

## **THE FIGHT FOR FREEDOM OF CONSCIENCE: RUSSIA 1992 - 1995**

### **THE STORY OF THE LAW ON RELIGION - PART II**

by **Yakov Krotov**

Yakov Krotov is an Orthodox journalist and historian living in Moscow. He was the editor of Khristianskii Novosti (1990-91), worked as News Analyst for the Christian Resource Center (Moscow), his articles appearing under the name James Krotov, and since 1993 has continued to edit a news service on religion in the Former Soviet Union. Much of this essay appeared in German in Glaube in der 2ten Welt. Part I appeared in the June issue, this second part was translated from the Russian by Walter Sawatsky.

#### **State Officials Against Missionaries**

In April 1994 it became known that the former staff member of the Council of Religious Affairs (CRA) of the USSR Council of Ministers, Genrich Mikhailov, had called a conference of former staff of the CRA (Moscow and provinces). Mikhailov was now responsible for church affairs in Chernomyrdin's government. At this conference he presented a draft of an amended Law on Freedom of Religious Confession (FRC) entitled (On Freedom of Conscience, Religious Confession and Religious Organizations). Article 17 of that bill contained the essence of the anti-missionary idea:

Representatives of foreign Russian organizations (persons, speaking on its behalf) may be active within the territory of the Russian Federation only upon invitation of a Russian religious organization, and only within the limits of tasks foreseen in its registered statute (constitution). Foreign religious organizations ... are not permitted to function independently.

#### **Campaign Against Freedom of Conscience - Summer of 1994**

Discussion of the new legislative bill was delayed since the Duma only received it for a first reading in November 1994. Metropolitan Kirill (of Smolensk & Kaliningrad), head of the Patriarchate's External Affairs Department, had organized a conference on "Christian Faith and Human Enmity" for June 21-23, 1994. It was called an inter-confessional conference and so it was. It did not include representatives of all confessions, however. Among the participants the Orthodox were in the absolute majority, which is quite natural and reflected the religious landscape of contemporary Russia. But there was not one single representative of the Russian Orthodox Church Underground (Church of the Catacombs literally) nor of the Russian Orthodox Church Abroad, nor were any of the "new" Protestant communities represented. In point of fact, the conference was less 'inter-confessional' than it was 'inter-Nomenklatura'. Instead of representatives of all confessions meeting, it was merely those more strictly centralized, which

had existed in Russia for decades and had existed under the Bolsheviks legally.

The conference participants enthusiastically received Metropolitan Kirill's proposal to form a committee consisting of representatives of all participant confessions. The first fruit of this action was a meeting of that committee on July 5 at which the new legislative bill on religion was discussed.

During the next several months there were periodic television news broadcasts, that called for limits to freedom of conscience on behalf of the 'struggle with sectarianism'. Andrei Politkovskii, for example, a former democratic journalist, devoted his July 8 program "Politburo" to that end. On August 16 the organizers of the "Leaders" program invited the audience to imagine that they were presidential advisers, and the president had prepared legislation granting privileges to three religions - how would they react?

### **Religious Oversight Agencies Organized - July 9, 1994**

Deputy Prime Minister Sergei Shakhrai was appointed chair of the Commission on Questions of Religious Societies of the government of the Russian Federation on July 21. Genrich Mikhailov, former staff member of the communist Council of Religious Affairs, was named secretary. He was the author of the proposed new legislation on freedom of conscience and in favor of restrictions on religious freedoms. Before this appointment, Mikhailov had headed a section of the state bureaucracy for relations with religious organizations. He was the one who in early 1994 (journal Voprosy Filosofii, Nr. 12, 1994) had accused foreign missionaries of espionage.

Also on July 21, 1994 the council of the State Duma approved the bill "On Reinstating the Council of Experts for Questions of Freedom of Conscience under the Committee for Social Unions and Religious Organizations". Staff appointments to the council only followed on January 19, 1995, at which point some of the members of the previous council, such as Iu. Rozenbaum, known for his support of freedom of conscience, were removed. The chair of the council was a certain Alekseev, former functionary of the central committee of the VDKSM and Communist Party central committee, now a member of Ziuganov's party. In practice the council did not play a major role, leaving matters to Shakhrai's governmental committee.

### **The State's Proposed Legislative Bill**

The state's legislative bill (the core of which had been drafted in April 1994 under Genrikh Mikhailov's leadership) moved into an active phase for approval by the Duma in autumn of 1994. It included four key clauses that set out four tasks for the opponents of freedom of conscience: 1) to be able to arbitrarily forbid a religion that did not conform to their conceptions of truth and morality; 2) to limit the actions of foreign preachers; 3) to return to the state the right of supervisory control over religion; 4) to introduce the teaching of Orthodoxy in the schools. It should be noted that the bill at least did not consider another measure that the nationalists and the Moscow Patriarchate had demanded and continue to demand - to anchor in law state support of the Patriarchate as the "traditional Russian religion".

Point 4 of Article 4 set out the first task, repeating in content and often literally the famous "improvements" of 1993:

The formation and activity of those religious organizations are forbidden:

- that violate social security and order;
- that preach war, use of force, hatred or who arouse social, racial, national or religious discord;
- that employ illegal use of force in their activities;
- that cause physical, psychological and moral harm of citizens, including the use of narcotics or similar means of stupefaction, carrying out depraved and similar activities that offend public morality;
- that prevent children from receiving a basic public education;
- that deceive citizens about the true character of their activities;
- that provoke citizens to illegal actions, and to refuse to observe a citizen's legal obligations.

The anti-missionary task was stated in article 14 (formerly 15)

Foreign religious organizations may have a representation (representatives) with Russian religious organizations... This representation (representatives) requires accreditation ... The accreditation may be refused if said organization is unable to show legal recognition in its own country or if its activities do not conform to the requirements of articles 4 and 10 of the present law. Representatives of foreign religious organizations, as well as foreign religious workers, may carry out public religious duties within the territory of the Russian Federation only upon invitation of a Russian religious organization that has a registered statute (constitution), and within the limits of the latter's activities.

