

Commentary on the New Soviet Law on Freedom of Conscience and Religious Organisations

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TEXT OF THE 'LAW OF THE USSR ON FREEDOM OF
CONSCIENCE AND RELIGIOUS ORGANISATIONS'¹

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Section I

GENERAL PROVISIONS

Article 1. THE PURPOSE OF THE LAW

This law guarantees the rights of citizens² to decide and express their attitude towards religion, to convictions corresponding to this and to the unhindered confession of a religion and the exercise of religious rites, and also to equality and protection of the rights and interests of citizens regardless of their attitude towards religion, and regulates the relations pertaining to the activity of religious organisations.

Article 2. LEGISLATION ON FREEDOM OF CONSCIENCE AND RELIGIOUS ORGANISATIONS

Legislation on freedom of conscience and religious organisations is made up of this law, *which establishes the fundamental guarantees of freedom of conscience in accordance with the USSR Constitution*,³ and the laws of the USSR and the union and autonomous republics published in accordance with it.⁴

Article 3. THE RIGHT TO FREEDOM OF CONSCIENCE

In accordance with the law on freedom of conscience, each citizen independently decides his own attitude towards religion and enjoys the right of confessing any religion either alone or jointly with others, or not to confess any religion, and to express and spread convictions associated with his attitude towards religion.⁵

Parents and persons acting in loco parentis *have the right in mutual agreement*⁶ *to rear*⁷ their own children in accordance with their personal attitudes towards religion.

No compulsion of any kind is permitted when a citizen decides his own attitude towards religion or to the confession or non-confession of a religion, or to participation or non-participation in divine service and religious rites and ceremonies and in religious instruction.

*The exercise of freedom of conscience, religion or conviction*⁸ is subject only to the limitations necessary to maintain public safety and order, *life, well-being, and morals*⁹ and also the rights and freedoms of other citizens as established by law and compatible with the international obligations of the USSR.¹⁰

Article 4. EQUALITY OF CITIZENS REGARDLESS OF THEIR ATTITUDE TOWARDS RELIGION¹¹

Citizens of the USSR are equal under the law in all fields of civic, political, economic, social and cultural life regardless of their attitude towards religion. No indication of the attitude of a citizen towards religion is permitted in official documents except in cases where the citizen himself so desires.

Any direct or indirect limitation on the rights of a citizen or the establishment of any advantages¹² for citizens depending on their attitude towards religion, and equally incitement of enmity or hostility associated with this,¹³ or insult against the sentiments of citizens,¹⁴ are subject to criminal liability as established by law.

No one may by reason of his own religious persuasion avoid observance of obligations established by law. Replacement of one obligation with another for reasons of religious persuasion is permitted only in cases as provided for by USSR legislation.¹⁵

Article 5. SEPARATION OF CHURCH (*RELIGIOUS ORGANISATIONS*)¹⁶ AND STATE

All religions and denominations are equal under the law. The establishment of any advantages or restrictions with respect to one religion or denomination over others is not permitted.¹⁷

The state does not assign to religious organisations the discharge of any state function and it does not intervene in the activity of religious organisations if that activity does not contravene legislation. *The state does not fund religious organisations or activity associated with the propaganda of atheism.*¹⁸

No restrictions are permitted on the conducting of scientific research, including research funded by the state, or propaganda of its results or inclusion of those results in any general programme of education on the grounds that they are in accordance with or not in

*accordance with the tenets of any religion or of atheism.*¹⁹

Religious organisations do not carry out state functions.²⁰

Religious organisations enjoy the right to participate in public life and also to make use of the mass media *on an equal footing with public associations.*²¹

*Religious organisations do not participate in the activity of political parties and do not provide financial assistance for political parties. Ministers of religious organisations have the right to participate in political life on an equal footing with all citizens.*²²

*Religious organisations are obliged to observe the requirements of existing legislation and law and order.*²³

The state promotes the establishment of relations of mutual tolerance and respect between citizens who confess a religion and citizens who do not, between religious organisations of various confessions, and also between their followers.²⁴

Article 6. SEPARATION OF SCHOOL AND CHURCH (RELIGIOUS ORGANISATIONS)²⁵

The state system of education in the USSR is separate from the church and *is secular in nature*. Access to the various kinds and levels of education is granted to citizens regardless of their attitude towards religion.

