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SCLJ

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RELIGIOUS FREEDOM IN RUSSIA

Introduction

The American Center for Law & Justice (ACLJ) and its globally affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world. The Slavic Centre for Law & Justice, located in Moscow, Russia, is an affiliate of the ACLJ and provides legal representation to those persecuted for their faith in Russia. The SCLJ drafted this report, drawing from its firsthand experience in Russia.

Overall Human Rights Climate

In general, for the year 2011, the situation with human rights in Russia has not changed, including with religious freedoms. Despite the verbal rhetoric discussing religious freedom in Russia, in reality, all spheres of human rights and freedoms have gradually deteriorated in 2011. There are no real practical changes, much less any reforms to strengthen the rule of law, democracy, or the human rights situation. The SCLJ recognizes that the rhetoric is nothing more than window dressings intended to reassure western partners that the Russian government respects human rights.

Until very recently, the Russian society tacitly tolerated the fact that the state is gradually restricting civil rights and fundamental freedoms. A majority of Russians were convinced that by giving up democratic values, civil rights, and fundamental freedoms in exchange for the mythical stability promised by the government. In reality, only a small minority of the population in Russia understand the importance of democratic institutions and the value of human rights, and how their existence correlates with the degree civil rights and freedoms are protected.

The recent parliamentary elections on December 4, 2011, and the gross and large-scale fraud in favor of the ruling party that took place, however, did not leave civil society indifferent. For the first time in the last 20 years protestors took the streets all over the country to peacefully protest actions under the slogan "For fair elections." The people cried out initially cried out for fair elections, but quickly added other political and civil demands of their government. The SCLJ recognizes that these peaceful protests events represents a qualitative leap in the development of Russian civil society.

In the days following the mass protests, the Kremlin was taken aback and lacked clear answers for the protestors. As the Presidential elections approach, which will be held March 4, 2012, it is difficult to overestimate the importance of the people. Only under the pressure of the December protests did the government amend the electoral legislation and the legislation on political parties, mitigating the conditions for the participating minor parties in parliamentary elections. The government also granted the people an election of governors, similar to those offered in 1990s, although *de facto* the control over their election still remains with the President. These so-called concessions, however, serve more as a facade to lull the attention of the western partners (specifically the United States and the European Union) and divert them from criticism of Putin's regime. The end goal is recognition by the US and EU that the upcoming 2012 presidential elections are legitimate.

In reality, the Russian authorities do not intend to start any dialogue with the opposition. Nevertheless, during his election campaign Vladimir Putin, held a big meeting with the heads of major religious denominations, to which he invited the representatives of the four so-called

"traditional" religions and representatives of the Pentecostals, Seventh-day Adventists, Catholics, and some others. Putin demonstrated his "loyalty to all" confessions, and not only to the Russian Orthodox Church. At the meeting, which took place in early February 2012, Putin received the support of all the heads of the denominations present. This support was more like veneration of Putin, however, and does not reflect the real attitude of the members of the churches, including the Orthodox.

Putin expressed his support of the following proposals: organization of Russian Orthodox family support centers in each city and municipality; the continuation of the course "the Basics of religious cultures and secular ethics" (a program tested in 2011 and attended by almost 500,000 children, pupils, 20,000 teachers and 30,000 schools); giving all educational institutions created by religious organizations equal lease rights, equal access to public funds, and equal salary pay for teachers; the state support of social service on the development of the institutions of the military clergy; the introduction of theologians on an equal basis with other humanitarian disciplines in secular high schools.

During the meeting, no one present raised truly sensitive issues on violations of the rights of religious minorities, the blatant interference of the state in church affairs, the discrimination against different religious organizations, the religious intolerance and the incitement of hatred or crimes committed on this ground, or the fight against religious organizations under the guise of combating extremism. Therefore, the SCLJ considers this meeting as purely propaganda in Vladimir Putin's election campaign.

Application of Extremism Law

The application of the Extremism Law continues to be one of the most controversial issues in regard to religious organizations. During 2011, the government made no changes to the Extremism Law. Application of the law also remained virtually unchanged, in fact, in respect to certain religious organizations, specifically the Church of Scientology and Jehovah's Witnesses, this practice has ratcheted up.

