

## **Submission by the Church of Scientology**

### **OSCE Review Conference (Warsaw, 30 September – 8 October 2010)**

#### **Working Session 2**

#### **Religious Discrimination Directed at Scientology in Russia**

##### **1. Surgut Extremism Case**

On 26 March, 2010, the Surgut City Court of Khanty-Mansiysk region rendered a decision finding that 29 Scientology religious books, lectures and brochures should be labeled as "extremist" under the Extremism Law. This decision occurred after an *ex parte* hearing that did not include any party on behalf of Scientology. No Church of Scientology or Scientologists who were the intended recipients of the books and lectures were allowed to intervene as a party to attend the hearing. Indeed, they were not even given notice of the hearing. The American publisher of the materials that were seized, Bridge Publications, was also denied the right to intervene.

One of the intended recipients of the Scriptures, Anna Portnova, a founder of the Church of Scientology of Surgut, received a copy of the decision from the Surgut City Court, but only *after* the 26 March decision was rendered. Ms. Portnova received the decision in the mail on 6 May 2010 and promptly filed a notice of appeal within 10 days of receipt of the decision on 13 May (the other parties that were not granted intervention below also refiled notices of appeal at this time). However, as the filing of this notice of appeal was out of time and as Ms. Portnova was never granted the right to intervene in the case, Ms. Portnova filed further complaints in the Surgut City Court to intervene in the case, to gain access to the case file and to file a timely appeal.

On 24 May 2010, a different Judge in the Surgut City Court held a hearing regarding Ms. Portnova's claims. The Court determined that:

- 1) Ms. Portnova could intervene in the case;
- 2) Ms. Portnova could obtain access to the case file; and
- 3) Ms. Portnova could file an appeal from the 26 March ruling declaring the materials extremist even though the 10 days for filing an appeal had run. The Court "recovered" Ms. Portnova's time for filing an appeal as she was not provided notice of the 26 March ruling at the time it was rendered. It ruled that she had ten days from 24 May to do so.

On 13 July 2010, the Khanty Mansiysk Court of Appeals heard the complaints of all applicants that had filed appeals to enter into the Surgut extremist case but were refused the right to intervene or file an appeal by the Surgut City Court.

Three founding members of the religious group in Surgut who were intended recipients of the seized materials were heard by the Appeals Court. The Court rendered an oral decision that they had a right to intervene and be heard in the case. Likewise, the Court of Appeals found that the Church of Scientology of Moscow had the right to appeal and intervene.

However, the Court determined that the Surgut Church could not intervene because it is not a legal entity (as noted in the previous memo, the Surgut Church was denied the right to register as a religious organization on the grounds that it did not qualify under the 15 Year Rule of the 1997 Religion Law; this was taken to Strasbourg and the European Human Rights Court found that the 15 Year Rule contravened the right to religious freedom and freedom of association under the Human Rights Convention). The Appeals Court did not grant the publisher, Bridge Publications, the right to appeal and intervene on the grounds that there was no evidence before the Appeals Court that the seized materials were published by Bridge (this is evident from the seized materials themselves, but they were not part of the record before the Court).

The Appeals Court determined to remand the complaints of the parishioners and the Moscow Church to the Surgut City Court. It determined that they have the right to access the case file and be heard on the merits before the City Court regarding their claims. The case has now been transferred back to the Surgut City Court. A hearing is now scheduled for 12 October 2010.

## **2. Placement of Scientology Scriptures on Federal List of Banned Materials**

The 13 July 2010 decision by the Khanti-Mansiysk Appeals Court is significant as it negates the 26 March 2010 Surgut City Court ruling by remanding the case and subjecting the lower court ruling to challenge below. Based on the Court of Appeals ruling:

- 1) There is no final decision in the case; and
- 2) The current decision must be reconsidered in light of the arguments that will be presented below.

Nevertheless, approximately 3 hours after the Appeals Court decision, the seized books and lectures were placed on the federal list of banned materials by the Federal Ministry of Justice (MOJ) and showed up as Items

632-660 on the MOJ website. This inclusion on the list of banned materials directly contradicts letters from the MOJ 3 weeks ago to the Moscow Church and Church counsel where MOJ officials noted that they were aware that 1) appeals had been filed; 2) the decision is not final; and 3) they will not put the seized items on the federal list of banned materials on the MOJ website.

