Russia
Judicial Decisions on Anti-Discrimination

This document outlines jurisprudence on discrimination in Russia.

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Description of Cases

A. Decisions on racial equality

I. *Timishev v Russia*

1) Initial Details

- **Jurisdiction:** The European Court of Human Rights
- **Case Name:** *Timishev v Russia (Applications Nos. 55762/00 and 55974/00)*
- **Date of Decision:** 13 December 2005
- **Case Status:** Final
- **Link to full case:** http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=9858272&skin=hudoc-en

2) Facts

A. Refusal of Entry into Kabardino-Balkaria

- The applicant, Ilyas Yakubovich Timishev, a lawyer, was a Russian national of Chechen ethnic origin, who was born in the Chechen Republic in 1950. Since 15 August 1996 he had been living in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant. The respondent was the Russian Government, represented by Mr. P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.
- On 19 June 1999 Mr. Timishev and his driver of Chechen origin were travelling by car from Nazran, in the Ingushetia Republic (Russia), to Nalchik. The parties submitted different versions of the subsequent events.
- According to the applicant, their car was stopped at the Urukh checkpoint on the administrative border between Ingushetia and Kabardino-Balkaria. Officers from the Kabardino-Balkaria State Inspectorate for Road Safety refused him entry, referring to an oral instruction from the Ministry of the Interior of Kabardino-Balkaria not to admit anyone of Chechen ethnic origin.
- According to the Russian Government, the applicant attempted to jump the queue of cars waiting to pass through the checkpoint and then left, after being refused priority treatment.
- The fact that the applicant was refused to enter into Kabardino-Balkaria was confirmed in the letter of 1 February 2000 from the Prosecutor General's Office. The undated summary approved by the Minister of the Interior of Kabardino-Balkaria also referred to the fact that subordinate police officers had received from their superiors an oral instruction not to allow people of Chechen ethnic origin travelling by private cars from the Chechen Republic to enter the Kabardino-Balkaria Republic.

B. Refusal of Access to School

- On 1 September 2000 the applicant's nine-year-old son and seven-year-old daughter were refused admission to their school in Nalchik – which they had attended from September 1998 to May 2000 – because the applicant could not produce his migrant's card, a local document confirming his residence in Nalchik and his status as a forced migrant from Chechnya. The applicant had been required to submit his migrant's card in exchange for compensation, received on 24 December 1999, for the property he lost in the Chechen Republic. The headmaster agreed to admit the children informally, but advised the applicant that the children would be immediately suspended if the education department discovered the arrangement.

3) Law

1. Domestic Law

- Articles 19, 27, 43, 56 of the Constitution of the Russian Federation, dated 12 December 1993;
- Section 11(22) of the RF Law "On Militia" No. 1026-1, dated 18 April 1991;
- Section 5 of the RF Law "On Education" No. 3266-1, dated 10 July 1992.

2. International Law

- Article 1 of the United Nations' International Convention on Elimination of All Forms of Racial Discrimination, dated 21 December 1965;
- General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination adopted by the Council of Europe's European Commission against Racism and Intolerance on 13 December 2002;
- Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "**Convention**");
- Article 2 of the Protocol No. 4 to the Convention;
- Article 2 of the Protocol No. 1 to the Convention.

4) Legal Arguments

A. Refusal of Entry into Kabardino-Balkaria

- The applicant alleged, in particular, a violation of Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, taken alone or in conjunction with Article 14 of the Convention, in that on 19 June 1999 he had not been permitted to enter Kabardino-Balkaria because of his Chechen ethnic origin.
- The Government argued that the restriction was imposed in accordance with Section 11(22) of the RF Law "On Militia" with a view to deter criminal offences and guarantee public safety. The applicant responded that the restriction had been unnecessarily broad and the aim thereby pursued too abstract.
- The applicant indicated that he would have had unhindered passage through the checkpoint had he concealed his Chechen ethnicity. The Government rejected the applicant's complaint about discrimination as unsubstantiated, because the Russian Constitution did not require citizens to make known their ethnic origin and it was not indicated in a person's identity documents.

B. Refusal of Access to School

- The applicant alleged a violation of his children's right to education under Article 2 of Protocol No. 1.

- The applicant pointed out that the refusal to admit his children to school after the summer break had been founded solely on the fact that he had had no registered residence and no “migrant's card”, which only former Chechen residents were required to have.

- The Government accepted that the right of the applicant's children to education had been unlawfully restricted. Under Russian law, rights and freedoms could not be restricted on account of a person's registered place of residence, and the Education Act guaranteed the right to education irrespective of the place of residence (Section 5).

5) Decision

The Court held unanimously that there had been:

- a violation of Article 2 of Protocol No. 4 (freedom of movement) to the Convention;

- a violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 of Protocol No. 4; and

- a violation of Article 2 of Protocol No. 1 (right to education).

In particular, the Court stated that a differential treatment of persons in similar situations, without an objective and reasonable justification, constitutes discrimination. Discrimination on account of one's actual or perceived ethnicity is a form of racial discrimination. Further, the Court noted that once the applicant has shown that there has been a difference in treatment, it is then for the respondent Government to show that the difference in treatment could be justified. The Government did not offer any justification for the difference in treatment between persons of Chechen and non-Chechen ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.

Under Article 41 (just satisfaction), the Court awarded the applicant EUR 5,000 for non-pecuniary damage and EUR 950 for costs and expenses.

6) Key words: Issues Tree

Group 1: Direct Discrimination, Instruction to Discriminate

Group 2: International Standards

Group 3: Race, Color, Ethnicity

Group 4: Education, Other Discrimination Areas

Group 5: Remedies and Enforcement

B. Decisions on the Rights of Persons with Disabilities

II. *Prisetskaya v Sibir Airlines*

1) Initial Details

- **Jurisdiction:** Cheremushki District Court of Moscow
- **Case Name:** *International Confederation of Consumer Societies in favour of Natalya Prisetskaya v Sibir Airlines (civil case No. 2-5572/08; cassation – case No. 33-26928)*
- **Date of Decision:** 17 October 2008 (2 December 2008 – cassation)
- **Case Status:** The case has been concluded at a cassation stage.
- **Link to full case:** http://pravo.perspektiva-inva.ru/index.php?127 (please note that all materials are in Russian only)

2) Facts

- The applicant is the International Confederation of Consumer Societies, which acted on behalf of Natalya Igorevna Prisetskaya. Natalya Prisetskaya, who uses a wheelchair, is an activist of "Iniziativa" public organization that protects the rights of persons with disabilities. The respondent is OAO "Sibir Airlines" ("S7 Airlines").
- On 30 June 2008 Natalya Prisetskaya was travelling to the city of Vladikavkaz from Domodedovo airport in Moscow. She arrived at the airport on time, checked her luggage and, was accompanied by the airport staff to board on the plane. However, the stewardess of S7 Airlines refused to take her aboard referring to an "internal instruction". The stewardess told Natalya Prisetskaya that the latter could not fly without an accompanying person.
- In order to get to Vladikovkaz, Natalya Prisetskaya had to take another flight (No. 363 of Vim-Avia Company) from Vnukovo airport.

3) Law

- Article 55 of the Russian Constitution, dated 12 December 1993;
- Articles 310, 786 of the Russian Civil Code, No. 14-FZ, dated 26 January 1996;
- Articles 10, 15 of the Law No. 2300-1 "On the Protection of Consumers' Rights", dated 7 February 1992;
- Article 107 of the Russian Air Code, No. 60-FZ, dated 19 March 1997;
- Article 15 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia", No. 181-FZ, dated 24 November 1995;
- Article 110 of the Federal Aviation Rules approved by the Order of Ministry of Transport No. 82, dated 28 June 2007.

4) Legal Arguments

- Natalya Prisetskaya claimed that her right of free access to air transport was violated. During 2008 she had flown often using different airlines, including S7, and she never encountered any similar problems.
- Natalya Prisetskaya confirmed that she was not informed in advance of any restrictions or special requirements (such as accompanying person) imposed by S7 Airlines to persons with disabilities.
- As a result of S7 Airlines' refusal, Natalya Prisetskaya experienced humiliation and moral and physical sufferings, as she had to spend more than ten hours seated. As a result, Natalya Prisetskaya applied to the court claiming RUR 1,000,000 from S7 Airlines as compensation for the moral damage suffered.
- The respondent insisted that it was acting in accordance with the Federal Aviation Rules, as Article 110 of these rules states that during transportation of a passenger in a wheelchair another person should be present to look after the passenger during the flight.

