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AS/Jur (1998) 17 rev
AS/Pol (1998) 10 rev
AS/Cult (1998) 12 rev
3 April 1998
ajdoc17.98

New Russian law on religion

Observations, dated 18 February 1998, of Mr Zorkaltsev, Chairman of the State Duma Committee on Public Unions and Religious Organisations on the motion for a recommendation on the new Russian law on religion tabled by Mr Atkinson and others

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Kevin McNamara, United Kingdom, Socialist Group

With regard to:

Paragraphs 1 and 2 of the motion for a recommendation[1]

Nowhere in the Federal Law "On freedom of conscience and religious associations", which was adopted by the State Duma on 19 September 1997 and entered into force on 1 October 1997, is it established that "only those churches and religious organisations which can prove that they were in existence before 1982 will be recognised". The period of 15 years since the beginning of an association's religious activities in Russia is stipulated only in respect of those religious groups wishing to enjoy the special status of "religious organisation" entitling them to tax privileges.

[1] See Appendix.

All religious associations having begun their activity in Russia during the period from 1982 to 1997 **are recognised by the State**, and those already registered maintain their entitlement to legal person status. However, until they complete 15 years of existence, the State will pay closer attention to their activities with a view to preventing possible violations of rights such as cruelty to people, sexual importuning, unlawful deprivation of freedom, trafficking in persons, incitement to violence, dissemination of racist views, tax evasion, unlawful transfers of capital, trafficking in arms and drugs, violation of labour legislation and unlawful medical practices.

Paragraph 3

No religious organisations will have "their fundamental rights" undermined. They may obtain legal person status by registering as a non-profit (public) organisation. Pending the expiry of the 15-year period of existence, the only restrictions on the entitlements of a religious association are that it may not:

1) enjoy the additional tax privileges granted by the State in accordance with the constitutional principle of the separation of religious organisations from the State (this principle does not extend to public associations);

2) obtain deferment of military service for its clergymen;

3) send representatives to state organisations, such as the army, police, schools, prisons etc, for which confirmation of official status as a religion is required.

Paragraph 4

"Pentecostalists" have existed in Russia for some 100 years, "Baptists" for 130 years, "Adventists" for 110 years, Muslims for 1,100 years, Orthodox Old Believers for 330 years and Orthodox churches representing alternatives to the Moscow Patriarchy for 72 years. The "Salvation Army", "Mormons" and "Quakers" were recently established but, as they are already registered, they nevertheless maintain their legal person status together with the right to found public organisations with the rights of a legal person.

Paragraph 5

Most of the rights listed are granted in Russia to every citizen in their capacity as a physical person, and they may, individually or collectively with their co-religionists, exercise those rights for religious purposes while complying with the general legislation applicable to all. In cases where legal person status is absolutely necessary but the religious group in question has been in existence for less than 15 years, it may register as a public organisation and thus acquire all the other property rights necessary to the exercise of fully fledged religious activity.

Paragraph 6

This is principally a new law, drawn up and approved in its final draft by the 15 largest faiths in Russia: the Russian Orthodox Church, the Catholic Church, the Synagogue, Baptists, Adventists, Pentecostalists, Lutherans, Muslims, Buddhists etc.

Paragraph 7

The Russian Federation, through its two chambers of Parliament, the President and the Government, considers that the law complies with the Constitution of the Russian Federation and international law. Specific shortcomings or imprecision within it do not give rise to any discrimination. In many respects the law is more democratic than similar legislative acts adopted in many European countries.

Paragraph 8

The Assembly has clearly received distorted information on the law. An objective assessment also requires, in addition to a good translation of the Russian original, examination of the law in conjunction with Russia's other legislative acts forming a unified whole in the legal regulation of public non-profit organisations.

* * *

In the USA, Great Britain and a number of other countries, the activities of religious organisations are governed by the general legislation applying to all non-profit organisations. In a number of countries, including the Russian Federation, there are special laws governing the specific aspects of religious activities. In the Russian Federation, the basic legislative act governing relations in the civil and real estate sphere is the Civil Code. It sets out general norms and principles for the activity of legal persons, including norms governing non-profit organisations in the most general sense. These are set forth in greater detail in the Federal Law "On non-profit activity", in force since 1995. The Civil Code has been further developed and supplemented by special laws dealing with specific aspects of this or that public-sphere activity, such as the laws on "public associations", "charity activities" and "freedom of conscience and religious associations". Draft laws on "political parties", "foundations", "unions for creative professions" etc await adoption.

The activities of citizens exercising their right to freedom of conscience in the Russian Federation are governed, therefore, by:

a) the Constitution of the Russian Federation;
b) the Civil Code of the Russian Federation;
c) the Law "On non-profit activity";
d) the Law "On freedom of conscience and religious associations".

Russian citizens wishing to profess their faith collectively with their co-religionists and in public are quite free to do so in the capacity of a "religious group" (Articles 6 and 7 of the Law "On freedom of conscience and religious associations"), in cases where they do not require the special status in respect of property ownership and legal position granted to a "religious organisation", which enjoys special privileges and may send representatives to state institutions. In this connection, Russian citizens may, as physical persons, either individually or collectively with their co-religionists, perform public and private rites following the general rules for public events, travel abroad and invite foreign citizens to visit in a private capacity (without the entitlement to work), establish enterprises manufacturing religious objects or publishing religious literature, found media devoted to religious matters, privately own premises or land for the holding of religious events, found private educational establishments specific to a religion and any kind of voluntary organisation or social assistance unit. As physical persons, they may not, however, represent religious associations not enjoying legal person status in civil law relations, as legal person status is necessary to do so.

