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CHURCH AUTONOMY IN THE RUSSIAN FEDERATION

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I. HISTORICAL BACKGROUND

Freedom of conscience was declared a constitutional principle during all the years of the Soviet era. However, this freedom always had a fictitious nature: the rights of religious organizations were restricted, the anti-religious propaganda was state policy, believers were excluded from government service, clergymen were repressed and houses of worship demolished. Among the sources of law determining the legal position of religion in the Soviet Union was a Decree on the Separation of Religion from the State signed by Lenin in 1918. This Decree was in force until 1990. More detailed regulations were contained in a decree of April 8, 1929, amended in 1932 and 1975, and an Instruction made under it, released in 1929 and reissued in 1931.¹ Numerous all-union regulations on state supervision of religious organizations were in effect, but many of them were unpublished. The state regulations applied to all denominations uniformly.

During the Soviet period, organized religion never enjoyed public status in Russia. Neither were religious groups considered social organizations. Only individual religious associations had a status in law. State registration of

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** Conclusions contained in this paper are author's own and do not reflect the opinion of the Law Library of Congress.

¹ V.I. Lenin, KPSS o Religii (V.Lenin and the CPSU on Religion), Politizdat, Moscow 1982.

religious associations was required. Although applications for registration were to be submitted to the local administration, they were decided upon by the Council on Religious Affairs under the Federal Government. Registration was granted not as a matter of right, but as a privilege.

The constitutionally declared freedom to profess a religion did not provide protection against the state system of monitoring religious activities. Even though the Constitution provided for the equality of Soviet citizens before the law without distinction of their attitude to religion, discrimination was widespread. Those who professed religion openly were subject to reprisals. They might face demotions or discharge from employment. Local administrations were instructed to collect data on the attendance at religious services and to identify persons practicing religious rites. For this purpose, church organizations were obliged to maintain records of baptisms, marriages, etc. performed. The information was used for “individual work with believers” at their places of work and at home because the demonstration of an “intolerant attitude towards a religious ideology” was required by law.² Open-air ceremonies and processions, performance of rites in apartments and houses of believers, and pilgrimages to holy places were forbidden. Since “objects of the cult” might not be located in buildings belonging to the state or to social organizations, citizens living in communal or cooperative houses could not legally even keep icons in their homes.

Special restrictions were imposed against the clergy. Clergy were required to have a state license for performing the work in the congregation which hired them exclusively for conducting worship services. Clergymen might not take part in secular affairs of their congregations and were excluded from the congregations' administrations. No cleric at a local level could appear before a government body as a representative of his church. The income of religious workers was subject to higher taxation than comparable income of other citizens. Any gifts, including gifts in kind, had to be reported as taxable income. Foreign visitors wishing to perform religious rites in the USSR needed a state permission issued by the federal authorities to do so. However, oppressive state control of the Church during the Soviet period was of benefit to it at the same time, protecting it from both external infringements and internal divisions. When in 1991, the Church escaped state control, it simultaneously lost state protection too, and began to lose the

² For Official Use Only. Collection of Soviet Statutes on Church State Relationships. New York, 1976.

fight against its rivals. This situation caused the Church to join the active struggle for influence on the state.

II. RELIGIOUS LEGISLATION OF INDEPENDENT RUSSIA

The Gorbachev political reforms of the late 1980s were accompanied by a movement to restore freedom of religion. In 1988, the Soviet State celebrated the 1000th anniversary of the introduction of Christianity into Russia.³ In December 1988, president Gorbachev, in an important speech to the General Assembly of the United Nations, promised that new Soviet legislation on freedom of conscience would meet the highest international legal standards. In 1989, the new popularly elected USSR Parliament included clergy among its members as well as lay persons previously persecuted for religious activities. After widespread discussion, new laws on freedom of religion and the rights of religious organizations were enacted in 1990, both in the USSR and in the Russian Federation.

The USSR Law on Freedom of Conscience and on Religious Organizations of October 1, 1990,⁴ declared that “every citizen shall have the right, individually or in conjunction with others, to profess any religion or not to profess any, and to express and disseminate convictions associated with his relationship to religion” (art.10); that the exercise of such freedom shall be subject to restrictions that are compatible with the international obligations of the USSR, that all religions and denominations shall be equal before the law; that there shall be separation of church from the state but that the clergy of religious organizations shall have the right to participate in political life on an equal footing with all citizens; and that religious organizations whose charters are registered in accordance with established procedures shall have the right to create educational institutions and groups for religious education of children and adults.

The first liberal Russian Law on Freedom of Conscience was passed on October 25, 1990.⁵ Even though it repeated many of the provisions of the

³ In 988, Christianity was introduced into Kyivan Rus', an area today approximating modern-day Ukraine; for this reason Russia's claim to this heritage is disputed by some Ukrainian scholars.

⁴ Vedomosti Verkhovnogo Soveta i Siezda Narodnih Deputatov SSSR [USSR official law gazette], 1990, No. 41, Item 813.

⁵ Vedomosti RSFSR [official gazette of the Russian Soviet Federal Socialist Republic], No. 21, 1990, Item 267-1.

USSR Law, it went considerably further in the protection of religious freedom. All previously existing barriers in the religious sphere were removed, and basic rights were declared and implemented by this Law. The Russian Law also went beyond the USSR Law in explicitly providing that not only citizens but also foreigners and stateless persons could exercise the right to freedom of religion individually as well as jointly through creation of appropriate social associations. The registration of religious associations was also simplified. Aiming to create a real independence for religious organizations, this Law fulfilled its main purpose and freed the Church and religions from total state control through the KGB and its department, the Governmental Council on Religious Affairs.

In contrast to the USSR Law, the Law of Russia was entitled On Freedom of Religion, a phrase that is broader than “freedom of conscience”, implying freedom to give expression to one's religious beliefs through the activities of religious organizations.⁶

In 1993, the Russian parliament passed a new comprehensive Religion Law. The President of Russia vetoed this Law twice and it was not reenacted because of the dissolution of the parliament in September 1993. In 1995, revisions of the Law on Religion again came under consideration in the new Russian Parliament, now called the State Duma. Several drafts were proposed; however, they did not survive the parliamentary review.

In 1997, the Law on Freedom of Religion was repealed. Opponents of the Law of 1990 suggested that new legislation is needed to protect historical Russian faiths from the impact of missionaries from other religious groups who have entered Russia since the fall of communism and operated under the Law on Freedom of Conscience. According to the data of the Russian Federation Ministry of Internal Affairs, more than 6,000 sects were officially registered in Russia in September 1997. But if the total number of all registered congregations was around 14,000, including almost 8,000 Orthodox, then all non-Orthodox religious groups were considered as sects.⁷ The Russian Ministry of Health set up a service to aid “victims of totalitarian sects”. The Interior Ministry (police) as part of its anti-crime efforts declared

⁶ The Russian word *veroispovedanie*, translated here as religion, means literally profession of faith, whereas the Russian word *sovest*, meaning conscience, refers to one's inner belief rather than one's outer profession of the belief.

