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Honouring of obligations and commitments by the Russian Federation

(excerpts)

Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr David Atkinson, United Kingdom, European Democrat Group and Mr Rudolf Bindig, Germany, Socialist Group

/.../

VIII. Human Rights

/.../

K. Freedom of conscience and religion

349. Besides being committed by virtue of the Statute of the Council of Europe to ensure enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms including freedom of conscience and religion (Article 9 of the ECHR), the Russian Federation also assumed the following commitments: a) to introduce new laws in line with the Council of Europe standards:... on freedom of religion; b) to return without delay the property of religious institutions.

350. The liberal legislation on freedom of religion, adopted in the beginning of the 90's, promoted broad plurality of confessions and religious organisations throughout the Federation¹⁹⁵. However, the 1997 Federal Law on freedom of conscience and religious associations bears signs of unequal treatment of the various confessions by recognising "the special role of Orthodoxy in the history of Russia", by "respecting Christianity, Islam, Buddhism, Judaism, and other religions, constituting an integral part of the historical heritage of the peoples of Russia"¹⁹⁶. Being included in the Preamble of the Law and having no direct binding force, these provisions, nevertheless, inspire a discrimination of those confessions that are not mentioned. Hence, federal and regional authorities seem to offer a preferential treatment to the Russian Orthodox Church. We heard allegations that minority religious communities must secure permission from the local Orthodox Church before being allowed to build a house of worship or that local authorities seek the advice of the Orthodox Church before dealing with such religious groups.

351. We were distressed to hear during our fact-finding missions reports about numerous cases of religiously motivated violence – physical violence, intimidation, other forms of attacks against the representatives of "non-traditional" confessions and their places of worship¹⁹⁷. In

most cases the local and regional authorities turned a blind eye to these attacks and did not prosecute their authors.

352. Foreign religious leaders and missionaries have experienced difficulty gaining entry visas or maintaining residence in Russia¹⁹⁸. Since the beginning of 2002, a Catholic Bishop and several priests have been expelled from Russia, including those who had lived in Russia for years. In addition to the denials or revocations of visas for Catholic priests, there were reportedly numerous other cases in which foreign religious workers were denied visas to enter or re-enter the country, including members of the Protestant Christian, Buddhist, and Muslim faiths. In the Krasnodar and Kaliningrad regions priest and nuns can obtain only 3 month visas. In late 2003, a court in Tatarstan denied a new residence permit to a Baptist missionary on the basis of the assessment of local security officials that his activities were "extremist". The Buddhist community of Kalmykia for several years has been appealing to the Russian Foreign Affairs Ministry to reverse previous visa denials and allow its spiritual leader, the Dalai Lama, to visit Russia. We welcome the fact that the Dalai Lama was allowed in November 2004 to visit Kalmykiya.

353. A July 2002 Law "On the Legal Status of Foreign Citizens in the Russian Federation", which transferred much of the responsibility for visa affairs from the Ministry of Foreign Affairs to the Ministry of Interior, appears to have disrupted the visa regime for religious and other foreign workers, contributing to the sharp decrease in the issuance of long-term visas and causing hardship for many groups. The FSB has asserted itself into matters dealing with visas and religion, particularly where groups it views as "dangerous cults and sects" are concerned. For example, an FSB official who acted as the official representative of the country at the meeting on 16 June 2004 of the Organisation for Security and Co-operation in Europe (OSCE) on the Relationship between Racist, Xenophobic, and anti-Semitic Propaganda on the Internet and Hate Crimes presented an official statement that labelled members of Jehovah's Witnesses and Hare Krishna's as examples of xenophobic cults that propagated "fanatical devotion and rejection of other religions" on their Web sites¹⁹⁹.

354. During 2004 mass media reported numerous cases of illegal personal data collecting by regional departments of the Ministry of Justice. For instance, in Chelyabinsk, Samara, and Yaroslavl the Justice Departments sent a questionnaire to religious organisations which included a requirement to attach a list of parishioners. Such practice existed during Soviet rule when churches, mosques, and synagogues had to present personal information about parishioners to the responsible agencies but disappeared with the breakdown of the USSR. The practice of collecting personal data of the parishioners in regions of Russia should be stopped; the central department of the Ministry of Justice should advise its regional offices on the inadmissibility of such requirements.

355. Another frequently cited major problem with enjoyment of freedom of religion is the allocation of land for the construction of places of worship for some religious communities. This especially concerns minority confessions, in particular Jehovah's Witnesses, which encountered problems in Yekaterinburg, Kazan, Dalnegorsk, Adler, and St. Petersburg. Another case of difficulties in obtaining

a plot of land was reported by a Jewish community in Yekaterinburg. They claimed that the previously allocated site was later taken away for the construction of the presidential envoy's residence (during our meeting with the presidential envoy, Mr Latyshev neither confirmed nor disputed the allegations).

