

The Moscow Trial of Yuri Samodurov, Ludmila Vasilovskaya and Anna Mikhalechuk

1. Andrei Sakharov Museum and Public Center

After Andrei Dmitrievich Sakharov passed away in 1989, the Sakharov Commission (The Andrei Sakharov Foundation/Russia) was established in Moscow in 1990. It is a nongovernmental organization created to preserve the legacy of Andrei Sakharov and promote the values which he advocated.

The Andrei Sakharov Museum and Public Center for Peace, Progress and Human Rights was founded by the Commission. It was opened on May 21, 1996, Sakharov's 75th birthday. Its primary goals are the preservation of the memory of the victims of the totalitarian regime and continuation of Sakharov's work in the field of human rights. It is one of the few independent, non-governmentally financed museums in Russia. The Museum runs a variety of programs aimed at advancing the development of civil society and human rights in Russia.

2. The exhibition "Caution, Religion", what it was and what had happened to it

The exhibition "Caution, Religion" opened on January 14, 2003. It was held in a secular cultural institution, far from any place of religious worship. Approximately 40 artists participated. They were not only Russian citizenry. There were artists from Japan, Cuba, Georgia and Armenia as well. Some of the artists are well-known. Their works are exhibited in the major Russian museums, such as the Tret'yakov picture-gallery and the Russian Museum in St. Petersburg. Most of the exhibits were of the contemporary art style. Religious allusions were used to express artists' attitudes towards religiousness, religion, culture, etc. With regard to the Russian Orthodox Church, the artists' viewpoints expressed in their works, ranged from complete acceptance to a highly critical attitude of certain aspects of the Church's activities. The last is concerned with today's attempts of the influential Russian Orthodox Church to be moral arbiter and chief censor in matters spiritual and ideological.

According to the exhibition organizers, its aim was to attract attention to necessity of careful and respectful treatment of religion. In the same time, the exhibition also warned of the danger of religious fundamentalism and the identification of the state with religion.

The exhibition was closed on January 18 after a group of altar boys from Russian Orthodox Church of St. Nicholas in Pyzhi defaced more than the half of the paintings with spray paint, torn some of them and crashed showcases in the exhibition hall. The vandals were detained by police, and the exhibition destruction was recorded. A criminal case against the hooligans was started. However, after some time a judge forced the investigator to close this case on the grounds that there were no violations of law in the vandal's actions.

3. Criminal case against Yu. Samodurov, L. Vasilovskaya and A. Mikhalechuk

Practically at the same time when the exhibition was smashed, the Russian State Duma, at the urging of Russian Orthodox officials, adopted a resolution, which asked the Procurator General "to take necessary measures" against the organizer of the exhibition. One of the possible motives for the attack is anger at Sakharov Center's supports for liberal causes generally and for a peaceful political settlement of the conflict in Chechnya in particular. Alexander Shargunov, archpriest of St. Nicholas in Pyzhi, who blessed the exhibition smashing, wrote to President Putin on February 2, 2003, as follows:

“The Andrei Sakharov Public Center and Museum has functioned for several years in Moscow under the direction of Elena Bonner and Yuri Samodurov. ... The Centers activities are aimed at corrupting the morals of Russian society and the Russian army. They cunningly used the slogan “Stop the War in Chechnya” for this porpoise. ... In our view, it is not accidental that the marginal “politicians” offered their Museum’s exhibition hall to marginal “artists”.”

As the result of these activities the Museum Director Yuri Samodurov, head of the Museum’s exhibition group Lyudmila Vasilovskaya, and the artist and poet Anna Mikhalchuk were accused under Article 282 Parts 1 and 2 of the Russian Criminal Code (see Appendix), of organizing and holding the exhibition “Caution, Religion”, which, in opinion of the prosecutor office “incited hatred, and humiliated the national dignity of a large number of believers in connection with their affiliation with the Christian religion, specifically with orthodox Christianity and the Russian Orthodox Church.”

The trial of Samodurov, Vasilovskaya and Mikhalchuk opened on June 15, 2004 in the Taganski Court in Moscow. It is the first ideological trial after disintegration of Soviet Union. The Prosecutor’s Office did not dare to accuse (the scandal would be too grate) more than 30 artists whose works, according to the investigations experts, were interpreted as incited national and religious dissention and insulated people’s national and religious feelings.

In the same time on March 2, 2005, the prosecutor asked for sentences of 3 years deprivation of freedom for Yuri Samodurov, 2 years deprivation of freedom for Lyudmila Vasilovskaya and 2 years deprivation of freedom for Anna Mikhalchuk. In addition, the prosecutor asked that Samodurov and Vasilovskaya be banned from working in their profession, and the paintings held by court as material evidence to be destroyed.

The verdict will be pronounced by Judge Vladimir Proschenko on **March 28**.

4. International precedents

There are a lot of countries whose criminal law allows one to accuse a person whose actions incite national and religious dissention and insulate people’s national and religious feelings. However, in democratic countries after the World War II never was a criminal prosecution of a person because of works of art. There are two known analogous cases in international legal practice. The suits were filed in England and Austria. However, the both were civil, but not criminal suits. In declaration the plaintiffs asked to put a veto on demonstration of the works of art in question. The Strasburg Court on Human Rights confirmed incompetence of criminal prosecution in such a case.

