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# Church-State Relations in the Russian Federation

*Andrei Oskarovich Protopopov\**

## I. INTRODUCTION

Church-state relations are an inseparable part of Russia's political history. For centuries, these relations have been subject to constant change. Central to this historical dynamic is Orthodoxy, specifically the Russian Orthodox Church ("the church"). Having become the state religion in Kievan Rus at the end of the tenth century, the church functioned as the Russian state's principal spiritual undergirding. The close church-state relationship was essentially the base of all church-state policy. Eventually, beginning with the reign of Peter the Great, the state began to dominate that relationship. By the end of the nineteenth century, government domination of the Orthodox Church was for all practical purposes completed. By the beginning of the twentieth century, the church was entirely integrated into the nation's state system, becoming part of its administrative apparatus.<sup>1</sup>

The unique, closely allied relations of the state and the Orthodox Church were now reflected in fundamental laws of the Russian Empire. The state, recognizing the usefulness and necessity of religion for the moral and spiritual well-being of society, mandated some religious affiliation but allowed, alongside the privileged Orthodox Church, the existence of "tolerated" and "persecuted" denominations. In accordance with the Russian Empire's Legal Code, none of its subjects were allowed to refrain

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\* Head of the Department of Religious Organizations in the administration of the president of the Russian Federation; State Counselor of the Russian Federation, First Class. A version of this speech was given in October 1996 at a conference on church-state relations held in the United States under the aegis of the International Academy for Freedom of Religion and Belief.

1. For a valuable overview of Russian church-state history, see M.I. ODINTSOV, *GOSUDARSTVO I TSERKOV' V ROSSII XX VEK* [STATE AND CHURCH IN RUSSIA: TWENTY CENTURIES] (1994) and I.U. A. ROSENBAUM, *SOVETSKOE GOSUDARSTVO I TSERKOV'* [SOVIET GOVERNMENT AND THE CHURCH] (B.M. Lazarev ed., 1985). A more extensive analysis of church-state issues has been prepared by compiling lectures given on this topic by the Russian Academy of State Service under the president of the Russian Federation.

from confessing religion or to be an atheist.<sup>2</sup> Russian people from birth to death were officially considered followers of one of the existing faiths, regardless of their actual relations to religion. Thus, by law, all Russians were counted among adherents of the Orthodox Church or one of the existing faiths and were legally obliged to observe their religious rituals and rites. The law allowed forcible baptism of children if parents resisted, and all males at the age of twelve years had to take an oath professing obedience to the faith. A refusal brought the accusation of being a state traitor. Those who demurred from performing the requisite ceremonies were subject to church punishment and administrative measures on the part of the "civil leadership."

Eventually, the inability of the Russian legal structure to meet society's needs and arbitrary treatment of non-Orthodox believers and communities by local administrations led to increasingly insistent demands in Russian society for fundamental reform in the state's church policy. In approaching religious reforms, officials were guided by the concept of a Christian state. For Russia this signified maintaining close relations with the Orthodox Church, providing for its dominant position, and utilizing religious structures in furtherance of the interests of state power. However, regarding church-state relations, there was also a strong movement within Russian society to establish the principles of a secular state.

According to Russian religious scholars, three models of church-state policy subsequently emerged, corresponding to forms of state structure: the monarchical structure correlated with a pro-Orthodox position; the bourgeois republic correlated with religious pluralism; and the Soviet state correlated with an atheistic outlook. However, the current Russian government structure faces the necessity of working out its own model of interrelations among state and religious institutions. In many ways, the results of this work will depend on how thoroughly Russia's historical experience is studied. Beginning with a more recent historical overview of church-state relations, this Article will describe various modern legal reforms and discuss the impact of those reforms on contemporary Russian society.

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2. 2 SVOD ZAKONOV ROSSIISKOI IMPERII [CODE OF LAWS OF THE RUSSIAN EMPIRE], pt. 1 (1910).

## II. CHURCH-STATE RELATIONS IN THE TWENTIETH CENTURY

Nicholas II's 1905 edict "On the Strengthening of Religious Tolerance" introduced certain elements of religious freedom into Russian society. However, because of conditions favorable to the coming popular revolution, the edict bore the inevitable imprint of compromise. The state Duma,<sup>3</sup> during its ten years of operation, attempted to modify religious legislation and eliminate the incompatibility between legislative and governmental positions on substantive questions of religious reforms, but these attempts proved futile. The efforts of the bourgeois Provisional Government, which declared ideals of religious freedom and strove for reform in the sphere of church-state relations, likewise produced no desired results.

Nor could the Decree of the Soviet of Peoples' Commissars "On Freedom of Conscience, Church, and Religious Societies" in 1918, known as Lenin's Decree "On the Separation of Church from the State and Schools from the Church," provide genuine equality for all citizens regardless of their relation to religion. Although this document was a concrete step toward solidifying the principles of freedom of conscience and worship in society and placing the separation of the church and state in the center of church-state relations, the Decree also contained restrictions. Religious organizations were deprived of legal status and property ownership rights. Moreover, by the end of the 1920s, religion and religious organizations came under scrutiny from the Bolshevik Politburo as counterrevolutionary ideological forces, subjecting church officers and believers to all the consequences that status implies.

