

Forming a particular attitude towards religion by Russian state: Legal framework and reality

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1. Local religious communities in Russia: statistical overview

The most obvious starting point would be to give information on the existing religious communities in Russia and then focus on one specific aspect of the existing relationships between the State and the largest religious community of Russia – the Russian Orthodox Church.

According to statistics – most Russians consider themselves to be Orthodox (75-80%¹ or 71%²) and this number apparently increased since 2013 – when it was around 68%³. The second largest religious community is traditionally the Muslims – with approximately 10% of Russians identifying as such. Other religious communities are significantly smaller – Catholics (1%), Protestants (1%), Jews (around 1%).

Exact recent data on such religions as Buddhism and Hinduism is hard to find, however, statistics from 2012 show that adherents of these religions constituted at that moment less than 1% of the Russian population. Then of course there are traditional practices such as shamanism and ethnic religions (example: Mari people indigenous religion), the followers of these practices and religions constitute a very small percentage of the Russian population.

The two most significant religious denominations are Orthodox Christianity and Islam – these religious communities have a sizeable influence on the political, social, cultural and even legal agenda of the Russian society. Still, however, the strongest influence is exercised by the Russian Orthodox Church, so a brief history overview is in order.

2. Short History of Russian Orthodox Church in Russia

History of religious communities in Russia is obviously not a topic to be dealt with in a short paper, however it is possible to point out key moments in the history of interaction between the Russian state and the numerically dominant religious community – Russian Orthodox Church.

The story of Russian Orthodox Church begins with the baptism of Kievan Rus' at the time of Prince Vladimir the Great. It happened in 988 AD (the exact year is still disputed by scholars, however, 988 is the year officially proclaimed by the Russian Orthodox Church). This event had a profound impact on Russian social, cultural and political life. It also defined the political and ecclesiastical structures as well as political theories and models which were received from

¹ According to the data of the Levada Center – Russian independent non-governmental polling and sociological research organization URL: <https://www.levada.ru/2018/01/23/otnoshenie-k-religiyam/> (10.12.2018)

² URL: http://www.pewforum.org/2017/05/10/religious-belief-and-national-belonging-in-central-and-eastern-europe/?utm_source=Pew+Research+Center&utm_campaign=efff8a5e05-EMAIL_CAMPAIGN_2017_05_10&utm_medium=email&utm_term=0_3e953b9b70-efff8a5e05-400288249 (10.12.2018).

³ URL: <https://www.levada.ru/2013/12/24/rossiyane-o-religii/> (10.12.2018).

the Byzantine Empire (Byzantium)⁴. One of the most important ideas received from the Byzantine Empire was the idea of the *symphonia* – «harmonious interdependent correlation between state and ecclesiastical authorities»⁵.

Thus, the co-existence and interdependence of Church and State were predetermined from a very early stage (since Russian statehood officially dates back to 862, only 126 years before the Christianization).

The next important historical period to mention, is the Mongol conquest of Russian cities and principalities, which also hugely influenced the position of the Church in the power structures of the Russian society (to use the modern notion of «society» here for the sake of simplicity). Mongol rule continued from the middle of the 13th c. to 1480 and entailed the political and tax control over the Russian principalities, although this control was exercised from a distance with the help of those Russian princes who agreed to obey and cooperate. During this period a few important changes occurred:

- The center of political power moved from Kiev to Moscow (with the influence of the Byzantine Empire specifically through the Metropolitans of the Russian Church, who were Byzantine appointees and gradually moved their residence from Kiev to Moscow ?? – плохая фраза). Thus, ecclesiastical authorities and the princes coexisted and dealt together with urgent problems⁶.
- 1448 – de-facto autocephaly, when Grand Prince Vasily II convened a council that elected the Metropolitan of the Russian Church without approval by Constantinople.
- The Fall of Constantinople in 1453 and development of Russian self-perception as independent political and religious entity was strengthened with the gaining of complete independence from the Mongol rule in the 1480.

