

21 June 2011

RUSSIA: Muslim's appeal begins, Jehovah's Witness' second trial to begin

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Beginning yesterday (20 June) in the Russian North Caucasian republic of Dagestan was the appeal hearing of Ziyavdin Dapayev. He is challenging the three-year suspended prison sentence imposed on extremism-related charges for leading study of the works of Turkish Muslim theologian Said Nursi in private homes. His lawyer particularly objects to the court-ordered destruction of his religious books. "They contain quotations from a holy text [the Koran], so I hope that at least this part of the verdict will be annulled," Murtazali Barkayev told Forum 18 News Service. Beginning tomorrow (22 June) is the second trial on extremism-related charges of Jehovah's Witness Aleksandr Kalistratov, in what Russia's Human Rights Ombudsperson has deemed a "landmark case". The Prosecutor challenged Kalistratov's acquittal after a six-month trial which saw 71 witnesses questioned and 24 separate hearings. An appeal court ordered a re-trial. The Ombudsperson complained the case was built on an "expert analysis" of Jehovah's Witness texts which was "tendentious and superficial".

The appeal of Ziyavdin Dapayev, a Muslim from the southern Russian republic of Dagestan, against a suspended three-year prison sentence began in the republic's capital Makhachkala yesterday (20 June), his lawyer told Forum 18 News Service. Dapayev – a reader of the works of the late Turkish Muslim theologian Said Nursi – had been found guilty on "extremism" related charges, which he rejected. Meanwhile, a new criminal trial of Jehovah's Witness Aleksandr Kalistratov is due to begin tomorrow (22 June) at Gorno-Altaysk City Court in Siberia. He had been acquitted in April after a six-month trial on extremism-related charges, which he denies, but the retrial was ordered after the Prosecutor appealed against the acquittal.

"I believe I will be acquitted," Dapayev told Forum 18 from Makhachkala on 21 June. "We're not criminals," he added, speaking of those like himself who gather in private homes to discuss their faith.

Dapayev's lawyer, Murtazali Barkayev, insists the sentence handed down to his client should be overturned. "From the point of view of the current law, he can only be acquitted," he told Forum 18 from Makhachkala on 21 June. "But if political elements are brought in, don't expect an objective verdict in the appeal."

"Tendentious and superficial"

The prosecution of Kalistratov was the subject of harsh criticism from Vladimir Lukin, Russia's Human Rights Ombudsperson, who described it as a "landmark case". "The charge sheet in the case was built exclusively on an expert analysis of Jehovah's Witness literature," he complained in his annual report for 2010, published on 13 May 2011 on his official website. "For his part, the Ombudsperson regards the conclusions of the expert analysis as tendentious and superficial."

And Lukin added: "Indeed, the criminal prosecution of a religious organisation and its representatives for openly using their religious literature is nothing less than a method reminiscent of the Soviet practice of persecution on grounds of faith."

Readers of Nursi's works and Jehovah's Witnesses have been particular targets of the government's hostility. They are often subjected to police and FSB security service raids, interrogation and prosecution (see eg. F18News 13 April 2011 http://www.forum18.org/Archive.php?article_id=1562).

Police officers often use the alleged presence of literature courts have deemed "extremist" as an excuse to raid places of worship, Lukin noted in his annual report. They break up worship services and "harshly" interrogate, photograph and fingerprint those present. "The paradox is that even such questionable (from a legal point of view) and clearly excessive zeal in the struggle with 'extremists' as a rule does not uncover cases where religious organisations have violated the current law."

Russian anti-extremism legislation itself has systemic problems (see the commentary by Alexander Verkhovsky of the SOVA Center at F18News 19 July 2010 http://www.forum18.org/Archive.php?article_id=1468).

More publications banned

More Islamic theological works by Nursi, and Jehovah's Witness publications, deemed "extremist" by local courts have been added to the Federal List of Extremist Materials maintained by the Justice Ministry, making their distribution a criminal offence. The latest of Nursi's works in Russian translation to be added to the Federal List was The Tenth Word on the Resurrection of the Dead, a volume of his Risale-i Nur (Messages of Light) collection of sermons, the Justice Ministry website notes. This was added to the list on 12 May following a court ban imposed by Zheleznodorozhny District Court in Krasnoyarsk in September 2010 (see F18News 29 October 2010 http://www.forum18.org/Archive.php?article_id=1504). Fifteen of Nursi's works are now on the Federal List.

