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RUSSIA: Auction to end Old Believer church restitution hopes?

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

Despite a verbal promise from the regional governor, Old Believers in Yekaterinburg in the Urals fear that they may never get restitution of their church, seized during the Soviet period. Sverdlovsk Regional Property Fund is due to auction the historical church on 11 June. "Logic, common sense, the Governor's promise, and historical justice compel us to believe that the church building will be handed over to its rightful owners," Maksim Gusev of the Church's Urals Diocese told Forum 18 News Service. "But officials are doing everything to obscure the situation and delay the outcome." Lutherans in Vyborg in north-western Russia have been refused the restitution of their former parish house, which they hope to use as the pastor's accommodation and a Sunday school. A 21 May court decision claims this is not a "religious purpose" as required under the 2010 restitution law. Catholics in Barnaul have been promised the return of their Soviet-confiscated church "no later than 3 February 2018".

Three and a half years since it came into force, Russia's 2010 Law on the Transfer of Religious Property to Religious Organisations has proved to be no guarantee that the restitution process will be easy or unchallenged, or indeed that religious property seized during the Soviet period will be returned at all, Forum 18 News Service has found. Some religious communities fear they may never get back their historical property.

Soviet-confiscated religious buildings may yet be sold to developers, as in the case of an Old Believer church in the Urals city of Yekaterinburg. Or they can have their religious significance disputed, as in repeated court cases brought by Lutherans in the north-western city of Vyborg trying to regain a parish house. In areas of intensive urban development, commercial concerns may prevail over the principles of the Law.

Religious communities have made hundreds of applications for the return of former places of worship under the 2010 Law. These include 734 requests for federally owned properties alone, according to the Federal Agency for State Property Administration (Rosimushchestvo).

The 2010 Law allows religious communities to attain full ownership of property and other items of religious purpose to which they can demonstrate their rights. In contrast to earlier laws, it introduced defined time periods for dealing with cases. However, the same government body that currently owns the property also oversees the arbitration process for those dissatisfied with its decisions (see below).

In 2010, a Catholic church in Russia's Baltic exclave of Kaliningrad, which the local parish had been trying to get back in vain since the early 1990s, was among a number of religious properties suddenly handed to the Russian Orthodox Church. Other properties handed over, which likewise never belonged to the Orthodox, 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).

Some religious organisations also encounter problems building new places of worship, including repeated denials of land, withdrawal of permission to build (as in the case of Moscow's Hare Krishna community), and court orders to demolish nearly-completed structures (e.g. mosques in Kaliningrad and Pyatigorsk) (see F18News 5 June 2014 http://www.forum18.org/archive.php?article_id=1965).

Old Believers in Yekaterinburg

The former Old Believer Holy Trinity Church, on Rosa Luxemburg Street in central Yekaterinburg, is due to be auctioned on 11 June, despite regional Governor Yevgeny Kuyvashev's assurances to Old Believers that it would be returned to them. The church functioned from the 1880s until its confiscation in the 1930s, and latterly housed a tuberculosis clinic.

The group seeking the return of the building belongs to the Belokrinitsa Concord of Old Believers. The Old Believers (the term also refers to priestless denominations outside the "priestist" hierarchies) separated from the official Russian Orthodox Church in the 17th century in protest against liturgical reforms, and they carry on liturgical practices in use before this time.

The Church's head, Metropolitan Kornily, approached then-Governor Eduard Rossel seeking the church's return in 2007, but no

progress was made. In July 2013, Kornily met Rossel's successor, Kuyvashev, who "responded positively to the Metropolitan's request, noting that at the end of 2013 or a little later, the doctors and patients would move into a new clinic .. and then the building should be handed over to the Old Believer community", the Church's website noted.

As required by the Governor's office, immediately after the meeting, the Church sent an official request for the transfer. But the administration never registered receipt of this letter, Maksim Gusev, press secretary of the Church's Urals Diocese, told Forum 18 on 15 May. The Old Believers, however, trusted the Governor's word.

The Old Believers contacted the Governor's administration at the end of 2013, when they thought the building would be vacated, but were told that their letter had been "misaid". "Waiting for an invitation to take the building, we could simply be left out of the situation," Gusev told Forum 18.

