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RUSSIA: "Retroactively depriving Russian citizens of the right to international protection"

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

Under June amendments, Russia will not enforce any European Court of Human Rights decision which came into force after 15 March, and will pay outstanding compensation in earlier cases only in Roubles and not to bank accounts in countries deemed "unfriendly". "Russia hasn't been the best in enforcing ECtHR judgments domestically, far from it," says a Jehovah's Witness lawyer, but added that positive judgments "generally slowed down the infringements". Moscow lawyer Sergey Okhotin described the amendments as "retroactively depriving Russian citizens of the right to international protection".

Judgments of the European Court of Human Rights in Strasbourg will no longer be upheld in Russia, according to amendments with retroactive force which President Vladimir Putin signed into law on 11 June. Thousands of Russian citizens and organisations have appealed to the ECtHR over more than 20 years, including over violations of freedom of religion or belief.

Russia will not enforce any ECtHR decision which came into force after 15 March, and will pay outstanding compensation in earlier cases only in Roubles and not to bank accounts in countries deemed "unfriendly" to Russia (see below).

The ECtHR will not accept the lodging of any new cases from Russia relating to alleged violations which occur after 16 September 2022, the date Russia ceases to be party to the European Convention on Human Rights (see below).

"The ECtHR was an effective mechanism for the recognition of human rights and freedoms," the lawyer Sergey Sychyov, who was involved in freedom of religion or belief cases at the Strasbourg court, told Forum 18 (see below).

"Russia hasn't been the best in enforcing ECtHR judgments domestically, far from it," a Jehovah's Witness lawyer commented to Forum 18. "Most of the time, it would compensate for material damages, but would take years to amend its legislation and/or redress the individual issue, when it did not contradict its plans" (see below).

The Jehovah's Witness lawyer noted, though, that positive ECtHR judgments "generally slowed down the infringements". The lawyer added that it would have taken the Russian authorities much less time to liquidate Jehovah's Witness organisations and ban their activities as "extremist", had it not been for the four positive ECtHR judgments issued before 2017 (see below).

Russians are now left with no effective mechanism for the protection of their human rights outside the domestic legal system. Moscow lawyer Sergey Okhotin described the amendments to a legal newspaper as "retroactively depriving Russian citizens of the right to international protection" (see below).

Forum 18 asked the General Prosecutor's Office in Moscow what Russian citizens should do now if their human rights are violated, once they have exhausted all domestic options. Forum 18 received no reply by the end of the working day in Moscow of 12 August.

The number of ECtHR cases concerning Russia is the second-highest of all member states (after Turkey), despite the fact that Russia ratified the European Convention on Human Rights only in 1998 and the Court has been operating since 1959. In 2021, nearly a quarter of all ECtHR judgments concerned Russia.

Russian citizens still have the option of reporting human rights violations to the United Nations Office of the High Commissioner for Human Rights. The OHCHR can then request that the government take action, but there is no way of enforcing their recommendations and this is not a compensatory mechanism (see below).

Russia views the UN human rights mechanisms "merely as soft law and does not consider itself bound by them", a Jehovah's Witness lawyer commented to Forum 18 (see below).

Amid hundreds of other laws adopted on 14 July, President Putin also signed amendments to the Extremism Law which will introduce a new restricted-access database of extremist materials and a new "unified register" of people

(https://www.forum18.org/archive.php?article_id=2766) deemed to be "involved in" the activities of organisations which have been banned as extremist.

The individuals and activities liable for inclusion in the register are so broadly defined, however, that it is unclear whether there may be wider implications (https://www.forum18.org/archive.php?article_id=2766), including for religious believers whose organisations have been banned as "extremist" – Jehovah's Witnesses, Muslims who study the works of Said Nursi, adherents of the Muslim missionary movement Tabligh Jamaat, and Falun Gong adherents in Khakassiya.

Russia no longer implementing European Court of Human Rights rulings

On 11 June 2022, President Vladimir Putin signed into law a set of amendments to Russia's legislation (<https://rg.ru/documents/2022/06/14/document-izmeneniya.html>) governing the implementation of European Court of Human Rights (ECtHR) rulings. These amendments made any rulings which came into force after 15 March unenforceable in Russia.

