

RUSSIA

Victories

1. “New Testament” Evangelical Church of the City of Perm v. Motovilikha Plants

Facts: In April 2005, the New Testament Church of the city of Perm acquired the building of the Palace of Culture, which formerly belonged to the local industrial enterprise “Motovilikha Plants.” Under the terms of this agreement, Motovilikha Plants should have prepared all documents for the state registration and jointly filed them to the Federal Registration Service to register the transfer of property rights. However, Motovilikha Plants evaded from doing this.

The Church turned to the Arbitration Court of Perm Region in order to oblige the seller to execute its contractual obligations. On February 8, 2006, the Court denied this claim and declared the purchase agreement null and void.

Legal Issues: The Court stated that the purchase contract for the Palace of Culture is void on the basis of Article 168 of the Civil Code. The court motivated it by the fact that at the moment of signing this agreement, the property in question was one of the subjects of pledge under the contract between Motovilikhinskiye Zavody and ZAO Baltiyski Bank. For its part, the bank did not agree to the sale of this property.

However, the court did not take into account the fact that the property in question was excluded from the pledge two months after the deal was signed; therefore, there was no infringement on the bank’s rights, and the latter did not institute court proceedings in this respect. It follows from Art. 39 of the Federal Law on Real Estate Mortgage, that the deal can be only invalidated at the request of an interested party, since, in this case, the violation is purely technical.

Status: On April 1, 2006, the Church turned to SCLJ for legal help. SCLJ examined the case file and drafted an appeal against the decision of February 8, 2006.

The appellate hearing took place on April 13, 2006. SCLJ lawyer Roman Maranov represented the Church’s interests. The appellate arbitration court revoked the decision of the first instance court in the part declaring the deal null and void. The remainder of the decision was upheld on the grounds that the Church brought an action prematurely, since the time limit for the voluntary execution of contractual obligations by the plant had not expired.

The Church went to court again, asking to register its right of ownership in relation to the Palace of Culture. On June 16, 2006, the Perm Regional arbitration court granted this request and obliged the Federal Registration Service to register the right of ownership.

The Art and Culture Department that took part in the proceedings as the third party (since the Palace is a protected building) appealed against the ruling of June 16, 2006.

On August 16, 2006, in appellate hearing, the Department petitioned the court to suspend the

proceedings on the grounds that a day before the Department brought its own action, asking that the Palace be transferred into the state ownership. OAO Motovilikhinskiye Zavody was named as a defendant, since the transfer of property rights had not been registered.

The court granted the Department's petition and suspended the proceedings pending judgment on the Department's action. SCLJ appealed against this ruling. The hearing of our appeal is scheduled for October 3, 2006, in the Federal Arbitration court of the Urals Federal District.

On September 27, 2006, the hearing was adjourned to December 25, 2006.

On October 3, 2006, the Federal Arbitration Court of the Ural Federal District granted SCLJ's cassation and repealed the ruling of the 17th appellate court of August 16, 2006. The case was referred to the appellate court for a new consideration on the merits.

On November 27, 2006, the 17th appellate court confirmed the decision of June 16, 2006 (the one in favor of the Church). The decision entered into force; and on December 22, 2006, the Church received a registration certificate confirming its ownership rights to the Palace of Culture.

The complaint of the Art and Culture Department of the Perm Region against the Motovilikha Plants on the transfer of the Palace of culture into the state ownership will be heard on December 25, 2006.

On December 25, 2006, the hearing was adjourned to January 23, 2007.

On January 23, 2007, Arbitration Court of Perm Region ruled in favour of the church and dismissed claims of the Department of Culture of Perm Region. The ruling was not appealed and became final.

Thus the conflict was resolved in favour of the church.

2. *Federal Property Agency v. "Kingdom of God" Evangelical Church*

Facts: On December 16, 2005, the Federal Property Agency filed claim against the "Kingdom of God" Evangelical Church with the Arbitration Court of Moscow, requesting that the building belonging to the Church and used as the house of prayer be declared federal property and seized.

In 1992, the building was privatized by the joint stock company "Kalibr" and in 1997 – sold to the Church.

The Agency argues that the privatization was carried out in contravention of the law and, therefore, the subsequent sale of the building to the church is null and void. The claimant argues that the Russian Federation is the lawful proprietor of the building; and, being its representative, the Agency is entitled to retrieve this property.

