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RUSSIA: "Virtually anything can be deemed to be unlawful missionary work"

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

In the 18 months from July 2020 to December 2021, Forum 18 found 108 prosecutions on administrative charges of unlawful "missionary activity" to punish a wide range of activities, including worship meetings for fellow believers. Prosecutions continued in 2022, with a judge fining and ordering deported a Tajik citizen for leading Muslim prayers. The legislation on missionary activity is "formulated in such a way that virtually anything can be deemed to be unlawful missionary work", comments Olga Sibiryova of SOVA Centre.

Individuals and religious organisations continue to be brought to court across Russia on administrative charges of unlawful "missionary activity" to punish a wide range of activities, including ordinary worship meetings for fellow believers. Forum 18 found 108 such prosecutions in the 18 months from July 2020 to December 2021.

More than 80 per cent of defendants whose cases reached a verdict are known to have been found guilty in 2020 and 2021, mostly with punishments:

- for Russian citizens, fines of at least several days' average wages;
- for foreign citizens, fines of two weeks' average Russian wages plus possible expulsion from Russia;
- and for organisations, of nearly four weeks' average wages.

For those on state pensions, the impact is much greater.

For a full list of the 37 known prosecutions between July 2020 and December 2020, see here (https://www.forum18.org/archive.php?article_id=2732). For a full list of the 71 known prosecutions in the calendar year 2021, see here (https://www.forum18.org/archive.php?article_id=2733).

The proportion of cases involving Muslim individuals or organisations remains high, continuing a trend Forum 18 first observed in 2019-2020. 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 – such as homes, workplaces, or unregistered prayer houses (see below).

The legislation on missionary activity is "formulated in such a way that virtually anything can be deemed to be unlawful missionary work", comments Olga Sibiryova of the Moscow-based SOVA Centre for Information and Analysis, which tracks such prosecutions (see below).

Forum 18 asked Prosecutor's Offices in several regions why they had brought charges of "unlawful missionary activity" against individuals who had conducted worship services on residential premises, freely permitted under the Religion Law, and where only people who were already members of the community were present. It received no responses (see below).

How many prosecutions there are in a region "depends in many respects on the enthusiasm of the security forces in the field", Sibiryova noted. "If there is a hypothetical 'comrade major' who simply does not like 'sectarians', or, more often, who wants to show progress is being made, then there will be many cases" (see below).

Court decisions indicate a still-small but growing effect on judicial practice of the Constitutional Court's 2018 clarification of what "missionary activity" means. Nevertheless, the continuing prosecution of individuals and religious organisations for a wide range of activities, including ordinary worship meetings for fellow believers, suggests that the Constitutional Court's ruling is having less impact on prosecutors and police (see below).

Prosecutions and convictions for unlawful "missionary activity" have both fallen compared to earlier years, Forum 18 has found in a study of known court records from July 2020 to December 2021.

According to available court records, 108 known prosecutions reached court between the start of July 2020 and the end of December 2021. Of these, 90 were brought under Administrative Code Article 5.26, Part 4 ("Russians conducting missionary activity") and 18 under Article 5.26, Part 5 ("Foreigners conducting missionary activity") (see below).

The 108 known prosecutions involved seven organisations and 101 individuals. The majority resulted in guilty verdicts and fines, with an initial conviction rate of 84.52 per cent (see below).

Three of the foreign citizens convicted under Part 5 were also ordered deported from Russia, but none was detained before departure (see below).

In terms of both case numbers and guilty verdicts, the 2020-21 period shows a decrease from 2019-20, when Forum 18 recorded 142 known prosecutions across the 18 months (https://www.forum18.org/archive.php?article_id=2593) and a conviction rate of 91 per cent.

Prosecutors are also known to have brought 23 cases against individuals under Russia's "anti-missionary" laws in 2021 in Russian-occupied Crimea. All 22 individuals (one twice) were found guilty and fined (https://www.forum18.org/archive.php?article_id=2720).

Such prosecutions have continued across Russia in 2022, as well as in Russian-occupied Crimea. In one case, a judge in Yaroslavl Region fined a Tajik citizen for leading Muslim prayers and ordered him deported (see below).

In its report on violations of religious freedom in 2020-21, the Moscow-based Rule of Law Institute noted that police and prosecutors "often see the presence of missionary activity in virtually any religious activity of citizens and religious associations". The report added: "Failure to understand the specifics of the activities of various religious associations often leads to erroneous legal qualification of offences, selective law enforcement and other problems."

