

The New Soviet Law on Religion

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The Soviet authorities claim that religious dissidents such as the Baptist leader Georgi Vins are not punished for their religion but for breaking Soviet law. To what law are they referring? The Decree of 1918 on the Separation of Church from State and Article 124 of the 1936 Soviet Constitution are both still in force, but the basic legislation is the "Law on Religious Associations" of April 1929, slightly revised in 1932. In the Soviet Union the 1929 Law has long been almost impossible to obtain. So believers often do not know which law they are said to be violating. Moreover, State policy towards religion is notorious for its arbitrary and whimsical application of, or even violation of, its own law.

In July 1975 the government announced revisions of the 1929 Law which affected nearly half of the Law's 68 articles?¹ This was after 44 years during which, despite radical changes in religious policy, the government had retained the 1929 Law unchanged. At first experts dismissed the changes as minor and insignificant. Upon closer perusal, however, one discovers some significant changes. The Council for Religious Affairs now has a published legal constitution which defines its duties and powers. Juridical personality has been *almost* totally restored to both local executive committees of religious associations and to central church bodies. In addition some interesting changes have been made in the procedure for registering churches, while the limited sphere of legitimate religious activity has been circumscribed even more.

Were these revisions actually made in 1975 or earlier? In a report (since published in the West) presented to Sakharov's Human Rights Committee in May 1971, Igor Shafarevich the Soviet mathematician cited a recently published collection of legal documents and related materials which contained a tantalizing bit of information.² According to it, 21 articles³ of the 1929 Law had been changed by an *ukaz* of the RSFSR Supreme Soviet on 19 October 1962, but these changes had not been made public. Another 12 articles,⁴ this publication continued, had undergone minor changes. Shafarevich was understandably indignant to learn that laws affecting the general public were kept secret. Believers were being held accountable for them without knowing their contents. The 1975 changes which *were*

published correspond almost exactly with the list of articles cited in Shafarevich. Unless these articles were changed once again in 1975, it is possible and likely that only five articles of the law were revised in 1975, whilst the other 34 revised articles were changed as early as 1962. Three of the 1975 revisions (Art. 3, 7, and 36) represent major changes and the other two (Art. 32 and 62) follow logically from the earlier revision of Art. 4.

In the autumn of 1943, a month after Stalin had reached a secret concordat with leaders of the Russian Orthodox Church, the Soviet government announced the formation of a Council for the Affairs of the Russian Orthodox Church. A similar Council for the Affairs of Religious Cults was created in May 1944 for all the other denominations. If Stalin's concessions to the Church and the powers of these councils were guaranteed in law, this was never indicated, and the more restrictive articles of the 1929 Law on Religious Associations were simply ignored, not changed. In fact, the Churches had to live with the fear of losing their new freedoms should the State decide to apply the letter of the law once again.

Although the two state councils for religious affairs were described vaguely as conducting liaison between the Churches and the State on matters affecting the latter, by 1959 when Khrushchev launched a major attack on the Churches these councils were interfering in church affairs very extensively. Religious dissidents began criticizing the councils for controlling the Churches and even for orchestrating the anti-religious campaign. The widely quoted letter of two Orthodox priests (Fr. Yakunin and Fr. Eshliman) sent to President Podgorny in December 1965 listed some of these charges and asked that the legal powers of the council be made public. This was not done. In late 1965 when the two councils were combined into the Council for Religious Affairs under the USSR Council of Ministers, the new council's chairman, V. A. Kuroedov, did however admit that it had been given "a much greater role and greater responsibility in supervising laws on cults" and "correspondingly greater powers".⁵ Presumably the 1962 revision (referred to above) increased its responsibility and strengthened the powers of the councils. Two legal commentaries published in 1970 and 1974 indicated the considerable powers of the Council for Religious Affairs in general terms.⁶ Now at last with the 1975 revision of the 1929 Law the details of the council's duties and powers have been made public.

The Council for Religious Affairs is mentioned in 14 articles; another three articles affect the council or were altered because of it; and another six articles of the 1929 Law have been dropped now that the powers of the council have been made clear.⁷ The council has been given full regulatory powers over all religious matters and due to changes clearly made in 1975 it has legislative powers as well.

