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The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief

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RUSSIA: 142 known "anti-missionary" prosecutions in 2019-20

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

At least 17 organisations and 125 individuals faced prosecution in 2019 and the first half of 2020 for "missionary activity" under Administrative Code Article 5.26, Parts 4 and 5. Over 90 per cent of cases ended with convictions. Nineteen of the 125 individuals were foreigners, 10 of whom were ordered deported. One such – Tajik citizen Fayzali Kholmurodov – is still in a detention centre in Tula Region six months after his conviction.

Individuals of almost every religious affiliation continue to face prosecution under Russia's "anti-missionary" legislation for exercising their right to freedom of religion and belief. Despite a 2018 Constitutional Court decision which offered some clarification of what "missionary activity" means, police and prosecutors continue to initiate cases to punish a wide range of activities, from advertising events online to holding ordinary worship services for fellow believers.

According to available court records, 142 prosecutions reached court between January 2019 and June 2020. Of these, 123 were under Administrative Code Article 5.26, Part 4 (http://www.forum18.org/archive.php?article_id=2246) ("Russians conducting missionary activity"); and 19 under Administrative Code Article 5.26, Part 5 (http://www.forum18.org/archive.php?article_id=2246) ("Foreigners conducting missionary activity") (see below).

The 142 prosecutions involved 125 individuals and 17 organisations. The majority resulted in guilty verdicts and fines, with a conviction rate across the 18-month period of 91 per cent (see below).

Ten of the foreign citizens convicted under Part 5 were also ordered deported from Russia, with five being sent to detention centres before their departure. One such detainee – 27-year-old Tajik citizen Fayzali Kholmurodov – is still in a detention centre in Tula Region six months after his February 2020 conviction, as the coronavirus pandemic has largely closed Tajikistan's borders (see below).

(See here for a full list of the 100 known cases in 2019 (http://www.forum18.org/archive.php?article_id=2594) and 42 known cases in the first half of 2020 (http://www.forum18.org/archive.php?article_id=2595).)

Religious organisations also continue to face prosecution under Administrative Code Article 5.26, Part 3 (http://www.forum18.org/archive.php?article_id=2246) ("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"). Prosecutions continue against religious organisations, as well as individuals (despite this not being legal), for not showing their full official names on literature, online, and most frequently on buildings. From the beginning of January 2019 to the end of June 2020, 76 registered religious organisations and 22 individuals were prosecuted. Most resulted in guilty verdicts and fines, and the largest increase in the number of prosecutions by religious community was of Muslims. The conviction rate was 72.5 per cent. A Constitutional Court appeal may clarify the law (http://www.forum18.org/archive.php?article_id=2610) on how and where names should be displayed.

In terms of overall numbers and case outcomes, the 2019-20 period differs little from 2018 (http://www.forum18.org/archive.php?article_id=2474) (see below).

The number of prosecutions of individual Muslims and Muslim organisations has risen considerably, however. Muslims have now overtaken Protestants as the most likely to be taken to court for "unlawful missionary activity", Forum 18 has found. The activity for which most Muslims are prosecuted under Administrative Code Article 5.26, Parts 4 and 5 is simply conducting (or allowing) prayers on premises which are not officially designated places of worship (see below).

Despite the Constitutional Court's definition of "missionary activity", it appears that almost any religious activity may still make people vulnerable to prosecution (see below)

"Such broad interpretation of the concept of missionary activity makes it possible to qualify any dissemination of religious information and literature by an individual as unlawful missionary activity," lawyer Anatoly Pchelintsev commented in an article for

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the Moscow-based Slavic Centre for Law and Justice on 15 November 2019. "This creates a dangerous precedent of infringement on the legitimate rights and freedoms of believers, and serves as a basis for unjustified administrative prosecution."

"The confusion of the law and the inability of courts to sort out this situation give rise to perverse law enforcement practice and seriously violate the right of citizens to constitutional freedom of conscience," Pchelintsev added.