⁷ Interview with the RF Minister of Internal Affairs Gen. A. Kulikov in *Nezavisimaia Gazeta* (in Russian), October 14, 1997.

that several sects were involved in criminal acts and would be closely monitored. Another reason for adoption of new legislation lays in the sphere of economics. Because of inexperience with a market society, some religious institutions chose to make the government a protector and an ally. The government, which was burdened with the problems of social stabilization, decided to cooperate with them, expecting corresponding countermeasures from the Church.

III. CONSTITUTIONAL GUARANTEES OF RELIGIOUS FREEDOM

Today Russia's Constitution declares the state to be a secular one where no religion shall be declared an official or compulsory religion. The Constitution of the Russian Federation provides for equality of all religious associations before the law and states in article 14 that all religious organizations shall be separate from the state. This provision is contained in the chapter which constitutes the fundamental principles of the constitutional system of the Russian Federation and cannot be changed except by a very complicated procedure established by the Constitution. No other legal acts may contradict the fundamental principle of the Russian constitutional system.

Religious issues are regulated also by article 28 of the Constitution and by the Federal Law on Freedom of Conscience and Religious Organizations. The secular character of the Russian state means that there is no particular church hierarchy over the state authority. It is reflected in the civil system of jurisprudence, state registration of the documents of civil statutes, the lack of the obligation for civil servants to confess a particular religion, and in the legal status of believers in general. Article 3.4 of the Law on Freedom of Conscience and Religious Organizations states that citizens of the Russian Federation are equal before the law in all spheres of civic, political, economic, social, and cultural life, independent of their attitudes toward religion or religious associations. Mentioning one's attitude toward religion in official documents is prohibited.

In accordance with the constitutional principle of the separation of religious organizations from the state, power authorities must not interfere in the activities of religious organizations, must secure the secular character of education in state and municipal educational institutions, and may not call upon religious associations to carry out the functions of organs of state power, other state organs, or of organs of local self-government (art. 4).

Under the Constitution (art. 28), all people are to be guaranteed freedom of conscience and freedom of religion, including the right to profess individually or jointly with others any religion, or to profess none, to freely choose, hold and propagate religious beliefs and to act in accordance with them. This constitutional provision is officially interpreted by the Government of the Russian Federation⁸ as the recognition of the right of every person to act in accordance with his own beliefs and means the freedom to be a member of an already existing religious association, to establish new religious groups, to perform worship services, religious rituals and ceremonies, to publish and distribute religious books and materials, to obtain a religious education. As the government interpretation says, this constitutional article provides for the right to alternative military service also. However, the realization of that right as well as others depends on the adoption of implementing federal laws and legal acts in the future. Presently, a citizen may not refuse to fulfill his civil obligations on religious grounds, and a refusal to undergo military service because of religious convictions is still criminally punishable.

Because of the historical tradition of the Soviet society, the Constitution especially mentions the right not to profess any religion. This guarantee is needed because there are millions of people in Russia who do not confess at all.

Despite the fact that freedom of conscience is declared by the Constitution, this right cannot be exercised without limits. The idea of absolute rights is conclusively rejected in article 55.3 which states that “human and civil rights may be restricted by the federal law only to the extent required for the protection of the foundations of the constitutional system, morals, health, rights and lawful interest of other persons and to ensure the defense of the country and the security of the state”.

IV. RELIGIOUS LAW OF 1997: BASIC PROVISIONS

The realization of these constitutionally protected rights depends on the implementation of the Federal Law on Freedom of Conscience and Religious Organizations (further mentioned as the Religious Law) which was almost unanimously passed by the Russian Parliament on September 26,

⁸ Commentaries to the Russian Constitution, published by the Administration of the RF President, 1994, at 177.

1997.⁹ The Religious Law regulates the legal relations in the sphere of the rights of man and of citizens to freedom of conscience and freedom of creed, as well as the legal status of religious associations. The Law establishes that nothing in the Russian legislation may be interpreted in such a way as to result in lowering or infringing the rights to freedom of conscience, and declares legal status of Russian citizens, foreign citizens, and persons without citizenship to be equal in their right to freedom of creed. Following the Constitution, the Law prohibits the establishment of privileges or restrictions, or other forms of discrimination on the basis of one's attitude toward religion. The confessional secrecy is also protected by the Law. It states that a clergyman may not be taken to account for refusing to provide testimony about circumstances which became known to him from a confession. However, the collaboration of a clergyman with the state authorities is not restricted, and previously existing legal prohibitions against interrogating or summoning a clergyman have been lifted.

To protect the right to freedom of religion, the Law prohibits the hindering of the realization of this right, including the use of force against an individual, intentional insults of the feelings of citizens in connection with their attitude toward religion, or the propagation of religious superiority, with the destruction or damage of property, and with threats of such actions. The conducting of public events and the distribution of texts and images insulting the religious feelings of citizens in the vicinity of objects of religious veneration is not permitted. Those found guilty of violating the legislation on freedom of conscience are subject to prosecution under criminal and administrative law.

The Criminal Code of the Russian Federation states that the unlawful hindrance of the activity of religious organizations or the performance of religious rites is punishable by a fine up to 200 times the amount of the minimal labor wage, or by correctional labor work for a term of up to 1 year, or by a prison term up to 3 months (art. 148). Inciting religious enmity is another crime which is punished by the Criminal Code. Article 282 provides for a fine 500 to 800 times the amount of the minimal labor wage, for limitation of freedom up to 3 years, or imprisonment from 2 to 4 years for actions aimed at inciting religious hatred, and likewise propaganda expounding the exclusivity, supremacy or inferiority of citizens based on their attitude toward religion, if these actions were performed publicly or

⁹ Sobranie Zakonodatelstva Rossiiskoi Federatsii (Official gazette of the Russian Federation, SZ RF), 1997, No. 39, Item 4465.

with the use of the mass media. The same actions performed with force or threat of force; by a person through the use of his official position; or by an organized group are punishable by imprisonment from 3 to 5 years.

V. IMPLEMENTING DOCUMENTS

The pernicious effects of the 1997 Religious Law have recently been somewhat muted because, like most other legislation in the Russian Federation, the Law is implemented only episodically and half-heartedly. Federal authorities have transferred the responsibility for implementation of the Law and for punishing violations to regional administrations.

