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RUSSIA: State destroys own "extremism" evidence

By Geraldine Fagan, Forum 18 (<https://www.forum18.org>)

A Russian court case in Siberia to ban 68 Islamic books and leaflets has taken an ironic turn, Forum 18 News Service has learnt: the state has destroyed its own evidence. Following appeals against the March 2012 ban, which was not made known until June 2012 and came from a hearing lasting only 20 minutes, Orenburg Regional Court has ordered a repeat "expert" analysis. But only 42 of the titles are now being analysed, because the authorities are unable to find copies of the remaining 26. Prosecutions can only be brought relating to "extremist" texts if they are the exact edition of the work specified on the Federal List of Extremist Materials. But this has not stopped prosecutions relating to editions not on the Federal List. While "everything depends upon the analysis and the court's decision," the omission of the 26 texts should mean that the Court's ban on them will ultimately be lifted, appeal lawyer Nurzhigit Dolubayev told Forum 18. Compilation of the Federal List is accelerating, Forum 18 notes. The List is now growing at a rate at least three times faster than when it first came into existence.

A landmark Russian court case in Siberia to ban 68 Islamic books and leaflets - including many classical works – has taken an ironic turn, Forum 18 News Service has learnt: the state has destroyed its own evidence. Following Muslims' appeals against the March 2012 ban on the texts, Orenburg Regional Court ordered a repeat "expert" analysis on 15 April 2013, appeal lawyer Nurzhigit Dolubayev told Forum 18 on 27 June. But only 42 of the titles are now being analysed because the authorities are unable to find fresh copies of the remaining 26, Dolubayev explained: "In line with the first ruling, all the original books were destroyed!"

Ban to be lifted?

"Without the books, there is nothing to do a comparative analysis from," Dolubayev noted. Yet the missing 26 texts are mysteriously also the most well-known, he pointed out: collections of hadiths [sayings attributed to the Muslim prophet Mohammed]; works by 11th-12th-century theologian Abu Hamid al-Gazali; and works by the contemporary well-known Moscow imam Shamil Alyautdinov. While "everything depends upon the analysis and the court's decision," the omission of these 26 texts should mean that the Court's ban on them will ultimately be lifted, Dolubayev thinks.

The 26 missing texts also include a collection of hadiths by 13th-century imam an-Nawawi, and a work by contemporary Azerbaijani Islamic scholar Elmira Kuliyeva. Kuliyeva has protested to Forum 18 that the banned 68 titles include works of "world cultural heritage". (see F18News 30 July 2012 http://www.forum18.org/archive.php?article_id=1726). If the Court's ban on the texts is upheld they will be added to the Federal List of Extremist Materials, making anyone in Russia who possesses them liable to criminal prosecution (see Forum 18's "extremism" Russia religious freedom survey at http://www.forum18.org/Archive.php?article_id=1724).

Works that Russia already bans via the Federal List include other Islamic books and works by Jehovah's Witnesses. Russia also continues to prosecute those distributing those works and titles associated with the Chinese spiritual movement Falun Gong (see F18News 10 July 2013 http://www.forum18.org/archive.php?article_id=1856).

In Russian law, prosecutions can only be brought relating to "extremist" texts if they are the exact edition of the work specified on the Federal List. But this has not stopped prosecutions being brought relating to editions that are not on the Federal List (see F18News 28 February 2013 http://www.forum18.org/archive.php?article_id=1808).

Lack of state responses

At Lenin District Court, which issued the original "extremism" ruling against the 68 Islamic texts, Forum 18 was directed to its Chancellery for civil cases. On 12 July a Chancellery spokesperson was able to say only that the ruling did not specify destruction of the texts, and directed Forum 18 to the Public Prosecutor's Office.

At Orenburg's Lenin District Public Prosecutor's Office – which pursued the ban – Forum 18 was directed to its representative in the case, Yelena Akimova. Her telephone went unanswered whenever Forum 18 called on 10, 11 and 12 July.