Background

On 6 July 2016, President Vladimir Putin signed amendments to the Religion Law imposing tight restrictions on the sharing of beliefs, including on where and by whom they may be shared. The amendments effectively ban broadly defined "missionary activity" by anyone without written permission from an officially recognised religious association, and apparently any activity performed by religious organisations not using their full legal names.

The amendments also prohibit "missionary activity" on residential premises, or by anyone who is a former member of an "extremist" religious organisation, and allow wide scope for arbitrary official actions.

The amendments were introduced as part of an "anti-terrorism" package proposed by United Russia Duma deputy Irina Yarovaya and Senator Viktor Ozerov. Protests against the changes were widespread (http://www.forum18.org/archive.php?article_id=2246).

A 2015 amendment to the Religion Law required all unregistered religious groups to notify the authorities (usually local branches of the Justice Ministry) of their existence and activities (http://www.forum18.org/archive.php?article_id=2246). This includes providing the names and addresses of all their members, and addresses where any meeting takes place.

Although no explicit punishment currently exists for not submitting this notification, Forum 18's analysis of prosecutions under Administrative Code Article 5.26, Parts 4 and 5, shows that failure to do is frequently taken as evidence of unlawful "missionary activity".

Punishments

Individuals and legal entities who violate any of the July 2016 restrictions and requirements are subject to punishment 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"), Part 4 ("Russians conducting missionary activity"), or Part 5 ("Foreigners conducting missionary activity") (http://www.forum18.org/archive.php?article_id=2246). These were all signed into law at the same time.

Under Part 4 ("Russians conducting missionary activity"), Russian citizens are liable for a fine of 5,000 to 50,000 Roubles. For organisations (legal entities), the fine stands at 100,000 to 1 million Roubles. Religious groups, while they may share their beliefs in limited circumstances, are not legal entities – their members are therefore subject to prosecution as individuals.

Foreigners may be fined 30,000 to 50,000 Roubles for the same offence under Part 5 ("Foreigners conducting missionary activity"), with the possibility of expulsion from Russia.

Punishments under 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") are a fine of 30,000 to 50,000 Roubles and possible confiscation of any materials. A fine of 50,000 Roubles represents nearly six weeks' average wages for those in work or 16 weeks' average state retirement pension.

Prosecutions continue against religious organisations, as well as individuals (despite this not being legal), for not showing their full official names on literature, online, and most frequently on buildings. From the beginning of January 2019 to the end of June 2020, 76 registered religious organisations and 22 individuals were prosecuted. Most resulted in guilty verdicts and fines, and the largest increase in the number of prosecutions by religious community was of Muslims. The conviction rate was 72.5 per cent. A Constitutional Court appeal may clarify the law (http://www.forum18.org/archive.php?article_id=2610) on how and where names should be displayed.

Statistics: January 2019 to June 2020

In an analysis of available court records, Forum 18 found a total of 142 prosecutions brought to court under Administrative Code Article 5.26, Parts 4 and 5 in the calendar year 2019 and the first six months of 2020. It is unknown how many other individuals and organisations may have faced charges, as cases against Russian citizens and legal entities (which comprise the vast majority) are heard in magistrates' courts, of which there are more than 7,000 across the country.

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Establishing accurate figures is becoming increasingly difficult if communities or their members do not themselves make prosecutions known.

The 142 prosecutions found by Forum 18 involved 17 organisations and 125 individuals (some of them charged more than once for different incidents). Ten women and 103 men are known to have been brought to court, as well as two people whose gender is unknown.

A number of cases appear to be based on surveillance by the FSB security service – both of worship services and other events and of online activities. The FSB then informs prosecutors or police, who open administrative cases against the people or communities involved. Other cases may arise from routine prosecutor's office "inspections of compliance with the requirements" of the Religion Law and Extremism Law, or are triggered by calls to police or prosecutors from members of the public.