Citizens *may be instructed* in a religious doctrine and obtain a religious education in the language of their choice either individually or jointly with others.²⁶

*Religious organisations that have charters (or statutes) registered in accordance with the established procedure have the right in accordance with their own enactments to set up educational establishments and groups for the religious education of children and adults and also to engage in teaching in other forms, making use of premises that they own or that are made available for their use for this.*²⁷

Section II

RELIGIOUS ORGANISATIONS IN THE USSR

Article 7. RELIGIOUS ORGANISATIONS

Religious organisations ('*organizatsii*') in the USSR are religious societies ('*obshchestva*'), boards and centres, monasteries, *religious brotherhoods, missionary societies (missions)*²⁹ and spiritual training institutions, and also associations ('*ob'edineniya*') made up of religious organisations. *Religious associations are represented by their*

centres (boards).³⁰

*Religious organisations in the USSR are formed for the purpose of satisfying the religious needs of citizens with respect to professing and spreading a faith, and they operate in accordance with their own structure and select, appoint and change their own personnel in accordance with their own charters (or rules).*³¹

Article 8. THE RELIGIOUS SOCIETY

A religious society is formed by citizens for the purpose of jointly professing a faith and satisfying other religious needs, and operates on a voluntary basis.

It is not mandatory to inform the state bodies that a religious society has been set up.

Article 9. RELIGIOUS BOARDS, CENTRES AND ASSOCIATIONS

Religious boards, centres and associations operate on the basis of their own charters (or rules) insofar as they do not contravene existing legislation.

Religious organisations in the USSR that have leading centres abroad may be guided in their activity by their own charters (or rules) if when this occurs it does not violate Soviet legislation.

Relations between the state and religious boards, centres and associations, including those abroad, are not regulated by law and are determined in accordance with agreement between them and state bodies.³²

Article 10. MONASTERIES, BROTHERHOODS AND MISSIONS

Religious boards and centres may in accordance with their own registered charters (or rules) establish monasteries, religious brotherhoods and missionary organisations (missions), which operate on the basis of their own charters (or rules) registered in accordance with the procedure established by law.

*Monasteries and religious brotherhoods may also be formed in accordance with the procedure laid down by this law in order to form religious societies whose charters (or rules) are registered.*³³

Article 11. SPIRITUAL TRAINING ESTABLISHMENTS

Religious boards and centres have the right in accordance with their own registered charters (or rules) to set up religious training establishments to train clergymen and other ministers needed by them for religious specialities. Spiritual training establishments operate on the basis of their own charter (or rules) registered in accordance with the procedure established by law.

Citizens engaged in full-time studies at higher and secondary religious training establishments enjoy the same rights and privileges as laid down for students at state educational establishments as far as deferment of military service and taxation and inclusion of time spent in study at the work-place are concerned.

Article 12. CHARTERS OF RELIGIOUS ORGANISATIONS

The charter (or rules) of a religious organisation must in accordance with civil law defining its legal capacity be registered under the procedure established by law. This charter contains information on the kind and location of the religious organisation, its denominational affiliation, its place within the organisational structure of a religious association, its position with respect to property, its rights to set up enterprises and means of mass information, to found other religious organisations, and to set up training establishments, on other powers and on the procedure for resolving property and other matters in the event that its activity is terminated, and also other provisions connected with the special features of the activity of that organisation.

The charter (or rules) or other documents defining the regulation, training aspects of activity and resolving other internal matters of a religious organisation need not be registered with state bodies. The state takes into consideration and respects the internal enactments of religious organisations if they are submitted to appropriate state bodies and insofar as they do not contravene existing legislation.

Article 13. RELIGIOUS ORGANISATIONS AS LEGAL ENTITIES

Religious organisations are recognised as legal entities from the moment of registration of their charters (or rules).

As legal entities, religious organisations enjoy rights and bear obligations in accordance with legislation and their own charter (or statutes).³⁴

Article 14. REGISTRATION OF THE CHARTERS OF RELIGIOUS ORGANISATIONS³⁵

In order for a religious society to obtain legal capacity as a legal entity for citizens who have attained the age of 18, at least 10 persons must make an application with the charter (or rules) to the executive committee of the raion (or town) soviet of people's deputies at the place of the proposed activity of the society. In the event that a religious society belongs to some religious organisation, this is indicated in the charter and confirmed by the appropriate religious board or centre.³⁶ The executive committee considers the statement within one month and makes an appropriate decision.

If the confirmation mentioned in the previous paragraph of this

article is not provided the executive committee of the local soviet of people's deputies has the right to ask for additional materials and to seek the opinion of specialists. In this event the decision is made within a three-month period.

