



Testimony before the Commission on Security and Cooperation in Europe

U.S. HELSINKI COMMISSION HEARING TO EXAMINE RUSSIA'S APPROACH TO COUNTERTERRORISM

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Mr. Hudson, thank you very much for inviting me to testify before the subcommittee on this important issue of Russia's approach to counterterrorism and counterextremism.

My remarks today focus on Russia's counterextremism and counterterrorism policies and practices. I will talk about how a number of laws designed to counter violent extremism and terrorism use vague and expansive definitions that not only run counter to human rights norms but facilitate serious human rights violations.

I will briefly outline these laws. It is important to note that while Russian authorities have used these laws and practices for legitimate purposes, they have also used them and other measures to target individuals and organizations who pose no actual threat and are simply viewed as politically inconvenient for the authorities. I will provide some examples of how authorities have selectively enforced anti-extremism measures against nonviolent individuals who hold critical views of the government, conflating criticism of the government with violent extremism.

An important question is why Russian authorities have adopted and selectively enforced these elastic norms. There are several answers. One is that following the collapse of the Soviet Union, with the period of "color revolutions" and public uprisings elsewhere in the world, they wanted to have wide discretion to define threats broadly. Another is that once these legal tools came onto the books, authorities at the federal level and local level could not resist using them, along with other tools, to deal with critics and the like.

The main impact of these restrictive laws and their selective enforcement is that many Russians are increasingly unsure about the threshold of acceptable speech, and at the same time are increasingly anxious about the consequences of speaking up, especially online and on mobile applications.

Some of the misuses of Russia's counterextremism laws have made headlines because they are patently ridiculous. It is important to resist any temptation to caricature the situation. These laws are complex. Russia's law enforcement and security agencies have used them to fight real acts of armed extremism, and to crack down on violent hate crimes, including those committed by Russian nationalists. I strongly recommend that the commission study the data that SOVA Center for Information and Analysis, an independent Russian think, regularly gathers and publishes on this.

My recommendation is for US policymakers to be aware of Russia's overly broad definitions of terrorism and extremism, the abuses stemming from their application, and the ripple effect these laws have in countries in the region. Any potential collaboration that the US enters into with Russia on counterextremism and counterterrorism should not replicate or unwittingly support or promote the abusive aspects of the laws and practices I will describe. In this context it is important to note that Russia's laws on these and similar issues have served as templates for laws in other countries that are participants in the Organization for Security and Co-operation in Europe (OSCE). Kyrgyzstan's 2005 counterextremism law, for example, is largely modeled on Russia's, although it is even more severe. Counterextremism laws in Kazakhstan, Tajikistan, and Belarus, are also very similar, and in some cases are tougher. In some cases, these countries' laws are modeled on Russia's laws but there may be some practices that migrated from Central Asia to Russia.

Violations of human rights in the name of security are not only unlawful. They can also be counterproductive by alienating local populations and making them more vulnerable to overtures from armed extremist groups.

I. Evolution of Russia's Counterextremism Laws and Practices

No serious discussion about the problematic aspects of Russian counterextremism and counterterrorism policies can take place without reference to the work of Alexander Verkhovsky and his colleagues at SOVA, an independent Russian think tank. I owe a debt of gratitude to him for his insights for today's testimony. I strongly encourage the commission to invite Mr. Verkhovsky for further discussions on this issue.

Russia adopted its counter-extremism law in 2002. Before that, Russia had laws that criminalized hate speech and actions aimed at overthrowing the government.¹ The counter-extremism law the Duma adopted in 2002 was a framework law. In Alexander Verkhovsky's words "it the framework from which legal efforts to regulate speech and hate crimes draw." So when a number of further laws were eventually adopted that restrict speech and associations, they were adopted in the framework of this law, or were justified with reference to the need to fight extremism and terrorism.