In 2019, there were:

- 85 prosecutions (15 of organisations, 70 of individuals) under Part 4 ("Russians conducting missionary activity");

- and 15 prosecutions under Part 5 ("Foreigners conducting missionary activity").

In the first six months of 2020, there were:

- 38 prosecutions (two of organisations, 36 of individuals) under Part 4;

- and four prosecutions under Part 5.

These figures show no significant change from 2018, which saw 90 prosecutions under Part 4 and 15 prosecutions under Part 5. The conviction rate also shows little change and remains high (see below).

Forum 18's analysis of prosecutions in the first half of 2020 shows slightly fewer cases being considered than might have been expected. This is likely to have resulted from restrictions on court functions imposed during Russia's coronavirus lockdown period.

Conviction rate stable

First instance courts convicted a total of 112 defendants and acquitted only twelve. Judges sent another eight cases back to police and prosecutors on technical grounds and closed a further five for unknown reasons. Five more cases were dropped because they reached court after the permitted time period for prosecutions had passed (the statute of limitations on administrative offences examined by a judge is three months).

This gives an initial conviction rate of 90.86 per cent across the 18 months from January 2019 to June 2020. This is similar to 2018's rate of 90 per cent (http://www.forum18.org/archive.php?article_id=2474). In 2016-17, this figure was 82 per cent (http://www.forum18.org/archive.php?article_id=2305).

Of those convicted in 2019-20, all but one were fined. One Muslim community, in the Republic of Kabardino-Balkariya, received a warning for conducting unspecified "missionary activity" in a house of culture (according to the verdict, "on premises it had no right to use", as it had only an oral agreement with a local administration staff member). The judge agreed that there had been no negative consequences. On appeal, the warning was overturned as the statute of limitations had expired.

Most Russian citizens charged under Article 5.26, Part 4 ("Russians conducting missionary activity") received fines of 5,000 Roubles (the minimum punishment available). In 2019, there were two fines of 6,000 Roubles and three of 10,000 Roubles (one of these was overturned on appeal), and a court imposed a fine of 35,000 Roubles on an imam who continued to lead prayers in a village mosque after he was dismissed from his post and expelled from the council of the Spiritual Administration of Muslims of the Adygeya Republic (the verdict did not mention the reason for his dismissal).

Organisations charged under Part 4 were fined between 50,000 Roubles (reduced because of mitigating factors) and 100,000 Roubles (the formal minimum).

Of the 19 prosecutions in 2019-20 under Article 5.26, Part 5 ("Foreigners conducting missionary activity"), fifteen resulted in the minimum fine of 30,000 Roubles and one in acquittal, while two cases were sent back to prosecutors for technical reasons (and not resubmitted) and one was closed because the statute of limitations had expired.

Ten people were also sentenced to deportation under Part 5 between January 2019 and June 2020, with five of them sent to detention centres before their departure (see below).

Few appeals successful

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Defendants submitted initial appeals in 65 cases (either to district/city courts within ten days of the original verdict, or as supervisory appeals after the original ruling came into force – the latter were heard in regional courts up to October 2019, thereafter in one of nine newly established cassational courts which each caters to several federal subjects).

Of these initial appeals, 50 were unsuccessful and only 13 successful. One case was sent for re-examination, then closed as the statute of limitations had expired. The outcome of one appeal remains unknown.

Twelve defendants challenged their unsuccessful appeal rulings at the supervisory level. All of these were again unsuccessful (though one outcome is unknown).

Police and prosecutors lodged only seven appeals (five initial appeals and two supervisory), none of which succeeded.

Deportations on the rise?

Judges sentenced ten foreign citizens to deportation under Article 5.26, Part 5 in 2019 (eight) and the first half of 2020 (two), five of whom were sent to detention centres before being removed from the country. One man – Tajik citizen Fayzali Kholmurodov – is believed to be still in detention six months after his February 2020 conviction, because of border closures.

