

TOTALITARIAN APPROACH TO THE LAW INTERPRETATION FOR RELIGIOUS MINORITIES

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The right to freedom of conscience and freedom of religion is guaranteed by Article 28 of the Constitution of the Russian Federation (of December 12, 1993): "Everyone is guaranteed freedom of conscience, freedom of religion, including the right to individually, or jointly with others, profess any religion or not to profess any, freely choose, have and disseminate religious and other beliefs and act in accordance with them.

However, the Federal Law on Freedom of Conscience and Religious Associations, along with other legislation, allows law enforcement to grant preferences to four religious concepts (Christianity, Islam, Buddhism, Judaism), while all other religions are forced to prove their right to exist.

The fact is that Article 282 of the Criminal Code of the Russian Federation states that it is possible to condemn a person for "acts aimed at inciting hatred or enmity, as well as humiliating the dignity of a person or a group of people on grounds of gender, race, nationality, language, attitudes towards religion, as well as belonging to any social group, committed in public or using the media or information and telecommunications networks, including the Internet".

If you unhappy remark humiliate the dignity of a person, he to restore his dignity would have to act within the Code of Administrative Offenses of the Russian Federation or the Civil Code of the Russian Federation. This is rather troublesome, requires sufficiency and convincing evidence. But if the investigator by his power act gives this person "belonging to

any social group" and the "expert" confirms this, you can be arrested and condemned to a real incarceration.

The totalitarian discourse of the domestic criminal justice with the psychoemotional approach of law enforcement allows to steadily expand the use of criminal repression, the general prevention of which forces people to be even more afraid of the employees of the law enforcement agencies, be timid and obedient in appeals to authorities. The law-enforcement doctrine of the state directs investigators and judges to such a complex of actions that for citizens looks like a desire to intimidate the population, to "discourage" people from attempts to criticize the authorities, to suppress the desire for freedom of choice of religions and rulers.

In June 2017, several people were arrested in St. Petersburg, professing the Scientology faith, whom the Memorial Human Rights Center recognized as political prisoners. Five St. Petersburg Scientologists accused by the FSB of humiliating the dignity of several parishioners (item "b" part 2 of Article 282 of the Criminal Code of the Russian Federation), the creation of an extremist community (part 1 article 282.1 of the Criminal Code) and illegal business (items "a" and "b" part 2 of Article 171 of the Criminal Code). This is a court decision, according to which the executive director of the St. Petersburg Church of Scientology Galina Shurinova, the head of the security service Anastasia Terentyeva, the chief accountant Saib Aliyev and the spiritual leader of the organization Ivan Matsitsky were sent to the detention centre (SIZO). According to human rights defenders, Scientologists "became victims of discrimination because of their religion."

Human rights activists demanded to release the accused and punish the perpetrators of their criminal prosecution. Under the humiliation of human dignity, the investigation implies the issuance of internal orders for the non-admission of a number of parishioners who violated the ethics of the Church of Scientology. The isolation of a part of Scientology supporters subjected to psychological pressure into a social group protected by anti-extremist legislation seems questionable, as was proclaimed in the "Memorial" statement.

For several years, the authorities of St. Petersburg denied the religious group of Scientologists registration as a legal entity - a religious organization. In 2014, the European Court of Human Rights found the denial of registration of a religious organization of Scientologists a vio-

lation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, the Church of Scientology of St. Petersburg still has no possibility to be registered. Because of the ban on state registration, which allows an organization to have a bank account, Church funds were collected privately. Scientologists became victims of discrimination because of their religion: in recent months, despite the formally existing freedom of conscience in Russia, the situation of religious organizations has deteriorated significantly. The wording of the law on counteracting extremist activities and articles of the Criminal Code are so vague and wide that they allow law enforcement to apply measures of criminal procedural impact to virtually all religious (and not only) groups. It was declared extremist and banned the organization of Jehovah's Witnesses, persecuted various groups of Muslims, "Pentecostals", "Jehovah's Witnesses" and other religious groups.

In this obviously politicized criminal prosecution of Scientologists, the investigator could not do without the conclusion of an "expert" who would confirm his legal fantasies. An expert who graduated from the Faculty of Psychology of the University for reasons beyond our comprehension gave an opinion on religion, sociology and linguistics. Without having a special education in religion, sociology and linguistics, the expert nevertheless made his expertise based on these sciences.

Inadmissible from the point of view of the Code of Criminal Procedure, the evidence (the conclusion of this "expert") served not only as grounds for initiating criminal cases on extremist articles, but also for further arrests of people professing the Scientology faith.