Religious organisations also continue to face prosecution 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") for not showing the complete forms of their officially registered names on literature, online, and most frequently on buildings.

Several individuals have challenged prosecutions under Administrative Code Article 5.26 at the European Court of Human Rights in Strasbourg. However, Russia's expulsion from the Council of Europe has set a time limit on how long individuals can continue to lodge such challenges (see below).

Jehovah's Witnesses were also frequently charged under Article 5.26, Part 4 until the Supreme Court's decision to liquidate their registered organisations as "extremist" and ban their activities nationwide came into force in July 2017.

Nearly six hundred people have since faced criminal prosecution for "continuing the activities of a banned extremist organisation" (Criminal Code Article 282.2), and many have received six-figure fines, suspended sentences, or prison terms. The only Jehovah's Witness to be found not guilty under Article 282.2 by a first-instance court (https://www.forum18.org/archive.php?article_id=2698) - Dmitry Barmakin from Vladivostok - had his acquittal overturned on 8 April and will now undergo a re-trial (see forthcoming F18News article).

Broadly defined "missionary activity"

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 (https://www.forum18.org/archive.php?article_id=2246) proposed by United Russia Duma deputy Irina Yarovaya and Senator Viktor Ozerov. Protests against the changes were widespread.

A 2015 amendment to the Religion Law required all unregistered religious groups to notify the authorities (usually regional branches of the Justice Ministry) of their existence and activities (https://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. The written authorisation required by anyone conducting missionary activity on behalf of a religious group includes "written confirmation of receipt and registration of the notification of the [group's] creation and commencement of activities" – the lack of such notification is therefore often taken as evidence of unlawful missionary activity", even if no group in fact exists.

This is despite the 15 October 2018 Constitutional Court ruling that failure to submit notification of the existence of a religious group does not in isolation constitute an offence under Article 5.26, Part 4 (see below).

Lawyers and human rights defenders continue to criticise the anti-missionary amendments. Lawyer Stanislav Seleznyov (Net Freedoms Project and Agora human rights group) told Caucasian Knot news website on 7 June 2021 that he has "doubts about the expediency of the existence of Article 5.26 in the legal system of a 21st century state. If we look at the standards of the [European Court of Human Rights], they provide for the admissibility of reasonable proselytism without calls for violence against representatives of other movements and confessions, and also atheists. The participation of the authorities in resolving religious contradictions is clearly excessive."

The Rule of Law Institute, in its 2 February 2022 report on religious freedom violations in 2020-21, argues that the specifics of freedom of conscience are "poorly taken into account by the current norms of Russian legislation". It added that this opens up "considerable scope for excessive, unreasonable, and often frankly anti-constitutional restrictions on the rights and freedoms of citizens".

The Institute also noted "the low level of legal and religious culture" of police and prosecutors, other state and municipal employees, magistrates and federal judges, as well as a significant part of society, "which only exacerbates the problem of implementing legislation on freedom of religion".

Punishments: Fines, possible expulsion from Russia

Individuals and legal entities who violate any of the July 2016 restrictions and requirements are subject to punishment under Administrative Code Article 5.26 (https://www.forum18.org/archive.php?article_id=2246):

- 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"). 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.

A fine of 50,000 Roubles represented nearly four weeks' average wages in 2021 for those in work or nearly 13 weeks' average state retirement pension.

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.

Prosecution under Article 5.26, Part 4 may have further consequences for religious communities. As the Rule of Law Institute commented in its 2 February report, legal costs in such cases are "the money of the parishioners, which could be directed to social and charitable projects, the construction and creation of communities and prayer houses, [and] the development and strengthening of interfaith peace and harmony".

Instead, the report noted, believers and religious organisations "expend enormous efforts and funds on upholding the basic rights and freedoms enshrined in articles of the Constitution of the Russian Federation, federal laws, and international law". The report added that this "only undermines the confidence of some citizens" in police, prosecutors, courts and local officials.

Punishments: Threats to liquidate religious community

Although a single conviction alone is not grounds for the dissolution of a religious association, prosecutors or Justice Ministry branches may use it in conjunction with other legal violations – or may use repeat convictions – as evidence in requesting the liquidation of a registered religious organisation or the suspension of a religious group.

Forum 18 found three examples of this between July 2020 and December 2021:

- Barakyat Local Muslim Religious Organisation, ordered liquidated by Ulyanovsk Regional Court on 7 April 2021;
- Good News Mission Pentecostal Church, Izhevsk, ordered liquidated by the Supreme Court of the Udmurt Republic on 16 July 2020;
- Anapa Council of Churches Baptist Church (religious group), the activities of which were suspended by Anapa City Court on 4 February 2021.