356. We are alarmed by the recent trend of segregation of religious organisations into traditional and non-traditional groups. Recognising the fact that the federal authorities are trying to secure the unhindered realisation of the freedom of religion, we have to state that regional and local bodies in many cases are reluctant to protect the rights of religious communities and fail to address properly the cases of freedom of religion violations.

357. At the same time, the State Duma hasn't supported so far the initiatives to formally grant special status to the so-called traditional religious organisations²⁰⁰, notwithstanding the 26 March 2004 Presidential statement in favour of drafting a bill on state support "to the spiritual leaders of traditional religious confessions," the ITAR-Tass news agency reported.

The Salvation Army and Jehovah's Witnesses cases

358. In its [Resolution 1277](#) (2002), the Assembly regretted the problems of the Salvation Army²⁰¹ and Jehovah's Witnesses in Moscow, but welcomed the decision of the Russian authorities to ensure that the problem of local discrimination and harassment of these religious communities be brought to an end. However, we have to report that to date both organisations continue to face legal and/or practical obstacles in conducting their activities in some regions of the Federation.

359. In February 2003, the Taganskiy District Court of Moscow quashed its own September 2001 decision ordering liquidation of the Moscow branch of the Salvation Army following a ruling by the Constitutional Court of 7 February 2002²⁰². As the ruling of the Constitutional Court concerned only the liquidation procedure, the decisions on refusal to re-register taken in 2000 remain in force. The Moscow branch of the Salvation Army is to date *de facto* deprived of its legal status, since the time limit for re-registration has expired.

360. The Moscow branch of the Salvation Army has lodged an application with the European Court of Human Rights on 18 May 2001, which was declared admissible in June 2004²⁰³. In its application, the Moscow branch of the Salvation Army complained under Articles 9 and 11 of the Convention that the refusal to grant legal entity status severely curtails its ability to manifest its religion in worship and practice. The applicant submits that the classification of the Salvation Army as a paramilitary organisation and the assumption that its members would inevitably break Russian law are not founded on any factual proof and represent an impermissible judgement about the legitimacy of the applicant's religion.

361. Jehovah's Witnesses. On 26 March 2004, the Golovinskiy District Court of Moscow passed a ruling banning activity of Jehovah's Witnesses organisation in the Russian capital under a provision of the 1997 Law that allows courts to ban religious groups believed to incite hatred or intolerant behaviour²⁰⁴. This was confirmed on appeal by the Moscow City Court on 16 June 2004. Notwithstanding the fact that the national office of the organisation was registered before, Moscow courts have found the community guilty of forcing families to disintegrate, infringing rights and freedoms of the citizen, encouraging suicide or the refusal on religious grounds of medical aid to the critically ill, and inciting citizens to refuse to fulfil their civil obligations established by law. The Jehovah's Witnesses became the first national religious organisation to have a local branch banned under the 1997 law. The organisation lodged an application with the European Court of Human Rights the examination of which is pending.

362. Many local congregations of Jehovah's Witnesses throughout the country reported that the rental contracts on their buildings were either being cancelled or that they faced that risk by landlords. Members of Jehovah's Witnesses reported an increase in these denials after court decisions to ban all religious activity by the group in Moscow, first on 26 March and then on 16

June, were publicised. Some landlords misunderstood the ruling and believed they were compelled by law to cancel rental contracts with the group. In Sochi, in June, members of Jehovah's Witnesses were denied access to a meeting venue after the FSB pressured the landlord; the decision to deny access was later reversed and the meeting took place.

363. We've been also disappointed to learn that this organisation is being prosecuted not only in Moscow city but also in some other regions we visited, in particular in Yekaterinburg where the congress of Jehovah's Witnesses was disrupted last summer by representatives of the local authorities. The Jehovah's Witnesses' local conventions have been also disrupted in Moscow, Vladimir, Khabarovsk, Stavropol Kray, Nizhniy Novgorod, Pyatigorsk, Sochi, and Chelyabinsk²⁰⁵.

364. We call on the Russian authorities of all levels to ensure equal treatment for all faiths under the law. We refer to the Assembly's recommendation to the Russian authorities expressed in [Resolution 1278](#) (2002)²⁰⁶ that the law on religion be more uniformly applied throughout the Russian Federation, ending unjustified regional and local discrimination against certain religious communities and local officials' preferential treatment of the Russian Orthodox Church, and in particular their insisting in certain districts that religious organisations obtain prior agreement for their activities from the Russian Orthodox Church.