The return of official control (supervision) over religion was introduced in point 3 of article 20:

Other state organs have the right to review questions related to the activities of religious organizations, in accord with their legally established competence on general grounds.

The possibility that Orthodoxy would be fostered in the public schools was provided in point 4 of article 8:

By request and in accord with the religious preference of parents or guardians, with the agreement of the children attending a municipal and state educational institution, the administration of such a school may make facilities available for religious education to religious organizations having a registered statute (constitution).

### **Some Provincial Laws Against Freedom of Conscience - November, 1994.**

The most threatening development to freedom of conscience in Russia were some laws passed by Oblast (provinces) or city councils. These laws were illegal, and in some oblasty attorneys protested; and no charges have been filed on the basis of these laws (because

judgments based on such legislation would be immediately reversed by Moscow). Nevertheless, these laws are extremely dangerous because they signal provincial officials how to conduct themselves toward non-Orthodox religions. The majority of such laws have not been made known to the public. Such a law for Vologda Oblast was not printed in the public record nor circulated to officials. Well known was the text of a similar law from Tula Oblast "On Missionary (Religious) Activities within the Territory of Tula Oblast", signed on November 21, 1994 by N. V. Sevriugin, the chair of the Tula Oblast Duma and also governor of the Oblast, hence Yeltsin's direct representative. The law was intended to define the "procedures for accreditation" of missionaries in Tula Oblast. Its first clause stated that missionary activities without accreditation were forbidden. Article 5 had in view the introduction of a special position: a plenipotentiary under the governor for religious questions, who was to administer the accreditation. Accreditation required numerous documents, including (art. 6) "copies of the founding document of the foreign religious organization ... notarized" (what might the author of the law have imagined as "founding document" for the Catholic church). Moreover, Article 6 stated:

If necessary, the accrediting organ has the right to request additional documents, concerning the activities of the foreign religious organization, confession, being represented, or to request an explanation of the regulations in the founding document.

The granting of such unlimited 'rights' to the officials means that they could delay the accreditation indefinitely. And further, the accreditation was only good for a year (Art. 12). Article 15 stated:

Accreditation... may be refused... if the activities of the foreign religious organization are linked with nationalist, racist or religious hate mongering, or if harmful to a citizen's health or other violations of the person's rights and personhood, or other similar illegal actions.

Analogous laws were passed in Amur, Sakhalin, Kostroma, Tver, Tiumen oblasti. In December 1995 an analogous law was passed in the St. Petersburg City Duma; at the time of writing it was not yet known whether Mayor A. Sobchak would sign it. An anti-missionary law is in preparation for Udmurtia.

### **The President Steps in to Protect Freedom of Conscience - January 10, 1995**

The state bill received a sharply worded critique from the office of the President (the letter was signed by P. Orekhov, head of the governmental-legal administration of the President and was addressed to the deputy head of the state administration, dated January 19, 1995). (It should be noted that the enumeration of the bill's clauses, indicated in the excerpts [in the letter], do not correspond to the published text of the bill, though the text itself was not changed, merely some transposition of paragraphs). The writer observed correctly that the bill restored to current legislation the odious phrase "to guarantee public security" that had been eliminated from the constitution (art. 3, pt. 3). The crucial clause, point 4 of article 4, so the legal opinion, should be struck out completely. The writer drew attention to the fact that "it is impossible to speak of a uniform morality in society, ... it is not permitted to include moral criteria as the basis for making judicially significant decisions." Further he reminded the legislators that article 28 of the constitution guarantees freedom of conscience to each individual, which means that the entire

article 14 limiting the rights of foreigners in Russia, is unconstitutional.

It should be noted that the presidential administration is that large, that it is impossible to expect uniform views on all issues. So on February 10 A. Loginov, administrative official for cooperation with political parties, social organizations, groups and deputies of the federal (upper) house sent a letter to the Duma where he ardently supported the bill and expressed his concern about the "violation of the historically complex ethno-confessional balance within the country".

### **Parliamentary Hearing "On Freedom of Conscience" - February 14, 1995**

The Committee for Freedom of Conscience on February 14 organized a parliamentary hearing "On the Freedom of Conscience and Human Rights in the Russian Federation". The organizers, apparently, had at first planned to adopt a resolution ("Recommendation"), which would propose that the Duma accept the revisions of V. Savitsky to the Law on Freedom of Confession (see text below), and that the government "Adopt the Statute on Accreditation of Foreign Religious Organizations." However, while the hearing was being prepared the proponents of freedom of conscience in the Duma apparatus succeeded in inviting not only opponents of freedom of conscience but also some of its supporters. The presentation by Eileen Barker, professor at London University, in which she detailed the technical impossibility of distinguishing between 'good' and 'bad' religions, and the possibility (and necessity) of charging 'bad' religious workers exclusively with violations of criminal law and only for criminality, drew marked attention. The papers from the hearing were published in a brochure, together with the text of the Law on Religious Confession, the proposed legislation of the governmental apparatus and other materials. The Moscow Patriarchate demonstratively boycotted the hearing, which earned it the indignation of the press.

### **A Vote on Valeri Savitsky's Revisions - April 14, 1995**

Soon after the parliamentary reading (March 20) something occurred that decisively strengthened the hand of the opponents of freedom of conscience: the explosion in the Tokyo subway which was traced to the AUM Sinriki sect. The Russian newspapers launched a wave of antisectarian hysteria, in which the criticisms of the AUM Sinriki constantly shifted into a critique of all non-Orthodox religions in general.

On April 14, 1995 the State Duma approved in a first reading the proposed federal bill of amendments to the law existing since 1990 "On Freedom of Religious Confession". The text for the amendments was drafted by Duma deputy Valeri Savitsky, Christian Democrat, elected as a member of Grigory Yavlinsky's bloc. The amendment (to article 4 of FRC) was simple and fit on a single page: "The formation and activity of religious societies that violate the security of the state and social order is forbidden." That would have sufficed with nothing further to say. The meaning of "state security" and "social order" were that vague and allowed broad and loose interpretation so that almost any organization could have been accused of violating them. But Savitsky did not stop there but proposed to ban organizations, which "rely on force in their activities, endanger the physical and psychic health of a citizen, using drugs and similar substances; prevent children from getting a basic education, or induce citizens to violate the law."

