

Emily B. Baran and Zoe Knox, 'The 2002 Russian Anti-Extremism Law: An Introduction'

The Russian state's commitment to fighting "extremism" is relatively new. In the late 1990s and early 2000s, terrorist attacks shook both the Russian heartland and the United States. In response, Russian President Vladimir Putin argued that new legislation was necessary to protect citizens from the threat of global terrorism, and particularly from the danger posed by religious extremists.¹ Geraldine Fagan has argued that until this moment, "ekstremizm was unfamiliar to the Russian lexicon." The concept was so new that even as the Kremlin urged the Russian Duma to craft new legislation to combat it, many officials still were not sure exactly what extremism meant, or how to define it.²

Despite this fact, lawmakers in summer 2002 passed the law "On Combatting Extremist Activity" ("*O protivodeistvii ekstremizma*").³ Article 1 of the law provided a long list of activities that it classified as extremism. Some items were relatively unsurprising, such as public advocacy of terrorism and the forcible overthrow of the government. Other "extremist" activities, however, were far broader in scope, such as the promotion of social discord on the basis of religion, ethnicity, or race, and the promotion of one's superiority on the basis of one of these categories. Even the terrorism charge did not require actual violence and most "extremist" activities on the list were framed in terms of public statements or views, rather than concrete actions taken in response to these beliefs. The law also had two additional components of major importance. First, it allowed for the criminalization of any

¹ The Moscow apartment bombings in 1999 have since been the subject of much scrutiny, including allegations that the attacks were orchestrated by Putin and the Federal Security Service (FSB). For a thorough study of the attacks and this theory, see John B. Dunlop, *The Moscow Bombings of September 1999: Examinations of Russian Terrorist Attacks at the Onset of Vladimir Putin's Rule*, 2nd ed. (New York: Columbia University Press, 2014).

² Fagan cites the September 11, 2001 attacks as a critical turning point in Kremlin terminology on religious minorities, and the introduction of "extremism" as a term with legal weight. She recounts how when a Ministry of Justice official was asked at a spring 2002 conference to offer a Russian equivalent of the term, other attendees shouted out suggestions, including the Russian terms for violence (*nasilie*) and extremity (*krainost*). Geraldine Fagan, *Believing in Russia: Religious Policy after Communism* (Abingdon, UK: Routledge, 2013), 155.

³ The full text of the law, "O protivodeistvii ekstremizma," is available online through *Rossiiskaia gazeta*, July 30, 2002 <<https://rg.ru/2002/07/30/extremizm-dok.html>> (last accessed December 7, 2018).

organization found by the government to be in violation of this law. Second, it barred the publication and distribution of materials that violated the law. In the decade after the law's passage, thousands of items found their way onto this list, making it difficult for ordinary citizens to even keep track of what was now considered extremism. Overall, the law gave government officials significant power to curtail public expression of a wide range of views under the umbrella term of extremism.

Since its initial passage, the law and related administrative and criminal sanctions have undergone multiple revisions. Most critically in 2016, the so-called Yarovaya package of legislation dramatically expanded anti-extremist enforcement and created stiffer penalties for violators. Moreover, the state made clear its intent to enforce the law, targeting religious minorities but also social media users whose online activity offended the Russian Orthodox Church, criticized government policy, or was simply in bad taste. Convictions of young people for relatively minor actions, including a suspended prison sentence for a blogger who posted a video of himself playing Pokemon Go in an Orthodox Church on YouTube, have garnered significant domestic and international criticism.⁴ The Moscow-based non-profit organization SOVA Center for Information and Analysis has made the details of such cases readily available online, compiling reports of prosecutions for extremist activity on its website.⁵ To address such criticism, in October 2018 President Putin announced reforms to the law intended to lower the penalties for first-time offenders by making such crimes an administrative rather than criminal offense.⁶ The impact of this latest round of revisions remains to be seen.

Russian courts have applied the anti-extremism law even more broadly than critics feared. In 2009, Alexander Verkhovsky, director of the SOVA Center, argued that the vagueness of the

⁴ Ol'ga Kuraeva, Anastasiia Bulatova, Anna Tokareva, "Blogera osudili za lovliu pokemonov v tserkvi," *Kommersant*, May 11, 2017.

