

ART JUDGEMENTS

Art on trial in Russia after perestroika

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Translated from the German
by Michael Turnbull

Series on the History of Art



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Introduction: Art, Society, and the Law

Since the turn of the millennium, the relationship of Russian society to contemporary art has been characterized, in comparison with the 1990s, by both wider reception and increasing repression. While the decade directly following perestroika was distinguished by the “total isolation of contemporary Russian art from the official institutions”¹ and by modern Russian society’s lack of interest in current art, according to the art critic and curator Viktor Misianos, the change of government in the late 1990s ushered in a “principally new dimension of artistic activity,”² as the actionist Anatoly Osmolovsky put it. Osmolovsky’s expectations were confirmed: since the beginning of the new millennium, foundations for contemporary arts have been founded with their own galleries and exhibition spaces; private and state prizes have been instituted; Russian equity holders have increasingly begun to support contemporary art projects; and in 2005 the state-funded Moscow Biennial took place for the first time. Contemporary art became a status symbol.³ But this growing financial participation in the contemporary art scene was also accompanied by an increased ideological interest reflected in an unusually large number—in international comparison—of legal proceedings against artists and curators, primarily instigated by representatives of Orthodox organizations, since the late 1990s.

Until the mid-1990s—to be more exact 1995—an artist such as Anton Litvin was able, on Good Friday and unimpeded, to unfurl a widely visible banner on Nikolskaya Street in the center of Moscow bearing the title of his action, *Crucify Him! (Raspni Ego)*.⁴ But in 1999, the first criminal proceedings in post-Soviet (art) history were initiated.⁵ The artist Avdei Ter-Oganyan was charged with inciting national, racial, and religious hatred and enmity under article 282 of the Criminal Code of the Russian Federation (*Ugolovnyi kodeks Rossyskoi Federatsii*, UK RF) in his performance *The Young Atheist* (*Yuny bezbozhnik*). Ter-Oganyan had offered the desecration of icons to order and for payment at the Moscow art fair Art Manege. In 2000 similar criminal proceedings with the same charges were instigated against the artist and director Oleg Mavromatti for his performance *Don’t Believe Your Eyes (Ne ver glazam)*, in which he was publicly nailed to a wooden cross. But appreciable international attention was first attracted by the trials of the organizers of the exhibition *Caution, Religion! (Ostorozhno, religiya!)* in 2003–05, and those of the exhibition *Forbidden Art 2006 (Zapretnoe iskusstvo – 2006)* in 2007–10, who like Ter-Oganyan and Mavromatti were charged with—and, unlike the two artists, convicted of—inciting national, racial, and religious hatred and enmity.

An intensification of juridical proceedings against artists occurred as a result of these trials. In 2010 two members of the group Voyna (war) were charged under article 213 UK RF with hooliganism (*khuliganstvo*) and inciting hatred out of enmity towards a social group (the police) and remanded in custody for their performance *Palace Revolution* (*Dvorcovy perevorot*). For a video-documented performance, they had turned a police car upside down. In 2011 the charges were dropped on the grounds of non-commission of the offense. Finally, in 2012, three members of the group Pussy Riot were also charged with hooliganism, this time motivated by religious and national hatred, and remanded in custody under article 213 UK RF. The reason was the group's video clip *Punk Prayer* (*Pank-moleben*), which the activists partly filmed in the Cathedral of Christ the Savior in Moscow. The trial received wide international attention—even Madonna declared her solidarity with Pussy riot—yet it nevertheless ended with the conviction of two of the three defendants to detention in a prison camp; the third defendant received a suspended sentence. Finally, the performance artist Pyotr Pavlensky, like Voyna, was charged in 2013 with hooliganism and inciting hatred out of enmity towards a social group, but the charge was dropped. During his action *Fixation* (*Fiksatsiya*), on November 10, 2013, Police Day, Pavlensky nailed his scrotum to the cobblestones of Red Square in Moscow. In 2015 he was charged with vandalism under article 214 for setting fire to the front door of the headquarters of the Federal Security Service of the Russian Federation (FSB). In the end, though, he was fined for willful damage to cultural heritage.