The title and position of the Patriarch of the Russian Orthodox Church existed until 1700 – with the death of Patriarch Adrian the so-called “First Patriarchate period” ended. Peter the Great (reigned 1682-1721) delayed the election of the new patriarch – for 21 year. During this period the Russian Orthodox Church was governed by the patriarchal locum – Stephen Yavorsky. In 1721 instead of the patriarch, a collegium was created with the name of Holy Governing Synod under the supervision and control of Chief Procurator. Thus, the Russian Orthodox Church became part of the state apparatus and the emperor disposed of the «potential parallel center of authority»⁷. This period is known in Russian historiography as the “Synodal period”. It lasted until 1917. During this period the regulation of the Church and its activities within the State becomes more elaborate.

⁴ Petrenko V. The Development of Authority within the Russian Orthodox Church. A Theological and Historical inquiry. Peter Lang: Bern, 2011. P.110.

⁵ Definition taken from Prosic, T. Between Support for the State and its Betrayal. Political Theology, 15(2), 2014. P. 180. Also see there the translation of the fragment of the original source of the idea of the *symphonia* – the Novellae Constitutiones of the Code of Justinian.

⁶ Meyendorff J. Byzantium, the Orthodox Church and the Rise of Moscow // The Byzantine Legacy in Eastern Europe. Lowell C. (ed.). East European Monographs, distributed by Columbia University Press, 1988. P.3 –17.

⁷ Alfeyev H. Orthodox Christianity: The History and Canonical Structure of the Orthodox Church. Yonkers, NY: St. Vladimir's Seminary Press, 2011. P.171.

After the February Revolution in 1917, the Local Council of the Russian Orthodox Church gathered and held its sessions until the 1918. Patriarch Tikhon was elected by the Great All-Russian Ecclesiastical Sobor on the 5th of November 1917 thus marking the start of the Second Patriarchate Period.

At the same time after the Bolshevik coup (known during the Soviet period as the Great October Socialist Revolution), the new political power immediately issued several normative acts to separate the Church from the state and impose the confines of the new Communist ideology on it. In fact, the new authorities commenced violent persecution of the Church, the clergy as well as ordinary believers.

The most significant document here would be the «Decree on the separation of church from state and schools from the church» which was a normative legal act adopted by the Council of People's Commissars (*de facto* Soviet cabinet of ministers) on January 20, 1918⁸. It established the secular nature of state authority, proclaimed freedom of conscience and religion, deprived religious organizations of any property rights and the rights of legal entity. It also laid down the foundations for the development of atheist propaganda and education.

One of the examples of extreme anti-religious regulations is the inclusion of the clergy into the category of people deprived of voting rights⁹ (from 1918 until new constitution of the USSR was adopted in 1936). However, there existed a possibility of organizing and registering a religious association, which could even have its own charter¹⁰. These associations were not recognized as juridical persons and did not have any property rights. However, they could enter into private law contracts regarding the using of the cult property.

After the Nazi invasion of the USSR in 1941 religious life was resurrected in the German-occupied territories. Joseph Stalin felt that he had counter this by reviving elements of the Russian Orthodox Church to boost traditional Russian patriotism. the patriotic stance of the Russian Orthodox Church was considered useful by the political authorities and persecution of the Church was limited¹¹, for example the Orthodox parishes in the lands occupied by the German troops were allowed to function after the lands were reclaimed by the USSR. The relaxation of the prosecution also apparently had to do with the «Stalin's project to create an Orthodox Vatican»¹² by using the Russian Orthodox Church to unify other Orthodox communities and reach a higher level of international authority. During the short period of warmer relationship with the Soviet State (1943 – 1948), the church was basically controlled

⁸ Find the text in Russian here URL: <http://www.hist.msu.ru/ER/Etext/DEKRET/religion.htm> (12.02.2019)

⁹ In the Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) of 1918 (part (d) of art.65 in chapter 13) URL: <http://www.hist.msu.ru/ER/Etext/cnst1918.htm> (12.02.2019).

