

THE RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION IN THE RUSSIAN FEDERATION'S LEGISLATURE AND JUDICIARY

BY ANATOLIY V. PCHELINTSEV*

*Maria B. Grise** and Joshua L. Bettridge*** translators*

Religion is of the utmost importance in the social life of modern Russia. As of January 1, 2001, there were approximately 20,215 religious congregations representing more than sixty different confessions of faith.¹ The largest religious congregation is the Russian Orthodox Church (Moscow Patriarchy), which has approximately 11,000 registered parishes, monasteries, and missions. The Pentecostals have approximately 1,500 associations, and the Evangelical Christian-Baptists have approximately 1,000 communes.² There are also religious congregations that have a smaller number of believers in Christ, amounting to just a few parishes, including the Copts, Mennonites, Quakers, and Scientologists, among others.³ The abundance of different confessions of faith in the Russian Federation duly affects the legislature, the relations between state and religion, and the practice of law in the area of freedom of conscience and freedom of religion.

I. LEGAL BASES OF FREEDOM OF CONSCIENCE AND RELIGION

* Military Institute, Department of Law and Military Science (Moscow) 1978; J.D. 1987. Member, Council of Experts, Ministry of Justice of the Russian Federation, (conducting state examinations of religious matters); member, Council of Experts on Human Rights in the Russian Federation; member, Bar Association of the City of Moscow. The author participated in drafting the Constitution of the Russian Federation (1993) as a member of the President's Committee; has been involved in enacting a number of legislative acts, and has represented different Christian religious organizations in numerous court proceedings. Prior to 1993, Mr. Pchelintsev served in the military justice system. Since 1994, he has been the Director of the Institute of Religion and Law in Moscow. Mr. Pchelintsev became Co-Chairman of the Slavic Center for Law and Justice (SCLJ) in 1998, and currently resides and works in Moscow. Mr. Pchelintsev is the Editor-in-Chief of the *Journal of Religion and Law* and has authored approximately one hundred publications on protecting human rights, freedom of conscience, and the relations between state and church, including: *Freedom of Conscience and Abuse of Freedom of Mass Media: Protection of Honor, Dignity, and Business Reputation* (Moscow, 1998); *Pressing Issues of Perfection of the Relations Between State and Religion // Religious Organizations and State: Prospects of Interaction* (Conference Materials, Moscow (1999)), and *Trial Practice of Matters Related to Effectuation of the Right to Freedom of Conscience and Activities of Religious Organizations* (Moscow, 2000 (co-authored)).

** Articles Editorial Staff, 2000-01, *Regent Journal of International Law*; J.D., Regent University School of Law, 2002. The translator wishes to express her deep gratitude to Tatiana Tomaeva from the Slavic Center for Law and Justice (Moscow, Russia), Joshua P. Berndt, and the members of the *Regent Journal of International Law* for their editorial assistance.

*** Notes Editor & Technical Editor, 2000-01, *Regent Journal of International Law*; J.D., Regent University School of Law, 2001; B.A., Hampden-Sydney College, 1998. The translator would like to thank his mother, Cynthia M. Noble, for her support and encouragement.

¹ After the expiration of the re-registration deadline, statistical data was compiled by the Department of Registration of Religious Organizations of the Russian Ministry of Justice. The Department provided this data to the author. See also Interview with Victor Korolyov, *Re-registration is over. Will religious organizations face problems?*, No. 1 J. RELIGION & L. 7 (2001). Alexander Zaluzhny, *Some results of registration of religious organization according to the federal act On Freedom of Conscience and on Religious Associations*, No. 2 J. RELIGION & L. 5-7 (2001).

² *Id.* The Muslim association has more than 3,000 registered organizations. *Id.*

³ *Id.*

Legal relations in the area of religious rights, human rights, and the activities of religious congregations are governed by the federal law of 1997, *On Freedom of Conscience and Religious Congregations*.⁴ Religious legislation also embraces a totality of legal acts and norms that are intertwined, interrelated, and subject to their own hierarchy and restraints. Among the most important components of this *modus operandi* are recognized principles and norms of international law and the international treaties of the Russian Federation. For the first time in the history of Russia, the Russian Constitution contains a provision declaring that these principles and norms are an integral part of Russia's legal system.⁵ As a result, this provision affords the opportunity to directly enforce international treaties, including the Universal Declaration of Human Rights,⁶ the International Covenant on Civil and Political Rights,⁷ the European Convention on Human Rights and Protocols,⁸ and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.⁹

Article 14 of the Constitution of the Russian Federation proclaims: "[t]he Russian Federation is a secular state. No religion can be established as an official state religion or an obligatory religion. Religious congregations are separated from [the] state and are equal before [the] law."¹⁰ The Constitution also guarantees to every person freedom of conscience and religion,¹¹ prohibits any restriction of human rights based on religious affiliation,¹² outlaws propaganda or agitation that may arouse religious abhorrence and hostility,¹³ and provides for the right to have military service replaced with an alternative civil service based on religion or belief.¹⁴

The federal law *On Freedom of Conscience* should be closely scrutinized. Among the more questionable components of this law, is the specific reference in its preamble to the *special role* of the Orthodox Church. The preamble then goes on to enumerate other religions that are "respected" by the state,¹⁵ thus violating the constitutional principle of equality of all religious congregations before the law. This contravenes the federal law, *per se*, because article 3 prohibits the establishment of supremacy or other forms of discrimination based on religion.

Article 3, paragraph 5 of the federal law also contains prohibitory language that is improperly employed against religious congregations. It declares that "[t]he law prohibits involvement of minors in religious congregations and bans religious education of minors of their own free will without parental consent . . ."¹⁶

⁴ See generally O Svobode Sovesti i o Religioznih Objedinenijah (On Freedom of Conscience and Religious Congregations), 125-FZ, Sep. 26, 1997 (amended Mar. 26, 2000), Ross. Gazeta, 1 Oct., 1997, No. 190; Sobr. Zakonod. RF, 1997, No.39 [weekly] (hereinafter "*On Freedom of Conscience*").