A centralizing trend is reflected in the increased powers of the council :

it now takes over powers formerly held by local authorities. The procedure for decisions is conveyed in the oft-repeated phrase: "the Council for Religious Affairs under the USSR Council of Ministers upon recommendation of the Councils of Ministers of autonomous republics, executive committees of regional, provincial, city (Moscow and Leningrad) Soviets of Workers' Deputies". This centralizing trend is also reflected in the greater reliance placed on central religious bodies whose powers have been extended (Art. 21). This can be contrasted with the attempt in the early years of Soviet power to break central church control by making the local religious association the sole legal church unit.

Religious associations were however severely crippled by Art. 12 of the 1918 Decree which stated: "No ecclesiastical and religious association has the right to own property. They do not have the rights of juridical personality." That decree is still in force but the phrase denying the right of juridical personality which also appeared in Art. 3 and 22 of the 1929 Law has now been omitted. Instead Art. 3 and 20 (which includes the old Art. 22) state that they

have the right to acquire church utensils, cult objects, means of transport; rent, construct and purchase buildings for their needs in accordance with established legal procedure.

This "established legal procedure" appears to mean that a prescribed form must be filled in each time and permission obtained from the Council for Religious Affairs or from the executive committees of city and district soviets.

But did religious associations in fact have the right of juridical personality before the recent published changes? In 1958 Georgi Karpov (then head of the Council for the Affairs of the Russian Orthodox Church), was reported to have written to Patriarch Alexi on 28 August 1945 informing him that the Council of People's Ministers had adopted a resolution which did grant religious associations this right.⁸ The text of the letter which was finally published in the West in 1966 (but never in the USSR) is less clear for it speaks of granting "juridical rights for the acquisition of . . ." and then lists the items as in the newly revised Art. 3 and 20.⁹ It also only refers to Orthodox religious associations although other religious bodies in practice enjoy similar rights. Another curious aspect of the newly revised Law is the distinction it makes between granting "acquisition" rights to local religious associations (Art. 3) and to religious centres and diocesan administrations (Art. 20). Since Art. 3 was changed only in 1975 local religious associations may possibly have only now received this right whereas "religious centres" (including non-Orthodox) may have had this incorporated into the secret changes to the 1929 Law made in 1962. Despite this confusion it is clear that the *de facto* right of juridical personality granted by the 1975 revisions has

been made public and therefore very likely permanent. That is a major step towards allowing church organizations, local and central, to function properly.

A large number of the articles of the Law on Religious Associations are concerned with the registration of religious associations and the use of buildings and materials for worship. Here the 1975 revisions include both major and minor (yet important) changes. The fundamental article is Art. 4 which states that a religious association or group of believers may begin its activity only after the Council for Religious Affairs has permitted it to register. Formerly decisions about registration, use of building, denial of registration, alternative use for a closed church, etc. were taken by local soviets on some questions and on others by the Permanent Commission on Religious Matters, a body introduced into the 1932 amendments. Now in all cases the final decision must be taken by the Council for Religious Affairs. Earlier Art. 7 specified that the local authorities must decide to register or not to register a group within one month of receiving a request for registration. Now Art. 7 specifies that one month after receiving such a request, the higher state authorities must make their recommendation to the Council for Religious Affairs. But, the local authorities have no time limit. It is they who first receive the request for registration and who must submit a recommendation to higher authorities. Nor does the Council for Religious Affairs which makes the final decision have to reply within a time limit. This gives room for withholding registration, although it should be pointed out that the one month rule was seldom observed. Previously Art. 37 and 44 gave religious associations two weeks to appeal against a local decision to liquidate a church building. This right of appeal has been omitted in the 1975 revisions. A decision to close a building can presumably only be taken by the Council for Religious Affairs which would also be the highest organ to which an appeal could be made. Another "little" change that makes the registration process more difficult is the requirement (Art. 6) that the request for registration be signed "by all members of this group", not just by a representative as before.