The 2002 law's definition of extremism consisted of a long list of acts, ranging from violent overthrow of the government and committing terrorist violence, to sowing social, racial, religious, or ethnic "discord", insulting national dignity or promoting the superiority of a particular race, religion, language and the like. The law banned any public calls promoting these actions, and created the notion in law of "extremist materials" and extremist organizations, banned extremist organizations, public communications, mass distribution of "extremist" materials, and possession of such materials if the aim was to distribute them widely.

It set out a system of warnings that law enforcement officials were to make to individuals, organizations, and media outlets who, in their opinion, displayed aspects of "extremism."

In line with the new law, in 2002, parliament amended article 280 of the criminal code, which had banned overthrow of the government, to "public incitement to extremist activities," punishable by fines and prison terms. The same round of amendments introduced a new offense of "carrying out the activities of a banned extremist organization."

From 2002 through 2007, there were several amendments to the criminal code regarding "extremism."

One of the key moments for changes in counterextremism laws and measures came in 2007, with amendments to broaden the criminal code's definition of hate crimes to include political or ideological hatred or animosity or hatred based on membership of a particular social group. The amendments also added hate motive as an aggravating circumstance to approximately 10 offenses set out in the criminal code. Alexander Verkhovsky has commented that this made possible large-scale undertakings to counter violent hate crimes.

More significantly, 2007 saw the creation of the Center E, a special division of the police mandated to conduct surveillance and detective work on groups and individuals that might be "extremist."

¹Also, in 1996 hate motivation was added as an aggravating circumstance to murder.

A 2018 amendment to 282 partially softened the law, making a first “extremism” offense within a 12-month period, an administrative, rather than criminal, offense.

Russia’s counterextremism laws have come under scrutiny and criticism by intergovernmental human rights bodies of which Russia is a member. For example, the Council of Europe’s [Venice Commission reviewed Russia’s anti-extremism legislation](#) and stated that in its view, “the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the “basic notions” defined by the Law - such as the definition of “extremism”, “extremist actions”, “extremist organisations” or “extremist materials” - are concerned, gives too wide discretion in its interpretation and application, thus leading to arbitrariness.” It also found that “the activities defined by the Law as extremist... do not all contain an element of violence and are not all defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organisation so as to avoid the application of such measures.” The Venice Commission also concluded that “the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality.” The United Nations Human Rights Committee in 2011 stated that “such offences as... ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.”

II. Post- 2012: Counter-Extremism Grounds to Justify New, Repressive Laws

As members of this commission are aware, starting in 2012, the Russian government began a massive crackdown on civil society. The crackdown followed the 2011-2012 mass protests and Vladimir Putin’s return to the presidency in May 2012. The Kremlin rammed through parliament a raft of laws that severely curtailed freedom of assembly, introduced massive restrictions on the work of nongovernmental organizations (NGOs), and on free speech. More restrictive laws followed Russia’s occupation of Crimea and the war in eastern Ukraine.

Among the laws adopted between 2012 and the present are those allegedly adopted to counter violent extremism and terrorism, but that unjustifiably restrict privacy and free speech.

I would like to list what some of these laws do. I hope you will refer to the reports and other materials of Human Rights Watch and SOVA Center for further details. These laws:

- Create a unified registry of banned web material, including extremist material, and create a procedure for compelling internet providers and website hosts to block content that a court deem to be harmful to children, including extremist material;

- Allow authorities to block internet content without a court order if the content in it incites “extremist” actions or calls for unauthorized mass protests, riots, and the like;
- Require internet companies to store data on Russian citizens on servers in Russia;
- Require telecommunications companies to keep copies of communications for six months;
- Block or fine VPNs and internet anonymizers that provide access to blocked materials;
- Create new penalties for insulting religious feelings, calling for “separatism”;
- Criminalize “failure to report” crimes related to terrorism and extremism, with little specificity;
- Increase penalties for all “terrorism” and most “extremism” offenses, including “public justification of terrorism” and “inducing, recruiting, or otherwise involving” others in mass unrest, and for other related crimes;
- Criminalize insulting Russia’s military honor and “spreading knowingly false information about actions by the Soviet Union’s during World War II,” and include these offenses under the rubric of “justification of Nazism.”