The statement of claims alleges that these irregularities were brought to the Agency's attention by an unidentified member of the Russian Parliament.

Legal Issues: We regard this case as an act of blatant discrimination against a Protestant Church.

Privatization of the building in 1992 was carried out in full compliance with the law. The purchase of the building by the Church in 1997 was also done lawfully. The reports of the inspections carried out by the Prosecutor's Office from 1997 to 2005 prove this.

Moreover, according to the Russian law, the limitation period for this category of claims is three years, whereas the events of the case took place 13 and 8 years ago.

Status: The Church turned to SCLJ for help on January 13, 2006. Its leaders said that immediately after they purchased the building, they were subjected to the non-ending attacks by the nationalist pro-Orthodox and other extremist groups. Pickets were held near the building with people holding slogans: "Cultists go away from Russia." The police carried out numerous raids – allegedly trying to find drugs. Once they came with a dog during a service and began checking IDs of everyone present. The Moscow Prosecutor's Office carried out numerous inspections – including ones in order to check the legality of the purchase. No irregularities were found. The Church regards the Agency's claim as an act of discrimination.

The SCLJ decided to intervene in the case. The preliminary session is due to take place on January 24, 2006.

The hearing was held on February 21, 2006. The proceedings were adjourned to April 6, 2006, and subsequently to May 3, 2006, because the Federal Property Agency was unable to present evidence in proof of its claims.

On May 3, 2005, the Arbitration Court of Moscow denied the Agency's claims to recognize the house of prayer as property of the Russian Federation and confiscate this building from the Church.

On June 13, 2006, the Agency appealed against the judgment.

On September 19, 2006, the 9th appellate arbitration court dismissed this appeal and upheld the decision of the first instance court. The ruling of the arbitration court comes into effect on the day it is issued (Art. 271(5) of the Code of Arbitration Procedure). The Agency may file a cassation within two (2) months.

On October 25, 2006, the Agency filed a cassation with the Federal Arbitration Court of the Moscow District, requesting that the decisions of May 3, 2006, and of September 19, 2006, be revoked and a new decision issued which would grant the Agency's claims.

On November 30, 2006, the Federal Arbitration Court examined the Agency's complaint. SCLJ lawyer Natalia Gavrishova represented the Church's interests.

The court ruled that no breaches of substantive and procedural law can be found in the previous decisions and confirmed both of them.

The Agency did not file an application for supervisory review of the Arbitration Court's ruling of November 30, 2006. Thus the dispute about the building was settled in favour of the church. The Agency's claims on the seizure of the building from the Church may not be

reviewed by another court in any further dispute involving the same parties and the same grounds.

3. *The Moscow Branch of the Salvation Army (MBSA) v. Russia*

Facts: On February 18, 1999, the MBSA submitted a package of documents for re-registration as a local religious organization to the Department of Justice. On August 16, 1999, the Department of Justice notified the MBSA (by letter No. 99r) of its denial of re-registration. The denial was motivated by the fact that the documents submitted do not comply with the law, namely:

1. The changes to the MBSA Charter were introduced by the Financial Council (executive body of the MBSA) consisting of six members, whereas the local religious organization must have at least ten members (founders).
2. Only copies of passports were attached to the list of members of the Financial Council, and no visas of its members who are foreign citizens;
3. As the higher authority for the MBSA is the centralized organization Salvation Army with the headquarters abroad, the MBSA is “most likely” a representation of a foreign religious organization acting on behalf of and as an agent of the latter.

On September 7, 1999, the MBSA, regarding the refusal of re-registration as unlawful, filed suit against the Department of Justice in the Presnensky District Court of Moscow.

On July 5, 2000, the Presnensky District Court of Moscow (case No. 2-1902/2000) denied the appeal of the MBSA and ruled that the refusal of re-registration was lawful.

The MBSA appealed the decision of the Presnensky District Court to the Moscow City Court. On November 28, 2000, the Judicial Board for the Civil Cases of the Moscow City Court issued a ruling (Case No. 33-14350) by which the decision of the Presnensky district court was left unchanged and the MBSA’s appeal dismissed. The decision entered into force immediately.

