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RUSSIA: Obstructions to building places of worship

By Victoria Arnold, Forum 18 (https://www.forum18.org)

The Regional Court in the Russian Baltic exclave of Kaliningrad has upheld a lower court ruling which deemed a nearly completed mosque illegal, despite the fact that the federal law on heritage preservation it allegedly violates did not apply to the site at the time construction began. The community's lawyer Dagir Khasavov described the court to Forum 18 News Service as being "in the worst traditions of the Soviet period of stagnation". He said the community has organised "round-the-clock protection" of the mosque in case of attempts to destroy the building now that the court decision has come into force. The same court also upheld a decision suspending the construction of a synagogue to replace one destroyed by the Nazis. Moscow's Hare Krishna community lost its court case challenging the city Property Department's unilateral termination of its lease on a plot of land on which it had planned to build a temple. The Property Department claimed to Forum 18 it was working on a new possible site.

The fate of two would-be places of worship – a mosque in the Russian Baltic exclave of Kaliningrad and a Hare Krishna temple in the capital Moscow, both of them halted through the courts – illustrate the problems some communities face in such construction, Forum 18 News Service notes. Religious communities which attempt to build new places of worship can find that even the possession of fully approved written decrees of land allocation and building permission are no guarantee that a place of worship will be completed unchallenged.

At the same time, some religious communities whose places of worship or other properties were seized during the Soviet period have found it difficult or impossible to regain them, despite a 2010 Law allowing for such restitution (see F18News 23 May 2014 http://www.forum18.org/archive.php?article_id=1961).

Mosque in Kaliningrad

Kaliningrad Regional Court has upheld a lower court ruling which deemed a nearly completed mosque illegal, despite the fact that the federal law on heritage preservation it allegedly violates did not apply to the building site at the time construction began.

On 1 April 2014, after a case brought by Kaliningrad's Moscow District prosecutor and the Friedland Gates Museum against the city administration and Kaliningrad's Religious Organisation of Muslims, the municipal decrees which enabled the mosque to be built were ruled invalid and the Muslims deprived of their rights of ownership. On 4 June, Kaliningrad Regional Court rejected the Muslim community's appeal.

The community's lawyer Dagir Khasavov – who had travelled from Moscow to Kaliningrad for the hearing - described the court to Forum 18 on 5 June as being "in the worst traditions of the Soviet period of stagnation", and said that it "did not consider any of the District Court's numerous violations of substantive and procedural rights which we pointed out in our appeal".

At the appeal hearing, the city administration (a respondent in the case) changed its position "by 180 degrees" and said that it did not agree with the Muslims' appeal, a move Khasavov describes as "a betrayal".

The mosque community is preparing to challenge the 4 June decision in a further cassational appeal to the Regional Court Presidium, Khasavov told Forum 18. It will simultaneously be lodging a case at the European Court of Human Rights (ECtHR) in Strasbourg. "But I still believe in the possibility of cancellation of the decision within the existing Russian courts."

Khasavov said the Muslim community has organised "round-the-clock protection" of the mosque and "mobile response teams" in case of attempts to destroy the building now that the court decision has come into force.

A long wait

Muslims in Kaliningrad have been seeking to build a mosque for more than two decades. Between 1993 and 2005, the city administration allocated a total of eight different sites, only to withdraw them after receiving objections from local residents who allegedly feared large crowds on Fridays and Islamic holidays.

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In 2009, the wait appeared to be over when the community was given two plots of land at the edge of Kaliningrad's South Park (one for the mosque itself, the other for an access road). In December 2013, however, when the mosque was 80 per cent complete, Central District court ordered a halt to construction on the grounds that it violated the preservation zone around an object of cultural heritage (the nineteenth century Friedland Gates, now a museum).

According to the 1 April 2014 Moscow District court verdict, seen by Forum 18, the city administration issued the preliminary act selecting the land in July 2007. The mayor's preliminary decree to this effect followed in January 2008. The land was formally allocated to the Muslim community by a further decree in August 2009. A building permit was issued in October 2010 and building work began the following month.

The presence of the mosque was first challenged by local residents in the winter of 2011-12, but Central District Court ruled its construction legal in February 2012.

Construction halted

The December 2013 court decision to suspend construction came at the request of the Friedland Gates Museum. Representatives of the Muslim community were not invited to the hearing, and discovered the outcome only when they were denied a lease extension which they had requested in order to continue work on the site.