At Orenburg Regional Court, where the appeal is being heard, a press secretary advised Forum 18 to send questions by email on 11

July, predicting a speedy response. Forum 18 did so the same day, asking why the appeal is considering 42 rather than 68 texts, and what status the remaining 26 would have should the appeal prove successful. There was no response by the end of the working day in Orenburg on 12 July.

More Muslim titles banned

The 42 titles still subject to repeat "analysis" in the Orenburg case include Al-Qahtani's "Fortress of the Muslim" which does not call for the violation of any human rights, as well as numerous titles by Sufi spiritual leader Osman Nuri Topbas and theologians Fethullah Gulen and Said Nursi, all from Turkey.

Russia has now banned 41 titles by Said Nursi, while offering weak or no explanations for doing so (see F18News 5 March 2013 http://www.forum18.org/archive.php?article_id=1811).

The latest Nursi title to be banned – "The Twenty-Third Word" – was ruled "extremist" by Soviet District Court in Krasnoyarsk in January 2013 (see F18News 19 February 2013 http://www.forum18.org/archive.php?article_id=1803). It was added to Russia's Federal List of Extremist Materials – and so banned from distribution nationwide – on 11 July.

Ruled "extremist" by the same court in November 2012, Nursi's "Twenty Five Remedies for the Sick" was added to the List on 17 May.

Drawn-out appeal

The appeal lawyer in the Orenburg case Dolubayev thinks the repeat "expert analysis" of the 42 texts will not be ready until late August 2013. According to court documents seen by Forum 18, the analysis was initially ordered on 8 October 2012 – soon after appeal hearings began – but postponed when one of the three academics assigned to it declined to participate. The case resumed on 5 March and was adjourned on 15 April. Five parties are currently appealing – "New Light", "Dilya" and Aslambek Ezhayev's publishing houses, Shamil Alyautdinov and Fethullah Gulen.

As well as proceeding slowly, the appeal also had a late start. Orenburg's Lenin District Court originally banned the 68 texts in a 21 March 2012 ruling that came into force on 27 April 2012 – and the banning hearing lasted only 20 minutes. As the only parties to the case were Public Prosecutor and Justice Department representatives, however – both of whom support the ban - Muslim representatives learnt of the ruling only in mid-June 2012, long after the period for appeals had passed (see F18News 19 June 2012 http://www.forum18.org/archive.php?article_id=1713).

Formally, a court ruling does not come into force while an appeal is pending, lawyer Dolubayev – who is representing publisher Ezhayev – confirmed to Forum 18. However, while the period for appeals was successfully restored, the delay has allowed the Orenburg ruling to come into force, including the addition of the 68 titles to the Federal List of Extremist Materials on 12 July 2012. Although the original ruling does not specify the texts' destruction, this commonly follows successful "extremism" bans on literature, Dolubayev further noted.

Compilation of "extremism" list accelerating

Article 13 of Russia's July 2002 Extremism Law ordered the public compilation of a Federal List of Extremist Materials, with entries on the List to be banned from distribution across the country. The first local court ruling determining material "extremist" was not made until April 2004, however, and the first instalment of the List was not published until July 2007 (see "The battle with "religious extremism" - a return to past methods?", F18News 28 April 2009 http://www.forum18.org/Archive.php?article_id=1288).

Since then, compilation of the List has accelerated. Forum 18 notes that the List is now growing at least three times faster than initially. It reached 1,000 titles in November 2011 – nearly four and a half years after its first publication. In little more than a third of that time, however, the List had already reached 1,944 titles by 15 July 2013; it is soon likely to pass 2,000 (see Forum 18's "Extremism" Russia religious freedom survey at http://www.forum18.org/Archive.php?article_id=1724).

Prosecutions

While the eventual fate of the ban on the 68 titles remains undecided, their inclusion on the Federal List has resulted in several fines for their distribution in recent months, Forum 18 has found.

