

Amendments to the Russian Religious Freedom Law and the rule of law in Russia

I.1: the gap

The redefined relationships between the State and the Church have implied in 1990 the passing of a bill on religious freedom that intends to be seen as the cornerstone of the relations between the two parties. This law, that deals with the existence of religious organizations in the Russian Federation, demonstrates the Russian State's new policies regarding religious matters.

The broad lines of this law, which definitely breaks away from years of repressive and anti-religious actions, revolve around three key concepts: the freedom of conscience, the secularity of the State, and the equality between religious organizations. With their newly acquired legal status, religious organizations now have a right to exist legally as well as socially through the possibility to contract, to engage in legal actions and more importantly to own property. Such unprecedented terms of law have brought about the creation of some specific legal mechanisms. It did not take long before the implementation of the law began facing a great deal of difficulties that curbed its effectiveness.

These difficulties reflect deficiencies in the law, both on the juridical level; technically, the measures are hard to apply; and on the “social” level, because the law is often circumvented by religious organizations as well as by the national authorities.

Even if the law totally meets the international standards, agreements and conventions which Russia has ratified, in particular concerning the protection of Human Rights and more precisely liberty of conscience, although the law equally respects the basic principles admitted by all democratic states, it remains hard to implement. Its mechanisms, which are not clearly described, are not easy to set up. This is particularly true for measures such as the transfer of the Church valuables which were nationalized in 1918 and should be returned to the religious organizations, or measures which concern the registration of religious organizations. This strengthens the general aspect of the law which is characterized by a certain imprecision in the terms it uses, which leaves it open to wide interpretation. This juridical haziness of the terms of the law has led in practice, to applications which strongly deviate from the initial spirit of the law.

Not only the law is hard to enforce on a technical level for the reasons I have exposed, but it is also circumvented and violated in many fields. For example, a marked delay in administrative procedures has been noticed in the registration of foreign religious organizations, delay which most often leads to a blunt refusal to register. In the same way, concerning the transfer of confiscated Church valuables, a clear stand taken in favor of the Russian Orthodox Church has been felt. Indeed, this Church immediately received

the majority of the valuables given back, to the detriment of the other denominations¹. In short, the law process is seized and its spirit curtailed. Yet it was not before 1993 and the beginning of 1994 that a new momentum was reached through a bill on liberty of conscience, drafted by the Russian Orthodox church in collaboration with State representatives in charge of religious matters².

The bill is strongly biased in the sense that it aims at reinforcing the role of the Orthodox Church in the Russian Federation and limits the development of so-called "foreign religions". The principle of UNO's Universal Declaration of Human Rights the Convention of Economic, Social and Cultural Rights the International Convention on Civil and Political Rights UNESCO's Convention against discrimination in education; the United Nation's Declaration on the abolishment of all forms of intolerance and discrimination based on religion or convictions.

Equality between religious organizations is seriously battered in the new framing of the law. Not only the various denominations no longer have the same rights and are administered under two separate systems, but the law puts one religion, the Russian Orthodox Church (ROC) above the others, a position granted with privileges and advantages. This prevailing situation actually goes even deeper since the law awards the ROC the right to control the entire religious issue by entrusting it with the power of accepting or refusing the creation of religious organizations coming from foreign countries. The ROC thus becomes the unique religious reference by concentrating in its hands the evolution of the country's religious life.

The fact that the ROC wants to be the leader on its lands is not a new phenomenon. What is new, however, is that the Parliament has shown by adopting the bill in July 1993, that it openly accepts the ROC as a State religion. Although the bill was not ratified by the President due to the dissolution of the Congress of the Peoples' Deputies (Parliament) and of the Soviet Supreme on September 21st 1993, this law was enforced in practice, until July 10th 1996. Indeed, at this time, this draft law submitted for the second time to the parliament will become legitimate as it will be adopted.

It is now obvious that the authorities and the dominant Church in Russia have drawn closer. How this convergence can be qualified? Is it a mere collaboration, an agreement? Or does it go much further? In any case, the Orthodox Church is the only denomination

¹ According to the Government Decree No. 466, 321 objects distributed by the State to the religious organizations over 343 were transmitted to the Russian Orthodox Church.

² This draft law was elaborated under the direction of the "Soviet Supreme Committee for freedom of conscience" headed by the leader of the christian democrats in the Parliament, V. Polosin.

which has drew close to the authorities in such a manner. Likewise, the various ministries tend to see in the Orthodox Church the unique interlocutor for religious issues³.

I .2: The causes and the meaning of this gap

Given the above, with the predominant position and advantages extended to the Orthodox Church by the authorities, how can one explain the difficulties met with by the Russian legislator, and more generally, by the political authorities, in creating a society where an equal freedom of religion is granted to all?