In June 2013, Kaliningrad's regional government passed a law confirming the boundaries of monuments and the preservation zones surrounding them. Such zones, and restrictions on the activities permitted within them, had existed in Kaliningrad prior to this date under a 2002 Federal Law on Objects of Cultural Heritage and a regional decree of 2008, which established a plan for the formal development of preservation zones in the region. Only the 2013 regional law, however, explicitly delineated the zones. It became clear that the unfinished mosque lay within that of the Friedland Gates.

One case upheld, one refused

Moscow District court combined the Museum's and prosecutor's separately initiated suits into one and considered both in a single set of hearings. Although the objections to the mosque and the arguments presented were almost identical, Judge Irina Vartach-Vartetskaya ruled against the Museum as it did not have the right to go to court on its own behalf – only the Culture Ministry and its regional organs can initiate cases relating to violations of heritage preservation laws.

The court upheld, however, the Moscow district prosecutor's case on behalf of "a group of unspecified persons" whose constitutional rights to "a pleasant environment" and "freedom of movement" had been infringed by "unlawful" construction.

The court accepted the prosecutor's arguments that the disputed land was part of a recreational zone (South Park) in which no construction or other activities unrelated to its purpose (rest, tourism, physical culture, sports) may take place. Amid changes to the city's general plan, the city council had excluded the plot from the park in December 2007 (that is, after the decision to give the land to the Muslim community but before the decree which actually transferred it). It was added instead to the category of public and commercial land.

However, in June 2011 Central District Court ruled this decision invalid from its date of adoption. The court pointed to alleged requests from local residents who objected to changes to the general plan. Representatives of the Muslim community were not invited to the hearing.

Despite the fact, then, that when the plots of land were drawn up and handed over to the Muslim community and building permission given (in 2009 and 2010), they were not part of the park, Judge Vartach-Vartetskaya deemed regulations on recreational zones applicable to the city administration's decisions surrounding the mosque.

While the court acknowledged that the June 2013 regional law delineating the preservation zone around the Friedland Gates had not been in force when the mosque site had been transferred and the building permit granted, it noted that the zone itself was in existence prior to this date under federal law (2002) and regional law (2008). It thus ruled that the city administration and the Muslim community should have checked what is permitted in preservation zones. In her verdict, the judge took into account the fact that, after June 2013, construction was then still going on in a restricted area (as the building had not yet been completed).

Who initiated lawsuit?

Asked by Forum 18 on 28 May whom the prosecutor had been representing, a spokeswoman for Moscow District prosecutor's office would only repeat that the prosecutor acted on behalf of "unspecified persons". She refused to answer further questions by telephone.

The lawyer Khasavov told Forum 18 that he believes the "unspecified persons" the prosecutor was representing was in fact the Kaliningrad branch of the Justice Ministry and that no other complainants existed. A letter from the Justice Ministry to the Moscow District prosecutor's office, dated 10 February 2014 and seen by Forum 18, mentions that the Ministry "earlier carried out an

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inspection of this religious organisation" and that the materials relating to unspecified "violations" had been sent to the prosecutor for use in the mosque case.

Khasavov explained that the prosecutor would have no right to act for an organ of the state in this way, as the category of "unspecified persons" is meant to cover people who cannot go to court themselves (minors, the mentally incapacitated).

Khasavov also told Forum 18 that there had been no conflict between the Friedland Gates Museum and the Muslim community, and that the latter had offered the Museum free use of space beneath the prayer hall of the mosque.

Irshat Khisamov, head of the community, told the local media (confirmed to Forum 18 by Khasavov) that Museum director Marina Yadova told him in a "confidential conversation" that the mayor's office had threatened her with dismissal if she did not agree to the lawsuit. Forum 18 was unable to reach Yadova at the Museum on 5 June.

Forum 18 notes that while the city administration was a respondent in the various court cases, the claim that it would have dismissed Yadova had she not agreed to the lawsuit and the fact that it owned the Museum which brought one of the suits to rule the mosque construction illegal suggest that it was a driving force behind the moves to halt the mosque while hiding its involvement in the case.

When Forum 18 called the city administration's property department on 28 May, a spokeswoman for the land division said she was not authorised to discuss the mosque and put the phone down.

Synagogue – no, Russian Orthodox - yes

On 4 June, Kaliningrad Regional Court also upheld a decision suspending the construction of a synagogue, the court website noted. The city centre site was leased to the Jewish community for the period 2011-6 to enable the reconstruction of the nineteenth century New Synagogue. This was destroyed under the Nazis in the aftermath of Kristallnacht in 1938, when the city – then known as Königsberg – was part of the German region of East Prussia.

Although city authorities had not yet granted permission to build, construction work began in January 2013. On 14 March 2014, Central District court ruled that this work should be halted until a permit had been issued.

Local news outlet New Kaliningrad noted on 4 June that the city administration could not comment on why the Jewish community had not yet received a building permit.