Two different kinds of trial against curators and artists in Russia after perestroika become apparent here: first, those in the realm of art and exhibitions, mainly involving the giving of religious offense (Ter-Oganyan, Mavromatti, *Caution, Religion!, Forbidden Art 2006*), and second those dealing with charges of vandalism or hooliganism, which have more to do with political activism. The actions by Voyna, Pussy Riot, and Pavlensky explicitly oppose a repressive state, while the other exhibitions, performances, and works of art on trial have no such activist agenda. Because mixing these two areas or charges—art and political activism—doesn't seem useful to me, in this study, I chiefly concentrate on the trials under article 282, primarily those against the organizers of the two exhibitions *Caution, Religion!* and *Forbidden Art 2006*, as the proceedings against Ter-Oganyan and Mavromatti didn't come to trial. But I will provide a short outline of the proceedings against Pussy Riot and Pavlensky in my concluding remarks.

Central to my study is not only the question of how art is debated in court by both prosecution and defense but also the means by which the prosecution seeks to determine a normative concept of art and to establish it permanently in law. I am interested in how the art that is deemed by society—or a defining

part of it—to be socially constitutive is sought to be brought discursively into being by the staging in court of a concept of what art is supposed to be. I am ultimately concerned with this specific conception of art. How is it determined in Russia today as to what art should, can, and may do? Where does the boundary of freedom of artistic expression lie? Also important in this examination, it seems to me, is the question of how the Russian art trials of the 2000s can be placed both in an international context and within the Soviet juridical tradition.

The starting point of my analyses is legal documents from the various court cases, such as expert opinions, statements from witnesses, experts, specialists, and the defendants themselves in the form of court records and private written notes. Because basic research is important to me, I develop all the arguments of my study from these documents. My method is first to bring out the competing positions and argumentations in the Russian art trials in order to make them comprehensible. Then I draw a line to similar international cases in the twentieth and twenty-first centuries so as to introduce an additional historical and comparative level into the study. My primary aim is to highlight artistic developments, and where necessary political and juridical changes, as well as the role of mediality (word, image, action) in the legal judgement of art.

The Book's Structure

This book is divided into two complementary blocks: first into an examination of speaking about art in court; second into observations on stagings in court. Although speaking about art in court is highly staged, this division enables connections to be made to international juridical debates about art and makes it possible to point out the special features of the Russian art trials. The first block begins with an analysis of the prosecution strategies of the conservative Orthodox community and the defense strategies of the artists and curators as a basic mode of speaking about art in court. To begin with, I distil the various strategies from the court records alone, categorize them, and juxtapose the different positions in contrastive pairs. Juxtaposition enables me, in a second step, to formulate the image concepts of the prosecution and defense. These concepts allow conclusions to be drawn about the impact and power of art assumed by the disputing parties. Then I link the prosecution and defense strategies (above all the latter) applied in the Russian art trials to an international context in order to be able to draw comparisons and to examine the extent to which such strategies from other national contexts can also be found in Russia, and the points at which, for whatever reason, they differ.

After the prosecution and defense strategies I illuminate the concepts of art adopted by prosecution and defense—that is, the antagonistic argumentation about what art should be, may do, and is and what it shouldn't do, may not do,

and isn't. I determine the art concepts of both parties purely from the court records. Then I look at the resulting question of "what is art?" against the background of other international cases in order to find out the extent to which the Russian discourse about art or non-art can be integrated into an international one.

In the second block of my study, I place the main emphasis on the court stagings, on the theatricality of the trials, as the concepts of art and image—above all of the prosecution—are not only defined but veritably staged. In the chapter on the staging strategies of prosecution and defense, I am interested firstly in the concrete staging strategies used, and secondly in the extent to which the criminal proceedings against *Caution, Religion!* and *Forbidden Art 2006* go beyond the regular "trial drama" to approach theatrical staging practices. For this examination, I make additional use of journalistic sources and (sometimes drawn) commentaries, and also on video documentations of artistic actions.