The community sent another letter on 29 January 2014. The 17 February response from Yakov Silin, deputy chair of the regional government, seen by Forum 18, claimed that a "series of working meetings and consultations to reconcile the positions of interested parties" was ongoing and that "the search for a compromise is continuing". He expressed hope for a "positive solution to the problem, in the interests of [the Church]".

Auction

In early April, however, Sverdlovsk Regional Property Fund announced the auction of the building and associated land with a starting price of 355.64 million Roubles (62 million Norwegian Kroner, 7.6 million Euros or 10.4 million US Dollars), according to sale documents seen by Forum 18. The sale was to be held on 29 April, but was postponed first to 20 May, then to 11 June, according to the Property Fund's website.

A spokeswoman for the Property Fund told Forum 18 on 20 May that the auction had been postponed "by decision of the owner" (i.e. Sverdlovsk Region). She denied any knowledge of a promised return of the building to the Old Believers.

Rosa Luxemburg Street lies in a zone of intensive housing development. Two construction companies have expressed interest in the auction, one of which has already built a large residential block in an adjoining street and is seeking to expand it. The Old Believers fear that if the former church is sold to a developer, it will be impossible to regain it, as it will likely be demolished.

Yekaterinburg has two Old Believer parishes. One is based at the Church's sole surviving pre-1917 building in the city, Nativity Church, while the other, Holy Trinity parish, has no church of its own and had therefore been hoping for the building on Rosa Luxemburg Street. According to the samstar.ucoz.ru Old Believer website, the number of Old Believers in Yekaterinburg is growing, and the existing church building cannot accommodate the congregation at major services.

The disputed building was listed as an object of cultural heritage of regional significance, a status which protected it from demolition. This status was removed, however, by a regional law of November 2013.

Urals Diocese press secretary Gusev still hopes the Old Believers may yet regain their church. "Logic, common sense, the Governor's promise, and historical justice compel us to believe that the church building will be handed over to its rightful owners," he told Forum 18. "But officials are doing everything to obscure the situation and delay the outcome. So now it is difficult to make predictions."

Gusev stressed that the Old Believers "do not despair", though. "Every Sunday at five o'clock they come to the front of the building to pray again and again and ask God for the return of the property which was originally theirs."

Lutherans in Vyborg

After four years, multiple applications, and several court cases, the Vyborg parish of the Evangelical-Lutheran Church of Ingria is still struggling to regain ownership of a historical property. A January decision in the parish's favour at St Petersburg's Arbitration Court was overturned in May, and the community is preparing for another attempt, parish rector Vladimir Dorodny told Forum 18 on 20 May.

The parish house was built in 1928, when Vyborg (now in the Leningrad/St Petersburg Region) was part of Finland. After the Red Army took the area in 1944, it became a military recreational facility, a purpose it retained until 2011. The Defence Ministry then passed it to the Vyborg city administration, which later transferred it to the control of Vyborg District.

The Lutherans - who regained the use of Vyborg's St. Peter and St. Paul Church in 1991 - wish to return the nearby house to its previous roles as Sunday school and pastor's apartments, as well as to open a nursing home. They made three official applications to have the building returned, directed to the Defence Ministry (in 2010, before the adoption of that year's Law) and the city and district administrations (in 2012 and 2013 respectively).

The Defence Ministry denied the first application on the grounds that the building had already passed into the ownership of the city of Vyborg, according to court documents seen by Forum 18, despite the Lutherans having made their initial request before this transfer took place. Attempts to challenge the Ministry's lack of action in court were unsuccessful. The judge ruled that the change of state ownership had been appropriately communicated to the Lutherans.

Subsequent applications to the city and district administrations in April 2012 and March 2013 were denied as the building was deemed to be neither of religious significance nor serving religious property. This is in spite of the fact that property once used for religious education (e.g. a Sunday school) is covered by the 2010 Law.

The parish challenged the city's refusal unsuccessfully in St Petersburg Arbitration Court. According to the verdict, seen by Forum 18, the judge ruled that no evidence had been produced that proved religious significance.

Vyborg District's refusal was overturned by St Petersburg Arbitration Court on 21 January 2014. The court recognised the religious significance of the property and stated that the purpose of the 2010 Law is "the restoration of historical justice".