Laws adopted in 2019 that ban insulting public figures, the constitution, the state, and society are not strictly under the counterextremism framework law but are associated with it.

Recently, Russian authorities announced plans to introduce amendments to significantly increase penalties for IT companies for “failure to comply with Russian legislation.” It is believed these measures are aimed at large companies like Google, Facebook, and Telegram if they continue to refuse to block content.

III. Numbers of Abusive Counter-Extremism Prosecutions Rise

In many cases, these laws are overly broad, with vague definitions, lack clarity, and “invite arbitrary application through different interpretations in contravention of international human rights standards (Venice).”

Groups like HRW, SOVA, and intergovernmental organizations have all repeatedly expressed concern about the risk of selective enforcement, and that is exactly what has happened.

To be sure, as I noted above, they have been invoked against groups and individuals who engage in violence, armed extremism, and the like. But they have also been used to prosecute a very wide range of people who pose little or no threat.

A quick look at the data on extremism prosecutions supports this thesis. According to figures by SOVA, after a significant spike in sentences for extremist violence, which would cover hate-motivated violence and the like in 2010 and 2011, these figures declined and have evened out.

Meanwhile, between 2010 and 2017, there was a seven-fold increase in convictions for “terror” and “extremist” related speech offense, and since 2017 about 95 percent of these convictions have concerned online expression. In response to outcry and wide criticism for going after individuals who “liked” or “reposted” social media content, there has been a decline in such prosecutions since 2018.

Starting in 2012, there was a steady rise in the number of convictions for membership in terrorist or extremist groups through 2015, and then a near doubling of these between 2015 and 2017, with a slight fall-off in 2018.

Russian authorities have targeted a variety of groups that are not violent, but have controversial views, or have criticized Russia’s actions in Ukraine and Syria, and people who criticize Russia’s occupation of Crimea. They even targeted people who make jokes about religion.

IV. Examples of Using Counter-Extremism to Target “Inconvenient” People

I would like to give some examples of the selective use of “extremism” laws to prosecute people who pose no threat whatsoever of violence or threat to state security.

One of the most blatant examples of targeting particular groups is the banning of the Jehovah’s Witness organization by the Russian Supreme Court in 2017 as “extremist,” based on the charge that the organization’s literature asserts the superiority of its faith over others. This is not an idle ruling, but one with real consequences. Since 2017, more than 200 Jehovah’s Witnesses are under criminal prosecution, mostly for continuing the activities of an extremist group.

As of June 3, 35 people were in pretrial custody, and 23 are under house arrest. And as you may know, Dennis Christensen, a Danish citizen, is serving a six-year prison term.

Several people in 2017 and 2018 faced criminal prosecution for memes satirizing religion and the Orthodox Church. They included three people in the city of Barnaul, 19-year-old Daniil Markin, 25-year old Mariya Motuznaya, and 38-year old Andrey Shasherin, who faced up to five years in prison for reposting memes, such as those comparing the Jon Snow character from Game Of Thrones to Jesus or referencing a Russian proverb about two main woes, fools and roads, with a photo of a Russian Orthodox Church cross procession on a muddy rural road with potholes. Criminal cases against them were closed at the very beginning of 2019 on the basis of amendments to article 282 on extremism and expiration of statutory limitations on insult to religious feelings. However, these are non-rehabilitating grounds and those prosecuted are not entitled to any compensation.

An astounding example of the selective misuse of “justifying terrorism” charge is the criminal investigation currently under way against Svetlana Prokopyeva, an independent journalist based in Pskov. Last year, during a radio talk show, she was talking about an attack in Arkhangelsk, in which a 17-year-old boy reportedly detonated a bomb inside a local Federal Security Service (FSB) building, killing himself and injuring several FSB officers. Several minutes before the bombing, he said on social media that he was going to commit an act of terrorism because the “FSB... fabricates criminal cases and tortures people.” In her show, Prokopyeva commented that this was a teenager who grew up under Putin’s rule, which created a repressive state in someone who saw violence as the only path. There are simply no grounds for the accusation that she in any way justified terrorism, yet if the investigation leads to a prosecution, Prokopyeva could face a maximum seven-year prison sentence.