Punishments: Pressure on religious leaders

Article 5.26, Part 4 may also be used, among other measures, as an instrument of pressure against individual clergy of whose opinions or activities state authorities disapprove.

Mufti Isa Baumatgireyevich Khamkhoyev (Mufti of Ingushetiya 2004-2019) has clashed several times with the authorities in the Republic of Ingushetiya in the North Caucasus over his refusal to allow Salafi mosques to join the Muftiate, and his support for Ingush protesters punished for their opposition in 2018 and 2019 to an exchange of land on the border between Ingushetiya and the Republic of Chechnya. Republic head Yunus-bek Yevkurov tried and failed to have the Muftiate liquidated in 2016-17; the Muftiate excommunicated Yevkurov from the Muslim community in 2018.

On 27 May 2021, a Judge fined Mufti Khamkhoyev 5,000 Roubles under Article 5.26, Part 4 for giving a sermon in a mosque and uploading a video of it to Instagram. Because the Muftiate (the Spiritual Centre of Muslims of the Republic of Ingushetiya) had been dissolved by court order in January 2020, prosecutors deemed this to be "missionary activity" on behalf of a liquidated organisation, which is prohibited by the Religion Law.

Khamkhoyev's lawyer Magomed-Bazir Ozdoyev said that charges of "missionary activity" should never have been used against his client. He is "a citizen of the Russian Federation preaching Islam .. in a mosque in the city of Sunzha," he told Caucasian Knot. "To say that he called people to [follow] another religion is simply unimaginable."

Separately, another Judge fined Mufti Khamkhoyev twice under Administrative Code Article 20.2, Part 1 ("Violation of the established procedure for organising or conducting a gathering, meeting, demonstration, procession or picket") – on 20 January 2021, for a demonstration demanding lesser sentences for the border protesters, and on 28 April 2021, for calling Muftiate elections without informing the authorities.

These prosecutions had "political overtones", Stanislav Kulov of the Rule of Law Institute commented to Caucasian Knot news website on 7 June 2021. Olga Sibiryova of the Moscow-based SOVA Centre added that "if this is a socially active mufti, if he supported protesters, and [the authorities] need to put pressure on him in some way .. from the law enforcement point of view, it would be a sin not to use such a convenient Article – for illegal missionary work".

Statistics: July 2020 to December 2021

In an analysis of available court records, Forum 18 found a total of 108 prosecutions brought to court under Administrative Code Article 5.26, Part 4 and Part 5 in the last six months of 2020 and the calendar year 2021.

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 the 7,000 across the country. Establishing accurate figures is also difficult if religious communities or their members do not themselves make prosecutions known.

The 108 prosecutions found by Forum 18 involved seven organisations and 101 individuals (a few charged more than once for different incidents). Twelve women and 86 men are known to have been brought to court, as well as three people whose gender is unknown.

Of the seven legal entities taken to court in this 18-month period, four were religious organisations (all Muslim), two cultural-educational centres (one Jewish, one Muslim), and one a manufacturing company which provided a Muslim prayer room for employees.

A number of cases appear to be based on surveillance by the FSB security service, which 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 the last six months of 2020, there were:

- 34 known prosecutions under Part 4 (3 of organisations, 31 of individuals);
- 3 known prosecutions under Part 5.

In 2021, there were:

- 56 known prosecutions under Part 4 (4 of organisations, 52 of individuals);
- 15 known prosecutions under Part 5.

Prosecutions and convictions down?

These figures of known prosecutions appear to represent a marked decrease over time. Forum 18 found in each calendar year:

- in 2018, 105 known prosecutions (90 under Part 4, 15 under Part 5);
- in 2019, 100 known prosecutions (85 under Part 4, 15 under Part 5);
- in 2020, 79 known prosecutions (72 under Part 4, 7 under Part 5);
- in 2021, 71 known prosecutions (56 under Part 4, 15 under Part 5).

The conviction rate based on available records has also fallen. Between July 2020 and December 2021, first-instance courts convicted a total of 71 defendants and acquitted 13, and sent a further 20 cases back to police or prosecutors. Three cases were dismissed because they reached court after the permitted time period for prosecutions had passed (judges must examine an administrative offence within three months), and one case was closed for unknown reasons.

