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BELARUS: Will UN decision help religious communities?

By Geraldine Fagan, Forum 18

Belarus has yet to meet a 12 November deadline, set by the UN Human Rights Committee, for confirming the correction of a religious freedom violation against Hare Krishna devotees, Forum 18 News Service has learnt. In a decision with implications for other religious communities (such as the New Life charismatic church), the UN Human Rights Committee found that Belarus had violated citizens' rights under the International Covenant for Civil and Political Rights by refusing to register a nation-wide Hare Krishna association. Two devotees, Sergei Malakhovsky and Aleksandr Pikul, complained to the Committee, which set a 90 day deadline from 23 August for correcting the violation. Aleksandr Kalinov, of the State Committee for Religious and Ethnic Affairs, initially claimed to Forum 18 that all Krishna communities had registration, but then, questioned about the nation-wide association, claimed it did not have the right to register. Sergei Malakhovsky told Forum 18 that Krishna devotees had taken the UN Committee's decision to the State Committee and other government departments, "but they just shrugged their shoulders and said nothing."

Belarus has not yet formally responded to a 12 November deadline, set by a UN committee, for confirming that the country has corrected a religious freedom violation against Hare Krishna devotees, Forum 18 News Service has learnt.

In a decision with clear implications for other religious communities, the UN Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights (ICCPR), found that Belarus had violated the religious freedom guarantees of Article 18 of the ICCPR. The 23 August resolution (Communication 1207/2003) came in response to a formal complaint by two Krishna devotees, Sergei Malakhovsky and Aleksandr Pikul, and the Committee found that their rights had been violated by Belarus' refusal to give legal status to their republic-wide Hare Krishna association. The UN Committee examines alleged violations of the Covenant, which entered into force for Belarus in 1976.

The ninety-day period in which the UN Human Rights Committee specified that it should receive confirmation from the Belarusian state that it has taken measures to correct the violation expires on 12 November. (The 90 days deadline is set from the date of the resolution - 23 August - and not the date of the meeting on 26 July.) On 3 November, however, UN Human Rights Committee media liaison officer David Chikvaizde told Forum 18 from Geneva that it had not yet received a response from the Belarusian state.

Also asked on 3 November about the state's reaction to the UN Human Rights Committee resolution, Aleksandr Kalinov of the State Committee for Religious and Ethnic Affairs initially maintained to Forum 18 that all Krishna Consciousness communities in Belarus held registration. Asked specifically about the republic-wide association, he said that it did not have the right to register under the 2002 Religion Law. When Forum 18 pointed out that its registration application was submitted prior to that Law's adoption, he remarked "we are currently examining these issues." On 28 October Sergei Malakhovsky told Forum 18 that Krishna devotees had tried taking the UN Human Rights Committee's resolution to the State Committee and other government departments, "but they just shrugged their shoulders and said nothing."

In their complaint to the UN Human Rights Committee (see F18News 27 January 2004 http://www.forum18.org/Archive.php?article_id=236), Malakhovsky and Pikul argued that, by refusing to register the Belarus-wide Krishna Consciousness Society at the building used as a temple by the 500-strong Minsk community since 1992, the state authorities had denied them "certain activities which are essential to the practice of their religion," such as establishing monasteries, missions and educational institutions, and inviting foreign clerics to Belarus to preach or conduct other religious activity, "resulting in a decline of spiritual standards due to their inability to associate with more spiritually advanced believers."

Under the 2002 Belarusian Religion Law, these rights are not enjoyed by individual religious communities, only nationwide associations with a minimum of ten affiliate communities in at least four out of six regions, of which one must have conducted its activity for no less than 20 years. The country's Krishna devotees are unable to meet these criteria.

Malakhovsky and Pikul submitted their association's registration application on 10 May 2001 – well before the 2002 Religion Law came into effect. They finally received a refusal on 2 August 2002, however, on the grounds that the temple building was unsuitable for use as a legal address. Appeals against this refusal were rejected at all levels of the Belarusian court system (see F18News 27 January 2005 http://www.forum18.org/Archive.php?article_id=500). Like the charismatic New Life Church in Minsk (see most recently F18News 25 October 2005 http://www.forum18.org/Archive.php?article_id=676), the Minsk Krishna Consciousness

Society does not have the state approval required by the 2002 Religion Law to use its own premises for worship, and was refused re-registration as a result.

In its 2004 submissions to the UN Human Rights Committee, Belarus insisted that Malakhovsky and Pikul "are able to practise their religion unobstructed both personally and in association with others," and that the authorities' refusal to register their association at the requested address was justified, since inspection of the premises revealed violations of sanitary conditions and fire safety. The state also claimed that the 2002 Law's provisions "are not discriminatory in nature."