In essence Savitsky proposed a separate vote on point 4 of article 4 of the legislative bill.

This irritated state officials and slowed down the entire process of restricting freedom of conscience as a whole.

### **Proposed Legislation on Property Rights of Religious Organizations - April 21, 1995**

Father Viacheslav Polosin and A. Glagolev on April 15 produced the fifth version of legislation "On the Property of Religious Organizations", which proposed state aid to Orthodoxy and discrimination against foreign preachers. The bill, with amendments and revisions, was announced on April 21 as a legislative initiative of the Democratic Party of Russia. Yet another bill was drafted in the Duma in May 1995 which indirectly sought to forbid missionary activity. The preface to the bill quite inappropriately contrasted American standards of behavior and thought with Russian norms. At the same time the preface pretended that the proposed measures are accepted in the "laws of all civilized countries of the world". It would seem one should choose one or the other - originality or civilization.

The preface violates the principle of the separation of the church from the state, stating that today "separation of church from state" counts for less than a necessary "union of state and representatives of believers of diverse confessions". Such a formula is dangerous for it distinguishes from believers in general special "representatives of believers", a kind of religious officialdom. Other points of concern are the following:

The proposed bill interprets the theme of regulation extensively. In fact it replaces the Law on Freedom of Conscience and Religious Organizations (FRC). Article 2 point 4 affirms, for example, that the Law "regulates the relations of religious organizations, their enterprises and foundations with the organs of state", but this is already regulated by article 6 of the existing law.

Article 3 of the bill elucidates "special terminology of the law". On the one side, however, certain explanations contradict current legislation (the definition of a religious organization in point 1 contradicts the definition given in article 7 of the FRC). Other explanations rely on imprecise religious terms - point 7 specifies that "national heritage" is to be defined by the law on cultural legacy and national heritage. One section utilizes non-judicial terms, such as describing "property of the cult" as an "organic unity", more a philosophical than judicial term.

The definitions provided in article 3 do not distinguish between a religious organization and a religious society as provided for in the FRC, which leads to lack of clarity on the ownership of cultic objects, and on who is the judicial person in transactions and relations. The definitions introduce terms that are themselves undefined, as in point 5 which distinguishes between religious organizations and confessions but does not clarify the difference.

Much more uncertain, juridically speaking, is point 2 of article 3 which speaks of "professional religious activities", a concept absent both from the FRC and from the legislation of civilized countries. Its absence is not accidental, for it is practically impossible to keep distinctions clear between preaching of religious doctrine privately and professionally, between preaching a confession of faith and its inner churchly interpretation. Finally, the lawmakers seek to place a professional activity into a special category whenever it concerns licensing of an activity. At times the bill adheres strictly to the idea of licensing (art. 32), restricting religious preachers by means of regulating them by state organs. That contradicts both the Constitution of

the Russian Federation as well as FRC (art. 3), since those maintain the independence of the citizen in terms of relation to religion, the expression and spreading of one's convictions with regard to religion. It also contradicts the constitutional norms in all of article 19, by introducing restrictions on professional religious activity - only permitted for those members of religious organizations or to persons who have signed a contract with a religious organization. Moreover to take part in religious activities professionally one should have the right also of private personhood, if under that is understood "public confession and spreading of faith". Here the definition of professional religious activity in article 3, point 2 includes two features: confession of faith and signing a contract with the organization. Further on in the text of the bill these features are understood as exhaustive. The second feature however, is not exhaustive, since the occupation of professional religious worker must be open to private persons. The FRC does not prohibit private persons from preaching, also professionally. Indeed it presumes such a right and in general establishes the right of confession "singly or together". Here is the key point showing the ideological intent of the bill: by means of regulating economic activities, to restrict the rights of ideological activity.

Article 3 of the FRC also contradicts articles 37 and 38 of the proposed bill which envisions a special order of privilege for state financing of religious preachers "directed toward fostering the growth of national-cultural and spiritual-moral traditions of the peoples of the Russian Federation". The proviso "on condition of observing the freedom of the citizen to choose" merely brings a contradiction to the text rather than enabling the protection of freedoms. The determination of what helps to develop a tradition and what does not is highly debatable and practically speaking cannot be regulated by law.

Article 5 point 3 envisions that all the gains from enterprises and foundations belonging to religious organizations be directed toward the constitutionally stated activities of the religious organization. Article 4 point 1 speaks however, not of all the gains, but only of the "predominate" part which leads to the question of subjectively identifying such items correctly. The profits can be termed noncommercial in character when asking "not whether the profits result from its main tasks, but whether such profits help the property to the realization of the stated goals". In such a way the question of profit becomes a declaration of intention. The term "predominately" lacks juridical character. Not having defined numerically the profits which the organization would designate toward its stated goals, the bill opens the way to misuse and machinations. Moreover here we have the key economic idea of the bill in general. The call to "establish conditions for the formation of honest business" is ignored since by definition there is no business without profit. The bill substitutes the idea of tax privileges for a charitable enterprise with the idea of total tax immunity (and other privileges) for enterprises, that have come under the jurisdiction of a religious organization.

Point 4 of article 6 assumes a religious organization ..."with the right of contracting... profit taking, when its enterprises and foundations are considered to be fostering the statutory aims of the religious organization". But the term "has the right" has a permissive character, that is "profit taking" could also be unstipulated or noncommercial or the organization exists only fictitiously. Further, by leaving to the discretion of the subject the determination of profit, the bill opens up unlimited possibilities for abuse by individual managers and staff, for greedy settlements.