Registration is not automatic or simple nor does it mean the end of the story. Far more of the articles of the law deal with loss of registration and closure of churches. The new revisions clearly distinguish between the registering of a religious association and the granting to it of a building for which a contract must be signed. According to the old law, if a religious association failed to observe the conditions of the contract or failed to carry out "any sort of orders from administrative organs", registration would be withdrawn. The new law makes "violation of the law on religious cults" the sole reason for withdrawing registration. But it also requires that all orders from the Council for Religious Affairs be obeyed. Instead of the old right of appeal clause (Art. 44), the new Art. 44

states that the contract for the use of an object or building for worship can be dissolved by the Council for Religious Affairs if the religious association fails to observe the contract. Thus the closing of a church building can be used as a punitive, possibly temporary measure whereas the withdrawing of registration is a more permanent one.

Since 1918 the Soviet State has always claimed that Church and State are separated and that the State does not interfere in the internal, religious affairs of the Churches. In practice state officials have violated this claim. But the law itself spells out limits for religious activity. Most observers would regard these as interference in internal church affairs. For example, Art. 14 of the Law which remains unchanged gives the registering organs the right to remove individual members from the executive body of a religious association. Art. 17, also unchanged, gives details about what religious associations may not do: i.e. set up credit unions, give material aid to their members, organize special prayer meetings for children, youth and women, form circles for Bible or literary study, organize excursions, children's playgrounds, libraries, reading rooms, sanatoria or provide medical care. Those under 18 may not join a religious association. Art. 19 remains unchanged: it restricts clergymen to those areas in which the members of the local association to which they are attached reside. Several other such clauses have been changed, and in most cases made more restrictive.

Art. 20 is an exception. It deals with the convoking of local, regional and national conventions. Procedures for electing delegates are now left to the canonical rules of religious bodies although the Law specifies that participants must be men of good will. Formerly a duplicate list of delegates and of the proceedings of the convention had to be submitted to the authorities. Formerly also, such conventions could be initiated by a local religious society or group, its executive organ, or the executive organ of the convention (Art. 24). This article has now been omitted, thus making it impossible for Reform Baptists, for example, to call a congress.

Art. 18, 54, 56 and 59 are now more restrictive. Art. 18 has been simplified so that religious education is limited exclusively to "ecclesiastical educational institutions that have been opened according to established procedure". Art. 54 which permits religious associations to collect voluntary donations from its members now restricts this to within the building, omitting the phrase "and also outside it". Finally, Art. 56 and 59 which specify where services may be held, now require special permission from regional or city soviets for services held outside "and also in apartments and homes of believers".

What does the 1975 revision to the Law on Religious Associations indicate? It may reflect a hardening of the line against believers, though this may stem from those changes made in 1962 at the height of the anti-religious campaign rather than from the situation in 1975. During the past year numerous signs have pointed to more stable relations

between the State and the Orthodox and Baptist denominations.¹⁰ Even the Reform Baptists (their relationship with the State has not been normalized) now have 50% fewer members in prison than in 1974 and have registered a church in Kiev. That the powers and functions of the Council for Religious Affairs have been legalized and made public is to be welcomed. Some disquieting features persist however: for example, the wide discretionary powers of the Council for Religious Affairs. In addition, such disquietude would not be allayed were the Soviet secret police to continue to disregard such legal norms as the Law on Religious Associations. At all events, a Christian believer trying to render to Caesar what is Caesar's and to God what is God's must surely feel that in this Law the Soviet Caesar is still demanding more than is his due.

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As this article went to press Keston College received a copy of a new letter from Fr. Gleb Yakunin and Lev Regelson to Dr. Potter, General Secretary of the WCC. These two members of the Russian Orthodox Church were the authors of a letter which provoked a major debate at the Nairobi Assembly in December 1975 (see *RCL* Vol. 4, No. 1, pp. 2-17). In this 27-page letter, dated 6 March 1976, the writers approve the decision of the WCC to hear reports at the Executive Meeting in August about violations of religious freedom from the signatory countries of the Helsinki Declaration. But Regelson and Fr. Yakunin are concerned that the lack of religious freedom in the USSR may not be truthfully reported. Recent misleading pronouncements about freedom of conscience may be taken seriously by the West, they argue. For example the USSR claims that: (1) local State organs have sometimes acted illegally but that the State is systematically opposing such violations; (2) Soviet legislation on cults not only satisfies all general human norms, it is "the most humanitarian and democratic in the world"; (3) Soviet churchmen and visitors from abroad have affirmed that generally good conditions for religious freedom exist; (4) in the USSR persons are not persecuted for their religious activities but for breaking the law on the separation of Church and State.