Religious texts in whatever form, recently including materials published on Internet websites or holy books, some of which had been published century ago, have been declaring by courts as the extremist literature. As a rule, prosecutors who institute such proceedings before courts use one argument: the literature allegedly contained the assertion that this particular faith is the only true faith. This argument, in theory, could be applied to almost any religion, including Christianity, as the essence of many religions is precisely that it offers people something to believe in that is considered true from the perspective of the particular faith. By applying this argument to the assessment of religious texts, it turns out that everything depends on the discretion of the authorities, which allows the authorities to discriminately target unwanted religious organizations.

The infamous "list of the Ministry of Justice" now contains 1071 different "extremist" materials.

The shortcomings of the procedures by which a particular text is determined extreme contribute to the fact that this list is updated in a chaotic manner and why some harmless materials are included in the list. In civil proceedings Russia certain cases are considered by the courts under "Special Procedure." The procedure assumes that there is no dispute about the law *per se*; for example, if it is necessary to establish a legal fact of juridical importance, the fact becomes legally binding for all. Under the special procedures, a prosecutor may bring any

material before a district court without having to provide notice to concerned parties about the court hearing. The court generally orders religious experts to inspect the materials and offer an opinion on the matter, which is then used as the basis for its decision. The SCLJ has observed, however, that a high frequency of these cases take place in the Russian province (the Orenburg region, Buryatia, etc.), where no religious experts exist. Subsequently, such a decision becomes binding on the entire territory of Russia.

It should be noted that the procedural legislation does not exclude the possibility for the prosecutor to apply to the court by common procedure (a contentious proceeding with both a plaintiff and defendant). Prosecutors rarely use this method because it subjects the case to adversarial proceedings, where the responding party is given notice of the action and is represented by lawyers, and because it often attracts a lot of public attention.

Because the right to recognize materials as extremist belongs to the district courts, and not a regional or Supreme Court, there is a problem when two courts (even in the same city) come to diametrically opposite decisions on the same material. This recently happened over the slogan "Orthodoxy or death."

There is an alarming trend to have psychiatrists analyze disfavored religious practices. For example, in Khabarovsk, the prosecutor tried to prove that certain practices of the Church "Grace" (e.g., "Alpha course" and "speaking in tongues") had a psychological impact and could potentially harm its parishioners. In another case, a prosecutor claimed that the Church of Evangelical Faith of the City of Blagoveshchensk applied the methods of psychological influence in the form of neuro-linguistic programming (NLP) during the minister's sermons. Any church sermon or church service typically has some psychological impact on people. This is characteristic of all traditional religions, which tend to use music, lights, candles, incense, a choir, repeating phrases—methods aimed at connecting with congregants. But the same can also be said of the stage and cinema, and even advertising. Nonetheless, the court ordered that Khabarovsk Regional Psychiatric Hospital examine the videotaped sermons, and relying on its analysis, the court concluded, without an in person examination, that the church exercised NLP (a form of mind control) in its sermons. Prosecutors have used this argument to invalidate entire religious practices in hopes to liquidate unwanted religious organizations.

This trend of using psychiatry to analyze religious practices is of great concern. This is the return of punitive psychiatry. These methods were widely used in the USSR between 1960-1980 with respect of those who tried to criticize the Soviet system. The soviet psychiatry qualified those who denied the soviet system as having a mental disorder, because to "deny the socialist system and communist ideology as the only true was pure madness." Those who spoke out against the soviet system were placed for compulsory treatment in a psychiatric hospital, where there was no limits to his/her detention and many spent their whole life detained in the prison hospitals.

Application of the Extremism Law against Jehovah's Witnesses and Protestants

In 2011, a campaign against Jehovah's Witnesses under the Extremist law has continued. Such surge was recorded for the first time since the fall of the soviet union. In many regions the Jehovah's Witnesses faced unprecedented pressure in various forms, ranging from the denial of space for worship to including their literature on extremist list, and even in some cases, liquidating the organizations and institution after prosecutors brought criminal charges against ordinal believers under Article 218 of the Criminal code (extremism).