Indeed, religion plays a leading role in Russia, in particular in terms of politics. Orthodox Christianity, and more generally a certain form of religious as we will see it further, are used in politics as a social bond and to give sense to the society. Links emerge between political behavior and religious affiliation. The various political options feed themselves on religious references and political affiliations then bring about religious dissimilarities. Finally, an increasing number of Christians, instead of considering religion as a personal issue, thinks of a christianization of society, or even a politicization of Christianity.

Firstly, what notion of religion do the authorities have?

How do political parties and elected representatives consider religion in relation to politics?

- Religion as an instrument

Nowadays, the evolution of the mentalities faced with the development of democracy and market economy can be separated into two groups of people: those who are ready to go forward and who will find eventually their landmarks on the new scene and those who have difficulties adapting, and who will try to find landmarks in the past, constituting their identity exclusively by and in the tradition.

Religious feeling, in particular the orthodox religion, which constitutes the cradle of Russian culture and for many is assimilated to the national identity, is considered a useful tool by the authorities to obtain social agreement. The ROC, spiritual authority, embodiment of the Divine, brings as an element transcending politics, a legitimate basis.

All the more since, after 70 years of repression and underground survival, the ROC had inherited an aura of compassion and admiration. It is easy to see what this feeling, shared by the majority of the population and that shows that the choices made by the ROC are worthy to be followed, could generate in terms of support, if it were directed in any particular political direction. Inasmuch as the Orthodox Church, which has always been

³ The Russian Orthodox Church signed specific accords with the Ministry of Culture (May 1994), the Ministry of Defense (March 2nd 1994) and the Ministry of Social Affaires (July 1996).

the major denomination in Russia, offers a considerable political support through its large social basis.

On the other hand, the “instrumentalization” of the religion by the politics does not solely has the negative effects, in the sense of an active element using a passive element, that this word includes. The exploitation is not unilateral, but bilateral and reciprocal. Thus if the State, and in a broader sense the political sphere, uses the image of a particular religious institution, this institution also benefits from a State recognition, which is necessary for its social survival. Therefore, we are now facing a compromise or an agreement that leaves no doubt.

Nevertheless, even in this situation, there is a wide gap between what the authorities conceive and what the population perceives. If the instrumentalization of religion and on the contrary, the support of certain political organizations to certain confessions (most often to the ROC), is calculated in order to benefit from it, what is the true perception of the society?

During the first mass movement towards Faith, many had a positive opinion of the role of the Orthodox Church in society. In particular fields such as morality or culture, the opinion was mainly favorable. In others, such as politics or economy, this favorable opinion was definitely lower, although one could observe here a slight tendency to increase.

In 1992 and 1993, with a marked pause in the increase of religious belief, the authority of the Church decreased in all spheres of life. Thus, a poll carried out in 1993 by N. Oe'ea'o'ia and E. Ai6iioiaa⁴, and another carried out in December 1992 on “the influence of religious commitment on' political attitudes”⁵ show that an outstanding majority of the population considered that the Church did not help to further democracy nor lead the State in any direction whatsoever. An interesting fact to be stressed from these polls is that there certainly are some links, albeit weak, between religious belief and a series of nationalist opinions.

Thus, the Orthodox Church and the religious beliefs of the majority of the population are to be set on two different levels of understanding. On the one hand, there is the dogmatic contribution of the Church and its attitude towards various current problems. On the other hand, there are the believers, viewed as a whole, who are not very familiar with the positions of the Church and do not actually want to find out what they are. They regularly or irregularly participate in religious offices and do not ask anything more from the Church. The religious life of most of the population is completely autonomous and develops itself according to its own laws.

⁴ Religion, State and Society, Vol.22. No. 4, 1994

⁵ White, I. Mac Allister, O. Kryshstanovskaya, Religion. State and Society, Vol.22. No. 1, 1994

A second aspect has to be considered in the relation between religion and politics: the collapse of communism constituted a step of "disenchantment", to use the term of Max Weber, dealing with a more or less sacralized form of politics. Thus, politics viewed as a whole, became orphan, not of an ideology, but of the "sacred" side that the political message possessed. The political leaders search to find again through the reciprocal support of orthodoxy, this lost "sacred" side and above all, a legitimacy of their present activity.

- Fruit of old conceptions, tradition of the Symphony

The long tradition of osmosis between the spiritual authority and the political authority is an element inherent to the Russian political culture. If we consider this phenomenon on the long term, the experience of an atheist regime reveals insignificant in time and non-traditional in its character. I think that one should not neglect nor underestimate the common place, which consists in saying that the Russian society, including the political class, is searching for its past, its traditions, for a return, not to the pre-communist order in its whole, but to a certain degree of conformity with the typical elements of pre-revolutionary Russia. The themes of the Symphony of Powers, of Moscow-Third Rome are dear to all Russians because they represent their history, and why not, their national folklore.