Legal Issues: The refusal of the Department of Justice to re-register the MBSA, and the decision of the Presnensky District Court of Moscow, and the ruling of the Judicial Board for the Civil Cases of the Moscow City Court are unlawful for the following reasons:

1. The law applies the requirement of having at least ten founders to a religious organization at its establishment, and not to an executive body of an existing religious organization, as is the case with the MBSA Financial Council. According to the registered MBSA Charter, the Financial Council is specifically authorized to make amendments to the Charter.
2. Religious organizations have the right to invite foreign citizens for professional purposes. The law does not contain any requirements for a religious organization to submit at re-registration copies of visas of foreign citizens working for it.

3. The law provides, to be sure, the right for a foreign religious organization to establish its representative office in Russia, which would not possess the status of a religious association and could not engage in religious activities. The MBSA, however, was founded by Russian citizens as a religious organization back in 1992; and since that time, it is a legitimate religious organization under the Russian law. Moreover, the possibility for a Russian religious organization to become part of a foreign religious center is directly provided by the law. The Roman Catholic Church, the Mormons, the Seventh Day Adventists and some other organizations operate in Russia according to the same principle. Thus, the MBSA, while being part of a foreign religious organization, is by its status a full-fledged religious organization founded by Russian citizens and may not be deprived of this status by means of coercion. This is how the law was interpreted by the Constitutional Court of Russia in its ruling of April 13, 2000 on the appeal of the [Roman Catholic] Society of Jesus in Russia.
4. The court of the first instance committed gross violations of the law and procedure, specifically:
 - a) The MBSA challenged the legality of the three above-mentioned reasons for the denial of re-registration. The court did not examine all, but only one of the applicant's claims. Furthermore, the court unlawfully exceeded the limits of the appeal by considering matters not raised in the complaint. Thus, in its decision the court draws a conclusion about the paramilitary nature of the MBSA's activities from the fact of using the word "army" by the organization in its title, of having "military ranks" and "a uniform for its members," whereas this issue was not a subject of the appeal and was not examined at the hearing. As it became known after the MBSA received the final text of the decision, the allegations of the paramilitary character of the MBSA were inserted in the text of the decision from the written rebuttal of the MBSA's appeal by the Department of Justice, which was not examined at the hearing. Moreover, the text of the court decision contains conclusions as to the non-conformity of certain provisions of the MBSA Charter submitted for re-registration, but those issues were not raised at the hearing either.
 - b) The court did not substantiate in any way its findings of the "paramilitary" character of the MBSA and of its judgment that it may operate only as a representative office of a foreign religious organization. The court bases its findings not on the law but solely on the opinion of the Department of Justice.
5. In its ruling, the Judicial Board for Civil Cases of the Moscow City Court agrees with the conclusions of the Presnensky District Court that the MBSA is not a religious organization and may, therefore, be registered only as a representation of a foreign religious organization.

As the deadline for re-registration of religious organizations expired on December 31, 2000, the MBSA is now subject to liquidation. The refusal to re-register a religious organization is a violation of the rights guaranteed by Article 9 of the European Convention.

Status: The MBSA turned to the SCLJ for legal assistance. The SCLJ drafted an appeal for supervisory review to the President of the Moscow City Court. The appeal was submitted on May 23, 2001. Since the President found it necessary to thoroughly examine the appeal and the enclosed documents, a personal meeting with the SCLJ lawyers was scheduled for June 13, when, supposedly, the question of lodging a protest would be resolved. If the President of the Moscow City Court refuses to lodge a protest, the appeal will be forwarded to the Supreme Court of Russia.

Since the six-month term from the date of the ruling of the court of cassations (which may be the final judgment in the case) would expire on May 28, 2001, on May 25 the SCLJ filed a brief preliminary application to the ECHR on behalf of the MBSA. Thus, if our efforts to resolve the case with the national courts do not succeed, the opportunity remains for the case to be reviewed by the ECHR.

On June 13, 2001, V. Ryakhovsky met with President of the Moscow City Court who heard his arguments and requested the materials of the case for review. After she examines the materials, she will make the decision on lodging a protest.

On June 15, 2001, the SCLJ was notified by letter from the ECHR that the preliminary application on behalf of the MBSA was accepted and registered by the Court. The Court suggested that we file a "formal" application within eight weeks.

