

# Registration of religious organizations

## Problems in decisions of the Constitutional Court of the Russian Federation and ECtHR

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### Abstract

This article reflects on some modern legal forms of activities of religious associations and problems of their registration. It focuses on the questions of legal backgrounds for the exercise of freedom of conscience in Russia, international standards of the activities of religious organizations, collective forms of freedom of conscience and religion in the court's decisions. Finally, it discusses the need to amend the existing Russian legislation that does not comply with the principle of secularism enshrined in the 1993 Constitution.

**Keywords** Religious association, state registration, secularism, traditional church, confessional policy.

Relations between church and state have developed through many centuries. The church's role in society has changed, and this is fixed on the basic laws of all countries. The religious question has always been significant for a multi-national and multi-confessional Russia. Rules of law have traditionally regulated the relationship between state and religious associations. In Russia there are situations where people cannot realize freedom of conscience in its collective form. Existing legal acts set significant limitations on the creation and activity of religious associations, but such restrictions are not imposed on any other type of non-profit organization (e.g. political parties, public associations, and others). This is a limitation of human rights on grounds of faith. At the same time, there are no federal legal norms on missionary teaching of theology and religious culture in educational institutions, chaplains' activities, counterac-

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tion of the antisocial sects, and state support of socially significant activities of the church. Therefore, activities of religious organizations can be arbitrarily restricted, until they are banned. Additionally, in a situation where there are no federal regulations, regional restrictions may be imposed that do not correspond to the principle of equality of religions (for example, there are the laws in the Voronezh and Belgorod regions, etc.). This practice hinders the progressive development of relations in the sphere of realization of freedom of conscience. It also leads to a violation of human rights, because citizens cannot freely realize freedom of religion collectively by creating a religious association, and some of their activities may be prohibited at any time. This circumstance does not comply with the country's political course and should be the subject of legislative reform. The exclusion of these defects should become one of the main directions of reform legislation.

This article compares the legal forms of activities of religious associations with the problem of their registration as decided by the court. This consists of four parts. The *first* describes the legal framework, legal status of religious associations (religious groups and organizations), and discriminatory status of religious groups compared to religious organizations. The *second part* analyzes the international instruments regulating the issue of the status of religious associations and the main principles which should be followed in this field. The *third part* deals with the jurisprudence of the Russian courts and the Constitutional Court of Russia to assess the requirements for registration of religious associations. The fourth section sets out the legal positions of the European Court of Human Rights (ECtHR) in order to prevent and eliminate problems in the legal classification of religious groups and the order of their registration.

Based on the comparative analysis I will suggest amendments to the current Russian legislation to avoid unequal treatment of different types of religious associations, and exclude significant restrictions on freedom of conscience. The paper will examine the Russian experience from a comparative perspective. It could help to modernize regulation and suggest possible practical recommendations to legislators.

## **1. Russian legal background: implementation issues of freedom of conscience**

According to Article 14 of the Constitution of 1993, Russia is a secular state. Religious associations shall be separated from the State and shall be equal before the law, and no religion may be established as a state or obligatory one. This provision is considered by the Constitution of the Russian Federation as one of the fundamentals of the constitutional system.

In the Russian Federation there are a large number of legal acts regulating the status of religious associations.<sup>2</sup> Some laws do this indirectly (as they are not adopted to regulate the status of such organisations as their main objective), but regularly separate elements of the legal status. For example, the counterextremism law places restrictions on religious freedom. In addition to the Constitution (Art. 14, 28, 30), the 1997 Federal Law on Freedom of Conscience and Religious Associations has an important place in the regulation of questions of realization of freedom of conscience, including in its collective forms.<sup>3</sup> And although the said law mainly corresponds to the provisions of the 1993 Constitution and international obligations of Russia, a number of its provisions, in our point of view, have a contradictory character. During his adoption at the session of the State Duma of the Russian Federation (the lower chamber of Parliament) on 19 September 1997 Mr. V. Zorkaltsev, chairman of the Duma committee on affairs of social and religious associations and one of the drafters of the law, spoke as follows before the law was put to a vote:

Nevertheless, I will remind you of the essence of this law. It is this: the law will create a barrier on the path to religious expansion in Russia, it will hinder the development of totalitarian sects and restrict the activities of foreign missionaries, while at the same time creating conditions for the activities of our traditional religions and confessions. I say that to those who today feel that our law is unfit and are planning to vote against it. And I want to put this question to you: whose side are you on, dear colleagues?