The spike in so-called “extremist” speech offenses that I noted above is due in part to prosecutions against people who criticized Russia’s actions in Ukraine, including Crimea. An example is the 2016 verdict against 46-year-old Ekaterina Vologzheninova, for incitement to hatred towards “Russian people,” “Russian volunteers fighting on the side of the insurgents in eastern Ukraine,” and “authorities” and “residents of eastern Ukraine who do not support the political course of modern Ukraine” as ethnic and social groups. The charges stemmed from several posts on Vologzheninova’s page on VKontakte, Russia’s most popular social media platform, including a poem criticizing Russia’s actions in Ukraine and images reminiscent of USSR-period posters with captions, “Stop the Plague,” and “Death to Moscow Invaders.” Her VK page had four followers. She was sentenced to 320 hours of ‘corrective labor.’

V. Classifying Islamist Groups as “Terrorist” and “Extremist”

The Russian government has designated numerous Islamist groups as “extremist.” According to the SOVA Center, in some cases, the groups espouse violent extremist views but in others they do not. One example of the latter are followers of Said Nursi, the 20th century religious scholar from Turkey. Russian authorities have banned books by Nursi as “extremist”, even though they do not promote hatred or violence. In 2009, Russia’s Supreme Court claimed that “Nurcular”, or Followers of Nursi, existed as religious group, although it is unlikely that such a group exists, and banned it as extremist. Since then, Russian authorities have charged some of his followers with involvement in an extremist group. In 2018 alone, according to SOVA, at least five Nursi followers were convicted, receiving mostly fines or suspended sentences. However, two people received active prison sentences, one for eight years. In 2017, four active prison sentences were handed down for this offense.

Komil Odilov, in Novosibirsk, was sentenced to two years’ imprisonment in June 2018 solely for

possessing the works of Said Nursi and gathering with other followers. Upon his release in 2019, he was subsequently placed under ‘administrative supervision’ for another eight years, resulting in significant restrictions on his freedom of movement. In addition, like others convicted under extremism charges, he will be banned from opening bank accounts, which creates additional duress.

In 2003, the Russian government banned Hizb ut-Tahrir as a terrorist organization. Hizb ut-Tahrir is an organization that seeks to establish a caliphate throughout the Muslim world based on sharia, or Islamic law. The movement disavows violence to achieve its goals, but nevertheless calls for an end to secular statehood in Muslim-majority countries.

Hizb ut-Tahrir is banned in more than a dozen countries.

Since 2003, [around two hundred](#) people have been sentenced for involvement in Hizb ut-Tahrir and handed active prison sentences, according to SOVA’s estimates. The first accused as a member of Hizb ut-Tahrir was Yussup Kassimahunov, a national of Uzbekistan, who was detained in Moscow in February 2004. Later that year, his Russian wife, who converted to Islam, was also detained on similar charges, and their child was placed in an orphanage. In November of the same year, they were sentenced to eight and four-and-a-half years, respectively, for aiding and abetting a terrorist organization and participation in a criminal gang.

Following the 2017 amendments to Russia’s Criminal Code, the maximum sentence for leading a Hizb ut-Tahrir group is life imprisonment. In the past few years, courts handed down prison sentences for involvement in Hizb ut-Tahrir that were as long as 20 and 24 years, even though the defendants were not indicted for involvement in any act of violence. Research by Human Rights Watch and SOVA Center found that in many cases, the behavior that draws these long sentences is no more than disseminating Hizb ut-Tahrir literature or “holding meetings of like-minded people.”²

VI.

Special mention should be drawn to how Russian authorities use “terrorism” and extremism charges to target Crimean Tatars who object to Russia’s occupation of their homeland, Crimea. For example, in 2017, a Russian court convicted a Crimean Tatar leader, Ilmi Umerov, on separatism charges stemming from a media interview in which he criticized Russian actions in Crimea. The court sentenced him to two years in prison, and shortly after the verdict, he was allowed to leave Crimea.