The third major conceptual idea of the bill, that of restitution, is an attempt to solve a

problem common to the entire country, by means of singling out one part, namely the churchly, which is not justified in itself. The problem of restitution is very complicated, and for religious organizations it is even more complicated because of the principle of separation of church from state. Thus subpoint 'a' of point 2, article 7 provides, that in case of conflict the court will decide a case of succession on the basis of "succession of religious confession". In such a way, a purely religious conflict gets moved into the sphere of a secular jurisdiction. Experience shows that one cannot decide issues thus: the Old Believers consider themselves the true successors of the Church, but on the basis of certain texts (as the bill proposes) their position would be impossible, since all texts in a given situation would be subject to religious dispute.

Article 10 presumes the inviolability of cult objects. If point 2 of that article presumes the impossibility of sale of cult objects, that contradicts the necessity of selling cult objects after their manufacture or in the process of transferring the object to another owner.

### **The President Forms his Own Office for Preserving Freedom of Conscience - April 24, 1995**

President Yeltsin on April 24 signed an order to create a Council for Cooperation with Religious Bodies directly under the President of the Russian Federation. A. A. Krasikov was appointed the general secretary, with a staff of five from the Presidential Administration, thus creating a department within that administration for cooperation with religious bodies. Officially it was stated that this had been done upon the "initiative of representatives of various religious bodies" and "with the intent of facilitating the cooperation of the President of the Russian Federation with religious bodies and to enhance the spiritual culture of society".

On the same day the president signed a letter addressed to the Duma, his way of ending the bill passed on April 14 to amend the Law on Freedom of Conscience. Yeltsin served notice that he would not sign the amendments:

The notion underlying the bill ... to regulate relations which are fundamentally already regulated by the constitution... Therefore, according to point 5 of article 13 of the Constitution it is forbidden to organize and conduct a social union (obshchestvennykh ob'edinenii), the purpose and actions of which is directed toward forcefully changing the base of the constitutional structure and violating the integrity of the Russian Federation, undermining the security of the state, forming armed units, inciting social, racial, national and religious hatred. The Constitution of the Russian Federation... treats religious organizations as social or societal organizations, since in article 13 of the Constitution it speaks primarily of ideological diversity, including also religious world views. Applied to article 14 of the Constitution one should keep in mind, that the special understanding of religion and religious bodies evident there is due to the fact that there the secular character of the Russian Federation is articulated, but in article 13 of the Constitution the democratic feature comes out. Therefore religious bodies appear, from the perspective of the Constitution, as social entities/unions, even though they bear several specific characteristics, which are taken into consideration in the current Russian Law on Freedom of Religious Confession.

### **Clash of Legislative Bills - May 1995**

In the struggle on behalf of the Law on Freedom of Religious Confession, the democratic deputies, Father Gleb Yakunin and Valerii Borshchev decided to present a counter bill, named "On the Freedom of Conscience and Guarantees for its Observance". This bill was a unique juridical case, because it merely corroborated that the Law on Freedom of Religious Confession is the law in effect and repeated its points guaranteeing freedom of religious confession. The text of the bill is of interest only because it helps to understand what violations of freedom of conscience had emerged by the autumn of 1995 and how widespread they were. Thus by that time the practice of concluding contracts between the Moscow Patriarchate and individual ministries and organs of executive power had increased. The public was particularly upset about a contract with the war ministry. Orthodox churches were to be built in military schools with state funds, clergy were being appointed, were given the possibility to serve in special units, where they were de facto in service, but not the bearing or use of arms (this was during the time of the war with Chechnia). The municipal organs generously financed the restoration and new building of the Patriarchal Cathedral, but refused to return destroyed churches to the control of other confessions. With each contract, the Patriarch and the state official declared that with time similar contracts would be concluded with Muslims and Jews, but not once was this done. To quote from the text of the Yakunin-Borshchev bill, "the establishment of any sort of privilege for one or several religious unions by the state and municipal organs is not permitted.... The state provides no material support to religious and similar ideological unions. Civil servants, including the military, do not have the right to use their positions to influence citizens in their choice of relation to religion". (art. 5) "Education in all state and municipal educational institutions bears a secular character" (art. 6). On May 18 the bill was read in the Duma Council and sent to the Committee for Freedom of Conscience.

### **New Reframing of Amendments - October 5, 1995**

By autumn of 1995 politicians were acting as if they had completely forgotten that the Duma had already passed the first reading of the amendments to the FRC. Instead the governmental apparatus attempted to get the Committee on Freedom of Conscience to consider its own bill as requiring a vote in the Duma. Within that committee a reworking of amendments together with those of Savitsky and Yakunin was produced. This "reframing" was approved by the committee at its meeting on October 5, 1995. The text was a compromise between that of Yakunin and Borshchev and the opponents of freedom of conscience. Completely contradictory ideas were mechanically united. One amendment (to art. 4) consisted of the democratic phraseology from Yakunin and Borshchev: "Russia is a secular state. No single religion may be established as the state religion.... Establishing any sort of privilege or restriction for one or several religious organizations is not permitted". Other amendments repeated the idea of restrictions: "Religious organizations whose aims and actions violate social security and order, that undermine state security... inflict damage on morality, are forbidden to exist." The February 1995 version of article 4 (see above) had contained a long list of causes for banning the activity of a religious organization. By autumn of 1995 this list together with further amendments were moved to article 12, the text virtually unchanged. The anti-missionary point became article 11, unchanged in its essence.

### **State of Affairs After Elections in December 1995**

At the elections to the State Duma on December 17, 1995 parties of the left (Communists and Zhirinovtsy nationalists) gained a majority over those of the Nomenklatura ("Our Home is

Russia"). The sole opposition party was that of Grigory Yavlinsky, who never showed the slightest personal interest in the theme of religion. Among the deputies who retained their seats were communists who had already controlled the committee on religion in the previous Duma (Viktor Zorkaltsev remained its chair). Of the deputies for the next Duma who might stand on the side of democratic principles of freedom of conscience, one can name only Sergei Kovalev and Valerii Borshchev. Father Gleb Yakunin, formerly actively defending democracy in the religious sphere, was ousted by Vitalii Borov during the elections and did not get back into the Duma. Valeri Savitsky died in an auto accident on the eve of the elections.