As well as being fined, foreigners found guilty under Article 5.26, Part 5 may also be ordered deported from Russia (adminstrativnoye vydvoreniye – under Russian law, this is technically different from deportatsiya, as it is punishment for an administrative offence imposed by a court ruling, while deportatsiya is decided on by the migration authorities or the FSB border service; they also differ procedurally).

Adminstrativnoye vydvoreniye may take the form of enforced expulsion, in which the defendant is held in an Interior Ministry detention centre until he or she can be sent out of Russia. Bailiffs are responsible for ensuring that this process is carried out. More often, defendants are subject to monitored independent departure, under which an individual remains free and makes his or her own way out of the country within a specified number of days after the ruling comes into force, under migration authorities' supervision.

Some judges decide not to deport defendants because their families are in Russia or – as in the case of a South Korean Protestant and postgraduate student at Omsk State University – because it would be "an excessive and unjustified measure".

Eight deportations in 2019, three with detention (plus two in the first half of 2020, both with detention) marks an increase on 2018, when only three foreign citizens were ordered deported (all by monitored independent departure), one of whom had the deportation order overturned on appeal.

In 2016-17, there were five deportation orders (three by monitored independent departure, two by enforced expulsion with detention). One of those detained successfully challenged his deportation and was immediately released.

Given that those deported are of six different nationalities and multiple religious affiliations (Muslim, Mormon, three different Evangelical churches, and one unknown), and that their cases were brought in seven different regions, it does not appear that any particular group is being targeted.

Twenty-seven-year-old Fayzali Kholmurodov was convicted at Donskoy City Court in Tula Region on 12 February 2020. The judge imposed a fine of 30,000 Roubles and ordered that he be expelled from Russia, and held in the region's detention centre for foreign nationals in Kimovsk until his departure. Staff told Forum 18 that Kholmurodov arrived at the detention centre on 13 February, and, because Tajikistan's borders have been almost entirely closed during the coronavirus pandemic, is still there six months later.

Like other Muslims prosecuted under Article 5.26, Parts 4 and 5, Kholmurodov was charged because he had led prayers (for migrant workers in their hostel) when no notification had been submitted of the existence of a religious group. Consequently, he had no written authorisation from a religious group to carry out missionary activity. There is no suggestion, however, that any non-Muslims were present.

The court verdict, seen by Forum 18, states only that Kholmurodov "took actions to disseminate information about his faith (Islam) among persons from the hostel who were not members of the religious group of employees of [company name redacted], in order to involve these persons as participants by addressing their consciousness, will, [and] feelings, including by means of disclosing [his] own religious views and beliefs".

Forum 18 found 15 prosecutions under Article 5.26, Part 5 in 2019, and four in the first half of 2020 – a total of 19. They comprised four US citizens, three Tajiks, three South Koreans, two Kazakhs, two Azerbaijanis, one Ukrainian, one Lebanese citizen, one Pole, and one Turk. The nationality of one person remains unknown.

Article 5.26 sometimes only one part of restrictions

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The "anti-missionary" amendment is one of many pieces of civil and administrative legislation which may be used to restrict, monitor, and penalise the expression of freedom of religion and belief in Russia.

Individuals and their communities may face more than one kind of court case simultaneously or in quick succession. For example, Muslim convert Artur Rusyayev was charged (but acquitted) under Article 5.26, Part 4 for holding prayers in an "auxiliary" building on farmland owned by his wife, Irina Rusyayeva. This occurred in the midst of civil proceedings against the Rusyayevs, which ruled their prayer house – near Chernyakhovsk in Kaliningrad Region – an "unauthorised structure" and resulted in its demolition (http://www.forum18.org/archive.php?article_id=2508).

Similarly, Baptist Union pastor Yury Korniyenko was fined 10,000 Roubles under Article 5.26, Part 4 for leading a service in his community's church. The church met in a residential building owned by a church member in the village of Verkhnebakansky, on the outskirts of Novorossiysk (Krasnodar Region). This was despite the fact that no non-Baptists were present and that Korniyenko had written authorisation to perform missionary activity anyway. Novorossiysk city administration had banned the Baptists from using the building for religious purposes as its land plot lay within a "zone of education facilities and scientific complexes" established after its construction (http://www.forum18.org/archive.php?article_id=2505).

