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RUSSIA: Will Constitutional Court reduce "anti-missionary" prosecutions?

By Victoria Arnold, Forum 18

Lawyers have cautiously welcomed a March Constitutional Court ruling, hoping it will reduce "missionary activity" prosecutions. However, the first case seeking compensation for an unjustified "missionary activity" prosecution failed. Glorification Pentecostal Church's case against Krasnoyarsk Regional Prosecutor's Office and Russia's General Prosecutor was rejected.

As both Russian and foreign citizens continue to be prosecuted for unlawful "missionary activity", victims have lodged a number of legal challenges to the July 2016 "anti-missionary" amendment to the Religion Law and its associated Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity").

A Baptist pastor appealed to Russia's Constitutional Court seeking to question the assumptions inherent in the July 2016 amendment and the vague language in which it was written (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246). The Court refused in March 2018 to consider his appeal, but issued a partial clarification of the amendment. This said that giving information about religious events would constitute an "offence" only if it was aimed at attracting people who are not already members of a religious organisation (see below).

Some have cautiously welcomed the Constitutional Court's interpretation, hoping it will reduce the number of prosecutions. "Thanks to this definition, we hope to change radically the approach of the courts to missionary work," Pentecostal Union lawyer Vladimir Ozolin told Forum 18 (see below).

The other two appeals – to the European Court of Human Rights in Strasbourg (ECtHR) – have both come from foreigners punished under these provisions while legally resident in Russia. Foreigners make up a small proportion of those prosecuted so far, but face comparatively higher penalties, including deportation. The ECtHR is still considering these cases and decisions are not expected for some years (see below).

Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity") punish broadly defined "missionary activity" carried out against the Religion Law. There is also a Part 3, which punishes: "Implementation of activities by a religious organisation without indicating its official full name, including the issuing or distribution, within the framework of missionary activity, of literature and printed, audio, and video material without a label bearing this name, or with an incomplete or deliberately false label" (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

There have been no known appeals so far to the Supreme Court, Constitutional Court, or ECtHR against convictions under Administrative Code Article 5.26, Part 3. However, Forum 18 is aware, however, of one failed attempt to seek compensation from prosecutors after a Part 3 sentence was overturned on appeal in Krasnoyarsk (see below).

Prosecutions under Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity") are frequent. Forum 18 found 143 such prosecutions in 2017, and prosecutions have continued in 2018. Hare Krishna lawyer Mikhail Frolov told Forum 18 in April that "the fines are large, and where the boundaries of lawful behaviour lie is incomprehensible .. Everyone has become much more cautious in their public actions" (see F18News 18 April 2018 http://www.forum18.org/archive.php?article_id=2370).

Plight of foreigners charged under "anti-missionary" amendment

Administrative Code Article 5.26, Parts 3, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity") can all carry heavy fines (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246). Although courts have so far generally imposed fines at the lower end of the scale for first offences (see F18News 18 April 2018 http://www.forum18.org/archive.php?article_id=2370).

The minimum penalty for foreign citizens under Administrative Code Article 5.26 Part 5 ("Foreigners conducting missionary activity") is much higher (30,000 Roubles) than that for Russian citizens under Part 4 (5,000 Roubles). Foreigners may also be ordered deported, even if they have lived in Russia for many years (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Individuals of several different nationalities have been prosecuted or threatened with prosecution under Administrative Code Article 5.26, Part 5 ("Foreigners conducting missionary activity") since it came into force in July 2016, including Americans, South Koreans, Ukrainians and Israelis.

One notable grouping is African students at Russian universities. These include citizens of Ghana, Zimbabwe, Malawi, Cote d'Ivoire, Namibia, Nigeria, Swaziland and the Democratic Republic of Congo, several of whom have been ordered deported.

In early 2017, state officials began investigating several African students who attend the Pentecostal Embassy of Jesus church in Nizhny Novgorod for appearing in videos inviting international student to church events, or for reposting videos on their social media pages. One Zimbabwean – Kudzai Nyamarebvu – was convicted of violating the terms of her visa (Administrative Code Article 18.8, Part 2) and ordered deported, although her departure has been delayed to allow her to complete her course. Investigations of other African students are continuing.

