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RUSSIA: Three acquitted on "extremism" charges but jailings continue

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

An appeal court has overturned the suspended sentences handed to three Jehovah's Witnesses. "We hope that the Kamchatka example will turn out to have an effect on other judges, and they will take the liberty of correcting the mistakes made by their colleagues," said Jehovah's Witness Yaroslav Sivulsky. The acquittals may be linked to Supreme Court amendments governing the implementation of "extremism" laws. Yet prosecutions continue. On 25 January, an Astrakhan court handed Anna Safronova the longest prison sentence yet given to a Jehovah's Witness woman – six years. The Justice Ministry did not answer as to whether Russia had become a safer country as a consequence of the prosecution of Jehovah's Witnesses and Muslim Nursi readers.

On 18 January, after multiple appeals, three Jehovah's Witnesses in Kamchatka in Russia's Far East succeeded in having their convictions and suspended sentences for "extremist activity" overturned. All three were initially punished for exercising freedom of religion or belief. Their acquittal is the second to take place in less than three months since Russia's Supreme Court issued amended guidance for courts' examination of "extremism" cases, and the first to enter legal force.

Seventy-five-year-old Vera Zolotova, Snezhana Bazhenova, and Konstantin Bazhenov (both 44), who were originally found guilty in September 2020 of "participating in the activities of a banned extremism organisation" (Criminal Code Article 282.2, Part 2), are now no longer subject to any probation requirements and are eligible to apply for rehabilitation (see below).

"I would like to thank the panel of judges for the fair outcome of the case," Jehovah's Witness spokesperson Yaroslav Sivulsky commented on 18 January on the jw-russia.org news website. He pointed out that appeal hearings are now taking place "all over Russia in connection with illegal sentences handed down to Jehovah's Witnesses". "We hope that the Kamchatka example will turn out to have an effect on other judges, and they will take the liberty of correcting the mistakes made by their colleagues" (see below).

In November 2021, Dmitry Barmakin from Vladivostok became the first Jehovah's Witness to be acquitted on "extremism" charges related to the Supreme Court's 2017 liquidation of all Jehovah's Witness organisations as "extremist" (https://www.forum18.org/archive.php?article_id=2297) and prohibition of their activities nationwide. His acquittal has not yet come into force because prosecutors have lodged a challenge to the judge's ruling. No date has been set for a hearing (see below).

The Supreme Court issued amendments to its decree governing the application of the Extremism Law on 28 October 2021. The amendments direct judges to ascertain a defendant's "specific actions", their motivation, and "the significance [of these actions] for the continuation or resumption of a [banned organisation]'s activities". They also note that a person's actions "consisting solely of the exercise of their right to freedom of conscience and freedom of religion [...] do not in themselves constitute a crime under Article 282.2, Part 2, if they do not contain signs of extremism" (see below).

The effect of the Supreme Court amendments has so far been limited to the two acquittals of Jehovah's Witnesses. Appeal judges at different levels have sent back a further four Jehovah's Witness cases for re-examination in lower courts, though it is as yet unclear whether they were influenced by the Supreme Court's amended guidance (see below).

In the period since 28 October 2021, courts have sentenced eight Jehovah's Witnesses to imprisonment (with one woman, Anna Safronova, receiving a six-year jail term on 25 January). A further twelve have received suspended sentences and four have received fines (see below).

In December 2021, Nakiya Sharifullina – a Muslim from Tatarstan who met others to study the works of the Muslim theologian Said Nursi – was also unsuccessful in challenging her conviction for "organising the activities of a banned extremist organisation" (Criminal Code Article 282.2, Part 1) (see below).

Forum 18 wrote to several first-instance courts which have issued guilty verdicts since 28 October 2021. Forum 18 asked why, in the light of the Supreme Court's amended guidance, they had continued to convict Jehovah's Witnesses.

Four of the courts responded that, in accordance with Article 20 of the Federal Law on "On ensuring access to information about court activities in the Russian Federation", they could not answer questions about the interpretation or application of legal norms. Two other courts noted that the sentences were the subject of appeals (see below).

Do prosecutions make Russia safer?

Forum 18 wrote to the Justice Ministry in Moscow on 24 January to ask:

- whether Russia had become a safer country as a consequence of the prosecution of Jehovah's Witnesses and Nursi readers;
- whether it was envisaged that the Supreme Court's updated guidance would lead the initiation of fewer criminal cases in the first place, as well as fewer guilty verdicts;
- and whether the Ministry could foresee a point at which the Supreme Court's 2017 decision to liquidate and ban all Jehovah's Witness organisations would be overturned.

