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RUSSIA: Will Jehovah's Witness and Armenian-rite Catholic court victories be respected?

By Geraldine Fagan, Forum 18 (<https://www.forum18.org>)

Both the Jehovah's Witnesses and the Armenian-rite Catholic parish in Moscow have recently won legal victories in defence of their right to exist, Forum 18 News Service notes. The European Court of Human Rights (ECtHR) in Strasbourg rejected allegations that the Jehovah's Witnesses destroy families and infringe the rights and freedoms of citizens and which were used to attempt to ban their community in Moscow. The ECtHR also found that the excessive length of court proceedings against the community violated the right to a fair trial. However the Jehovah's Witnesses have submitted another complaint to the ECtHR, this time against a Supreme Court ruling outlawing 34 Jehovah's Witness titles as extremist and dissolving their community in Taganrog. This paved the way for the current nationwide wave of raids, detentions, literature seizures and other violations of freedom of religion or belief against Jehovah's Witnesses. Separately, Armenian-rite Catholics won a case in Moscow against a city decision not to register their parish. The city Justice Department has appealed in Moscow against the judgment, but no date has yet been set for the appeal hearing.

As the Russian authorities continue to raid the homes and seize the literature of Jehovah's Witnesses, the European Court of Human Rights (ECtHR) in Strasbourg may be the community's only hope against such religious freedom violations, Forum 18 News Service notes.

On 1 June the Jehovah's Witnesses submitted a complaint to the ECtHR against the Russian Supreme Court's 8 December 2009 ruling, which upheld Rostov-on-Don Regional Court's earlier ruling outlawing 34 Jehovah's Witness titles as extremist and dissolving the local Jehovah's Witness religious organisation in Taganrog (see F18News 8 December 2009 http://www.forum18.org/Archive.php?article_id=1385).

The Supreme Court ruling resulted in the addition of the 34 titles to the Federal List of Extremist Materials and paved the way for the current nationwide wave of raids, detentions, literature seizures and other violations against Jehovah's Witnesses, which is reminiscent of the latter Soviet era. Similar violations also take place against Muslims (see most recently F18News 7 July 2010 http://www.forum18.org/Archive.php?article_id=1464).

The latest, 1 June appeal to the ECtHR is the third case the Jehovah's Witnesses have brought against the Russian government, and came just before a 10 June victory in the first such case.

On 10 June 2010 the ECtHR ruled in favour of the Jehovah's Witnesses of Moscow in response to their October 2001 complaint against a ban on the community (Application No. 302/02 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=869647&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>).

The ECtHR also awards the Jehovah's Witnesses non-financial damage of 20,000 Euros (781,500 Roubles, 160,870 Norwegian Kroner, or 25,280 US Dollars) plus costs of 50,000 Euros (1,953,200 Roubles, 402,225 Norwegian Kroner, or 63,200 US Dollars), to be paid by Russia. Both parties now have three months in which to appeal against the decision before it becomes final on 10 September. As of 12 July, Russia has not challenged the ECtHR judgment.

Will Russia comply?

Officials at the Justice Ministry in Moscow declined on 11 June to put Forum 18 through to the office within the Ministry of Georgi Matyushkin, Russia's Permanent Representative to the European Court, insisting that any questions should be put in writing. Forum 18 asked Matyushkin in writing the same day whether Russia intends to challenge or comply with the 10 June judgment in favour of the Jehovah's Witnesses, including by registering their Moscow community. Forum 18 had received no response as of the end of the working day in Moscow on 12 July.

Officials at the Moscow Justice Department similarly declined to answer telephone enquiries. On 16 June Forum 18 asked the Justice Department head, Vladimir Demidov, in writing whether his department will now register the Jehovah's Witness Moscow

community in the light of the ECtHR judgment, as well as the Moscow parish of the Armenian-rite Catholics, which won a case in a Moscow court in early June against the Department's refusal to consider its registration application. Forum 18 had received no response as of the end of the working day in Moscow on 12 July.

The Russian government has not challenged previous ECtHR judgments in favour of its religious communities – including the Jehovah's Witnesses. It has paid compensation on time, and in the one case where a clear remedy was possible for the circumstances generating the complaint – that of the Salvation Army's Moscow branch – this was applied in the form of re-registration of the branch by the city's Justice Department (see F18News 23 July 2009 http://www.forum18.org/Archive.php?article_id=1331).

Neither the Armenian-rite Catholics nor the Salvation Army are experiencing other problems from the authorities.

Armenian-rite Catholic victory?

On 7 June, Moscow Justice Department's failure to consider an October 2009 registration application by the Armenian-rite Catholic parish of St Gregory the Illuminator was pronounced unlawful by Meshchansky District Court in the Russian capital. The Department had declined to consider the application on the grounds that it did not contain a document proving that the community had existed for 15 years, as required by the 1997 Law, but Vladimir Ryakhovsky of the Slavic Centre for Law and Justice, the parish's lawyer, demonstrated that such documentation was submitted.