On July 10, 2001, the SCLJ filed its official application with the Court, in English. We also requested an expedited hearing schedule due to the potential for liquidation and the immediate harm that could come to the MBSA.

On August 2, 2001, the SCLJ was informed by the Moscow City court president of her refusal to lodge a protest by way of supervisory review.

On August 20, 2001, we received a confirmation of receipt of our application by the ECHR.

On August 20, 2001, SCLJ filed an appeal by way of supervisory review to the Supreme Court of Russia.

By the letter dated September 5, 2001, the ECHR informed us that our applicant did not qualify for an expedited treatment.

On September 10, 2001, our appeal for supervisory review was denied by a judge of the Supreme Court.

On November 9, 2001, the SCLJ informed the ECHR of the current changes in the case, namely: denial of the Moscow City Court and of the Supreme Court to lodge a protest by way of supervisory review, and the decision of the Tagansky Court of Moscow to liquidate the Moscow branch of the Salvation Army.

On June 5, 2003, the ECHR informed us that the Chamber gave a notice of our application to the Government of Russia, and the Government was invited to submit observations on the admissibility and merits of the case by September 16, 2003. In September, the deadline for the Government's observations was extended until October 16, 2003. On November 25, 2003, the

ECHR sent us a copy of the Government's memorandum on the case. On February 12, 2004, the SCLJ submitted observations on the Government's memorandum.

On June 24, 2004, the ECHR declared the MBSA's application admissible under Articles of the European Convention and inadmissible under Article 6.

The Court has also suggested that SCLJ lawyers submit their claims for just satisfaction including pecuniary and non-pecuniary damage.

On July 22, 2004, a request for oral hearing of the case was submitted to the ECHR. On September 13, 2004, a claim for just satisfaction for the non-pecuniary damages incurred by the MBSA was submitted to the ECHR.

On October 15, 2004, SCLJ was notified of receipt of its statements by the ECHR Registry. The Court also notified us of the Russian Government's willingness to consider the possibility and condition of a friendly settlement with MBSA.

On November 2, 2004, we submitted a letter to the Court, stating the conditions on which the Salvation Army would agree to sign a friendly settlement with the respondent Government.

On November 10, 2004, the Court informed us that the Government was expected to lodge its observations on the proposed conditions of a friendly settlement by December 8, 2004.

On November 30, 2004, the Court informed us that the deadline for submission by the Government of its observations was extended until January 13, 2005.

On January 13, 2005, we submitted our conditions for the friendly settlement with the court. So far, we have received no response from the Government on this matter. SCLJ office made a number of phone calls to the Registry. The lawyers working on the case informed us that the Court, assuming that the respondent Government has nothing else to say on the matter of friendly settlement, moved forward past the negotiation stage. The Court has effectively retired in order to make its deliberation and to issue a judgment.

On October 5, 2006, the European Court of Human Rights ruled that the Justice Department of Moscow had unlawfully refused to re-register the applicant branch. In its judgment, the Court unanimously recognized that Art. 11 (freedom of assembly and association) of the European Convention, interpreted in the light of Art. 9 (freedom of thought, conscience and religion), was violated in relation to the Moscow Branch of the Salvation Army. Furthermore, the Court ruled that the respondent state is to pay 10,000 euros to the applicant branch in compensation of the non-pecuniary damage incurred by the latter.

Upon expiration of the three-month term for the voluntary execution of the ECHR judgment by the national authorities, the SCLJ lawyers will apply to the Supreme Court of Russia on behalf of the Moscow Branch of the Salvation Army, seeking to repeal the decision of the Presnensky District Court's way of supervisory review. We shall also resubmit the Branch's documents to the Moscow Justice Department in order to finally obtain its re-registration.

4. *Baptist Church "Resurrection" of the city of Ivanovo v. Oktyabrsky District Department of Internal Affairs of Ivanovo*

Facts: On May 13 and 14, 2006, the “Resurrection” Baptist Church in the city of Ivanovo rented a cinema center to hold a public action called “There is hope.” The event included demonstration of a Christian film, “Ascension,” distribution of the Gospels and Gideon New Testament and Psalms.

On May 14, 2006, the action was attended by about 500 people. After the film, people in plain clothes approached the church members distributing the books and detained three of them (there were about 15 people distributing books altogether) for a check-up. They justified their actions by referring to Article 12.22 of the Code of Administrative Offences.