² SOVA <https://www.sova-center.ru/en/misuse/news-releases/2019/05/d40991/>

At least 49 Crimean Tatars, many of whom are active in organizations that oppose Russia's occupation, have been charged or convicted for involvement in Hizb ut-Tahrir, although Ukraine does not ban the organization.³ We believe this is part of Russia's efforts to try to falsely portray opponents to the Russian occupation of Crimea as dangerous terrorists and violent extremists. They have also targeted lawyers and activists with administrative charges for social media posts that have excerpts or presumed references to Hizb ut-Tahrir, even posts made before Russia's occupation.

VII. Allegations of Entrapment, Torture, and Disproportionate Charges in Two Recent Extremism and Terrorism-Related Cases

Novoye Velichiye (New Greatness)

In March 2018, 10 young adults were detained for "organizing an extremist group." According to information from media, social media, and Russian human rights groups, the group started off via text chat on Telegram, where they discussed "Artpodgotovka," a banned extremist group of which they were not members. The chat participants discussed a wide range of topics, including politics.

At some point, a person the group now believes to be a police provocateur (both police and the alleged provocateur deny this, however) started to promote a specific political agenda in the chats, and suggested to organize offline meetings. He rented premises where they could gather and suggested they draft a charter for the group. This charter later was used as primary evidence in the case against them, along with testimonies of three undercover policemen who infiltrated the group.

Some of the group's members traveled to a forest outside of Moscow where, according to police information, they shot a semi-automatic rifle and learned how to make Molotov cocktails.

The detained members were accused of organizing an extremist group. They complained of ill-treatment and torture to extract confessions. Two of them struck a plea bargain with the prosecution and got one-and-a-half and two-and-a-half years' suspended sentence, respectively.

On May 28, a district court in Moscow started hearings in the cases of eight others.

The case received wide coverage in Russia, and many human rights defenders expressed concern over allegations that police directly provoked the commission of offenses that the accused would

³ As occupying power, Russia should respect, unless absolutely prevented from doing so, Ukrainian laws that were in force in Crimea when it commenced its occupation. However, Russia rejects its status as an occupying power and applies its federal laws to Crimea, including criminalizing activity not previously criminalized on the peninsula.

otherwise not have committed, as well as over credible allegations of use of coercion and ill-treatment against the detainees.

Set' (Network)

In January 2018, the FSB detained 11 young men, eight of them in Penza and three in St. Petersburg. The detained were anarchists and anti-fascists. In February, the FSB reported that they had prevented a series of terrorist attacks across the country, and that they detained members of the “Set” group. According to FSB, the branches of the organization existed in different cities in Moscow and Belarus. According to the families of the detained, many of them didn’t know the others, or knew some mostly superficially, through strike ball (a militarized version of paintball) sessions. These strike ball sessions were qualified by FSB as a military skill and tactics training.

[Human Rights Watch documented the torture allegations three of the men made](#), and allegations made by the others were made public. They alleged that they were subjected to torture to extort confessions. They gave consistent accounts of use of electric shock. Independent prison monitoring groups who visited them in custody saw marks on their bodies that were consistent with electric shocks.

In January 2019, a military district court delivered the first verdict in this case, with one of the accused accepting a plea bargain in exchange for three-and-a-half years of imprisonment. Under a plea bargain, the case is fast tracked, and the court does not examine the evidence or interrogate witnesses, but the agreement can be used with prejudice against defendants in connected cases. Immediately after the delivery of the verdict, “Set” was included in the government’s list of terrorist organizations.

Human rights defenders and journalists expressed serious concerns about this case. They have pointed out that the authorities’ narrative of the case lacks any evidence about terrorist acts or attacks that the accused were supposedly planning. The allegations of the use of torture and questions as to whether the organization ever existed, or was created by the FSB, sparked discussions and protests across the country.