However the UN Human Rights Committee noted, in response to these claims, that Article 18 of the Covenant does not permit any limitation whatsoever to freedom of conscience, but that the right to manifest this freedom may be subject to limitations "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others" directly related to and proportionate to the specific need on which they are predicated."

Inviting foreign clerics and establishing monasteries and educational institutions form part of the Krishna devotees' right to manifest their beliefs, the UN Human Rights Committee affirmed. While the requirement for premises adhering to relevant public health and safety standards is a reasonable limitation of the right of a religious association to carry out its religious activities, it agreed, there is no reason for such premises to be required for the act of registering such an association at a legal address: "Appropriate premises for such use could be obtained subsequent to registration."

Concluding that the registration refusal thus amounts to a disproportionate limitation of the Krishna devotees' right to manifest their religion under the ICCPR, the UN Human Rights Committee considers that Malakhovsky and Pikul "are entitled to an appropriate remedy, including a reconsideration of the authors' application in accordance with the principles, rules and practices in force at the time of the authors' request" - that is, prior to the adoption of the 2002 Religion Law.

In an individual opinion, committee member Ruth Wedgwood, Burling Professor of International Law and Diplomacy at Johns Hopkins University, stated that the issues that the Hare Krishna devotees' complaint specified were not the only serious problems in the 2002 Religion Law. She observed that "the right of a religious community to establish monasteries, educational institutions, or missions, and to invite foreign religious figures to speak, has been sharply restricted by the government of Belarus. Only those groups officially registered with the state as 'religious associations' can enjoy these aspects of the free practice of religion."

Professor Wedgwood noted, for example, the 20 year registration delay imposed by the 2002 Law and the Law's barring of newer faiths from engaging in religious education. She commented that "it is well to remember that the Covenant recognizes and guarantees the freedom of every person 'either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.' See Article 18(1). This right is not limited to old and established religions, or to large congregations, and it is fundamental to the freedom of religious conscience."

The Minsk Krishna community was also refused compulsory re-registration following the 2002 law's 16 November 2004 deadline (see 10 November 2004 http://www.forum18.org/Archive.php?article_id=450 and 25 November 2004 http://www.forum18.org/Archive.php?article_id=463), as were for example autonomous Orthodox communities. The Minsk Krishna community has since continued to seek re-registration as well as to register a new local organisation in the city, Malakhovsky told Forum 18. While the community's charter (which is essential for registering) for the latter was "practically dictated" by state officials, he continued, it too was rejected by Minsk City Executive Committee on 4 October 2005. A copy of the decision, received by Forum 18, lists the charter's alleged faults, including "numerous contradictions connected with outlining the competency of administrative bodies of the community" and "other shortcomings."

Malakhovsky also told Forum 18 that the original Minsk community is still unable to re-register for want of a suitable legal address: "Whatever state officials suggest is OK for commercial organisations, but we can't afford it." The community likewise sought re-registration at its temple building, in which, according to Malakhovsky, it has invested tens of thousands of dollars worth of renovation. He added, however, that there has been no move by the state to liquidate either the Minsk community or that similarly refused re-registration in Bobruisk [Babruysk] in Mogilev [Mahilyow] region (see F18News 27 January 2005 http://www.forum18.org/Archive.php?article_id=500). "Everything is up in the air, and this suits the authorities, I think – on the one hand we exist, on the other we have no rights."

Aleksandr Kalinov of the State Committee for Religious and Ethnic Affairs told Forum 18 that the executive committees in Minsk and Mogilev region were currently dealing with the relevant re-registration applications.

Religious organisations registered prior to the 2002 Law's adoption are now able to function only to the extent that their charters conform to its provisions. For fear of heavy fines (which have been imposed in the similar case of the Minsk New Life Church), the Minsk Society for Krishna Consciousness is consequently unable to meet for worship at its temple building (see F18News 11 May 2005 http://www.forum18.org/Archive.php?article_id=558). An 8 October 1997 analysis by experts attached to the State Committee for Religious and Ethnic Affairs declared the organisation a "destructive totalitarian sect" and recommended its closure.

Besides New Life Church and the Hare Krishna devotees, other religious organisations (such as a Baptist church) – particularly in

Minsk – are also unable to worship legally on the grounds that they do not have suitable premises (see F18News 12 May 2005 http://www.forum18.org/Archive.php?article_id=560 and 28 July 2005 http://www.forum18.org/Archive.php?article_id=619).
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For more background information see Forum 18's Belarus religious freedom survey at http://www.forum18.org/Archive.php?article_id=478

A printer-friendly map of Belarus is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=belaru>

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