⁵ See generally KONST. RF (1993) (amended Feb. 10, 1996) art. 15 (4), Ross. Gazeta, 25 Dec., 1993, No. 197.

⁶ See generally Universal Declaration of Human Rights, GA Res. 217(III), U.N. GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948); Ross. Gazeta, 5 Apr., 1995, No. 67.

⁷ See generally International Covenant on Civil and Political Rights, GA Res. 2200A(XXI), U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966); 999 U.N.T.S. 171, 6 I.L.M. 368 (1967); Biull. Verkh. Suda RF, 1994, No. 12.

⁸ See generally European Convention on Human Rights and Protocols, 213 U.N.T.S. 222, Sept. 3, 1953 (amended by Protocols Nos. 1-8), Ross. Gazeta, 5 Apr., 1995, No. 67; available at <http://www.kentlaw.edu/ic3/humrts/z17eur.htm> (visited May 22, 2001).

⁹ See generally Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, U.N. GAOR, Plen. Sess., UN Doc. 36/55 (1981).

¹⁰ KONST. RF, *supra* note 5, art. 14.

¹¹ *Id.* art. 28.

¹² *Id.* art. 19 (2).

¹³ *Id.* art. 29 (2).

¹⁴ *Id.* art. 59 (3).

¹⁵ *On Freedom of Conscience*, *supra* note 4, pmbles.

¹⁶ *Id.* art. 3, ¶ 5.

Analogous to the norms of the Criminal Code,¹⁷ such language deliberately presupposes the criminal character of activities conducted by religious organizations. The federal law includes provisions that both restrict human rights in the registration of religious organizations (the principle of territorial membership, citizenship, etc.) and restrain the rights of religious organizations (a fifteen year *probationary* term of existence).¹⁸ These provisions, together with others, contravene the Constitution, create chaos in the practice of law, infringe significantly upon the rights of citizens, and undermine the respect that they should pay to the authoritative nature and validity of laws in general.

Beside the act *On Freedom of Conscience*, the federal code includes approximately one hundred laws employing language in varying degrees of validation in regard to religious congregations. These laws can be subdivided into several groups. The first and most extensive is not directly related to religious congregations. They include federal laws on mass media, on burial and funeral matters, and on federal security services. These contain the norms that restrict the state and its institutes from interfering in the activities of religious congregations. Furthermore, these laws effectuate the right of freedom of conscience, freedom of religion, and equality of human rights, regardless of religious affiliation.

A separate group of federal laws governs the exercise of Christian rights in organizations and establishments. This group imposes restrictions on the rights and freedoms of employed citizens because of their participation in military service, strictly regulated institutions, and hospitals. Federal laws also control the manner in which religious organizations conduct different types of educational and charitable activities. Another large and rather important group of acts regulate the financial and economic activities of religious organizations. Along with the federal legislature, thirty-three jurisdictions in the Russian Federation have enacted their own regulations and other standardizing legal acts on religious issues.

At the same time, pursuant to article 71 of the Constitution, control and regulation of human rights and freedoms is within the power of the Russian Federation.¹⁹ Separate jurisdictions (governmental districts) of the Russian Federation are not entitled to enact laws that *establish* and *regulate* legal relations in the area of human rights law. Their subject matter authority only covers issues concerning the *protection* of human rights and freedoms, which are jointly governed by them and by the Russian Federation.²⁰ The enactment of such laws by jurisdictions of the Russian Federation is unconstitutional because the jurisdictions' role in this particular issue is exclusively legislative.²¹ Apart from their unconstitutionality, each jurisdiction's regulatory law establishes on its territory a special legal order regulating activities of religious organizations and their representative agencies. These legal orders intrude into an arena which is the sole and exclusive prerogative of the federal legislature.

For example, these legal orders significantly impact the affairs of missionaries and restrain religious missions even though international law supports the right of every person to distribute, publish, and propagate religious information and ideas by any means regardless of state borders. Freedom to choose, practice and disseminate religious beliefs is also guaranteed by the Constitution.²² It follows that missionary activities are included in the continuum of activities that every person and religious organization has a right to engage in. Distinguishing missionaries and missionary

¹⁷ UK RF, No. 63-FZ, June 9, 1996 (amended 09 July 1999), *Ross. Gazeta*, 18-20 June, 1996.

¹⁸ *On Freedom of Conscience*, *supra* note 4, art. 3, ¶ 5.

¹⁹ KONST. RF, *supra* note 5, art. 71.

²⁰ *Id.* art. 72.

²¹ *Id.* art. 104. The legislative authority granted to the jurisdictions is guaranteed by Article 104 of the Constitution. *Id.*

²² *Id.* art. 28.

activities as separate objects of legal regulation as most laws do, is thus illegal. These enactments and regulations restrict the rights of foreign citizens within the territory of particular jurisdictions, thus contravening the Constitution. Legislative regulation should not target missionary activities, but rather, should focus on the manner of establishing and operating religious organizations, opening branches and representative agencies of foreign religious organizations, conducting accreditation of their employees, and ensuring the legal status of foreign citizens within a state. Pursuant to article 62 of the Constitution, only federal law or an international treaty can restrict the rights of foreign citizens.²³

The laws of several jurisdictions in the Russian Federation employ such terms as *sect* and *totalitarian sect*. For example, the law of the Archangel District, entitled *On Regulation of Activities of Religious Sects, Representative Agencies (Branches) of Foreign Religious Organizations, Separate Advocates and Missionaries on the Territory of the Archangel District*, defines *sect* as "a religious association of citizens for the purposes of joint confession and dissemination of teachings of religious faith, distinguishable from teachings of traditional religions."²⁴ It defines *traditional religion* as a "religion which is historically rooted in a greater part of the population residing in a particular territory."²⁵ Without disputing different meanings of *sect*, the term should not be used in the practice of law because it violates the principle of equality of religious congregations before the law, which is mandated by the Constitution and the federal legislature.²⁶

The complexity of this issue is twofold. First, employment of such terms by the jurisdictions infringes on the legislature's control over the freedom of religion and of religious congregations. Second, such usage by the jurisdictions violates both the supremacy principle of the Constitution and federal laws. When analyzing legislation on freedom of conscience, one must consider important aspects of this area of social relations which are outside the scope of the legislator's attention. For example, the following areas desperately lack federal regulation: providing equal access to mass culture (House of Culture, Recreational Clubs, etc.) for all religious congregations, furnishing rules of religious conduct by state employees in the places of their employment, allowing deferment from military service for clergymen, ensuring exercise of freedom of conscience in the military forces, administering an alternative civil service based on religious beliefs, and implementing its procedural safeguards.

