



## **The Slavic Center for Law and Justice Wins Important Case at the Constitutional Court of Russia**

December 19, 2011

(Moscow, Russia) – The Slavic Center for Law and Justice won a case in the Constitutional Court of Russia regarding provisions of the Federal Law “On the state registration of legal entities”, according to which the tax authorities had the authority to eliminate religious organizations without any court proceeding that it deemed had ceased its operations. This procedure was introduced in 2006 and was designed to update the data contained in the Uniform State Register of Legal Entities (“registry”) to eliminate so-called “dead” entities from the registry. Because the tax authorities anticipated that the number of “dead” entities to be rather high, they rationalized that liquidation through court proceedings could potentially lead to a particularly heavy workload for the courts. Therefore, the power to exclude such legal entities from the registry was granted to the tax inspectorate at the district level.

The main drawback associated with this procedure, however, was the tax authority’s ability to remove a legal entity from the registry based on minimal criteria that the entity was no longer operating, such as a lack of bank account activity and a failure to report to the state during the previous 12 month period. Before removing an entity, the tax inspectorate was not required to verify any other entity activities that might otherwise evince the legal entity’s continued operation. Moreover, the tax inspectorate was not required to notify the entity that it was being or had been liquidated.

This procedure applied not only to commercial entities, but to every entity with legal status, including religious organizations. The procedure did not take into account the specific character of such organizations. For example, this procedure completely disregarded that the decision to register a religious organization is made by the Ministry of Justice, not by tax authorities (as is the case with registering commercial organizations). Also, this procedure failed to take into account that a large number of religious organizations do not have bank accounts namely because they do not perform any kind of commercial activity; nevertheless, such religious organizations continue to work actively with their parishioners.

In the first nine months of 2011, the tax authorities liquidated a total of 193 religious organizations under this procedure. Of the 193 religious organizations, 72 of them are active within the structure of the Russian Orthodox Church Moscow Patriarchate and the other 45 religious organizations comprised various Protestant denominations.

The religious organizations, in an attempt to prove that they are active entities, filed cases against the tax authorities challenging the liquidation and removal from the registry. Unfortunately, in

most cases, the courts relied solely on the criteria set out in the challenged law and denied the organizations' appeals, declaring such organizations to be defunct, despite evidence to the contrary.

The Slavic Center for Law and Justice challenged this procedure before the Russian Federation Constitutional Court, which issued its decision on December 6, 2011. The Court held that the proper body to determine whether a religious organization is inoperative and whether it should be removed from the registry was a judicial court, not the tax authorities. Furthermore, a religious organization may only be liquidated and removed from the registry if it can be established that the organization is factually no longer performing its authorized activity (*i.e.*, those activities for which the Ministry of Justice granted the organization legal status).

This victory has several lasting effects. First, tax authorities will no longer be able to unilaterally declare that a religious organization has terminated its activities and then proceed to exclude it from the state registry. Instead, the tax authorities now have to file a lawsuit and a religious organization will have the opportunity to defend its rights by providing evidence that it is indeed continuing to perform its statutory activities.

Second, this victory is significant for those religious organizations excluded from the state registry prior to December 6, 2011, as they will now have the opportunity to appeal the decision taken by the tax authorities through court proceedings. The liquidated religious organization must, however, initiate the appeal within one year of the date when they were informed or should have been informed about their exclusion from the state registry. On appeal, only one fact will be adjudicated by the court: whether the religious organization was in fact carrying out their statutory activities.

Third, for those religious organizations that the tax authorities excluded from the registry and had previously lost their appeal in court, this decision creates the right to have the court decision reviewed on the basis of newly discovered evidence. In this case, the court will have to take into account the constitutional and legal meaning of the applicable provisions identified by the Constitutional Court of the Russian Federation – in other words, it will have to determine whether, in fact, the religious organization has ceased performing its statutory activities. It should be noted that religious organizations may file the above-mentioned complaints **within a period of three months** from the date that it is established that there are grounds for review, that is, until March 6, 2012.

The Slavic Center for Law and Justice is willing and prepared to provide support to religious organizations that have been excluded from the state register for the reasons mentioned above, and to provide all the necessary legal assistance to restore those rights that have been violated. The particular case covered in this article was handled by Sergei Chugunov, legal advisor at the SCLJ.