In February 1998, the Russian Federation Government passed a package of implementing documents which includes:

the Statute on State Registration of Religious Organizations with Russian Federation Justice Authorities;¹⁰

Rules on Conducting State Scientific Religious Analysis;¹¹ and

Regulations on the Procedure for Opening Missions of Foreign Religious Organizations in the Russian Federation.¹²

The main feature of all these documents is their uncertainty, vagueness and gaps which allow local authorities in charge of the registration of religious organizations to apply existing rules differently, depending on concrete tasks. For instance, the Regulation on the Procedure for Opening Missions of Foreign Religious Organizations in the Russian Federation provides for the opening of a foreign mission on the territory of a specific sub-unit or several sub-units of the Russian Federation only. Excluding the possibility of establishing an independent, centralized foreign office, the document allows the opening of such missions only under the auspices of a Russian religious organization which has been registered in accordance with established procedure, i.e. which has existed in Russia for more than fifteen years.

Among other restrictions provided by the Law, foreign missions are prohibited from becoming juridical persons. Religious activities and worship

¹⁰ Order No. 19 of Feb. 16, 1998 of the RF Ministry of Justice.

¹¹ 6 SZ RF 1998, Item 756.

¹² 6 SZ RF 1998, Item 754.

services may not be conducted in foreign missions because they do not enjoy the status of a religious association which has been established by the Law. Quantitative restrictions in regard to foreign as well as Russian employees are also imposed. The Regulation puts all day-to-day operations of the foreign mission's central office under the auspices of the supporting Russian organization. Only on the basis of contracts with the Russian organization may the foreign mission decide matters relating to the provision of offices, residential quarters, transportation, utilities and other services.

The provision which entitles the registering agency to request clarifications in regard to documents submitted for registration is unclear. This rule may be used as an excuse for not registering a foreign mission without an official refusal. The list of issues which need to be clarified is not determined, and the process of such clarification can be endless.

Even if a foreign religious organization is allowed to open a mission in Russia, it will be obliged to repeat the entire registration process every three years. This means that the mission must submit all necessary documents once again and pay the unspecified amount of the registration fee. It should be noted that official state registration is not a guarantee that the foreign mission may conduct its affairs in a normal way. Although the Regulation allows the authorities to stop the activities of a mission, the Regulation does not include the complete list of reasons under which the work of a mission may be stopped and merely mentions unspecified violations of Russian legislation. The definition of the term *legislation* includes not only the federal laws of Russia or its sub-units but all executive regulations and acts of local, municipal, and self-government authorities. In such a situation a contradiction with any provincial norm would be enough to close the centralized office of a foreign mission in Moscow.

Other documents are also similarly restrictive. To prevent the registration of an undesired religious association, the conclusion of the Expert Council whose decisions cannot be appealed to the courts may be used as a reason to deny the registration. Expert Councils are to be established on both federal and state levels. The registering authorities are also allowed to involve representatives of already registered religious associations as experts in the decision-making process. The Rules prohibit the discussion of the conclusion of the Expert Council in the courts and prescribe the use of the negative conclusion only to support the position of the registering authority in cases when the religious organization appeals the denial of its registration.

The third document which regulates the state registration of religious organizations was proposed and drafted by the Government of the Russian Federation. This act creates and regulates the procedure for establishing and registering of all kinds of religious associations. The positive features of this Regulation are the time frame for the review of applications (up to six months) and the possibility for judicial review of decisions issued by the state registering authorities. However, the mechanism for the registration of a religious organization in Russia remains uncertain.

In general, the Regulation follows the Law on Religion and repeats the definitions and procedures introduced by the Law. In accordance with the Law, the Regulation recognizes local and centralized religious organizations and favors those religious organizations which can prove their legal existence in Russia during the past fifteen years. It should be noted that the Regulation recognizes only the legal existence of a religious organization, and only legal evidence can be considered for registration. The Regulation stipulates that only acts of local government authorities may be accepted for confirmation of the association's existence during the fifteen-year period. This provision will exclude from full accreditation associations which had previously existed but had not been registered by state organizations. Such organizations are able to provide such indirect evidence of the existence of an association such as the persecution of followers during the Soviet era, or established contacts with foreign partners. However, such evidence is not recognized by the authorities.

Different procedures are introduced for the registration of local and centralized religious organizations. It seems that authors of the Law expect that the majority of religious associations will be registered as local organizations by judicial authorities under the governments of the Russian Federation components. If centralized organizations are established, such associations may be legalized by the Russian Federation Ministry of Justice. Because the registration of judicial persons belongs to the competence of the Russian Federation sub-units, one can suppose that regional authorities will impose additional requirements on the registration of religious organizations. The Regulation directly states in article 4.3 that the procedure for notifying local government agencies of the establishment of a religious group will be determined by appropriate local rules. Under this provision, the registration of branches of the same religious organization in different regions may vary significantly.

The registration of a centralized religious organization rests with the Federal Ministry of Justice if at least three local organizations already exist. It is unclear whether existing local organizations will need further registration and re-registration if the centralized organization will be opened, and whether the centralized organization will be able to create new local offices and place such new religious communities under easier procedures. It is impossible to say where new local organizations will be registered: in Moscow together with the main office of the centralized organization or in the provinces. This doubt is confirmed by the article 9 of the Regulation which allows the centralized organizations to submit to the appropriate registering agency the annually requested information on local religious organizations without notification from those local organizations. Another question without an answer is, what will be the competence of the federally registered centralized organization? Will it be just an administrative body or it will be able to conduct religious services?

As has been the case with previously passed legislation, the citizenship issue remains the most painful question left open by the Regulation. Even though it declares that a religious organization is a voluntary association of Russian Federation citizens and other persons legally and permanently residing in the Russian territory, the Regulation states that only Russian citizens have the right to be founders of a religious organization. The Regulation requires that the citizenship of all founders will be mentioned in the application for registration and imposes a duty of proof on the registering agencies (art. 11). There is nothing to prevent governments of Russian Federation components from giving the right to form local religious organizations only to local residents.

Officially, Russian citizenship is not required for one to submit the application to register a centralized organization. However, because the centralized organization may be established on the basis of existing local organizations where non-citizens are excluded from being founders, the registration of a centralized organization also depends on the Russian citizenship of the followers of the group. Likewise, the Regulation does not say definitely who can be a founder of a centralized religious organization. The interpretation of the Law and Regulation allows one to conclude that the centralized religious organization may be established by representatives of local religious organizations, by representatives of foreign mission of a religious organization, and/or by independent believers who want to join existing local organizations or to unite them.

A dubious question is the annual re-registration for those religious organizations which were established before the entry into force of the Federal Law on Religious Organizations, those that can claim to have existed in Russia for fifteen years. All these organizations have to pay non-specified fees, face numerous bureaucratic obstacles, and handle the consequences of a possible break between registration periods. It is difficult to say whether it will be possible in such a situation to reestablish the patterns from the period of previous legal existence. Similar problems were experienced by the Moscow office of the Israeli organization *Sohnut*.¹³

Additional bureaucratic obstacles may be created by the registration procedure. Defining the list of founding documents to be submitted for state registration, the Regulation includes a proper standard letter of guarantee confirming the location of the religious organization (art. 11.7). This requirement may be problematic because under current administrative restrictions, the organization may not rent or buy a building, office space, or relocate in another place without official registration. At the same time, without a legal address, the religious organization may not be registered.