Religious associations, and also centres, boards, monasteries, religious brotherhoods, missions and spiritual training centres set up by religious organisations submit the charter (or rules) adopted by these organisations for registration with the executive committee of the raion (or town) soviet of people's deputies at the place of their location. The executive committee makes a decision on registration within one month.³⁷

Different procedures may be established for registration of the charter (or rules) of religious organisations under the laws of union and autonomous republics.

Article 15. REFUSAL TO REGISTER THE CHARTER OF A RELIGIOUS ORGANISATION³⁸

A decision to refuse to register the charter (or rules) of a religious society or religious organisation is sent in written form, indicating the reasons for refusal. This decision, or delay beyond the period laid down by this law for reaching decisions, may be appealed in the courts according to the procedure laid down for appeals against unlawful actions by the bodies of state management and officials who infringe the rights of citizens.

Article 16. DISCONTINUATION OF THE ACTIVITY OF A RELIGIOUS ORGANISATION

The activity of religious organisations may be discontinued only when they are liquidated in accordance with their own enactments or if there is violation of the provisions of this law or other laws of the USSR or the union and autonomous republics.

A decision to discontinue the activity of a religious organisation is made by the body that registered its charter (or rules). This decision may be appealed in the courts *according to the procedure laid down by civil procedural legislation.*³⁹

Section III

THE POSITION OF RELIGIOUS ORGANISATIONS WITH RESPECT TO PROPERTY⁴⁰

Article 17. THE USE OF PROPERTY THAT IS OWNED BY THE STATE, PUBLIC ORGANISATIONS OR CITIZENS

Religious organisations have the right to use for their own needs

buildings and property made available to them on a contractual basis by state and public organisations or citizens.

Local soviets of people's deputies and state bodies may transfer to religious organisations as property or for use gratis cultural buildings and other property belonging to the state.

Religious organisations have a preferential right to have cult building with their adjacent territory transferred to them.

Decisions on questions relating to the transfer of cult buildings and property to religious organisations should be made no later than one month after the corresponding application is made, with simultaneous response in writing to those submitting the application.⁴¹

The transfer to, and use by, religious organisations of objects and articles that are of historical and cultural significance is carried out in accordance with legislation.

Religious organisations establish *ownership* and use of land according to the procedure laid down by law.⁴²

Article 18. PROPERTY OF RELIGIOUS ORGANISATIONS

Religious organisations may own buildings, cult objects, facilities for production, social work and charitable purposes, monetary assets, and other property essential for their activity.

Religious organisations have the right to own property acquired or created by them using their own assets donated by citizens and organisations or transferred by the state, and likewise assets acquired from other sources as provided by law.

Religious organisations may also own property abroad.

Religious organisations have the right to appeal for voluntary financial and other donations and to receive them.

Financial and property donations, and likewise other incomes of religious organisations, are tax exempt.

*The right of ownership by religious organisations is protected by law.*⁴³

Article 19. PRODUCTION AND ECONOMIC ACTIVITY OF RELIGIOUS ORGANISATIONS

Religious organisations have the right *in accordance with the law and their own charter (or rules) to maintain publishing, printing, production, restoration and construction, agricultural, and other enterprises and also charitable institutions (shelters, boarding schools, hospitals and so forth), which enjoy rights as legal entities.*⁴⁴

*Profit from production activity and other income from enterprises belonging to religious organisations are subject to tax in accordance with the legislation according to the procedure and at the rates laid down for enterprises belonging to public organisations.*⁴⁵

Article 20. DISPOSITION OF THE PROPERTY OF RELIGIOUS ORGANISATIONS THAT DISCONTINUE THEIR ACTIVITY

When religious organisations discontinue their activity the disposition of property that they own is carried out in accordance with the charter (or rules) *and existing legislation*.

No penalty can be imposed or claim made by creditors against cult property belonging to religious organisations.

In the event that no successor is found, property is transferred to state ownership.⁴⁶

Section IV**RIGHTS OF RELIGIOUS ORGANISATIONS AND CITIZENS PERTAINING TO FREEDOM OF WORSHIP****Article 21. RELIGIOUS RITES AND CEREMONIES**

Religious organisations have the right to found and maintain freely accessible places revered by a particular religion (places of pilgrimage).

Divine service and religious rites and ceremonies are conducted without hindrance in prayer buildings, and on the territory belonging to them, at places of pilgrimage, in the establishments of religious organisations, at cemeteries and crematoria and in citizens' flats and houses.