Legal framework on freedom of conscience and religious associations

365. One of the Russian Federation's commitments was to introduce new laws in line with Council of Europe standards, in particular on freedom of religion (Opinion No. 193 (1996), § 7.v.). The Federal Law "On Freedom of Conscience and Religious Associations" entered into force on 1 October 1997 replacing a 1990 law on the same subject. This new legislation has been criticised both at home and abroad on the grounds that it disregards the principle of equality of religions. The Law's preamble specially mentions Orthodoxy, Christianity, Islam, Buddhism, and Judaism. In practice administrative bodies and the courts, interpreting the act as a whole from the point of view of its preamble, quite often treat the "non-traditional religious organisations" as "totalitarian sects"²⁰⁷.

366. The law then goes on to draw a distinction between "religious organisations", according to whether or not they existed before 1982, and a third category, called "religious groups". Religious organisations that existed for less than fifteen years, and religious groups are subject to legal and tax disadvantages and their activities are restricted²⁰⁸.

367. The intent appears to have been to discriminate against members of foreign and less well-known religions by making it difficult for them to establish religious organisations. For example, many officials in law enforcement bodies and the legislative branches speak of the need to protect the "spiritual security" of the country by discouraging the growth of "sects" and "cults," usually understood to include Protestant and newer religious movements. The 1997 law is very complex, with many ambiguous provisions; and it creates various categories of religious communities with differing levels of legal status and privileges. Most significantly, the law distinguishes between religious "groups" and "organisations." A religious "group" is not registered and consequently does not have the legal status of a legal person; it may not open a bank account, own property, issue invitations to foreign guests, publish literature, or conduct worship services in prisons and state-owned hospitals and among the armed forces. It does not enjoy tax benefits or the right to proselytise. Individual members of the group may buy property for the group's use, invite personal guests to engage in religious instruction, and import religious material. In this way, groups theoretically are permitted to rent public spaces and hold services;

however, in practice members of unregistered groups sometimes encounter significant difficulty in exercising these rights.

368. The 1997 law provides that a group that has existed for 15 years and has at least ten Russian members may register as a "local religious organisation." It acquires the status of a legal entity and receives certain legal advantages. "Centralised" religious organisation can be formed only from no fewer than three local religious organisations of the same confession. Thus, the 1997 law provides for a very complicated procedure to establish a new non-local religious organisation which can operate on more than one "territory" (the law also doesn't define clearly the administrative entities included in such "local territory"). Taking into account the significant discrepancy in rights attached to religious groups and organisations, this provision can be viewed as discriminating against minority or new beliefs.

369. Moreover, to be allowed to include in its name words "Russia", "Russian", and their derivatives the centralised religious organisation's structures have to operate on the territory of the Russian Federation on a legal basis for a period of no fewer than fifty years at the time of the application to the registration agency for state registration.

370. Some of these concerns have been addressed, notably through the decisions of the Constitutional Court of the Russian Federation of 23 November 1999, 13 April 2000, and 7 February 2002. Although the Court has already restricted the application of the so-called "fifteen-year rule", which initially severely limited the rights of religious groups that could not prove their existence on Russian territory for at least fifteen years before the new law entered into force, the total abolition of this rule would be considered as an important improvement of the legislative basis²⁰⁹.

371. Although the Law provides that foreign citizens and persons without citizenship who legally reside on the territory of the Russian Federation enjoy the right to freedom of conscience and freedom of religious profession on an equal basis with citizens of the Russian Federation (Article 3), it also stipulates that only citizens and other persons "permanently and legally residing on the territory of the Russian Federation" can associate into a religious organisations (be founders or members of such organisations). This provision can be viewed as contradictory to Article 28 of the Russian Constitution and Article 9 of the European Convention of Human Rights since the Russian legislation provides for special procedure for obtaining permanent residence.

372. The Russian Federation Ombudsman in his Special Report "On Implementation by Russia of its Obligations Undertaken When Joining the Council of Europe" released in May 2002, also noted that Article 3 (2) of the Law provided for the possibility of restricting freedom of religion if necessary to protect state security, whereas Article 9 of the ECHR contains no such restriction.

373. A Law "On Counteracting Extremist Activities" was adopted in July 2002 with the goal of reducing religious and ethnic intolerance and limiting the activities of ultra-right-wing organisations. The legislation prohibits advocating in public speech the superiority of any group based on religion, race, nationality, language, or other attributes. Critics charged that the legislation could prompt a dangerous expansion of police power and that the Government had already demonstrated a lack of political will in implementing existing legislation²¹⁰. Some observers expressed particular concern about the effect of the legislation on religious freedom. In 2003, authorities in Samara subsequently made use of the anti-extremism legislation to cancel the registration of a Buddhist community and the Church of the Last Covenant, and to refuse registration to communities of Scientologists and the Unification Church. At the same time, in

the vast majority of crimes targeting Jewish organisations and property, officials generally ignore the anti-Semitic motivation of the crimes and prosecute criminals under the much more lenient charge of "hooliganism".