The Justice Ministry's public relations department told Forum 18 on the same day to direct its enquiries to the General Prosecutor's Office and the Supreme Court.

Forum 18 put the same questions to the General Prosecutor's Office and the Supreme Court before the start of the working day of 25 January. It has received no responses.

Muslims similarly prosecuted

Muslims who meet to study the writings of the late Turkish theologian Said Nursi may also be prosecuted under the Extremism Law for organising or participating in the activities of "Nurdzhular". The Supreme Court banned this organisation as "extremist" (https://www.forum18.org/archive.php?article_id=2215) in 2008, but Muslims in Russia deny any such formal organisation ever existed. Typically, such Muslims meet in 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.

Most recently, Nakiya Khametzakirovna Sharifullina (born 1 January 1958) received a two-year suspended sentence with 18 months' probation under Criminal Code Article 282.2, Part 1 on 31 August 2021. Both defence and prosecution challenged the decision, but Tatarstan's Supreme Court upheld Naberezhnyye Chelny City Court's original ruling (https://www.forum18.org/archive.php?article_id=2713) and sentence on 17 December 2021.

At present, only one person who met with others to read Nursi's works remains imprisoned. A court in Dagestan sentenced Ilgar Vagif-ogly Aliyev (born 16 February 1977) in May 2018 to eight years' imprisonment plus two years of restrictions on freedom (https://www.forum18.org/archive.php?article_id=2386) for alleged involvement in "Nurdzhular".

No trials are currently known to be underway of Muslims who met to study Nursi's works, but eight people in Dagestan and Tatarstan appear to be facing criminal prosecution.

Prosecutions

After being kept under FSB security service or police surveillance for some months, most targeted Jehovah's Witnesses and Muslim readers of Nursi's works are prosecuted under Criminal Code Article 282.2 (https://www.forum18.org/archive.php?article_id=2215) for either "organising" (Part 1), or "participating in" (Part 2), "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".

The manifestations of freedom of religion and belief for which Jehovah's Witnesses and Muslims are prosecuted under both these parts of Criminal Code Article 282.2 are similar. They include meeting in each other's homes to pray and sing together, study sacred texts, and to discuss shared beliefs.

There is a wide range of compulsory and discretionary punishments – including post-imprisonment punishments (https://www.forum18.org/archive.php?article_id=2681) - for convictions under Criminal Code Article 282.2. The majority of convictions have been under this Article. Some Jehovah's Witnesses and Muslims have also faced charges under Criminal Code Article 282.3, Part 1 ("Financing extremist activity"), as well as under Criminal Code Article 282.2, Part 1.1 ("Inclination, recruitment or other involvement of a person in an extremist organisation"), for which there is a similarly wide range of compulsory and discretionary punishments (https://www.forum18.org/archive.php?article_id=2681).

These punishments vary depending on the articles (https://www.forum18.org/archive.php?article_id=2681) under which a conviction takes place, and whether a sentence is a prison sentence, suspended prison sentence, fine, or assigned work sentence

(https://www.forum18.org/archive.php?article_id=2681). Such punishments include bans on holding certain positions and/or carrying out certain activities, restrictions on freedom, and administrative supervision (https://www.forum18.org/archive.php?article_id=2681).

People convicted on extremism-related charges are also barred from a wide range of occupations and activities (https://www.forum18.org/archive.php?article_id=2681). These include standing for election (this ban also covers people employed by or otherwise involved in "extremist" organisations, even if never prosecuted), and working in the aviation industry.

There are eight interlocking consequences related to "extremism" investigations and convictions for exercising freedom of religion or belief:

- 1) during investigation and even if no trial takes place, inclusion on the Rosfinmonitoring "List of Terrorists and Extremists" (https://www.forum18.org/archive.php?article_id=2687). This blocks bank accounts, and causes for problems in finding formal employment, obtaining insurance, buying and selling property, and a range of other financial activities. Most of those listed below have been placed on the Rosfinmonitoring List;
- 2) if convicted, the prison sentence itself, or possible fines. Fines must be paid within 30 days of the fine entering legal force – this happens either 10 days after the judge issues the sentence, or upon an unsuccessful appeal;
- 3) for suspended sentences, the probationary period (https://www.forum18.org/archive.php?article_id=2681), which is the time during which any other conviction would send the defendant to prison;
- 4) for those not given prison or suspended sentences, or fines, a possible period of assigned work (https://www.forum18.org/archive.php?article_id=2681). This may take the form of a paid job in any organisation, as determined by the correctional centre administering the sentence. The assigned work depends on availability and the convicted person has no right to refuse. Officials check on convicted persons' locations at least once a day;
- 5) a possible period of restrictions on freedom (https://www.forum18.org/archive.php?article_id=2681). This normally includes a curfew between particular hours, a ban on visiting certain places, a ban on leaving one's home town, a ban on attendance at or participation in particular events, a ban on changing one's place of residence, work, or study without the probation authorities' permission, and an obligation to register with probation authorities one to four times per month;
- 6) sudimost, or the state of having an active criminal record (https://www.forum18.org/archive.php?article_id=2681). Individuals may face a harsher sentence if prosecuted and convicted again during this period. Individuals are also barred from holding certain jobs in sectors such as education, finance, the police and similar agencies, and the civil service, and from standing for election. Although there is no legal bar on employment in other sectors, many people find it hard to secure formal work after criminal convictions. Sudimost expires at the end of the probationary period (https://www.forum18.org/archive.php?article_id=2681) for those who have received suspended sentences. For those who have received fines, sudimost expires one year after the fine is paid. The length of sudimost for those given prison terms depends on the category of crime of which they have been convicted – for serious offences such as those under Criminal Code Article 282.2, sudimost lasts for eight years;
- 7) for those given prison sentences, administrative supervision (https://www.forum18.org/archive.php?article_id=2681) for the entirety of their period of sudimost. Administrative supervision consists of a set of restrictions on movements and activities, and a requirement to register regularly with the police;
- 8) and for those convicted under Criminal Code Article 282.2, Parts 1 or 2 (https://www.forum18.org/archive.php?article_id=2215) either compulsory or discretionary bans on holding particular positions or undertaking particular activities (https://www.forum18.org/archive.php?article_id=2681).

Raids and prosecutions continue

More than 560 Jehovah's Witnesses remain under investigation, are on trial, or have been convicted as a direct result of the Supreme Court's 2017 ban. A total of 165 people have received sentences, including 19 fines, 95 suspended sentences, and 51 prison terms (https://www.forum18.org/archive.php?article_id=2702).

Only four Jehovah's Witnesses have been acquitted for exercising freedom of religion or belief on charges related to the 2017 Supreme Court ban (Barmakin, Zolotova, Bazhenov, and Bazhenova). Several Jehovah's Witnesses have been acquitted on other "extremism"-related charges, most recently Yury Zalipayev in October 2020 (https://www.forum18.org/archive.php?article_id=2620).

In 2019, two other Jehovah's Witnesses were convicted of "continuing the activities" of the local Jehovah's Witness religious organisation in Oryol, which was liquidated as "extremist" in 2016, before the nationwide ban. One of them – Danish citizen Dennis Christensen – was imprisoned (https://www.forum18.org/archive.php?article_id=2479), the other fined.

Sixty-nine of Russia's 83 federal subjects (not counting Russian-occupied Crimea or Sevastopol) have seen prosecutions of Jehovah's Witnesses, with the highest numbers in:

- Primorye (39 people);
- Krasnoyarsk Region (25 people);
- Khabarovsk Region (24 people);
- the Jewish Autonomous Region (23 people);
- and the Khanty-Mansi Autonomous Region (23 people).

Investigators opened 14 criminal cases against a total of 36 individuals in the last three months of 2021. On 16 January 2022, there were raids on four Jehovah's Witness homes in Gorno-Altaysk in the Altay Republic, including that of Aleksandr Kalistratov, who was first prosecuted under the Extremism Law in 2010.

Kalistratov was convicted under Criminal Code Article 282, Part 1 ("Actions directed at the incitement of hatred [nenavist] or enmity [vrazhda], as well as the humiliation of an individual or group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, or social group") in 2011, but this was overturned on appeal (https://www.forum18.org/archive.php?article_id=1653).

Second acquittal

Nearly three and half years after investigators opened the criminal case against three Jehovah's Witnesses, an appeal court has found Vera Ivanovna Zolotova (born 20 October 1946), Snezhana Yevgenyevna Bazhenova (born 20 December 1977), and Konstantin Aleksandrovich Bazhenov (born 24 July 1977) not guilty of "extremist activity". The court's decision freed them of all probation restrictions associated with their suspended sentences.