5) Decision

The court ruled in favour of Natalya Prisetskaya. However, the amount of compensation for moral damage was substantially reduced. Instead of RUR 1,000,000 demanded by Natalya Prisetskaya, the court ordered S7 to pay RUR 50,000 in favour of Natalya Prisetskaya; RUR 25,000 in favour of the state, and RUR 12,500 in favour of the International Confederation of Consumer Societies.

The court based its opinion on the following:

- Under Article 786 of the Civil Code, the transport operator under the carriage agreement is obliged to carry a passenger to the destination place. The conclusion of carriage agreement is evidenced by the ticket. Under Article 310 of the Russian Civil Code the transport operator cannot unilaterally amend or terminate the agreement except for the cases envisaged by law.
- According to Article 10 of Law "On the Protection of Consumers' Rights", the performer is obliged to provide the consumer with necessary and true information about its services, which allows the consumer to choose properly. However, Natalya Prisetskaya was not provided with the information on the existing restrictions with respect to persons with disabilities.
- Article 107 of the Air Code sets a closed list of events where the carrier has the right to unilaterally withdraw from the carriage agreement. Among others the carrier has the right to terminate the agreement if the passenger's health requires special conditions for his air transportation or threatens the safety of the passenger or other people which is evidenced by medical documents, and causes disorder and unavoidable discomfort for passengers. The court ruled that as no such medical documents were provided to S7 Airlines, they had to render the relevant service to Natalya Prisetskaya in accordance with the carriage agreement.

6) Key Words: Issues Tree

Group 1 Direct Discrimination

Group 2 Regional Standards

Group 3 Disability

Group 4 Employment: Access to Employment

Group 5 Remedies and Enforcement

Obiukh v Sibir Airlines

1) Initial Details

- **Jurisdiction:** Leninsky Regional Court of Tulskaya Oblast
- **Case Name:** *International Confederation of Consumers Societies in the interest of Obiukh Pavel Alexandrovich v OJSC Sibir Airlines on compensation of moral damages (civil case No. 2-415/09)*
- **Date of Decision** 28 April 2009
- **Case Status:** The case has been concluded.
- **Link to full case:** N/A (the full text of this court decision in Russian can be provided upon your request).

2) Facts

- The applicant was International Confederation of Consumers Societies which acted in the interest of Obiukh Pavel Alexandrovich. As Mr. Alexandrovich is blind, he is considered to have disabilities of Group I[1] (he was a project coordinator with "Perspective"). The respondent party was OAO "Sibir Airlines" ("S7 Airlines").
- On 18 February 2009 Obiukh P.A. was going to fly to Kazan City from Moscow by flight No. 026 of Sibir Airlines.

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1 There are three disability groups (Group I, Group II, and Group III) where Group I is the most serious. Criteria for attribution of persons to one of the three groups are specified in the Order No. 535 of the Ministry of Health and Social Development, dated 22 August 2005, "On approval of classification and criteria used for the purposes of medical and social assessment by the federal state institutions of medical and social assessment".

Criteria for attribution to Group I are one of the following or their combination: inability to self-service, inability to self-movement, inability to communication, inability to control behavior provided that such a person needs permanent help of other people.

Criteria for attribution to Group II are one of the following or their combination:

- ability to self-service, ability to self-movement, ability to orientation, ability to communication, ability to control behavior provided that such a person needs regular partial help of other people with the use of support technology, if necessary;
- inability to education or education only in special educational institutions;
- inability to labor activity or ability to perform labor activity in special conditions with the use of support technology and(or) with the help of other people.

Criteria for attribution to Group III are one of the following or their combination:
- ability to self-service, ability to self-movement if this requires more time when usual or use of support technology, if necessary;
- ability to orientation only in the familiar situation and(or) with the use of support technology;
- ability to communication with the decrease of speed and amount of information received, use of support technology, if necessary;
- occasional limitation to control behavior in difficult reality situations and(or) permanent difficulties in performing role functions;
- ability to education with the use of special educational methods, special educational regime, use of support technology, if necessary.

- The representatives of Sibir Airlines refused to permit Obiukh to board their flight as Obiukh was not accompanied by a guide-dog or a person who would look after him during the flight. As a result Obiukh had to buy a ticket from another air company, "Tatarstan".
- The International Confederation of Consumers Societies claimed RUR 1,000,000 as compensation for moral damage for Obiukh and penalty in the amount of 50% of the above sum (50% for the state budget and 50% for the International Confederation of Consumers Societies).

3) Law

- Articles 151, 786, 310 of the Russian Civil Code, No. 14-FZ, dated 26 January 1996;
- Articles 102, 107 of Russian Air Code No. 60-FZ, dated 19 March 1997;
- Article 55 of the Russian Constitution, dated 12 December 1993;
- Articles 4, 16 of the Law No. 2300-1 "On the Protection of Consumers' Rights", dated 7 February 1992;
- Sections 6, 25 of the Federal Aviation Rules approved by the Order of Ministry of Transport No. 82, dated 28 June 2007;
- Resolution of Plenum of Supreme Court of 20 December 1994 "On Certain Issues Regarding Applying Provisions on Compensation of Moral Damages";
- Article 15 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia", No. 181-FZ, dated 24 November 1995.

4) Legal Arguments

The representative of the respondent party explained that Sibir Airlines adopted internal rules for the air transfer of passengers and baggage (which are in full compliance with the Federal Aviation Rules) according to which a deaf/blind passenger should be transferred only if accompanied by a person or guide-dog. Moreover, according to Article 107, of the Air Code, Sibir Airlines has the right to refuse to transfer any passenger if such transfer endangers the safety of other passengers.

Federal Supervision Agency for Customer Protection and Human Welfare sustained the claim and commented that special norms that are contained, for example, in the Federal Aviation Rules cannot be used for lowering the level of passengers' safety set under the Law "On the Protection of Consumers' Rights".

The representative of Obiukh P.A. said that there were no health obstructions preventing Obiukh P.A. from taking a flight of Sibir Airlines.

5) Decision

The Court ruled in favour of Obiukh P.A. but instead of RUR 1.000.000 for moral damages the court decided that Sibir Airlines should pay Obiukh RUR 25.000.

The Court based its decision on the following:

Obuikh and Sibir Airlines entered into the agreement on the carriage of passengers which is evidenced by the ticket in accordance with the provision of Article 786 of the Russian Civil Code.

According to Article 103 of the Air Code, under the agreement on the carriage of passengers the carrier is obliged to carry the passenger to the destination point specified on the flight ticket and provide him with a seat on the aircraft. The carrier has the right unilaterally to terminate the above-mentioned agreement if the condition of the passenger's health requires special conditions of air carriage, or endangers the safety of the passenger himself or other persons, as evidenced by medical documents.

The health condition of Obuikh P.A. did not require any special conditions for air carriage (Sibir Airline had not received any medical document confirming the opposite). Therefore, Sibir Ailines did not have the right to unilaterally withdraw from the agreement with Obiukh P.A.

Under Article 10 of Law "On the Protection of Consumers' Rights", the performer is obliged to provide the consumer with all true and necessary information about the services in advance so that the consumer has the possibility to make an appropriate choice. No special requirements for the transfer of blind people were mentioned on the air ticket of Sibir Airlines.

According to the Federal Aviation Rules, a blind person can be carried without an accompanying person, if she files a special application to the airline company. However, the internal rules of Sibir Airlines did not envisage such possibility. Therefore, the internal rules diminished the scope of rights of persons with disabilities in comparison with the Federal Aviation Rules, which is unlawful.

6) Key Words: Issues Tree

Group 1 Direct Discrimination

Group 2 Regional Standards

Group 3 Disability

Group 4 Goods Services and Facilities

Group 5 Remedies and Enforcement

Yurkov Case

1) Initial Details

- **Jurisdiction:** Roslavlsky Town Court of Smolensk Region
- **Case Name:** *Yurkov Viktor Viktorovich v the Department of Social Development of the Smolensk Region, the Department of Social Protection of the Population in the Roslavlsy Region, the Municipal Entity of the "Roslavlsky Region", and the Separate Structural Subdivision of the Roslavlsky Post Office*
- **Date of Decision** 14 February 2008 (cassation)
- **Case Status:** The case has been concluded at a cassation stage.
- **Link to full case:** http://www.nashepravo.org/index.php?name=Pages&op=page&pid=174 (please note that all materials are in Russian only)

2) Facts

- The applicant was Viktor Viktorovich, who has disabilities of Group I (according to Order No. 535 of the Ministry of Health and Social Development, dated 22 August 2005, "On approval of classification and criteria used for the purposes of medical and social assessment by the federal state institutions of medical and social assessment") currently holding a position of the President of the Smolenskaya Regional Non-Governmental Organization "Executive Committee for the Protection of Rights of Persons with disabilities"). The respondents were the Department of Social Development of Smolensk Region and Separate Structural Subdivision Roslavlsky Post Office.
- Yurkov V.V. applied to the above-mentioned state entities and complained that his right as a person with disabilities of free access to the relevant social infrastructure facilities was violated, as the buildings of the Post Office and Department of Social Development were not equipped with an entrance ramp and he could not enter because of his wheelchair. He therefore asked these entities to build entrance ramps. As no such ramps were built, Yurkov V. V. applied to the court.