In response to this draconian measure, officials of the Church of Scientology of Moscow sent a telegram and an e-mail to the Ministry of Justice alerting them to the Appeals Court decision and demanding that the Ministry immediately remove this material from their list.

Initially, in June of 2010, the Ministry replied by stating that it was aware that an appeal had been filed and that, in light of the appeal, it would not place the materials at issue on the federal list of banned materials. Yet, incredibly, in July, the Ministry went forward and placed these materials on the banned list notwithstanding the appeal and the letter in June 2010 assuring the Church that the materials would not be placed on the list as a final decision had not been rendered.

Counsel for the Church met with officials in the Ministry on 15 July 2010 to protest the inclusion of the Scriptures on the website on 15 July as there is no final decision in the Surgut case. Despite the fact that the case has been remanded to the trial court for further hearings, these officials refused to remove the Scientology Scriptures from the list, evidencing the level of bias against Scientology by the MOJ.

As the Ministry has improperly and illegally placed these Scriptures on its federal list of banned materials, the Church filed suit against the Ministry of Justice.

Placement of these Scriptures on the list of banned materials means that these Scriptures, which form the basic foundation of Scientology religious doctrine, will be banned throughout Russia, placing all Scientology religious organizations and their parishioners at great risk of raids, liquidation actions, criminal charges and general harassment and persecution while severely suppressing the right to religious freedom for Scientologists and the Church of Scientology in Russia.

### **3. Subsequent Extremism Investigations**

Over the past two years, authorities in Penza, Ekaterinburg, Novosibirsk and Moscow have initiated investigations seeking to block the importation of and censor Scientology religious Scriptures on the purported grounds that these materials are somehow "extremist".

As of April 2009, investigations in Penza and Ekaterinburg had been dismissed as groundless and the religious books originally seized and confiscated were finally released to the parishioners who purchased them.

Yet, new seizures and confiscation of Scientology religious materials occurred in Ekaterinburg in July 2009 and Penza in September 2009 under the Extremism Law.

On 19 and 20 February 2009, the Moscow Scientology Church was subject to inspections to review religious materials in order to determine if they should be confiscated under the Extremism Law.

On 16 March 2010 over 25 police officials, Ministry of Interior, FSB and Prosecutor office personnel entered the Management Center of Scientology to conduct what is called a "pre-investigation" on the charge of Extremism and to interrogate officers of the Center regarding the seized materials. The next day, 17 March 2010, representatives of the same agencies entered Church of Scientology of Moscow and seized additional Scriptural materials.

Since the Scientology Scriptures were improperly placed on the extremist materials list, administrative investigations have been instituted by the Prosecutor against the Krasnodar, Kaluga and Blagoveshensk Scientology Missions on the purported grounds of selling extremist literature. In addition, the Management Center of Scientology in Moscow was raided on 4 August and a criminal investigation was started on the grounds of "extremism" and "distributing banned literature".

On 23 September, a hearing occurred in the Krasnodar case. The defendant Scientologists presented to the Court the evidence that the Surgut Extremist decision of 26 March is under appeal and there is no final decision, therefore inclusion on the federal list of excluded materials is improper. They also presented the letter from the Ministry of Justice of Russia of June 2010 to the Church of Scientology of Moscow that they are aware the Surgut decision is under appeal and that they would not put the materials up on the federal website (which they then promptly did). The Judge ruled that she cannot see any crime committed by these 2 individuals based on the evidence and dismissed both cases.

#### **4. Refusal to Register Scientology Religious Organizations as Required by Law and Retaliation Against these Organizations through Application of Extremism Law**

Scientology Churches and Missions have been refused the right to register as religious organizations under the 1997 Russian Federation law "On Freedom of Conscience and Associations." The Religion Law requires religious groups to have at least a 15-year presence in the country to be eligible to register as religious organizations. Scientology Churches have been refused registration under the 15-year rule of the Religion Law and, in the case of the Moscow Scientology Church, pursuant to arbitrary and discriminatory rulings designed to bar any registration of Scientology religious groups under the Religion Law. Three Churches of Scientology

have successfully challenged this discrimination in the European Human Rights Court.

In 2007, the Human Rights Court in the case entitled Church of Scientology Moscow v. Russia (application no. 18147/02), overturned the Moscow City government's refusal to register the Church of Scientology of Moscow as a religious organization. The Court found that Russia had violated the rights of the Church of Scientology under ECHR Articles 11 (the right to freedom of association) "read in the light of Article 9" (the right to freedom of religion), when it refused to re-register the Church of Scientology Moscow.

