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RUSSIA: European Court victory for Evangelical pastor

By Geraldine Fagan, Forum 18 News Service <<http://www.forum18.org>>

Pastor Petr Barankevich of the Christ's Grace Evangelical Church is the latest Russian citizen to win a freedom of thought, conscience and belief case at the European Court of Human Rights (ECHR) in Strasbourg. Barankevich told Forum 18 News Service that he believes the financial compensation due from the Russian Government is "not as important" as upholding his rights. Ever since his church was denied permission to conduct worship in a park in the town of Chekhov (Moscow Region) in 2002, it has not held any public events. "We thought there was no point in trying until the European Court resolved the issue." Although an earlier ECHR judgment in favour of a group of Jehovah's Witnesses became final on 11 July, the Russian Government has not yet paid the compensation it should have done by that date. However, after another 2007 ECHR judgment became final, this time in favour of the Salvation Army, they were paid compensation. But the situation which led to that ECHR judgment has not been addressed. Aleksandr Kharkov, of the Salvation Army, told Forum 18 that they are very concerned to get the original Moscow court ruling overturned, because it suggests the church is a paramilitary formation.

The latest Russian citizen to win a religious freedom case at the European Court of Human Rights (ECHR) in Strasbourg, Petr Barankevich has told Forum 18 News Service he believes financial compensation now due from the state is "not as important" as the 26 July ruling upholding his rights. Ever since his Christ's Grace Evangelical Church was denied permission to conduct worship in a park in the town of Chekhov (Moscow Region) in 2002, it has not held any public events, the Pastor explained to Forum 18 on 27 July. "We thought there was no point in trying until the European Court resolved the issue."

A secretary to Russia's representative to the ECHR, Veronika Milinchuk, directed Forum 18 to the Justice Ministry's Press Office on 30 July, maintaining that Milinchuk does not comment to journalists. Forum 18 suggested that the Press Office might not be familiar with the specifics of ECHR cases, but the secretary insisted that Milinchuk was "very busy, she's not answering her phone." She also claimed not to be qualified to comment herself.

At the Justice Ministry's Press Office, Forum 18 was referred to the office of Russia's Human Rights Ombudsman. "But we're nothing to do with it!" laughed Mikhail Odintsov, its official dealing with religious freedom issues, when contacted on 30 July. Only the representative to the ECHR or the Justice Ministry could state whether Russia would appeal against the verdict in favour of Petr Barankevich, he told Forum 18. "But I don't think there can possibly be an appeal. The Court set everything out correctly, it was a totally just decision."

In the ECHR judgment (No. 10519/03 [2007] ECHR 648 (26 July 2007)), the ECHR ruled unanimously that the Russian state authorities had violated Article 11 (freedom of peaceful assembly and of association with others) read in the light of Article 9 (freedom of thought, conscience and religion) of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention entered into force for Russia in 1998.

In September 2002, the Court noted, the local authorities in Chekhov failed to approve Pastor Barankevich's request for a two-hour public worship service in a town park. Rejecting his appeal against this decision, Chekhov Municipal Court on 11 October 2002 maintained that public worship was subject to state approval. It also claimed that the authorities' refusal was justified because Pastor Barankevich's church "practises a religion that is different from the religion professed by the majority of the local residents, and having regard to the fact that in the Chekhov district there are more than twenty religious organisations of different denominations, a service of worship in a public area held by one of them may lead to (...) the discontent of individuals of other denominations and public disorder." Moscow Regional Court upheld this judgment on 4 November 2002.

Under Article 9 of the Convention, the right to freedom of thought, conscience and religion "shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others." Article 11 of the Convention limits restrictions on freedom of peaceful assembly and to associate with others to the same grounds as Article 9, as well as the grounds of "national security," and "the prevention of disorder or crime." Also unlike Article 9, Article 11 allows for the imposition of "lawful restrictions" on freedom of assembly and of association by "members of the armed forces, of the police or of the administration of the State."

At the time of Pastor Barankevich's application to Chekhov administration, organisers of a public assembly had to notify the local

authorities no later than ten days beforehand, in accordance with a 1988 Soviet decree. The authorities were obliged to respond no later than five days before the planned event and could ban it if its aim was anti-constitutional or threatened either public order or the security of citizens. Consequently, the ECHR accepted that the Chekhov authorities' restriction was prescribed by law and pursued the legitimate aim under Article 11 of preventing disorder.