5. Indictment infringements

The indictment violates:

1. Articles 13, 14, 28, 29, and 44 of the Russian Constitution (Articles stipulating the secular nature of the Russian State, freedom of conscience, of speech, of creative work, the prohibition of censorship) and Article 6 of the Russian Federal Law on freedom of conscience and religious associations. The last says that only “holding public events, placing texts and images insulting to citizens’ religious feelings near sites of religious worship is prohibited”. Violation of this norm is not a criminal, but an administrative (civil) offense (Article 5.26 of the Code of Administrative Offences). A brief review of relevant articles of the Russian Constitution are given in Appendix.

2. Article 19 of the Universal Declaration of Human Rights: “the right of every person to the freedom of his/her convictions and to their free and unimpeded expression; this includes the freedom to seek, to receive and to disseminate information and ideas by any means and independently of State borders. “.
3. Articles 47 and 171 of the Russian Criminal Procedural Code and Article 6 of European Convention in Defense of Human Rights, which state the right of a defendant to know what of his\her deeds are interpreted as criminal.

The defendants and their lawyers consider that the accusations have been compiled incorrectly. It was not shown at all who, how and with respect to whom national and religious dissention and insulations of national and religious feelings were incited. As a result, it was impossible for Samodurov, Vasilovskaya and Mikhalchuk to defend themselves, to produce proofs which show their innocence.

The indictment claims, that Samodurov and Vasilovskaya had organized a criminal group in order to incite religious and national hatred and offend the feelings of religious believers. This allows the indictment to insist on more sever punishment for them (see Appendix).

The prosecutor’s proofs of the defendants’ guilt were based on the testimonies of persons who cannot be trusted as witnesses, and the conclusions of experts, who cannot be trusted as specialists on contemporary art. The witnesses, who suffered morally because of the exhibition, were the same persons who smashed the exhibition “Caution, Religion”. Being the altar boys of the same church, in the court they lied that they had never met each other before. The indictment’s expert herself told the court that she “terribly dislikes the contemporary art and still does not know whether this is art”. The other expert opinions were written by specialists in ancient Russian art. No other documentary evidence of the defendants’ guilt was presented.

The defendants and their lawyers have serious grounds to believe that the court is under enormous pressure from top officials in the Prosecutor General’s Office and from senior members of the hierarchy of the Russian Orthodox Church.

The prosecutors’ call for destroying the works displayed in the exhibition is grotesque and is reminiscent of book-burning by Nazis in Hitler’s Germany.

Concluding, we would like to mention the openly anti-Semitic mood of the people, who came to the court to support the indictment. They speak and write openly and publicly about their hatred of Jews and about the necessity of their eviction or annihilation. Concerning the exhibition ‘Caution, Religion’ the prosecutors’ position was, in fact, the same as of these anti-Semites,

A “guilty” verdict would mean that the Russian State and the Moscow Patriarchy intend to build a “religious fence” dividing Russia from the rest of Europe as concerns freedom of conscience and the right to freely disseminate, receive and exchange information and ideas. Such a verdict would be a serious judicial and political step towards making Orthodoxy the State religion and eroding the principle of the separation of Church and State.

Appendix

A Brief Review of Relevant Articles of the Constitution of the Russian Federation

Article 13 of the Constitution of the Russian Federation states that no ideology can be established as an official state or obligatory ideology. Article 14 states that the Russian Federation is a secular state, that no religion can be regarded as official or obligatory, and that religious organization – including Russian Orthodox Church – are separate from the state and equal before the law. Article 28 guarantees freedom of conscience and the right of everyone to practice any religion or none whatsoever, to hold and to promote religious beliefs, or other beliefs and to act in conformity with them. Article 29 guarantees freedom of speech and thought, and the right freely produce and impart information. It also forbids propaganda of social, racial, national, religious, or language superiority, and forbids propaganda or agitation inciting hatred or hostility based on these characteristics. Article 44 guarantees freedom of artistic creation, and the right of everyone to participate in cultural life, to use institutions of culture, and to enjoy access to cultural values.

Article 282 Parts 1 and 2 of the Russian Criminal Code, under which Samodurov, Vasilovskaya and Mikhakchuk are charged:

1. Actions, directed to incite hatred or hostility, as well as to disparagement of a person or a group of people, on the basis of sex, race, nationality, language, origin, attitude towards religion, as well as belonging to any social group; as well as the same actions committed openly or with the usage of mass media, –

are punished by imposing a fine are charged by a penalty at the rate between 100.000 and 300.000 rubles, or at the rate of one to two year salaries or other incomes of the convicted offender, or by prohibition to hold certain positions or to be engaged in certain activities within up to three years, or by obligatory works within up to 180 hours, or by reformative labors within up to one year, or by deprivation of liberty within up to two years.

2. The same actions, committed:

- a) with violent use or with its menace;
- b) by a person using his/her service status;
- c) by an organized group, -

are punished by imposing a fine at the rate between 100.000 and 500.000 rubles, or at the rate of one to three year salaries or other incomes of the convicted offender, or by prohibition to hold certain positions or to be engaged in certain activities within up to five years, or by obligatory works within 120 to 240 hours, or by reformative labors within one to two years, or by deprivation of liberty within up to five years.