3) Law – 21 words

- Article 15 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia", No. 181-FZ, dated 24 November 1995.

4) Legal Arguments

Separate Structural Subdivision of the Roslavlsky Post Office admitted the claim.

The Municipal Entity of the "Roslavlsky Region" accepted that the relevant ramps should be built. However, it noted that the Department of Social Protection of the Population in

the Roslavlsy Region should be responsible for construction at its own expense. The Department of Social Protection of the Population in the Roslavlsy Region is currently occupying the premises although its lease agreement has expired; the draft of a new lease agreement prepared by the Municipal Entity of the "Roslavlsky Region" contains the obligation of the tenant (i.e. the Department of Social Protection of Population in Roslavlsy Region) to built the ramp for persons with disabilities.

The Department of Social Protection of the Population in the Roslavlsy Region refused to accept its obligation to build the ramp as they have not signed the above-mentioned agreement and, according to the Federal Law "On the Social Protection of Persons with Disabilities in Russia", the owner is responsible for providing persons with disabilities with access to the infrastructure facilities.

5) Decision

The Court ruled that the Department of Social Protection of the Population in the Roslavlsy Region and the Separate Structural Subdivision of the Roslavlsky Post Office should build the ramps.

The Court ruled that according to Article 15 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia", when the existing infrastructure objects cannot be adopted for the needs of persons with disabilities, owners of such objects should perform (with coordination of public associations) measures that would satisfy minimum needs of persons with disabilities.

According to the Court, the Municipal Entity of the "Roslavlsky Region", being the owner of the building occupied by Department of Social Protection of Population in Roslavlsy Region, made all necessary efforts in order to satisfy the minimum needs of persons with disabilities by including a special provision into the draft of the future lease agreement with the Department of Social Protection of the Population in the Roslavlsy Region obliging the latter to build the ramp.

In addition, Yurkov V.V. claimed freedom of access not to the Municipal Entity "Roslavlsky Region" but to the Department of Social Protection of Population in Roslavlsy Region. Therefore, according to the court, the Department of Social Protection of Population in Roslavlsy Region should be responsible for the construction of the ramp.

6) Key Words: Issues Tree

Group 1 Direct Discrimination

Group 2 Regional Standards

Group 3 Disability

Group 4 Goods Services and Facilities

Group 5 Positive Obligations

Case against Russian Railways

Unfortunately, the text of this case is not available and we therefore mention only some details that became known to us from different internet articles (http://www.asbest-grin.ru/news/2009-05-26-649; http://www.nr2.ru/ekb/233524.html)

1) Initial Details

- **Jurisdiction:** Zheleznodorozhny Court of Yekaterinburg City
- **Case Name:** *Prosecutor of Uralskaya Transportation Prosecution Office v OJSC Russian Railways*
- **Date of Decision:** 25(26) May 2009 (the exact date is not known to us)
- **Case Status:** The case has been concluded; the defendant accepted most of the claims.
- **Link to full case:** N/A

2) Facts

- The applicant is the Prosecutor of the Uralskaya Transportation Prosecution Office. The respondent party is the Open Joint Stock Company "Russian Railways", a 100% government-owned rail monopoly in Russia and one of the biggest railway companies in the world.
- The Prosecutor claimed that Russian Railways violated the provisions of certain Federal Laws and as a result discriminated against persons with disabilities while providing them with passenger carriage services.
- The Russian Railways accepted most of the claims.

3) Law

- Federal Law "On Sanitary-Epidemiological Well-being of the Population" No. 52-FZ, dated 3 March 1999;
- Federal Law "On the Social Protection of Persons with Disabilities in Russia", No. 181-FZ, dated 24 November 1995;
- Sanitary Rules for the Organization of Passenger Carriage on the Railway Transport Sanitary-Epidemiological Rules СП 2.5.1198-03, dated 3 March 2003 approved by State Chief Medical Officer of the Russian Federation First Deputy of the Minister of Health of the Russian Federation G.G. Onishenko.

4) Legal arguments

We have not seen the text of this judicial decision and, therefore, we cannot speculate on what legal arguments were employed by the defendant. However, the practice shows that in all such analogous cases the defendant believes that the expenses for making railway stations, airports, and other facilities accessible to persons with disabilities should be paid from the federal budget and budgets of the Russian Federation constituent members.

5) Decision

Russian Railways agreed to build ramps for persons with disabilities, to build special resting facilities for persons with disabilities in waiting rooms, to organize special cabins in the lavatories for persons with disabilities, to create special pictograms with symbols showing places available for persons in wheelchair, and to place telephones for persons with hearing impairments at a height of 0.8-1 metre from the floor.

Further, the court ruled that the Russian Railways should also place mobile elevators, and portable ramps that would help persons with disabilities to enter the carriages, equip trains with lavatories which are accessible to persons with disabilities, change seating in waiting rooms for seating with individuals seats, set up direct telephone lines with the parenting room and medical service post, equip the ticket offices with special shelves and equip certain ticket offices with special facilities for the transfer of money.

This case is one of many cases brought by the prosecutor's office against Russian Railways and other companies responsible for railway stations and airports. As a result of these actions, the Russian Railways and other defendants had to redevelop different railway stations and airport and adapt them to the needs of persons with disabilities. (For example, there is an analogous case related to the railway station in Perm ("Perm-II"). This railway station, according to the Dzerzhinsky regional court decision, should be equipped with an elevator so that persons with disabilities could access the second floor, where the ticket offices and waiting rooms are located. Ramps should be also changed as those ramps that are placed in the railway station do not correspond to the construction requirements set by the construction norms and rules and persons with disabilities cannot actually use them. Among other things the railway station should provide persons with disabilities with access to trade shops, telephones, cloak-rooms and the police office. Analogous decisions or amicable settlement agreements were made with respect to railway stations in Novokuznetsk, Novosibirsk and others).

6) Key Words: Issues Tree

Group 1 Direct Discrimination

Group 2 Regional Standards

Group 3 Disability

Group 4 Goods Services and Facilities; Health; Public Services, Social Assistance

Group 5 Remedies and Enforcement; Positive Obligations

Kondratieva A.M. v Committee of Social Protection of Moscow Population

1) Initial Details

- **Jurisdiction:** Presnensky Regional Court of Central Administrative District of Moscow
- **Case Name:** *Kondratieva A. M. v. Committee of Social Protection of Population of Moscow, Regional Department of Social Protection of the Population in the "Kuzminki"District (2-2589X2002)*
- **Date of Decision:** 14 June 2002
- **Case Status:** The case has been concluded.
- **Link to full case:** http://pravo.perspektiva-inva.ru/index.php?id=263 (please note that the text is in Russian only)

2) Facts

- The applicant was Kondratieva Alexandra Mikhailovna, a 10-year old (at the time of the court hearing) girl with disabilities (represented by her mother Kondratieva N.P.). The respondent parties were the Committee of Social Protection of the Population of Moscow and the Regional Department of Social Protection of the Population in the "Kuzminki" District.
- On 30 March 2001, the Inter-District Special Paediatric Bureau of Medical-Social Expertise approved the individual program of rehabilitation for Kondratieva A.M.. The Regional Charitable Organization "Centre of Medical Pedagogic" entered into an agreement for the provision of paid services for Kondratieva A.M. according to which the individual program of rehabilitation should have been carried out.
- According to Article 11 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia", rehabilitation services that form part of an individual rehabilitation program should be provided to persons with disabilities free of charge. If a person with disabilities has paid for these services, the relevant compensation should be paid to him.
- As Kondratieva N. P. (mother of Kondratieva A.M.) paid for these services herself, she applied to the Regional Department of Social Protection of the Population "Kuzminki" and asked them for compensation for money paid to the Regional Charitable Organization "Centre of Medical Pedagogic". She filed the request on 10 January 2001.
- On 16 April 2001 Kondratieva N. P. sent repeated requests as she had not received an answer to her initial request.
- The Regional Department of Social Protection of the Population in the "Kuzminki" District did not examine the request but sent it to the Committee of Social Protection of the Population of Moscow.
- As of the date of this hearing the Committee of Social Protection of the Population of Moscow had not responded to the request of Kondratieva N. P.