Continuing to observe the staging strategies, I then undertake a typology of the prosecution witnesses, as in my view their function determines the character of the trials of *Caution, Religion!* and *Forbidden Art 2006*. My aim, based on an analysis of the function of these witnesses, is to show how far the discussions in court are used to normalize the values and art concept of the prosecution in the form of newly drafted legislation.

In the concluding examination of trial traditions, I undertake a national-historical assessment of the Russian art trials of the 2000s in addition to my international survey. Here I'm interested in a comparison with the early Soviet mock trials,⁶ the show trials of the 1930s, and the prosecution of writers during the 1960s. My main focus is to find out where there are lines of historical continuity, meaning whether legal practices established during the first decades of the Soviet regime have a continuing influence today. Interesting points of comparison include the theatricality of the proceedings and the figure of the witness. In this final chapter, I also look at the role of the media and the media portrayal of the trials.

A few additional remarks on my approach: In my analysis of the trials, I don't consider their political background, legal inconsistencies, or procedural errors (or only in unavoidable exceptional circumstances). Nor do I consider the recent claim to power of the Russian Orthodox Church in Russian society,⁷ as my perspective is purely that of an art historian and cultural scholar. I'm primarily concerned with determining strategies of argumentation and staging, so as to be able to show which moral positions and world views come into conflict in the trials' discussion of art. Here I take both sides equally seriously. I also consider the various art trials from Ter-Oganyan to *Forbidden Art 2006* not as single phenomena but as a sequence whose individual parts are

interdependent and interrelated. For this reason, I don't make a sharp distinction between the trials, and proceed more from the patterns of argumentation that run through all the trials and criminal proceedings. In this way, I hope to shed light on the social function of the discussion of art in court.

Case Studies

Although the series of Russian art trials dealt with in this work begins with the proceedings against Ter-Oganyan in 1999, the impression shouldn't be given that artists didn't come into conflict with the law during the first post-Soviet decade. Along with the already mentioned action *Crucify Him!* by Anton Litvin in 1995, the first artistic action in an Orthodox Church took place, to my knowledge, in the same year:

During a service in the Epiphany Cathedral at Yelokhovo the poet Alexander Brener ran unexpectedly up to the altar and started shouting "Chechnya! Chechnya!" Later Brener stated that in this way he had wanted to offer himself to the churchgoers as Christ, as he was firstly a son of man, secondly 33 years old, and thirdly an Israeli citizen.⁸

In the words of his then gallerist, Marat Guelman, Brener was subsequently led out of the church and detained for a few hours in a police station. In a summary trial, he was fined 500 rubles (equivalent then to about 110 dollars) for hooliganism under article 213 UK RF. The fine was paid by his gallerist.⁹ In the same year, the artist Vladimir Salnikov flyposted the streets around the TV Gallery in Moscow prior to his exhibition *Rescuing Spaces* (*Spasenie prostranstv*). He was fined approximately 200 dollars for not obtaining official permission.¹⁰ This brief list can probably be extended, but it shows that artists were merely fined for their actions during the 1990s, until the first post-Soviet criminal proceedings against Avdei Ter-Oganyan.

Avdei Ter-Oganyan, The Young Atheist

For his performance *The Young Atheist* in 1998, Avdei Ter-Oganyan was charged under article 282 paragraph 1 UK RF with inciting national, racial, and religious hatred and enmity. On December 4, 1998, at the Moscow art fair Art Manege, he had offered the desecration of icons to order and for payment. A sign in front of his booth read:

Dear connoisseurs of contemporary art, here you can acquire excellent source material for blasphemy—Christ Pantocrator, the Blessed Mother of Vladimir, the Image of Edessa. [...] The gallery offers you the following services: the desecration of icons by the young and atheist for 50 rubles,

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