II. ISSUES OF FREEDOM OF CONSCIENCE AND RELIGION IN THE RUSSIAN FEDERATION CONSTITUTIONAL COURT

On November 23, 1999, the open session of the Constitutional Court of the Russian Federation ruled on the constitutionality of the provisions in article 27, paragraphs 3 and 4 of the law *On Freedom of Conscience*.²⁷ Two claims were filed separately, but were subsequently joined; one by the Religious Association of Jehovah's Witnesses in Yaroslavl, and the other by the Religious Organization, Christian Church of Glory, in Abakan, the Republic of Hakasiya. Both parties

²³ *Id.* art. 62.

²⁴ O Regulirovanii Dejatel'nosti Religioznych Sekt, Predstavitel'stv (Filialov) Inostrannykh Religioznykh Organizatsij, Otdel'nykh Propovednikov i Missionerov Na Territorii Arhangel'skoi Oblasti [On Regulation of Activities of Religious Sects, Representative Agencies (Branches) of Foreign Religious Organizations, Separate Advocates and Missionaries on the Territory of the Archangel District], 1997, art. 2.

²⁵ *Id.*

²⁶ See generally KONST. RF, *supra* note 5.

²⁷ Postanovlenie Konstitutsionogo Suda RF [Decree of the Constitutional Court RF], No. 16-P, Nov. 23, 1999, Ross. Gazeta, 16 Dec., 1999; Sobre. Zakonod, RF, 1999 [weekly]; Vestn. Konst. Suda RF, 1999, No. 6 [monthly].

claimed violations of constitutional rights and freedoms against their fellow citizens under the provisions of the law *On Freedom of Conscience*. The parties contended that the law restricted the rights of religious organizations that do not have documents confirming their existence in the appropriate territory for at least fifteen years.²⁸ Pursuant to the law *On Freedom of Conscience* (and unlike other religious organizations that were registered before October 1, 1997, in accordance with the law of the Russian Soviet Federative Socialist Republic (RSFSR) *On Freedom of Religion*), religious organizations "that lack the document confirming their existence in the appropriate territory for at least fifteen years enjoy in full the legal rights of a juridical person if they re-register annually prior to the completion of the fifteen year term."²⁹ Thus, certain religious organizations could not exercise rights as guaranteed by the federal law.³⁰

The Constitutional Court held that the challenged provisions of the federal law *On Freedom of Conscience* did not contradict the Constitution because they "apply (i) to religious organizations that are established before the federal law took effect and (ii) to local religious organizations that are included into the structure of a centralized religious organization."³¹ The Court also held that the provisions considered "mean that such religious organizations fully enjoy all legal rights of a juridical person without confirmation of a minimum period of a fifteen year term of existence on the appropriate territory, without annual re-registration, and without restrictions provided in article 27, paragraph 4 of the federal law."³² Without scrutinizing the constitutionality of the challenged provisions (article 27, paragraphs 3 and 4) in the law *On Freedom of Conscience*, the Constitutional Court held that they did not apply to religious organizations that were established before the federal law took effect on October 1, 1997, or to the local religious organizations which were included in the structure of a centralized religious organization.³³

The Constitutional Court dismissed the claims of unconstitutionality regarding the federal constitutional law *On the Constitutional Court of the Russian Federation*.³⁴ Pursuant to articles 96 and 97 of the constitutional law, the challenged legal provisions are subject to judicial scrutiny so long as the plaintiff has a significant stake in the controversy.³⁵ Here, the Constitutional Court narrowed the scope of judicial scrutiny concerning the constitutionality of the challenged provisions of the federal law by the degree of their applicability to similar religious organizations.

²⁸ KONST. RF, *supra* note 5.

²⁹ *Id.*

³⁰ These rights include (1) the right to appeal to the President of the Russian Federation for deferment from military conscription or the waiver of military training for the clergymen, KONST. RF, *supra* note 2, art. 3, ¶ 4; (2) the right to create educational institutions and to teach children religion outside the framework of the educational program based upon (i) the request of parents, (ii) the consent of children who are enrolled in state and municipal educational institutions, and (iii) the agreement with the appropriate organ of local self-government, *Id.* art. 5, ¶ 3, 4; (3) the right to have representation of a foreign religious organization, *Id.* art. 13, ¶ 5; (4) the right to conduct religious ceremonies upon request by citizens in medical, prophylactic, and hospital institutions as well as orphanages, nursing homes for the elderly and invalids, and in penitentiaries, *Id.* art. 16, ¶ 3; (5) the right to produce, procure, export, import, and disseminate religious literature, audio-video materials, or any other religious objects, *Id.* art. 17, ¶ 1; (6) the right to establish organizations that print religious literature and produce objects for denominational purposes, *Id.* art. 17, ¶ 2; (7) the right to create religious educational institutions for training clergymen and other religious personnel, *Id.* art. 19; and (8) the right to invite foreign citizens to engage in professional activities, including preaching and other religious activities, *Id.* art. 20, ¶ 2.

