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RUSSIA: Will Salvation Army's European Court victory set a precedent?

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

Finding against the Russian state for violating the rights of the Salvation Army's Moscow branch by refusing to give it legal status and by branding it a "militarised organisation", the European Court of Human Rights (ECtHR) in Strasbourg ruled on 5 October that the state must pay the Church compensation of 10,000 Euros. Reacting "very positively" to the ruling, which came five years after it lodged the case, Aleksandr Kharkov of the Salvation Army told Forum 18 News Service: "We would have preferred to have come to an agreement in a friendly manner, without recourse to the courts." Forum 18 has been unable to find out whether the Russian state will appeal against the judgment, though it has three months to do so. In what could serve as a precedent in other cases, the ECtHR ruling criticised the state's evaluation of the legitimacy of the Salvation Army's beliefs, the way officials used petty faults and subjective demands to deny registration applications, and the 1997 Religion Law's discrepancy between the religious rights of local citizens and foreigners.

The Salvation Army has reacted "very positively" to a recent decision in favour of its Moscow branch by the European Court of Human Rights (ECtHR) in Strasbourg, the Church's press secretary told Forum 18 News Service in Moscow on 11 October. "This is an example for other churches in Russia – it tells them that they can hope for justice," Aleksandr Kharkov commented. "We are so glad that such a structure exists – somewhere to turn to." The Russian state will now have to compensate the Salvation Army. Forum 18 has been unable to find out whether the Russian state will appeal against the judgement.

However, Jehovah's Witnesses - who unlike the Salvation Army are legally banned from working in the city - Pentecostals and Hare Krishna devotees continue to face problems in the Russian capital (see F18News 17 May 2005 http://www.forum18.org/Archive.php?article_id=591 and 16 June 2006 http://www.forum18.org/Archive.php?article_id=800).

The ECtHR 5 October 2006 ruling (Moscow Branch of the Salvation Army v. Russia - Application no. 72881/01 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=809052&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>) is the first regarding a Russian religious organisation, and Kharkov believes that its most important effect will be as a precedent rather than as a catalyst for relevant changes to the 1997 Religion Law. Six years have passed since the expiry of the re-registration deadline that forms the main legislative bone of contention in the case, he pointed out, and there would thus be little impact on other Russian religious communities should this provision be removed from the Law in the wake of the ECtHR decision.

Kharkov also stressed that the Moscow branch's joy at winning the case is tempered with restraint. "We would have preferred to have come to an agreement in a friendly manner, without recourse to the courts," he told Forum 18. In order to demonstrate that the organisation has not acted in order to receive financial benefit, he said, it has decided to spend compensation due from the Russian government on its charitable programmes rather than administrative costs. "For us morality and justice come first, the money is secondary."

The Moscow branch's Russian lawyers could not be reached on 11 October for technical reasons. In a 6 October statement on the website of the Slavic Centre for Law and Justice, however, Anatoli Pchelintsev and Vladimir Ryakhovsky describe the ECtHR decision as "historic", being the first for a Russian religious organisation. They also suggest that its primary impact is "as an important legal precedent for the defence of citizens' and religious organisations' constitutional right to freedom of conscience in Russia and Europe as a whole".

In their 17-page unanimous ruling, eight ECtHR judges agreed that the Russian state violated the Moscow branch's right to freedom of association (Article 11 of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms) in conjunction with the right to freedom of religion (Article 9) by refusing to grant the organisation legal status. In view of the ensuing non-financial damage - notably the negative publicity generated by one state department's designation of the Moscow branch as a "paramilitary organisation" - the ECtHR additionally ruled that the Russian government must pay compensation of 10,000 Euros (338,141 Russian Roubles, 84,192 Norwegian Kroner or 12,557 US Dollars). The Convention entered force for Russia in 1998.

Contacted by Forum 18 on 6 October, an ECtHR spokesperson explained that both parties in the case have three months in which to appeal the court's decision. She added that the Russian government must make its compensation payment within three months of the ruling becoming final.

The telephone of Pavel Laptev, the Russian Federation's representative to the ECtHR who presented the Russian side of the case, was engaged when Forum 18 rang repeatedly on 11 and 12 October. Numbers at Moscow Justice Department were either engaged or went unanswered.