By direct order of party leadership, the Bolsheviks promoted schisms among faiths, inflamed hostilities among various groups of officiating priests, and desecrated and destroyed thousands of churches, mosques, and synagogues, many of which represented unique architectural achievements. According to incomplete data, during the years of Soviet power over 500,000 priests were repressed and over 200,000 were killed. As a result of the mass political repressions of clergy and believers, irreparable damage

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3. The state Duma is the term traditionally used in Russia to designate the representative parliamentary body of the state.

was done to the moral fiber of Russian society, the cultural legacy of Russian peoples, and world culture.

Stemming from Lenin's Decree, the All-Russian Central Executive Committee of the Russian Soviet Federal Socialist Republic's [RSFSR's] Act of 1929 "On Religious Associations"<sup>4</sup> juridically established the official view that remaining religious organizations only had the right to address religious needs of believers, principally in houses of prayer. Also in 1929, the resolution granting citizens the right "to freedom of religious proselytizing" was excluded from article 4 of the constitution of the RSFSR. A series of harsh restrictions redefined the spheres of activity for religious organizations. In essence this resolution based on Lenin's Decree, which remained in force with few changes until 1990, was intended to drive religious groups from all formerly approved social spheres.

In 1930 the Central Executive Committee and the Council of People's Commissars passed the resolution "On the Struggle with Counterrevolutionary Elements in the Governing Organs of Religious Associations" of February 11, 1930.<sup>5</sup> According to this resolution, "kulaks (wealthy peasants), disfranchised persons and others hostile to Soviet power" were prohibited from serving in church government.<sup>6</sup> During 1929 to 1931 the All-Russian Central Executive Committee also issued several regulations which simplified procedures for closing church buildings. The struggle against religion and believers, an inseparable part of the campaign for agricultural collectivization, also included extralegal closing of places of worship, and repression of the clergy. Legislation in effect during this period and its practical application fully corresponded to the requirements of the Soviet party leadership. The party considered religion and members of religious associations to be counterrevolutionary ideological forces, with clergy and lay believers suffering all the implications flowing therefrom. Furthermore, in the mid-1930s there were unsuccessful attempts to formulate and pass an all-union law on religious associations.<sup>7</sup> However, these plans to amend the legisla-

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4. Postanovlenie "O religioznykh ob'edineniakh" (Apr. 8, 1929), Sbornik Ukazov RSFSR [SU RSFSR], 1929, No. 35, st. 353.

5. See ODINTSOV, *supra* note 1, at 82.

6. *Id.*

7. See *id.* at 95-96.

tion in effect during the period of harshest persecution of churches and believers were not realized.

The difficult conditions of the World War II compelled Soviet leaders to take somewhat less strident measures in relation to religious institutions. During 1943 to 1953, as a result of a partial normalization of relations between the state and religious organizations, church buildings began to be opened, religious associations started to be registered, certain monasteries and religious educational institutions started up again, and publishing activities expanded. Conversely, during Khrushchev's "thaw" from 1958 to 1965, church-state relations were set back to the 1930s. Again, the state assumed a harsh attitude toward religion and the church. This arose from the official policy of building communism and eliminating religious remnants from the past. Soviet legislation of the 1970s conceived principles of equality in all social-economic spheres regardless of one's attitude toward religion. However, conditions conducive to the appearance of new legislation on freedom of conscience and religious organizations did not appear until the late 1980s, during the general democratization of the country and the adoption of new approaches to church-state relations at the highest level of Soviet party leadership. By the 1990s, new legislation placed believers on an equal footing with other citizens of the Soviet Union.

### III. NEW LEGAL BASES FOR RELIGION IN THE 1990S

The 1990 USSR law "On Freedom of Conscience and Religious Organizations,"<sup>8</sup> followed by the RSFSR law "On Freedom of Worship,"<sup>9</sup> which included many aspects of the USSR law, created the legal base essential for subsequent implementation of principles of freedom of conscience. "On Freedom of Worship" declared that all statutes of all ministries and departments of the USSR and the RSFSR that contradicted the new law were null and void. The 1991 RSFSR law "On the Rehabilitation of

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8. Zakon SSSR "O svobode sovesti i religioznych organizatsiakh," 3 NOVYE ZAKONY SSSR (Moscow) (1991).

9. Zakon RSFSR "O svobode veroispovedanii," (Oct. 25, 1990) (as amended), reprinted in ANDREI O. PROTOPOPOV, RELIGIA I ZAKON: KONSTITUTIONNO-PRAVOVYE OSNOVY SVOBODY SOVESTI, VEROSPOVEDANIYA I DEYATEL'NOSTI RELIGIOZNYKH ORGANIZATSIH [RELIGION AND THE LAW: CONSTITUTIONAL-LEGAL BASES OF FREEDOM OF CONSCIENCE, WORSHIP, AND THE ACTIVITIES OF RELIGIOUS ORGANIZATIONS] 63-70 (1996).