Regelson and Fr. Yakunin refute these claims by arguing that Soviet law itself provides evidence of religious discrimination in the USSR sanctioned by the State. They make four points:

(1) "The unjustness of making the registration of religious societies into a sanctioning act."

(2) "Religious societies' loss of personal rights to prayer houses and cult objects."

(3) "The prohibition on missionary and cultural-social activities by religious societies."

(4) "The discriminatory character of the educational system: the prohibition on organized forms of separate religious education and instruction."

Each point is developed at length with copious quotations from the newly revised 1929 Law. The writers complain that copies of the Law are scarce. Their quotations are taken from an edition of the Law (incorporating the recent revisions) which was printed by the *Khronika* press in New York. This edition is already circulating clandestinely in the Soviet Union. They also quote at length from the legal commentary, *Religia i Zakon* (Religion and Law) by Georgi Golst (reviewed on pp. 32-34).

Finally Regelson and Fr. Yakunin warn Dr. Potter against being misled by the Council of Religious Affairs which is compiling lists of signatures of Soviet believers who testify that there is religious freedom in the USSR. Nevertheless, they claim, no amount of signatures can disprove the existence of religious discrimination, for "freedom is its own best witness".

May, 1976

¹ *Vedomosti verkhovnogo soveta RSFSR*, No. 27 (873), 3 July, 1975, pp. 487-91. The amendments are dated 23 June. Similar amendments are being made in the other republics. The most recent legal commentary by Golst incorporating the 1975 amendments is reviewed by Kathleen Matchett elsewhere in this issue.

² Igor R. Shafarevich, *Zakonodatelstvo o religii v SSSR*, Paris: YMCA Press, 1973 citing *Zakonodatelstvo o religioznykh kultakh (sbornik materialov i dokumentov)* Moscow: "Yurid. Lit", Izd. vtoroe, 1971. The latter is unavailable in the West.

³ Art. 4, 5, 6, 8, 10, 12, 18, 20, 27, 33, 34, 39, 41, 43, 44, 45, 47, 48, 54, 59 and 63.

⁴ Art. 25, 28, 29, 30, 38, 40, 46, 51, 52, 57, 58 and 61.

⁵ *Izvestia* 30 August 1966, quoted in Bohdan R. Bociurkiw, "The Shaping of Soviet Religious Policy", *Problems of Communism*, May-June 1973, pp. 37-51.

⁶ *Administrativnoe Pravo*, Moscow, 1970, p. 581 and A. Sedyulin, *Zakonodatelstvo o religioznykh kultakh*, Moscow: "Yurid. Lit.", 1974, pp. 72-73.

⁷ Referred to in Art. 4, 7, 8, 10, 20, 33, 36, 39, 41, 43, 44, 45, 51 and 63; affected by Council or altered due to it Art. 18, 52 and 64; articles dropped due to Council Art. 21, 22, 24, 35, 37 and 42.

⁸ M. M. Persits, *Otdelenie tserkvi ot gosudarstva i shkoly ot tserkvi v SSSR 1917-1919gg.* Moscow, 1958, p. 120.

⁹ Quoted in footnote in Bohdan R. Bociurkiw, "Church-State Relations in the USSR", in Hayward & Fletcher, eds. *Religion and the Soviet State: A Dilemma of Power* (London: Pall Mall Press, 1969) pp. 91-92. Dietrich Loeber first published the text in German in 1966.

¹⁰ See this writer's "Baptist Claims about 'Dramatic Improvement' Assessed", *Keston News Service*, No. 23, 8 April 1976.