The Moscow branch of the Salvation Army requested recompense for resources wasted in challenging the re-registration refusal, facilitating the transfer of property to a federal body in order to avoid its seizure and the adverse effect upon fundraising of negative publicity surrounding the legal battle with the Russian state. While the organisation has not recently reported any obstruction to its activities (see F18News 22 June 2005 http://www.forum18.org/Archive.php?article_id=591), late 2001 local court rulings approving dissolution of the organisation were initially followed by refusals to negotiate rental contracts by some landlords, curtailment of a meals-on-wheels programme and difficulties registering foreign and other non-Muscovite employees in the Russian capital.

Arguing against the Moscow branch's complaint, the Russian government claimed that the organisation could not be considered a victim of any violation as it was never struck off the State Register of Legal Entities and was even allocated a number on that Register by a local tax inspection office in October 2002. The ECtHR, however, pointed out that "the legal entity status of the branch was legally discontinued at least from 6 December 2001, when the Moscow City Court ordered its dissolution for failure to comply with the re-registration requirement, to 1 August 2002, when that judgment was quashed." It was the Moscow branch's situation during this period, the ECtHR maintained, that had "an appreciably detrimental effect on its functioning and religious activities".

While the Russian government also maintained that the Moscow branch could still apply for re-registration, the ECtHR rejected this claim as "self-defeating, for it confirms that the applicant has been denied re-registration to date". Notwithstanding the Constitutional Court's 2002 ruling preventing dissolution of the organisation, the ECtHR pointed out that the 1997 Religion Law's 31 December 2000 re-registration deadline also renders subsequent re-registration legally impossible.

On 17 May 2006 Konstantin Blazhenov of Moscow's Committee for Relations with Religious Organisations told Forum 18 that the expiry of this legal deadline was a possible reason why the Moscow branch of the Salvation Army had not been re-registered since the 2002 Constitutional Court decision (see F18News 17 May 2006 http://www.forum18.org/Archive.php?article_id=781). Forum 18 could not reach Blazhenov on 12 October.

Significantly, the ECtHR 5 October ruling also voices several criticisms of the 1997 Religion Law and its application. Noting that it prohibits foreign nationals from being founders of a Russian religious organisation, it finds "no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise the right to freedom of religion through participation in the life of organised religious communities".

Commenting on the state's complaint that the Moscow branch did not give a complete description of its religious affiliation in its re-registration application, the ECtHR notes that "it was the national courts' task to elucidate the applicable legal requirements and thus give the applicant clear notice how to prepare the documents in order to be able to obtain re-registration".

The ECtHR also rejects the paramilitary organisation accusation: "It could not seriously be maintained that the applicant branch advocated a violent change of constitutional foundations . . . there was no evidence before the domestic courts that in seven years of its existence the applicant branch, its members or founders had contravened any Russian law." Warning against such evaluations, the ECtHR stresses that "the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means to express such beliefs are legitimate".

Initially granted state registration in 1992, the Moscow branch of the Salvation Army applied for re-registration in line with the requirements of the 1997 Religion Law, but its application was rejected in August 1999. Moscow Justice Department initially motivated its refusal on the grounds that the Salvation Army had not provided documentation certifying its foreign members' lawful residence in Russia; that, although the 1997 law requires a religious organisation to have at least ten founding members, only five were present at a meeting which amended the branch's founding documentation; and that, being subordinate to headquarters outside Russia, the branch should obtain legal status as a representation of a foreign religious organisation rather than a local religious organisation.

Involved in subsequent legal challenges to this ruling – during which the Salvation Army was additionally accused of being a "militarised organisation" with "barrack-room discipline" - the Moscow branch was unable to file another re-registration application before the 1997 Law's re-registration deadline expired on 31 December 2000.

As a result, a local district court ruled in September 2001 that the branch should be dissolved. Shortly beforehand, however, the Salvation Army succeeded in lodging a complaint with the Constitutional Court, which on 7 February 2002 ruled that a religious organisation may not be liquidated simply for failing to re-register, but only if "properly proven to have ceased its activities" or to be in violation of its constitutional obligations as a legal personality.

During 2003, local courts followed the Constitutional Court's decision by overturning their previous rulings against the Moscow branch of the Salvation Army, but the branch was not re-registered.

The Moscow branch of the Salvation Army lodged its complaint with the ECtHR on 18 May 2001. It was declared partly admissible on 24 June 2004. (END)

For a personal commentary by an Old Believer about continuing denial of equality to Russia's religious minorities see F18News 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=509

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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