Then in the Constitution of the RSFSR of 1925 (part (d) of art.69 in chapter 6) URL: http://constitution.garant.ru/history/ussr-rsfsr/1925/red_1925/185477/chapter/9f26cdf39a65c84265eb766571cbfd90/ (12.02.2019).

¹⁰ Постановление от 15 апреля 1923 года. Инструкция о порядке регистрации религиозных обществ и выдаче разрешений на созыв съездов таковых. URL: <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ESU&n=4741#040026600750738073> (10.12.2018).

¹¹ Alfeyev H. Orthodox Christianity: The History and Canonical Structure of the Orthodox Church. P.273 –274.

¹² Kalkandjieva D. The Russian Orthodox Church, 1917 –1948. From decline to resurrection. Routledge, London, New York, 2015. P. 307.

by a special state organ which was created in 1943 – The Council for the Affairs of the Russian Orthodox Church – led by a former NKVD colonel Georgy Karpov¹³.

However, after 1948 and especially during Khrushchev's rule as the First Secretary of the Communist Party of the Soviet Union (1953–1964) the relationship between all religious communities and the State became worse, including the closing of the convents, churches and prayer homes and intensive anti-religious and atheistic propaganda¹⁴.

In 1977, the last constitution of the USSR recognized the right to atheistic, but not to religious propaganda. For believers, it recognized only the right to profess a religion and to partake in worship (art. 52 chapter 7)¹⁵. At the same time, unlike the provisions of international law, in Soviet legislation the meaning of the concept «to profess a religion» was interpreted strictly as the right to adhere to certain religious beliefs, but not to publicly manifest and disseminate them.

During the later years of Mikhail Gorbachev's «perestroika» (1985-1991), the State's attitude towards religious communities began to shift again. For example, in 1988, the status of the 'houses of prayer' changed – they were no longer considered to be the property of the State¹⁶. Finally, on October 25, 1990 the Supreme Soviet of the RSFSR adopted a resolution, by which it invalidated the «Decree on the separation of the church from state and schools from the church» on the territory of the RSFSR (Russian Soviet Federative Socialist Republic). During the same year, the Law of the USSR «On Freedom of Conscience and Religious Organizations» and the Law of the RSFSR «On Religious Freedom» were adopted.

3. Legal framework for the regulation of religious communities in Russia

The foundation of the legal framework for the regulation of religious communities in Russia was created during the 1990s, first with the adoption of the constitution of the Russian Federation in 1993 and then with the Federal Law «On Freedom of Thought and Religious Associations» in 1997. This law remains until today one of the most significant normative acts regulating religious communities in Russia.

Other normative legal acts which contain some of the norms which constitute the basic framework for regulating religious communities are the Civil Code (specific provisions regarding religious organizations were added to it in 2014), the Federal Law «On non-profit organizations» (adopted in 1996), the Labour Code (adopted in 2001, contains norms on the regulation of labour of the employees of religious organizations), the Criminal Code (norms regarding the protection of the constitutional right to the freedom of thought and freedom of religion (since 1996) and the very specific norm on the «protection of the religious feeling of the faithful» (since 2013)).

¹³ Ibidem. P. 184.

¹⁴ Alfeyev H. Orthodox Christianity: The History and Canonical Structure of the Orthodox Church. P.273 –276.

¹⁵ Find here the Text of the Constitution of the USSR of the 1977 URL: <http://www.hist.msu.ru/ER/Text/cnst1977.htm#7> (12.02.2019).

¹⁶ Сосновских Е.Г. Трансформация государственно-конфессиональных отношений в 1985-1997 гг. (на материалах Челябинской области) Диссертация на соискание ученой степени кандидата исторических наук. Челябинск, 2014. С.23. URL: http://www.susu.ru/sites/default/files/dissertation/sosnovskikh_eg_dissertatsiia.pdf (10.12.2018).

The Constitution confirms the lay character of the Russian state and prohibits establishment of a state or compulsory religion (art. 14 p.1). The Constitution declares that religious associations are separated from the State and are equal before the law (art. 14 p.2). These constitutional norms are repeated and specified in art. 4 of the Federal Law «On Freedom of Thought and Religious Associations».