The registration may be complicated by the requirement to translate all materials into Russian “in accordance with the established procedure” (art.5). Presently Russia has no uniformed rules for acceptance of translated foreign legal documents. Even though Russia signed the Hague Convention of 1951 in 1994, and documents which bear the so-called “apostill” stamp should be accepted by authorities, different regions and institutions follow their own requirements.

Furthermore, the requirement to inform the authorities about the fundamental tenets of the creed and associated practices followed by the organization, including the types and methods of its activities, its attitude toward the family and marriage, education and health (art. 11.6) sounds subjective. On discussing the origin of a religion, the registering agency may request the judgment of specialists on the issue. As mentioned above, the judgment issued by the Expert Council may be used as a reason to deny the registration.

In the second half of 1998, the Government of the Russian Federation continued to pass regulations related to religious problems. They included

¹³ Union of Councils for Soviet Jews, Report on Persecution of Ethnic and Religious Minorities (Jan. 18, 1998) at 4.

the Regulation on Procedures for Conducting Scientific Religious Analysis and the Decree on the Celebration of the 2000th Anniversary of Christianity. The Ministry of Justice issued several implementing orders. That process is not completed, however, and much of the implementation process depends on regional administrations.

All recently passed regulations do not differ substantially from the already analyzed drafts. Neither of these acts improves the position of a religious group. The only provision that makes the registration of a centralized religious organization easier is the permission to register such an organization if it is present in at least two components of the Russian Federation. The Law does not determine the required number of components. The Rules of Registration set a firm six-month period for the registering authorities when they are obliged to make a decision regarding religious organizations. Article 22 of the Rules sounds potentially restrictive because it requires annual submission of information from the religious organization regarding the continuation of its activity. Even a one-day delay in these annual submissions may entail a break in the counting of the 15-year period. The vagueness of this provision may result in an unregulated interpretation of this requirement by regional justice departments.

Article 4.6 of the Rules sounds especially uncertain. This article requires that a religious organization inform the registering authorities about the basic principles of its religion and religious practice, the history of the religion and given religious association, the methods and forms of its activity, and its position toward education, family and marriage, health protection of the followers, and realization of members' civil rights and duties. Such undetermined definitions allow registering authorities to request additional information or order a so-called scientific religious analysis and to postpone the registration for at least 7 months. Another problem may be found in the prohibition against registering a religious organization if any other religious organization with the same name already exists in the Russian Federation (art. 15). One can suppose that this requirement will be used to deny registration for unwanted religious associations. Knowing that during the recent provincial elections people with the same names as strong candidates were included in the ballots in order to mislead the voters, one cannot exclude the prospect that similar methods will be used in the registration process. Forged organizations may be established anywhere in Russia, and they could give regional authorities a reason to deny registration to a real religious association.

VI. LEGAL CHALLENGES TO THE CHURCH AUTONOMY

The institution of church autonomy was significantly undermined by religious laws of the components of the Russian Federation. Presently, such laws are adopted in 49 (more than half of the total) provinces. They all have a great deal in common, and regarding the state-church relations all the laws draw two types of distinction: between traditional and non-traditional religions and between foreign and Russian religions. In addition, authors of these laws closely follow the concept of ethnic religion. As a result of the proclaimed concept, following measures in regard to limitation of the church autonomy were stipulated:

Special bodies with powers to regulate and control the activities of religious organizations were set up. These organs are authorized to investigate and evaluate beliefs and practices of religious organizations, and give recommendations and/or decide about their registration;

Registration of religious organizations and licensing of their activities have been introduced. Contrary to the federal legislation, the local laws imply prohibitions on the activities of those organizations and groups which are not registered. Extremely complicated procedures for registration were created, and unfairly high fees for the certificate of registration were introduced;¹⁴

Certain religious practices are subject to arbitrary prohibitions. The definitions of religious practices considered unlawful are so broad that the local authorities are provided with enormous power over believers. Some types of activities of religious organizations are supposed to be licensed by the local authorities. These may include preaching, concerts, lectures, etc.;

Restrictions on missionary activities in public places. Since “missionary activities” are perceived to be fraught with dangers, they must be limited. Hence, restrictions are provided with range from outright prohibitions of religious practices “in all public places” (Perm region, Republic of Udmurtia) to various mechanisms of control of those (private and state owners) who rent meeting places (Sverdlovsk region). Since minority religions cannot, as a rule, afford to have their own meeting places, these restrictions become a powerful mechanism of control over religious organizations;

In some cases provincial laws require that the missionaries should have invitations from the local authorities and/or an invitation from a religious

¹⁴ Keston News Service, No. 9, 1996 at 6.

organization registered locally. This means that a religious organization cannot be legitimately present on the given territory even if it is registered nationally;

Some laws reserve the right for the local authorities to forfeit the registration of a religious organization which, according to the Federal Law, can only be done by a decision of a court of law.

Although according to the Constitution, the national law takes precedence over the local laws and regulations, and legally the latter may be simply ignored, it is rather common in contemporary Russia that in the attempt to find local solutions the local authorities neglect the Constitution and the decisions of federal authorities. As recent Russian history suggests, central authorities have limited powers to challenge local separatism.

Among other measures directed to restrict the autonomy of the religious organizations in Russia, are amendments to the Federal Law on Social Organizations, which entered into force on December 6, 1998. These amendments excluded religious organizations from the list of social and noncommercial organizations, and drastically changed the procedure for the organization, registration, and management of religious organizations. Previously, religious organizations in Russia were allowed to be registered as noncommercial organizations. After the new Law was adopted, the registration of religious organizations that were organized in accordance with the Law on Social Organizations became void, and they now have to go through the new registration process under the Law on Religious Organizations of 1997.

The Law on Social Organizations prohibits keeping the amount and composition of income of a nonprofit organization secret and requires public control over the budget of the organization. Because they are excluded from the jurisdiction of that law, religious organizations may hide financial information from the members. However, the registering state authorities have access to information on the financial activities of a religious organization (art. 10.2) and may use and disclose such information if needed in order to supervise religious organizations, as prescribed by article 25.2 of the Law.