Immediately after the judgment was given, the Moscow Justice Department indicated it would appeal against it, Ryakhovsky told Forum 18 on 12 July. It submitted its appeal to Moscow City Court in early July once it had received the 7 June decision in writing. No date has yet been set for the appeal hearing.

Ryakhovsky said the decision to appeal was probably based on the Justice Department's "formal approach". But he said he does not know why it refused to consider the original application. The parish remains unregistered.

The Armenian-rite parish is separate from the structures of Moscow's Roman Catholic diocese and is subject to the Armenian Catholic bishop based in Armenia. The lack of legal status has not prevented a priest from gaining visas to serve the Moscow parish from some years before the time the original application was lodged.

Spirit of ECtHR rulings defied

Russia continues to defy the spirit of the ECtHR rulings in favour of its religious communities. In one of over 265 incidents of state harassment reported by the Jehovah's Witnesses over six months since the Supreme Court's December 2009 ruling, police searched Jehovah's Witness homes and the Kingdom Hall in Chelyabinsk in approved raids on 12 May. Ironically, by confiscating special video equipment at the Hall, the authorities again paralysed the activity of the very same community of deaf Jehovah's Witnesses awarded compensation by the ECtHR in January 2007 for the state interruption of their worship service in April 2000, the second case brought by the Jehovah's Witnesses before the ECtHR (see F18News 17 January 2007 http://www.forum18.org/Archive.php?article_id=900).

A 14 May 2010 statement by the Chelyabinsk regional department of the Interior Ministry acknowledges searches of nine homes of active Jehovah's Witnesses and "premises where adepts hold meetings", involving confiscation of literature, video equipment, computers, mobile telephones, and audio and video storage devices. A criminal case has been opened against the Jehovah's Witnesses, it continues, due to the recent arrival from St Petersburg of a large consignment of "extremist literature, audio and video products". The statement also – mistakenly – alleges that Jehovah's Witness activity is "completely banned in some European countries".

A separate, 13 May statement by the Investigation Committee of Chelyabinsk Regional Public Prosecutor's Office adds that the case was opened under Article 282, Part 2, Point C of the Criminal Code (incitement of ethnic, racial or religious hatred by an organised group), which it claims was violated by statements made during Jehovah's Witness public preaching during 2009-10, and distribution of "banned literature".

Muted protests

While some parts of the state apparatus have condemned the current action against the Jehovah's Witnesses, their protest has been minimal and had little effect. As Grigory Martynov of the Jehovah's Witnesses told Forum 18 on 2 June, even high-level state representatives say they are unable to act, citing the need to comply with court decisions.

At a 2 June Moscow press conference organised by the Jehovah's Witnesses, Sergei Krivenko of the presidential Committee for the Development of Institutions of Civil Society announced that his Committee was preparing a complaint to the Constitutional Court against the 2002 Extremism Law being interpreted as in the case of the Jehovah's Witnesses. He repeatedly described what was happening to them as "inadmissible" – yet the campaign against them continues.

In a 24 June interview with Russian daily Kommersant, Russia's Ombudsperson for Human Rights, Vladimir Lukin, announced that on 22 June he asked the presidium of the Supreme Court to review Rostov-on-Don Regional Court's 11 September 2009 decision against the Jehovah's Witnesses.

In the interview, Lukin also claimed that his defence of freedom of conscience in Russia was "without division between traditional and non-traditional religions or sects". Yet while noting frequent complaints from Jehovah's Witnesses in various regions, the freedom of conscience section of the Ombudsperson's 21 May 2010 report on human rights violations in Russia in 2009 fails to mention the Rostov-on-Don or Supreme Court rulings. Instead – in sharp contrast to the latest ECtHR ruling – it recommends the Jehovah's Witnesses change their stance on blood transfusions.

In its overall assessment, the freedom of conscience section of the 2010 Ombudsman's report also echoes President Dmitry Medvedev's December 2009 suggestion to Lukin that a rise in complaints was "not bad" because it suggested that citizens had faith that they would be resolved. Such a rise "testifies to citizens' increased interest in and attention to these issues," the report maintains (see F18News 26 February 2010 http://www.forum18.org/Archive.php?article_id=1415).

Moscow JW community victory

The original grounds for the complaint considered in the ECtHR's 10 June judgment were repeated and protracted attempts to prosecute the Moscow Jehovah's Witnesses – five criminal investigations and two civil proceedings over some six years at the time of submission in October 2001 - and the corresponding refusal by Moscow's Justice Department to re-register the community under the 1997 Religion Law. The complaint was later amplified to take account of the verdict in the second civil case: the dissolution of the Moscow community and a ban on its activities, reached by the city's Golovinsky District Court on 26 March 2004 and upheld by Moscow City Court on 16 June 2004 (see F18News 17 June 2004 http://www.forum18.org/Archive.php?article_id=344).

In their complaint, the Jehovah's Witnesses argued that the state's action against them violated Articles 9 (freedom of thought, conscience and religion) and 11 (freedom of peaceful assembly and association) of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, which entered force for Russia in 1998. They point to the 2004 ban's numerous adverse effects on the Moscow community, such as being prevented from constructing or renting places of worship and from acquiring, importing and disseminating religious literature.