The specialists in the field of sociology, religious studies and philology (linguistics) who had in their conclusions refuted the arguments of both the "expert" and the investigator, were attracted to the defense, claiming that neither "sources of trouble" nor "Potential sources of trouble" or "overwhelming personalities" do not form a social group. Also, the conclusions of qualified specialists confirmed the absence of discriminating and degrading texts, the absence of signs of referring individuals to special social groups "suppressing personalities" and "potential sources of trouble", the lack of propaganda of exclusiveness and excellence as members of the Scientology organization, and religion in general.

Three detailed arguments of experts completely refuting the expert's opinion were passed on to the investigator, but he is listening to only the

conclusions of those who justify a totalitarian approach to the interpretation of the law, despite the principle of adversariality, proclaimed by Article 15 of the Code of Criminal Procedure of the Russian Federation. We will have a trial ahead of us, and despite the fact that the judges in their accusatory bias agree more than 99% of the cases with the investigator and the prosecutor, we hope for the reason and support of the world community.

We are forced to take into account the existing political and legal relationship in society, the dominant understanding of law only as an instrument for strengthening political and financial domination. The peculiarity of the Russian legal doctrine lies in the fact that it is formed mainly by the actors of the law enforcement agencies. It must be remembered that the turning point that occurred 100 years ago since the October Revolution of 1917. It was then that the active accustoming of the population to totalitarian approaches in the interpretation of law began. For more than a hundred years a special type of normality has been imposed, according to which the power departments become the main link in the management of not only domestic and foreign policies, but also culture, economy, and the social sphere. Fear of police in a Soviet man was worked out at the genetic level, and the horror of a possible encounter with the VChK-NKVD-KGB-FSB was formed as a standard reaction of the neural network. The law enforcement agencies skillfully use their image, developing phobias of the population in the interests of governing the state.

State-based type of legal understanding in Russia in the 21st century seeks to reincarnate the Stalin era in a slightly facilitated version. The type of socialist law and order with an unshakable hierarchy of power begins to be actively deconstructed, restoring the people's ideas about the correlation of their duties with the unrestricted rights of commissars of the early Soviet period. The population has to get used to new, more comfortable conditions of modern totalitarianism, and the term itself is not so terrible: it originated from the Latin words *totalis*, which means all, whole, complete, and *totalitas* - wholeness, completeness. The phenomenon of totalitarianism can mean the full care of the "party and government" about the needs of its "subjects", and social patronage, and the state's activity in helping the needy etc. In a country where more than half of the able-bodied population receives income only from budgetary funds, it is difficult not to believe in the bright future of neo-patrimonialism. We know that the limits and content of a person's memory depend

on his social environment. The individual recalls his memories in memory with the help of a framework of social memory. In other words, the various groups to which society shares are at any time capable of reconstructing their past. But, as we have seen, they often simultaneously reconstruct and deform it. Of course, there are many facts and details that an individual would forget if others did not keep the memory of them in his stead.

The danger for the population of the country is the actualization of the fear of the common man in the face of the almighty state; the inability of amorphous civil society institutions to prevent the growing dominance of law enforcement agencies. The state systematically suppresses the aspirations of people to unite into non-profit communities, critically oriented sub-items are stigmatized by the stigma of "foreign agents" and "undesirable organizations." The idealization of the "strong hand" of the imperious ruler begins to dominate the legal propaganda of recent years, but there are almost no concepts that would not allow society to look back at this or that period of its history. This is obvious when he has to cognize himself and reflect on his institutions, structure, laws and customs. The idea of the dictatorship of the proletariat, laid down in the foundations of Soviet statehood, received a logical conclusion in the modern monopoly of the totalitarian interpretation of law by the investigative and judicial bloc.

The ability to manage the prison industry provides unlimited political power over people and economic power over natural resources. The final stage will mean the total domination of the "siloviki" over all the material resources of our planet, the development of a coercive apparatus capable at any time of compelling any person to commit any act, the practical abolition of all freedom.

Instruments of interpretation of law are used to strengthen personalistic domination of people. To combat criticism of "people of the sovereigns", methods of criminal policy are toughened, including the very idea of criticizing the authorities at rallies, meetings, marches, pickets. Supporters of the dictatorship are trying to accustom the youth to submission, to bring up addiction to the totalitarian law and order. Regular punitive and prophylactic measures with the use of riot police, police, special means, and judicial punishments against young people expressing freedom-loving ideas, actors of state power demonstrate to the pub-

lic the danger of criticism of power and free choice of religion. The population is almost directly indicated that it can choose faith from only four recognized religions (Christianity, Islam, Judaism, Buddhism).