Before each election, the leaders of the various antagonist parties, rival between themselves to tangle religion in politics. The members of the LDPR attempted to get voted a law at the Duma, creating a Holy Synod under the Government of the Russian Federation and introducing censure in the press.

Boris Eltsin took another road when he created, within his administration the "Committee for interaction with religious organization". In this body, which has a consultative role, the representatives of civil authority were not included (they are in fact represented in other similar State bodies), and only representatives of the most important religious organizations were included. The President requested that they keep him informed of their opinion on the various aspects of the State's foreign and domestic policy and that they elaborate recommendations on these issues. This represents a large step forward as well as a real stride backwards. Indeed, we cannot truly understand all these attempts unless we go back and look at Russian history since its baptism the Symphony, the Third Rome, the Empire.

As a traditional landmark, Christianity is also widely considered as a constitutive element of politics. Most of the political parties have specific conceptions of the role of religion in relation to their movement. If most social democrats maintain religion in the private sphere, for most of the other political movements, this is not the case. For the liberals, Christianity appears as the foundation of the Russian political culture and Christian thinkers of the beginning of the century such as Berdiaev, Bulgakov and Frank are put forward. The national bolcheviks see in Russian Christianity a refuge against Western culture. Monarchists link orthodox renewal with the re-establishment of the eternal Holy Russia, embodied by tsarism. For a certain number of Russian intellectuals, Russian

Christianity, orthodoxy, from which Russian culture is indivisible, could induce a particular conception of politics and economy. In all these conceptions which most often have nothing in common, we can observe a certain confusion, but above all, a superposition between religion and morals, religion and culture, religion and nationality. It is a logic superposition, in the sense that all these elements are strongly related together, because they all represent to a certain degree the notion of religion in Russia. It is a natural superposition, if we refer to "religion" as the only element carrying values in the "disenchanted" Russia of the early 1990s, using, once again, the term of Weber.

II.1 Gap and common practices

In Russia where strong oppositions generally exist between the executive and the legislative powers, the voting of laws and their ratification by the President often lead to great power struggles between these two institutions. This is true for a number of political issues, but particularly for the debate around the liberty of conscience. Thus, the basic law voted in 1990 "on religious freedom" and which was difficult to enforce for the reasons we mentioned before, led to genuine political stakes around the projects of amending the law in July and August 1993.

- The political dimension of the religious debate

Did the debate on liberty of conscience, which took place during the summer of 1993, reveal the institutional battles which then animated the political scene?

If this question is not completely incongruous, I think we can attempt to provide a political reading of the difficulties met with at the religious level. Indeed, since 1992, the antagonism between the institutions has gradually developed. As we remarked, the application of the 1990 law was blocked, amongst others, by the battle between executive and legislative powers. Since November 1991, the regime is a presidential one. The already large powers of the President will keep on growing, to the detriment of those of the Parliament, the people's representative organ. Eltsin, who never had the majority in Parliament, certainly needs legislation to govern. Thus the President has a say-so in the Parliament's bills. The relations between the President and the deputies, becoming more and more conflictual, prompt Eltsin to fall back on his own administration and Khasbulatov to surround himself as much as possible with the deputies.

The "battle of the chiefs" will begin, to culminate over the summer 1993 and definitely explode in the fall of 1993. The break-up of the institutions will be felt at all levels of the political and social life of the Russian Federation. This battle was clearly felt in the transfer of religious valuables to the religious organizations for example, as well as in the problems linked to reconstruction.

The barriers met with for the application of the measures included in the 1990 law reflected a general situation of antagonism. That religious issue has been instrumentalized in several occasions around struggle for power is certainly true. But, on the opposite, I am quite convinced that if we consider the chronological evolution of the events, the

religious debate was the ultimate stumbling-block and the detonator of the open crisis between the Parliament and the President.

Actually, the vote of the modified law on liberty of conscience revealed a Parliament, whose power was growing against B. Eltsin, making an alliance with the ROC, one of the pillars of the Russian nation and in fact its State religion. Confronted with this growing power of the Parliament, B. Eltsin, who was largely put in minority during this debate, reacted by using his last recourse: he vetoed the law which had just been approved, breaking the effect of the alliance.

The interaction between the religious field and the political problems of the Russian Federation will clearly appear during the tragic days which followed the promulgation of Decree 1400. In front of the open and ruthless confrontation between the deputies and the President's men, Alexis II, Patriarch of the Russian Orthodox Church, proposed a mediation between the two sides.

Some considered the mediation offered by Alexis II as the will of the ROC to appear, in a moment of crisis, as the "gatherer of the Russian people", as the only pacificating element of the State. In other words, the ROC improved the events to make its own promotion. It is possible, however, I believe that it was also and mostly a will to propose itself once again to the two sides as a neutral element, an attempt to step backwards, towards a certain impartiality.