The paradox of this situation is that the campaign against Jehovah's Witnesses, which gained momentum again in 2010, happens on the background of a decision by the European Court of Human Rights (ECtHR) that required Russia to recognize Jehovah's Witnesses. The ECtHR held that none of the Jehovah's Witnesses' activities were extreme and the police and Russian courts breached not only the European Convention provision on Freedom of religion, but the Russian Constitution's one as well. The Russian government, however, has ignored the decision of the ECtHR and intensified its efforts to persecute this denomination.

Surprisingly, in the Soviet period the most persecuted were the Jehovah's Witnesses, but after the collapse of the USSR and the creation of the independent Russia all members of the Jehovah's Witnesses were automatically recognized as victims of political repression. This denomination is characterized by the fact that, since its inception, they have consequentially adhered to the same doctrines and the same patterns of behavior for decades. There is only one explanation for the increased persecution, the sudden increase in criminal cases brought against them and their literature, the content of which has not changed for decades—the policies of the state have changed.

The Official Distinction Between Traditional and Non-Traditional Religions

It is well known that the Russian authorities favor the Russian Orthodox Church. Even after the law on restitution of church property came into force the Russian authorities continue to show favoritism to the Orthodox Church. A striking example was reported in Vladivostok, where in 1965 the Seventh-Day Adventists and Baptists were granted a shared permanent use contract of a building. After the Law on the restitution came into force the Churches went to the local administration with the request to transfer them the ownership of the building. The local authorities, however, notified them of the cancellation of the permanent use contract and ordered them to vacate the premises on the grounds that, according to the civil code, a contract of indefinite free use may be terminated on the initiative of the owner at will.

On 24 January 2012, the court ruled in favor of the Churches finding that the termination of the contract was illegal, because the law requires both historical property and other property occupied by religious organizations be transferred to the churches.

Legal Status Issues

During year of 2011, the SCLJ won a few important cases at the Constitutional Court of Russia, which impact the legal status of religious organizations.

De-registration of Religious Organizations by the Tax Authorities Overturned

The SCLJ won a case in the Constitutional Court of Russia regarding provisions of the Federal Law "On the state registration of legal entities," which the tax authorities had used to eliminate religious organizations without any court proceeding that it deemed had ceased its operations. The tax authorities introduced this procedure in 2006 in an attempt to update the registry (Uniform State Register of Legal Entities) and eliminate so-called "dead" entities from the registry. Because the tax authorities anticipated that the number of "dead" entities to be rather high, they rationalized that liquidation through court proceedings could potentially lead to a

particularly heavy workload for the courts. Therefore, the power to exclude such legal entities from the registry was granted to the tax inspectorate at the district level.

The main drawback associated with this procedure, however, was the tax authority's ability to remove a legal entity from the registry based on minimal criteria that the entity was no longer operating, such as a lack of bank account activity and a failure to report to the state during the previous 12-month period. Before removing an entity, the tax inspectorate was not required to verify any other entity activities that might otherwise evince the legal entity's continued operation. Moreover, the tax inspectorate was not required to notify the entity that it was being or had been liquidated.

This procedure applied not only to commercial entities, but to every entity with legal status, including religious organizations. The procedure did not take into account the specific character of such organizations. For example, this procedure completely disregarded that the decision to register a religious organization is made by the Ministry of Justice, not by tax authorities (as is the case with registering commercial organizations). Also, this procedure failed to take into account that a large number of religious organizations do not have bank accounts namely because they do not perform any kind of commercial activity; nevertheless, such religious organizations continue to work actively with their parishioners.

In the first nine months of 2011, the tax authorities liquidated a total of 193 religious organizations under this procedure. Of the 193 religious organizations, 72 of them are active within the structure of the Russian Orthodox Church Moscow Patriarchate and 45 were religious organizations of various Protestant denominations.

The religious organizations, in an attempt to prove that they are active entities, filed cases against the tax authorities challenging the liquidation and removal from the registry. Unfortunately, in most cases, the courts relied solely on the criteria set out in the challenged law and denied the organizations' appeals, declaring such organizations to be defunct, despite evidence to the contrary.

The SCLJ challenged this procedure before the Russian Federation Constitutional Court, which issued its decision on December 6, 2011. The Court held that the proper body to determine whether a religious organization is inoperative and whether it should be removed from the registry was a judicial court, not the tax authorities. Furthermore, a religious organization may only be liquidated and removed from the registry if it can be established that the organization is factually no longer performing its authorized activity (i.e., those activities for which the Ministry of Justice granted the organization legal status).