Religious profile – shift towards more prosecutions of Muslims?

Prosecutions between January 2019 and June 2020 involved individuals or organisations belonging to the following religious communities:

- Muslim – 62 (42 in 2019, 20 in 2020)

- Baptist (Council of Churches, Baptist Union, independent/unknown) – 29 (17, 12)

- Protestant (including Pentecostals) – 22 (16, 6)

- Society for Krishna Consciousness (Hare Krishna) – 8 (8, 0)

- Methodist – 3 (3, 0)

- Catholic – 2 (1, 1)

- Church of Jesus Christ of Latter-day Saints (Mormons) – 2 (2, 0)

- Seventh-day Adventist – 2 (2, 0)

- Buddhist – 1 (1, 0)

- Unknown faith - 11 (8, 3)

This represents a considerable increase from 2018 in prosecutions of Muslim religious activity. In that year, police and prosecutors initiated only 14 such cases under Article 5.26, Part 4 or Part 5. It is unclear why such a sharp rise has occurred. Sergey Chugunov, a lawyer at the Slavic Centre for Law and Justice, has also noted the trend, he told Forum 18 on 6 August, but believes it is difficult to ascertain a reason for it.

Muslim-related cases show a wide geographical spread across 15 federal subjects – Adygeya Republic, Astrakhan Region, Chelyabinsk Region, Dagestan Republic, Republic of Kabardino-Balkariya, Kaliningrad Region, Kemerovo Region, Khabarovsk Region, Leningrad Region, Moscow Region, Rostov Region, St Petersburg, Tatarstan Republic, Tula Region, Ulyanovsk Region – with varying proportions of the population who are (at least nominally) Muslim.

The regions with the highest numbers of such prosecutions are: Dagestan – 13 (though these all derive from only two investigations); Rostov – 9; Chelyabinsk – 7; and Leningrad – 7.

Although most prosecutions for Muslim worship are of Russian citizens, they frequently occur as the result of police or prosecutor's office inspections of places where migrant workers are likely to be employed, such as construction sites and markets. Several prosecutions of Muslim foreign citizens also followed such inspections. Four cases were also associated with three cultural centres for people from Azerbaijan, Dagestan, and the Caucasus respectively, in St Petersburg and Leningrad Region.

On 28 October 2019, a Turkish construction company's Russian branch was fined 100,000 Roubles for allowing a digger driver to act as imam and lead Friday prayers for workers in their camp, without authorising documents from a religious organisation. According to the verdict from Tosnensky District Magistrate's Court No. 70 (Leningrad Region), the digger driver (who was himself

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convicted and fined 5,000 Roubles) "discussed and disseminated among [worshippers] information on his faith, ‘Islam'" – multiple witness statements from attendees nevertheless describe only "group prayers".

Similarly, Tajik citizen Kurbonali Kakhorov was charged under Article 5.26, Part 5 for leading prayers for fellow labourers in a trailer on their building site, while "not being a mullah (imam) of a Muslim mosque, [and] officially not part of a religious organisation", and without either authorisation from a religious group or having submitted notification of the existence of a religious group. The judge at St Petersburg's Frunze District Court decided, however, that on the basis of the Constitutional Court's 2018 definition, Kakhorov had not conducted any missionary activity, and acquitted him on 30 May 2019.

First Catholic and Methodist prosecutions

In another potential shift, 2019 and the first half of 2020 also saw the first prosecutions known to Forum 18 of Catholics and Methodists under Article 5.26, Part 4 or 5 (Catholic and Methodist churches have already faced prosecution under Article 5.26, Part 3 (http://www.forum18.org/archive.php?article_id=2474)).