The latest Jehovah's Witness publications added to the Federal List were six added on 18 January 2011, after being banned by Zavodsky District Court in Kemerovo in October 2010 (see F18News 11 February 2011 http://www.forum18.org/Archive.php?article_id=1539). A total of 58 Jehovah's Witness publications are now on the Federal List, including numerous issues of their magazines, The Watchtower and Awake!

Prosecutors in Krasnodar and Salsk are seeking to have further Jehovah's Witness publications declared "extremist", Jehovah's Witnesses complained to Forum 18 on 21 June.

Mass distribution, preparation or storage with the aim of mass distribution of titles banned as extremist may result in prosecution under Criminal Code Article 282 ("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 .. attitude to religion, .. conducted publicly or through the media"), whose penalties range from a fine to up to five years in prison. The authorities may instead choose to prosecute under Article 20.29 of the Administrative Violations Code ("Production or distribution of extremist materials"), whose penalties range from a fine to up to 15 days' detention (see F18News 28 April 2009 http://www.forum18.org/Archive.php?article_id=1288).

Jehovah's Witnesses complained to Forum 18 of previous court decisions where confiscated publications have been ordered destroyed. "Although our publications are just printed paper and are not in themselves sacred, such court-ordered destruction of our literature is unpleasant, even offensive." They noted one case where a Bible was included in the literature a court ordered destroyed. "At least over the Bible we were successful in having the destruction order overturned." Such confiscations and destructions have affected both Muslim Nursi readers and Jehovah's Witnesses (see F18News 5 March 2010 http://www.forum18.org/Archive.php?article_id=1417).

Suspended prison sentence

Dapayev had his 29th birthday a week before being sentenced on 18 May. His trial was held under Magistrate Vera Ivashkina, of Judicial Unit No. 12, of Lenin District of Makhachkala. The court website notes that after the initial hearing on 14 December 2010, a further 25 hearings took place in the case (see eg. F18News 11 February 2011 http://www.forum18.org/Archive.php?article_id=1539).

He was initially investigated under Article 282.2, Part 2 ("Participation 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") of the Criminal Code. However when the charges were formally brought they were changed to 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").

According to the verdict seen by Forum 18, Magistrate Ivashkina found Dapayev guilty of violating Article 282.2, Part 1. The maximum penalty is three years' imprisonment, but Judge Ivashkina ruled that the three year prison term should be suspended for two years.

Prosecutors alleged that Dapayev was involved in "Nurdzhular", an organisation based on the teaching of Nursi which was banned by Russia's Supreme Court in April 2008. Russia's Nursi readers, including Dapayev, insist the organisation does not exist.

Defenders of state action against Nursi followers routinely claim that his works are banned in Turkey, but this is not so (see F18News 28 January 2010 http://www.forum18.org/Archive.php?article_id=1400). Readers of Nursi's works have also been linked in the Russian media with the American Central Intelligence Agency (CIA), which claim Muslims vehemently deny (see F18News 13 April 2011 http://www.forum18.org/Archive.php?article_id=1562).

The 18 May verdict complains that Dapayev and a colleague "deliberately engaged in attracting residents of Dagestan to study and spread the teaching of Said Nursi" in "so-called 'home medressahs' [religious colleges]" in six locations in Makhachkala, as well as in the nearby towns of Izberbash and Derbent. During such meetings, "he held collective discussions with them of religious books written by Said Nursi", taught them and gave them copies of Nursi's books.

The verdict ordered that 1,820 copies of Nursi's books being held by the Dagestan FSB in connection with the case be destroyed.

Appeal begins

Dapayev's lawyer Barkayev lodged an appeal against the conviction on 24 May to Lenin District Court in Makhachkala. In his appeal, seen by Forum 18, Barkayev argues that his client was convicted "because individually and together with others he professes Islam". He also complained of what he argued were procedural violations.

Barkayev particularly complains over the destruction of the books, insisting that the works – in English, Russian and Arabic – are not on the Federal List. "No court has determined that they are extremist," he told Forum 18. "They contain quotations from a holy text [the Koran], so I hope that at least this part of the verdict will be annulled."

Barkayev said he last saw the books at the trial, but they are being held by the Dagestan FSB security service. "They are Dapayev's personal property and according to the law should be returned when the case is over. This is a violation of his right to private property."

Since lodging the appeal, Barkayev has also demanded that Magistrate Ivashkina provide a transcript of the trial, as she was required by law to do within five days of the verdict.

The appeal hearing began under Judge Magomed Onzholov at Lenin District Court on 20 June, but has been adjourned to an unspecified date which will be set only when Ivashkina provides the transcript, Dapayev told Forum 18.