One of the essential norms of the constitution is contained in art.15 part 4. It states that «the generally accepted principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes other norms than those provided by law, then the norms of the international treaty shall apply». This is the mechanism by which the international norms constitute a part of the national legal system (this includes Art.18 of The Universal Declaration of Human Rights, art. 18 and art. 27 of the International Covenant on Civil and Political Rights, art. 9 of the European Convention on Human Rights).

Another crucial article of the Constitution is art. 28, which states: “Everyone is guaranteed freedom of conscience, freedom of religion, including the right to profess, individually or jointly with others, any religion or no religion, to freely choose, adhere to and spread religious and other beliefs, and act in accordance with them».

Now let us turn to the Federal law «On Freedom of Thought and Religious Associations»¹⁷. It covers all essential aspects of the state regulation of religious communities such as interaction between the State and religious communities (art.4), religious education (art.5), recognized legal forms of religious associations (art. 7,8), requirements and procedure for the registration of religious organizations (art. 9 –12), rights of religious organizations and conditions for their activities (art.15 –24), missionary work (art. 24.1,24.2). It also sets out provisions for supervision and control of the implementation of legislation on freedom of conscience, freedom of religion and religious associations (art.25 –26).

I will only point out the most significant norms: according to part 5 of art. 4 of the law religious association «is created and operates in accordance with its own hierarchical and institutional structure, selects, appoints and replaces its staff in accordance with the relevant conditions and requirements and in a manner provided for by its internal regulations», does not perform the functions of state bodies, state institutions and local self-government bodies¹⁸; «does not participate in elections to state and local authorities»; «does not participate in the activities of political parties and political movements, does not provide them with material or other assistance».

The law gives definition of a religious association: «A religious association in the Russian Federation is a voluntary association of citizens of the Russian Federation, other persons permanently and legally residing on the territory of the Russian Federation, formed for joint profession and dissemination of faith and has the following characteristics:

- confession;

¹⁷Федеральный закон "О свободе совести и о религиозных объединениях" от 26.09.1997 N 125-ФЗ URL: http://www.consultant.ru/document/cons_doc_LAW_16218/ (10.12.2018).

¹⁸ This part of art. 5 cannot be well translated into the English language – since in Russian legislation two terms are used – «государственный орган» and «орган государственной власти», which can be literally translated as «state body» and «body of state power». These terms are not well defined and are sometimes used as interchangeable.

- worship, other religious rites and ceremonies;
- teaching religion and the religious education of their followers»¹⁹.

There are 2 forms of religious associations – religious groups and religious organizations. The essential difference between the two is state registration. Religious groups can function without state registration (however they need to notify the same authority that registers them about the start of their activities). However religious groups are not juridical persons. Their essential rights include the right to worship, conduct religious rites and ceremonies, as well as to teach religion and to conduct the religious education of their followers²⁰.

The law focuses mostly on religious organizations, since to receive the status of a religious organization the association must undergo the process of state registration, which allows it to acquire the status of a juridical person.

4. Promoting a specific attitude towards religion by Russian state: legal framework and political reality

A problem that is highly relevant for modern Russia is the one of defining the model of relationship between the State and the Russian Orthodox Church. Although the constitution stipulates, that Russia is a lay country and establishment of religion is illegal, the State still enjoys some discretion when deciding on the exact parameters of the State-Church relationship. One of the limits is set out in the part 4 of the art. 4 of the Federal Law «On Freedom of Thought and Religious Associations» which declares, that «the activity of state and local government organs is not accompanied by public displays of religious rites and ceremonies. Officials of state organs, other state bodies and bodies of local self-government, as well as military personnel are not allowed to use their official position to promote a particular attitude towards religion».

This part contains two legal norms both of which express a clear prohibition for the State's association with any religion in its activities. They aim at upholding the secular character of the Russian State, which is neutral about all faiths. However, the actual actions of the state bodies and military personnel in Russia quite often violate these two norms.