The law of Freedom of Religious Confession (FRC) of 1990 remains in effect, though in practice its democratic principles are not observed.

What were the results of the attack on freedom of conscience? Though the FRC of October 25, 1990 remains in effect, in all the areas where those siding with restricting the FRC were active, they were successful. This is significant in Russia where the judicial system remains subordinate, as before, to the executive powers and where what is important is not so much the law as the common unwritten rights and traditions of behavior.

1. The Possibility to Prohibit Any Religious Organization. In April of 1995 the Russian branch of AUM Sinrike was banned. No matter what one's attitude to this movement, one should note that it's prohibition was carried out in gross violation of the law. In essence, they were given one sole reason for rescinding the registration and confiscating the AUM building in Moscow, namely that the organization was headed by a citizen of a foreign country and its headquarters were outside Russian territory. This signifies, that by the same understanding it is possible to ban the activity of the Roman Catholic church, plus other confessions whose headquarters are outside Russian borders. Attempts to appeal the decisions of officials on refusing registration or withdrawing such registration were met with obstructionism and red tape, and the downright refusal of the courts to review an appeal. That leaves only the appeal to an international human rights organization, which means nothing to Russian officials. The violation of the rights of believers is not the sort of subject for which the international community would initiate an economic boycott or threaten with war, and this type of nomenklatura is completely insensitive to other sanctions.

2. Restricting Activity of Preachers. There are no juridical restrictions, but there are restrictions in practice. As before the state maintains a monopoly on all land, the officials control all space where one might organize a large gathering. To be granted a building or land depends on the good will of an official and his personal material interests. Fortunately, the majority of local and provincial officials currently are indifferent to religious questions and in exchange for money, will do what is written in law. If, however, some religious organization comes under fire from the higher authorities, no single court or official will defend it according to the law. That is also true for treatment of Russian religious workers, and especially for foreigners. Even the hierarchy of the Catholic church appealed in 1995 that priests from Poland and Italy were not getting the statutory registration from the authorities. The notification process was itself transformed into a licencing one, against the Law on Religious Confession. Foreign preachers were obliged to function in accordance with the law on professional work of foreign citizens, that is, to go through an especially complicated visa registration process. Often the official did not grant the said registration. No one has yet decided to appeal an official's decision to the courts, since this would involve subjecting oneself to Russia's complex system of due process.

3. State support of Orthodoxy. In state schools, in violation of article 9, if the director wishes or one student requests it, they often "form a relationship to religion", usually to foster Orthodoxy, granting the right to teach Bible. Metropolitan Kirill of Smolensk, in listing some successes, noted that they had closed a number of Sunday Schools in Smolensk Oblast, because the children were receiving similar teaching in the state schools. At various levels, the executive branch is financing the construction of Orthodox cathedrals, and offers the Moscow Patriarchate land for investment. Banks and businesses, even private individuals upon pressure from officials (who can exert pressure on private business through the system of privilege and favors) direct large sums of money to the publishing and building projects of the Patriarchate. Television shows where an Orthodox preacher appears or shows about Orthodoxy get more air time than do foreign preachers, because the Orthodox get a financial advantage over foreigners in buying air time.

4. State Controls over Religion. There are numerous commissions at all levels of executive and legal authority, which in fact exercise state control over religious organizations, even though article 11 prohibits such and "special entites for deciding issues related to the citizen's right to exercise the freedom of religious confession" are clearly forbidden by Article 8. It is true, that with reference to the terms 'control' and 'decide' no one is saying a commission may not play the role of "informing government", "consulting", "providing expertise", "coordinating action" or "preparing recommendations" for duly empowered legislative and executive authorities. At the same time, deputies tend to follow the instructions of officials. For the sake of decency, representatives of the "traditional" confessions are included in the make up of commissions, but only those persons who beforehand have already agreed to defer to the state officials heading the commissions.

Contrary to the provisions of article 7 of FRC and the Russian Constitution, thus far persons have not had the right to refuse military service for reasons of religious conviction and to do alternative service.

The sole sphere where the struggle against freedom of conscience has not had much success is in publishing and business activity. The Moscow Patriarchate did not succeed in getting a monopoly on iconography, the production of worship utensils nor the publication of church literature. All kinds of literature are published freely, if there is money for it.

Thanks to the significant degree of freedom officials have from control from above, foreign and non-Orthodox preachers as before have in practice had the possibility to preach in schools, if for example, they make an agreement with the school director.

During the past four years of struggle, the opponents of freedom of conscience formed some stereotypical assumptions, which seem self-evident to them. So for example the legal regulation that religion may not violate human rights they understand to mean that the wife and children have the right to a husband and father, but the father who leaves family to participate in a religious movement, violates a human right. (They ignore the fact, that this logic not only forces one to condemn the AUM Sinriike sect, but also to condemn Russian monasticism). All these people put the security and rights of society and of the state (they do not distinguish between these two understandings) above those of the rights of the individual.

The conduct of journalists has also changed during the past four years. They have

become more cautious with regard to religion. Their blind excited celebration of any new religion, characteristic of the years 1990-91, is gone. Although all the newspapers took part in the hysteria surrounding AUM Sinrike, by the summer of 1995 the democratic press (Moscow News, Izvestiia, Novoe vremia, Sevodnia and others) had essentially returned to its former position of weighing things, calling for acting within the limits of the law. At the same time, the opponents of freedom of conscience did not repeat their massive press campaign of 1993, preferring to work behind the scenes in the corridors of power, and thereby totally ignoring public opinion in the spirit of the Bolshevik epoch.