3) Law

- Articles 2, 9, 11 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia", No. 181-FZ, dated 24 November 1995.
- Article 7 of the RF Constitution, dated 12 December 1993.
- Para 4 of the Resolution of the Moscow Government "On Approval of the Temporary Rules for the Payment of Monetary Compensation to Persons with Disabilities in Implementing the Individual Programs of their Rehabilitation" No. 616, dated 11 August 1998.
- Law of the City of Moscow "On Applications of Citizens" No. 25, dated 18 June 1997.
- Order of the Presidium of Supreme Soviet of USSR "On the Procedure of Examination of Proposals, Announcements and Complains of Citizens" No. 2534-VII, dated 12 April 1968.
- Articles 2, 7 of the RF Law "On the Appeal in Court of Actions and Decisions that Violate Rights and Freedoms of Citizens" No. 4866-1, dated 27 April 1993.

4) Legal Arguments

According to Paragraph 9 of the Order of the Presidium of the Supreme Soviet of the USSR "On the Procedure of Examination of Proposals, Announcements and Complains of Citizens", claims and requests of citizens should be decided within one month from the date when the request was filed.

According to Article 7 of the Law "On the Appeal in Court of Actions and Decisions that Violate Rights and Freedoms of Citizens", any act complained of shall be deemed illegal if it leads to the consequences described in Article 2 of this Law.

Article 2 names the following consequences of actions: those actions as a result of which the rights and freedoms of citizens are violated, actions that prevent the citizens from exercising their rights and freedoms; actions that illegally impose obligations or actions as a result of which a citizen illegally becomes responsible.

The actions of the defendants prevented the claimant from using her rights envisaged by the Russian legislation (Article 11 of the Federal Law "On the Social Protection of Persons with Disabilities in Russia").

5) Decision

The Court ruled that the inaction of the Committee of Social Protection of the Population of Moscow and the Regional Department of Social Protection of the Population in the "Kuzminki" District was illegal.

The Committee of Social Protection of the Population of Moscow and the Regional Department of Social Protection of the Population in the "Kuzminki" District were required to compensate Kondratieva N.P. for the expenses of rehabilitation services provided by the Regional Charitable Organization "Centre of Medical Pedagogic" in the amount of RUR 1,827.

6) Key Words: Issues Tree

Group 1 Direct Discrimination

Group 2 Regional Standards

Group 3 Disability

Group 4 Goods Services and Facilities, Health

Group 5 Positive Action, positive Obligations

Kupolova S.N. v Russian Railways

1) Initial Details

- **Jurisdiction:** Leninsky Regional Court of N. Novgorod
- **Case Name**: *Kupolova Svetlana Nikolaevna v OAO "Russian Railways" on compensation of moral damages (civil case)*
- **Date of Decision:** 29 December 2005
- **Case Status:** The case has been concluded.
- **Link to full case:** N/A

2) Facts

- The applicant was a wheelchair user and the respondent party was the Open Joint Stock Company Russian Railways, a 100% government-owned rail monopoly in Russia and one of the biggest railway companies in the world.
- Kupolova S.N. bought a railway ticket from N. Novgorod to Moscow in a special carriage adapted for persons in wheelchairs. However, on the day of departure this special carriage was not attached to the train and Kupolova had to take a seat in the ordinary carriage. As a result, she suffered certain discomfort, as she could not use the lavatory and other public conveniences. She could not easily get on the train and someone had to carry her, which was a big risk for her health. Therefore, she claimed compensation of moral damages in the amount of RUR 30,000.
- It was an individual instance of discrimination.
- The ground for discrimination was disability.
- The issue being considered by the court was whether the applicant had a right of compensation for moral damages and the extent of any such right.

3) Law

- Articles 10, 15 of the Law "On the Protection of Consumers' Rights" No. 2300-1, dated 7 February 1992.

4) Legal Arguments

The respondent's representative argued that the claimant was using the services of Russian Railways not for daily personal needs but for business and that her employer seriously violated labor law as the applicant was a person with disabilities of Group I (according to Order No. 535 of the Ministry of Health and Social Development, dated 22 August 2005, "On approval of classification and criteria used for the purposes of medical and social assessment by the federal state institutions of medical and social assessment") who constantly needs nursing care but was sent on the business trip without any accompanying person.

5) Decision

The court ruled in favour of the applicant, but reduced the amount of moral damages that should be compensated to Kupolova to RUR 3,000.

The court explained that, according to the applicable law, Russian Railways should inform their clients in advance about their services so that customers can make the right choice. The Russian Railways provided Kupolova with the wrong information about the train carriage and unilaterally changed the conditions of the agreement with Kupolova.

The moral damage caused to the customer as a result of the seller's violation of the customer's rights should be compensated. The amount of such compensation is defined by the court.

6) Key Words: Issues Tree

Group 1 Indirect Discrimination

Group 2 Regional Standards

Group 3 Disability

Group 4 Goods Services and Facilities

Group 5 Remedies and Enforcement

C. Decisions on Religion-Based Discrimination

Moscow Branch of the Salvation Army v Russia

1) Initial Details

- **Jurisdiction:** The European Court of Human Rights
- **Case Name:** *Moscow branch of the Salvation Army v Russia. (Applications No. 72881/01)*
- **Date of Decision:** 5 October 2006
- **Case Status:** Final
- **Link to full case:** http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=9858272&skin=hudoc-en

2) Facts

Refusal to grant re-registration to the applicant

- The applicant was a Moscow branch of the Salvation Army. It worked officially in Russia from 1913 to 1923 when it was dissolved as an "anti-Soviet organization". The applicant resumed its activities in Russia in 1992, when it was registered as a religious organization having legal entity status.
- The respondent was the Russian Government, represented by Mr. P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.
- On 1 October 1997 the Law on Freedom of Conscience and Religious Associations ("the Religions Act") entered into force. It required, inter alia, that all religious associations that had previously been granted legal entity status should apply for re-registration by 31 December 2000.
- The applicant was refused in state re-registration; it challenged the refusal before the Court. The Court affirmed the refusal of re-registration. It recalled, inter alia, the following:

"In the course of the analysis of the Charter, certain of its provisions stood out as being, on the one hand, full of barrack-room discipline and the unquestionable subordination of the members of the religious organization to its management and, on the other hand, as relieving the management and the organization as a whole from any responsibility for the activities of its members. Hence, the Charter assumes that the members of the organization will inevitably break Russian law. "

In such a way, the Russian Court considered the Salvation Army as a paramilitary organization.

3) Law

1. Domestic Law

- Articles 29, 30 of the Constitution of the Russian Federation, dated 12 December 1993;

- Articles 6, 7, 8, 12, 27.3 Law No. 125-FZ "On the Freedom of Conscience and Religious Associations", dated 26 September 1997;

- Government Regulation No 130 "On procedures of registration, opening and closing of branches of foreign religious associations", dated 2 February 1998 (became inoperative).

2. Relevant Council of Europe Documents

- The Report of the Committee on the honoring of obligations and Commitments by Member States of the Council of Europe (Monitoring Committee, No. 9396, dated 26 March 2002) that stated:

"The law on freedom of religion of December 1990 has led to a considerable renewal of religious activities in Russia. According to religious organizations in Moscow, this law has started a new era, and led to a revitalization of churches. It was replaced on 26 September 1997 by a new federal law on freedom of conscience and religious associations. This legislation has been criticized both at home and abroad on the grounds that it disregards the principle of equality of religions. In February 2001, the Ombudsman on Human Rights, Oleg Mironov, also acknowledged that many Articles of the 1997 law "On Freedom of Conscience and Religious Associations" do not meet Russia's international obligations on human rights. According to him, some of its clauses have led to discrimination against different religious faiths and should therefore be amended".

3. International Law

- Article 6 §1, 9, 11, 14 of the Convention on the Protection of Human Rights and Fundamental Freedoms (the "Convention").

4) Legal Arguments

A. Refusal to grant the status of a legal entity

- The Government argued that the applicant was not a "victim" of the alleged violations because it had continuously held the status of a legal entity. Therefore, the applicant could operate without any obstacle.

- The applicant argued that the refusal to re-register had severely curtailed its ability to manifest its religion in worship and practice. The applicant submitted that the classification of the Salvation Army as a paramilitary organization and the assumption that its members would inevitably break Russian law were not founded on any factual proof.