Victims of Political Repression,"<sup>10</sup> provided for the rehabilitation of citizens who had been convicted without factual basis of violating laws on the separation of the church from the state, and schools from the church. Additionally, the March 1996 edict of the Russian Federation president "On Means for Rehabilitation of Clergy and Believers Who Were Victims of Unfounded Repression"<sup>11</sup> served to reassert the legal right of Russian citizens to freedom of conscience and worship.

Today one can say with assurance that the legal base essential for the operation of religious associations has been created in the Russian Federation. Thanks to new legislation, representatives of various faiths, among them Orthodox, Catholic, Protestant, Baptist, and Jew, have begun assuming their rightful places in Russian society. Together with the 1993 Russian Federation Constitution, other ground-breaking documents, such as the first and second portions of the Russian Federation Civil Code, have become law. Also, part 4, article 15 of the Russian Federation Constitution demonstrates the Russian Federation's compliance with generally accepted principles and norms of international rights, stating that "generally accepted principles and norms of international rights and international agreements of the Russian Federation are an integral part of its legal system."<sup>12</sup> Article 15 demonstrates the Russian Federation's commitment to those standards by affirming that "if through international agreement with the Russian Federation rules are established other than those contained in the [Russian Federation] law, the rules of the international agreement shall apply."<sup>13</sup> Direct action and application of international rights by state organs of power, among them courts, is now possible. Persons, both physical and juridical, involved in resolving problems with state organs of power, enterprises, institutions, and organizations, or among themselves, are entitled to directly rely on international legal norms.

10. *Zakon RSFSR "O reabilitatsii zhertv politicheskikh repressii,"* No. 1761--1 (Oct. 18, 1991), reprinted in A.I. KUDRIAVTSEV & ANDREI O. PROTOPOPOV, *SBORNIK NORMATIVNYKH AKTOV* [COLLECTION OF NORMATIVE ACTS] 27 (2d ed. 1994).

11. *Ukaz Prezidenta Rossiiskoi Federatsii "O merakh po reabilitatsii svyashchennosluzhitelei i veruiushchikh, stavshikh zhertvami neobosnovannykh repressii,"* No. 378 (Mar. 14, 1996), reprinted in PROTOPOPOV, *supra* note 9, at 90.

12. *KONSTITUTSIIA ROSSISKOI FEDERATSII* [Constitution of the Russian Federation] [KONST. RF] art. 15.

13. *Id.*

There also exists a considerable number of laws securing rights directly related to the sphere of church-state relations and the establishment of the constitutional right to freedom of conscience. These laws include edicts, resolutions, departmental normative documents, orders of the Russian Federation government, and orders of the Russian Federation president. The federal constitution prohibits the establishment of a state religion or any obligatory religion, provides for the equality of religious organizations before the law, and recognizes the priority of international agreements in Russian Federation legal practice. These are critical guarantees protecting the right to freedom of conscience and worship.

Religious organizations, having received full legal recognition and protection, have become fully empowered participants in society. However, according to the Civil Code, they are considered nonprofit associations, and are therefore allowed to undertake entrepreneurial activities only for the accomplishment of purposes that correspond to the purposes for which they were created.<sup>14</sup> The legislature has paid special attention to the question of the observance of constitutional guarantees of freedom of conscience and worship, including the possibility of performance of religious rites and use of religious items in church worship by individual citizens. In this connection one may identify several groups of laws and other acts establishing rights. Laws are now in force which secure the right to freedom of conscience for various categories of citizens: military personnel, patients in hospitals and in psychiatric sanatoria, convicts, and suspects or those accused of committing crimes.<sup>15</sup>

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14. *Grazhdanskii kodeks Rossiiskoi Federatsii (Chast' pervaiia)* [Civil Code of the Russian Federation (First Part)] §§ 117, 213 (Nov. 30, 1994), *reprinted in* PROTOPOPOV, *supra* note 9, at 71.

15. *See* Federal'nyi zakon "O soderzhanii pod strazhei podozrevaemykh i obviniaemykh v sovershenii prestuplenii" [Federal Law "On Detaining Those Suspected and Accused of Committing Crimes"] § 17 (July 15, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 86; Zakon Rossiiskoi Federatsii "O statuse voennosluzhashchikh" [RF Law "On the Status of Military Personnel"] § 8 (Jan. 22, 1993), *reprinted in* PROTOPOPOV, *supra* note 9, at 81; Zakon Rossiiskoi Federatsii "O psikhiatricheskoi pomoshchi i garantiakh prav grazhdan pri ee okazanii" [RF Law "On Psychiatric Help and Guarantees of Rights of Citizens in Treatment"] §§ 37, 39 (July 2, 1992), *reprinted in* PROTOPOPOV, *supra* note 9, at 79; Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii "Osnovy zakonodatel'stva Rossiiskoi Federatsii ob okhrane zdorov'ia grazhdan" [Resolution of the Supreme Soviet of the Russian Federation "Principles of Russian Federation Legislation on the Preservation of the Health of Citizens"] §§ 30,