All higher state officials (with the exception of the President and A. Krasikov, head of the council for religion under the President) - that is S. Shakrai, G. Mikhailov, A. Kudriavtsev (official of the department for registration of religious bodies in the Ministry of Justice), the adviser to the prime minister on religious matters Andrei Sebentsov, Duma staff member V. Polosin, took the side of restricting freedom of conscience. Similarly one can say of the representatives of the "traditional" religions: the heads of their administrative structures (chief Rabbi of Russia, A. Shaeovich, the supreme Mufti, leaders of the Union of Evangelical Christian Baptists) supported the idea of restrictions. Further, confessional leaders at lower levels (Oblast and city), it seems, began to understand the danger of attempting to set limits between pure and not pure religions. The head of the Russian Catholics, Archbishop Tadeush Kondrushevich took an ambivalent position - he spoke out against restrictions on religious freedoms, but agreed with Met. Kirill of Smolensk that some sort of restriction (not for Catholics, of course) was necessary.

Public opinion as a whole did not support the idea of restriction on religious freedoms, of privileges for the Moscow Patriarchy, and of persecuting foreign preachers and non-orthodox. According to a study carried out in the summer of 1995, 80% of the Muslims, and even 30% of Orthodox believers themselves were worried about the threat of Orthodoxy becoming established officially. But at the same time 60% of those Orthodox interviewed considered it desirable to strengthen the union between church and state still more. Of the Orthodox and Muslims, 60% were against, and only 30% of Catholics and Protestants were "against the right of freedom to preach for 'nontraditional religions'".

Today in Russia the legislation on freedom of conscience is more democratic than is the psychology of the political elite. Civil Society does not exist, but one can say that public opinion is more inclined to tolerance and less nationalistic than is true of upper officialdom. There are no forces sufficiently well organized to resist the attempts of the Nomenklatura to bring society under its control, but there are also no forces that would actively help the officials place one of the religions into the ruling religion. All in all, over the course of time an economic order will emerge in Russia, similar to that in several Latin American countries, where the economy is under the control of the bureaucracy. Then the bureaucrats will also try to use the church (i.e. Orthodoxy in Russia), but not to give the church any real political influence. The history of Latin American countries shows, that in such conditions the influence of the ruling church collapses and the sermons of Protestants and new religious movements enjoy great success. As a whole, the future of religious freedom in Russia depends less on conditions in the religious sphere, than it does on the general developments in the spiritual and political situation.

### **First Reading of New Law - July 10, 1996**

The State Duma approved the first reading of a new Law on Freedom of Religious

Confession on July 10, 1996. Viktor Zorkal'tsev, standing as a Communist, and who had already under Khasbulatov headed the committee on religion, repeated in his introduction to the bill the steps that had led to their resolve to oppose religious freedom since the moment in 1990 when that very democratic law went into effect, namely that in the sphere of religion there reigns a "legal vacuum", sects are proliferating, and foreign missionaries are interfering.

The old law had underlined that religious freedom "has no limits, ... which is necessary for the rights and freedoms of other persons" (from the preamble). The new bill added to the personal "the preservation of the country's defense and state security" (art. 3, pt. 2) The introduction of the terms "state security", and "social order" suddenly transforms the law from a document of rights to a declaration of totalitarianism, for its understandings are totally vague so courts and governmental officials can interpret it as they wish. That, properly speaking has been the case throughout the entire post revolutionary era through to the present day.

The new law has eliminated any understanding of the foreign citizen or person without citizenship, which in the old law gave them equal rights to Russian citizens for freedom of religious confession. This was done in order to sharply reduce the activities of foreign missionaries, deemed undesirable to the government. Nor can the Russian citizen rejoice that much - the entire article 5 of the present law giving the "guarantee of freedom of religious confession" has been left out. True, the guarantee was merely declaratory, during the past five years Russian courts and officials took actions against believers who displeased them. Now they will be able to do so legally.

In general the new law is most frightening there where it removed many of the provisos from the previous law that had limited the totalitarian tendencies of the authorities so typical for Russia. Now the prohibition against showing one religious orientation in official documents (article 5) is lifted. Article 8 which had prohibited the creation of executive and administrative organs of state power and duties, specially designated for dealing with religious questions and connected with the realization of the rights of a citizen to freedom of religious confession, now is lifted. In essence, these organs and agencies have already done a great deal, all former officials of the Council of Religious Affairs retained their jobs, merely with new titles. But this was done illegally, now the innumerable consultants, quite apart from the councils of religion - whether presidential or oblast government - will be legalized.

The former law declared the right of the child to freedom of conscience: "The state respects the rights of the child and its parents or legal guardian to secure the religious and moral instruction of the child in accord with its own conviction" (art. 9). This was too vague, because it remained unclear, how much the parents had the right to direct the child in religious matters. The new law (art. 3, pt. 6) eliminated the vagueness: "Parents or guardians who prevent the child from exercising its right to freedom of conscience, which is expressed in forcing the child to participate or not to participate in religious rituals...". So generally, if the police see that you are taking the child to church and it is whining, you will not escape prison. More seriously, the law on the one hand permits a court judgment for involving one's child in an undesirable sect, and, on the other hand the law could send a child to prison for leaving the parents to enter a monastery, for violating the civil rights of parents, i.e "for the denial of parental responsibility to the children and of the children to the parents". How much "responsibility" remained undefined, as did "state security", so here also the way to absolute arbitrariness is opened.

The current revolution (namely that of the Bolsheviks) is completely toward registration - the existing law envisions registering the statute of a religious organization (art. 20), the new speaks of registering the religious organization itself. That is, at present no one may prohibit the activities of a religious community, at most the court can take away its right to juridical personhood. With the new law, the court can liquidate the congregation as a whole (art. 12), occasioned by mere disturbance of the peace. If the present law emphasizes that "a legal violation by an individual member of a religious body is not the responsibility of the body as a whole" (art. 21), that point is now eliminated. Now, if one monk gets drunk, the entire monastery can be closed, indeed Orthodoxy in its entirety could be forbidden. But of course, the monks can drink in peace, the law was written against other people. The Krishnaites, Catholics, Baptists - the principle of corporate responsibility applies to them.

In addition to the notorious danger to society and "undermining of state security" (yes, the word 'undermine' returns again to legal parlance) what has become criminal is "causing harm to the moral, physical and psychological health of citizens" - all of them as undefined charges.