That is, the law was conceived as discriminatory from the outset. Its disadvantages include the following: First, the formulation of a preamble is incorrect.<sup>4</sup> All the religious diversity of Russia is presented as a hierarchy of religions with the recognition of the special contribution “of Orthodoxy to the history of Russia and in the formation and development of Russian spirituality and culture.”<sup>5</sup> Such legal regulation entails preferences for this church and a negative attitude towards new religious movements. Second, the legislator, dividing religious associations into

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<sup>2</sup> See, the 1993 Constitution of the Russian Federation, the 1996 Federal Law 7-FZ on Noncommercial Organizations, the 1997 Federal Law 125-FZ on Freedom of Conscience and Religious Associations, the 1995 Federal law 135-FZ on charitable activities and charitable organizations, the 2001 Federal Law 129-FZ on State Registration of Legal Entities and Individual Entrepreneurs, the 2002 Federal Law 114 on Countering Extremist Activities, the 2010 Federal Law 327-FZ on Transferring Property of Religious Value Currently under Governmental or Municipal Control to Religious Organizations, etc.

<sup>3</sup> The 1997 Federal Law 125-FZ on Freedom of Conscience and Religious Associations, CL RF 1997, 3, P. 4465.

<sup>4</sup> Igor V. Ponkin, Commentary on some articles of the Federal Law on Freedom of Conscience and Religious Associations (Moscow: Institute of State-confessional Relations and Law, 2007).

<sup>5</sup> Vladimir Lukin, The conclusion of the Commissioner for Human Rights of the Russian Federation.” Russian Newspaper. (April 22, 1999) 77.

categories depending on their legal status, did not define the scope of rights of both types. Third, there is an absence of legal guarantees and mechanisms of state support for socially significant activities of religious organizations (such as rehabilitation of offenders, prevention of drug and alcohol addiction, care for socially unprotected people, etc.). Fourth, there is an absence of legal basis and mechanisms of government assistance to religious pilgrimage. Fifth, we face inefficiency and even corruption of the existing order of production of the state religious expert examination.<sup>6</sup> The principle on which the 1997 federal law was based allows the court to prohibit the activities of any religious association and introduces what may be called “quasi-official religion,” because law establishes a preferential status for “traditional” religious organizations and restrictions for new churches and for the activities of foreign missionaries. But the most discussed and controversial issue is legal classification and the system of registration of religious associations. The 1997 federal law provides the possibility of creating two types of religious associations: religious groups and religious organizations. Other types of legal organizational forms are not provided in the legislation. Their main difference is that a religious organization is a registered association of Russian citizens, which has legal personality, but religious groups have no status of legal entity, and therefore, fewer rights. For example, religious groups have no right to establish educational institutions, produce, purchase, export, import religious literature and other objects with religious significance, or to establish mass media. However, all of the above are very typical activities for any kind of religious association.

According to Article 9 of the 1997 federal law, the founders of a religious organization may comprise no less than 10 citizens of the Russian Federation associated as a religious group, having a confirmation of its existence in the given territory within no less than 15 years. In other countries there are no such restrictions on the registration of religious organizations. Or in the country-established compulsory registration of all religious associations (Argentina, Botswana, Vietnam, Cameroon, Mali, Mongolia, Morocco, Benin Republic, the Slovak Republic, Central African Republic, Switzerland, Sweden), or if the registration is not compulsory, but the participants decide to register the association, they can get legal status without time limits for the organization's existence in the country. They can be either a non-profit organization (Canada, Turkey), or have special status as a religious organization (Ukraine, Kazakhstan, Belarus). The term of activity in the country may be consid-

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<sup>6</sup> Anatoly V. Pchelintsev, What should the state religious expert examine? (2009) 3 Russian Justice at 49; Sergei A. Buryanov, Sergei A. Mozgovoy, The problems of implementation the freedom of conscience and trends in the relationship between the state and religious associations in Russia (Moscow: Institute for the freedom of conscience, 2004), Oleg N. Terekhov, Problems of constitutional and legal status of religious associations (Moscow, 2004), etcetera.

ered when the state is granting a special preferential status for religious association (for example, in Austria, when granting the status of “religious confessional communities”). Thus, in Russia if a religious group is not associated with any centralized religious organization, or does not have documents to substantiate its existence in the given territory for 15 years, it will not be registered as a legal entity. Therefore, citizens are not always able to realize freedom of conscience in its collective form as guaranteed by the Constitution and international treaties.