Visiting the site in September 2013, Forum 18 observed that it is marked by a large stone inscribed "First stone of the restored Königsberg Synagogue, 16 October 2011", flanked by banners depicting the building before 1938 and an architect's drawing of the reconstruction.

By contrast, in May 2013 Kaliningrad Regional Arbitration Court upheld the request of the Russian Orthodox Aleksandr Nevsky parish to legalise their church, which had been built without a permit on land leased to the parish in the north of the city.

In 2012, the Russian Orthodox also built a house alongside a fourteenth century former Lutheran church in the village of Rodniki, just outside Kaliningrad. Both the Diocese and the regional government refused to confirm to journalists whether building permission had been granted.

Dmitry Zonin, head of the Department for Oversight over Fulfilment of Federal Law at Kaliningrad regional prosecutor's office, was quoted by New Kaliningrad news agency on 19 April 2013 as declaring that according to federal law, prosecutors "do not have the right to interfere with the activities of the Russian Orthodox Church".

In 2010 a Catholic church, which the local parish had been trying to get back since the early 1990s, was among a number of religious properties suddenly given to the Moscow Patriarchate Russian Orthodox Church by the state. Other Kaliningrad properties handed over, which also never belonged to the Patriarchate, included former Lutheran churches and castles originally built by the Teutonic knights (see F18News 14 December 2010 http://www.forum18.org/archive.php?article_id=1521).

Hare Krishna in Moscow

On 26 May, the Society for Krishna Consciousness in Moscow lost its court case challenging the city Property Department's unilateral termination of its lease on a plot of land on which the community had planned to build a temple. They now have one month to appeal.

The site in question, in the Molzhaninovo District beyond the capital's ring-road, was allocated to the community in late 2006 and, after various planning requirements had been fulfilled, a consecration ceremony was held in June 2012. In the summer of 2013, however, the Property Department told the Krishna devotees that their contract would be terminated.

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The Moscow Committee for State Oversight in Construction (Mosgosstroinadzor) meanwhile refused to grant a building permit – the community has since been fighting a second, separate court case over this, but on 2 April requested a suspension of proceedings until a final decision has been reached in the dispute with the Property Department.

Simultaneously, the Krishna devotees have been living under threat of eviction from their rented offices near the Dinamo metro station in northern Moscow (see F18News 11 September 2013 http://www.forum18.org/archive.php?article_id=1874).

In January, the community received another warning to vacate the premises from the Prefecture of the Northern Administrative District, and moved in early March to another rented building nearby. Their lawyer, Mikhail Frolov, told Forum 18 on 30 May that this building is expensive to rent and the funds for doing so will not last long.

Sergei Andreyev, director of the temple building project, added on 3 June that the new space is also insufficient: "How can the entire 15,000-strong community, Muscovites and Indians, who regularly visited the temple before and wish to visit it in the future, fit into a basement area of only 500 square metres? Especially when they all come to spiritual holidays? Especially when you consider that this space is now generally considered the only temple in Moscow?"

Property Department

The Krishna devotees took the Moscow Property Department to the Moscow Arbitration Court in December 2013 over the latter's annulment of the contract granting the religious community free use of the land during the period of construction of the temple.

Under Article 30.3 of the 2001 Land Code such a plot is given for use free of charge during construction (bezvozmezdnoye srochnoye polzovaniye). Once the building has been declared fit for use (prinyato v ekspluatatsiyu), the land beneath it becomes the religious organisation's private property (Article 36) (see F18News, 26 September 2012 http://www.forum18.org/archive.php?article_id=1747).

Lawyer Frolov told Forum 18 that "the position of the Moscow Government is simple and cynical" – that they had the right to terminate the contract "unilaterally and unconditionally", whenever they wanted.

Moscow government representatives confirmed in court that they themselves had no complaints about the Krishna adherents' activities and that the religious organisation had fulfilled the terms of the contract "conscientiously and lawfully", according to Frolov. Despite this, and the community's expenditure on the project, the contract was terminated "a month before we got the building permit". Frolov complained to Forum 18 that, in court, the Property Department did not explain their reasons for doing this.

Frolov estimated that the community had spent 70 million Roubles (12 million Norwegian Kroner, 1.5 million Euros or 2 million US Dollars) collected by community members.

The Moscow Property Department refused to answer Forum 18's questions by telephone on 3 June. Forum 18 asked in writing why the contract had been terminated and why previously dismissed residents' complaints had been taken into account. "Based on the fact that up to 23 June 2013 the plot had not been taken over and temple construction had not begun, on 4 April 2013 the Moscow City Construction and Land Commission, also taking into account the views of residents of the area, decided to terminate the contract," the Department's press office replied on 4 June.

