on 29 December. During this period, proceedings were delayed three times when the lower court returned the case to the prosecution for the resolution of technical issues. Police challenged Korobelnikova's initial acquittal by Judge Yury Gunger in Omsk Regional Court, where on 10 November Judge Vladimir Kruglov sent the case back for re-examination. Upon re-trial by Judge Larisa Romanyuk, Korobelnikova was convicted on 4 December and fined 20,000 Roubles. Her appeal was then unsuccessful. Korobelnikova's fellow defendant S. Lashko, though charged with an identical offence, was initially fined 20,000 Roubles by Judge Svetlana Tsareva at Kuibyshev District Court on 17 September (again after a delay for technical reasons). Her two subsequent appeals to Omsk Regional Court were also unsuccessful.

Proceedings against E. Rogachyov, a Baptist charged with picketing near a school, appear to have finally come to an end after some eight months with his unsuccessful appeal at Rostov Regional Court on 26 January 2016. Rogachyov and two companions, N. Kirillov and L. Leyn, were originally acquitted by Rostov's Proletarian District Court in June 2015 (see F18News 4 November 2015 http://www.forum18.org/archive.php?article_id=2117), but the police appealed against these rulings. Kirillov's acquittal was upheld, but Leyn and Rogachyov (who faced a different appeal court judge) were sent for re-trial and found guilty on 7 August. Leyn appealed unsuccessfully on 8 October, while Rogachyov's case was again returned for re-examination at the lower court, where he was convicted again and fined 5,000 Roubles on 20 November.

Forum 18 called Proletarian District Court in Rostov on 18 February to ask why the distribution of literature could be considered a picket, but a spokeswoman refused to answer questions by telephone.

Picketing problems

As may be seen from the court verdicts of September-December 2015, police and prosecutors consistently view Jehovah's Witness literature stands as pickets. Both Jehovah's Witnesses and Baptists tend to engage in talking about their beliefs to passers-by in twos or threes, which often results in their being accused of conducting group pickets without notifying the authorities. Members of other faith groups are also known to have fallen foul of this misinterpretation, which is responsible for the bulk of cases against religious believers under Article 20.2.

This interpretation by officials is driven by pressure from the federal government to "minimise the public activity of citizens", Hare Krishna lawyer Frolov commented to Forum 18 on 17 February. "The law is prescribed in such a way that any public action can be interpreted as a picket, rally, assembly, or procession."

The Demonstrations Law defines pickets as "public expression of opinion .. by means of the placing of one or more people at the picketed object, using posters, banners and other means of visual agitation". Under the Law, group pickets require prior notification to the authorities while individual pickets do not. Individual pickets may not be nearer to each other than 50 metres (55 yards). All organisers of group pickets must carry distinguishing signs identifying themselves as such.

The understanding of pickets employed by courts in the judgment of such cases appears to have changed, as reflected in the language of written decisions. Several verdicts from different courts expand on the Demonstrations Law's description to define the purpose of a picket as "the drawing of attention to the picketed object or to a concrete problem". This phrase was used in 9 decisions under Article 20.2, Part 2, found by Forum 18 between September and December 2015, all but one of which involved religious believers. Between January and April 2015, the phrase appeared in two verdicts; in the whole of 2014, in two verdicts from one case. In 2013 and 2012, it was not used at all.

In all instances of its use before September 2015, the phrase appears in the form "the drawing of attention to the picketed object or to a concrete problem of an individual citizen" However, in the latest appearances the reference to an individual citizen has been dropped.

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This increasingly broad and general conceptualisation of a picket's purpose is used to justify the interpretation of small-scale public religious activity (such as that often practised by Jehovah's Witnesses and Baptists) as picketing, in which believers consistently deny that they engage.

"Nowhere in the Russian legal system will you find legally defined attributes of the concepts of 'religious service', 'religion', 'worship', or 'religious rite'," lawyer Frolov explained to Forum 18. "The court will describe religious service however it wants, and the correctness of its conclusions cannot be verified given the absence of specific criteria."

Of the 46 total prosecutions found by Forum 18 between September and December 2015, 38 were based on allegations of unlawful picketing, 29 of which initially resulted in convictions. Of these prosecutions, 32 were of Jehovah's Witnesses, two each of Baptists and Hare Krishna devotees, and two of individuals of unspecified affiliation. None comes under the definition of picketing in the Demonstrations Law.

As is evident from their arguments in court, individuals accused of such "offences" do not see their activities as picketing. It therefore does not occur to them to notify authorities, ensure 50 metres' distance between participants, or identify themselves as organisers.

Continuing lack of clarity

The Demonstrations Law lists sites where religious and other events are never permitted, including on railways, in border zones, near gas pipelines and outside the presidential residence. Article 16 of the 1997 Religion Law outlines those places where religious "services, rites, and other ceremonies" are allowed without restriction and without any requirement to inform the authorities. There remains a grey area in between, however, covering all other public spaces.

Despite the October 2014 amendments and the December 2012 Constitutional Court ruling, the situation is nevertheless still poorly defined. The law refers only to the free conduct of "worship services and other religious rites and ceremonies", and therefore does not cover other activities such as the distribution of literature. The types of places which fall between the freely permitted and the prohibited are also unspecified.

As Inna Zagrebina of the Guild of Experts on Religion and Law pointed out in comments for the Moscow-based SOVA Center on 24 November 2014, "evangelisation carried out in the courtyards of houses, parks, and open squares does not fall under Article 16". So individuals themselves must determine whether the conditions of their "event" require public health and safety measures when deciding whether it is necessary to notify the authorities, she added.

A lack of clarity of persists at the prosecution stage. For instance, Forum 18 found three prosecutions under Part 1 of Administrative Code Article 20.2 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") which should have been brought under Part 2 because the only "violation" allegedly detected was a failure to notify the authorities (Part 1 is explicitly aimed at offences which are not covered under Parts 2 to 4). Defendants face lower fines, however, under Part 1. Uncertainty on the part of police and prosecutors also persists over whether defendants are the organisers of or only participants in a "public event", leading to very similar cases being brought under Parts 2 and 5. Forum 18 found several examples of reclassification of cases by judges who determined that the police had got it wrong. (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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