In accordance with the law "On the Judicial System in the RSFSR," upon written request, clergy and others who, owing to their religious convictions, cannot participate in meting out justice are excluded from lists of sworn jurors.<sup>16</sup> According to the RSFSR Criminal Procedure Code, "a criminal case cannot be initiated or one already initiated is to be stopped . . . in the case of member of the clergy who refuses to provide testimony concerning circumstances known to him from confession."<sup>17</sup> Laws containing provisions aimed at eliminating any sort of arbitrary intrusion into the affairs of religious associations and their members specifically prohibit: (1) the Federal Security Service from using clergy and authorized representatives of officially registered religious organizations on a secret basis; (2) organs of internal intelligence from participating in the operations of religious organizations with the aim of exerting influence on the character of their activity; (3) organs which carry out operational-investigative activity from taking silent part in the activities of duly registered and nonprohibited religious associations with the aim of exerting influence on the character of their activity; and (4) private detectives from gathering information connected with religious convictions of individual persons.<sup>18</sup>

Restrictions on religious activity also exist alongside these prohibitions on religious interference. A separate category of federal laws in part prohibits religious associations from conducting political campaign activities and from disseminating campaign literature.<sup>19</sup> A series of laws contains prohibitions against activ-

48 (July 22, 1993), *reprinted in* PROTOPOPOV, *supra* note 9, at 79; *Ispравitel'no-trudovoi kodeks RSFSR* [RSFSR Corrective Labor Code] § 81 (Dec. 18, 1970), *reprinted in* PROTOPOPOV, *supra* note 9, at 86.

16. *Zakon RSFSR "O sudoustroistve v RSFSR"* § 80 (July 8, 1981), *reprinted in* PROTOPOPOV, *supra* note 9, at 75-76.

17. *Ugolovno-Protsessual'nii Kodeks RSFSR* [RSFSR Code of Criminal Procedure] [UPK RSFSR] § 5 (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 85.

18. *See* *Federal'nyi zakon "Ob operativno-rozyskoi deiatel'nosti"* [Federal Law "On Operational-Investigative Activity"] § 5 (Aug. 12, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 83; *Federal'nyi zakon "Ob organakh federal'noi sluzhby bezopasnosti v Rossiiskoi Federatsii"* [Federal Law "On Organs of Federal Security Service in the Russian Federation"] § 19 (Apr. 3, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 82; *Zakon Rossiiskoi Federatsii "O vneshnei razvedke"* [RF Law "On External Intelligence Gathering"] § 18 (July 8, 1992), *reprinted in* PROTOPOPOV, *supra* note 9, at 83; *Zakon Rossiiskoi Federatsii "O chastnoi detektivnoi i okhrannoi deiatel'nosti v Rossiiskoi Federatsii"* [RF Law "On Private Detectives and Bodyguard Activity"] § 7 (Mar. 11, 1992), *reprinted in* PROTOPOPOV, *supra* note 9, at 83.

19. *Federal'nyi konstitutsionnyi zakon "O referendume Rossiiskoi Federatsii"*

ity of religious associations in establishing and participating in commodity exchanges and activities of financial-industrial groups.<sup>20</sup> At the same time, a whole set of laws provides for the exemption of appropriate types of religious organizations' income from tax assessments.<sup>21</sup>

Another block of laws covers questions of transfer of church buildings and other property to religious associations: the order of the Russian Federation president "On the Transfer to Religious Organizations of Church Buildings and other Property,"<sup>22</sup> the Russian Federation government's resolution "On the Transfer to Religious Organizations of Church Buildings and other Property,"<sup>23</sup> and the edict of the president "On Privatization in the Russian Federation of Local Historical and Cultural Monuments,"<sup>24</sup> which established corresponding regulations on procedures for transfer of such property. The registration of religious organizations' charters in the justice organs is regulated by detailed rules, which have undergone governmental certification.<sup>25</sup>

[Federal Constitutional Law "On a Referendum of the Russian Federation"] § 19 (Oct. 10, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 82.

20. Zakon RSFSR "O tovarnykh birzhakh i birzhevoi torgovle" [RSFSR Law "On Commodity Exchanges and Security Exchanges"] §§ 11, 14 (Feb. 20, 1992), *reprinted in* PROTOPOPOV, *supra* note 9, at 73.