This gives an initial conviction rate between July 2020 and December 2021 of 84.52 per cent for cases that reached a verdict, and 68.52 per cent overall. In the preceding 18 months, from January 2019 to June 2020, the conviction rate was 90.86 per cent for cases which reached a verdict (https://www.forum18.org/archive.php?article_id=2593); in 2018, this figure was 90 per cent (https://www.forum18.org/archive.php?article_id=2474); and in 2016-17, 82 per cent (https://www.forum18.org/archive.php?article_id=2305).

It is impossible to give complete statistics because of the number of magistrates' courts, the lack of a means of searching all their records simultaneously, and the fact that not all such records are kept up to date.

Russia's Supreme Court publishes figures for Administrative Code Article 5.26 as a whole, which do show a decrease in cases (for example, from 201 in the first half of 2020 to 153 in the first half of 2021). The figures for the various Parts are not disaggregated, however, and therefore include prosecutions under Part 3 (which was introduced as part of the 2016 "anti-missionary" amendment but specifically punishes failure to display a religious organisation's official full name), and Parts 1 and 2, (which respectively punish "Obstructing the exercise of the right to freedom of conscience and religion" and "Deliberate public desecration" of religious objects and symbols).

Possible reasons for the drop in prosecutions and convictions include the effects of the coronavirus pandemic and increasing knowledge among religious communities and their lawyers of how to avoid prosecution and put forward a defence in court. It also appears that more judges are abiding by the Constitutional Court's March 2018 statement/ruling which clarified the definition of missionary activity (see below).

Prosecutions continue in 2022

Police and prosecutors have continued to initiate cases under Article 5.26 Parts 4 and 5 in 2022:

- on 11 January 2022, Adler District Magistrate's Court (Krasnodar Region) fined Council of Churches Baptist presbyter Vladimir Kharchenko 5,000 Roubles for holding services in his community's prayer house and allegedly giving visitors religious literature;
- on 16 February 2022, a judge at Tutayev City Court (Yaroslavl Region) fined Tajik citizen Umedzhon Tozhev 30,000 Roubles and ordered him deported from Russia for leading Muslim prayers and giving a sermon "without being a leader, a member of a collegiate

body, [or] a clergyman of a religious organisation, and without a document issued by the governing body of a religious organisation and confirming [his] authority to carry out missionary activities on [its] behalf".

"We have simply adapted"

Council of Churches Baptists, who have often faced prosecution linked to their choice not to seek legal status for their religious communities, have noted fewer cases being brought against them, but "it is not known what has influenced this", their Intercession Department commented to Forum 18 on 4 March. It added that prosecutions have not affected their churches' ministry: "[Ministers] preach as they have always preached. Services are held as they have always been. On the contrary, during the pandemic, people have become more receptive to the word of God."

"For us the situation has improved," Society for Krishna Consciousness lawyer Mikhail Frolov told Forum 18 on 2 March. "It's clear from the figures. In the last year there have been seven cases and we have won all seven. We have simply adapted to law enforcement practice." Nevertheless, he added that "in general, such cases are very difficult to win".

Lawyer Sergey Chugunov of the Slavic Centre for Law and Justice also agrees that there are fewer cases, "but it's hard to pinpoint a single reason". The pandemic, the fact that "religious organisations are learning to live in these conditions", and the work of lawyers may all be contributing factors, he commented to Forum 18 on 10 March.

The Rule of Law Institute, however, believes that the pandemic has had little effect. "Despite the decrease in the total number of believers held accountable," it noted in its 2020-21 report on religious freedom violations, "unscrupulous law enforcement officers continue to use the amendments."

Olga Sibiryova of the SOVA Centre for Information and Analysis also noted that cases have been decreasing, referring to the Supreme Court's figures. "Pandemic-related restrictions may have had some effect on the intensity of prosecutions for 'unlawful' missionary activity, but they certainly were not the only reason for the decline in cases," she commented to Forum 18 on 7 March.

Sibiryova said they had noted a downward trend even before the pandemic. "The increased legal literacy of religious organisations has played an important role: believers have learned how to defend themselves, including in court, and how to take measures not to be prosecuted under this Article."

Sibiryova added that police and prosecutors seem to have found "more effective instruments of pressure on religious organisations", such as Criminal Code Article 239 ("Creation of a religious or public association whose activities involve violence against citizens or other harm to their health, as well as the leadership of such an association"). She says they have therefore begun to resort less frequently to Administrative Code Article 5.26.