³¹ CC RF, No. 16-P, 23 Nov. 1999, Ross. Gazeta, 16 Dec., 1999; Sobr. Zakonod. RF, 1999, No. 51 [weekly]; Vestn. Konst. Suda RF, 1999, No. 6 [monthly].

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* art. 96, 97.

The Constitutional Court advanced the following reasons for its decision: (1) both religious organizations are claimants; (2) they were established before October 1, 1997; and (3) each one of them is included in the structure of the appropriate centralized religious organization.³⁶ This rationale, however, raises the issue of whether the requirements mandated by article 27, paragraph 3 of the law *On Freedom of Conscience* are in any way related to religious congregations that were established by the citizens after the federal law took effect which were not included in the structure of a centralized religious organization.³⁷ Pursuant to article 9, subsection 1 and article 11, paragraph 5 of the law *On Freedom of Conscience*, a religious group must exist for fifteen years before it may be registered as a religious organization.

Another important question is the status of other religious organizations (that the judgment of the Constitutional Court refers to) when the Court does not consider those organizations to fall under any of the challenged provisions. The Constitutional Court disavowed the Jesuits' claims that the challenged provisions of the federal law were unconstitutional without addressing the issue of constitutionality. The Court's holding is perhaps more understandable if one considers the tense socio-political situation under which the challenged federal law was enacted.

The Constitutional Court's resolution will undoubtedly have an important impact on practice. Under this judgment, all religious organizations that were established before October 1, 1997, are no longer required to confirm their fifteen year term of existence in the appropriate territory when complying with the state re-registration policies and procedures. Regardless of their own inclusion in a centralized religious organization, all religious organizations can now fully enjoy all the rights of a juridical person without annual re-registration or restrictions as stated in article 27, subsection 3 of the law *On Freedom of Conscience*. The same religious organizations that have already been re-registered and, due to lack of documentation confirming a fifteen year term of existence, were forced to exclude from their bylaws the rights that are mandated in the law *On Freedom of Conscience*,³⁸ are now entitled to supplement and modify their bylaws to eliminate restrictions.

In addition, these religious organizations may now present modifications to the Ministry of Justice for registration. Each group shall be granted a new certificate of state registration without any reference to its temporary character. The Constitutional Court considered and followed established practice by according deference to religious organizations that are included in the structure of a centralized religious organization.³⁹ In light of the Court's evaluation, the challenged provisions do not apply to the above-mentioned religious organizations. In this regard, the official interpretation of the law is also extremely important because as a matter of practice, even judicial bodies did not always agree on this particular issue concerning the recommendations of the Ministry of Justice.

Another matter before the Constitutional Court also deserves reflection. The fact that the Ministry of Justice registered the Commune of Jesus (the Order of the Jesuits) on September 30, 1992 is undisputed. An insignificant number of its members (approximately forty Russian and foreign citizens) have been actively involved in educational activities, and these members founded a Catholic college named after St. Phoma Akvinskiy. Like all other religious organizations, the Jesuits were obligated to complete their re-registration. The Ministry of Justice denied their request to re-register several times, stating that their structural arrangement did not comport with the structure required by law, and that their founder, the World Order

³⁶ *Id.*

³⁷ See *On Freedom of Conscience*, *supra* note 4, art. 27, ¶ 3.

³⁸ *Id.* art. 3, ¶ 4; art. 5, ¶ 3, 4; art. 13, ¶ 5; art. 16, ¶ 3; art. 17, ¶ 1, 2; art. 18, ¶ 2; art. 19; art. 20, ¶ 2.

³⁹ *Id.* art. 27, ¶ 3.

of the Jesuits, was not entitled to establish religious organizations in the Russian Federation.⁴⁰

In accordance with the law *On Freedom of Conscience*,⁴¹ a local organization can be established by as few as ten Russian citizens who constantly reside in the same locality. For purposes of a religious organization's activities, the territory is defined by the confines of the same locality. A centralized religious organization can be established by as few as three local organizations. A strict application of these regulations presupposes a uniform structure for all confessions of faith on Russian territory. Three or more local organizations that are established by Russian citizens, constantly residing in the same locality, can be united into a centralized religious organization.

Religious organizations do not normally fit into the framework prescribed by law. For example, the structure of the Order of the Jesuits has remained practically unchanged over five centuries, and its canonic regulations mandate formation of the regions in accordance with the decree of the Father Superior. Its region is not divided into any parishes or sections. On the contrary, it constitutes a unified organization, and its territorial borders can overlap those of the administrative-territorial division of the state.

Furthermore, the Commune of Jesus cannot be a mass organization, because its believers must meet a very high standard for membership. Priests are not only committed to their monastic vows, but also to a very high level of education; specifically, Russian members are generally sent to Rome to complete their training and education. This is why no locality in the Russian Federation can possibly include ten continuously-residing citizens who are members of the Order of the Jesuits. This alone precludes the possibility of registration as a local religious organization, because its members cannot satisfy the required registration for a centralized religious organization.

The Order of the Jesuits was denied re-registration despite its existence for more than 200 years in Russia. Federal law offered limited choices to the Jesuits: (1) get registered as a representative agency of the World Order of the Jesuits, thereby losing their right to act as a religious organization; (2) comply with all the requirements mandated by the federal law on registration as a religious organization, thereby violating their own canonic structure and losing their status as an integral part of the Order and the Roman Catholic Church; or (3) waive their registration and rights that the Order has enjoyed since 1992, which authorizes the activities of the Russian Region of the Commune of Jesus.

The Jesuits filed a complaint in the Constitutional Court on August 30, 1999, contending that the restrictions prescribed by the federal law violated freedom of conscience. The enactment of the new federal law gave the Jesuits hope that the Constitutional Court might review their case. Their rights were no doubt violated by the discriminatory acts that contravene the *per se* provisions of the federal law. Specifically, article 15 of the law *On Freedom of Conscience* declares that the state will respect the regulatory bylaws established within religious organizations, therefore, forfeiting the state's right to dictate a certain organizational structure.⁴²

In addition, the discriminatory acts contravened both the Constitution and the European Convention on the Protection of Human Rights and Protocols.⁴³ The restrictions applied to the Jesuits could not possibly be ascertained as tolerable in a democratic society interested in securing peace, tranquility, social order, health, morality, and the protection of rights and freedoms. The Jesuits also claimed that Russia was bound to respect the rights of religious congregations, including the

⁴⁰ *Id.* art. 13.