Specifically, the Human Rights Court determined that, in denying registration to the Church of Scientology of Moscow, the Moscow authorities "did not act in good faith and neglected their duty of neutrality and impartiality vis-à-vis the applicant's religious community." The Court also awarded the Church 10,000 Euros in respect of non-pecuniary damage and 15,000 Euros for costs and expenses.

Despite this decision, the Russian government has refused to re-register the Moscow Church. In light of the government's bad faith in complying with the Church of Scientology Moscow ECHR decision, the Moscow Church has filed submissions with the Committee of Ministers Subcommittee on Execution of Human Rights Court Decisions in the Council of Europe, requesting that the Council direct Russia to comply with the Moscow Scientology final decision. This request is pending.

In October 2009, the European Court of Human Rights found that the refusal to register Scientology Churches in Surgut and Nizhnekamsk as religious organizations because they had not existed for 15 years as required by the 1997 Religion Law violated the rights of the applicants, in particular, violation of the provisions of Article 9 of the Convention (freedom of religion) in the light of Article 11 (freedom of association). The Court found that "the restricted status afforded to religious groups under the Religion Act did not allow members of such a group to enjoy effectively their right to freedom of religion, rendering such a right illusory and theoretical rather than practical and effective, as required by the Convention". The two organizations were awarded 20,000 € in costs and damages.

This ruling became final on 1 March 2010. Rather than registering the Surgut Church as a religious organization as required by the Human Rights Court, the Russian government has instead manufactured an assault on the Surgut religious association and its founders by seizing all the basic Scientology Scriptures sent to them and declaring these Scriptures as "extremist" in the secret, *ex parte* hearing held 25 days after the ruling of the Human Rights Court became final and binding on the Russian Federation.

On 15 July 2010, the Tatarstan Supreme Court ordered that, in light of the October 2009 ruling of the European Human Rights Court in the Nizhnekamsk Case, the local Ministry of Justice must register the Church of Scientology of Nizhnekamsk as a religious organization under the 1997 Religion Law. This is a final decision and hopefully religious registration of this Scientology Church will occur forthwith.

Likewise, Russian authorities have initiated an "extremism" investigation of the Moscow Church while refusing to re-register it as a religious organization as required by the Human Rights Court.

The Church of Scientology of St. Petersburg also filed an action in the European Court of Human Rights in November 2006 against the Russian Federation challenging the refusal to register it as a religious organization because of the 15 Year Rule. This case remains pending before the Court.

Shortly after the ruling of the Surgut City Court, and well before anyone associated with Scientology had received a copy of the Surgut City ruling, the Prosecutor in St. Petersburg contacted the St. Petersburg religious organization and provided a verbal "warning" to cease and desist distribution and use of the materials deemed extremist by the Surgut City Court.

There should be no question that these actions have been taken in retaliation for the Church of Scientology filing actions and prevailing in the Human Rights Court.

## **5. Forced Liquidation**

Once the decision by Russian authorities to refuse to allow the St. Petersburg Church to register as a religious organization pursuant to the 15 Year Rule was upheld in Russian courts, authorities initiated actions designed to liquidate the Church. The government claimed that the Church should be liquidated for, among other reasons, not allowing psychiatrists to attend parishioners' private religious minister-parishioner sessions and not allowing them to review confidential minister-parishioner files.

The Church litigated the liquidation matter in Russian courts and the trial court's decision to force liquidation of the Church on these spurious grounds was upheld. In July, 2008, the Church of Scientology of St. Petersburg filed an application with the ECHR challenging this forced liquidation. This case remains pending with the ECHR.

Because of the refusal of Russian authorities to register Scientology Missions and Churches as religious organizations under the 15 Year Rule, individual Scientology Churches in Chelny, Rostov, Ufa, Samara, Barnaul, Vladivostok, Novosibirsk, Surgut City, Penza, Ekaterinburg, and elsewhere have experienced discriminatory treatment by local officials in the form of never-ending investigations and attempts to close down the Churches.

These actions include civil and criminal charges with the initiation of proceedings on the specious grounds that the Scientology Churches are either practicing medicine or running unregistered schools. Authorities in Barnaul, Rostov, Naberezhniye, Chelny, Vladivostok, and Samara, for example, have filed actions attempting to liquidate the Scientology Missions in those cities, while at the same time refusing to register them.