In Samara, Kirov District Court fined Ruslan Kanyukayev 3,000 Roubles (about 570 Norwegian Kroner, 72 Euros, or 90 US Dollars) on 23 April for "production or distribution of extremist materials" (Code of Administrative Offences, Article 20.29), according to the Court's website. A fruit-and-vegetable seller at the local "Halal" trading pavilion, Kanyukayev was on 15 March found by local law enforcement agents to be selling an-Nawawi's "40 Hadiths" and "Gardens of the Righteous", according to the website of Samara Regional Public Prosecutor's Office. Both are among the 68 texts banned in Orenburg.

Seizures of religious literature from both Muslims and Jehovah's Witnesses, mostly during raids or detentions, frequently result in prosecutions under the Administrative Code's Article 20.29. This punishes "Production or distribution of extremist materials" recorded on the Federal List of Extremist Materials with a fine or imprisonment of up to 15 days and confiscation of the banned literature. Under this Article, the "mass distribution" of items on the Federal List, as well as their "production or possession for the purposes of mass distribution" is banned. Despite the term "mass distribution", prosecutors have often brought charges even if only one copy of a text is discovered. Court decisions usually order "extremist" materials to be confiscated and often destroyed (see Forum 18's "Extremism" Russia religious freedom survey http://www.forum18.org/archive.php?article_id=1724).

In Perm, Sverdlovsk District Court fined two people at a local shop a total of 5,000 Roubles (about 950 Norwegian Kroner, 120 Euros, or 150 US Dollars) under Article 20.29 on 19 April for selling an-Nawawi's "40 Hadiths", Al-Qahtani's "Fortress of the Muslim" and two titles by Osman Nuri Topbas, also among the 68 Orenburg titles. Regional FSB security service representatives found the titles at the shop and purchased some of them on an unspecified date, according to redacted rulings against the shop owner, N. Ismaiyllov, and salesperson, Guzaliya Murzakayeva, both on the Court's website.

Chechnya's Public Prosecutor's Office announced on 20 December 2012 that Grozny's Factory District Magistrate's Court No. 18 had heard several cases brought against individuals under Article 20.29. This followed November check-ups on four bookshops in the city by local FSB security service and Public Prosecutor officials, who found books "of a religious nature" determined "extremist" in Orenburg. On 10 December Judge Magomed Akhmatkhanov heard four cases in quick succession under Article 20.29 against M. Musayeva, T. Minkailova, M. Astamirova and A. Aliyeva, according to the website of Factory District Magistrate's Court No. 18.

Again in Samara, Industrial District Court fined Kivi company, which owns the city's Chakona bookshop, 50,000 Roubles (about 9,300 Norwegian Kroner, 1,200 Euros, or 1,500 US Dollars) on 10 October 2012. The case was brought under Article 20.29 for the sale of eight of the 68 texts ruled "extremist" in Orenburg, including a history of prophets from Adam to Mohammed and several titles by Sufi leader Osman Nuri Topbas. According to the Court's website, the ruling followed "Operation Test Purchase", in which local counter-"extremism" police entered Chakona bookshop on 15 August, bought some of the titles and noted the presence of others.

The fine came even though Kivi representatives protested against the charges. According to the ruling, they claimed the confiscated titles did not precisely match the editions on the Federal List, and that "the disputed books are currently being debated and have not been given an official response." The Court rejected these arguments, noting that the titles and authors matched those on the Federal List.

Katyusha company – which owns the branch of Chakona in nearby Tolyatti - was similarly fined 50,000 Roubles under Article 20.29 on 12 September 2012 (see F18News 11 October 2012 http://www.forum18.org/archive.php?article_id=1753).

Historical text dilemma

Determined "extremist" by the Orenburg ruling and again by the same region's Sol-Iletsk District Court on 28 May 2012, an-Nawawi's 13th-century collection of 40 hadiths highlights the ability of Russia's "extremism" policy to criminalise anyone distributing texts regarded as classics, but which contain ideas many modern readers would not share.

The hadiths include statements such as No. 31: "There should be neither harming nor reciprocating harm." However, No. 13 states: "It is not permissible to spill the blood of a Muslim except in three [instances]: a married person who commits adultery, a life for a life, and one who forsakes his religion and separates from the community." The commentary in the edition banned among the 68 texts - a Russian translation by Vladimir Nirsha – explains: "If the life of a person begins to pose a threat to the life of society (...) then he loses the right to life and existence and he must be destroyed, so that Muslim society might live in security and prosperity." The commentary also attributes this view to another hadith: "Kill whoever changes their religion."