21. Zakon RSFSR "O naloge na pribyl' predpriatii i organizatsii" [RSFSR Law "On Taxes on the Profits of Business and Organizations"] § 6 (Dec. 27, 1991) (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 74; Zakon RSFSR "O podokhodnom naloge s predpriatii" [RSFSR Law "On Corporate Income Tax"] § 9 (Dec. 20, 1991), *reprinted in* PROTOPOPOV, *supra* note 9, at 75; Zakon RSFSR "O naloge na imushchestvo predpriatii" [RSFSR Law "On Taxes on Business Property"] § 4 (Dec. 13, 1991) (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 75; Zakon RSFSR "O naloge na dobavlennoiui stoimosti" [RSFSR Law "On Value-Added Tax"] § 5 (Dec. 6, 1991) (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 75.

22. Rasporyazhenie Prezidenta Rossiiskoi Federatsii "O peredache religiozным organizatsiam kul'tovыkh zdaniі i inogo imushchestva," No. 281-rp (Apr. 23, 1993), *reprinted in* PROTOPOPOV, *supra* note 9, at 87.

23. Postanovlenie Pravitel'stva Rossiiskoi Federatsii "O poriadke peredachi religiozным ob'edinenіam otnosiashchegosia k federal'noi sobstvennosti imushchestva religioznogo naznachenіia," No. 248 (Mar. 14, 1995), *excerpted in* PROTOPOPOV, *supra* note 9, at 88.

24. Ukaz Prezidenta Rossiiskoi Federatsii "O privatizatsii v Rossiiskoi Federatsii nedvizhimykh pamiatnikov istorii i kul'tury mestnogo znachenіia," No. 2121 (Nov. 26, 1994), *reprinted in* PROTOPOPOV, *supra* note 9, at 90.

25. Pravila registratsii ustavov (polozhenii) religioznykh ob'edinenii [Rules of Registration of Charters (Tenets) of Religious Organizations] (confirmed by the RF Ministry of Justice on Nov. 30, 1994 (No. 19-01-159-94) and registered on Dec. 15, 1994 (No. 747)), *reprinted in* PROTOPOPOV, *supra* note 9, at 94-99.

The right to freedom of conscience and worship, as well as the procedures for establishing religious education and religious organization activity, are included in the laws "On Education,"<sup>26</sup> "Principles of Russian Federation Legislation on Culture,"<sup>27</sup> "On Means of Mass Communication,"<sup>28</sup> "On Advertising,"<sup>29</sup> "On Interment and Burial Matters,"<sup>30</sup> in "Principles of Russian Federation Legislation on the Preservation of Citizen Health,"<sup>31</sup> and in the Family Code of the Russian Federation,<sup>32</sup> the Code of Laws on Labor in the RSFSR,<sup>33</sup> and other documents. These laws concern the creation, licensing, and accreditation of religious educational institutions, the establishment of cultural organizations by religious associations, the impermissibility of utilizing mass communication for inciting religious intolerance or discord, the impermissibility of advertisements slandering the religious convictions of individuals, the establishment of denominational cemeteries, the refusal to allow pathological-anatomical autopsy on religious grounds, the recognition of marriage performed only under officially approved registry authority, and the prohibition on lowering the wages or salary of a worker due to his religious views.

Current legislation also contains norms establishing various levels of accountability for violating citizen equality due to religious attitudes, violating rights of freedom of conscience and worship, and organizing and participating in activities of groups encroaching upon the privacy and rights of citizens.<sup>34</sup> According

26. Zakon Rossiiskoi Federatsii "Ob obrazovanii" §§ 1, 2, 5, 11, 11-1, 12, 14, 32, 33, 40, 50 (Jan. 13, 1996), *reprinted in* PROTOPOPOV, *supra* note 9, at 76-77.

27. Zakon Rossiiskoi Federatsii "Osnovy zakonodatel'stva Rossiiskoi Federatsii o kul'ture" §§ 9, 31, 41, 53 (Oct. 9, 1992), *reprinted in* PROTOPOPOV, *supra* note 9, at 77-78.

28. Zakon Rossiiskoi Federatsii "O sredstvakh massovoi informatsii" §§ 4, 7, 61 (Feb. 8, 1992), *reprinted in* PROTOPOPOV, *supra* note 9, at 78.

29. Federal'nyi zakon "O reklame" § 8 (July 18, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 78.

30. Federal'nyi zakon "O pogrebenii i pokhoronnom dele" §§ 15, 18, 19, 28 (Dec. 12, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 80.

31. Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii "Osnovy zakonodatel'stva Rossiiskoi Federatsii ob okhrane zdorov'ia grazhdan" §§ 30, 48 (July 22, 1993), *reprinted in* PROTOPOPOV, *supra* note 9, at 79.

32. Semeinyi kodeks Rossiiskoi Federatsii §§ 1, 31, 57, 65 (Dec. 29, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 83-84.