⁵ The SOVA Center website can be accessed at <https://www.sova-center.ru> (last accessed December 7, 2018).

⁶ On the October 2018 reforms, see Kirill Bulanov, Anastasiia Kornia, and Ekaterina Bryzgalova, "Putin vnes v Gosdumu zakonoproekt o smiagchenii stat'i ob ekstremizme," *Vedomosti*, October 3, 2018 <<https://www.vedomosti.ru/politics/articles/2018/10/03/782645-putin-o-dekriminalizatsii>> (last accessed December 7, 2018). For a copy of the proposed changes, see "Proekt federal'nogo zakona 'O vnesenii izmeneniia v stat'iu 282 Ugolovnogo kodeksa Rossiiskoi Federatsii,'" *Rossiiskaia gazeta*, October 3, 2018, <<https://rg.ru/2018/10/03/proekt-kodeks-site-dok.html>> (last accessed 7 December 2018).

law's terminology and provisions would allow the government to apply it to a wide range of groups.⁷ Verkhovsky's concerns proved prescient, as the articles in this special issue attest. The Putin regime's creeping authoritarianism has been partly characterized by a rise in the application of the law to minority communities that Russian political conservatives want confined to the margins of society and, ultimately, expelled from the country altogether. This has been more noticeable since the anti-government protests of 2011-12, when the targets of the anti-extremism law noticeably shifted beyond Islamic extremists to include a broader range of organizations and movements, religious and secular. In some cases, the targeted group might be widely regarded in western countries as controversial or even marginal but rarely, if ever, have they been outlawed as extremist. To take two very different examples, Russian courts have labelled both the Administrative Center of Jehovah's Witnesses and nineteenth-century Jewish literature "extremist", as Zoe Knox and Ellie Schainker explain in their respective articles on these cases.⁸ The application of the anti-extremism law has extended to publications as varied as works by Said Nursi, a Turkish Sunni Muslim theologian, and by L. Ron Hubbard, the founder of the Church of Scientology. Banned works appear on the Federal List of Extremist Materials (*Federal'nyi spisok ekstremistskikh materialov*) maintained by the Ministry of Justice. In addition to printed matter, the list includes audio-visual material and web sites, in particular material produced by nationalist groups on the Russian social media and networking site *Vkontakte* and in YouTube videos.⁹

There are striking continuities in the Russian state's treatment of certain minority groups from the Soviet to the post-Soviet periods, ostensibly radically different eras in Russia's modern history. The title of this special issue – "Understanding Russia's Anti-Extremism Law: Historical Contexts and Contemporary Consequences" - makes the connection between past and present clear. In her article, Emily B. Baran examines Soviet officials' use of the term "extremism" (*ekstremizm*) in the late Soviet period and argues that although it was not

⁷ Alexander Verkhovsky, "Russian Approaches to Radicalism and 'Extremism' as Applied to Nationalism and Religion" in *Russia and Islam: State, Society and Radicalism*, eds .R. Dannreuther and L. March (London: Routledge, 2009), 26.

⁸ Ellie R. Schainker, "Banning Jewish 'Extremist' Literature in Russia: Conversion and Toleration in Historical Perspective"; Zoe Knox, "Jehovah's Witnesses as Extremists: The Russian State, Religious Pluralism, and Human Rights", both in this special issue.

⁹ The full list is available online through the Ministry of Justice's official website: "*Federal'nyi spisok ekstremistskikh materialov*," at <http://minjust.ru/ru/extremist-materials>, last accessed 24 July 2018.

in common usage, it was used to marginalize evangelical faiths.¹⁰ This continuity is part of the broader treatment of groups cast as anti-social and anti-state which has endured after the dissolution of the USSR in 1991. Jehovah's Witnesses, for instance, were the anti-Soviet "sectarian" *par excellence* from the Khrushchev-era antireligious campaign until the late Gorbachev period.¹¹ The discourse surrounding the 2017 federal ban suggests Witnesses are held in a similar regard – as dangerous, pernicious, and seditious – in today's Russia. In her article, Schainker argues that the ban on *Nasil'no kreshchennye (Forcibly Baptized)*, a book first published in 1896 by Marcus Lehmann, a German Jewish rabbi, is not primarily the result of twenty-first century conceptions of extremism and intolerance, but rather the mores of late Imperial Russia, when Russian Orthodoxy was the state religion and thus privileged over other faiths in the empire.¹² The late Imperial regime sought to shield Christianity from criticisms like those leveled by Lehmann, which centred on the historic persecution of Europe's Jews.¹³ There are striking parallels between the scapegoating of religious minority groups during the tumultuous final decades of Imperial Russia and twenty-first century Russia. In both cases, the state insisted on the politicization of religious affiliation and identity.