This decision was itself overturned at the Thirteenth Arbitration Appeal Court in St Petersburg on 8 May, according to the written decision issued on 21 May and seen by Forum 18. The court concluded that the original works contract and pre-WWII directory of Vyborg the Lutherans presented as evidence did not prove that the disputed building had been intended for the fulfilment of religious purposes, only that it had been constructed at the parish's expense and used as offices. The Lutherans have two months to submit any appeal at the Federal Arbitration Court of the North-West.

In July 2013, the administration rejected claims of historical ownership: "By this logic, we should give the Finns the whole of Vyborg," unnamed "specialists" told local website 47news.ru on 20 July 2013.

Pastor Aleksandr Kudryavtsev, the Church of Ingria's property manager, told 47news.ru at the same time that the restitution process varies within Leningrad Region – the regional authorities are generally "neutral" and sometimes helpful, but the municipalities can be obstructive.

Parish house sale?

As Vyborg parish rector Dorodny explained to Forum 18 on 20 May, the district authorities say they are using the building, although they rent out only part of it (according to the administration website, to Vyborg's Youth House). In an echo of the Yekaterinburg Old Believers' case, Pastor Dorodny added that "there are also suggestions that they may sell the house, but this is not confirmed".

An 8 May statement on the district administration's website declares that it "managed to convince the court" that the building was not used "for the performance of services, religious rites or ceremonies" and that if the house "was never intended to serve property of religious significance either in the Soviet Union or in Russia, and does not constitute a cult complex with religious property, it cannot be freely given to a religious organisation".

This is an interpretation of Article 5, Part 3 of the 2010 Law, which governs the transfer of property which "does not have religious significance, and is intended to serve religious property and/or forms with it a monastic, church, or other religious complex". The administration ignored the possibility that properties integral to a religious organisation's activities might not be adjacent.

"It remains for us only to continue the fight and pray for the parish house," Pastor Dorodny told Forum 18, "which by federal law should be returned to the parish, but for some reason has not yet been given to us."

Catholics in Barnaul

The Roman Catholic community of Barnaul, in the Altai region, has been trying to regain the use of its pre-1917 Church for more than twenty years (see F18News 3 August 2005 http://www.forum18.org/archive.php?article_id=624).

The Immaculate Heart of the Virgin Mary Church, which was completed in 1913 and forcibly closed in 1932, houses Pharmacy No. 4. It also houses three Duma deputies' offices, the Siberian Institute of Human Reproduction and Genetics, and the Altai Region's Municipal Education Council.

The Catholic community, about 100 strong, currently worships at the recently-built Church of Christ the King, about five kilometres away. At the old church's 100th anniversary in June 2013, Diocesan Bishop Jozef Werth told parishioners that its return would right a "great injustice".

The adoption of the 2010 Law gave new impetus to the congregation's campaign, and they submitted a formal application in February 2011. Although federal, regional, and municipal authorities are obliged by the Law to respond within one month, Barnaul's Catholics received no reply until 2012, when the regional administration told them it had only just received their application documents.

On 4 June 2013, Governor Aleksandr Karlin signed a decree, seen by Forum 18, ordering the Altai Region's property administration body (Glavaltaiimushchestvo) to prepare a plan for the transfer of religious property to religious organisations. The plan determines the provision of equivalent premises to state unitary enterprises, state institutions, or residential occupiers currently housed in religious buildings. It is to be overseen by Deputy Governor Boris Larin.

In practice, this document refers only to the former Catholic church, the only religious building currently under regional government ownership, according to Glavaltaiimushchestvo's website.

Priest of the Catholic parish, Father Bogdan Kalecki, confirmed to Forum 18 on 21 May that there is a written agreement that the building will be returned in November 2017. He had no explanation for the administration's delay in replying to the 2011 application.

Forum 18 asked Lyudmila Moiseeva of Glavaltaiimushchestvo on 15 May for confirmation that the church will be returned to the Catholics by November 2017 and why the administration's response had been delayed. She asked for questions to be sent in writing.

In its 23 May response, Glavaltaiimushchestvo told Forum 18 that a regional administration order of 15 July 2013 included the church in the plan for property transfer and that a copy of this had been sent to the Catholic parish. The building will be handed over "no later than 3 February 2018", as "the full packet of documents" required was received on 3 February 2012 (the six-year period mandated by law – see below). "The process cannot be accomplished sooner because of the lack of free space to accommodate regional structures" currently occupying the building, the agency told Forum 18.