Fines, expulsions from Russia

All those known to have been initially convicted under Administrative Code Article 5.26, Part 4 or Part 5 in 2020-2021 were fined. Most Russian citizens received fines of 5,000 Roubles (the minimum punishment available). There was one fine of 6,000 Roubles, three of 7,000 Roubles (one for a repeat offence within one year), two of 10,000 Roubles, one of 15,000 Roubles (details unknown), one of 20,000 Roubles, one of 25,000 Roubles (the last two of the same individual for a repeat offence within one year), and one of 35,000 Roubles.

According to Administrative Code Article 4.6, "a person who has been sentenced to an administrative penalty for committing an administrative offence is considered to have been subjected to this penalty from the date the decision on the imposition of an administrative penalty comes into force until the expiration of one year from the day the fulfilment of this decision ends".

Of the seven organisations charged under Part 4, three received fines of 50,000 Roubles and one of 100,000 Roubles (the formal minimum), while the other three cases were sent back and not resubmitted.

Of the 18 prosecutions of foreigners under Part 5, nine resulted in the minimum fine of 30,000 Roubles and four in acquittal, while the case against five others (all charged in connection with the same incident) was sent back and not resubmitted.

Three of these foreigners were also sentenced to deportation from Russia ("administrative expulsion", *administrativnoye 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 were not held in a migration detention centre, but permitted to make their own way out of the country ("monitored independent departure").

Prosecutions under Part 5 involved two Kyrgyz citizens, two Azerbaijanis, one Uzbek, one Ukrainian, one Belarusian, one US citizen, and one German. The nationalities of the other nine defendants are unknown. Twelve defendants were Muslim, three Baptist, one other Protestant, and two of unknown religious affiliation.

More successful appeals?

Defendants submitted initial appeals in 29 cases (mostly to district/city courts within ten days of the original verdict, in one case to a cassational court after the original ruling came into force). All but one of these appeals challenged convictions – one (by a Society for Krishna Consciousness adherent) was an attempt to prove the defendant's innocence after the statute of limitations had expired and his case was dismissed.

Of these initial appeals, 17 were unsuccessful and 10 were successful. The outcome of two appeals remains unknown. Three defendants challenged their unsuccessful appeal rulings in the cassational courts; two were unsuccessful, while the third had his case sent back for re-examination at the appeal level, where the original guilty verdict was again upheld.

Police and prosecutors lodged only four initial appeals, none of which was successful.

These figures appear to show an improved success rate for defence appeals. Between January 2019 and June 2020, out of 65 appeal, 50 were unsuccessful and only 13 successful. Out of the 10 successful appeals in 2020-21, however, in only four cases did judges conclude that no offence had been committed. Another guilty verdict was overturned because the judges decided that the circumstances of the offence were unproven. Four appeals were successful because the statute of limitations was found to have expired (the details of the tenth appeal are unknown).

Religious profile – Muslims remain most prosecuted group

There continues to be a wide range of religious backgrounds represented in cases brought under Administrative Code Article 5.26, Parts 4 and 5, but Muslims form a strong plurality. Muslims overtook Protestants in 2019-2020 as most frequently prosecuted community, and this trend has continued in 2020-2021.

Known prosecutions between July 2020 and December 2021 involved individuals or organisations belonging to the following religious communities:

Muslim – 45 (15 in the second half of 2020, 30 in 2021);

Baptist (Council of Churches, Baptist Union, US Southern Baptist, independent/unknown) – 15 (6 in 2020, 9 in 2021);

Other Protestant (including Pentecostals) – 12 (4 in 2020, 8 in 2021);

Society for Krishna Consciousness (Hare Krishna) – 9 (4 in 2020, 5 in 2021);

Seventh-day Adventist – 4 (0 in 2020, 4 in 2021);

Jewish – 2 (0 in 2020, 2 in 2021);

Hindu – 2 (0 in 2020, 2 in 2021);

Falun Gong – 1;

Russian Orthodox Autonomous Church – 1;

Christian of unknown denomination (including one possible Russian Orthodox-Moscow Patriarchate believer) – 5;

Unknown affiliation – 11

No affiliation (commercial entity) – 1

There were 62 known Muslim-related prosecutions in 2019-20 (https://www.forum18.org/archive.php?article_id=2593), up from only 14 in 2018. The reasons for the increase remain unclear.

Muslims appear to suffer particularly from the continued tendency of police and prosecutors to discern a "missionary" element even in ordinary gatherings for worship involving only fellow believers.

According to available court records, police and prosecutors initiated 27 of the 45 Muslim-related prosecutions in 2020-21 (18 under Part 4, nine under Part 5) simply for meeting to pray – either without documents authorising missionary activity or without having submitted notification of the existence of a religious group. These 27 cases involved meeting for prayer:

- in a mosque or prayer house (10 cases)

- on residential premises (9 cases);
- in a workplace (7 cases);
- or online (1 case).