Constitutional Court offers partial clarification

On 13 March 2018, the Constitutional Court announced its refusal to consider an appeal from Baptist Union member Sergei Stepanov. He had posted an invitation to an Easter service at another church on his page on the VKontakte social network, which was found during internet monitoring by the FSB security service. Tambov District Magistrate's Court No. 1 fined him 5,000 Roubles on 10 July 2017 under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity").

The Constitutional Court did, however, issue an interpretation of the legal norms disputed in Stepanov's appeal – the July 2016 "anti-missionary" amendment (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

According to Stepanov's lawyer Sergei Chugunov, the appeal raised two issues: firstly, that the anti-missionary amendment does not distinguish between "missionary activity" and citizens' right to share their own beliefs on an individual basis; and secondly, that it is unclear what actually constitutes activity aimed at disseminating the beliefs of a religious association – whether this has to include "any principles of belief of this association" or could be merely "a simple announcement of events held by the religious association".

In remarks for the Moscow-based Slavic Centre for Law and Justice on 2 April, Chugunov concluded that the Constitutional Court's response "does not clarify the uncertainty regarding the dissemination of personal religious beliefs", but gives "an unambiguous answer" as far as the definition of a religious association's missionary activity is concerned.

What is "missionary activity" ?

According to the Constitutional Court, a religious association's missionary activity:

- "firstly, is carried out by a particular circle of persons (the religious association, its participants, other citizens and legal entities in the established order)";

- "secondly, is aimed at disseminating information about its doctrine (its religious postulates) among persons who are not participants (members, followers) of this religious association"

- and "thirdly, aims to involve these persons in the membership .. of the religious association by appealing to their consciousness, will, feelings, including by means of the person doing the missionary work revealing their own religious views and beliefs".

Thus, "A defining feature [sistemobrazuyushchy priznak] of missionary activity is the dissemination by citizens and their associations of information about a specific religious belief among persons who, not being its followers, are involved in their number, including as participants in specific religious associations". Therefore, the distribution of information for example about services, ceremonies or events "falls under the definition of missionary activity as such, only if it contains the said defining feature".

The Constitutional Court concludes that establishing that missionary activity has been carried out requires "the identification of all the signs of missionary activity specified in [the Religion Law]". If any is absent, the religious activity "cannot qualify as missionary activity in the sense of the [Religion Law], and therefore, even if it is committed in violation of the requirements of the [Religion Law], it does not constitute an offence as stipulated in Article 5.26, Part 4 of the Administrative Code".

The Constitutional Court also stipulates that courts should request "expert analysis" of religious activities where this is necessary to differentiate between "missionary activity" and "other activities in the field of religious relations, including those aimed at public

information". However, "expert analyses" can be produced by people who are not expert in the activities, beliefs or material under review, and who are biased against groups or people the authorities dislike (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246).

Will Constitutional Court interpretation reduce prosecutions?

The Constitutional Court's interpretation may mean such cases as Imam Raman Samadarov's in Tula Region may be avoided.

The police charged Samadarov under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") for leading Friday prayers in a house "in the presence of parishioners, that is, he performed missionary activity in violation of [the Religion Law]". According to the verdict, seen by Forum 18, the police had been alerted by an anonymous telephone call about "a mass gathering of foreign citizens".

On 18 December 2017, Uzlovaya District Magistrate's Court No. 44 in the Tula Region fined Samadarov 30,000 Roubles. His appeal at Uzlovaya City Court on 31 January 2018 was unsuccessful.

On the other hand, the question of how to protect individuals' constitutional right to share their beliefs as private citizens from infringement by the July 2016 "anti-missionary" amendment no clearer. Despite many defendants arguing that they were not representing any religious organisation or group and therefore did not need authorising documents, most of these cases have ended in convictions (see F18News 18 April 2018 http://www.forum18.org/archive.php?article_id=2370).

"Nobody wants to answer this question," lawyer Sergei Chugunov told Forum 18 on 19 April, "because, if you answer it, you can forget all about these [legal] norms – they will not work, as it will suffice to say 'I'm disseminating my own beliefs'."

Too early to say how far definition has affected court practice

In its refusal of an earlier appeal, by American Baptist Donald Ossewaarde (see below), the Constitutional Court also avoided pronouncing on this issue. It stated that "the question of whether [Ossewaarde] was a member of a religious association and carried out missionary activity on its behalf .. or was simply publicly disseminating his own religious beliefs, as related to the establishment and evaluation of the factual circumstances of a particular case, do not come within the powers of the Constitutional Court".