374. Therefore, we urge the Russian authorities to revise the 1997 Law on freedom of conscience and religious associations, in particular, in order to eliminate the discriminatory provisions hindering registration of new religious organisations; simplify the registration procedures; grant more rights to unregistered religious groups; bring other provisions of the law into line with the Russian Constitution and European Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted in the case law of the European Court of Human Rights.

375. Russia also undertook to return without delay the property of religious institutions (Opinion No. 193 (1996), § 10.xiii.). We note that the restitution of religious property seized by the Soviet government remains an issue. Most properties used for religious services, including churches, synagogues, and mosques, have been returned. But, for instance, the Jewish community is still seeking the return of a number of synagogues, religious scrolls, and cultural and religious artefacts. In Kazan, the former cathedral of the Roman Catholic Church has not been returned because it's now a laboratory of an aviation institute.

376. The Russian Orthodox Church appears to have had greater success reclaiming pre-revolutionary property than other groups, although it still has disputed property despite its preferential treatment. The St. Petersburg Russian Orthodox Old Believers' Community has not been able to get its church returned, which was confiscated by Soviet authorities in 1922. Roman Catholics continue to pursue legal avenues towards restoration of the Saint Peter and Saint Paul Cathedral in Moscow. The office of an oil company currently occupies the cathedral, and the Catholic parish is meeting in a former disco hall because it does not expect the company to vacate the premises.

377. In this regard, we welcome the adoption by the Russian parliament of the law²¹¹ granting the religious organisations a free of charge right of ownership on the plots of state or municipal land occupied by the religious constructions (if the relevant construction is owned by the organisation) or gratuitous long-term possession. We hope that this law will be implemented without any discrimination to the different religious organisations and will relieve them from the need to pay for or purchase land on which their buildings are already located.

378. Therefore, we urge the Russian authorities to solve remaining problems with the return of property to the religious institutions without further delay.

L. Alternative military service

379. Another commitment of the Russian Federation was to adopt a law on alternative military service, as foreseen in Article 59 of the constitution (Opinion No. 193 (1996), § 10.xviii.). This law was adopted in July 2002 and took effect on 1 January 2004. Two supplements to the law were issued in March 2004 – the first one listed 722 organisations to which draftees may be assigned for alternative service, and the second listed 283 activities that draftees were permitted to perform. In May 2004 the Russian Government approved the by-laws regarding the implementation of the law on alternative civilian service performance. In July 2003 the President adopted a decree defining the special state bodies authorised to organise alternative civil service – Ministry of Labour and Social Development (in March 2004 this function was transferred to the Federal Service of Labour and Employment) and Ministry of Defence.

380. The Law is often criticised for a number of its provisions. The term of alternative civil service is 1.75 times longer than the regular military service (42 months or 21 months for university graduates). But if served in the "organisations of the Armed Forces" the term of service is cut down to that of 1.5 times of the ordinary military service; conscripts who opt for alternative service have to absolve it outside the territory of the Russian Federation subject where they currently reside, thus loosening their family and social ties.

381. We consider that the new law is not compatible with European standards and can't be regarded as an effective one. Unfortunately, the new law reflects in most of its provisions the position of the Ministry of Defence of the Russian Federation, which formally took the stand of supporting the introduction of alternative civil service, while in fact setting obstacles in its way²¹².

382. Thus the Law in practice denies the right of alternative service to the majority of young men willing to choose it. Alternative military service as provided by the Law serves as a punishment for those who choose to exercise their religious or moral convictions²¹³. That is why the law is prohibitive and mostly ineffective - only a small number of those drafted opted for alternative service during 2004 (not more than 1%)²¹⁴.

383. In our view, it is also unusual that those who choose alternative civil service are often required to perform their 3 and a half years working in industry or other economic units. The aim of alternative civil service should not be to provide companies, even public ones, with cheap workforces but to give those opposed to military service the possibility to serve society as a whole, through work carried out in the non-profit public sector, for example in hospitals, schools, retirement homes and the like.

384. In this regard, we should notice that Russia's commitment concerning the law on alternative civil service was not fulfilled as it implies not only the mere adoption of a law but also its compliance and implementation in line with European standards. A law which de-facto hinders and discourages those who refuse to bear arms for religious or other reasons of conscience from choosing non-military service cannot be considered as satisfactory. Thus we urge Russian authorities to revise the law in line with applicable European standards.