In March 2009, the Rostov Mission of Scientology was ordered liquidated by the trial court on the purported grounds that the Church practiced education without a license because it offered parishioners classes on Scientology Scriptures. This investigation was finally closed.

The Barnaul Mission of Scientology was registered as a social organization (it cannot register as a religious organization under the Religion Law's 15-Year rule). In 2007, the local prosecutor brought an action to liquidate the Mission on the grounds that it practiced medicine and education without a license. These charges were dismissed by the trial court. In August 2008, the trial court's decision was overturned by the Altay Regional Court and the case was sent back for trial. The Court ordered the prosecutor to obtain an expertise regarding the charges. The expert retained by the government determined that the organizations activities were not educational but religious in nature. In August 2009, the trial court relied on this evidence to order liquidation of the Mission on the grounds that it could not conduct religious activities as a social organization but had to be registered under the Religion Law! This ruling was affirmed on appeal.

Likewise, in November 2008, the trial court ordered liquidation of the Samara Mission of Scientology (which had registered as a noncommercial organization in order to obtain legal entity status) on the purported grounds that it practiced education without a license. This decision was upheld on appeal in December 2008.

While the Churches have successfully challenged some of these claims in court, it seems that for each one that is dismissed another one starts. Where decisions in the first instance have been negative, all necessary appeals are being pursued.

## **6. Extremism Law and its Use Against Other Faiths**

The Extremism Law has been typically used against other religions to censor religious literature based on biased expert reports. For example, Forum 18 notes that, in one case, Muslim literature was banned because the expert argued the literature was "extremist" as it "propagandizes the idea of the superiority of Islam - and therefore Muslims - over other religions and the people who adhere to them". Yet a fundamental tenet of religious freedom is the right to say that yours is the only true religion<sup>1</sup>.

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<sup>1</sup> "Russia: How the Battle with Extremism was Begun" Geraldine Fagan, 27 April 2009 <http://www.forum18.org>.

NGOs and the Russian Human Rights Ombudsman have expressed concern over the use of the Extremism Law to suppress and censor religions.

The list of the extremist organizations and the list of extremist literature are posted on the website of the Ministry of Justice of the Russian Federation. As of September 2010, the extremist literature list comprises 694 items, including articles, leaflets and brochures, books, specific newspaper and magazine issues, films, videos, pieces of music.

In December 2009, the Russian Supreme Court issued a decision against the Jehovah's Witnesses. This gives a good snapshot of how the Extremism Law is and can be applied and the dangers it contains. The Supreme Court upheld the finding that 34 Jehovah's Witness publications are extremist and therefore banned nationwide. Any person distributing or using those materials can be arrested. Any organization distributing them can be charged. The Jehovah's Witness community in the local town of Taganrog was also found by the lower Court as an "extremist organization" and is banned from meeting as a community. The Court also ordered that the religious organization be liquidated. The organization's property – including land, office and residential premises – were placed under state control.

The Supreme Court also upheld, as part of the ruling, the liquidation of the Taganrog Jehovah's Witness congregation as "extremist". The congregation's property was confiscated, and it was banned from meeting as a community.

Another ruling finding 18 written materials of Jehovah's Witnesses as extremist was delivered by the Gorno-Altai City Court of the Altai Republic on 1 October 2009. The ruling was based on the conclusions of expert examinations in psychology and linguistics finding the texts to be negative propaganda containing promotion of superiority of the doctrine of Jehovah's Witnesses and inferiority of other religions.

Muslim literature that has been the target of "extremist" investigations and rulings includes, for example, *The Personality of a Muslim*, a popular work among Russian Muslims, that was deemed extremist in August 2007 and several distributors of it have since been fined. Readers of the late Turkish Muslim theologian Said Nursi have been detained and subject to prosecution.

## **Conclusion**

In the wake of three major decisions by the European Human Rights Court denouncing violations of the right of Churches of Scientology to freedom of religion and freedom of association in Russia, the Russian government



has launched new draconian measures to attempt to suppress the right to freely practice the Scientology religion in Russia. These measures contravene fundamental human rights that Russia has signed and ratified.

Under these circumstances, the Church respectfully requests that the OSCE investigate these draconian measures and enter into a dialogue with the Russian government to facilitate resolution of these matters consistent with human rights principles.