Such sentiments are clearly incompatible with freedom of religion or belief, but may be found in various historical texts written from many religious and non-religious standpoints.

Ironically, the person whose analysis led to the ban on an-Nawawi's collection of hadiths was himself investigated by Public Prosecutor representatives in late 2008 due to "extremism" concerns about a historical religious text on his personal website. Yury [now Fr Georgy] Maksimov was questioned about "The Sham Piety of Mohammed", an article by Russian Orthodox saint Fr Aleksandr Miropolsky (1847-1918). The article includes statements such as: "Muslims devote themselves not to God, Who expects active love from a person, but to satan himself by living – according to his suggestions – in vanity, pride and self-gratification" (see F18News 16 January 2009 http://www.forum18.org/archive.php?article_id=1241).

Arbitrary rulings

This dilemma over historical texts is contributing to arbitrary rulings such as that in Orenburg, Forum 18 notes. In one striking example, courts in Bashkortostan Republic have banned an article that quoted the Koran, then amended the ruling to exempt the

Koranic quotes.

Bashkortostan Republic Public Prosecutor's Office announced on 20 March that Airat Dilmukhametov's article "Akhyr zaman" [Bashkir: "End of the World"] had been ruled "extremist". While the name of the article is redacted from it, the website of Kirov District Court in the Bashkir capital, Ufa, confirms the relevant 15 March decision by Judge Zulfiya Ramzanova.

Overall, Judge Ramzanova concluded, the article is "extremist" because it contains "calls for the organisation, preparation and execution of actions aimed at violent change to the constitutional foundations and violation of the integrity of the Russian Federation, for mass disorder and acts of hooliganism and vandalism motivated by ideological, political, religious hatred [nenavist] or enmity [vrazhda] towards a social group."

Still on the internet and seen by Forum 18, Dilmukhametov's article argues with reference to the Koran that Allah created separate nations and assigned them to particular territories, and questions who controls the Urals territory given to the Bashkir nation. However, the article does not call for violence and is not even strictly nationalist: it maintains that Allah will accept people who have served him best from among all nations.

According to a recent investigation by Gazeta.ru, the "extremism" ruling relied in part on five ayats [Koranic verses] contained in Dilmukhametov's article. These included ayat 20.97 – "Look at the god you devoted yourself to. We will burn him and scatter him in the sea" - and part of ayat 58.19: "The devil overcame them (..) they are the party of the devil." Once it became clear that Koranic verses had been ruled "extremist", Gazeta.ru found, Bashkortostan's Supreme Court revised the ruling on 28 May so that the "extremism" designation no longer applied to the Koranic quotations but remained for the rest of the article.

The Supreme Court's website confirms that its Judge Fanil Safin altered the ruling on 28 May without ordering that the case be reheard. (END)

For more background, see Forum 18's surveys of the general state of religious freedom in Russia at http://www.forum18.org/Archive.php?article_id=1722, and of the dramatic decline in religious freedom related to Russia's Extremism Law at http://www.forum18.org/Archive.php?article_id=1724.

An analysis of the way that the Russian authorities have used the Pussy Riot case to intensify restrictions on freedom of religion or belief is at F18News 15 October 2012 http://www.forum18.org/Archive.php?article_id=1754.

A personal commentary by Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis <http://www.sova-center.ru>, about the systemic problems of Russian anti-extremism legislation, is at F18News 19 July 2010 http://www.forum18.org/Archive.php?article_id=1468.

A personal commentary by Irina Budkina, Editor of the <http://www.samstar.ucoz.ru> Old Believer website, about continuing denial of equality to Russia's religious minorities, is at F18News 26 May 2005 http://www.forum18.org/Archive.php?article_id=570.

More reports on freedom of thought, conscience and belief in Russia can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=10>.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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