⁴¹ *Id.* art. 8, 9.

⁴² *Id.* art. 15.

⁴³ See European Convention on Human Rights and Protocols, *supra* note 8.

preservation of their own hierarchical and institutional structure. The preservation of these rights is mandated by the final document of the 1989 Vienna meeting, which was attended by members of the Convention on Security and Cooperation in Europe.⁴⁴

The Jesuits filed their claim for relief before the complaints filed by the Jehovah's Witnesses and the Pentecostals were reviewed. However, the Jesuits' claim was not joined with the other two, albeit the law *On the Constitutional Court* joins all persons in one action as plaintiffs if they assert any right to relief arising out of the same transaction or occurrence, or if any question of law or fact common to these persons will arise in the action. The *Solomonic* decision of the Constitutional Court on November 23, 1999, skirted the Jesuits' claims and avoided judicial review of the federal law through technicalities and subtle elegance.

The Court's ruling did not prevent religious discrimination against the Jesuits, but it did satisfy the claimants in the consolidated proceeding. Clearly, this decision brought relief to a great number of registered religious organizations. At the same time, the Court avoided holding that discriminatory acts are unconstitutional by stating that the challenged provisions of the federal law, as applied to their enforceability in deference to other religious organizations, have yet to be tested. One can reasonably assume that the Court will continue to avoid judicial scrutiny of the federal law because this would inevitably result in a holding that the federal law was unconstitutional.

On December 9, 1999, the Constitutional Court's secretariat denied a related complaint that was filed by the Jesuits. The letter of denial stated that the Jesuits' rights were not violated because the negative consequences of denying re-registration can commence only upon the completion of a fixed term of re-registration. By referring to the forms of religious organizations prescribed by the federal law, the Constitutional Court's secretariat reproached the Jesuits. Averting that the Jesuits' request for exceptional and preferential treatment was without foundation, the secretariat alleged that the Jesuits violated state procedural safeguards establishing and registering juridical persons.

Disagreeing with what they considered to be a skewed interpretation of the claim, the representative of the Order of the Jesuits petitioned the Court. Justice V. D. Zorkina rendered the ruling of the Court at the plenary meeting of the preliminary proceeding on April 13, 2000. The Court interpreted the provisions of the federal law, under a *constitutional and legal* meaning, to permit the re-registration of organizations that were established before the federal law took effect. The Court pointed out that the Jesuits could not be denied re-registration on the grounds that the federal law subsequently changed for those who are entitled to re-register religious organizations. The Court, however, dismissed the Jesuits' complaint because a final decision in the form of a resolution was not required to grant relief.

This decision of the Court, along with the November 23, 1999 resolution, significantly inhibits the possibility of applying discriminatory acts during re-registration.⁴⁵ The Court's 2000 decision undoubtedly goes beyond the scope of the particular issue facing the Jesuits. The Court stated with deference to the provisions of the law *On Freedom of Conscience* that one could not impart to them any meaning that differs from their constitutional and legal core.⁴⁶

Thus, when exercising the right of re-registration, religious congregations may claim some type of organizational and legal form in their charter documents, without

⁴⁴ Conference on Security and Cooperation in Europe, Vienna Follow-up Meeting 1986-1989, Final Doc., princ. 16, (1989), at http://www.osce.org/docs/english/1973-1990/follow_ups/vienn89e.htm (last visited May 22, 2001).

⁴⁵ *Opređenje Konstitutsionnogo Suda RF* [Decision of the Constitutional Court RF], No. 46-O, Apr. 13, 2000, *Ross. Gazeta*, 16 May, 2000; *Sobr. Zakonod. RF*, 2000, No. 19 [weekly].

⁴⁶ *On Freedom of Conscience*, *supra* note 4, art. 8, ¶ 3-5; art. 9, ¶ 1, 2; art. 13; art. 27, ¶ 3, 4.

creating new subsections, including territorial ones. Additionally, such organizations are entitled to use for their own purposes the words *Russia*, *Russian*, and their derivatives, if they had already been using such words in their titles before the federal law took effect or if, by the time of application, they had been legally operating on the territory of the Russian Federation. Finally, temporarily halting a religious organization's activities does not matter if the organization was disabled for independent reasons arising from the illegal decisions and actions of state organs and their employees.

As a result, many religious organizations may now resume their original hierarchical and institutional structure instead of being forced to change their organizational and legal structure or to be included in a centralized congregation for the purposes of re-registration. If the religious organizations were registered before October 25, 1990, in accordance with the RSFSR *On Freedom of Religion*, the organs of justice shall not deny them re-registration on the grounds that they were established by improper persons or that the law has changed the order of their establishment. Hence, these groups do not have to comply with the prescribed uniform principles of forming a religious organization.

The Constitutional Court replaced a literal interpretation of the federal law with a *constitutional and legal* meaning. The Court has continuously avoided a determination that this federal law is unconstitutional, which radically differs from both the Russian Constitution and the norms of international law. The Court's ruling, however, constitutes another step towards curbing the most discriminatory provisions of the federal law *On the Freedom of Conscience and Religious Congregations* as employed by the judicial bodies.

Religious organizations experience certain difficulty when forced to initiate court proceedings because, pursuant to the federal law *On Constitutional Court*, a claimant must show that he suffered a particular injury by the action being challenged. Unlike the President of the Russian Federation, the State Duma, or the Council of Federation, private individuals (both physical and juridical) are not entitled to file a claim on the incongruity of any norms of the Constitution. However, religious organizations may benefit from the Constitution's specific provision enabling the Constitutional Court to broaden the analysis of the issue under a more general scrutiny. Nevertheless, any appeal to the Court may bring about some explanation or specification that consequently circumvents the rights of religious organizations, exactly what happened at the plenary meeting regarding the petition of the Order of the Jesuits.