Leningrad District Court in Kaliningrad fined Polish citizen Fr Andrzej Zalewski, priest of the Nativity Catholic Church of the Byzantine Rite, 30,000 Roubles under Article 5.26, Part 5, for conducting the Liturgy of St John Chrysostom on premises belonging to the Caritas-West charity. According to the verdict of 17 September 2019, police patrol officers noticed "loud music" and "suspicious citizens" coming from the property. Fr Zalewski had lodged an application to register the parish as a religious organisation three days before the police visit, but it had not yet been approved, thereby rendering the church's lease invalid.

On 12 February 2020, Nikita Glazunov, leader of a traditionalist Catholic religious group, the Society of Saint Pius X, was fined 5,000 Roubles at Vakhitovsky District Magistrate's Court No. 8 in Kazan (Republic of Tatarstan). He had organised a Latin Mass in a hotel conference hall, served by a "foreign preacher" who did not have written authorisation from the group to perform missionary activity. According to the verdict, a witness testified that the preacher had "spoken of the truth of Catholicism in comparison with Orthodox Christianity", and that Glazunov had "approached him and invited him to take printed materials to familiarise himself with their religious views".

The Methodist Church of stantsiya Ugolnaya in Primorye Region was fined 100,000 Roubles on 15 May 2019 for organising the Far Eastern Conference for Children's Ministers without a formal lease on the sanatorium used. Because the delegates included members of different churches and people who had not specified their religious affiliation, Soviet District Magistrate's Court No. 24 in Vladivostok concluded that the conference constituted "missionary activity".

Oleg Kuzin, pastor of Ryazan Wesleyan Church, and his acquaintance Fyodor Makarov were fined 5,000 Roubles each at October District Magistrate's Court No. 18 for distributing Gideon bibles outside a university. This was despite their arguments that the New Testament was common to all Christians and they were not attempting to involve anyone in any religious association. Because both did, in fact, have written authorisation to carry out missionary activity, they were acquitted on appeal.

Geographical spread

Thirty-eight of Russia's 83 federal subjects saw at least one prosecution under Article 5.26, Parts 4 and 5 between January 2019 and June 2020 (33 in 2019, 15 in 2020), not counting Russian-annexed Crimea and Sevastopol. The highest numbers of prosecutions were in Krasnodar Region (14), the Dagestan Republic (13), Chelyabinsk Region (12), Rostov Region (9), Ryazan Region (8), and Leningrad Region (8).

The Dagestan prosecutions were derived from two investigations. The first was of ten Muslims charged for giving Arabic language and Koran lessons at a mosque in Makhachkala. The second was of three Muslims charged for teaching Arabic and the Koran (as well as handicrafts and arithmetic) at a children's centre in the Botlikh district.

(The Russian occupying authorities in Crimea and Sevastopol frequently use Article 5.26, Part 4 to punish the exercise of freedom of religion or belief. At least 24 such prosecutions are known to have been launched in 2019, of which 17 ended with punishment (http://www.forum18.org/archive.php?article_id=2544).)

Impact of March 2018 Constitutional Court definition only minor

On 13 March 2018, the Constitutional Court issued an interpretation of some of the legal norms in the "anti-missionary" legislation (http://www.forum18.org/archive.php?article_id=2377). "A defining feature [sistemoobrazuyushchy priznak] of missionary activity," it declared, "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 meetings for worship, ceremonies, or events "falls under the definition of missionary activity as such, only if it contains the said defining feature".

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The Constitutional Court concluded that establishing whether 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 Administrative Code Article 5.26, Part 4 ["Russians conducting missionary activity"]".

This appears to be having a discernible but still limited impact on prosecutions under Article 5.26, Part 4. Forum 18 found eight explicit mentions of it in written verdicts (first instance and appeal), as well as five rulings in which its principles were evidently at least acknowledged. In four of these cases (three first instance, one appeal), it did not prevent judges from reaching a guilty verdict.

