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RUSSIA: Three prisoners of conscience stripped of citizenship

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

Authorities have stripped Russian citizenship from three men jailed for exercising freedom of religion or belief: Muslim Yevgeny Kim in January 2019, and Jehovah's Witnesses Feliks Makhammadiyev and Konstantin Bazhenov in April 2020. Kim and Makhammadiyev are now stateless. Russia has been trying to deport Kim since 2019, and might try to deport Makhammadiyev and Bazhenov when they complete their jail terms.

The stripping of Russian citizenship from two men in April – both Jehovah's Witnesses currently in jail (one of them Russian-born) – brings to three the number of people known to have been stripped of Russian citizenship and passports as a direct consequence of being jailed under the Extremism Law for exercising their freedom of religion and belief.

The latest two - Feliks Makhammadiyev and Konstantin Bazhenov from Saratov - were among the first Jehovah's Witnesses to be jailed (http://www.forum18.org/archive.php?article_id=2510) after the 2017 Supreme Court ban on Jehovah's Witness activity (http://www.forum18.org/archive.php?article_id=2297) (see below).

The two men are likely to be ordered deported (to Uzbekistan and Ukraine respectively) upon their release, despite their long residence in and close ties to Russia, including being married to Russian citizens (see below).

The Jehovah's Witnesses' citizenship was annulled on the basis of Article 22 of the Citizenship Law, under which conviction for particular criminal offences is taken as equivalent to the provision of false information in a citizenship application (see below).

The first person stripped of his citizenship after being jailed for exercising freedom of religion and belief was Yevgeny Kim (born 5 October 1974), a Muslim jailed in June 2017 for three years nine months (http://www.forum18.org/archive.php?article_id=2290) for meeting with other Muslims to study Islam using theologian Said Nursi's works. Officials secretly stripped Kim of Russian citizenship in January 2019, leaving him stateless, and on 10 April 2019 – the day he completed his labour camp term – he was fined and ordered deported to Uzbekistan (http://www.forum18.org/archive.php?article_id=2478), his country of birth. He has never been an Uzbek citizen.

More than a year after finishing his prison term, Kim remains in a migration detention centre in Khabarovsk (http://www.forum18.org/archive.php?article_id=2585).

Jehovah's Witnesses who exercise their right to freedom of religion and belief by meeting for prayer, hymn singing, and Bible study stand accused of "continuing the activities" of the Jehovah's Witness Administrative Centre and its subsidiary local organisations. The Supreme Court ruled them "extremist" and ordered them liquidated in April 2017 (http://www.forum18.org/archive.php?article_id=2297).

Muslims who exercise their right to freedom of religion and belief by meeting to study Nursi's writings stand accused of "continuing the activities" of "Nurdzhular", a "banned extremist organisation" which Muslims in Russia deny exists but which the Supreme Court banned in April 2008 (http://www.forum18.org/archive.php?article_id=1136). Typically, such Muslims meet in private homes to study Islam, with one or more expounding on Nursi's works. They also pray, eat, and drink tea together, and do not seek state permission to meet. (http://www.forum18.org/archive.php?article_id=2215)

Eleven other people - nine Jehovah's Witnesses and two Muslims – are currently serving prison terms under the Extremism Law for exercising their freedom of religion and belief. (http://www.forum18.org/archive.php?article_id=2581)

Like Kim, one of the two Jehovah's Witnesses, Feliks Makhammadiyev (also Uzbek-born), has been rendered stateless, and so is also likely to be sent to a detention centre after his release from imprisonment. This may last indefinitely if no way of legalising his status can be found. Konstantin Bazhenov, is thought to have retained his Ukrainian citizenship. Both men are married to Russian citizens (see below).

Kim (http://www.forum18.org/archive.php?article_id=2332) and Makhammadiyev

(http://www.forum18.org/archive.php?article_id=2549) were both tortured. No official suspected of torturing Muslims and Jehovah's Witnesses appears to have been arrested and put on criminal trial for torture (http://www.forum18.org/archive.php?article_id=2554), as Russia's international human rights obligations require.

Neither the Federal Human Rights Ombudsperson nor Saratov Region Human Rights Ombudsperson have replied to Forum 18's questions of:

- why Makhammadiyev and Bazhenov had been deprived of citizenship (especially if this would leave Makhammadiyev stateless);
- whether they would be deported;
- what will happen if Uzbekistan or Ukraine refused to accept them;
- and whether deportation would violate their right to family life, given that their spouses are citizens of and resident in Russia (see below).