33. Kodeks zakonov o trude RSFSR §§ 16, 65, 77 (Dec. 9, 1971) (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 84.

34. See Ugolovnyi kodeks RSFSR [RSFSR Criminal Code] [UK RSFSR] §§ 74,

to article 239 of the Russian Federation Criminal Code, effective January 1, 1997, penalties are prescribed for creating and/or participating in a religious or civic association whose activity is linked to violence towards any citizen, other activities harmful to citizens' health, inciting citizens to refuse to perform the duties of a citizen, or performing other acts abridging another's rights.<sup>35</sup>

It is appropriate here to mention a normative rights act, such as the Russian Federation law "On Principles of Government Service in the Russian Federation,"<sup>36</sup> and the Regulation on Federal State Service,<sup>37</sup> issued by an edict of the Russian Federation president in December 1993. According to article 11 of the law, "a governmental servant may not utilize his position of service to benefit political parties or social, including religious, associations in order to gain support. Political parties and religious or civil associations, excepting professional unions, may not be organized in state organs."<sup>38</sup> Also, according to the Regulation on Federal State Service "state servants may not . . . utilize their official authority as a state servant for promoting religious beliefs or for participation as a state servant in religious ceremonies."<sup>39</sup> Finally, when hiring a state servant, imposing any kind of direct or indirect restriction based on one's attitude toward religion or one's religious convictions is prohibited. The collection and entering of information concerning political and religious membership and the private life of state servants into one's work records and lists is forbidden.

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143, 143<sup>1</sup> (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 84-85; Kodeks RSFSR ob administrativnykh pravonarusheniakh [RSFSR Code on Administrative Rights Violations] § 193 (June 20, 1984) (as amended), *reprinted in* PROTOPOPOV, *supra* note 9, at 86-87.

35. UK RSFSR § 239.

36. Zakon Rossiiskoi Federatsii "Ob osnovakh gosudarstvennoi sluzhbe Rossiiskoi Federatsii" (July 31, 1995), *reprinted in* PROTOPOPOV, *supra* note 9, at 80.

37. Polozhenie o federal'noi gosudarstvennoi sluzhbe (confirmed by edict of the RF president on Dec. 22, 1993 (No. 2267)), *reprinted in* PROTOPOPOV, *supra* note 9, at 81.

38. RF Law "On Principles of Government Service in the Russian Federation" § 11, *reprinted in* PROTOPOPOV, *supra* note 9, at 80.

39. Regulation on Federal State Service § 10, *reprinted in* PROTOPOPOV, *supra* note 9, at 81.

#### IV. THE IMPACT OF LEGAL REFORMS ON CHURCH-STATE AND SOCIETAL RELATIONS

All of the aforementioned legal reforms demonstrate that a natural normative process is under way, reflecting to some degree the socio-economic needs of Russian society. As demonstrated, religious organizations and their members are now citizens with full rights in this society. The impact of these reforms is already being felt. The number of religious organizations has more than doubled from 5500 registered religious congregations in 1990 to 13,000 registered congregations by January 1, 1996. In reality, approximately 20,000 religious organizations are actually operating, including those congregations not registered with the government. In addition, the country's denominational spectrum has become far more diverse. Compared with 1990, the number of different denominations has risen from twenty to more than sixty.

However, the leading role in the religious life of the country still belongs to the Russian Orthodox Church. As pointed out, the church has historically occupied a special place in the religious life of Russia and in the formation of Russian culture and government. More than half of the registered congregations in Russia are Orthodox. Nevertheless, religious activity seems to be on the rise on all denominational fronts. Sociological studies reveal that Orthodox believers compose 75% of all Russian believers and show that about half of all Russians consider themselves believers. The largest proportion of believers is among youth ages sixteen to nineteen. In this age group, 65% are believers, a higher percentage than among retirees (62% believers).

But despite these increases in religious activity, Russian church-state relations are only at a preliminary stage. However, one thing is certain: the development of these relations, as with the implementation of the constitutional rights to freedom of conscience and worship, is no longer limited to the ideological parameters of state atheism. In addition, the state is now working to facilitate a new model of church-state relations.

Russian Federation governmental departments have been formed to ensure close contact with religious organizations and are successfully operating in state organs of power. These departments provide churches practical assistance in solving a broad range of problems. In the Russian Federation's Academy of State Service under the president, professionals are trained for

service in these departments. A commission on questions of the relations between religious associations and the state operates under the Russian Federation government. This commission also provides religious associations with a coordinating-methodological link to specific state structures. In the Russian Federation's state Duma, a committee studies social groups and religious organizations. Under the Russian Federation's president, a consultative council has been formed on cooperation with religious organizations.

The emerging church-state model is not only providing structural support for the facilitation of church-state relations but is also giving needed financial support to remedy the past oppression of religious associations. According to far-from-complete data, in 1995 the Russian Federation appropriated approximately 200 billion rubles for the restoration of church architectural monuments. In that year more than 100 billion rubles were also expended from the federal budget toward these goals. Additionally, religious organizations are essentially fully exempted from all federal taxes and receive significant reductions in customs duties. Finally, over the last five years religious associations have received more than 4000 church buildings.

The new church-state model has broadened the parameters of religious associations' activity significantly. Church representatives have become increasingly active in charitable work, providing assistance to socially vulnerable layers of the population; combating a lack of spirituality, drunkenness, drug addiction, and crime; and contributing to the solution of international problems, including the establishment of peace where there are armed conflicts. In turn, the positive societal impact of these practices has brought about the continued support of governmental structures.