The Constitutional Court's definition did lead to acquittal for eight defendants (and was mentioned by the judge in the closing of another case for technical reasons). For example, Society for Krishna Consciousness adherent T. Kulichenko appeared at Miass Magistrate's Court No. 9 (Chelyabinsk Region) on 21 January 2019, charged with speaking to an audience at a yoga studio and chanting mantras "aimed at disseminating information about his faith, Krishnaism (Vaishnavism), among persons who were not participants in this religious group, in order to involve them in the group's membership", without authorisation from a religious group and without submitting notification of the existence of a religious group. Referring to the Constitutional Court's definition, the judge concluded that "In itself, the holding of a religious event, in the opinion of the court, does not indicate that the organisers are pursuing the goal of involving those present in the composition of any religious association", and acquitted Kulichenko.

Baptist G. Makiyev was charged under Article 5.26, Part 4 for leaving copies of the magazine "Faith and life" on a table in a property where he was doing building work, with a sign saying that anyone who wished could take one. Makiyev's lawyer pointed out that the magazine contained writing by Protestant, Catholic and Orthodox authors, as well as art and fiction. In acquitting Makiyev on 27 January 2020, the judge at Maysky District Magistrate's Court No. 1 (Republic of Kabardino-Balkariya) cited the March 2018 definition and noted that there was no evidence that Makiyev had carried out (or aimed to carry out) any activities aimed at disseminating information about any religion in a public place.

While 13 cases mentioning the Constitutional Court definition (11 in 2019, two so far in 2020) represents an increase on 2018 (when this figure was seven), the impact still appears to be minor.

"Difficulties remain in law enforcement practice," lawyer Sergey Chugunov remarked to Forum 18 on 6 August. "Despite the fact that the Constitutional Court indicated that not all activities of a religious organisation are missionary, in practice the [magistrates' and district] courts make no distinction, recognising all religious activities as missionary. Therefore, this problem remains, and the number of such cases, if it is decreasing, is only due to the fact that citizens have become more careful."

Interpretation of the law remains broad

Despite the Constitutional Court's 2018 definition of "missionary activity" and its consideration by some judges, Article 5.26, Parts 4 and 5 offer officials many ways to punish the exercise of freedom of religion or belief.

Firstly, investigators and prosecutors can still apply the concept of "missionary activity" indiscriminately. Secondly, officials frequently appear to disregard even the broad definition provided by the Religion Law in favour of finding tangential violations, such as the lack of notification of a religious group's creation, even when no religious group exists. Thirdly, the anti-missionary amendment is based on the presumption that all religious activity should take place within the parameters of a formally constituted religious organisation or group, and this has the effect of penalising individual expressions of freedom of religion and belief.

In commentary for the Slavic Centre for Law and Justice on 5 July 2019, Mikhail Shakhov, President of the Guild of Experts on Religion and Law, points out that no legal definitions exist of the terms "member", "participant", and "follower" – all used in the anti-missionary amendment> He also points out that no formal process exists of making a person a member of a religious association (unless they are one of the "founder members" (uchrediteli) named in an organisation's charter).

This, Shakhov argues, "opens up ample opportunities for circumventing the provisions" of Article 2, Paragraph 3 of the Religion Law, which declares that "nothing in the legislation on freedom of conscience, freedom of religion, and religious associations should be interpreted in the sense of diminishing or infringing upon the rights of person and citizen to freedom of conscience and freedom of religion, as guaranteed by the Constitution of the Russian Federation or arising from international treaties of the Russian Federation".

Shakhov notes that the law implies that the outcome of missionary activity is the inclusion of a person in the membership of a religious association – so if someone is persuaded to follow Islam, for example, but does not join a specific association, the process of persuasion is not technically missionary activity. This has led to police and prosecutors "‘correcting' the deficiencies of the law" by assuming any dissemination of beliefs to be missionary activity.

The example of a Buddhist leader's prosecution in Sochi shows how far the interpretation of "missionary activity" can stray even from the wide-ranging concept outlined in the Religion Law. Khostinsky Magistrate's Court No. 99 fined Igor Darayev 5,000

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Roubles on 7 February 2019 for organising "collective meditation" in a boathouse for "about a dozen" fellow Buddhists, without written authorisation from a religious association to carry out missionary activity.