There is a quite comical point introduced especially for the Moscow Patriarchate in art. 3, pt. 3: "Persons, with priestly rank, are excluded from military service during peace time". The benefactors of Orthodoxy failed to take the time to define the term "priestly rank" in juridical terms. They thought, that this was self-evident, that this did not refer to some elder from the Jehovah Witnesses nor to a Krishnaite teacher. Already, without any special legislation, Orthodox seminarians and priests only were excluded from military service, were placed in a special list, which was not called on in Chechnia. It is striking, that the active building of Orthodox churches in military garrisons, resumed in recent years, contradicts both the current and the new law.

The present law is more democratic, since its article 11 emphasizes that the state merely controls the adherence to the law on freedom of religious confession. The new law (art. 24, pt. 2) announces: "Those organs (agencies) having registered religious organizations, exercise control on the observance of the activities of the religious organizations with reference to its constituted goals". Such an unlimited formula gives the official the right to enter into the holy of holies, poke his nose into any corner, or not do so, according to the whim of the official.

In the present law, it is true, there is a silly point, never yet applied, to the effect that only a religious organization may produce liturgical materials and cult objects. The new law add to this the "exclusive right" of registered religious organizations to "establish institutions of professional religious education" (art. 17). In this way, registration shifts from being a right or the possibility to get an advantage, to an unavoidable duty, if one wants to preach or teach clergy in Russia. This should cause all those making crosses, icons or any other symbolic ornaments for "religious organizations" to tremble. The state is helping the holy fathers set up some competition!

It would be easy to punish sectarians - it makes no difference whether Catholics or Mormons - with the two simple phrases "state security" and "foreign preachers". Article 11 refers to "procedures, established by the government". Such procedures have already been determined and merely await passage of the law. The Russian Ministry of justice by request of the government has already drafted a bill: Regulations for opening a representative office for foreign religious organizations in the Russian Federation. Point 9 of the proposed regulations envisions

for the registration of "travelling missionaries", as now named in specified circles, receiving some sort of fee. One can rest assured it will not be a small fee. But the most grandiose expectation is in point 14 - registration is granted merely for three years, after which the procedure is repeated, half the fee is collected again.

It is understood of course, that no where in the world do representatives of the Moscow Patriarchate pay a fee for registration or that re-registration is required every three years. To consider foreign religious workers as a milk cow happens only in Russia. Moreover, those milking the foreigners are the very same people, who call them 'locusts' and 'wolves in sheep's clothing'.

The foreign missionary in Russia is required to submit "constitution, a certificate or registration or similar document which affirm that the religious organization functions officially in its corresponding foreign territory". The papal nuncio, naturally, would not be permitted to live in Russia, because the Roman Pope is nowhere registered. Since in the USA in general, the state is separated from religion, even Billy Graham would not be able to submit the required affidavit.

Nor does the gathering of numerous papers suffice. The representatives of foreign religions must show that their actions are "not directed toward changing the fundamental constitutional structure of the Russian Federation nor violate its integrity, undermining state security, establishing armed bands, inciting to social, racial, national and religious hatred". All the dreams of the former communist "specialists on religion", safely carrying out their former trickery in various governmental departments, are now on paper. According to article 8 of the regulation, officials of the ministry of justice have the right "to check the veracity of the information provided" (with trips, apparently, to the Vatican or New York, why confirm information on the Roman Pope and on Billy Graham in Russia). More so in point 23, according to which the official "in the case of repeated violations of the governmental legislation of the Russian Federation during the course of a year" may shut down the activities of the foreign religious representation, **without handing the matter over to the courts.**

There is no doubt that the new law will be passed by the Duma (no sooner than October 1996). For the defense of freedom of conscience, not long ago there was to be established a public committee for the defense of freedom of conscience, a Russian department of the International Association for Religious Freedom. But sitting on the committee are persons such as Viacheslav Polosin, the very one who as a deputy in Khasbulatov's`house, worked actively to restrict freedom of religious confession. And the International Association for Religious Freedom throughout its years of existence has only managed to produce one brochure and send out one mailing. Unfortunately, in this sphere there is too much fluff, not worrying about issues but about appearances - to get some grant from the west to struggle for freedoms, but beyond that to let the grass grow. Westerners also seem less concerned about freedom of conscience in general, than about freedom of conscience for 'their own' - Mormons, Adventists, Catholics, but not for everybody.

The final hope, if strange, is in Yeltsin (and now also his head of the presidential committee for religion, Shumeiko). Perhaps he will remember, that the numerous attempts to review, amend, change the Law on Freedom of Conscience came from his political opponents. It is no accident: freedom cannot be divided, one cannot freely choose a president without also

freely choosing one's faith.

## **EDITOR'S SUPPLEMENT**

Between the publication of the first and second parts of Yakov Krotov's essay - which covered the time period between 1990 and late 1996 - the world press drew attention to the latest conflict between the Russian Duma and President Yeltsin's office on rewriting the 1990 law. Before summarizing those developments, it may be helpful to restate Krotov's arguments in an abbreviated form.

There has been a Law on Freedom of Religious Confession (FRC) in force in the Russian Federation since October 1990. Since 1992 the elected deputies to the Duma, then also key spokespersons for the Russian Orthodox church, have begun efforts toward renewed restrictions on religious freedom. The apparent concerns are the perceived need to stop harmful cults and Western missionaries from proselytizing among Orthodox faithful. The statistical impact of both 'threats' is negligible. Krotov weaves into his presentation an argument to show how a communist mindset of controlling society has shaped those groups, who were worried about Western influence in the growing chaos, in formulating their strategies of response. In the first phase, new restrictive legislation was passed by a Duma that was then declared dissolved as Yeltsin battled against Khasbulatov and Rutskoi in the autumn of 1993. There followed a new Russian constitution and a second round of draft legislation on religion with the President's office stepping in January 10, 1995 and warning that the proposed bill violated rights guaranteed in that constitution. Krotov's final sections describe two concurrent developments: 1) Attempts to combine contradictory legislative bills into a new revision that was then approved at a first reading on July 10, 1996; and 2) The de facto functioning of agencies to oversee and control religious affairs headed by former Council of Religious Affairs officials. In Krotov's summary, the July 1996 revision was really a new law replacing the 1990 FRC, but adding four worrisome features: 1) the possibility to prohibit a religious organization; 2) restricting the activity of preachers (i.e. missionaries); 3) state support of Orthodoxy; 4) and state controls of religion.