The Council of Europe suspended Russia from its membership on 25 February, immediately following the invasion of Ukraine. Russia initiated withdrawal procedures on 15 March, but the Council expelled it on 16 March. Russia will cease to be party to the European Convention on Human Rights on 16 September 2022; the ECtHR will continue to deal with applications against Russia over alleged violations committed until that date, but the passage of the new legislation means that no decisions relating to these will be enforced.

If parties to a case do not appeal, ECtHR decisions enter legal force three months after they are issued – therefore, decisions which were made between 15 December 2021 and 14 March 2022, but which are not yet in force, will not be implemented.

For instance, on 7 June 2022 the ECtHR found (Taganrog LRO and Others v. Russia, Application No.32401/10 and 19 others (<https://hudoc.echr.coe.int/eng?i=001-217535>)) that the liquidation of the Jehovah's Witness Administrative Centre (https://www.forum18.org/archive.php?article_id=2297) and its subsidiary organisations and the prohibition of their activities as "extremist" in 2017 was illegal in international law. The ECtHR stated it "concurs with the assessment by the Venice Commission, the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, and the UN Human Rights Committee that the interference with the applicants' fundamental rights was made possible because of the overly broad definition of "extremism" in Russian law." The ECtHR among other things also stated that this "could – and did – lead to arbitrary prosecutions" and also condemned "a lack of judicial safeguards".

The ECtHR ruled that

Russia should halt all criminal prosecutions of Jehovah's Witnesses, free all those imprisoned and detained, return all seized property, and pay nearly 3.5 million Euros in compensation. This ruling is not due to come into force until 7 September 2022.

The case (Taganrog LRO [Local Religious Organisation] and Others v. Russia, Application No.32401/10 and 19 others (<https://hudoc.echr.coe.int/eng?i=001-217535>)) was originally lodged in 2010 in response to the dissolution as "extremist" of the Jehovah's Witness congregation in Taganrog and the banning of 34 Jehovah's Witness publications (https://www.forum18.org/archive.php?article_id=1385) in 2009. It eventually incorporated a total of 20 appeals, lodged between 2010 and 2019, against the banning of other Jehovah's Witness literature, the blocking of the main jw.org website (https://www.forum18.org/archive.php?article_id=2071), and the liquidation of the Administrative Centre (https://www.forum18.org/archive.php?article_id=2297), among other cases.

The 11 June 2022 Russian amendments also state that compensation payments relating to ECtHR decisions which came into force before 15 March 2022 (inclusive) will be paid only in Roubles and cannot be paid to foreign bank accounts in states deemed unfriendly to Russia.

"Retroactively depriving Russian citizens of the right to international protection"

"The law proposes retroactively depriving Russian citizens of the right to international protection," Moscow lawyer Sergey Okhotin commented to the legal newspaper "Advokatskaya Gazeta" on 14 June. "The adoption of the [amendments] creates a situation in which many thousands of people from Russia who applied to the ECtHR for protection, which the state guaranteed them on the basis of Article 15, Part 4 and Article 46, Part 3 of the Constitution of the Russian Federation, are deprived of the opportunity to protect their rights, without an alternative."

(Article 15, Part 4 of the Constitution states: "The generally recognised principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes other rules than those provided for by law, then the rules of the international treaty shall apply." Article 46, Part 3 states: "Everyone has the right, in accordance with the international treaties of the Russian Federation, to apply to interstate bodies for the protection of human rights and freedoms, if all available domestic remedies have been exhausted.")

Amendments to Criminal Procedural Code Article 413, also adopted on 11 June and in force from 22 June, remove the possibility of

using ECtHR rulings as "new circumstances" which would be grounds for overturning Russian court decisions which have come into force, or for resuming court proceedings.

Supreme Court challenges "insufficient"?

As an alternative mechanism to the ECtHR, the 11 June amendments expand the grounds for challenging a Russian court decision to include discrepancy between a court's interpretation of a law (or one of the law's provisions) and the Constitutional Court's interpretation (where previously this was only possible if the Constitutional Court had recognised a law as actually unconstitutional subsequent to a person's conviction).

People wishing to challenge a conviction or sentence, who could previously have turned to the ECtHR, must now apply for it to be reviewed by the Supreme Court.