Eight other Muslim-related prosecutions were based on teaching activity, and two on the distribution of literature (by the same person), while the origins of a further eight remain unknown.

Geographical spread

Thirty-seven of Russia's 83 federal subjects saw at least one prosecution under Article 5.26, Part 4 or 5 between July 2020 and December 2021, not counting Russian-annexed Crimea and Sevastopol.

The highest numbers of known prosecutions across the whole 18-month period were in: Krasnodar Region (9), Rostov Region (7), Dagestan Republic (7), Moscow City (7), Adygeya Republic (6), Chelyabinsk Region (6), and Kemerovo Region (6).

The Dagestan prosecutions were derived from two investigations, one involving five Muslims who gave lessons in Arabic grammar and the Koran, the other involving two Muslims charged with carrying out "missionary activity" unspecified in the court verdict. The high Moscow figure likewise comes from only two investigations.

Krasnodar, Rostov, and Chelyabinsk Regions also saw high numbers of prosecutions between January 2019 and June 2020.

How many prosecutions there are in a region "depends in many respects on the enthusiasm of the security forces in the field", Olga Sibiryova of the SOVA Centre commented to Forum 18 on 9 March. "If there is a hypothetical 'comrade major' who simply does not like 'sectarians', or, more often, who wants to show progress is being made, then there will be many cases."

Growing impact of March 2018 definition in courts ..

On 13 March 2018, the Constitutional Court issued an interpretation of some of the legal norms in the "anti-missionary" legislation (https://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".

Distributing information – for example, about meetings for worship, ceremonies, or events – therefore "falls under the definition of missionary activity as such, only if it contains the said defining feature".

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".

This now appears to be having a growing impact on prosecutions under Article 5.26, Parts 4 and 5.

Forum 18 found 20 explicit mentions of it in written verdicts (first instance and appeal) between July 2020 and December 2021, as well as six verdicts in which its principles were clearly taken into account (out of 81 prosecutions for which case details were available).

In seven of these cases, judges still found the defendants guilty, but ten individuals were acquitted in first-instance courts and three more on appeal. Judges also sent six cases back to police or prosecutors on the same grounds.

On 7 August 2020, Bezhitsky District Court in Bryansk acquitted Firuz Ilkhomkhudzhayevich Aluyev, a Muslim student of unknown citizenship, whom police had charged with performing Friday prayers with five fellow students in their university hostel, "not having the proper education and not belonging to a religious organisation".

Referring to the March 2018 Constitutional Court ruling, the judge noted that police had presented no evidence that Aluyev had disseminated information about his beliefs among people who were not adherents of those beliefs, and that "In itself, the collective reading of prayers and the conducting of religious rites without the presence of the defining feature of missionary activity does not constitute an offence" under Article 5.26, Part 5.

Uzlovaya City Court (Tula Region) acquitted two Seventh-day Adventists - Zhanna Albertovna Kuzina and Sergey Vladimirovich Rudnev – on appeal on 1 April 2021, citing the March 2018 Constitutional Court definition. Kuzina and Rudnev had received 5,000

Rouble fines on 21 January 2021 at Uzlovaya District Magistrate's Court No. 43 for leading religious worship in a house belonging to their church, "without documents confirming the right to hold this religious event", despite the defence submitting statements from the congregation that they were all members of the church, and documents showing the church's ownership of the building.

The appeal judge accepted the statement of Oleg Goncharov – a Seventh-day Adventist Church representative and Secretary General of the Russian Association for the Defence of Religious Freedom – that video footage of the event showed that it was "an ordinary service for believers in their own prayer house, and nobody was there who did not belong to the church community".

The appeal ruling "restored legality and justice", Goncharov said in remarks for the Moscow-based Slavic Centre for Law and Justice on 19 April 2021. "This legal decision is another confirmation that the services that believers hold on their own premises and in accordance with their beliefs cannot be considered missionary activity, and the people conducting them are not required to provide any permits."

Goncharov added that another important result of this case "is the strengthening of confidence in the Russian judicial system, which, with the proper work of defence lawyers, allows believers to defend their legal rights to freedom of religion in court and restore justice that was violated solely because of low qualifications in the field of religious knowledge among police officers and a specific magistrate."

Between January 2019 and June 2020, Forum 18 found 13 verdicts in which the Constitutional Court definition was mentioned or acknowledged (four convictions, eight acquittals, one case sent back), out of 121 prosecutions for which case details were available). In 2018, this ruling was acknowledged in seven cases.