"The organiser of the gatherings did not actively attract new followers and did not promote his activities in the media; a small circle of people met for meditation", a prosecutor's office spokesperson told "Kommersant" newspaper on 13 February 2019. "Nevertheless, [Darayev's] activities are in fact missionary, which presumes the registration of a religious association with the Justice Ministry."

Basis for prosecutions

The most common ground for prosecution (60 cases) is a lack of written authorisation from a religious organisation or group to carry out missionary activity on its behalf. This assumes, firstly, that everyone carrying out missionary activity must be representing a formally constituted religious association, rather than simply sharing their own beliefs (several defendants appear not to be members of any association); and secondly, that any activity which individuals might perform on behalf of (or merely in connection with) their religious communities is inherently "missionary".

Almost as common (52 cases) is the failure to submit notification to a regional branch of the Justice Ministry of the existence of a religious group (see below).

Among the cases found by Forum 18, other reasons given in verdicts include: missionary activity on residential property – 17 cases; no right to use the premises (e.g. by ownership, lease, agreement of free use) – 16 cases; an individual's lack/loss of position as official representative or clergy – 3 cases; missionary activity on another religious organisation's property – one case (although both organisations were Muslim and their relationship is unclear); missionary activity among minors without parental consent – one case.

In more than 30 cases, it was impossible to ascertain what reason police or prosecutors had for initiating the prosecution, because no written court decision was available, the court decision lacked detail, or the judge deemed there to be no grounds at all, and therefore decided on acquittal.

These figures add up to more than the total number of prosecutions because police and prosecutors often cite multiple violations. The commonest combination is a failure to submit notification of the existence of a religious group and (consequently) a lack of written authorisation from a defendant's (often non-existent) religious group to carry out missionary activity.

Lack of religious group notification

Apart from the lack of written authorisation, the commonest reason behind the prosecution of individuals is a presumed failure to submit notification of the existence of a religious group (http://www.forum18.org/archive.php?article_id=2246) (even if the defendant is not in fact a member of any religious group).

This is a particular problem for both independent and Council of Churches Baptists, as well as, increasingly, for Muslims meeting to pray in homes or workplaces. Council of Churches Baptists refuse on principle to seek any kind of state registration, and argued publicly against the restrictions imposed by the introduction of the group notification requirement in 2015.

On many occasions, there appears to be no reason that an individual should have deemed notification necessary, e.g. when no group with consistent membership and regular meetings exists at all, or when worship involves only casual gatherings of friends at home.

There were 52 prosecutions for this lack of notification (36 in 2019 and 16 in the first half of 2020). The calendar year 2018 saw 39 such prosecutions, while there were 24 in 2016-17.

"It is difficult to say whether or not a majority of cases are related to non-notification of group creation, but this is a big problem," lawyer Sergey Chugunov told Forum 18 on 6 August. "The legislation contains no specified point at which a group is considered created. This is a gap. Therefore, anything is considered to be a religious group and fined."

Most cases based on lack of notification arise either because individuals (usually groups of acquaintances in someone's home) hold collective meetings for prayer outside formal places of worship, or because of activities (often one-off actions) which an individual might reasonably assume could not be interpreted as "missionary activity".

Police and prosecutors initiated 47 prosecutions in 2019-20 under Article 5.26, Parts 4 and 5 solely or principally for worship. Sixteen of these were for worship on residential premises. (Article 24.1, Paragraph 3 of the Religion Law explicitly forbids "missionary activity" on residential premises, with the exception of activities covered by Article 16 Paragraph 2, namely "Services, rites, and ceremonies", which are explicitly permitted.)

Individuals prosecuted included a Baptist Union pastor who held services on the third floor of his own house and a Muslim charged for praying with relatives and acquaintances "who had professed Islam since childhood", again in his own home. (END)

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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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