Ironically, Russia was the main sponsor of a United Nations Human Rights Council Resolution (A/HRC/RES/32/5) (<http://undocs.org/en/A/HRC/RES/32/5>) - adopted unanimously on 30 June 2016 - on "Human rights and arbitrary deprivation of nationality". The Resolution expressed "deep concern at the arbitrary deprivation of persons or groups of persons of their nationality, especially on discriminatory grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Among other things, the Resolution called on states to ensure "access of persons arbitrarily deprived of their nationality to effective remedies, including, but not limited to, restoration of nationality".

Legal limbo

The detention of stateless persons awaiting an impossible deportation is a common problem in Russia (<http://adcmemorial.org/en/news/russian-courts-continue-to-place-stateless-persons-in-detention>), where thousands of people do not hold any valid citizenship. They are often former Soviet citizens who for some reason have been unable to obtain any other passport.

Although Kim and Makhammadiyev's cases differ from many others' in that they did become Russian citizens, many years before they were prosecuted, their convictions and the consequent stripping ("annulment") of their citizenship mean that they are now in the same legal limbo. They are unable to live legally in Russia and unable to leave the country legally, unless they manage to obtain identity documents.

It seems likely that Bazhenov's valid Ukrainian passport will allow him to travel to Ukraine or a third country and avoid detention after his release, but authorities have not confirmed any specifics of either Jehovah's Witness' situation, Jehovah's Witness lawyers told Forum 18 on 29 June.

Meanwhile, Russia has issued Red Notices through Interpol seeking the detention and return to Russia of at least three individuals (two Muslims and one of another faith) who have left the country (http://www.forum18.org/archive.php?article_id=2584). All three face criminal prosecution under the Extremism Law for exercising freedom of religion or belief if they are returned.

Two Saratov Jehovah's Witnesses stripped of citizenship

Konstantin Viktorovich Bazhenov (born 10 May 1975) and Feliks Khasanovich Makhammadiyev (born 14 December 1984) were among six Jehovah's Witness men from Saratov convicted on 19 September 2019 (http://www.forum18.org/archive.php?article_id=2510) under Criminal Code Article 282.2, Part 1 ("Organisation of the activity of a social or religious association or other organisation in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity"). (http://www.forum18.org/archive.php?article_id=2215)

Judge Dmitry Larin of Saratov's Lenin District Court jailed Bazhenov for three and half years, and Makhammadiyev for three years.

Bazhenov is now imprisoned in Labour Camp No. 3 in Dimitrovgrad (Ulyanovsk Region) (http://www.forum18.org/archive.php?article_id=2581). His fellow defendants, including Makhammadiyev, are imprisoned in Labour Camp No. 1 in Orenburg. (http://www.forum18.org/archive.php?article_id=2549)

Makhammadiyev was born on the territory of Uzbekistan when it was part of the Soviet Union, and, according to Jehovah's Witnesses, moved to Saratov in Russia with his mother in 2002, when he was still a minor. In 2008, he renounced his Uzbek citizenship and became a Russian citizen. The decision to strip him of his Russian citizenship has therefore rendered him stateless. His wife, Yevgeniya Lagunova, is also a Russian citizen.

Bazhenov was born in Novgorod in northern European Russia, and moved as a child to Donetsk, in south-eastern Ukraine, when both Ukraine and Russia were part of the Soviet Union. After the dissolution of the Soviet Union, he took Ukrainian citizenship. In 2009, he returned to Russia and acquired Russian citizenship, as did his wife, Irina Bazhenova (who is from Ukraine).

Russian law requires anyone applying for Russian citizenship to attest that they will renounce any other citizenship they hold. Makhammadiyev did this; it appears that Bazhenov did not. Actual renunciation of other citizenships does not seem to be enforced by Russia.

Makhammadiyev and his fellow Jehovah's Witnesses at Labour Camp No. 1 in Orenburg stated that when they arrived on 6 February 2020, prison guards tortured them by kicking them and beating them with batons (http://www.forum18.org/archive.php?article_id=2549). They were then placed in solitary confinement. Makhammadiyev was hospitalised with kidney damage, a broken rib, and fluid on the lung. Guards also took away the gluten-free food which, as he has coeliac disease, is medically essential for him. No one has been arrested and put on criminal trial for torture (http://www.forum18.org/archive.php?article_id=2554), as Russia's international human rights obligations require.

Stripped of citizenship

The Saratov and Belgorod branches of the Interior Ministry, as the agencies which had originally granted Makhammadiyev and Bazhenov Russian citizenship, were also responsible for rescinding it. They did this at the behest of the Saratov Region Prosecutor's Office, which had informed the Interior Ministry of the men's "extremism" convictions and therefore under the Citizenship Law supplying of "false information" as the grounds for annulling their citizenship (see below), Jehovah's Witness lawyers told Forum 18.