## **2. International standards and legal framework for the activities of religious organizations**

Because of the significance of entity status to the practical functioning of religious and other belief communities, and because of the variety of ways that states may impinge on the rights of such groups in affording them legal entity status, various countries have made commitments related to the right of religious associations on the status of the legal person.<sup>7</sup> After the Madrid meeting in 1983, the participating states of the OSCE reported that they undertake to “favourably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.”<sup>8</sup> This position was further strengthened in the Vienna Concluding Document (1989), which pointed out that participating states would not only “favourably consider applications,” but also grant at their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries. Thus, the particular form of legal entity can vary in different countries, but access to some form of legal entity, which allows the full range of religious activities, must be provided. Not every type of legal entity allows organizations to carry out the full range of religious activities, and especially as a form of religious group. Provisions of federal law that authorize a legal status to certain organizations (existing in the

<sup>7</sup> For example, the 1948 Universal Declaration of Human Rights (Art. 18), the 1966 International Covenant on Civil and Political Rights (Art. 18), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)(Articles 6,7); Helsinki Final Act (1975) (principle VII); Concluding Document of the Madrid Meeting (1983) (paragraph 12 of Questions Relating to Security in Europe); Concluding Document of the Vienna Meeting (1989) (principle 11); Document of the Copenhagen Meeting (1990)(Paragraph 9.4); Charter of Paris for a New Europe (paragraphs 5-6); Budapest Document toward a Genuine Partnership in a New Era (1994)(Chapter IV, 37).

<sup>8</sup> Concluding document of the Madrid meeting 1980 of Representatives of the participating States of the Conference on Security and Co-operation in Europe, held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference, Madrid, 1983 <http://www.osce.org/mc/40871> accessed 4 September 2013.

country for at least 15 years), but also prohibit certain types of activities that do not satisfy these criteria. These provisions fail to comply with standards set down by Article 9 of the ECtHR, which stipulates no restrictions on collective worship. Since such a limited status does not allow for the organization to realize its basic religious functions, refusal to provide the necessary legal status means to impose restrictions on the right to practice religion which is contrary to Article 9 of the ECtHR. This article guarantees freedom of thought, conscience and religion. This norm is closely related not only with Article 8, but also with Articles 10 and 11, since freedom to practice religion or belief includes the need to appeal to freedom of expression or freedom of assembly. But freedom of religion is not absolute and may be limited. It is difficult to agree with the refusal to grant entity status only because the organization does not “exist” before it is a “necessity in a democratic society.”<sup>9</sup> Respect for the rights of religious organizations requires that States adopt laws regulating the sufficiently adaptable activities of religious organizations. They must consider the interests of the different types of religious organizations that exist in each country. But Russian legislation has not fully fixed the international standards of realization of freedom of religion. Citizens cannot establish religious organizations without any restrictions.

### 3. Case law of the Russian courts

In cases relating to the implementation of freedom of conscience Russian courts have made several decisions, but in these the requirement of “15 years” has not been assessed.<sup>10</sup>

The most important case was considered in the Constitutional Court in 1999. The Constitutional Court of the Russian Federation considered the appeal of the Religious Society of Jehovah’s Witnesses in Yaroslavl City and the religious association “Christian Glorification Church.” The subject of both appeals was the requirement of Article 27 of the federal law on the need for annual re-registration of a religious organization for 15 years. In this period, they cannot enjoy the rights provided to other religious organizations. The Constitutional Court has not accepted the provisions of the law as unconstitutional and said that it does not apply to religious organizations established before the entry into force of federal law, as well as local

<sup>9</sup> Cole Durham, Freedom of religion or belief: laws affecting the structuring of religious communities, Organization for Security and Co-operation in Europe Review Conference, September 1999 ODIHR Background Paper 1999/4 <http://www.osce.org/odihr/16698> accessed 4 September 2013.

<sup>10</sup> See, decision 16-P of 23 November 1999 in the case of Religious Society of Jehovah’s Witnesses in Yaroslavl and Christian Glorification Church // CL RF 1999. 51. P. 6363; decision decision 46- of 13 April 2000 in the case of religious association “Independent Russian Region of the Society of Jesus” // CL RF 2000. 19. P. 2101; decision 7-O of 7 January 2002 in the case of religious association “the Moscow Branch of The Salvation Army” // CL RF 2002. 9. P. 963 and others.

religious organizations, within the structure of a centralized religious organization. In its decision, the court made several conclusions.

First, freedom of religion includes the freedom of creation of religious associations and their activities, which is based on the principle of legal equality. A federal legislator has the right to settle civil legal status of religious associations, including the conditions for recognition of religious associations as legal entities, the procedure of its establishment and state registration, and more. At the same time, the legislator should take into account the universally-recognized principles and norms of international law. Measures taken by the state on establishment and registration of religious organizations should not distort the essence of freedom of religion, freedom of association and their activities. Possible limitation affecting these and other constitutional rights must be justified and proportional constitutionally for significant purposes.