In 1994, the heads of several traditional Russian religious associations united in signing a nationwide agreement on social harmony that set the lofty goal of securing civil peace for the country and establishing a high level of moral behavior in various spheres of social life. It is wholly apparent that this sermon, which preaches Russia's transformation into a great, fruitful country, may also in the long run serve as an effective integrating force. The Russian Federation's national and regional policy initiatives give an important place to religious associations' at-

tempts to teach feelings of respect, trust, and tolerance between people and the preservation of the integrity of the Russian state.

Despite many positive reforms, religious conditions in the country and church-state relations predictably are not without problems. Unfortunately, violations of the constitutional principle of the secular nature of the state frequently arise. The most common constitutional infractions occur in the sphere of state education. Conditions conducive to missionary work and proselytizing exist in many schools and universities. But violations of state education's secular nature occur not only through the requests of religious organizations, but also through the cooperation of state educational organs, which are striving to fill a world-view vacuum in educational institutions. Violations of the principle of the state's secular nature also occur in the Ministry of Defense, in the activity of state institutions and enterprises, and in several federal ministries and departments.

Other violations of the secular nature of the state come from the increasing politicization of religion and the use of religious slogans by nationalist political movements. In numerous instances, political figures utilize the authority of religious organizations to achieve concrete political aims. Additionally, certain groups' political activities within religious organizations create unnecessary complications for a church's official leadership. For example, there have been instances when leaders of nationwide nongovernmental political organizations have claimed to represent the followers of a religion, thus compromising the religious organization and injecting tensions into interdenominational relations. Regardless, the leadership of the country, including the president, has always considered support for the interreligious world in the Russian Federation an invariable ideal and long-term objective. The very possibility of ethno-political conflicts growing into interreligious conflicts must be avoided, particularly because none of Russia's peoples is entirely religiously homogeneous.

Another problem is the attempts of commercial organizations to penetrate religious associations' structure and merge with them in order to utilize tax privileges granted them. Such attempts detract from religious associations' credibility. Particularly troublesome is the problem over recent years of expanding missionary activity in the Russian Federation by nontraditional foreign religious organizations. At the present time, there are

hundreds of foreign missions and a large but unknown number of foreign missionaries and preachers operating in Russia without any kind of governmental notification and without any supervision. In some regions, especially in Siberia and the Far East, the number of such newly formed denominations already reaches fifty to sixty percent of religious organizations functioning there. Several foreign religions, sometimes representing organizations in disrepute abroad, frequently violate norms of Russian legislation concerning the status of foreign citizens, registration, and travel procedures.

Sometimes their methods of disseminating their beliefs cause offense, particularly where these have acquired a mass and uncontrolled character, cause a concrete threat to the physical or psychic health of the people, change the historical Russian denominational balance and thus religious stability, or evoke displeasure from a significant portion of society as well as the majority of the country's religious leaders. Also, several new religions are well known in the West for their inveterate refusal to pay taxes and their legal battles connected with antisocietal and antigovernmental activity. Consequently, ever more voices urgently demand federal regulation of foreign religious activity. However, the lack of a federal legal basis for the regulation of these issues compels regional organs of power to deal with this problem on their own. Accordingly, they have passed normative acts that, in part, contradict requirements of current federal legislation.

Speaking of the most immediately pressing problems of church-state relations, one should also mention questions of the transfer to religious associations of church buildings and other property of a religious character now held by the state. Similarly difficult is the question of financing the remodeling and restoration of property returned to churches. Currently the process of transferring church buildings has slowed somewhat. This is largely because those buildings not yet returned are cathedrals and monasteries, requiring state organs to make significant financial expenditures in order to free them from current occupants. Unfortunately, present budgetary limitations do not allow the government to address all needs to the extent everyone would wish. Nevertheless, in accordance with the March 1996 edict of the Russian Federation president "On Measures for Rehabilitating Clergy and Believers Who Were Victims of Un-



founded Repression,"<sup>40</sup> organs of executive power at all levels must give assistance to believers by remodeling church buildings and returning items removed from churches, mosques, synagogues, and other church institutions. Of course, this transferring process also requires that due consideration be given to the interests of cultural institutions in the preservation of unique monuments of our cultural heritage.

In many ways, the status of church-state relations is defined by the level and depth of the current process for securing rights. Thus, the necessity for legislation defining the constitutional guarantees of freedom of conscience, worship, and religious organization acquires particular significance. It is well known that the whole series of norms in the current RSFSR law "On Freedom of Worship" passed over five years ago does not fully meet the needs of the times. This law requires fundamental revision and amendment. Serious corrections are needed in the areas of the legal status of religious associations, their state registration, the monitoring of their compliance with the statutes reflecting the aims of their activity, and the legal relations of these associations.