After the events of the summer of 1993, some commissions in charge with the regulation of relations with religious organizations have been created both at Presidential level⁶ and at Parliament level⁷. Therefore, we find once again a system of opposition between the State institutions, each trying to catch competencies upon the subject of relations between the State and religious organizations. Once more, there is a confirmation that in Russia, the debates upon liberty of conscience are directly linked to the battle between the institutions.

Last summer the State Duma re-examined the amendment to the law on "religious freedom" (which has since received a new name: "on liberty of conscience and of religious organizations"). The first version of this text, adopted by the deputies on July 10th, was the result of a compromise which gathered several years' works. However, this text was, with the exception of a few words, the same discriminatory bill proposed in July 1993.

⁶ Commission for the Affairs of Religious Organisations, presided by S. Shakhrai

⁷ Expert Consultative Committee, planned in the 1990 law

The fact that this bill (its content) has been proposed in 1993 and then reappeared in July 1996, shows that religion, actually the Orthodox Church, would be clearly considered, in the case of a political crisis, as the main element of national cohesion and that only the ROC could offer the moral values that could be invoked. Behind all of that, there is the conviction despite what the polls figures, that after 70 years of atheism, the Russian people naturally remained orthodox; a conviction shared by political leaders from very different tendencies and vigorously supported by the Moscow Patriarchate. But, this time, on the contrary, the Parliament and the Government more and more openly backs up the Orthodox Church (the Moscow Patriarchate) even if they disagree on other issues. It seems that a consensus has been adopted around the religious issue : we just have to examine on the one hand, the results of the vote in Parliament on this question, and on the other hand, the efforts of the President towards the Moscow Patriarchate, clearly obvious through Patriarch Alexis II attendance at the investiture ceremony of President Eltsin in August 1996. On his side, Sumeiko, the former President of the High Chamber of the Russian Parliament publicly declared himself for "the fusion of the State and religious flux".

The enforcement of human rights in Russia seems to be quite uncertain and directly linked to the battle between the institutions. Firstly because the constitutional regime is itself uncertain (by a simple ukaze, the President can limit Human rights) and secondly because the debate over religious freedom seems to be indivisible from the problem of the representativity in Parliament which exerts direct pressure on it. The major problem behind these battles is how to organize on a constitutional level the relations between the State and the Church. Each institution tries to catch competency upon regulating these relations which directly leads to institution battles. The most striking example of this, is the will to create two parallel organizations, with approximately the same abilities over religious organizations and over information collecting, both at the level of the Douma (which is planned in the law) and at the level of the Government (which is illegal)⁸. An obvious decision of doubling the competent structures in order to be in charge of the whole sphere of relations between church and state, seems to be now the capital stake. Nevertheless, the recent adoption of the new law on "liberty of conscience and religious organizations" seems to have reached a consensus, an agreement between institutions. But why just now appears a consensus? Two main reasons seem to emerge: one is political, the other is more widely social and historical.

The adoption of this text by Parliament and the lack of Eltsin's veto, which show their agreement, or at least the lack of opposition on this issue, has been pronounced right after the June 1996 presidential elections. Now, during these elections, the Communist party strongly progressed and could lead, given the number of votes it got, to put the candidate Eltsin in balance. This strong recovery of the communist ideology very much worried the liberal and democratic factions. Could we see in this consensus over the liberty of conscience an attempt to make alliances and to oppose a united front against the Communists?

⁸ According to the October 25th 1990 law, still in application on "religious freedom"

Beyond the strictly religious debate, (even if the differences are clear, given that the Communists at numerous occasions have declared that they were opposed to the predominance of any confession over the others), could this be a means to forget quarrels and show unity and efficiency in front of the threat of a "jump backwards" and of a come back in force of the communist ideas?

There is a second reason, according to me, to this consensus over the law on the liberty of conscience: that of the proliferation of foreign sects in Russia. A very large majority of deputies as well as the President agree⁹, believing that the infatuation of the population towards oriental, and more generally "foreign" religious trends is a threat for the preservation of the national identity. The desertion of traditional places of worship and the rapid increase of affiliations to the new religions seem to show that the main belief would no longer be traditional orthodoxy and we have seen how much the various political movements needed to re-establish a national identity based upon religion. This law, through the regulations it generates, finds true support from the authorities, both executive and legislative.

In any case, the first step towards modifying the basic law of 1990 has already been taken and could -if the trend in this direction is not stopped - finally lead to the melting of both state and confessional structures, to the take-over by the State of religious issues and to State clericalism.

⁹ The law should have been reviewed in a second hearing in the fall of 1996 and should have received the President's accord or veto, but for the moment, the procedures have not progressed.