The Court remained unconvinced that the measure was necessary in a democratic society, however. "Democracy does not simply mean that the views of the majority must always prevail," states the 26 July 2007 verdict. "The mere fact that the Evangelical Christian religion was practised by a minority of the town residents was not capable of justifying an interference with the rights of followers of that religion. (...) It would be incompatible with the underlying values of the Convention," the ECHR states, "if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were it so a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention."

Noting "the indisputably peaceful character of the religious assembly planned by the applicant," the ECHR stressed that "freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. It is thus the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully."

The ECHR thought that "what is at stake here is the preservation of pluralism and the proper functioning of democracy, and the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other."

Nor was the ECHR convinced by the Russian Government's argument that it was necessary to restrict Barankevich's right to freedom of assembly and religion "for the protection of those whom he was allegedly trying to convert". Under Article 9 of the Convention, the Court points out, "freedom to manifest one's religion includes the right to try to convince one's neighbour, failing which, moreover, 'freedom to change one's religion or belief', enshrined in that Article, would be likely to remain a dead letter."

Unless either side in the case appeals, the verdict becomes final on 26 October 2007. The Russian Government must then make a compensation payment of 6,000 Euros [approximately 210,000 Russian Roubles, 48,000 Norwegian Kroners or 8,000 US Dollars] by 26 January 2008.

Pastor Barankevich told Forum 18 that, while his 15-strong independent congregation has not encountered further problems, neither has it maintained a public profile. "We annulled our registration as we didn't see any point in having it," he explained. "It only meant submitting papers to the Tax Inspectorate and the Justice Ministry supposedly proving that we exist." Christ's Grace Church is currently content to meet for worship in private flats, he said. "We exist anyway, on our own."

This is the latest case in which the ECHR has found against Russia on a religious freedom issue. An 11 January 2007 verdict in favour of a group of Jehovah's Witnesses in the Urals city of Chelyabinsk became final on 11 April, with the fine being payable by 11 July. However, the Russian Government has not yet paid compensation, Jehovah's Witness spokesman Vasili Kalin confirmed to Forum 18 on 27 July. Unprompted, the Jehovah's Witnesses have sent their bank details to Milinchuk's office at the ECHR, said Kalin, "but we haven't heard anything" (see F18News 17 January 2007 <http://www.forum18.org/Archive.php?article_id=900>). Milinchuk comes under the Justice Ministry in Moscow.

According to Mikhail Odintsov, the official dealing with religious freedom issues at the office of Russia's Human Rights Ombudsman, "there's some kind of complication - no one's getting paid." Forum 18 pointed out that the Salvation Army's Moscow branch did receive its compensation approximately on time in early April 2007 (see F18News 29 March 2007 <http://www.forum18.org/Archive.php?article_id=937>). As this was shortly after Milinchuk at the Justice Ministry took over the post of Russia's representative to the ECHR from Pavel Laptev at the Presidential Administration, could the transfer be linked to non-payment? Odintsov thought not. "Even with the Salvation Army it was drawn out."

"But the money isn't the main thing," Odintsov continued. "The government should order the Justice Ministry to address the situation. The Salvation Army still aren't registered." Such an order could come only from the ministerial level, he explained to Forum 18. But, he added, as Russia has no minister dealing with religion the issue falls between stools.

In a 13 July 2000 judgment on a different case (Scozzari and Giunta v. Italy), the ECHR specified that "a judgment in which the Court finds a breach imposes on the respondent state a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose (...) the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects."

On 5 October 2006 the ECHR ruled that Russia had violated Article 11 of the Convention read in the light of Article 9, by failing to re-register the Salvation Army's Moscow branch (see F18News 12 October 2006 <http://www.forum18.org/Archive.php?article_id=854>).

Speaking to Forum 18 on 27 July, a Salvation Army spokesman confirmed that, while its Moscow branch has received financial compensation, the authorities have still to address the situation out of which the violation of the Convention arose. The branch's lawyers will now ask Russia's Supreme Court to call upon Moscow's Presnensky District Court to overturn its 5 July 2000 decision against the church, said Aleksandr Kharkov. The Moscow branch has still not been re-registered as a result of this ruling. Kharkov maintained that the Salvation Army is very concerned to see the ruling overturned because it contains the suggestion that the church is a paramilitary formation. "Of course this isn't something that will be sorted out in a couple of weeks." (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=947>

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>>

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