The Constitutional Court has also decided whether there should be a constitutional right to have military service replaced with alternative civil service based on a citizen's belief and religious faith. On May 22, 1996, the Court ruled on an inquiry submitted by the Belov City People's Court of the Kemerov Region.⁴⁷ The Court stated that the absence of a federal law, which would define the conditions and procedures by which military service could be replaced with alternative civil service, hinders the citizens' exercise of their constitutional right. Additionally, it applies to other situations that have to be decided in light of this federal law pursuant to the Constitution.⁴⁸

The right of citizens to have their military service replaced with an alternative civil service based on belief and religious faith is constitutionally guaranteed and

⁴⁷ Otkaz na rasmotrenije zaprosa Belovskogo Gorodskogo Narodnogo Suda Kemerovskoj Oblasti kak nesootvetstvujushego trebovanijam Federal'nogo Konstitutsionnogo Zakona "O Konstitutsionnom Sude RF" [On Refusal to Review an Inquiry of the Belov City People's Court of the Kemerov Region is Inadequate to Meet the Requirements of the Federal Constitutional Law "On Constitutional Court of the RF"] Opredelenie Konstitutsionnogo Suda RF [unpublished Decision of the Constitutional Court RF], 22 May, 1996.

⁴⁸ KONST. RF, *supra* note 5, art. 59 (3).

does not need any specification.⁴⁹ Like all other human rights and freedoms of a citizen, this right must be active, and it must be effectuated regardless of whether the appropriate federal law is enacted. The intention of a citizen to exercise his constitutional right by legal means cannot be the basis of a cause of action against him in criminal or civil proceedings. In addition, "actions of citizens exercising their constitutional right to procure an alternative civil service cannot be interpreted as a subterfuge to avoid military service without a legitimate excuse, and consequently, the action is not illegal."⁵⁰

In the November 23, 1999 judgment, the Constitutional Court concluded that the right to have military service replaced with alternative civil service, which is prescribed by the Constitution,⁵¹ "does not need specification. It is an active individual right, i.e. related to the freedom of religion in its personalized but not collective aspect, and it must be thereby effectuated regardless of whether a citizen is a member of any religious organization."⁵² The Court, albeit with a certain amount of wariness and diplomacy, spent a great deal of effort scrutinizing the rights of its citizens to their freedom of conscience and their freedom of religion. The Court's decisions are already affecting the legal practice of general jurisdiction courts as discussed next.

III. ISSUES ON FREEDOM OF CONSCIENCE AND RELIGION IN THE GENERAL JURISDICTION COURTS

The federal law *On Freedom of Conscience and Religious Congregations* directs the general jurisdiction courts to hear all matters that can be divided into two main categories: (1) matters initiated by religious organizations or citizens and (2) matters initiated by the organs of justice, the public prosecutor's office, and organs of local self-government. The legal grounds for bringing an action, which are described under the first category, are stated in article 12, subsection 2 of the law *On Freedom of Conscience*.

Under this provision of the law, citizens and religious organizations have the right to appeal a repudiation, including acts of obstruction by the registering body.⁵³ State re-registration of religious organizations presupposes standardization of their bylaws in accordance with the federal law *On Freedom of Conscience*.⁵⁴ Any registering organ that obstructs the registration or re-registration of a religious organization is violating a term of review for state registration application under federal law. An unsubstantiated claim of a state investigation on religious matters in a religious organization, for example, constitutes an act of obstruction.

Pursuant to the law *On Freedom of Conscience*, an application for state registration of a religious organization, which is created by its inclusion into a centralized religious body or by the confirmation granted by a centralized religious body, must be reviewed within a month from the date of submission of all required documents.⁵⁵ In other cases, a registering entity can increase this term of review up to six months to conduct a state investigation on religious matters. Other kinds of obstruction by state registering entities often go unchecked and unsubstantiated, including the decision to cease the process of registration or re-registration of a religious organization—a decision for which the federal law provide no procedures.

⁴⁹ *Id.* art. 18.

⁵⁰ O Konstitutsionnom Sude RF [On Constitutional Court of RF], 1-FKZ, July 21, 1994, Ross. Gazeta, 23 July, 1994, Nos. 138, 139.

⁵¹ See KONST. RF, *supra* note 5, arts. 18, 28, 59.

⁵² Postanovlenie Konstitutsionnogo Suda RF [Decree of the Constitutional Court RF], *supra* note 27.

⁵³ On Freedom of Conscience, *supra* note 4, art. 12, ¶ 2.

⁵⁴ *Id.* art. 12, ¶ 2.

⁵⁵ *Id.* art. 11, ¶ 8.

To successfully defend the right on freedom of conscience and freedom of religion, which are violated as a matter of federal law, citizens and congregations can also cite to the law *On the Right to Challenge of Actions and Appeal of Decisions that Violate the Rights and Freedoms of Citizens*.⁵⁶

The first category of court proceedings initiated by religious organizations and citizens also includes actions to protect honor, dignity, and business reputations. Pursuant to the Russian Federation Civil Code, a citizen has the right to petition the court to deny the claims that discredit his honor, dignity, and business reputation, unless the defendant proves that the alleged claims are true.⁵⁷ The rules protecting the business reputation of a citizen can also be applied to the protection of the business reputation of a juridical person.⁵⁸

The mass media has recently abounded with numerous publications about the activities of religious organizations, and some of the information is insulting to believers in Christ. The authors of such publications readily attach various labels to groups which, in their view, are not traditional religious organizations. "Sect," "members of a sect," and "totalitarian sect" are common monikers, as are references to "probing of adherents," "hypnosis," "infringement on national security," "driving to suicide," and "shots in the back of the head." These journalists often forget about one important fact. If a religious organization or its parishioners file a complaint to protect their honor, dignity, or business reputation, the authors of the terminology will have to prove in court that the information that they have disseminated is true, with the federal law clearly allocating the burden of proof to the defendant.