Second, the state may provide some restrictions, in order not to automatically grant legal status of a religious organization, prevent the legalization of sects that violate human rights and law, and prevent missionary activity, including the problem of proselytism, if it is incompatible with respect to freedom of thought, conscience and religion of other people.

Third, the provisions which are analyzed are to be considered in conjunction with other articles of federal law. Thus, the confirmation of 15 years of existence is not required to establish and register a local religious organization which is part of a centralized religious organization. And if a religious organization was founded before the entry into force of the federal law, then such confirmation is not required as a religious group has ceased to exist, transforming itself into a religious organization, which was registered as a legal entity and, therefore, considered to be established. Since that point it has obtained legal capacity. Such a religious organization is not required to re-register annually until the period of 15 years. That is, in its decision the court considered the problem formally. The constitutionality of the restrictions imposed by the Law for religious freedom in regard to other religious organizations is not directly considered. Such a position of the court caused a negative assessment from politicians and lawyers, who suggested that the court "elegantly retired from the recognition that discriminatory rules are unconstitutional", that the decision is limited, that it does not prevent religious discrimination, although it formally satisfies the specific applicants.<sup>11</sup> In its decision the Constitutional Court of Russia, instead of considering the content of the provisions of Article 27 of the federal law, found ways to resolve individual problems. It determined that

<sup>11</sup> Krasikov A. The Constitutional Court and the freedom of conscience in Russia. Constitutional Law: vostochnoevro-European survey ( Number 1, 2000). Vladimir Lukin, The conclusion of the Commissioner for Human Rights of the Russian Federation. Russian newspaper. (April 22, 1999) 77.

the challenged norms should have an entirely different interpretation. They may not apply to religious organizations that have state registration in accordance with the requirements of the former law.

#### **4. The ECtHR's assessment of collective forms of freedom of conscience and religion**

The procedure and requirements for registration of religious associations challenges not only Russia but also foreign countries. Many other European countries have experienced (and many still face) serious difficulties in this matter and the ECtHR had to deal with many cases on this topic. For example, the cases *Kokkinakis v. Greece* (No 14307/88, 25.05.1993, §17-18, 31, 33); *Otto-Preminger-Institut v. Austria* (No 13470/87, 20.09.1994, § 47); *Serif v. Greece* (No 38178, 14.03.2000, § 49); *Hassan and Chaush v. Bulgaria* (No 30985/96, 26.10.2000, § 60); *Wingrove v. the United Kingdom* (No 45701/99, 13.12.2001, § 53); *Kalaç v. Turkey* (No 20704/92, 01.07.1997); *Metropolitan Church of Bessarabia and Others v. Moldova* (No 45701/99, 27.03.2002, § 118); *APEH Üldözötteinek Szövetsége and Others v. Hungary* (No 32367/96, 05.10.2000), etcetera analyzed the problems of establishing the aim and object of guarantees of the freedom of thought, conscience and religion; forms of realization of the freedom of religion; the possibility of state intervention and its limits; the right to exercise freedom of religion in the form of an organized structure and the right to register a religious association and have legal entity status; the authorities' refusal to register a group directly affects both the group itself and also its presidents, founders or individual members; the autonomy of religious associations; certain powers of legal entity (such as the rights to own or rent property, to maintain bank accounts, to hire employees, and to ensure judicial protection of the community, its members and its assets) which are necessary for exercising the right to manifest one's religion.

One of the first cases concerning the rights of religious associations was the claim of the member of the *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (judgment of 31 July 2008, No 40825/98). Austria's experience is of great interest to Russia for several reasons. Austria, according to the Constitution of 1920 (the *Bundes-Verfassungsgesetz*), is a federal state as is Russia. This fact is important for the demarcation of competencies and powers between the federal government and regions, including issues of legal regulation of religious associations. In both countries in this area only the federal government may adopt rules of law. Also in the legislation of both countries there are certain periods of time ("trial period") after which religious groups can be registered. For example, in Russia, registration as a religious organization can happen after a group of people shall have conducted their activities for 15 years as a religious group. And in Austria, according to the



1998 Law on the Status of Religious Confessional Communities, a religious group should exist for at least 20 years in order to become a religious society. In addition, this is the first case consideration by the ECtHR against Austria, which discussed issues about the creation and activity of religious associations. The case most frequently discussed is the case on the right of citizens to alternative civilian service.<sup>12</sup>