This victory has several lasting effects. First, tax authorities will no longer be able to unilaterally declare that a religious organization has terminated its activities and then proceed to exclude it from the state registry. Instead, the tax authorities now have to file a lawsuit and a religious organization will have the opportunity to defend its rights by providing evidence that it is indeed continuing to perform its statutory activities.

Second, this victory is significant for those religious organizations excluded from the state registry prior to December 6, 2011, as they will now have the opportunity to appeal the decision taken by the tax authorities through court proceedings. The liquidated religious organization must, however, initiate the appeal within one year of the date when they were informed or should have been informed about their exclusion from the state registry. On appeal, only one fact will be adjudicated by the court: whether the religious organization was in fact carrying out their statutory activities.

Third, for those religious organizations that the tax authorities excluded from the registry and had previously lost their appeal in court, this decision creates the right to have the court decision reviewed on the basis of newly discovered evidence. In this case, the court will have to take into account the constitutional and legal meaning of the applicable provisions identified by the Constitutional Court of the Russian Federation – in other words, it will have to determine whether, in fact, the religious organization has ceased performing its statutory activities. It should be noted that religious organizations may file the above-mentioned complaints within a period of three months from the date that it is established that there are grounds for review, that is, until March 6, 2012.

The 15-year Existence Requirement for Registration of Religious Organizations after *Kimla, et al. v. Russia* (nos. 76836/01 and 32782/03, §§ 103-104, 1 October 2009) Came Into Force

In 2011, *Kimla, et al. v. Russia*, a decision by the ECtHR, came into force, and some slight modifications were made in the law on freedom of conscience. Now, if a religious group does not present the document confirming its 15-year existence, the Ministry of Justice will request documentation from the relevant local authorities. It is not clear, however, what procedure the Ministry will follow if the local administration also fails to provide such documentation. Presently, the Ministry of Justice has taken an informal position that such documentation is not required by virtue of *Kimla, et al. v. Russia*.

Despite uncertainty about the 15-year period's legality and application, the Ministry of Justice prepared a draft law. Rather than using a scalpel to eliminate the uncertainty after the *Kimla, et al. v. Russia*, the draft law used a sledge hammer to rewrite the whole system of registration for religious associations. In addition to a number of "technical" amendments to the Law on Freedom of Conscience, the proposed law includes several important and fundamental changes relating to the activities of religious associations.

The Draft Law proposes to delete the term "religious group" from the Law on Freedom of Conscience. The Draft Law proposes that only certain religious organizations will be recognized:

(1) Religious (faith-based) organizations;
(2) Institutions of professional religious education; and
(3) Organizations that were established by a centralized religious organization in accordance with its charter, which indicates its objectives and characteristics, as stipulated in Paragraph 1 of Article 6 of the respective federal law, including a governing or coordinating body.

Under these limitations, the draft law would not necessarily ban all religious communities that operate without having undergone state registration; instead, the draft law would permit the government to not recognize such communities as religious groups. As such, the draft law effectively eliminates religious groups' access to legal rights and benefits provided by the state.

Additional enforcement issues will be raised if the draft law is enacted. The draft law will be open to varying interpretations by regulatory and supervisory authorities that do not always follow the spirit of the law. Some interpretations may actually harm civil rights. For example, because the draft law removes the term "religious groups," some would interpret this category's deliberate removal to mean that no such category should exist. There have been numerous civil rights violations against the right to collective manifestation. Whether a religious entity registers and receives legal recognition or maintains status as a religious group, and whether constitutional

rights apply to these entities, religious entities will remain subject to violations through *ad hoc* determinations because of the draft law's ambiguity. Because legal nihilism is widespread among those charged with enforcing the law and protecting religious liberty, one does not need to hope that regulatory and supervisory organs will treat the constitutional rights of citizens with due respect without any reference to this legislative act.