Makhammadiyev received a letter dated 23 April 2020, seen by Forum 18, informing him that the Saratov Region branch of the Interior Ministry had, on 17 April 2020, "annulled the decision to admit [him] to citizenship of the Russian Federation". The letter noted that this had been done on the basis of Lenin District Court's ruling in September 2019. A separate, undated letter added that his passport had been invalidated.

Belgorod Region branch of the Interior Ministry annulled Bazhenov's citizenship on 14 April 2020. The letter informing him of this decision and the cancellation of his passport was dated 30 April 2020.

According to Jehovah's Witness lawyers, it is possible to appeal against the decisions within three months. But Makhammadiyev and Bazhenov received their letters only on 8 May and 15 May 2020 respectively, meaning that several weeks that could have been used to prepare appeals were lost.

Russian law appears to have no mechanism of appeal specific to the annulment of citizenship, but Makhammadiyev and Bazhenov may be able to lodge administrative suits challenging the actions of the Saratov and Belgorod branches of the Interior Ministry. There are, however, almost no examples of such challenges in the area of citizenship, ADC Memorial noted to Forum 18 on 9 July.

Kim was not notified of being stripped of his citizenship in January 2019 until April 2019 (http://www.forum18.org/archive.php?article_id=2478), also obstructing the possibility of his making an appeal (http://www.forum18.org/archive.php?article_id=2585).

Forum 18 wrote to Federal Human Rights Ombudsperson Tatyana Moskalkova and Saratov Region Human Rights Ombudsperson Tatyana Zhurik on 28 May, asking:

- why Makhammadiyev and Bazhenov had been deprived of citizenship (especially if this would leave Makhammadiyev stateless);
- whether they would be deported;
- what will happen if Uzbekistan or Ukraine refused to accept them;
- and whether deportation would violate their right to family life, given that their spouses are citizens of and resident in Russia

Saratov Region Human Rights Ombudsperson Zhurik replied on 5 June that she could not provide any information.

The Federal Ombudsperson's Office had not replied by the middle of the working day in Moscow on 9 July.

Makhammadiyev's, Bazhenov's and Yevgeny Kim's are so far the only cases known so far of stripping of citizenship used against those convicted for exercising their freedom of religion and belief. Jehovah's Witness lawyers think it will "definitely affect" other Jehovah's Witnesses who may have acquired Russian citizenship through naturalisation.

Deportation to follow?

Both Bazhenov and Makhammadiyev were in detention for most of the time they were under investigation (http://www.forum18.org/archive.php?article_id=2510), and were detained again while their appeal was pending.

Under amendments to Criminal Code Article 72, signed into law in July 2018, one day in custody is taken as equivalent to a day and half in a general-regime labour camp ("correctional colony"). Makhammadiyev is due for release in December 2020 or January 2021, while Bazhenov appears likely to be released in September 2021.

Upon their release, it is likely that Bazhenov will be ordered deported to Ukraine and Makhammadiyev to Uzbekistan. The Russian migration authorities have not yet issued any official notification of deportation, Jehovah's Witness lawyers told Forum 18 on 29 June.

Forum 18 put questions in writing to: Aleksey Zelepukin, head of the Department for Migration Issues at the Saratov Region branch of the Interior Ministry, on 22 May; Saratov Region Prosecutor's Office on 29 June; and the Department for Migration Issues at the Belgorod Region branch of the Interior Ministry on 29 June. All were asked:

- whether Makhammadiyev and Bazhenov will be deported upon their release and what will happen if Uzbekistan and Ukraine refuse to accept them;
- who initiated the process of depriving them of citizenship;
- and whether there is any possibility of their remaining in Russia, given their family ties.

Only Saratov Senior Assistant Prosecutor for Press and Public Relations replied. Tatyana Kazachenko told Forum 18 on 3 July that the matter did not fall within the competence of the prosecutor's office and that the request should be sent to the Saratov branch of the Interior Ministry. By the middle of the working day on 9 July they had not replied to the same questions put to them on 22 May.

Makhammadiyev, as a now-stateless person, has no country to which he can be deported. Bazhenov has Ukrainian citizenship, but Jehovah's Witnesses "do not know exactly how the authorities will act after his release: either by deportation or simply by giving him an order to leave Russia".

It is unclear whether this process will take the same form as in Yevgeny Kim's case, involving administrative prosecution and detention. Bazhenov's Ukrainian passport is likely to protect him from this, but Makhammadiyev, as a stateless person whom Uzbekistan has no obligation to accept, may be caught up in the legal limbo which afflicts many hundreds of former Soviet citizens in Russia and be subject to indefinite detention.