Command authorities in military units do not hinder participation in divine services or the fulfilment of religious rites by servicemen during their free time.

Divine service and religious rites in hospitals, *military hospitals*, homes for the aged and disabled, and in places of preliminary detention and places where sentences are served are conducted at the request of the citizens in them. The administrations of these establishments provide assistance in inviting clergymen, and they participate in determining the time and other conditions for holding divine service, rites and ceremonies.

In other cases, public divine service and religious rites and ceremonies are conducted in accordance with the procedure established for holding gatherings, meetings, *demonstrations* and processions.

*Religious organisations have the right to submit proposals to conduct divine service for citizens in hospitals, military hospitals, homes for the aged and disabled and places of detention.*⁴⁷

Article 22. RELIGIOUS LITERATURE AND RELIGIOUS OBJECTS

Citizens and religious organisations have the right to acquire and make use of religious literature in the language of their choice and

likewise other religious articles and material.⁴⁸

Religious organisations have the right to produce, export, import and disseminate *religious articles*, religious literature, and other informational materials that are religious in content.

Religious organisations enjoy an exclusive right to establish enterprises *to publish religious literature and produce religious articles*.⁴⁹

Article 23. CHARITABLE AND CULTURAL-ENLIGHTENMENT ACTIVITIES OF RELIGIOUS ORGANISATIONS

Societies, brotherhoods, groups and other associations of citizens may be set up by religious organisations for the purpose of charitable activities ('blagotvoritel'nost') and to study and disseminate religious literature and for other cultural-enlightenment activity. They may have their own charters registered in accordance with the procedure laid down for public associations.

Religious organisations have the right to engage in charitable activity ('*Blagotvoritel'nuyu deyatel'nost'* ') and philanthropy ('*miloserdie*') both independently and through public foundations.

Donations and payments for this purpose are not included in the sums liable for taxation.⁵⁰

Article 24. INTERNATIONAL LINKS AND CONTACTS BY BELIEVERS AND RELIGIOUS ORGANISATIONS

Citizens and religious organisations have the right to establish and maintain, on either a group or individual basis, international links and direct personal contacts, including trips abroad for pilgrimage or participation in meetings and other religious events.⁵¹

Religious organisations may send citizens abroad *to study in spiritual training establishments and accept foreign citizens for this purpose*.⁵²

Section V

LABOUR ACTIVITY IN RELIGIOUS ORGANISATIONS AND THEIR ENTERPRISES

Article 25. LABOUR LEGAL RELATIONS IN RELIGIOUS ORGANISATIONS

Religious organisations have the right to hire citizens for work.

Conditions of labour are set by agreement between the religious organisation and the worker and are set forth in a labour contract concluded in written form.

The religious organisation is obliged to register any labour contract in accordance with established procedure.

The same procedure is used to register documents defining salary conditions for ministers.

Citizens working in a religious organisation under the terms of a labour contract may be members of trade unions.⁵³

Article 26. LABOUR RIGHTS OF CITIZENS WORKING IN RELIGIOUS ORGANISATIONS

the legislation covering labour applies to citizens working in religious organisations under a labour contract in the same way as for workers and employees in state and public enterprises, establishments and organisations.

Income derived by citizens working in religious organisations, including ministers, is taxed in accordance with the rates set for workers and employees in state enterprises, establishments and organisations.⁵⁴

Article 27. LABOUR LEGAL RELATIONS OF CITIZENS AT ENTERPRISES AND ESTABLISHMENTS OF RELIGIOUS ORGANISATIONS

*Legislation on labour, tax procedure, social insurance and social security for workers and employees in state and public enterprises, establishments and organisations applies to citizens working at all enterprises and establishments of religious organisations and also at charitable institutions that they set up.*⁵⁵

Article 28. SOCIAL SECURITY AND SOCIAL INSURANCE FOR CITIZENS WORKING IN RELIGIOUS ORGANISATIONS

Citizens working in religious organisations, including ministers, enjoy the same social security and social insurance as workers and employees in state and public enterprises, establishments and organisations.