In the practice of law, there often arises a question as to whether the words *sect* and *members of a sect*, used in connection with religious organizations and their members, are denigrating. The Court Chamber of the Russian Federation President on Informational Disputes provided the answer to this question in its decision on February 12, 1998. It states: "the legislature of the Russian Federation does not have a concept of a sect. At the same time, by virtue of the ideas deeply rooted in the history of the society, this term undoubtedly carries a negative conceptual connotation, and journalists can insult the believers in Christ by using the term."⁵⁹

Courts, however, have not heard many cases that were appealed by religious organizations and citizens regarding the acts of the organs of justice, bodies of local self-government, and other state entities; nor have the courts reviewed many appeals regarding matters on the protection of honor, dignity, and business reputation. One reason for the legal inertia is an insufficient knowledge by the believers in Christ concerning the possibility of legal recourse. In some cases, Christians consider it highly improper to file a cause of action. As a result, they sometimes strive for a peaceful resolution and compromise on unfair terms.

Pursuant to the federal law *On Freedom of Conscience*, the Office of the Public Prosecutor, the entities conducting state registration of religious organizations, and the bodies of local self-government are all entitled to institute proceedings on the elimination of a religious organization or on the prohibition of the activities of a particular religious organization or a religious group.⁶⁰ Federal law states that religious organizations can be dissolved and shut down by a court ruling if they have

⁵⁶ *Ob Obzhalovaniu v Sud Dejsvij i Reshenij, Narushajuschih Prava i Svobodi Grazhdan* [On the Right to Challenge Actions and Appeal Decisions that Violate the Rights and Freedoms of Citizens], No. 4866-1, Apr. 27, 1993 (amended Dec. 14, 1995), *Ross. Gazeta*, 12 May, 1993.

⁵⁷ GK RF, art. 1-453 (1), Nov. 30, 1994 (amended Apr. 16, 2001), *Sobr. Zakonod. RF*, 1994, No. 32 [weekly], art. Nos. 3301, 3302.

⁵⁸ *Id.* art. 152 (7).

⁵⁹ *Cudbnaja Palata Po Informatsionnim Sporam Pri Prezidente Rossijskoj Federatsii* [Court Chamber on Informational Disputes of the RF President], No. 4 (138) Feb. 12, 1998.

⁶⁰ *On Freedom of Conscience*, *supra* note 4, art. 14, ¶ 3.

repeatedly or grossly violated the norms of the Constitution, the federal law *On Freedom of Conscience*, or any other federal statutes.⁶¹

Religious organizations can also be disbanded if they have regularly engaged in activities that contravene the objectives of their charter. The federal law *On Freedom of Conscience* not only enumerates the grounds for the dissolution of a religious organization, but it also prohibits some activities by a religious organization or religious group.⁶² Reviewing the contents of this list, the generality and ambiguity of the definitions become puzzling; these definitions will cause judicial misinterpretation.

The federal law *On Freedom of Conscience* states that the action to eliminate a religious organization can also be initiated by a registering entity during the process of its state re-registration.⁶³ If, during this process, the determination is made that with deference to a religious organization there are some grounds for its dissolution or prohibition of its activities, a registering entity shall repudiate re-registration and initiate court proceedings.⁶⁴ Under these circumstances, a registering body is not entitled to repudiate re-registration of a religious organization without contemporaneously submitting a petition to the court concerning the dissolution or prohibition of these activities; the burden of proof rests upon a registering entity.

As to the second main category of court proceedings to eliminate religious organizations that are initiated by judicial bodies or the Office of Public Prosecutor, the common deficiency that they share is that of the unprepared and unsubstantiated character of their claims. Pursuant to the Russian Federation Code of Civil Procedure, each party shall prove the circumstances as a ground for claims and objections.⁶⁵ Unfortunately, as proven by the practice of law, the judicial bodies and the Office of the Public Prosecutor simply ignore this important principle of civil procedure. For example, the Department of Justice brought an action against a Pentecostal church in Kirov, which was included in the Russian Union of Christians of Evangelical Faith; the relief sought was the dissolution, disbandment or closing down of the Pentecostal church. The October Regional Court in Kirov that heard the case from January 31 to February 1, 2000, denied the claim. The court held that the Department of Justice committed a gross violation of these citizens' constitutional rights and freedoms.⁶⁶

After a previous hearing⁶⁷ on December 29, 1999, the court had adjourned and asked the Department of Justice to provide supplementary evidence to prove its claim. The Department of Justice presented the following grounds to support its action to disband and close the Pentecostal church: (1) the destruction of a family, (2) the infliction of harm to parishioners' health by means of applying hypnosis, and (3) the infringement on human rights.⁶⁸ The Department of Justice introduced into

⁶¹ *Id.* art. 14, ¶ 1.

⁶² *Id.* art. 14, ¶ 2. It should also be noted that a list of grounds for the elimination of a religious organization and prohibition of its activities is exhaustive.

⁶³ *Id.* art. 27, ¶ 2.

⁶⁴ *Id.* art. 14, ¶ 2.

⁶⁵ GPK RF, art. 50, June 11, 1964 (amended Aug. 7, 2000), *Vedomosti Verkh. Soveta, RF*, 1964, art. 24.