VII. CHURCH AND STATE RELATIONSHIP

Russian Religious Law created a foundation for the relationship between the church and the state. In order to secure the separation of religious organizations from the state, the Law says, in particular, that the activities of organs of state power and organs of local self-government may not be accompanied by public religious rituals or ceremonies. State and self-government officials, as well as military personnel, are not entitled to use their service position for the formation of any attitude whatsoever toward religion. Because of the increasing weakness of the state, the Russian Orthodox Church pretended it is the only social institution that is connected with the history of Russian civilization, and has raised its profile and interfered with state affairs. Serious violation of this constitutional principle may be observed in the widespread practice of conducting religious services in state institutions and enterprises (e.g., at the consecration of buildings, factories, other work places, and production), displaying icons and other religious symbols, religious blessings during the inaugurations, state financing of religious organizations, use of the military personnel for the construction of churches and other houses of worship, and broadcasting of religious services by the state-owned television channels. Furthermore, in December 1998, the Patriarch of Russia made two politically controversial statements. He said that even though the Orthodox Church opposes capital punishment, Russia is not ready to live without it, and he asked the Government to stop the moratorium on the death penalty. He also strongly criticized attempts to introduce an alternative military service in Russia and supported currently existing draft and military duty.¹⁵

In the last two or three years the Russian Orthodox Church concluded agreements with all of the power ministries,¹⁶ all of which are being fully implemented. The Orthodox Church's influence and authority in the power structures are growing noticeably. Churches are being built in military units. The institution of chaplains was recently established.¹⁷ Chief of the Educational Department of the Defense Ministry, who is simultaneously the

¹⁵ Russian Patriarch Opposes Death Penalty, in Theory; Reuters, Dec. 6, 1998, at <<http://www.russiatoday.com>>, visited Dec. 7, 1998.

¹⁶ Power Ministries is a common definition for governmental agencies having military units and/or troops. This includes Ministry of Defense, Ministry of Interior, Federal Security Service, State Protection Service, Federal Agency of Government Information and Communication, and some others.

¹⁷ There are chaplains only for the Russian Orthodox Church excluding all other denominations.

Deputy Minister of Defense, recommended that Russian Orthodox chaplains be included on the staff of military units and that they be paid using appropriated funds saved because of vacancies. It is rather common when all soldiers are brought to the church services by orders of their commanders. In November 1998, many newspapers noted that a chaplain had baptized the entire staff of a submarine in accordance with the order of the ship's captain.¹⁸ Leaders of other religious denominations complain that the Russian Orthodox Church wants to monopolize its ties with the military and to reestablish its tsarist position where only it has the right to work directly with the military command, while other faiths would have to go through the Orthodox Church.

The church hierarchs publicly come forward in support of defense enterprises. As the recent passage of the Law on Freedom of Conscience showed, the Orthodox Church is using the support of the left nationalist majority in the State Duma.

Despite of its own ban on the clergy taking part in political life, the Russian Orthodox Church entered politics and has become a serious political force. First, the Church openly went into politics in the 1996 presidential elections. The Patriarch virtually summoned believers to vote for Boris Yeltsin. This support was fully appreciated in the Kremlin. Patriarch Aleksiy II, alone among Russian religious figures, was granted the right to make a speech at the President's inauguration in August 1996. Thus the Russian Orthodox Church's special status was emphasized. The inspired Patriarch set about elaborating a concept reflecting the general church attitude to issues of church-state relations and the problem of modern society as a whole.

VIII. INTERFERENCE OF THE RUSSIAN ORTHODOX CHURCH INTO STATE AFFAIRS

An important political event occurred on October 9, 1998, when Russian Patriarch Aleksiy invited leading politicians and public figures to his residence in the Danilov Monastery with the purpose of “not only discussing how to get out of the old crisis, but, as he said, to discuss variants of a new state and political system”.¹⁹ Present at the meeting were the Mayor of

¹⁸ Rossiiskaia Gazeta [official newspaper of the Russian Federal Government], November 18, 1998, at 4.

¹⁹ Zavtra, October 13, 1998, at 1.

Moscow Yu. Luzhkov; Chairman of the State Duma G. Seleznev; Communist leader G. Zyuganov; Governor A. Tuleev; former Prime Minister V. Chernomyrdin; and Deputies of the State Duma V. Zhirinovskiy, S. Baburin, S. Glazyev, Nikita Mikhalkov, and others. President Yeltsin personally asked Ye.Stroev and E. Primakov not to take part in the meeting. The meeting was attended by all the hierarchs of the Russian Orthodox Church and was called the "Russian People's Assembly". The event received very restricted coverage in the Russian mass media. The most critical and anti-government speech was made by Yuri Luzhkov, who was accused by some of using the Assembly as an opportunity to appear on national television being "blessed" by national religious leaders.²⁰ Evaluating the situation in the country, he said that it is an illusion to believe that Russians are law abiding and that the Constitution works. Luzhkov stated that everything that had been done in Russia during the last seven years was one big mistake. This mistake, in his opinion, is radicalism and rejection of national traditions. He predicted popular riots and the breakdown of the nation's statehood if Russia does not return to its traditions, Christian values, commandments, and religious laws. In his speech, Luzhkov considered the Assembly to be the first attempt since 1993 to rescue the nation and paid tribute to the Patriarchate for its efforts to consolidate Russian society.

The Russian Orthodox Church backed the Kremlin's foreign policy. When the Russian authorities started to object to NATO's eastward expansion, the Church firmly stood up for them. Hearings on the theme of "Nuclear Arms and Russia's National Security" were held in St. Daniel's monastery (the Russian Orthodox Church headquarters) where the Church hierarchy warned that the expansion of the North Atlantic Alliance was fraught with "colossal danger, not only of aggression from the West, but in terms of provoking other aggressive acts". Developing the Kremlin's thesis on the danger of the appearance of new dividing lines in Europe, Patriarch Alexiy II warned at the Second European Inter-Church Assembly in Graz that the worsening of ecumenical processes in Russia in which Western missionaries trying to entice members of other faiths into their faith were responsible for could lead to the rise of a "silver curtain" instead of an iron one. A little later he equated the expansion of Western churches with NATO's expansion.²¹ Also,

²⁰ V. Tretiakov, editorial, *Nezavisimaya Gazeta*, October 26, 1998, at 3.

²¹ I. Smirnov, *Employees of the Church* (in Russian), *Kommersant*, Moscow, No. 27, 1997, at 14-15.

leaders of the ROC together with the state officials are actively involved in the attempts to resolve the Kosovo crisis.