- The Government argued that a new application for re-registration could be submitted.

- The applicant emphasized that the legal time-limit for re-registration had expired and no further extension had been granted. It was therefore impossible to a file a new application.

- The applicant complains about discriminatory treatment on the ground of its status as a religious minority in Russia.

5) Decision

The Court held unanimously that:

- there had been a violation of Article 11 of the Convention read in the light of Article 9;

- under Article 44 §2 of the Convention, the Court awarded EUR 10,000 in respect of non-pecuniary damage.

In particular, the Court held that the believers' right of freedom of religion encompasses the expectation that the community will be allowed to function free from arbitrary state intervention. As for this particular case, refusal of re-registration directly affected the legal position of the applicant. In such a way the Salvation Army appears to be a "victim" of a violation. The Court stated that exceptions to freedom of religion are to be construed strictly and only convincing and compelling reasons can justify restrictions. In this case there was no persuasive justification for such treatment.

6) Key Words: Issues Tree

Group1: Indirect discrimination

Group2: International standards

Group3: Religion

Group4: Other discrimination areas

II. Church of scientology Moscow v Russia

1) Initial Details

- **Jurisdiction:** The European Court of Human Rights
- **Case Name:** *Church of Scientology of Moscow v Russia (Application No. 18147/02)*
- **Date of Decision:** 5 April 2007
- **Case Status:** Final
- **Link to full case:** http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=9858272&skin=hudoc-en

2) Facts

Refusal to grant re-registration to the applicant.

- The applicant, the Church of Scientology of the city of Moscow, was registered as a religious organization having legal entity status on 25 January 1994. The respondent was the Russian Government, represented by Mr. P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

- On 1 October 1997 the new Law on Freedom of Conscience and Religious Associations (the "Religions Act") entered into force. It required, *inter alia*, that all religious associations that had previously been granted legal entity status should apply for re-registration by 31 December 2000.

- The applicant submitted five applications for re-registration but on each occasion it was refused re-registration because of an incomplete set of documents without receiving any further clarification.

- On 31 December 2000 the time-limit for re-registration of religious organizations expired.

- The applicant brought a complaint before the Court against the refusal to re-register. The Court gave judgment in favor of applicant, but the Moscow authorities refused to comply with it.

- After that the applicant submitted its sixth, seventh, eight, ninth and tenth applications along with the writ of execution mandating re-registration, but the Moscow authorities refused to process the applications on the ground that the time-limit for re-registration of religious organizations had expired.

3) Law

4. Domestic Law

- Articles 29, 30 of the Constitution of the Russian Federation, dated 12 December 1993;

- Articles 11, 12, 27 of the Law No. 125-FZ "On the Freedom of Conscience and Religious Associations", dated 26 September 1997;

5. International Law

- Articles 9, 10, 11 of the Convention of the Protection of Human Rights and Fundamental Freedoms (the "Convention").

4) Legal Arguments

- The Government considered that there was no interference with the applicant's right to freedom of association because it retained the full capacity of a legal entity.

- The applicant considered that the result of the refusals of the Moscow authorities was that the applicant had been “frozen in time” and deprived of a possibility of modifying its founding documents in accordance with the law and its changing needs.

- The Government submitted that there was no violation of the applicant's right to freedom of religion. The penalty imposed on the applicant was not motivated by religious factors, but by a failure to comply with the Religions Act and violation of the administrative procedure.

- The applicant contended that the expiry of the time-limit without re-registration was directly linked to the Moscow authorities' persistent refusal to give any concrete explanation for rejecting the applications.

- The Government claimed that the applicant was not precluded from lodging a new application for re-registration.

- The applicant alleged that a presumed “opportunity to apply” was meaningless because the applicant was barred from re-registering due to the expired time-limit for re-registration.

5) Decision

The Court held unanimously that:

- there has been a violation of Article 11 of the Convention read in the light of Article 9;

- no separate examination of the same issues under Article 14 of the Convention is required;

- the respondent State was required to pay the applicant:
- (i) EUR 10,000 in respect of non-pecuniary damage;
- (ii) EUR 15,000 in respect of costs and expenses; and
- (iii) any tax that may be chargeable on the above amounts.

In particular, the Court held that the applicant was a "victim" of the violation because even in the absence of prejudice or damage, the refusal of re-registration directly affected its legal position. Moreover, there was no persuasive justification for such restrictions as the Moscow authorities acted in an arbitrary manner. In particular, this appeared to be the case when the Moscow authorities declined to clarify what information or document was considered missing. The Court considered the approach of the Moscow authorities to be inconsistent, on the one hand accepting that it was competent to determine the applications incomplete but, on the other hand declining its competence to give any clarifications.

6) Key Words: Issues Tree

Group 1: Indirect discrimination

Group 2: International standards

Group 3: Religion

Group 4: Other discrimination areas

Barankevich v Russia

1) Initial Details

- **Jurisdiction**: The European Court of Human Rights
- **Case name**: *Barankevich v Russia (Application No. 10519/03)*
- **Date of decision**: 26 July 2007
- **Case status**: Final
- **Link to full case**: http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=9858272&skin=hudoc-en

2) Facts

Refusal of permission to hold a service in public place.

- The applicant, Mr. Petr Ivanovich Barankevich, was represented before the Court by Mr. S. Sychev, a lawyer practising in Moscow. The Russian Government ("the Government") was represented by Mr. P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

- The applicant was born in 1960 and lived in the town of Chekhov in the Moscow region. He was the pastor of the "Christ's Grace" Church of Evangelical Christians.

- On 9 September 2002 the applicant applied to the Chekhov Town Council for permission to hold a service in public between 11 a.m. and 1 p.m. on 22 or 29 September 2002.

- The deputy head of the Chekhov Town Council refused permission. He informed the applicant that it was not possible to hold services in public areas in the town (squares, streets, parks, etc.). The applicant was advised to hold services at the registered seat of the church.

- The applicant challenged the refusal before a Chekhov Town Court. The court found that, pursuant to the domestic law, public worship and other religious rites were subject to an authorization by a municipal authority. It further ruled as follows:

"The contested refusal is lawful because it is justified. As the Church of Evangelical Christians 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 organizations 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".

3) Law

1. Domestic Law

- Law No. 125-FZ "On Freedom of Conscience and Religious Associations", dated 26 September 1997;

- The Decree of the Presidium of the USSR Supreme Council No. 9306-XI of 28 July 1988 (in force at the material time pursuant to Presidential Decree No. 524 of 25 May 1992).

2. International Law

- Articles 9, 11 of the Convention on the Protection on Human Rights and Fundamental Freedoms (the "Convention").

4) Legal arguments

- The applicant argued that the interference with his freedom of religion and assembly was not prescribed by law because the deputy head of the Chekhov Town Council had not given reasons for the refusal. If the authorities considered that holding an assembly in the place he had proposed might disturb public order, they could have suggested another place or time. Moreover, in 1998 the church had held services in public in the town of Chekhov which had not caused any disturbances. Other denominations, such as the Russian Orthodox Church, were allowed to hold services in public and such worship did not provoke any disorder in the town either.

- The Government argued that the domestic law provided that a person wishing to hold an assembly or a service of worship in a public place should obtain prior authorization from the authorities. In the present case, the decision to refuse authorization was examined by the domestic courts, which found it to have been lawful and justified.

- The Government further submitted that services of worship outside religious buildings aimed to influence the beliefs of others. The majority of the population of the Chekhov district professed other religions and the authorities had to protect their freedom of conscience and religion.

5) Decision

The Court unanimously held that:

- there had been a violation of Article 11 of the Convention interpreted in the light of Article 9;

- it was not necessary to examine the applicant's complaint under Article 14;

- the respondent State was required to pay the applicant EUR 6,000 in respect of non-pecuniary damage.

In particular, the Court held that the mere fact that the Evangelical Christian religion was practiced by a minority of the town residents was not capable to justify an interference with the rights of the followers thereof. It would be incompatible with the Convention if the exercise of rights by a minority group were made conditional on its being accepted by the majority. Were this the case, a minority group's rights to freedom of religion would become merely theoretical rather than practical and effective.