(Konstantin Aleksandrovich Bazhenov in Kamchatka is not to be confused with fellow Jehovah's Witness Konstantin Viktorovich Bazhenov, born 10 May 1975, from Saratov, who was deported to Ukraine (https://www.forum18.org/archive.php?article_id=2702) after completing his jail term.)

On 18 January 2022, appeal judges at Kamchatka Regional Court ruled – apparently on the basis of the Supreme Court's updated guidance on applying the Extremism Law – that the three defendants' convictions under Criminal Code Article 282.2, Part 2 should be overturned.

As an appeal ruling, the decision entered legal force immediately. This makes Zolotova and the Bazhenovs the first Jehovah's Witnesses prosecuted as a direct result of the 2017 ban whose acquittals are now in force.

(Dmitry Barmakin, acquitted by a first-instance court in November 2021 (https://www.forum18.org/archive.php?article_id=2698), is awaiting a prosecution appeal. As of 28 January 2022, Primorye Regional Court has not yet listed a date for the appeal to be heard.)

"I would like to thank the panel of judges for the fair outcome of the case," Jehovah's Witness spokesperson Yaroslav Sivulsky commented on 18 January on the jw-russia.org news website. "Appeal hearings are now taking place all over Russia in connection with illegal sentences handed down to Jehovah's Witnesses. We hope that the Kamchatka example will turn out to have an effect on other judges, and they will take the liberty of correcting the mistakes made by their colleagues."

Kamchatka Regional Court's re-examination of the case took place after Zolotova and the Bazhenovs successfully challenged the outcome of their first, unsuccessful appeal at the 9th Cassational Court in Vladivostok. There, on 9 November 2021, judges "urged [the appeal court] to take into account the clarifications of the Plenum of the Supreme Court of the Russian Federation of 28 October 2021".

The Investigative Committee arrested retired bookkeeper Vera Zolotova and teachers Snezhana Bazhenova and Konstantin Bazhenov after searches of their homes in the town of Yelizovo on 19 August 2018.

After short periods in detention, the three were charged under Criminal Code Article 282.2, Part 1 and spent the duration of the investigation and trial under travel restrictions. Yelizovo District Court returned their case to prosecutors in November 2019, but prosecutors had this decision overturned, and new court proceedings began in March 2020.

On 25 September 2020, Judge Yuliya Piskun reclassified the defendants' alleged offences as "participation in", rather than "organisation of", the activities of a banned "extremist" organisation, and found them guilty under Criminal Code Article 282.2, Part

2. The Judge handed each of them a suspended sentence of two years (https://www.forum18.org/archive.php?article_id=2620), with three years' probation and six months' restrictions on freedom. Kamchatka Regional Court initially upheld these sentences on appeal on 17 November 2020.

Zolotova and the Bazhenovs' restrictions on freedom ended on 17 May 2021, before they lodged their cassational appeal, but their probation – and, therefore, their active criminal records (sudimost) – would have lasted until 17 November 2023, had their later appeals been unsuccessful.

Investigators had the three Jehovah's Witnesses added to the Rosfinmonitoring "List of Terrorists and Extremists" (https://www.forum18.org/archive.php?article_id=2687) on 11 October 2018, meaning that their bank accounts were blocked except in the case of small transactions (up to 10,000 Roubles per month). As of 28 January 2022, their names remain on the list.

It can take some weeks or months for Rosfinmonitoring to remove the names of people who have been acquitted or whose criminal records (sudimost) have expired.

Effect of the Supreme Court amendment

On 28 October 2021, the Plenum of the Supreme Court in Moscow issued amendments to the Court's 2011 Decree (https://www.forum18.org/archive.php?article_id=2698) "On judicial practice in criminal cases concerning extremism offences", which instructs judges on how to apply the Extremism Law. Such decrees are aimed at ensuring uniform application of Russian legislation across all courts.

As yet, these amendments appear to be affecting court practice only gradually, with more convictions than acquittals and more unsuccessful than successful appeals so far. As the Kamchatka case demonstrates, however, the amendments do appear to provide grounds for overturning convictions which have already entered legal force, by lending weight to cassational appeals.

"As for the Plenum of the Supreme Court amendment, we can't say anything definite yet," Jehovah's Witness lawyers commented to Forum 18 on 13 January, before the Kamchatka acquittal. "It is true that cassational courts have sent back some cases for re-examination. However, we do not yet understand whether this is due to the fact that the judicial authorities intend to change the practice of convicting Jehovah's Witnesses or not."