The question of how religion became part of extremist discourse in Russia is an urgent one. Of the five articles in this special issue, four focus on religion. This is partly due to the rising profile of religious extremism worldwide over the last twenty years and partly due to unique circumstances in post-Soviet Russia. Particularly in the past decade, faith communities of western origin have come under suspicion and scrutiny with the resurgence of anti-western

¹⁰ Emily B. Baran, "From Sectarians to Extremists: The Language of Marginalization in Soviet and Post-Soviet Society", in this special issue.

¹¹ Emily B. Baran, *Dissent on the Margins: How Soviet Jehovah's Witnesses Defied Communism and Lived to Preach About It* (New York: Oxford University Press, 2014); Zoe Knox, "Preaching the Kingdom Message: The Jehovah's Witnesses and Soviet Secularization" in *State Secularism and Lived Religion in Soviet Russia and Ukraine*, Catherine Wanner, ed. (Woodrow Wilson Center Press with Oxford University Press, 2012), 244-71.

¹² Ellie R. Schainker, "On Faith and Fanaticism: Converts from Judaism and the Limits of Toleration in the Late Russian Empire", *Kritika: Explorations in Russian and Eurasian History* 17, n. 4 (Fall 2016): 753-80.

¹³ For figures on religious affiliation based on the 1897 census, see V. M. Kabuzan, *Rasprostranenie pravoslaviia i drugikh konfessii v Rossii v XVIII- nachale XX v. (1719-1917 gg.)* (RAN: Moscow, 2008), 247-248.

sentiment and strained diplomatic relations between Russia and the west.¹⁴ The issue of why religious minorities with roots in the west have become a prime target is vital to understanding how courts have interpreted not only the law's provisions, but the broader religious landscape. A core component of Russian nationalism is Russian Orthodoxy. Although the Russian Orthodox Church is not a state church, the Moscow Patriarchate, the administrative body of the Church, has a prominent profile and privileged position in post-Soviet Russia, a departure from its Soviet-era status as an institution tolerated by the communist regime and invoked by the state at opportune points, but severely constrained in its outreach and activities. Representatives of the Patriarchate have been outspoken opponents of the right of western Christians to unfettered evangelism on Russian soil. The anti-extremism law has offered the legal means to marginalize nontraditional faiths and to delegitimize western religious organizations. A 2018 report on the application of the Russian anti-extremism law published by a US federal government commission was aptly entitled *Inventing Extremists*.¹⁵

The majority of Russian court rulings on extremism relate to the regulation of the online world. Just as the global networks of extremists pose problems for modern governments who seek to monitor and control them, so do new and emergent technologies. The communications revolution engendered by the Internet necessitated a radical shift in the approach taken by governments to countering extremism on a domestic level and at the same time brought together like-minded activists at geographical remove through social media and forums like chat rooms, video sharing sites, and the dark web. Maria Kravchenko's analysis of how the anti-extremism law has been used to censor the Internet highlights the fresh and evolving challenges facing two distinct groups: those who seek to freely exchange their views and organise to effect change, and those concerned with the civil and political rights of all

¹⁴ The poisoning of Russian-spy-turned-M16-informant Sergei Skripal and his daughter in the English tourist town of Salisbury in March 2018 with the Soviet-era nerve agent Novichok, the death of a homeless woman who chanced upon a bottle of the poison and consumed it, revelations of the role of Russian agents in the attack, and the resultant strain on relations between the Kremlin and Westminster certainly seem like episodes from the height of the Cold War.