6) Key Words: Issues Tree

Group 1: Indirect discrimination

Group 2: International standards

Group 3: Religion

Group 4: Other discrimination areas

Yevgeniy Kimlya, Aidar Sultanov and Church of scientology of Nizhnekamsk v Russia

1) Initial Details

- **Jurisdiction**: The European Court of Human Rights
- **Case Name**: *Yevgeniy Kimlya, Aidar Sultanov and Church of Scientology of Nizhnekamsk v Russia. (Applications No. 76836/01 and 32782/03)*
- **Date of Decision**: 9 June 2005
- **Case Status**: as to the admissibility of applications
- **Link to full case**: http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=9858272&skin=hudoc-en

2) Facts

- The first applicant, Mr. Yevgeniy Nikolayevich Kimlya, was a Russian national who was born in 1977 and lived in Surgut in the Khanty-Mansi Autonomous Region of the Russian Federation. Mr. Kimlya is the President of the Church of Scientology of Surgut City. The second applicant, Mr. Aidar Rustemovich Sultanov, was a Russian national who was born in 1965 and lived in Nizhnekamsk in the Tatarstan Republic of the Russian Federation. Mr. Sultanov was a co-founder and member of the third applicant, the Church of Scientology of Nizhnekamsk ("the applicant church").

- The respondent Government was represented by Mr. P. Laptev, representative of the Russian Federation at the European Court of Human Rights.

A. Church of Scientology of Surgut City

- In 1994, the first centre for the study of Dianetics (the creed of the Church of Scientology) opened in Surgut and obtained State registration as a social non-governmental organization.

- On 2 January 2000 the first applicant, in conjunction with his fellow believers, resolved to found the “Scientology Group of Surgut City”. At a subsequent meeting a resolution was passed to establish a local religious organization, the Church of Scientology of Surgut City (the "Surgut Church”).

- The Justice Department refused registration of the Church of Scientology of Surgut City because the Surgut Church has failed to produce a document certifying that the religious group has existed in the given territory for no less than 15 years, or a document issued by the centralized religious organization certifying that the religious group is a branch of such an organization.

- Church of Scientology of Nizhnekamsk

- On 28 October 1998 the second applicant and fellow believers resolved to found the Church of Scientology of Nizhnekamsk as a local religious group.

- The applicant church applied to the State Registration Chamber of the Tatarstan Republic ("the registration chamber") for registration as a local religious organization. The application for registration had been rejected as "there [had] so far been no conclusions from the religious expert examination to which the applicant church's documents [had] been subjected".

- The Presidium of the Supreme Court of the Tatarstan Republic found that a religious expert examination was a mandatory precondition for State registration of a little-known religious organization such as the applicant church.

3) Law

1. Domestic Law

- Articles 19, 28 of the Constitution of the Russian Federation, dated 12 December 1993;

- Articles 6, 7, 8, 9, 11, 12 Law No. 125-FZ "On Freedom of Conscience and Religious Associations", dated September 26, 1997.

2. Opinions of the Russian Ombudsman

On 22 April 1999 Professor O. Mironov, the Ombudsman of the Russian Federation, published his opinion on the compatibility of the 1997 Law with the international legal obligations of the Russian Federation. The opinion states, *inter alia*:

"The distinction between religious organizations and religious groups provided for in the Law is contrary to both the European Convention and the case-law of the Convention bodies. In accordance with section 7 §1 of the Law, religious groups, in contrast to religious [organizations], are not subject to State registration and do not enjoy the rights of a legal entity. Furthermore, the Law discriminates between 'traditional' religious organizations and religious organizations that do not possess a document proving their existence in a given territory for at least 15 years. 'Non-traditional' religions are deprived of many rights [...]".

3. Relevant Council of Europe Documents

- The information report by the Committee of the Parliamentary Assembly of the Council of Europe on the Honoring of Obligations and Commitments by Member States of the Council of Europe (the "Monitoring Committee" – Doc. 8127, dated 2 June 1998) established the following regarding Russian Federal States:

"[…] the law [the Religions Act] establishes two categories of religious associations: the more privileged 'religious organizations' and the less privileged 'religious groups'.

Religious groups, unlike religious organizations, do not have the status of a legal person, and do not enjoy the rights associated with this status, such as owning property, concluding contracts, and hiring employees. In addition, they are explicitly barred from operating schools or inviting foreign guests to Russia. Religious organizations have these rights, but to be recognized as such they must be either classified as a 'traditional' religion or they must have existed as a registered religious group on Russian territory for at least 15 years, the latter to be certified by the local authorities. […] These provisions may lead to discriminatory treatment especially of non-traditional religions, thus undermining the principle of religious equality before the law".

- Resolution 1278 (2002) on Russia's law on religion, adopted by the Parliamentary Assembly of the Council of Europe on 23 April 2002, noted, *inter alia*, the following:

"The new Russian law on religion entered into force on 1 October 1997, abrogating and replacing the 1990 Russian law – generally considered very liberal – on the same subject. The new law caused some concern, both as regards its content and its implementation. Some of these concerns have been addressed, notably through the judgments of the Constitutional Court of the Russian Federation of 23 November 1999, 13 April 2000 and 7 February 2002, and the religious communities re-registration exercise at federal level successfully completed by the Ministry of Justice on 1 January 2001. However, other concerns remain. The law itself, while posing an acceptable basis of operation for most religious communities, could still be ameliorated. Although the Russian Constitutional Court has already restricted the application of the so-called 'fifteen-year rule', which initially severely limited the rights of religious groups that could not prove their existence on Russian territory for at least fifteen years before the new law entered into force, the total abolition of this rule would be considered as an important improvement of the legislative basis by several of these groups. [...]"

4. International Law

- Articles 9, 10, 11, 14 of the Convention on the Protection of Human Rights and Fundamental Freedoms (the "Convention").

4) Legal Arguments

- The Government submitted that the founding of a religious group did not require any special permission; notification to the local authority sufficed. Accordingly, the applicants were free to exercise their rights without State interference. Religious groups could celebrate services, other religious ceremonies, and also give religious instruction and training to their followers.

- The Government argued that the grounds for refusing State registration had been "purely legal" and prescribed by the Federal Law, that the decision had not been motivated by religious considerations and that there had been no causal link between the decision and the enjoyment of the right of citizens to freedom of religion and association.

- In the applicants' view, the imposition of restrictions on fundamental aspects of the life of a religious community, such as the ability to set up a place of worship or to produce religious literature, simply because they could not prove that they had been in existence for 15 years, constituted interference with the "effective enjoyment of the right to freedom of religion by all its active members" under Article 9.

5) Decision

The Court unanimously:

- decided to join the applications;

- declared admissible the applicants' complaints concerning the domestic authorities' decisions refusing State registration of the applicants' churches as legal entities.

6) Key Words: Issues Tree

Group 1: Indirect discrimination

Group 2: International standards

Group 3: Religion

Group 4: Other discrimination areas

D. Decisions on Age-Based Discrimination

Stupko Case

1) Initial Details

- **Jurisdiction**: Appellate Court of the Leninsky District of Voronezskaya Oblast
- **Case Name**: *Mr. Yury Ivanovich Stupko v OOO "Talirs lus"*
- **Date of Decision**: 28 January 2008
- **Link to full case**: http://www.rg.ru/2008/05/08/buhgalter.html; http://kommersant.ru/doc.aspx?DocsID=884204 (in Russian only)

2) Facts

- The applicant was Mr. Yury Ivanovich Stupko, a 57 year-old unemployed trained as accountant. The respondent was OOO "Talirs lus".
- Mr. Stupko claimed an individual instance of direct de-facto age discrimination in the employment context on the grounds of age.
- The applicant was rejected for employment by reason only of his age. As he was unemployed he was sent to the respondent by the employment service. When leaving the company after the interview, he discovered that the following ground for refusal was specified by the respondent in his job placement: "age category inappropriate".
- The applicant filed a complaint to the Labor Inspection Service. Later he lodged a complaint to the Leninsky District Public Prosecutor's Office of the Voronezskaya Oblast. Both authorities refused to help him showing their lack of competence to resolve the issue. Then, Mr. Stupko filed an equal employment opportunity suit to the peace justice of the Leninsky District of Voronezskaya Oblast, but failed to prove discrimination: the court rejected the case on 12 October 2006. The applicant appealed and, finally, on 28 January 2008 the appeal court ruled in his favour.

3) Law

- Articles 3, 64 of the Labor Code of the Russian Federation, No. 197-FZ, dated 30 December 2001.

4) Legal Arguments

We have not seen the text of this case and, therefore, we cannot speculate on what legal arguments were employed by the applicant and the respondent. However, based upon the wide range of press reports covering it, we may proceed from the following:

- The applicant argued that his right to work was violated by the respondent's refusal to hire. Mr. Stupko sought to invalidate the refusal, compel the respondent to sign the labor contract and pay compensation for material and moral damages caused.