The lack of precise legislative criteria for the separation of church and state allows various interpretations of this constitutional principle. Thus, scholarly judicial commentary on the Russian Federation Constitution recognizes that

under conditions of the separation of religious associations from the state one should acknowledge as a serious violation of this constitutional principle the practice of organizing worship services in state institutions and enterprises (for example, the dedication of buildings, of produced goods, of employment positions, and so on), the location of icons or other items of religious symbols in them, the religious blessings of individuals as they assume government posts, the financing of the activity of religious associations at government expense, and so forth.<sup>41</sup>

An elaboration of legal concepts is urgently needed to guide the activity of organizations requesting governmental registra-

40. Decree of the President of the Russian Federation "On Means for the Rehabilitation of Clergy and Believers who Became Victims of Unfounded Repression," No. 378, reprinted in PROTOPOPOV, *supra* note 9, at 90.

41. TOPORNIK, ET AL., KONSTITUTSIIA ROSSISKOI FEDERATSII, KOMMENTARIJ [CONSTITUTION OF THE RUSSIAN FEDERATION, COMMENTARY] (1994).

tion as religious associations. The creation and functioning of religious associations in the Russian Federation, particularly foreign religious groups, requires the creation of federal procedures for foreign religious organizations seeking to open offices as foreign noncommercial and nongovernmental associations. The immediate enactment of the Federal Law "On the Introduction of Changes and Additions into the Law of the RSFSR 'On Freedom of Worship'" will permit omissions to be remedied. Furthermore, the enactment of the statutory regulation on opening foreign religious organization offices in the Russian Federation will serve similar purposes.

In sum, despite the practical problems encountered with and caused by religious reforms, the contemporary concept of cooperative interrelations between state and religious associations, for which the Russian Federation's Presidential Council on Cooperation with Religious Associations is responsible, could play an essential, positive role in the development of a new church-state model and, ultimately, in the strengthening of social-political stability. Of course such a concept must be closely bound to the draft law "On the Introduction of Changes and Additions into the Law of the RSFSR 'On Freedom of Worship.'" This concept of cooperation and the draft law should in no way be contradictory. Indeed, one would think they could have a mutually enhancing relationship.

## V. CONCLUSION

The Russian Federation has established a firm legal basis necessary for guaranteeing the constitutional right of freedom of conscience and worship and for protecting the activities of religious associations. Further legislative improvements will strengthen these guarantees and ensure that these rights will be observed, thus contributing to the dynamic development of church-state relations in the Russian Federation. Russian history and the experience of civilized countries demonstrate with absolute clarity the executive branch's genuine need for creation of a special expert-consultative organ on questions of church-state relations. This organ, holding to a unified conceptual line, would represent and defend the interests of the state in interrelations with religious associations, establish procedures in this delicate sphere of social relations, provide the necessary information about the state of religion in the country for other federal

organs, generalize and analyze proposals of religious associations to assist state structures, and provide scholarly research on religions.

Questions of cooperation between the state and religious associations are constantly under consideration by the Russian Federation president and his administration. As already noted, in 1995 a consultative Council on Cooperation with Religious Associations (in which authoritative representatives of religious associations participate) was formed under the president of the Russian Federation. Members of the consultative council include participants in the Agreement on Social Harmony and leaders of several federal executive organs. Together with preparation of a contemporary conceptualization of church-state relations and providing for presidential cooperation with religious organizations, this organ was given the responsibility, in part, to present the president with analytical material on questions of his policies in the area of interrelations of state and religious associations and to discuss proposed normative acts bearing on these relations.

The problems with church-state relations discussed in this Article have found expression to a significant degree in the Actions Program of the President of the Russian Federation 1996-2000, which dedicates a special chapter to questions of religious liberty. In this Program, in part, the president expresses his concern over the presence of active foreign missionary organizations in the Russian religious world. He notes the necessity for strict monitoring of observance of human rights and believers' rights in the structure being established according to Russian legislation. In the president's opinion, protection of citizens from spiritual aggression must be provided. In the Program, confidence is expressed that while protecting the right to freedom of worship, mechanisms will be created to also protect citizens from totalitarian cults.<sup>42</sup>

Among the most pressing tasks of Russian Federation presidential policy in the sphere of cooperation between religious associations and the state are (1) eliminating the contradictions between federal and regional levels of legislation in the area of church-state relations; (2) creating a legal basis for formation of nongovernmental sources of support of religious associations'

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42. Of course, the term "totalitarian cults" is not used here as a legal term.

activities; and (3) encouraging in every possible way religions' charitable activities. In the future, the Russian president intends to support protective measures for religious associations that promote the building of new cathedrals, the opening of new seminaries, the expansion of religious organizations' participation in national celebrations intended to further the unification of all citizens of Russia, and access to state and public radio and television. The realization of the aforementioned proposals to strengthen the guarantees of rights to freedom of conscience and worship and of the improvement of church-state relations in the Russian Federation, I believe, will allow us to impart a more dynamic and constructive character to the early development of these relations.