Lawyers have nevertheless greeted the Constitutional Court's clarification of missionary activity with a degree of optimism. The Constitutional Court's interpretation "correctly noted that in order to determine the existence of missionary activity, one must proceed from the presence of all the attributes, since not all the activity of religious associations is missionary", Pentecostal Union lawyer Vladimir Ozolin commented to Forum 18 on 12 April. "So far, unfortunately, state officials' practice has been different. Thanks to this definition, we hope to change radically the approach of the courts to missionary work."

Hare Krishna lawyer Mikhail Frolov added on 19 April: "The Constitutional Court's 13 March definition will certainly have a strong influence on judicial practice under Administrative Code Article 5.26, since, for the first time, the Constitutional Court has detailed the composition of missionary activity, singling out three of its characteristics and calling one of them 'system-forming' [a defining feature]".

In a letter to the Justice Ministry on 13 April, Forum 18 asked whether the Ministry will ensure that judges are obliged to take the Constitutional Court's interpretation into account when deciding on cases under Administrative Code Article 5.26, Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity"). Forum 18 received no reply by the end of the working day in Moscow on 16 May.

It is still too early to say how far the definition has affected court practice, Chugunov told Forum 18 on 10 May. It is now possible, he explained, for defendants to appeal against convictions (including those which came into force before 13 March), citing the Constitutional Court's stipulation of how the legal norms should have been applied.

Frolov notes that it has already been cited in an appeal verdict which overturned the conviction of two Hindus in Orenburg under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity"). Olga Ovchinnikova and Igor Ovchinnikov were each fined 5,000 Roubles by the city's Lenin District Magistrate's Court No. 11 for running a study group on Hindu texts at their yoga centre. On 6 April, Judge Murat Kuzhabayev of Orenburg Regional Court upheld their supervisory appeals.

The written verdict on Ovchinnikova, seen by Forum 18, quotes the Constitutional Court's 13 March definition, and concludes that "By itself, collective reading of religious books without the presence of the defining feature [sistemoobrazuyushchy priznak] of missionary activity does not constitute the composition of the offence provided for in [Administrative Code] Article 5.26, Part 4".

Compensation suit fails..

Aleksandr Mikhailov, pastor of the Glorification Pentecostal church in Sharypovo, unsuccessfully took Krasnoyarsk Regional

Prosecutor's Office and Russia's General Prosecutor to court in what appears to be the first attempt to seek compensation for an unfounded prosecution under the anti-missionary amendment.

On 15 March 2017, Sharypovo Magistrate's Court No. 30 fined the pastor and his church 30,000 Roubles each under Administrative Code Article 5.26, Part 3 ("Implementation of activities by a religious organisation without indicating its official full name, including the issuing or distribution, within the framework of missionary activity, of literature and printed, audio, and video material without a label bearing this name, or with an incomplete or deliberately false label"). Their initial appeals to Sharypovo City Court were unsuccessful on 24 April 2017. Krasnoyarsk Regional Court, however, upheld Mikhailov's supervisory appeal and overturned his fine on 30 June 2017. The church's fine was also eventually overturned on 25 September 2017.

On 3 August 2017, Mikhailov lodged a suit at Krasnoyarsk's Central District Court, seeking compensation from Krasnoyarsk Regional Prosecutor's Office and Russia's General Prosecutor for having been "subject to unlawful administrative prosecution". Judge Yelena Senkina rejected the suit on 17 April 2018.

..but full official name not now required?

Although the compensation suit was unsuccessful, lawyer Vladimir Ozolin of the Pentecostal Union hailed the overturning of Mikhailov's conviction (and that of his Church) as important for judicial practice under Administrative Code Article 5.26, Part 3 ("Implementation of activities by a religious organisation without indicating its official full name, including the issuing or distribution, within the framework of missionary activity, of literature and printed, audio, and video material without a label bearing this name, or with an incomplete or deliberately false label").

Ozolin noted that Krasnoyarsk Regional Court agreed that the Religion Law does not require the full official name of a religious organisation to be displayed on the facade, or at the entrance of the building where religious activity is carried out.