- According to the applicant's attorney, Ilia Sivoldaev, in order to prove the illegality of the employment refusal it was necessary to have the employer's documented opinion motivated by age-related stereotyping. In this particular case the above mentioned respondent's wording specified in the job placement provided for the sufficient evidence of direct age discrimination. The same reason for rejection is pointed out directly in the objection to the appeal specifying that "the respondent preferred women under 35 years of age".
- It is worth mentioning here, that the burden of proof is on the employee; that is to say, the employee has to prove he/she was discriminated against by documenting that he/she was treated differently from other job applicants. The aggrieved party usually cannot obtain satisfactory evidence, given the competent employer formulating the ground for refusal more carefully.

5) Decision

- The trial court dismissed the claim considering the allegation of discrimination as being not proved. The appellate court found that there was sufficient evidence, invalidated the respondent's refusal to hire and awarded damages in the amount of the accountant's two years salary RUR 285,000 (approximately US$11,661) as well as compensation for material and moral damages caused, amounting to RUR 5,000 (approximately US$204). At the same time the court dismissed the applicant’s attempt to conclude a labor contract, since it had no authority to compel the employer to give him work against the employer's will.
- Whereas age discrimination is evidently the most widespread type of discrimination in Russia (19.5% according to the Center of Social and Labor Rights), the Stupko case is generally considered to be quite an exceptional case having no parallels in the national court practice. We have also seen no other precedents available.
- The above court decision was to be enforced by 7 June 2008. However, favourable to Mr. Stupko the ruling may be, it is noteworthy that it has not yet been enforced. According to the Federal Bailiff Service Voronezh Department, OOO "Talirs Plus" is not available at the place of registration.

6) Key Words: Issues Tree

Group 1 Direct Discrimination

Group 2 Regional Standards

Group 3 Age

Group 4 Employment: Access to Employment

Group 5 Remedies and Enforcement

Pinhasik Case

1) Initial Details

- **Jurisdiction:** Constitutional Court of the Russian Federation (the "Constitutional Court")
- **Case Name:** *Concerning the Claim of the citizen Pinhasik Marat Lazarevich on the Violation of his Constitutional Rights, as established by Article 2.1 (1) of the Law of Russian Federation "On the Rehabilitation of Victims of Political Repression" (Ruling No 103-O)*
- **Date of Decision:** 18 April 2000
- **Case Status:** The case has been concluded by the Constitutional Court.
- **Link to full case:**

http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=28069 (please note that this case wording is available in Russian only).

2) Facts

- The applicant was Mr. Marat Lazarevich Pinhasik, citizen of the Russian Federation.
- The applicant claimed indirect de jure age discrimination arising from legislative provisions distinguishing the status of "politically repressed" people from their children's status.

3) Law

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse, adopted by the UN General Assembly, dated 29 November 1985;
- Article 26 of the International Covenant on Civil and Political Rights, dated 16 December 1966;
- Articles 13, 17, 18, 19, 26, 27, 38, 40, 45, 55, 61 of the Constitution of the Russian Federation, dated 12 December 1993;
- Article 2.1 of Law of the RF Law "On the Rehabilitation of Victims of Political Repression", No. 1761-1, dated 8 October 1991 (the "Rehabilitation Law");
- Ruling of the Constitutional Court "On Review of the Constitutionality of Articles 2.1 and 16 of the Law of the Russian Federation "On the Rehabilitation of Victims of Political Repression" No. 6-P, dated 23 May 1995.

4) Legal Arguments

- The applicant claimed unconstitutionality of the provisions of Article 2.1 of the Rehabilitation Law stipulating that children of politically repressed citizens shall be found "aggrieved by political repression", i.e. persons with specific legal status, entitled to compensation. However, children of politically repressed citizens are entitled to a lower compensation than their parents. This difference in treatment reflects age-based discrimination against the children of politically

repressed citizens.

- The applicant argued that children of "politically repressed" people suffered the same or similar hardships and rights' deprivation as the "politically repressed" themselves. Usually they either followed their parents into the exile or were compulsorily sent to orphan homes where they were mistreated and humiliated, deprived of their property, place of living, right to education and were subject to other kinds of restrictions.

- The applicant sought a ruling of unconstitutionality in respect of Article 2.1 (1) of the Rehabilitation Law, as giving rise to age discrimination.

5) Decision

- The Constitutional Court ruled the provisions of Article 2.1 (1) of the Rehabilitation Law unconstitutional as giving rise to age discrimination.

- Assuming the similarity of hardship suffered both by "politically repressed" people and their children, the Constitutional Court ruled that the above provision violated the right of every person to non-discriminatory legal protection.

6) Key Words: Issues Tree

Group 1 Indirect Discrimination

Group 2 Regional Standards

Group 3 Age

Group 4 Other Discrimination areas

Group 5 Reasonable accommodation

Dobvnia Case

1) Initial Details

- **Jurisdiction:** Constitutional Court of the Russian Federation (the "Constitutional Court")
- **Case Name:** *Concerning the Refusal to Accept for Consideration a Request of the Amursky City Court of the Khabarovsk Territory for the Verification of the Constitutionality of the Provisions of Article 59 of the Labor Code of the Russian Federation (Ruling No. 378-O-P)*
- **Date of Decision:** 15 May 2007
- **Case Status:** The trial court suspended the proceedings and directed an inquiry to the Constitutional Court requesting it to consider the constitutionality of the provisions to be applied in this case.
- **Link to full case:** http://www.garant.ru/prime/20070716/12054561.htm (please note that this case wording is available in Russian only).

2) Facts

- The applicant was Mrs. M.F. Dobvnia, a 61 year-old pensioner. The respondent was a public agency Pension Fund Management.
- In April 2003, the applicant was taken into the Pension Fund Management under a fixed-term labor contract. The latter contract was later extended. However, in October 2006 Ms. Dobvnia was dismissed, because of the expiry of her labor contract. The applicant claimed invalidation of the termination order, re-employment and execution of an indefinite term labor contract. Ms. Dobvnia also claimed recovery of wages for the time of her involuntary absence.
- The case was considered by the Amursky City Court of the Khabarovsk Territory ("the Court"). In its defence the respondent referred to Article 59 of the Labor Code of the Russian Federation, No. 197-FZ, dated 30 December 2001 as providing for the employer's right to conclude a fixed-term labor contract with old-age pensioners. The latter defence led to the Amursky Court's request to the Constitutional Court. The Amursky Court alleged that the legal provision conflicted with the constitutional principle of equality and implied de jure age discrimination.
- This allegedly discriminatory provision should be considered in the wider context of a general social vulnerability of pensioners, some of whom have to continue their work efforts after attainment of the retirement age.

3) Law

- Article 59 of the Labor Code of the Russian Federation No. 197-FZ, dated 30 December 2001 ("the Labor Code"), providing for the opportunity to conclude a fixed-term labor contract by agreement of the parties with hired old-age retirees;
- Recommendation of the International Labor Organization "Concerning the Termination of Employment at the Initiative of the Employer", No. 166, dated 2 June 1982 (the "ILO Recommendation").

4) Legal Arguments

- The applicant contested the constitutionality of Article 59 of the Labor Code as empowering an employer to sign a fixed-term labor contract with retirees because of their age only, without regard to the proposed work type and conditions. According to the Court the attainment of the pension age as such can not be taken as reasonable ground for conclusion of a fixed-term labor contract.

5) Decision

a) The Majority Opinion

- The Constitutional Court sustained the constitutionality of the above Labor Code provision, assuming that retiree's status and benefits rather than the attainment of pension age are the reasons for the specific labour regulation. The retired pensioner is a senior citizen, being granted the retirement pension. Failing both conditions the aged person does not fall within the scope of the law in question.
- The law can provide for a differential extent of guarantees depending on the relevant people's actual position. For retired pensioned people their salary is an additional source of funds, which justifies to a certain extent the legislator's differentiated approach in employment access regulation.
- In addition, a fixed-term contract may be concluded upon a mutual agreement of the parties only. The voluntariness of their relationship also makes any allegations of discriminatory practice unreasonable.

b) Important dissenting opinions

- Judge Hohriakova O.S. expressed her separate opinion on the matter, assuming that the above mentioned provision may lead to discriminatory practice. Mrs. Hohriakova disagreed with the Constitutional Court opinion in view of the following arguments.
- The judge refers to the ILO Recommendation n. 166 pointing out the necessity to prevent employees from concluding fixed-term labor contracts that deprive them of the acceptable level of protection. Indefinite-term labor contracts are considered to be a measure of protection of employees' labor rights. Provided that most pensioners in the Russian Federation are retirement (age) pensioners, they come to be deprived of such kind of guarantee.
- According to the majority opinion, the contested provision is not discriminatory since employer and employee-pensioner are entitled to conclude an indefinite-term labor contract as well as a fixed-term one. However, in the circumstances retirement pensioners come to be discriminated against anyway. While a non-pensioner can settle an indefinite-term contract assuming the employer can not refuse him, the pensioner may invalidate the fixed-term agreement where he/she has been forced to conclude it. It is, however, extremely hard to prove.