The detained were taken to the police station and process-verbal of the examination of the Gideon books they had on them was executed. The process-verbal enumerated the following “violations”: “missing information on the Chief Editor, issue number and publication date, circulation, address of the editors, publishers and printing house.”

On May 15, 2006, the Head of the Oktyabrsky District Department of Internal Affairs ordered an inspection in order to find out the circumstances that could potentially cause administrative or criminal liability. Upon the results of this inspection, the detained members or leaders of the Church will be charged with an administrative offence.

Legal Issues: According to Article 13.22 of the Code of Administrative Offences, publication or distribution of a mass medium without indicating the output information or with incomplete or false output information entails a warning or an administrative fine in the amount of three to five minimum monthly wages, with or without confiscation of the mass medium. The sum of fine for officials amounts to five to ten minimum monthly wages, with or without confiscation of the mass medium, for legal entities - 50 to 100 minimum monthly wages, with or without confiscation of the mass medium.

This Article applies to the periodical printed media--that is, publications issued at least once a year. It follows from the above that the said provision does not apply to books – even more so to the editions of Biblical texts.

Status: On May 16, 2006, the Church turned to the SCLJ for legal help.

SCLJ decided to defend the interests of the Church.

We are currently collecting all necessary materials and evidence – including the text of the ruling by which the church members were charged with an administrative offence to be able to complain against this ruling to court.

SCLJ arranged a meeting between the Governor of the Ivanovo Region Mikhail Men and the leaders of the Russian Baptist Union in order to achieve extrajudicial resolution of the conflict. SCLJ lawyers took part in this meeting as well.

Mikhail Men apologized to the Baptist leaders for the incident and explained that it was caused by the lack of professionalism of the law enforcement officers. The Governor has also stressed that the case against the arrested Church members was closed, sanctions were taken against the responsible officers at the Oktyabrsky District Department of Internal Affairs, and this would not happen again.

The leaders of the Russian Baptist Union and Church representatives were happy with the results of this meeting. Thus, the conflict was resolved out of court in favor of the Church.

5. *Syktyvkar City Prosecutor v. Victor Dudin*

Facts: Victor Dudin is Pastor of the Exodus Evangelical Church in Syktyvkar and also President of the Renewal Charitable Foundation established by the Church. On July 28, 2006, he organized and held an anti-drug and anti-alcohol music event in the city park. The local authorities were duly notified of the intention to hold this event. As part of the program, Church members told the audience about their personal experience of getting rid of their drug and alcohol addictions. Christian songs were sung; and at the very end of the program, Victor Dudin said a prayer.

On August 16, 2006, the Prosecutor's Office of Syktyvkar instigated administrative proceedings against Victor Dudin. This was done in reaction to a letter from the Acting Director of the regional directorate of the Federal Security Service. The City Prosecutor alleged that under the guise of a concert, Victor Dudin was, in fact, holding a worship service (with prayers and religious songs), thus breaking the provisions of the Federal Law "On Meetings, Rallies, Demonstrations, Marches and Picketing."

Legal Issues: In SCLJ's opinion, the reference to the Federal Law "On Meetings..." made by the Prosecutor is unjustified; according to Art 1(2) of this law, religious rituals and ceremonies fall under the remit of the Federal Law "On Freedom of Religion."

Furthermore, the mere facts of saying a prayer or singing religious songs cannot be qualified as administrative offences. To assert this would be in contradiction with Art. 28 of the Russian Constitution which guarantees everyone the right to manifest and propagate one's religion and beliefs and to act in accordance therewith.

Article 20.2(1) of the Code of Administrative Offences of the Russian Federation provides a sanction for the breaches of the provisions on the organization of a meeting, rally, demonstration, march or picketing which incur a fine from one to two thousand roubles.

Status: On December 22, 2006, Victor Dudin turned to SCLJ for help.

SCLJ lawyers examined the circumstances of the case and provided documents, and they drafted a petition to terminate the proceedings.

On September 26, a justice of peace of the Krasnozatonsky court district granted our petition and terminated the proceedings against Victor Dudin, having found no offence in his actions. On October 26, 2006 the decision entered into force.

The conflict was resolved in favor of Victor Dudin.