The October 2021 amendments state that:

- in applying Criminal Code Article 282.2, courts should ascertain defendants' "specific actions", their motivation, and "the significance [of these actions] for the continuation or resumption of the [banned organisation]'s activities";
- after an organisation is banned as extremist, a person's subsequent actions "consisting solely of the exercise of their right to freedom of conscience and freedom of religion, including through individual or joint confession of faith and the performance of services or other religious rites and ceremonies, do not in themselves constitute a crime under Article 282.2, Part 2, if they do not contain signs of extremism";
- and if a person is considered to be the leader or organiser of a banned extremist organisation, then any recruitment of others to that organisation they may have carried out is covered by Article 282.2, Part 1; the person should not also be charged under Part 1.1 ("Inclination, recruitment or other involvement of a person in an extremist organisation") (the possibility of double charges under Part 2 and Part 1.1 nevertheless remains).

In the three months since the Supreme Court issued its updated guidance, only four people have been acquitted in two cases (all Jehovah's Witnesses – three on appeal, one at first instance).

Twelve Jehovah's Witnesses have received suspended sentences and four have received fines since 28 October 2021, while eight have been sentenced to imprisonment. They include Anna Arnoldovna Safronova (born 22 July 1965), who on 25 January 2022 received the longest prison sentence yet given to a Jehovah's Witness woman – six years – at Trusovsky District Court in Astrakhan.

At the appeal level, one Jehovah's Witness has succeeded in having his case sent back for re-examination. The re-trial of Aleksey Nikolayevich Khabarov (born 15 February 1975) at Porkhov City Court (Pskov Region) began on 24 January 2022. All other Jehovah's Witness appeals have been unsuccessful, as was Muslim Nakiya Sharifullina's (see above).

At the cassational level, apart from the Kamchatka case, judges have sent a further three Jehovah's Witness cases back for re-examination by appeal courts:

– Yury Prokopyevich Savelyev (born 1 January 1954), who received a six-year prison sentence in December 2020, is due to appear at Novosibirsk Regional Court on 7 February 2022 for a second appeal (he has been transferred from his prison colony in Barnaul to a detention centre in Novosibirsk, as his conviction is no longer considered to be in force);

– Konstantin Viktorovich Guzev (born 16 June 1964), who received a suspended sentence of two years and six months with two years' probation in January 2021, had his unsuccessful appeal ruling overturned by the 9th Cassational Court in Vladivostok; the Court of the Jewish Autonomous Region has yet to list a repeat appeal date;

– Svetlana Yakovlevna Monis (born 15 July 1977) is also awaiting a new appeal date at the Court of the Jewish Autonomous Region after its first appeal ruling – which replaced her original fine with a suspended sentence of two years and six months with two years' probation at the request of prosecutors – was overturned at the 9th Cassational Court.

All other cassational appeals by Jehovah's Witnesses have been unsuccessful.

Forum 18 wrote to several first-instance courts which have issued guilty verdicts since 28 October 2021, with all enquiries sent by the start of the working day of 18 January 2022. Forum 18 asked why, in the light of the Supreme Court's amended guidance, they had continued to convict Jehovah's Witnesses.

Seversk City Court (Tomsk Region), Railway District Court in Krasnoyarsk, Nikolsk City Court (Penza Region), and Soviet District Court in Lipetsk all responded between 19 and 24 January, stating that, in accordance with Article 20 of the Federal Law on "On ensuring access to information about court activities in the Russian Federation", they could not answer questions about the interpretation or application of legal norms.

In its reply of 20 January, Uray City Court (Khanty-Mansi Autonomous Region) noted only that the defendant's sentence had not yet entered legal force, as it was being challenged by both prosecution and defence. Prioksky District Court in Nizhny Novgorod responded on 25 January that it had established the defendant's guilt "on the basis of evidence presented by the prosecution and the defence, examined directly in the court hearing". It added that "questions of the legality and validity of this court decision will be resolved by the court of appeal". (END)

More reports on freedom of thought, conscience and belief in Russia (<https://www.forum18.org/archive.php?country=10>).

For background information, see Forum 18's survey of the general state of freedom of religion and belief in Russia (https://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 (https://www.forum18.org/archive.php?article_id=2215).

A personal commentary by the Director of the SOVA Center for Information and Analysis (<https://www.sova-center.ru>), Alexander Verkhovsky, about the systemic problems of Russian "anti-extremism" laws (https://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 (https://www.forum18.org/archive.php?article_id=1351).

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