6) Key Words: Issues Tree

Group 1 Indirect Discrimination

Group 2 Regional Standards

Group 3 Age

Group 4 Employment: Other Areas related to employment

Group 5 Reasonable Accommodation

Malkov, Antropov and Vahitovsky District Court of the city of Kazan Case

1) Initial Details

- **Jurisdiction:** Constitutional Court of the Russian Federation ("the Constitutional Court")
- **Case name:** *Concerning the Check of Constitutionality of Article 20(3) of the Federal Law "On High and Postgraduate Professional Education" in connection with Claims of Mr. V.P. Malkov and Mr. Y.A. Antropov and Request of the Vahitovsky District Court of the City of Kazan (Ruling No. 19-P)*
- **Date of decision:** 27 December 1999
- **Case Status:** The district court suspended the proceedings and directed an inquiry to the Constitutional Court requesting it to consider the constitutionality of the provisions subject to be applied in this case.
- **Link to full case:** http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=25870 (please note that this case wording is available in Russian only).

2) Facts

- The applicants were Mr. Malkov, 65-year old former professor and former head of the Kazansky State University (the "Kazansky University") department and Mr. Antropov, 70-year old former head of department in the Penzensky Institute of the Physician Professional Development of the Ministry of Healthcare of the Russian Federation (the "Penzensky Institute").
- After reaching 65 years of age Mr. Malkov was refused an extension of his labor contract as the head of department, in accordance with Article 20 of the Federal Law "On High and Postgraduate Professional Education", No. 125-FZ, dated 22 August 1996 (the "High Education Law"), fixing an age limitation for certain positions. Instead he was offered a position as the professor of the same department; however, he refused to accept it and was fired from the university. Mr. Malkov applied to Vahitovsky District Court of Kazan (the "Court") seeking invalidation of the respective academic council's decision and reinstatement in his former position. In the course of hearing, the Court found Article 20(3) of the High Education Law to be unconstitutional, suspended the proceedings and directed an inquiry to the Constitutional Court requesting it to consider the constitutionality of the respective provisions.
- Mr. Antropov, the head of the Penzensky Institute department faced a similar situation. After reaching 70 years of age he was refused an extension of his labor contract with reference to Article 20(3) of the High Education Law and he was appointed to a professor's position by the rector's order. Mr. Antropov contested the respective order in the Oktiabrsky District Court. However, the court rejected the case. This rejection led to the applicant's inquiry to the Constitutional Court, questioning the constitutionality of the above provision, as violating his constitutional rights.
- Both applicants claimed direct de jure age discrimination arising from legislative

provisions, fixing age limitation for certain kinds of official capacities, even though such limitations were not required by the relevant type of work. The Constitutional Court consolidated the processing of these two complaints.

3) Law

- Convention of International Labor Organization "Concerning Discrimination in Respect of Employment and Occupation", No. 111, dated 25 June 1958 ("ILO Convention");
- Articles 2, 7, 15, 17, 18, 19, 37, 55 of the Constitution of the Russian Federation, dated 12 December 1993;
- Art 20 of the Federal Law "On High and Postgraduate Professional Education", No. 125-FZ, dated 22 August 1996 ("the High Education Law") ;
- Article 26 of the Law of the Russian Federation "On education", No. 3266-1, dated 10 July 1992;
- Items 7, 8, 21 of the "Model Regulation on Institutions of Continuing Professional Education (Professional Development)", adopted by the Government Decree, No. 610, on 26 June 1995.

4) Legal Arguments

- The applicants claimed the unconstitutionality of Article 20(3) of the High Education Law. According to the above provision, office positions of rectors, pro-rectors, deans, heads of departments, chiefs of branches and institutes in state and municipal universities should be occupied by persons younger than 65 years old. In certain circumstances their labor contracts may be extended up to the attainment of 70 years old, constituting a mandatory retirement age for sthe pecified positions. The applicants considered the above provisions as being unlawful, discriminatory and violating their rights to work.

5) Decision[2]

- The Constitutional Court ruled the provisions of Article 20(3) of the High Education Law unconstitutional and ordered the retrial of both cases on the basis of the following reasoning.
- According to Article 20 of the High Education Law, the positions of Head of the university department and dean of the faculty are considered to be "magistral" rather than administrative ones. Office positions of professor, associate professor (docent), senior teacher and teacher are also referred to as "magistral" ones, whereby the Constitutional Court concluded that work requirements to the position of head of department should be the same as to the other "magistral" positions, having no age limitations.
- Pursuant to Article 1(2) of the ILO Convention, only restrictions and limitations based on the particular terms and conditions of employment are admissible, while

[2] A similar legal position on the same matter was expressed by the Constitutional Court in the "Sherenko case", No. 213-O, dated 11 July 2006.

according to the provision concerned the attainment of the specified age appears to be the only reason for termination of the labor contract.

6) Key Words: Issues Tree

Group 1 Indirect Discrimination

Group 2 Regional Standards

Group 3 Age

Group 4 Access to Employment

Group 5 Reasonable Accommodation

Horoshenko Case Summary

1) Initial Details

- **Jurisdiction:** Constitutional Court of the Russian Federation ("the Constitutional Court")
- **Case Name:** *Concerning the Refusal to Accept for Consideration the Appeal Lodged by Mr. Horoshenko A.A. on Violation of his Constitutional Rights by the Provisions of Articles 57, 59 and 105 (2) of the Criminal Code of the Russian Federation (Ruling No 937-O-O)*
- **Date of Decision:** 18 December 2007
- **Case Status:** The Constitutional Court has dismissed the claim of Mr. Horoshenko A.A.
- **Link to full case:**

http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=414929 (please note that this case wording is available in Russian only).

2) Facts

- The applicant was Horoshenko A.A., sentenced to the death penalty under the Permskiy Province Court sentence.
- On 19 May 1999 capital punishment was replaced with deprivation of liberty for life by way of pardon.
- Subsequently, Mr. Horoshenko filed a claim to the Constitutional Court seeking invalidation of Articles 57, 59, 105 (2) of the Criminal Code of the Russian Federation, No. 63-FZ, dated June 13, 1996 ("the Criminal Code") as restricting death penalty and life sentences with respect to men, who have reached the age of 65 years old, women and minors of age. According to the applicant, these rules give rise to discriminatory practice.

3) Law

- Article 14 of the Convention on the Protection of Human Rights and Fundamental Freedoms;
- Article 2 of the International Covenant on Civil and Political Rights, dated 16 December 1966;
- Articles 15, 19, 20, 21 of the Constitution of the Russian Federation, dated 12 December 1993;
- Articles 57, 59 and 105 of the Criminal Code of the Russian Federation, No. 63-FZ, dated 13 June 1996 ("the Criminal Code");
- Decree of the Constitutional Court of the Russian Federation, No. 3-P, dated 19 March 2003.

4) Legal Arguments

- The applicant claimed that the provisions of the Criminal Code Articles 57, 59, 105(2) were unconstitutional. Pursuant to these provisions deprivation of liberty

for life shall not be imposed upon women, nor upon persons who have committed crimes at ages below 18 years, nor upon men who have attained 65 years of age by the time of adjudication. According to the applicant, such segregation constitutes sex and age discrimination, as it does not take into account any other criteria except for age and gender.

5) Decision[3]

The Constitutional Court dismissed the applicant's claim on the basis of the following reasoning:

- The gravity of the crime and the level of responsibility of the accused should be considered in light of all the factors that can be important for the case, including physiological ones. Thus, the contested provisions are based upon the principles of humanism and justice. They proceed from the necessity to take into consideration all social, gender, age and physiological criteria while carrying out the sentence.

6) Key Words: Issues Tree

Group 1 Indirect Discrimination

Group 2 Regional Standards

Group 3 Age

Group 4 Other Discrimination areas

Group 5 Reasonable Accommodation

[3] Similar legal position on the matter was expressed by the Constitutional Court in "Shagov Case", No. 927-O-O, dated 15 November 2007.