"We sincerely hope that this resolution will have a positive impact on further state officials' practice and will stop attempts by officials' to act contrary to the law," Ozolin remarked in an article on the Pentecostal Union website shortly after the supervisory appeal.

European Court of Human Rights appeals

Indian Protestant pastor Victor-Immanuel Mani, who is married to a Russian and has a Russian-born child, was the first foreigner to be ordered deported under Administrative Code Article 5.26, Part 5 ("Foreigners conducting missionary activity"). Naberezhnyye Chelny City Court found him guilty on 20 December 2016 of advertising religious gatherings on social media and allegedly giving religious literature to a non-member of his church. He was also fined 30,000 Roubles (see F18News 1 March 2017 http://www.forum18.org/archive.php?article_id=2261).

Mani left Russia after his appeal to Tatarstan's Supreme Court failed in January 2017, but returned after Russia's Supreme Court overturned the deportation order in November 2017 on the grounds of "the strength of Mani's family and social ties to the Russian Federation" and the fact that deportation violated his right to a "private and family life" under Article 8 of the European Convention on Human Rights. The Supreme Court's ruling nevertheless upheld Mani's conviction and did not overturn his fine.

Mani lodged his appeal to the European Court of Human Rights (ECtHR) in Strasbourg (Application No. 54264/17) on 31 July 2017.

On 19 January 2018, the ECtHR asked the Russian government whether Mani's prosecution had violated his right to freedom of religion and belief under Article 9 ("Freedom of thought, conscience and religion") of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The ECtHR particularly asked about the distinction (or lack thereof) between "missionary activity" and individual sharing of beliefs. The ECtHR also asked whether the difference in the treatment of Russian and foreign citizens under Administrative Code Article 5.26 Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity") amounts to unlawful discrimination, and whether the Russian courts had taken into account the impact of Mani's deportation on his family.

American Baptist pastor Donald Ossewaarde was fined 40,000 Roubles under Administrative Code Article 5.26, Parts 5 ("Foreigners conducting missionary activity") by Railway District Court in Oryol in August 2016 (see F18News 26 August 2016 http://www.forum18.org/archive.php?article_id=2211). His "offence" was holding services in his home and allegedly advertising them on noticeboards. He was not ordered deported, but left the country of his own accord after the last of his appeals in Russia was unsuccessful (see F18News 1 March 2017 http://www.forum18.org/archive.php?article_id=2261).

Ossewaarde lodged an appeal at the ECtHR (Application No. 27227/17) on 18 April 2017. On 6 July 2017, the ECtHR asked the Russian government whether Ossewaarde's prosecution had violated ECHR Articles 9 ("Freedom of thought, conscience and religion") and 11 ("Freedom of assembly and association"), particularly regard to the distinction (or lack thereof) between "missionary activity" and individual sharing of beliefs. The ECtHR also asked whether the difference in the treatment of Russian and

foreign citizens under Administrative Code Article 5.26 Parts 4 ("Russians conducting missionary activity"), and 5 ("Foreigners conducting missionary activity") amounts to unlawful discrimination.

Forum 18 has been unable to establish if the Russian government has responded to these questions in either case.

Appeals to the ECtHR can take years to be resolved. If Mani and Ossewaarde are successful, the ECtHR would require the Russian government to pay them compensation ("just satisfaction") and undertake other "individual measures" designed to remedy the violation. (In Mani's case, rescinding the deportation order, had this not already occurred.)

A judgment also requires a state to undertake "general measures" to prevent a violation happening again. Were the ECtHR to find in favour of Mani or Ossewaarde, this would, for example, require Russia to amend the part of the Religion Law governing so-called missionary activity in order to bring it into line with international human rights law.

In December 2015, Russia adopted a law which stated that its own Constitution took precedence over ECtHR judgements and that the Constitutional Court would rule on whether these judgments would be put into practice (see Forum 18's general Russia religious freedom survey http://www.forum18.org/archive.php?article_id=2246). On 1 March 2018, the RIA Novosti news agency reported that Russia was considering withdrawing from the European Court of Human Rights altogether. (END)

For more background see Forum 18's surveys of the general state of freedom of religion and belief in Russia at http://www.forum18.org/Archive.php?article_id=2246, and of the dramatic decline in this freedom related to Russia's Extremism Law at http://www.forum18.org/Archive.php?article_id=2215.

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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