The Constitutional Court has issued two further statements on Article 5.26, Part 4:

– on 15 October 2018, that failure to submit notification of the existence of a religious group does not in isolation constitute an offence under Part 4, and courts should take into account all the circumstances to ascertain whether the Constitutional Court's definition of the "defining feature" of missionary activity has been met (it is difficult to ascertain whether this is having any effect on court decisions separately from the Constitutional Court's March 2018 ruling);

– and on 11 February 2021, that missionary activity may be conducted outside the explicitly permitted locations listed in Religion Law Article 24.1 (which include places of worship (v kultovykh pomeshchaniyakh), other buildings and land to which religious organisations have property rights, cemeteries, and pilgrimage sites), as long as it complies with all the requirements of Religion Law Article 24.2.

.. but not among police or prosecutors?

Despite the Constitutional Court's attempts to clarify the law and the ways in which it should be applied, police and prosecutors continue to open cases against believers and their communities for a wide range of activities.

These include, among the cases found by Forum 18:

– a Baptist church picnic in the Republic of Buryatiya, at which the pastors read and discussed the Bible;

– an invitation to a religious event in Oryol posted on the VKontakte social network by an adherent of the Society for Krishna Consciousness, despite the fact that he only made the post inside a group for members of the community;

– the handing out of religious literature by a Christian who was preparing free meals for the needy in Voronezh;

– the holding of worship services "to which any person could come" and the maintenance of a library "from which any person could borrow a book", by a Baptist religious group in Orenburg Region;

– a display of Seventh-day Adventist books by a publishing company representative at an airport in the Altay Republic.

The legislation on missionary activity is "formulated in such a way that virtually anything can be deemed to be unlawful missionary work", Olga Sibiryova of the SOVA Centre said in comments to Caucasian Knot news website on 7 June 2021. She added that police and prosecutors have "a lot of scope for abuses".

"It is very difficult to distinguish between the concepts of 'dissemination of religious beliefs', which is guaranteed to us by Article 28 of the Constitution and [the Religion Law], and 'missionary activity', lawyer Stanislav Kulov commented, also to Caucasian Knot. "Missionary activity is, in fact, the dissemination of religious beliefs .. the Constitution gives us the right to do this."

The most common ground for prosecution (45 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 (many 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".

The next most common reason (20 cases) is the failure to submit notification to a regional branch of the Justice Ministry of the existence of a religious group.

Neklinovsky District Magistrate's Court No. 2 (Rostov Region) fined Aleksandr Viktorovich Smitchenko (Archimandrite Artyomy of the Russian Orthodox Autonomous Church – not part of or recognised by the Moscow Patriarchate) 5,000 Roubles on 16 December 2020 for holding services in his own church, without having submitted notification of the creation of a religious group and consequently not possessing authorisation from a religious group to carry out missionary activity.

At these services, according to the written court decision, "the participants sang religious hymns, read the Bible, [and] prayed", and Smitchenko "[disseminated] his beliefs among persons who are not participants (members) of the religious association, in order to involve them as participants (members, followers) of the religious association – the Sovetka village podvorye of the Suzdal Diocese of the Russian Orthodox Autonomous Church". A member of the public allegedly reported this to the prosecutor's office.

Forum 18 wrote to Neklinovsky District Prosecutor's Office on 4 March 2022, asking why Smitchenko had been charged with unlawful missionary activity for only holding worship services at which only fellow believers had been present. Forum 18 received no reply by 11 April.

Among the cases found by Forum 18, other reasons given in verdicts include: missionary activity on residential property – 13 cases; not being a member of a religious organisation – 6 cases; no right to use the premises (e.g. by ownership, lease, agreement of free use) – 2 cases; missionary activity deemed harmful to citizens' health and morality – one case; missionary activity on another religious organisation's property – one case (although both organisations were Muslim and their relationship is unclear); missionary activity on behalf of a liquidated legal entity – one case; missionary activity among minors without parental consent – one case.

In 36 cases, it was impossible to ascertain what reason police or prosecutors had for initiating the prosecution, usually because no written court decision was available, but also because 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.

The Religion Law states that missionary activity may be freely carried out in places of worship (v kultovykh pomeshcheniyakh), but is prohibited on residential premises "except in cases provided for by Article 16 Part 2 [of the Religion Law], according to which "Religious services and other religious rites and ceremonies" may freely take place on residential premises.