Residents' complaints?

At earlier hearings in the case, the Krishna adherents asked the court to request from the Moscow government a copy of local residents' objections to the temple and the written response to it.

The letter from the Public Association of Khimki Urban District to Moscow's mayor Sergei Sobyanin (received on 25 June 2012), seen by Forum 18, stated that the Society for Krishna Consciousness was "a dangerous totalitarian sect", and that "their teaching is alien and harmful to inhabitants of Russia", and asks the Mayor to rescind building permission in Molzhaninovo.

Fazil Izmaylov, then First Deputy Prefect of Northern Administrative District, replied on 13 August 2012 that "the teachings of Hinduism are founded on peacefulness, respect for other religions, non-violence, and charity", that all religions are equal before the law in "multiconfessional" Russia, and that there was no reason that the temple would have a negative influence on Moscow's residents.

According to Frolov, at the hearing, the Property Department's representatives stated that the opinions of residents were not the reason for terminating the lease, but "were taken into account".

Andreyev, director of the temple building project, pointed out to Forum 18 that there were no houses near the temple site, and that the written complaint, oddly, came not from residents of Molzhaninovo, but from the neighbouring district of Khimki.

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"For the Government of Moscow simply to terminate the contract with no reason would have been quite ugly," Lawyer Frolov remarked to Forum 18, "so they came up with 'the views of residents'."

Andreyev commented that "we all know that any religious object, including Orthodox churches in Moscow, causes protests from local residents. However, despite the protests and discontent, these objects are still being built."

Mosgosstroinadzor

The Krishna community applied for a building permit on 18 June 2013. Mosgosstroinadzor refused on 26 June 2013 on the grounds of absence of a land lease agreement with extension of the construction period. The contract supplied by the religious community in its application stipulated that construction was to be completed by 31 December 2012.

The Krishna devotees took Mosgosstroinadzor to Moscow Arbitration Court in December 2013 court. They argued that they had provided all necessary documents and that after a contract expires (ie. contract of free use/rental of site), it is considered renewed unless the landowner objects.

Judge Igor Korogodov upheld Mosgosstroinadzor's refusal of the building permit, ruling that the December 2012 date of completion remained valid regardless of any automatic renewal of the contract, and that since the Moscow Property Department had notified the community on 20 May 2013 that it had terminated the contract on the land, the Krishna devotees had no title to the site at the time of their application. The Moscow Property Department maintained that the contract came to an end on 23 June 2013.

Lawyer Frolov told Forum 18, however, that the community did not receive notice of the termination of the contract (which they believed to have been renewed automatically) until mid-June 2013. Since, by law, the contract remained valid for one month after such notification was received, Frolov maintains that it did not expire until mid-July 2013. Thus, the community applied for a building permit on 18 June 2013 when the contract was still in force.

The appeal against the December 2013 court decision will continue after the Krishna devotees' appeal against the 26 May ruling in the case against the Property Department.

Prospects

Frolov thinks the chance of being able to build at Molchaninovo remains only "minimal", as the land has been taken away, with little prospect of its return. "Only high political will could change the situation."

He added that the city is supposed to be "working on" the allocation of a new plot in the southern part of "New Moscow" (districts recently attached to the city from the surrounding Region).

The Moscow Property Department confirmed to Forum 18 on 4 June that the city's Committee for Architecture and Town Planning had been instructed to "study the question of siting the [temple] on alternative land in the Troitsky and New Moscow Administrative Districts".

Frolov pointed out that "realistically, this would happen in a few years, after the General Development Plan has been approved. And again, there is no guarantee that the third site would not be taken away just like that." (END)

For more background, see Forum 18's surveys of the general state of freedom of religion or belief in Russia at http://www.forum18.org/Archive.php?article_id=1722, and of the dramatic decline in religious freedom related to Russia's Extremism Law at http://www.forum18.org/Archive.php?article_id=1724.

A personal commentary by Alexander Verkhovsky, Director of the SOVA Center for Information and Analysis http://www.sova-center.ru, about the systemic problems of Russian anti-extremism legislation, is at F18News 19 July 2010 http://www.forum18.org/Archive.php?article_id=1468.

A personal commentary by Irina Budkina, Editor of the http://www.samstar.ucoz.ru Old Believer website, about continuing denial of equality to Russia's religious minorities, is at F18News 26 May 2005 http://www.forum18.org/Archive.php?article_id=570.

More reports on freedom of thought, conscience and belief in Russia can be found at http://www.forum18.org/Archive.php?query=&religion=all&country=10.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

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