Consistently increasing struggle against protest activity is also manifested in the initiation of an increasing number of criminal cases on the so-called "rubber" articles of the criminal code against protest movement actors. On the part of the state, legislative instruments criminalize activities that could affect the diminishing of the order of state governance that has developed over the past decade. The growing influence of the Federal Security Bureau of the Russian Federation is easily traced in the increase in the number and quality of criminal cases under investigation by the FSB. The brightest dynamics is manifested in the number of sentences under the "terrorist" article 205.2 of the Criminal Code of the Russian Federation (public justification of terrorism, calls for terrorist activity). If in 2013 there were only two such sentences, then in 2016 - already 47, and in the first half of 2017 - 33. That is, in five years the number of convicts for calls to terrorism, as a rule on the Internet, increased 30 times. Two-fold increase since 2015 shows sentences under Art. 280 (calls for extremist activity). The investigation in this article is also conducted by the FSB. Of course, in sum, judgments on these articles are not enough to the number of sentences under Art. 282, but more and more often operational support and on cases of inciting hatred are carried out by operatives of state security agencies.

The society is already accustomed to the fact that the number of criminal cases brought under Art. 282 of the Criminal Code (the incitement of hatred or enmity, as well as humiliation of human dignity) is steadily increasing. But the danger for the law-abiding population of the country lies in the fact that officers of the law enforcement agencies are beginning to involve more and more people who are not involved in acts of violence that do not intend to humiliate the human dignity of specific individuals.

The new legal technology of law enforcers is to create an imaginary legal reality by justifying the existence of so-called social groups, for whose humiliation members can now be sentenced to real imprisonment for up to six years. Operative staff and investigators are actively assisted by so-called "experts" - persons with special knowledge and appointed by the investigator (in practice) to confirm the version of the prosecu-

tion. Criticism of public authority or freedom of choice of faith becomes so dangerous that it leads an increasing number of Russian citizens to places of detention. But the increasing number of facts of the qualifications of actions of people who criticize public authority, on articles about extremism, makes us take a closer look at the totalitarian discourse of the interpretation of law in the Russian legal order.

The judges can only transform the texts of expert opinions into a verdict based entirely on the opinion of people who are not formally involved in the activity of the "punitive-repressive apparatus", but who are actively sympathizing with this "social group". Experts can be divided into three categories: 1) which is all the same, for the money and the location of the government to themselves are ready to write anything; 2) who did not understand; 3) who are convinced opponents of Scientology. That is, we have scientific disagreements among linguists, sociologists and religious scholars (philosophers). But if the investigator and the judge simply takes as a basis the convenient opinion of the expert, and does not take into account the directly opposite opinion of another expert, that I call this law enforcement approach a totalitarian approach. You can always find people, including experts, who do not like this religion (type of religion). Witnesses will testify that their (such) beliefs are offended, and experts write beautiful language that they do not like this belief. The problem of the Russian legal system is that the judges are not free and independent of the investigators. The judge takes the decision that will suit the investigator and prosecutor.

When analyzing trends in the interpretation of modern law, it is necessary to take into account that the dependence of the judiciary on the will of executive officials becomes so obvious that the population is already accustomed to the fact that judicial decisions (arrests, verdicts, etc.) are essentially not taken by a judge, but an investigator. Some courts become a kind of "office" under the investigative bodies, which turns convictions into sentences. It is now a business practice to transfer an indictment in an electronic form to the judge for the convenience of turning an already prepared text into a guilty verdict.

The danger of the current trend lies in the fact that the investigators, reasonably counting on the full support of the judges, lose interest in the quality and quantity of evidence, focusing on forcing people to confess the charge and inducing them to take a decision on legal proceedings in

a simplified procedure. The formation of the criminal jurisdiction of the judiciary from judges and prosecutors is subject to slow rotation at the expense of secretaries and assistants to judges, brought up in unconditional obedience to senior positions and hatred of "annoying visitors to the courts." The totalitarian rule of law is ensured by the growing power of the law enforcement agencies, their impunity for violations of the rights of citizens. The formation of the system of sources of law is influenced by the political regime in the country, the tasks of the state at the appropriate stage, geographical and climatic features of the territory, the state's attitude to religion, and other factors. "

The state has accepted the criminal paradigm through the institutions of non-procedural coercion, special normative environment, customs and traditions, the system of values and behavioral norms and continues to reproduce it. The prison system is a prototype of power relations in any totalitarian state, its activities are regulated not so much by regulatory requirements as by developing elements of customary law. Its customs ("concepts") attach individuals to a certain social and cultural experience, are passed on from generation to generation, regulate behavior, support intragroup cohesion, and authentically interpret facts and states.

The criminal subculture is part of the convictions of the Russian public authority, shaped by the experience of the practice of the GULAG. The prison subculture in Russia permeates the system of relationships from everyday life to state power. The right to initiate a criminal case, to arrest any person explains the voluntarist norms prevailing in the post-Soviet society. Direct subordination of the vertical, the refusal of prosecutors and judges to criticize investigators lead to impunity for investigators who dictate their rules to society.