Police and prosecutors often a) interpret simply meeting for worship as "missionary activity", and b) do not treat residential or commercial premises as "places of worship" (even if communities or individuals have formal permission to use them from their owners).

(Because of the difficulties some religious communities encounter in building, buying, or renting their own spaces for worship, they often have to meet on premises which are technically designated residential or commercial, which can also lead to prosecution under Administrative Code Article 8.8, Part 1 (https://www.forum18.org/archive.php?article_id=2528) ("The use of a land plot not for its intended purpose in accordance with its belonging to a particular land category and/or authorised use").)

On 20 May 2021, Uglich District Magistrate's Court No. 3 fined the Local Religious Organisation of Muslims of Uglich and Uglich District (Yaroslavl Region) 50,000 Roubles. According to the written court decision, seen by Forum 18, a prosecutor's office inspection had found that the community had carried out "religious activity" on residential premises (despite the fact that worship on residential premises is explicitly permitted by the Religion Law).

The community chairman argued that this was a service of Friday prayers, attended only by Muslims, conducted at his home because there was no space for Islamic worship elsewhere in the town. Nevertheless, the judge concluded that the prayer service constituted "missionary activity" because people other than the founder members of the religious organisation were present.

Forum 18 wrote to Uglich Interdistrict Prosecutor's Office on 4 March 2022 to ask: a) why the community had been taken to court when it had only held a worship service on residential premises, freely permitted under the Religion Law, and b) why the community had been accused of unlawful missionary activity when only Muslims had been present. Forum 18 received no reply by 11 April.

Similarly, Council of Churches Baptist pastor Dmitry Aleksandrovich Berdnikov was charged with unlawful missionary activity for

holding services in a church member's home without authorisation from a religious group and without submitting notification of the existence of a religious group. He received a 5,000 Rouble fine on 20 November 2020 at Pochep District Magistrate's Court No. 48 (Bryansk Region), which he challenged unsuccessfully at Pochep District Court on 18 January 2021.

Forum 18 asked Pochep District Prosecutor's Office in writing on 4 March 2022 why Berdnikov had been charged with unlawful missionary activity when he had only conducted worship services on residential premises, freely permitted under the Religion Law, with only fellow Baptists present. Forum 18 received no reply by 11 April.

Time running out on European Court of Human Rights applications

Several individuals have lodged challenges to prosecutions under Administrative Code Article 5.26 to the European Court of Human Rights in Strasbourg.

Among those to have lodged such a case is Indian Protestant pastor Victor-Immanuel Mani. Married to a Russian and with a Russian-born child, he was the first foreigner to be ordered deported (https://www.forum18.org/archive.php?article_id=2261) under Administrative Code Article 5.26, Part 5 ("Foreigners conducting missionary activity"). Russia's Supreme Court overturned the deportation order in November 2017 but left his fine unchanged.

Mani, his wife and child lodged a case to the ECtHR in July 2017. The ECtHR asked Russia questions about the case in January 2018 (https://www.forum18.org/archive.php?article_id=2377). The ECtHR has not yet issued a judgment in the case.

However, Russian citizens and organisations now have only limited time to continue to seek justice for human rights violations under this mechanism.

The Council of Europe suspended Russia's participation in the organisation on 25 February 2022, the day after its renewed invasion of Ukraine. Russia then said it was leaving the Council of Europe, indicating also that it was renouncing its adherence to the European Convention on Human Rights and Fundamental Freedoms. Its departure was formalised on 16 March.

On 22 March, the ECtHR – which considers cases of alleged violations of the European Convention - declared that Russia will formally leave the jurisdiction of the European Convention on 16 September (https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf).

A spokesperson for the ECtHR explained to Forum 18 on 11 April that the Court will continue to examine cases lodged against Russia before 16 September 2022. The Court will also examine cases lodged within four months of 16 September 2022, provided domestic legal remedies have been exhausted before 16 September 2022.

Asked how any judgments against Russia could be enforced, the ECtHR spokesperson responded: "Questions of enforcement fall to the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights (<https://www.coe.int/en/web/execution/home>) rather than to the Court."

[UPDATE 10 May 2022: On 10 May the Department published information that applicants and other interested parties concerned about the way Russia is implementing ECtHR judgments "may continue to provide information to the Committee of Ministers on the progress of the execution of the judgments, including the payment of just satisfaction" (<https://www.coe.int/en/web/execution/-/information-on-pending-cases-concerning-the-russian-federation>).] (END)

Full reports on freedom of thought, conscience and belief in Russia (<https://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 (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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