Recently there have been cases of consecration services by the Orthodox clergy of new state institutions, military units, warships, missiles, secondary and higher education institutions, etc.²¹. It is also a tradition that either the President or the Prime minister of Russia (sometimes both), as well as other officials and civil servants participate in Christmas and Easter services which are broadcast by state-owned Russian TV²². Another example of such behavior is the publicly known participation of the Russian president in the traditional form of celebration of Epiphany (the Baptism of Christ in the Orthodox Church)²³. In Russia, Ukraine and some other

¹⁹ Part 1 art. 6 of the Federal law «On Freedom of Thought and Religious Associations».

²⁰ There seems to be a lack of clarity on the distinction between the «teaching of religion» and the «religious education of followers».

²¹ Examples of such cases in the various news reports and information sites: <https://www.business-gazeta.ru/news/398545>, http://www.eparhia-saratov.ru/Articles/article_old_6206, <https://vitprav.by/6879.html>, <http://www.patriarchia.ru/db/text/5301909.html>, <https://pravoslavie.ru/50517.html>. (12.02.2019).

²² URL: <https://ria.ru/20190107/1549077813.html>, <https://rg.ru/2018/01/08/putin-posetil-rozhdestvenskuii-sluzhbu-v-cerkvi-gde-krestili-ego-otca.html>, <https://www.5-tv.ru/news/195483/>, <https://www.interfax.ru/russia/558622>

²³ URL: <https://lenta.ru/news/2018/01/19/putin/>

countries this church feast is celebrated by swimming in an open body of water or in an ice-hole which is blessed by the priest²⁴.

The best example of this kind of legally problematic situations is a recent project of the Russian Ministry of Defense²⁵ to build an Orthodox Cathedral of the Armed Forces of Russia. This project was officially announced by the Russian Minister of Defense²⁶, and involves the building of the Cathedral itself in the park named «Patriot». It also envisages the building of a «multimedia museum and exhibition complex "Spiritual Army of Russia", where unique expositions will be devoted to various episodes of the heroic history of the Russian army»²⁷. The project is to symbolize «the spirituality of the Russian military who only ever raise their sword to protect the Motherland»²⁸.

The official site of the project contains endorsements from celebrities, state and military officials (such as the President, Minister of Defense, Governor of the Moscow Region, etc) They call on the Russian people to donate money to this project.

A special non-profit foundation «Voskresen'ie» ('Resurrection' in Russian) was created to raise money for the construction of the Cathedral. The project's website states that it was the Minister of Defense Sergey Shoigu who launched it, supported by president Vladimir Putin and Patriarch Kirill, primate of the Russian Orthodox Church²⁹.

Furthermore, the ceremony of laying of the foundation of the Cathedral was accompanied by the church service. Patriarch Kirill officiated while the president, top military commanders were in attendance.

In my opinion, this is a clear violation of the norms set out in the part 4. art. 4 of the Federal Law «On Freedom of Thought and Religious Associations». Described actions violate both prohibitions:

- to accompany activities of state and local government by public display of religious rites and ceremonies
- to use an official position to promote a particular attitude towards religion

The two norms are connected, since accompanying the activities of the state and local government officials by public display of religious rites and ceremonies almost inevitably forms some attitude towards a religion.

Does it mean, however, that the State is not allowed to show any preference in collaborating with religious organizations? Does it mean that the State has an obligation to always equally cooperate with and support all religions in the country?

²⁴ This tradition is quite popular, although it is often denounced as dangerous and unrelated to the actual teachings of the Church.

²⁵ URL: <https://hram.mil.ru/> (12.02.2019).

²⁶ URL: <https://tvzvezda.ru/news/forces/content/201809041324-9v3w.htm> (12.02.2019).

²⁷ A quote from the site of the project (URL: <https://hram.mil.ru/>), translated into English by me.

²⁸ Ibidem.

