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Case Note

On October 5, 2006, the European Court of Human Rights issued its judgment in the *Case of the Moscow Branch of the Salvation Army v. Russia*.¹ In this case, the Court reaffirmed the important role of civil society and specifically addressed the re-registration of foreign organizations in Russia. We recently obtained this judgment and have already received a number of requests to provide a summary. Accordingly, we have prepared the following Case Note. Further analysis will be posted at www.icnl.org.

We begin with a brief factual overview. The Salvation Army worked in Russia from 1913 to 1923 before it was dissolved for being an “anti-Soviet organisation.” *Salvation Army* at para. 8. In 1992, the Salvation Army resumed its activities, registering as the Moscow branch of the Salvation Army and obtaining legal entity status. *Id.* at 9 -10.

In October 1997, a new Law on Freedom of Conscience and Religious Associations (“the Religions Act”) entered into force. It required religious organizations that had previously obtained legal entity status in Russia to bring their articles of association into conformity with the Religions Act and to re-register.

The Moscow branch of the Salvation Army applied for re-registration but was unsuccessful. Several reasons were advanced, including the involvement of five nationals who had multiple entry visas, but who lacked residence permits. *Id.* at 12-18.

On December 31, 2000, the time limit for re-registration expired. Organizations that failed to re-register were liable for dissolution. *Id.* at 19.

In September 2001, the Salvation Army lodged a complaint before the Constitutional Court, arguing, *inter alia*, that it was unconstitutional to dissolve an organization for failing to re-register. *Id.* at 23. According to the European Court, the Russian Constitutional Court:

held that re-registration of a religious organisation could not be made conditional on the fulfillment of requirements that were introduced by the Religions Act and had not legally existed at the time of the founding of the organisation. *Id.* at 24.

The Russian Constitutional Court also held that dissolution could only occur if the organization ceased its activity or had engaged in unlawful activities; dissolution should not be based on “formal grounds” such as the failure to re-register. *Id.* We will review this 2002 Constitutional Court case in the coming days to determine its implications for foreign NGOs that are threatened with dissolution for failing to re-register under the new Russian NGO law.

In response to the Constitutional Court case the dissolution order was dismissed, but the organization was still refused re-registration. The European Court noted that the refusal to re-register had significant impact on the organization. According to the Court, “the lack of re-registration made it impossible for twenty-five foreign employees and seven non-Moscow Russian employees to obtain residence registration in Moscow, the refusal resulted in

¹ This case is available on the website of the European Court of Human Rights: <http://www.echr.coe.int/echr>

negative publicity that undermined fundraising efforts, and the organization was unable to deliver hot meals to house-bound elderly because a local official refused to work with the branch since it had no official registration.” Id. at 31-33.

After reviewing these facts, the Court then examined “general principles.” It reiterated the legal baseline, namely that the right to form an association is an “inherent part” of the freedom of association under Article 11 of the European Convention. Id. at 59. The Court also recognized that associations are important for the “proper functioning of democracy.” Id. at 61.

The Court then reaffirmed the right to form an association as a legal entity:

[T]he ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the freedom of association, without which that right would be deprived of any meaning. The Court has consistently held the view that a refusal by domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the applicants’ exercise of their right to freedom of association. Id. at 71.

Reviewing the facts, the Court found that Russia had indeed interfered with the freedom of association through the re-registration process. Id. at 74. The Court then addressed arguments presented by Russian authorities to justify this interference.² Among other issues, Russia argued that the interference was justified based on the “foreign origin of the applicant branch.”

The Court was clear on this point, finding that there is “no reasonable and objective justification for a difference in treatment of Russian and foreign nationals from being founders of Russian religious organisations.” Id. at 82. The Court concluded: “It follows that the arguments pertaining to the applicant’s alleged ‘foreign origin’ were neither ‘relevant and sufficient’ for refusing its registration, nor ‘prescribed by law.’” Id. 86.

This case is important for a number of reasons. The European Court of Human Rights reaffirmed the essential role that civil society plays in a democratic society. The Court reiterated the “inherent” right to form an association as a legal entity and stated that the limitations on this right should be “strictly construed.” Finally, the Court found that the freedom of association extends to organizations with a “foreign origin,” as ICNL and human rights groups have argued in the past, and is not limited to entities formed by “domestic persons.”

² The Court also stated general principles concerning restrictions on the freedom of association:

The State’s power to protect its institutions and citizens from associations that might jeopardize them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.... [T]he notion ‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable.’” Id. at 62.