Kim has tried to bring legal appeals against his detention. (http://www.forum18.org/archive.php?article_id=2585)

"Easy for courts to dismiss all motions for early release filed by foreign citizens"

Makhammadiyev's and Bazhenov's loss of citizenship means that they will be ineligible for parole, as no bilateral agreement exists to regulate their behaviour after release (as required by Supreme Court Plenum Resolution No. 8 of 21 April 2009). Russia has not, in fact, ratified any such bilateral agreement with any state.

For the now-stateless Makhammadiyev, this would in any case be impossible.

"This has made it easy for Russian courts to dismiss all motions for early release filed by foreign citizens on purely technical grounds (i.e. the absence of a bilateral agreement)," Jehovah's Witness lawyers told Forum 18 on 3 June.

On 23 June 2020, Lgov District Court in Kursk Region ordered that Danish citizen and Jehovah's Witness Dennis Christensen should be released early from his jail sentence (http://www.forum18.org/archive.php?article_id=2581). He had been sentenced to six years in February 2019. (http://www.forum18.org/archive.php?article_id=2479)

This, however, did not constitute parole but took place under Article 175, Part 3 of the Criminal Enforcement Code, which allows for the replacement of the unspent part of a sentence with a lighter punishment (for Christensen, a 400,000 Rouble fine) – therefore, no bilateral agreement between Russia and Denmark was necessary.

It is theoretically possible that this option is also open to Makhammadiyev and Bazhenov, but the situation remains unclear at present, particularly for Makhammadiyev.

As they do not have the documentation allowing them to reside in Russia (a visa, temporary resident permit, or permanent resident permit), however, early release may simply lead to detention in a migration detention centre, Jehovah's Witness lawyers pointed out

to Forum 18 on 9 July. In such facilities, "Living conditions are usually worse than in penal colonies and family visits are practically impossible", they added. Human rights groups have similarly noted this (http://www.forum18.org/archive.php?article_id=2585).

Prosecutors have appealed against Christensen's early release, meaning that he remains imprisoned. It is unknown when Kursk Regional Court will consider the prosecutors' appeal.

Legal grounds for deprivation of citizenship

Article 6 of the Russian Constitution states that a person cannot be stripped of his or her citizenship. Bazhenov, Makhammadiyev, and Kim, however, were all stripped of their Russian citizenship on the basis of an amendment to Article 22 of the Citizenship Law which entered legal force on 1 September 2017.

Citizenship Law Article 22 states that citizenship can be annulled if it was awarded on the basis of forged documents or "false information". Under the 2017 amendment, conviction under some articles of the Criminal Code is taken as equivalent to knowingly presenting false information in a citizenship application. Among the named Criminal Code articles are 282.2 ("Organising" or "Participating in" "the activity of a social or religious association or other organisation in relation to which a court has adopted a decision legally in force on liquidation or ban on the activity in connection with the carrying out of extremist activity") and 282.3 ("Financing extremist activity").

These Criminal Code articles are used to prosecute Jehovah's Witnesses and Muslim readers of Nursi's works. As a result, therefore, authorities may annul the citizenship of a person who has been found guilty of one of these offences, and who acquired Russian citizenship by naturalisation (rather than by birth).

International human rights standards, Constitutional Court

Russia is not a party to two international conventions aimed at preventing statelessness (http://www.forum18.org/archive.php?article_id=2478). It has not acceded to the 1961 United Nations Convention on the Reduction of Statelessness. In November 1997 it signed but has not yet ratified the Council of Europe's 1997 European Convention on Nationality. Therefore neither convention is in force in Russia.

However, the European Court of Human Rights (ECtHR) in Strasbourg ruled in July 2014 that Russia had violated several articles of the European Convention on Human Rights and Fundamental Freedoms in relation to a stateless person held in a St Petersburg detention centre in for two years because he could not be deported to his birthplace of Uzbekistan (http://www.forum18.org/archive.php?article_id=2585) (Application No. 44260/13).

The ECtHR stipulated in its judgment that Russia should adopt measures to ensure court oversight of the detention of stateless persons.

In May 2017, Russia's Constitutional Court ruled that two Articles of the Administrative Code were unconstitutional and should be changed. The Articles were unconstitutional as they do not permit stateless persons, who had been ordered deported and sent to migration detention centres, to appeal in court against their continued detention if there is no prospect of their being expelled from the country. However, neither Administrative Code article has yet been changed (http://www.forum18.org/archive.php?article_id=2585). (END)

Full reports on freedom of thought, conscience and belief in Russia
(<http://www.forum18.org/archive.php?query=&religion=all&country=10>)

For more background see Forum 18's survey of the general state of freedom of religion and belief in Russia (http://www.forum18.org/archive.php?article_id=2246), as well as Forum 18's survey of the dramatic decline in this freedom related to Russia's Extremism Law (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
(http://www.forum18.org/archive.php?article_id=1468)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments
(http://www.forum18.org/archive.php?article_id=1351)

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