In this case, Jehovah's Witnesses had filed an application complaining on two points. First, they had been denied registration and therefore the right to become a legal entity for 20 years (even though they had obtained it when the application was filed). And second, once they were officially registered, they were denied the more consolidated status of religious society with its special privileges because they did not fulfil the 10 year registration requirement under the law. Religious organizations are divided into three legal categories (listed in descending order of status): officially recognized religious societies, religious confessional communities, and associations. Each category of organizations possesses a distinct set of rights, privileges, and responsibilities. ECtHR, unlike of the Russian Constitutional Court, in the case on appeal of the Religious Society of Jehovah's Witnesses in Yaroslavl City and the religious association "Christian Glorification Church," considered the merits of the case. It concluded that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The court has consistently held the view that a refusal by domestic authorities to grant legal entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association. It also finds that the right of association applies to religious followers and that religious freedom must also be guaranteed through the autonomy of religious communities. The court noted that since religious communities traditionally exist in the form of organized structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified state interference. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society.

The most significant of ECtHR decisions in freedom of conscience protection cases against Russia was the decision of the case *Kimlya and Others v. Russia* of 1 October 2009. In other cases, decided by the ECtHR and connected with obstacles to the exercise of freedom of conscience (such as, the *Moscow Branch of the Salvation Army v. Russia*, *Church of Scientology Moscow v. Russia*, *Kuznetsov and*

<sup>12</sup> See, *Gütl v. Austria*, 49686/99; 12.03.2009; *Koppi v. Austria*, No 33001/03, 10.12.2009; *Lang v. Austria*, No 28648/03, 19.03.2009 and others.

Others v. Russia, Barankevich v. Russia, etc.), the violation of the Convention was established in connection with the fact that it violated Russian law.

In the case *Kimlya and Others v. Russia* violation of the Convention was established in the implementation of the provisions of the 1997 federal law “On Freedom of Conscience and Religious Associations.” Thus, the claim that in terms of the Convention the Russian legislation can serve as an object of the procedure (in compliance with the Convention), but not as a regulator, now confirmed the practice of the ECtHR. The court found a direct relationship between the right of freedom of religion and the right of freedom of association, thereby recognizing the right to establish religious associations as part of basic human rights and freedoms. And in the end the ECtHR concluded that the interference with the applicants’ right of freedom of religion and association was not “necessary in a democratic society” and there had been a violation of Article 9 of the Convention read in the light of Article 11. In this case, unlike in the case *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, religious associations are generally unable to register and have a legal entity in any of the forms. But by law in Austria they can be registered as a religious community.

## 5. Conclusions

Now in Russia there are many problems in the implementation of freedom of religion. In particular, there is a need to allow the registration of religious organizations without excessive restrictions and to ensure the equal legal status of religious organizations of every kind. The experience of foreign countries can be successfully applied to solve these problems. It is important to develop and adopt a new federal law that would exclude the shortcomings of existing rules, including the requirement to wait 15 years for the registration of religious organizations. This act, in our opinion, should be based on the clear and fully developed concept of relationships within the system: people – church – state. However, changing the basic principles of regulating the freedom of conscience and the legal status of religious associations should not be spontaneous. It should be a well thought out and coherent system of measures, based on the constitutional principles of the secular state and the equality of religious associations.

The implementation of freedom of religion does not depend on the status of a legal entity. Individuals and groups should be free to practice their chosen religion. In turn, the right to acquire the status of a legal entity is essential, if the religious association wants to go through the registration procedure.

Religious associations of any kind must get a status which would provide all the necessary powers to carry out the full range of their activities. In Russia, religious groups cannot enjoy the full range of rights necessary for worship before registering as the organization after 15 years of existence in the country.

The registration process should not be discriminatory. In a multi-religious country public officials must observe strict neutrality and impartiality in their relations with religious communities.

During the implementation of a new state policy it is necessary to consistently adhere to the principle of the autonomy of religious organizations. There should not be any interference in their internal activities, as takes place in Russia now. All religious organizations must have the freedom to organize in accordance with their hierarchical structures (election of spiritual leaders and appointment to the church office), freedom to communicate with the followers of the respective religion, freedom to receive and publish religious literature, freedom of religion spread outside the places of worship, freedom in the use of the media; freedom in the conduct of educational, charitable and social activities, etcetera.

New policy should be carried out in phases, with the introduction of new regulations and rules, their approbation, identification gaps and their subsequent elimination. At the initial stage, Russia needs to make changes to the existing federal law. In addition, it would be advisable to adopt legal acts regulating social relations in areas not covered by this law (e.g., chaplains and missionary activity, etc.).