In its submission to the ECtHR, the Russian government defended the ban on the Moscow Jehovah's Witnesses, maintaining that the community's "salient theocratic hierarchy", "mindless submission" of individual members, aspiration to integrate families into the life of a "totalitarian non-secular collective" and "paramilitary discipline" set it apart from unspecified "traditional religions".

The rights enshrined in Articles 9 and 11 of the Convention are not absolute, but restrictions must both be prescribed by law and "necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." Since the Jehovah's Witness ban is based on Article 14 of the 1997 Law, the ECtHR states in its 41-page verdict that it is prepared to accept that it is prescribed by law and "pursued the legitimate aim of the protection of health and the rights of others."

However, the ECtHR found on examination of the Russian state's key charges against the Jehovah's Witnesses – coercion into destroying the family; infringement of the personality, rights and freedoms of citizens; encouragement of suicide or the refusal of medical assistance; and incitement of citizens to refuse civic duties – that they had no basis whatsoever. It therefore determined the ban unnecessary and upheld the Jehovah's Witnesses' complaint, awarding the combined 70,000 Euros in non-pecuniary damage and costs. In addition, the ECtHR has ordered the Russian government to "put an end to the violation found by the Court and to redress so far as possible the effects".

Landmark decision

The ECtHR's argumentation in rejecting the specific charges against the Jehovah's Witnesses is particularly significant, as similar accusations form the basis of the September 2009 Rostov-on-Don Regional Court ruling. In its verdict, the Rostov-on-Don court accepted allegations that the Taganrog Jehovah's Witnesses destroy families and infringe the rights and freedoms of citizens among its grounds for dissolving the community. It also accepted as evidence of extremism references in Jehovah's Witness literature to rejection of blood transfusions, military service, state symbols and holidays.

By contrast, rejecting the charge of coercion into destroying the family in the Moscow case, the ECtHR stated:

"It further appears from the testimonies by witnesses that what was taken by the Russian courts to constitute 'coercion into destroying the family' was the frustration that non-Witness family members experienced as a consequence of disagreements over the manner in which their Witness relatives decided to organise their lives in accordance with the religious precepts, and their increasing isolation resulting from having been left outside the life of the community to which their Witness relatives adhered. It is a known fact that a religious way of life requires from its followers both abidance by religious rules and self-dedication to religious work that can take up a significant portion of the believer's time and sometimes assume such extreme forms as monasticism, which is common

to many Christian denominations and, to a lesser extent, also to Buddhism and Hinduism. Nevertheless, as long as self-dedication to religious matters is the product of the believer's independent and free decision and however unhappy his or her family members may be about that decision, the ensuing estrangement cannot be taken to mean that the religion caused the break-up in the family."

Rejecting the charge of infringement of the personality, rights and freedoms of citizens, the ECtHR stated:

"The Court finds it remarkable that the courts did not cite the name of a single individual whose right to freedom of conscience had allegedly been violated (...) Nor is it apparent that the prosecution experts had interviewed anyone who had been coerced (...) into joining the community. On the contrary, the individual applicants and other members of the applicant community testified before the court that they had made a voluntary and conscious choice of their religion and, having accepted the faith of Jehovah's Witnesses, followed its doctrines of their own free will."

Rejecting the charge of encouragement of suicide or the refusal of medical assistance, the ECtHR stated:

"The ability to conduct one's life in a manner of one's own choosing includes the opportunity to pursue activities perceived to be of a physically harmful or dangerous nature for the individual concerned." Noting that the right to refuse medical treatment is also protected by Russian law, the Court continued that the freedom to make such a choice "is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. However, for this freedom to be meaningful, patients must have the right to make choices that accord with their own views and values, regardless of how irrational, unwise or imprudent such choices may appear to others. Many established jurisdictions have examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life."

Rejecting the charge of incitement of citizens to refuse civic duties, the ECtHR stated:

"The religious admonishment to refuse military service was in full compliance with Russian laws and no instances of any applicant community's members unlawfully refusing alternative civilian service were put forward in the community trial (...) Russian law does not contain regulations on the civil duty of honouring such [state] symbols (...) there is no law compelling celebration of any holidays, whether they are secular or religious, and such compulsory participation in celebrations, had it been elevated to the rank of a legal obligation, could arguably have raised an issue under Articles 9 and 10 of the Convention."

The ECtHR also accepted that the approximately five and a half years of legal proceedings by the Russian authorities within Russia against the community were excessive. The length of these legal proceedings was found by the ECtHR to break Article 6 (the right to a fair trial), Paragraph 1 of the Convention. (END)

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

For more background, see Forum 18's Russia religious freedom survey at http://www.forum18.org/Archive.php?article_id=1196.

Analysis of the background to Russian policy on "religious extremism" is available in two articles: - 'How the battle with "religious extremism" began' (F18News 27 April 2009 http://www.forum18.org/Archive.php?article_id=1287 - and - 'The battle with "religious extremism" - a return to past methods?' (F18News 28 April 2009 http://www.forum18.org/Archive.php?article_id=1288).

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.

A printer-friendly map of Russia is available at

<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=russi>.

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