Second criminal trial after acquittal at first trial

Kalistratov, who will be 35 in July, was the first Jehovah's Witness to face criminal trial in post-Soviet Russia in connection with his religious activity (see F18News 20 April 2011 http://www.forum18.org/Archive.php?article_id=1565). His second trial – after the long-running series of hearings in his first trial which led to his acquittal - begins tomorrow (22 June). It is being held at the same Gorno-Altai City Court as his first trial, but this time under Judge Marina Kulikova.

Despite Kalistratov's 14 April acquittal, on 18 May Bulat Yaimov of the Prosecutor's Office lodged an appeal against the acquittal. On 26 May, Judges Olga Birulya, Svetlana Kalinicheva and Aydar Sautkanov of the Altai Republic Supreme Court overturned the verdict and ordered a new trial in the case, the Court website notes.

Acquittal verdict "illegal and unfounded"?

Larisa Shestak, spokesperson for the Altai Republic Prosecutor's Office, stated that "an appeal was lodged because the verdict was illegal and unfounded," she told Forum 18 from Gorno-Altai City on 21 June. She was unable to say in what proportion of acquittals prosecutors in the Altai Republic challenge the verdict. But Shestak denied that anyone apart from the Prosecutor's Office had taken the decision to appeal against the verdict. She also denied that her office was governed by anything other than the law. "This is not a private campaign against Kalistratov."

Asked what would happen if Kalistratov is acquitted at the end of the new trial, Shestak insisted that prosecutors can challenge court decisions "as many times as they need to if they regard the verdict as unfounded".

Shestak told Forum 18 she had read the remarks on Kalistratov's case from Human Rights Ombudsperson Lukin, but declined to comment on them or to say if they would have any impact on the case.

Acquittal at end of six-month first trial

In Kalistratov's first trial, he was accused of giving away two copies of the booklet "What Does God Require of Us?" while knowing it had been banned by Gorno-Altai City Court – even though this ruling had not entered into force at the time of the alleged offence. He was prosecuted under Article 282, Part 1 of the Criminal Code ("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 .. attitude to religion .."). He denied the accusations (see F18News 30 November 2010 http://www.forum18.org/Archive.php?article_id=1515).

The first trial began on 20 October 2010 at Gorno-Altai City Court. After a long-running trial which included 24 hearings and saw 71 witnesses testify, Judge Marina Sokolovskaya found him innocent on 14 April 2011 (see F18News 20 April 2011 http://www.forum18.org/Archive.php?article_id=1565).

Court found prosecution's contention "unfounded"

The 56-page court verdict, seen by Forum 18, states that in neither the pre-trial investigation nor the court hearings was it proven that Kalistratov distributed banned material. "The contention of the prosecution that Kalistratov had the deliberate intention of committing actions directed at inciting hatred or enmity, the court considers unfounded," it added. The court rejected the contention of four prosecution witnesses that Jehovah's Witness literature incited "dissatisfaction, anger, and at times hatred" among

Gorno-Altai's residents, as well as the prosecution case that this proved that Kalistratov was guilty.

Is prosecution of Kalistratov "necessary"?

Testimony during Kalistratov's first trial by Irina Moshkareva, a city administration official responsible for links with public – including religious – organisations between October 2003 and May 2009, revealed the way different officials and agencies in Altai Republic worked together over some years to try to find ways to halt the activity of local Jehovah's Witnesses, before finding an effective mechanism in Russia's 2002 Extremism Law.

Moves involved the city administration - including Mayor Viktor Oblogin - the Prosecutor's Office, Altai Republic Supreme Court and a university lecturer who provided an expert analysis of Jehovah's Witness literature. The official insisted that a request to liquidate the Jehovah's Witness community in Gorno-Altai came because the city administration "considered it necessary".

However, Forum 18's investigations could not determine conclusively who initiated these attempts (see F18News 1 December 2010 http://www.forum18.org/Archive.php?article_id=1516). (END)

For more background, see Forum 18's Russia religious freedom survey at http://www.forum18.org/Archive.php?article_id=1196.

Analysis of the background to Russian policy on "religious extremism" is available in two articles: - 'How the battle with "religious extremism" began' (F18News 27 April 2009 http://www.forum18.org/Archive.php?article_id=1287 - and - 'The battle with "religious extremism" - a return to past methods?' (F18News 28 April 2009 http://www.forum18.org/Archive.php?article_id=1288).

A personal commentary by Irina Budkina, Editor of the <http://www.samstar.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.

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.

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.

A printer-friendly map of Russia is available at <http://education.nationalgeographic.com/education/mapping/outline-map/?map=Russia>.

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