²⁹ Find here the page in which this is stated: <https://fondvoskresenie.ru/My-nasledniki-Pobedy/form/form>, and here the page with quotations by Shoigu, Putin and Kirill, explaining the national significance of the project URL: <https://fondvoskresenie.ru/>.

Closer collaboration of the State with organizations representing historically traditional faiths in Russia (Orthodox Christianity, Islam, Buddhism and Judaism) does not violate the requirements of parts 1 and 2 of art. 14 for the State to be secular and for the religious organizations to be separated from the State and remain equal before the law³⁰. The distinction is rooted in the factual inequality of the various religious organizations. And while «equality before the law» means formal legal equality, and thus equal fundamental rights and obligations, it does not entail any obligation for the State to create factual equality. Natural differences between different denominations like the number of faithful, financial strength, impact of some religious communities on the society should not be deliberately corrected by the State.

In my opinion, the State can officially recognize and consider historical, cultural, social or other significance of a religious community for the society – and since the Russian government has the authority to «determine the basics of federal policy and federal programs in the field of political, economic, environmental, social, cultural and national development of the Russian Federation» (p. «e» art. 71 of the constitution of Russian Federation), it also has the possibility to cooperate more closely and frequently with historically traditional religious communities.

The idea is not that the State cannot support or collaboration with religious organizations at all, but rather that it must be clear that this engagement is the result of the sovereign decision by the State and is one of the consequences of the State exercising its functions. So, in other words, if the State is collaborating with religious organizations, associations or movements or is supporting them, it is an acceptable form of demonstrating a positive attitude towards different religions, but the decision-making process that leads to this collaboration must be secular³¹ in character. The problem occurs when religion enters the sphere of decision-making by the State or at least when there is a public impression that one or several religious communities help the state authorities in exercising their functions or provide additional legitimacy to the state bodies.

The question is how to distinguish between the State conducting its cultural or social policy (for example, by means of supporting some activities of religious communities such as charitable organizations and various cultural events, for example) and the State actively violating its own laws by showing preference towards one faith, which in the case of Russia is privileging the Russian Orthodox Church.

Is building the Armed Forces Cathedral acceptable if there were no public attempts at promoting this project by the military or state officials? It can be argued that because the whole project is formally based on voluntary contributions and is not financed from the state budget, public support for the project by State officials and top military commanders is a minor issue. Moreover, there appears to be an unsolvable contradiction – how can the State conduct any religious policy without forming a certain attitude towards a specific faith or faiths? Is the criterion used by the law («using the official position» by state officials) a formal or substantial

³⁰ Понкин И. В. Комментарий к некоторым статьям Федерального закона "О свободе совести и о религиозных объединениях". М.: Институт государственно-конфессиональных отношений и права, 2007. С. 64. URL: http://www.r-komitet.ru/law/comm_faith.pdf (14.02.2019).

³¹ I am aware of the different meanings the terms «secular» and «lay» can have. The exact definition of the two terms and of their interrelation doesn't seem to be possible, however, I will use the term «lay», because this is the term that is used in the Russian Constitution.

requirement? For instance, when the President participates in a church service and it is publicly announced or even broadcast, is he using his official position to promote Orthodoxy?

I conclude by pointing out, that despite apparent relevance of the issue, Russian legislation and jurisprudence still do not provide an up-to-date regulation on the specifics of Church-State interaction – namely what is permitted under the nominally secular legislation and what is out of bounds? The Armed Forces Cathedral is a project which is completely in line with the aggressively militaristic ideology hoisted by Russia’s political class on the whole of society, but it also raises important legal questions, which are yet to be resolved – at least in and by academia. I would premise that the most important criteria here is the publicity of Church-State interactions and their political context. If there are major attempts to promote a religious project (like the Armed Forces Cathedral) which is very public and evidently serves a political purpose, I would suggest this is a possible sign of violation of the secular character of the State.

Διεπιστημονική Εφημερίδα

Εκκλησιαστικού Δικαίου / Article 1

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ΑΡΘΡΟ 13

Διεπιστημονική εφημερίδα
Εκκλησιαστικού Δικαίου