This "additional compensatory mechanism, in my opinion, is insufficient", Never Gasparyan of the Federal Chamber of Lawyers of the Russian Federation told "Advokatskaya Gazeta" on 14 June, suggesting that the number of grounds for overturning sentences at the cassational level should also be expanded.

The Civil Procedural Code was also amended on 11 June to remove ECtHR rulings as grounds for reviewing civil cases (which can include extremism-related bans on religious literature and religious organisations). The expanded Constitutional Court mechanism had already been introduced to the Civil Procedural Code by an amendment of 30 December 2021.

"The ECtHR was an effective mechanism for the recognition of human rights and freedoms," the lawyer Sergey Sychyov, who was involved in freedom of religion or belief cases at the court, told Forum 18 on 9 August. "Article 52 of the Constitution of the Russian Federation guarantees compensation for damages to victims of crimes and abuses of power. The legislation of the Russian Federation stipulates mechanisms for compensation for damages".

Forum 18 wrote to the General Prosecutor's Office in Moscow on 1 August to ask what Russian citizens should do now if their human rights are violated, once they have exhausted all domestic options. Forum 18 received no reply by the end of the working day in Moscow of 12 August.

Positive ECtHR judgments "generally slowed down the infringements"

"Russia hasn't been the best in enforcing ECtHR judgments domestically, far from it," the Jehovah's Witness lawyer commented to Forum 18. "Most of the time, it would compensate for material damages, but would take years to amend its legislation and/or redress the individual issue, when it did not contradict its plans. That being said, the picture was not as dark as one could imagine. Any positive judgment has generally slowed down the infringements."

The Jehovah's Witness lawyer added that it would have taken the Russian authorities much less time to liquidate Jehovah's Witness organisations and ban their activities as "extremist", had it not been for the four positive ECtHR judgments issued before 2017.

Lawyer Mikhail Frolov, who said he regretted Russia's withdrawal from the jurisdiction of the ECtHR, believes that most of its decisions are "quite well spelled out". "Based on the experience of the best judges from different countries, they developed approaches and criteria for resolving rather complex legal and moral issues. The decisions of the ECtHR undoubtedly had a positive impact on both Russian judicial practice and Russian lawmaking."

The UN option

Russian citizens still have the option of reporting human rights violations to the United Nations Office of the High Commissioner for Human Rights, even before domestic remedies are exhausted. The OHCHR can then request that the government take action, but there is no way of enforcing their recommendations and this is not a compensatory mechanism.

"I think that this option will not be useful for citizens," the lawyer Mikhail Frolov – who has worked on freedom of religion or belief cases - told Forum 18 on 5 August, adding that he believes the system "does not really work". "In addition, Russians' confidence in international legal institutions is declining."

Russia views the UN human rights mechanisms "merely as soft law and does not consider itself bound by them", a Jehovah's Witness lawyer commented to Forum 18 on 9 August.

Outstanding ECtHR cases

Russia currently owes 74 million Euros in compensation and has 2,030 cases against it still outstanding, the ECtHR press service told "Kommersant" on 6 June.

These outstanding cases include many related to freedom of religion and belief, including:

- several lodged by people prosecuted for allegedly unlawful "missionary activity" (https://www.forum18.org/archive.php?article_id=2731) under Administrative Code Article 5.26, Parts 4 and 5;
- the case of three Muslims from Naberezhnyye Chelny, found guilty of extremist activity (https://www.forum18.org/archive.php?article_id=2684) in 2014 for meeting to study Said Nursi's writings;
- and the case of Novosibirsk imams Ilhom Merazhov and Komil Odilov, also convicted of involvement in "Nurdzhular" (https://www.forum18.org/archive.php?article_id=2391). (END)

More reports on freedom of thought, conscience and belief in Russia (<https://www.forum18.org/archive.php?country=10>)

For background information, see Forum 18's survey of the general state of freedom of religion and belief in Russia (https://www.forum18.org/archive.php?article_id=2246), as well as Forum 18's survey of the dramatic decline in this freedom related to Russia's Extremism Law (https://www.forum18.org/archive.php?article_id=2215)

A personal commentary by the Director of the SOVA Center for Information and Analysis (<https://www.sova-center.ru>), Alexander Verkhovsky, about the systemic problems of Russian "anti-extremism" laws (https://www.forum18.org/archive.php?article_id=1468)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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