Another ROC attempt to influence state authorities was the decision regarding the celebration of the 2000 Anniversary of Christianity. After Yaser Arafat solved the long-standing dispute between the Russian Orthodox Church and Russian Orthodox Church Abroad over the Trinity Monastery in Hebron in favor of the Russian Orthodox Church, the Moscow Patriarchate decided to support the Bethlehem-2000 project proposed by the Palestine authorities and to oppose the Israeli version of festivities, even though the Government of Russia still had not come to a decision on this subject.²²

In exchange for its political pronouncements, the Church counted on the authorities giving it credit where it was due, requesting restriction on the activity of sects and foreign missionaries in Russia, and special rights for the Orthodox Church, however. Giving a sermon in February 1997, in connection with the creation of an Orthodox Russia movement, Patriarch Aleksiy II, acknowledging that equal rights should be conceded to all traditional religions, but at the same time emphasized that “they cannot be equivalent in their significance”.²³

Even though relations between the Church and the Government during the last months were rather tentative and did not involve any significant events, the establishment by the state of a Russian Organizing Committee on the Celebration of the 2000 Anniversary of Christianity demonstrated a willingness on the part of the state to keep closer ties with the Russian Orthodox Church than with any other denomination. The Committee, which was established under the Administration of the President of Russia, includes members of the federal government, governors, and leaders of the Patriarchate. Prime Minister Primakov and Patriarch Aleksiy are co-Chairmen of the Committee, and President Yeltsin is its Honorary Chairman. The duty of the Committee is to draft plans for the celebration and coordinate the activities of federal and regional executive authorities with the interested religious organizations. The Committee has right to

²² N. *Gevorkian*, Spor o Rodine Christa, *Kommersant-Vlast*, No. 39, 1998.

²³ A. *Pchelintsev*, Ni scobodi, ni sovesti, in: *Religiia i Zakon*, No. 1, 1998.

gather necessary information from and issue mandatory resolutions to all related federal and regional authorities.²⁴

In November, the Public Committee for the Defense of the Freedom of Conscience, a lobbying group headed by Gleb Yakunin, argued in a letter to Prime Minister Primakov²⁵ that at a time of “disastrous economic conditions”, the Moscow Patriarchate’s subsidies and economic privileges should be eliminated. The letter recommended amending current Russian tax legislation and imposing tax duties on religious organizations in order to increase the state budget.²⁶ The Committee called Patriarch Aleksiy II an oligarch who has to share his wealth with the nation and to return state money, already appropriated by religious institutions, to Russians. “Freedom of religious activity”, wrote Yakunin, “should not be substituted with freedom for clergymen to make themselves richer.” Because Primakov did not respond to this letter, Russian analysts decided that he cares more about his political future and good relations with the Patriarch than about the budget.²⁷

Recent Russian and foreign publications conclude that the caesaropapist tradition is not a sufficient explanation for such a close friendship between state and Orthodox leaders.²⁸ They believe that democracy itself is a problem in Russia because it appears as a foreign implant with shallow national roots. In such a setting, the Russian regime uses the Church for two pragmatic reasons: to define the limits of permissible Westernization and to fortify the anemic legitimacy of national politicians. Therefore, the President's refusal

²⁴ Decree No. 1468 of the Russian Federation President of December 4, 1998, Rossiiskaia Gazeta, December 11, 1998, at 10.

²⁵ The letter was reprinted in the Russian Kommersant-Daily on November 5, 1998, and published in English in *Transition*, No. 1, 1999.

²⁶ The Law on Freedom of Conscience and Religious Associations does not prescribe tax privileges. Tax exemptions may be introduced by tax regulations for particular religious organization individually (art. 4.3). Usually religious organizations in Russia are exempt from paying property tax, land tax if the temple building is registered as a landmark, value added tax on provided services, payment for use of the word “Russia” in the title of the religious organization, and income tax from enterprises that belong to religious associations. Since September 1997, a Governmental regulation prohibits religious organizations from reselling foreign humanitarian aid.

²⁷ See, e.g.: *O. Khlobustov*, *Trebovaniia pravdi i chelovekoliubiia*, *Nezavisimaia Gazeta*, Nov.19, 1998, at 4.

²⁸ *S. Holmes*, *Church and State in Eastern Europe*; *East European Constitutional Review*, v. 7 No. 2 (1998).

in September 1997 to sign the Law on Religion was a development the Russian Orthodox Church did not expect. The Church was in an extremely unpleasant state of conflict with the authorities. Addressing the president, the Russian Patriarch expressed his displeasure with the veto. He declared that it was necessary to adopt this Law without amendments, and warned that rejecting the Law could create tension between the authorities and the majority of the people.²⁹

IX. INTERFERENCE OF THE STATE INTO CHURCH AFFAIRS

The recent waive of religious intolerance is directed against almost all existing denominations and is orchestrated by certain political and religious leaders. Lack of strong law enforcement opens the door to the persecution of dissident religions and to arbitrary rule. Laws are applied differently to religious organizations depending on the attitude of the state authorities toward them. Elena Panina, a Member of the State Duma and Vice Chairwoman of the World Russian Assembly,³⁰ stated in her interview with the TV program *Parlamentskii Chas* on October 26, 1998, that “regional authorities complain to the parliamentarians that they would happily close meetings of all sects in their provinces, but unfortunately cannot do that because there is no such law. We hope [said Panina] that the existing law will become more restrictive, though even the current law allows us to fight against foreign sects”.

In November 1998, Jehovah’s Witnesses were challenged in a Moscow Court. Numerous procedural violations were committed during the trial. In contradiction to the existing legal norms, the judge ordered a closed trial and did not allow public and journalists to attend the court session. The court pleaded abatement in regard to the experts and witnesses called by the defendant. Even though no evidence was produced by the plaintiff, the case was not dismissed, but postponed. The trial resumed in February and continues presently. Representatives of the plaintiff, the Public Committee for Rescuing the Youth from the Totalitarian Sects, said that they wanted to

²⁹ Interview with the patriarch of Moscow and All Russia, *Moskovskaia Pravda*, October 14, 1997.

³⁰ A newly created social organization under the auspices of the Patriarchate with the declared goal of saving Russia and Russian statehood from foreign influence. Patriarch Aleksiy is its chairman, and leading Russian political, public, and intellectual figures are members of the Assembly.

“establish a controlling authority under the Russian Federation Ministry of Justice to monitor the distribution of Western funds among foreign religious organizations operating in Russia”, something that would constitute an illegal intervention in internal affairs of the organization. Russian and foreign observers speculate that the Russian Orthodox Church was instrumental in the organization of the trial.³¹ On the eve of the trial, the weekly magazine PROFIL’ published an interview with Aleksiy where he said that “foreign churches have destructive and totalitarian features and buy the souls of the Russian people”. In the interview he suggested that legislators introduce additional qualification requirements for foreign religious organizations if they care about the future of the country.³² Another reason to conclude that the Orthodox Church masterminded this trial is the strong tie between the Patriarchate and the Mayor of Moscow, who totally controls city courts.