⁶⁶ *Delo Po Isku Upravleniya Justitfii Kirovskoy Oblasti K Tserkvi "Kirovsky Khristiansky Tsentr" Khristianskoy Assotsiatsii "Globalnaya Strategiya" O Liquidatsii Juridicheskogo Litsa* [On the Complaint of the Department of Justice of the Kirov Region Against the Church of the "Kirov Christian Center"] (formal name used in text of decision). *Delo Kirovskogo Khristianskogo Tsentra* [On the Case of Kirov Christian Center] (more typical case name used). *Delo Tserkvi "Kirovsky Khristiansky Tsentr"* [Case of the Church of the Kirov Christian Center] (name of the article in *Religion and Law Justice Dep't of Kirov Region v. Kirov Christian Center* (shortened and Americanized case name with party titles), No. 2 J. RELIGION & L. 22 (2000) (final ruling Feb. 1, 2000).

⁶⁷ *Id.*

⁶⁸ *Id.*

evidence a videotape of a church service that was received from an orthodox priest who contended that he obtained the videotape from one of the unknown parishioners whose granddaughter allegedly attended that *sect*.

Medical doctors, witnesses for the Department of Justice, testified that the church service contained the elements that generated the effect of a stupor, which can inflict an irreparable harm to the health of a citizen.⁶⁹ During the examination of Ms. Kudriavtseva on December 29, 1999, the witness testified that her son became distracted from his studies after he joined the church.⁷⁰ She alleged that as a result of his involvement in the church she lost connection with her son, and she blamed the church.⁷¹

During another court session from January 31 to February 1, 1999, two medical doctors testified about the videotape. Dr. V. Melnikov, the Chief Legal and Medical Expert of the Kirov Region, testified that he did not have sufficient evidence to support a finding of harm inflicted by the church to anyone's health.⁷² In contrast, Dr. V. Bagaev, the Chief Psychiatrist of the region, testified that upon viewing the videotape and paying a personal visit to a church service he concluded that the service exerts a certain psychological impact on all those present.⁷³ Although the impact could be qualified as a stupor, the doctor conceded that it could not be considered a deviation from the norm. The condition of a stupor can be caused by a variety of reasons, including a non-religious reason and self-induction. Furthermore, Dr. V. Bagaev stated that such an exertion does not constitute hypnosis, as the plaintiff averred in his pleading. Dr. Tatiana Bulatova, an expert psychiatrist, supported this testimony.

Upon request by the Department of Justice, the court also examined a few witnesses who were former church members. Contrary to the expectations of the Department of Justice, the former church members' testimony did not support the plaintiff's claim either. In contrast, the lawyers representing the church offered evidence that refuted the claim of the Department of Justice.⁷⁴ A few witnesses testified that the church, contrary to the plaintiff's claim, helped them preserve families, contributed to their social rehabilitation, and aided in their personal growth. An independent Russian psychiatric association presented its expert opinion that rebutted the medical conclusion based on the videotape.⁷⁵

The defendant's lawyers convinced the court that the Department of Justice committed gross violations of the Constitution while gathering its evidence.⁷⁶ The videotape that was previously admitted into evidence had been recorded secretly and without the consent of the church members. In 1997, the Church Council prohibited any videotape recording during church services. The parishioners participating in the church service knew about this and were confident that their personal demeanor and disposition during worship would not be exposed to the public. In light of these facts, a secret videotape recording can be interpreted as an interference with the private lives of citizens.

The defendant's lawyers then petitioned the court (1) to have the illegally obtained videotape excluded from evidence, (2) to deny the claim of the Department of Justice, and (3) to have the office of the public prosecutor investigate any exposed violations of the law.⁷⁷ The public prosecutor involved in the court proceedings

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Ms. Kudriavtseva's son was 22-years-old at the time of trial.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

supported the church's position and asked the court to dismiss the Department of Justice's complaint. The court agreed with the public prosecutor and ruled in favor of the church. Recently, there have been numerous suits that have been very similar to this one.⁷⁸ On one hand, these suits signify the increase of the judicial role and independence from the organs of local self-government. On the other, these suits attest to the insufficient knowledge that many state employees, who deal with religious questions as a matter of their employment, have concerning religious and legal culture.

IV. CONCLUSION

Legislation on the freedom of conscience and religious congregations has changed significantly over the past years. For the Constitution to better comport with international legal norms in the area of freedom of conscience and religion, the federal law *On Freedom of Conscience* must be reformed. To ensure proper effectuation of citizens' rights on freedom of conscience, the conception of the relations between state and religious congregations must evolve. This will, in turn, serve as a basis for legislative acts that will govern this area of religious activities more fully.

Considering the specific nature of church-state relations and legislative authority in this area, Russian law schools should have an elective course, called Religion and Law, incorporated into their curriculum. In addition, the training of lawyers and professionals for local self-government should require a special course in religion. Considering the importance of freedom of conscience as a fundamental human right, the Russian Federation must extend access to judicial review of these matters to the public, especially to the entities of local self-government, religious congregations, and legal defenders. The Russian Federation must also accord deference to those seeking to exercise their rights of freedom of conscience and freedom of religious association and activity.

⁷⁸ See *Delo o Liquidatsii Tserkvi "Slovo Zhizni Goroda Magadana"* [Case of the Liquidation of the "Word of Life Church of Magadan"] No. 3 RELIGION AND LAW 11 (1999) (opinion rendered May 18-21, 1999 by the Magadan City Court); see also *Delo o Liquidatsii "Kostromskogo Khristianskogo Tsentra"* [Case of the Liquidation of the "Kostroma Christian Center"], No. 1 J. RELIGION & L. 40 (2001) (opinion rendered Nov. 16, 2000 by the Lenin District Court of the City of Kostroma); see also *Delo o Evangelico-Luterantskoy Missii Tuim (Hakazia)* [Case of the Evangelical-Lutheran Mission of Tuim (Khakasia)], *Sudebnaya Praktika Po Delam Suyazannym s Realizatsiei Prava Na Fvobodu Sovesti I Deyatelnostyu Religiozmykh Organizatsiy* [Jurisdictional Practice of Law on Cases Related to the Exercise of the Right to Freedom of Conscience and to Activities of Religious Organizations] 48 (Moscow 2000) (opinion rendered on Feb. 12, 1999 by the Supreme Court of the Republic of Khakasia).