¹⁵ Maria Kravchenko, *Inventing Extremists: The Impact of Russian Anti-Extremism Policies on Freedom of Religion or Belief* (The United States Commission on International Religious Freedom: Washington, D.C., 2018), available at <https://www.uscirf.gov/sites/default/files/Inventing%20Extremists.pdf>, last accessed December 19, 2018.

citizens. Kravchenko highlights the significant efforts of the Russian government to deal with complex and relatively recent phenomena like incitement to violence on the Internet.¹⁶ The SOVA Center is deeply concerned with the way the current censorship regime limits free expression in (and access to) the online world.

The Russian judicial system has increasingly been used to reduce the scope for the expression of dissenting views and to marginalize oppositional sentiment. In a memorable turn of phrase, Marat Shterin and Dmitry Dubrovsky refer to the “political use of the legal system for managing dissent”.¹⁷ By “managing”, they mean controlling, monitoring, and in some cases, liquidating. Shterin and Dubrovsky examine how “experts” have been called upon to give support to campaigns against minority religions. The tension between the increasingly systematic use of the Russian legal system to silence dissenting voices on the one hand and Russia’s obligations under the European Convention on Human Rights on the other has led to a deluge of cases before the European Court of Human Rights in Strasbourg from Russian citizens appealing Russian court decisions to what has become the “...the de facto Supreme Court of human rights in Europe.”¹⁸ This has highlighted the gulf between international human rights norms and the Russian rights regime and has serious implications for Russia’s membership in the Council of Europe, as Knox argues in her article in this special issue.

The potential of the 2002 law “On Combatting Extremist Activity” to impede democracy, human rights, and the rule of law in Russia was widely recognized well before its application broadened under Putin’s third presidency.¹⁹ The law has led to some unexpected, even

¹⁶ Maria Kravchenko, “Russian Anti-Extremism Legislation and Internet Censorship”, in this special issue.

¹⁷ Marat Shterin and Dmitry Dubrovsky, “Academic Expertise and Anti-Extremism Litigation in Russia: Focusing on Minority Religions”, in this special issue.

¹⁸ Mikael Rask Madsen, “The challenging authority of the European Court of Human Rights: from Cold War legal diplomacy to the Brighton Declaration and backlash,” *Law and Contemporary Problems* 79, no. 1 (Winter 2016), 141.

¹⁹ See, for example, European Commission For Democracy Through Law (Venice Commission), *Opinion On The Federal Law On Combating Extremist Activity Of The Russian Federation*, Opinion no. 660 / 2011, CDL-AD(2012)016, 20 June 2012, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e) , last accessed July 24, 2018.

bizarre, scenarios. For example, since the ban on the Administrative Center of Jehovah's Witnesses in 2017, members of this community are no longer recognized as a religious group in Russia, and their right to claim conscientious objection has been suspended. Russian authorities are now in the position of trying to force "extremist" Jehovah's Witnesses to serve in the regular military because the option to undertake alternative civilian service is closed to them. Forum 18 reported that a Witness in the Chuvash Republic was forced to work with nuclear weapons when he was denied the right to alternative service.²⁰ In recent years, the application of the law has been in fundamental conflict with the way Article 9 of the European Convention on Human Rights has been protected in case law emanating from the Strasbourg court. The application of the anti-extremism law is not an issue confined to the domestic realm but influences Russia's international standing.

The five articles in this special issue on Russia's anti-extremism law are essential to identifying and interpreting the intersections between human rights, civil liberties and religious minority rights in Russia today. The articles, written by scholars based in Russia, the United Kingdom and the United States, all conclude that the anti-extremism law poses a profound challenge to basic rights. The authors approach the law from different angles, ranging from the evolving rhetoric of extremism in Russia and the law's application to particular religious minority cases to the censorship of the online world and the politicized and partisan nature of the Russian legal system. In so doing, they draw out the contradictions, inconsistencies, and arbitrariness in the anti-extremism law's application, and some unexpected continuities with earlier historical periods.

²⁰ Victoria Arnold, "Russia: Property sell-offs, alternative service denials follow Jehovah's Witness ban", 19 December 2017, *Forum 18 News Service*, at http://www.forum18.org/archive.php?article_id=2344, last accessed December 24, 2017.