Several violations of religious rights were reported during the last months of 1998, which in Russia was officially declared the Year of Human Rights. Among them are the closure of the Evangelic community in Hakassiya, liquidation of the Protestant religious group “Zion” in Reutovo (Moscow oblast), and denial of registration for the Church of the “New Generation” in Yaroslavl. Early in December 1998, Yegor Stroevev, the governor and Chairman of the Federation Council ordered that the building belonging to the Catholic Church in Oryol be transferred to the Orthodox Church. Moscow newspapers also reported that the City Prosecution office is ready to initiate a criminal case against the Church of Reverend Moon, charging the organization with encroaching on the identity and rights of citizens, as found in article 239 of the Russian Criminal Code.³³

State actions directed against the so-called sects or non-traditional religions continue in Russia. In February 1999, Moscow municipal police together with the Federal Security Service and tax police officers raided all four offices and headquarters of the Church of Scientology in Moscow. Leaders of the organization were accused of unlawful entrepreneurship and organization of an association that violates citizens’ rights. Both accusations entail criminal investigation and punishment. Persecution of a Dutch

³¹ See articles in Russian newspapers “Segodnia” and “Moscow Times” published in October-November 1998.

³² Profil, No.39, 1998 at 4-7.

³³ See Radio Free Europe/Radio Liberty Daily News Monitor: Vol. 1, Nos. 179, 194, 211, 247, 1998.

evangelical group in St. Petersburg and closure of a school operated by the group was also reported in February 1999.³⁴ In Yakutiia a group of Pentecostals was informed by the authorities that their license had been revoked, and the lease for their Church building was terminated.³⁵

X. INSTITUTIONAL STATUS OF RELIGIOUS ASSOCIATIONS

The Law on Religion also regulates the status of religious associations in Russia, including their rights, conditions for their activity, and the establishment of procedures for supervising and monitoring the observance of the legislation on freedom of conscience. The legal status of a religious association depends on whether or not it belongs to the traditional denomination. Christianity, Islam, Buddhism, and Judaism are considered by the Law as religions traditional for the people of the Russian Federation. Only those religious organizations which belong to one of these religions and have existed for more than fifty years in Russia may enjoy all the freedoms and rights declared by the Law. However, even among these denominations the constitutionally declared equality of religious denominations is violated. While the legislation might protect congregations already registered with the state, it would do little to protect congregations within those faiths not registered in the past. Thus, many Jewish synagogues that have arisen since the end of the Soviet regime might not be protected by the Law, and the large number of Roman Catholic congregations active underground even before 1990, might not have the right to continue to exist. In accordance with the Decree of the Russian President on Amendments to the Official Protocol of the Russian Federation,³⁶ the heads of major all-Russian religious organizations were given their places in the state hierarchy according to the number of believers. Thus, the Metropolitan of Russia is in the 24th place and the Chief Rabbi is in the 118th.

The Law defines the religious association in Russia as an association of citizens of the Russian Federation and other persons residing permanently and on legal grounds on the Russian territory, formed with the goal of joint confession and dissemination of their faith and possessing the features corresponding to that goal: a creed; the performance of worship services,

³⁴ Radio Free Europe/Radio Liberty Newslines, No. 48, v. 1, March 1, 1999.

³⁵ Agence France Presse, Moscow, March 2, 1999.

³⁶ 49 SZ RF 1997, Item 5183.

religious rituals and ceremonies; and the teaching of religion and a religious upbringing of its followers.

The creation of religious associations in state, military, or municipal institutions is forbidden. However, the Orthodox Church is lobbying now to get permission for religious work in military units among soldiers and in prisons. Reportedly, an executive order on this issue is already drafted, and by an Order issued by the Ministry of Defense in 1994, commanders of the units are to decide whether to let chaplains into the units. The first Orthodox chaplains practiced their services during the Chechen war in 1994-1996.

Religious associations whose activity is associated with violence against citizens and other infliction of harm to their health, or with inciting citizens to reject their civic responsibility or to perform other unlawful actions are prohibited also. The act of creating and likewise the leading such associations is punishable under the CRIMINAL CODE of the Russian Federation by a fine from 200 to 500 times the amount of the minimal labor wage, or by imprisonment for a term of up to 3 years. Participation in the activity of such an association and propaganda for the activities specified above are punishable also by a fine from 100 to 300 times the amount of minimal labor wage, or by imprisonment for a term of up to 2 years.

Religious associations may be created in the form of religious organizations or religious groups. Different rights are prescribed for each type of the association.

Religious groups may be formed by Russian citizens without state registration and obtaining the rights of a legal entity. Premises and property necessary for the activities are to be provided by the participants. Religious groups may be established for joint confession and their members are restricted in the realization of other rights declared by the Law.

A religious organization is a state-registered association having at least ten members who have reached the age of majority. State registration entails the receiving of a legal personality, and some other rights, such as the adoption of internal regulations of the religious organization; maintaining of houses of worship and installations and other objects and places specially designated for divine services; the right to produce, acquire, export, import, and distribute religious literature and other printed, audio and video materials; to carry out charitable activities; to found institutions for professional religious education; to establish international ties and contacts; to own buildings and

plots of land; and to perform entrepreneurial activities, to create their own enterprises, and conclude employment agreements.

The problem of establishing and registering a religious organization is one of the most disputable questions of this legislative act. The Law states that additional normative documents devoted to the implementation of this Law shall be elaborated on by the Russian Government. In order to register a religious association, the Law obliges believers to present evidence of the existence of their organization in an organized form over the course of fifteen years. But the Law does not oblige any state organ to grant the status, nor does it establish a system for granting it. In practice, it means that everything will be decided by local executive bodies and Orthodox priests who are included in local licensing committees.

Restrictions are also imposed in regard to foreign religious organizations which can open only representative offices. All foreign organizations are reprimanded from religious services and activities. This provision allows any association, whether foreign or Russian, which has a superior or governing center abroad, to be labeled a representative body of a foreign religious organization. Believers who, in accordance with their own convictions, cannot declare their doctrinal independence from a spiritual center located beyond Russia's borders, for example, Catholics, could by this principle be completely deprived of their rights to confess their faith publicly and jointly with others.

The Law contains restrictions on the rights of Russian Federation citizens predominantly resident outside the Russian Federation and also of persons who are not Russian citizens. The Law stipulates that only Russian Federation citizens who are permanently resident in one locality can profess and propagate their faith collectively, but may satisfy their religious needs as individuals only, even though the Constitution of the Russian Federation declares that foreigners and stateless persons residing in Russia enjoy the rights enshrined in the Russian Constitution on equal terms with Russian citizens.

Supervision concerning compliance with the legislation on freedom of conscience, freedom of creed, and on religious organizations is carried out by the organs of the Procuracy of the Russian Federation.