Furthermore, if the purpose of the draft law was to improve upon existing legislation, this version completely fails in this respect. Improvement cannot be reasonably attained by excluding religious groups because most religious associations will cease to exist *de jure*, while continuing to exist *de facto* (absent a legal interpretation that would prohibit an entity's activities altogether). If religious groups continue to exist without falling within the purview of the Law on Freedom of Conscience, they cannot be criminally and civilly liable for any of their activities. As such, the authorities' next logical step would be to prohibit any unregistered religious communities from assembling, in stark contradiction with and a blatant violation of Article 28 of the Constitution.

In the case of *Kimla, et al. v. Russia*, the European Court of Human Rights obliged Russia to take measures aimed at removing the practice of refusing to register religious organizations on the basis of their non-compliance with the pre-requisite that a religious association prove a 15-year existence in Russia before registration.

Although the draft law proposes to exclude this 15-year history prerequisite for registration, it imposes new insurmountable difficulties that continue to block registration for new entities. True, the draft law proposes to allow local religious organizations not affiliated with any centralized religious organization to register without providing proof of its 15-year history. The draft law, however, makes the exercise of certain rights contingent upon the local religious organization's ability to prove its inclusion within a centralized religious organization. Thus, although a local religious organization may register without proving such affiliation, **it may not exercise certain rights for a ten-year period** – a period similarly unreasonable to the 15-year period addressed (and found to violate the Convention) in *Kimla, et al. v. Russia.* The restricted rights are listed below:

- Offering religious instruction to children outside of the educational programs offered at state and municipal educational establishments;
- Involving any representatives of a foreign religious organization;
- Conducting religious services in health care institutions and hospitals, orphanages (children's homes), communal homes for the elderly and disabled, and in correctional facilities (*e.g.* prisons, penitentiaries) at the request of citizens who are at the premises specifically allocated by the respective administration for this purpose;
- Establishing educational institutions or setting up mass media capabilities;
- Creating institutions offering professional religious education (religious educational institutions) to train ministers (clergy) and religious personnel;
- Inviting foreign citizens in order to engage in the professional activities, including preaching and religious activities, of such organizations in accordance with federal legislation;
- Becoming involved as the founders of a centralized religious organization.

Because the draft law fails to specify its objectives, any discussion or analysis of whether

the relevant "limitations affecting . . . constitutional rights" are "justified and proportionate to constitutionally significant purposes" is not possible. The draft law's restrictions are based on unfounded opinions that are not related to a religious association's actual activities. Thus, the the draft law, at least in part, represents the fear of "new" religious groups and equates them with something that is "dangerous."

Under the current Law on Freedom of Conscience, a state religious expert examination may be carried out only if the organization is registered upon its initial establishment. The Ministry of Justice now proposes to examine religious organizations that already exist. According to the draft law, a state religious expert examination may be carried out in the following instances:

1) The submission, in the prescribed manner, of an application for state registration to the appropriate federal state registration body (or a territorial agency thereof):
   - For a local religious organization that does not have confirmation issued by a centralized religious organization of the same religion/faith;
   - Any amendments to the charter of a religious organization (including its legal name) in the case that these changes are associated with specified or altered information about the religious confession of the organization;
2) If necessary, an expert assessment to determine whether a registered religious organization still exhibits the characteristics of a religious organization, as established under Federal Law.

The provisions in the draft law (or lack thereof) regarding religious expert examinations appear to open the door to abuse, because the draft law is unclear as to whether religious expert examinations may be carried out repeatedly against a single organization. Neither does the draft law indicate how often examinations may be conducted. Further, the legal consequences are similarly not clear should a particular examination of a religious organization find that the necessary requirements are no longer met. Under Article 12 of the current law, a religious organization may initially be denied the opportunity to register if it is not recognized as a religious entity. Additionally, the current law does not impose any sanction in such a case, because an examination is only permitted during the initial registration or when registering amendments to the founding documents. The draft law would allow for expert examination in the same manner as the existing law, but opens to door for further and repeated examination by leaving out language to limit the timing of the expert examination and the procedural requirements for carrying out the examination.

The draft law met with fierce criticism from all religious groups and human rights activists. The Ministry of Justice's response to the criticism has been to remove the draft law from its website. As we know from the highest officials of the Ministry, out of protocol, the draft law will not be changed fundamentally. Apparently, only the forthcoming presidential and parliamentary elections influenced the time of its official adoption by the Parliament, which probably will happen in 2012.