Private individuals may not, either, found special religious institutions to train professional clergymen (seminaries etc), as there are special licensing arrangements for such institutions, granting privileges and deferment of military service.

Should worshippers require legal person status in this connection, they are also free to create public associations, charity funds and so on, in which they may pursue religious activities in full exercise of the rights provided for in international agreements: public and private religious services, public sermons and ceremonies, journeys abroad and invitations to visit for foreign citizens, the publication and acquisition of literature, the manufacture and acquisition of religious objects and the founding of media.

The status of public non-profit organisations falls short of that of religious organisations only in respect of the following entitlements:

1) additional tax privileges granted by the State in accordance with the principle of separation between religious organisations and the State (this principle does not extend to public associations);

2) deferment of military service for clergymen;

3) sending of representatives (clergymen, ministers, preachers etc) to state organisations: army, police, schools, prisons etc, as the State has no obligation to admit religious activists and does so at the request of citizens and on the basis of a certificate from a religious organisation with official status.

These are the three sole distinctions between the status of a public association and that of a religious organisation. Therefore, the question of the introduction of a 15-year period of existence in Russia before a religious organisation is recognised as such by the State concerns **solely those rights set out in the three aforementioned points.** If these provisions are compared with the universally accepted texts on human rights and religious freedoms, it is not difficult to ascertain that they do not fall within the meaning of the terms "freedom of conscience" and "freedom of religion". The matter of economic privileges and advantages does not affect a citizen's relationship with religion and grants no one preferential treatment on the grounds of their belonging to a specific religion.

As far as the 15-year period is concerned, it is necessary solely for the purposes set out by the European Parliament in February 1996 in its Resolution on cults, which called on all European Union Member States "**not to make the granting of religious status automatic and to consider, in the case of sects involved in undercover or criminal activity, withdrawing their status as religious communities, which confers tax advantages and certain legal protection**" and also to "ascertain whether there is sufficient provision, particularly in the areas of the law on associations, corporation law, tax and social security law and criminal law, to protect the public from unlawful activities". They are also asked to show vigilance to ensure that state subsidies are not granted to cults.

The measures adopted by the Russian Federation in this connection do not, therefore, deprive anyone of their fundamental rights and freedoms, including the followers of the cults mentioned, but they do make it possible to more closely examine their activities for a certain period of time and to limit the granting of incentives by the State itself.

As regards the retroactive 15-year period laid down in Article 27 paragraph 3 of the Law "On freedom of conscience and religious associations", it is true that its wording is somewhat imprecise and will, of course, be subsequently rectified. However, it entails no restriction whatsoever on the rights of baptists, pentecostalists, adventists, krishnas, alternative orthodox believers or others who have been active in Russia for a good deal longer than 15 years. The new religious formations and cults that have recently made their first appearance in Russia may maintain legal person status under the general registration procedure in the capacity of a public organisation and notify the State of the beginning of their religious activity with a view to attaining privileged religious status after completion of the 15-year period.

APPENDIX

Doc. 7957
6 November 1997

New Russian law on religion

Motion for a recommendation
presented by Mr Atkinson and others

This motion has not been discussed in the Assembly and commits only the members who have signed it

1. The Assembly is concerned at the new law on religion passed by the State Duma on 19 September 1997, by the Federal Council on 26 September 1997 and ratified on the same day by President Yeltsin.

2. It notes that only those churches and religious organisations which can prove that they were in existence before 1982 will be recognised.

3. Thus, all those that have taken root in Russia, or which have come out into the open from their underground past, will be deprived of their fundamental rights.

4. These include the Pentecostalists, Baptists, Adventists, Mormons, the Ukrainian Church and other Orthodox churches which refuse to accept the Russian Patriarchy, the Hari Krishnas, the Quakers, numerous Islamic associations and the Salvation Army.

5. They will be deprived of being able to hold services in public buildings such as hospitals, to own or rent land, to maintain a bank account, to make contracts, to print, publish and circulate religious literature, to have access to the media, to organise religious education, schools and seminaries, to invite missions from abroad, and other rights.

6. The Assembly notes that this is the third attempt to introduce such a law, despite representations to President Yeltsin and some religious leaders who were misled into supporting the new bill as being acceptable to world opinion.

7. The Assembly considers that this law contravenes the European Convention of Human Rights, the Russian commitments upon accession and, indeed, the Russian constitution.

8. The Assembly considers that this law should be annulled. It calls upon the Russian delegation to draw its concerns to the attention of the Russian Government and Parliament. It also recommends that the Committee of Ministers discuss the matter at its next meeting.

Signed : [2]

Atkinson, United Kingdom, EDG
Columberg, Switzerland, EPP/CD
Domljan, Croatia, EPP/CD
Eltz, Croatia, EDG
Fico, Slovakia, SOC
Gabrielescu, Romania, EPP/CD
Gelderblom-Lankhout, Netherlands, LDR
Gjellerod, Denmark, SOC
Hagard, Sweden, EDG
Jansson, Finland, LDR
Kelam, Estonia, EPP/CD
Mitchell, Ireland, EPP/CD
Solé Tura, Spain, SOC
Stoyanova, Bulgaria, EPP/CD

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2 SOC: Socialist Group
PPE/CD: Group of the European People's Party
GDE: European Democratic Group
LDR : Liberal, Democratic and Reformers' Group
UEL: Group of the Unified European Left
NR: not registered in a group