A local self-government authority, which is usually the body that has registered a religious organization, monitors the observance of the latter's

charter as related to the organization's goals and its manner of activity. Being organs directly connected with the local populace, the local government authorities could act in the interests of the majority, which could lead to the infringement of the rights of minorities. This might allow multiple violations of the rights of believers before the completion of judicial determinations which can last for months. Radio Free Europe/Radio Liberty reported that the day after the Law entered into force, Protestant churches in the Northern Caucasus region were closed by orders of local self-government authorities without any explanation. After the adoption of this Law, the authorities in different Russian regions urgently began to establish social organizations whose goal is to resist the involvement of youth in sects and non-traditional religious groups.³⁷

XI. COMPLIANCE WITH INTERNATIONAL OBLIGATIONS

In evaluating the religious freedom legislation in Russia in the light of international human rights provisions, it seems relevant to begin by noting remarks made by President Boris Yeltsin on July 28, 1997. Yeltsin rejected the Russian Law as adopted by the State Duma on June 23, 1997,³⁸ and stated that the Law countermanded generally accepted principles of international law, such as Articles 18 and 19 of the Universal Declaration on Human Rights, Articles 18 and 19 of the Covenant on Civil and Political Rights, and Articles 9 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The President of the Russian Federation also used the occasion to complain that a reference to international legal acts as an integral part of Russian legislation had disappeared from the text of the federal law, which only retained the auxiliary use of the provisions of international treaties for the purpose of interpreting Russian legislation on freedom of conscience. Following the adoption of the new Russian "compromise" Law on Religion of September 26, 1997, Yeltsin's July remarks may now be seen as having only an historical value because they were not considered by the legislators. Even so, they were correct and show the extent to which domestic policies may clash with human rights law.

³⁷ RFE/RL Newslines, No. 218, Vol. 1, October 1997.

³⁸ Rossiiskaia Gazeta [official gazette of the Russian Government], September 16, 1997.

1. COMPLIANCE WITH INTERNATIONAL AND EUROPEAN HUMAN RIGHTS STANDARDS

The Russian Law and its implementing documents obviously contradict provisions of the Convention because they impose special restrictions and require state interference in the activities of religious organizations. In 1995, when President Boris Yeltsin submitted Russia's application for admission to the Council of Europe, an Explanation to the Plan of Improvement of the Legal System in Russia was attached. In regard to the Law on Freedom of Conscience, the Plan stated that the modernization of the then valid Law was foreseen, and the more detailed version would be drafted. However, at that time the law in force was totally in accordance with the recommendations of the Council of Europe, and there were no problems with the realization of religious rights in Russia. The Conclusion No. 193 of the Parliamentary Assembly of the Council of Europe issued on January 25, 1996, on the Russian Admission Application stated that the process of political, legal, and economic reforms in Russia was continuing. Despite the fact that legal experts of the Parliamentary Assembly discovered that the Russian legal system had certain shortcomings (Conclusion on Juridical Expertise of October 7, 1994), it was emphasized that Russia was seen as striving toward the rule of law and that it understood the necessity of implementing laws.

Defining the major tasks that Russia had to fulfill in order to bring its legislation and politics into compliance with the European standards and requirements, the Assembly recommended to the Russian Government to return the previously nationalized property to religious organizations as soon as possible. That was the only recommendation in regard to the issue of religion. This problem is still not resolved. Even though the houses of worship were transferred to the religious organizations for use, the religious organizations do not own them, and the state keeps property rights over all these buildings. The Law on Privatization also excluded the Church from participation in the privatization process. Religious organizations are not allowed to buy shares of privatized enterprises.

In addition to the Law on Religious Organization, Russia has to amend and change many other legal acts which even indirectly deal with the issues of human rights and religious freedom. One of the most important is the area of judicial reform. The Russian Government has still done nothing to make it possible for Russian citizens to appeal to the European Court of Justice or European Court of Human Rights or to have the decisions of these courts implemented in Russia.

Contrary to European provisions requiring equal status for religious organizations, Russian regulations allow state authorities to grant a privileged status for one or another religious organization as it wishes. Tax law is one of the instruments used for such favoritism.

The strong involvement of the Russian Orthodox Church and its governing institution in Russian political and social life may be considered a violation of European standards. The hierarchs of the Russian Orthodox Church openly insist on publication of the patriarchate documents and statements in the official governmental newspapers. Just recently, the Patriarch of Russia made a statement criticizing the intention of the Government to introduce an alternative military service and said that Russia should not abolish the death penalty. The implementation of both measures is required by the Council of Europe as a condition for successful Russian membership in this organization. Strong support of the political opposition and announcement of the anathema to the state authorities contradict the standards of the separation State-Church relations accepted in European countries.

2. REALIZATION OF EUROPEAN RELIGIOUS RIGHTS IN RUSSIA

The most recent ratification of the European Convention on Human Rights by the Russian Federation State *Duma*³⁹ raised the question of Russia's adherence to its Human Rights obligations. Despite the fact that the Russian Constitution does not foresee any additional conditions for international laws to be applied in Russia and provides for the priority of international legal norms over domestic, the problem of the acceptance of the Convention is acute. During the discussion which preceded the ratification, Members of the Russian Parliament suggested that Russia ratify the Convention conditionally if all provisions of Russian laws which contradict the Convention would still remain in force.

International observers mention three major problems in regard to the adoption of the Convention:

Whether the acceptance of the Convention will affect the Russian legal system regarding European human rights laws;

³⁹ 9 SZ RF 1998, Item 1090.

What Russia sees in the Convention: a real international law with the system of obligations or a tool which may be used to make a pleasant international image; and

How rulings of the Strasbourg judges, which are usually directed against governments will be enforced in Russia.

In February 1996, when Russia was admitted to the Council of Europe, a greater weight was given to political factors than to legal criteria. Presently, human rights specialists assume that if this approach continues, the legality of the Strasbourg human rights system will not be enforced and will be flouted.⁴⁰

Particular concerns were expressed regarding the implementation of article 9 (freedom of conscience) of the Convention and related provisions of the Protocols. For instance, experts raised the issue of the realization of the right on education (Protocol 1, art. 2). In prohibiting religious education for those who are not members of officially registered religious groups, Russia violates the decision of the European Court on Human Rights. For instance, in the case of *Kjeldsen v. Denmark*, the Court found that the right to education means the right of parents to have their beliefs respected in the education of their children.

For the evaluation of the human rights situation in the Member Countries, the Council of Europe uses the analytical publication entitled EMINENT LAWYERS REPORT. In regard to Russia, the last issue of the REPORT states that Russia falls short of the usual rule of law stand. It is difficult to force the Russian Government to comply with international legal documents. The REPORT emphasizes the lack of experience in providing human rights protection at the level of municipal law. In addition, this document says that no domestic remedies may be enforced by the victims of human rights violations.

⁴⁰ See *M.Janis*, Russia and the “Legality” of Strasbourg Law, 8 European Journal of International Law 91 (1997).