When Forum 18 called Deputy Governor Larin's office on 21 May and asked about the return of the Catholic church, a spokeswoman said that all questions should be submitted in writing.

Applications under 2010 Law

In 2013, Rosimushchestvo received 203 applications from religious organisations for federal properties to be returned. Of these, 32 were approved and the transfers have been completed. A further 92 properties are being prepared for transfer. 53 applications are still under consideration. 21 have been refused.

The majority of applications (187, or 92 per cent) came from the Russian Orthodox Church, with six from Muslim organisations, three from the Catholic Church, two each from the Lutheran Church, Jewish organisations and Old Believer jurisdictions, and one from the Buddhists. Rosimushchestvo does not provide figures for the success rate of different religious groups.

Forum 18 emailed the Legal Department of the Moscow Patriarchate (the source of the largest proportion of applications to Rosimushchestvo), asking for total numbers and success rates of applications for federal, regional and municipal property in each year the 2010 Law has been in force. Forum 18 also requested information on reasons given for refusals and the number of refusals the Church has challenged. The request was sent before the start of Moscow's working day on 19 May. No reply had been received as of the afternoon of the working day on 23 May.

2010 Law

- Types of property

The 2010 Law governs the transfer of buildings, land, and other religiously significant property from the ownership of federal, regional, and municipal organs (known as executive authorities) to the ownership or free use of religious organisations. Buildings intended for worship, other religious ceremonies and gatherings, religious education, monastic life, and pilgrimage (including pilgrims' accommodation) are all covered. Other property may include interior furnishings and utensils used in worship.

Property may be transferred to the free use (rather than ownership) of a religious organisation if: a) it cannot be divided from another state or municipal property; b) if this is requested by the religious organisation itself; or c) if it is located inside a property which does not have religious significance (for example, a Russian Orthodox house chapel frequently found inside hospitals and educational institutions before 1917).

- Requirements for transfer

To effect a transfer, the religious organisation must apply with the permission of its central governing authority (e.g. the Moscow Patriarchate in the case of a Russian Orthodox parish). This must state the property's name, its significance, its location, the history of its creation and use, and the religious organisation's intentions for it.

The application must also contain "documents which prove the right of the religious organisation to the property", as stipulated in Governmental Decree No. 325 (26 April 2011). These include archival information on the construction and confessional affiliation

of the property, statements from monument protection bodies on the property's heritage status, and a draft statement of conservation measures. If the necessary documents are not supplied, the executive authority (federal, regional, or municipal) can reject the request.

- Time periods

The executive organ must respond to the religious organisation's application within one month of receiving it. If the request is granted, the property must be transferred within a period of six years from the date of the decision (this was originally two years, but was extended by decree in 2011).

- Reasons for refusal

If an application is turned down, the executive authority must give reasons in its response. A request may be denied if: the property is not judged to have religious significance; the religious organisation's intended use for the property contravenes its charter or federal law; the applicant is a foreign religious organisation (or its representatives); a court ruling has disposed of the property to another party; or the property is already being freely used by another religious organisation.

Transfer of ownership may also be denied if the property cannot be divided from other state or municipal property, or if it is located inside a building which is not of religious significance.

- Arbitration

Commissions comprising central religious representatives (ie. not members of the local organisation making the request), local government, public organisations, and legal, religious, and cultural specialists should be convened to settle disputes arising during the consideration of applications. The commission's decisions will inform the ruling made by the executive authority. Anyone who believes their rights or legal interests may be infringed by acceptance or refusal of the application may make a statement to the commission or directly to the executive authority.

Individuals and organisations (including the religious organisation which requested the property) may also challenge the decision in court after it is made.

Drawbacks

Former religious property seized during the Soviet period is currently owned by state organs of all kinds and at all levels, from government ministries to small municipalities, and may be passed between them, as in the case of the Lutheran parish house in Vyborg. This opens up the possibility of a drawn-out process of repeated applications if an initial attempt is misdirected.

Different levels of government and different parts of the country may adopt inconsistent approaches, Forum 18 notes. This means that the likelihood of a smooth transfer process may vary depending on where and under whose jurisdiction a property lies.

The composition of commissions set up to oversee disputes is also determined by the executive authority which will make the decision on the transfer (the federal, regional, or municipal government). This echoes the general lack of independent oversight of the Law's implementation. (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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