On June 23, 1997 the lower house of the Russian Duma approved (300 for, 5 against) the full text of the new Law on Religious Confessions, the revised text of which had emerged from committee only on June 6. Patriarch Aleksey defended the law by restating the need to stop sects deemed harmful to society and to restrict the proselytizing activity of "false missionaries". His own actions in cancelling a meeting with Pope John Paul II that week symbolized the broad negative meaning Russian Orthodox were giving to 'mission activity' of other confessions, seeing this as a threat to Orthodoxy rather than as mission in a predominantly secular society.

Human rights organizations and religious bodies in the West expressed grave concern about the proposed restrictions. The main concerns were:

1. Elevating official Orthodoxy to a privileged position, recognizing a few other ethnically based traditions (Islam, Buddhism, Judaism) and leaving "other religions and local beliefs" at a third rank only.
2. Re-registration requirements (by the end of 1998) and requiring excessively large numbers of signatures (100,000) and geographic spread (have congregations in at least half of the provinces) to qualify as an "all-Russian" religious organization.

3. Making vulnerable the status of religious bodies advocating conscientious objection to military service, alternative schooling and alternative medicine (Article 12).

4. Special procedures for registering foreign religious organizations, including relief and service agencies, which in effect violates the Russian Constitution's principle of "equal rights for all religious believers".

5. The de facto restoration of a state body for religious affairs, staffed by officials from the old apparat, with extensive powers of interpretation and regulation.

A month later, on July 22, 1997, Yeltsin sent the bill back to the Duma and Federation Council, requesting amendments before he would sign it. This means that in September 1997 the Duma will attempt either to incorporate Yeltsin's concerns or else demand his signature and seek to override his likely veto with a two-thirds majority. In his remarks to the Duma, Yeltsin conceded that a law was needed that achieved two things: 1) "it must protect the moral and spiritual health of the nation... 2) "raise reliable barriers to radical sects which inflict great damage on the physical and mental health of our citizens...". Yeltsin was now also affirming the Patriarch's concerns in a general way, but the three concerns he went on to enunciate did require some quite basic re-writing of the law. In the first place, many of the new law's provisions "infringe upon the citizens' constitutional and human rights". Secondly it would "legalize inequality between different confessions" which was "at variance with Russia's international commitments". Further, he went on to predict that in its present form the proposed law would isolate Russia's traditional confessions [from the West presumably] and "give rise to religious conflicts"...

Yeltsin too, claimed that "ten other main religious organizations of Russia" supported the proposed legislation. In its report, however, Keston News Service stated that during the previous six weeks the Baptist Union, Pentecostal Union, Seventh Day Adventists, Union of Councils for Soviet Jews, Roman Catholic Church, Reform (or Initsiativniki) Baptists, Russian Orthodox Free Church, Russian Orthodox Church Abroad, the Old Believers and individuals within the Russian Orthodox Church had all formally protested the law, to say nothing of the criticism from the Sakharov center and the European Union. Since that list encompasses the usual list of confessional bodies [Christian] that have been present during the Soviet period, it is hard to guess which Yeltsin's ten organizations would represent.

Finally, even for those inclined to grant Russian Orthodoxy some preferential treatment as the equivalent of a Volkskirche, it is disturbing to note that this legislation helps to legitimate the structures of financial corruption into which the hierarchy of the Russian Orthodox church has been drawn. Carey Scott, recently returned Moscow correspondent of the Sunday Times (London), detailed the Patriarchate's involvement in dubious financial dealings. The church's bank accounts are not subject to scrutiny by the tax authorities and have therefore attracted the attention of mobsters eager to launder money. Last year when it became known that the Patriarchate's importation of tax exempt alcohol and tobacco (10% of all imports) had cost the state \$40 million in lost revenues, Patriarch Aleksey requested the government to rescind its tax free status. But early in 1997 the church's external affairs department again applied to customs authorities for tax free status. Moreover, the documents in the defense ministry that Carey Scott was privy to, told the story of a joint bank account between the defense ministry and the Patriarchate whereby profits from the sale of defense ministry property were to be channeled into

a charity fund for invalids and army widows. That accounted received \$28 million in the next year even though the ministry fell far behind in paying soldier's salaries, etc. Investigators found no evidence that any of the money went to army widows, orphans, kindergartens or other needy - it was diverted to the private use of army brass and to fund the luxurious living of some in the church hierarchy, including the two private airplanes owned by Metropolitan Kirill of Kaliningrad and Smolensk. Already in 1994 the deputy finance minister, Vavilov, had issued a report on the abuse of the 200 'charitable funds' under the defense ministry's control, with only 10-15% actually applied to charity. Now the church hierarchy is accused of corruption, but is deemed too powerful to worry about facing trial, and this at a time, as Larry Uzzell, Moscow representative of Keston Institute, put it when "the typical Russian Orthodox parish is teetering on the very brink of survival".

The time still seems distant when the finances of the Russian Orthodox church become open to public scrutiny and it might serve as a model for how doing good in Christ's name presumes moral probity. As Uzzell, himself Orthodox, observed in June, one of the reasons for converts to Old Believers, Baptists or Seventh Day Adventists is that "more and more people are getting fed up with the church leadership being in bed with a corrupt oligarchy". It seems fair to ask how restrictions on a few sectarian groups could "protect the moral and spiritual health of the nation" when at the same time the leadership of the church claiming the longer tradition of moral and spiritual leadership is perceived to be so corrupt. Something else than a legal amendment is needed to change perceptions.

(Walter Sawatsky, August 1997).