To this end religious organisations *and their enterprises and institutions* make contributions to the state social insurance fund and the USSR pension fund *in accordance with the procedure and at the rates set for public organisations and their enterprises and establishments.*

All citizens working in religious organisations receive a state pension that is paid on the common basis in accordance with the legislation.⁵⁶

Section VI

STATE BODIES AND RELIGIOUS ORGANISATIONS

Article 29. STATE BODIES FOR RELIGIOUS AFFAIRS

The USSR state body for religious affairs is an informational,

consultative and expert centre. In this capacity it does the following:

- maintains contacts and coordinating ties with similar establishments in the union and autonomous republics and abroad;*
- creates a data bank on religious organisations in the USSR and on the exercise of legislation on freedom of conscience and religious organisations;*
- sets up an expert council of religious experts, representatives of religious organisations and experts on the problem of human rights in order to conduct religious expert assessments and if required to provide an official expert conclusion with regard to requests from bodies of state management and the courts;*
- at the request of religious organisations provides assistance in reaching agreements with state bodies and all necessary help in matters requiring a decision by state bodies;*
- promotes the strengthening of mutual understanding and tolerance between religious organisations of different denominations within the country and abroad.*

The USSR state body for religious affairs is formed by the USSR Council of Ministers.

State bodies for religious affairs are set up in the union and autonomous republics and operate in accordance with legislation of the USSR and of the union and autonomous republics.⁵⁷

Article 30. RESPONSIBILITY FOR VIOLATIONS OF LEGISLATION ON FREEDOM OF CONSCIENCE AND RELIGIOUS ORGANISATIONS

Officials and citizens guilty of violations of legislation on freedom of conscience and religious organisations are liable as established by the legislation of the USSR and the union and autonomous republics.

Article 31. INTERNATIONAL TREATIES

If an international treaty to which the USSR is a signatory has established rules other than those contained in the legislation on freedom of conscience and religious organisations, the rules of the international treaty shall apply.

[Signed] M. Gorbachev, President of the USSR
Moscow, the Kremlin, 1 October 1990

Commentary

1. The law examined here is the result of a process which had a long incubation period. In addition to outlining the law's innovative aspects, this commentary also refers to previous drafts: to the draft distributed in late 1988 to representatives of the Moscow Patriarchate, attributed to K. Kharchev (text published in *Russkaya mysl'* 7 April 1989, referred to below as Kharchev 1); to the later version of the same draft (known to us only in a typed version, referred to as Kharchev 2); and to the draft of Yu. A. Rozenbaum (cf. *Sovetskoye Gosudarstvo i pravo*, 1989 No. 2, pp. 91 ff., henceforth referred to as Rozenbaum).

The law was preceded by a draft approved by the Supreme Soviet on 30 May 1990. Between the definitive text and the draft there are numerous differences in both form and substance: these are indicated in the text by *italic type*.

The law's title merits clarification. The concept of freedom of conscience (*svoboda sovesti*) was, until recent times, couched in ambiguous terms. At times it indicated a citizen's freedom to believe or not believe; at times it was used in a Marxist-Leninist way to indicate a citizen's right-cum-obligation to free himself from religion. Affirmations of this type used to be common: 'freedom of conscience is not limited to freedom to profess faith and practice religious cults or to consider religion as something unimportant or tolerable, as some bourgeois scholars maintain; freedom of conscience in the USSR consists primarily in the freedom to diffuse atheistic ideas'¹. Such affirmations for decades constituted the justification for religious discrimination, in agreement with the axiomatic and ideological premises of the system. The truth is that, on the basis of these premises, party doctrine has consistently emphasised the need to distinguish between the proletarian and bourgeois interpretations of freedom of conscience. This double semantic content of freedom of conscience, consistently affirmed until recent times, was clearly sanctioned by article 52 of the Constitution of 1977, which does not place religious and atheistic attitudes on the same juridical level, but clearly favours the latter.

If it be true that overcoming the primacy of the Party has, among its many consequences, that of modifying the semantic content of juridical terminology, then it is also true that the legislator could have used this occasion to underline his intent to break with the past, ending the *favor juris* conceded to atheism by evidencing in the title itself his intent to defend religious freedom, and not that freedom of conscience which had been formulated in such ambiguous terms. In our opinion, Kharchev 2 was self-consistent in the title 'The law of the

¹ *Sovetskoye Gosudarstvo i pravo*, 1964 No. 7, p. 67.

USSR on freedom of conscience, on freedom of religious profession and on religious organisations' where the freedom to profess religious beliefs is used as a clarification of the more general, renewed concept of freedom of conscience. This question, however, is purely one of terminology, because there is no doubt about the intent of the legislator to endow freedom of conscience with a content quite different from that of the past, as emerges from reading articles 1-4 and by comparison with the norms of 1929 and 1975.

2. This article restricts religious freedom to citizens only (analogously Kharchev I and 2 and Rozenbaum (Art. 3), and not to *all and everyone*. Consequently there is no juridical guarantee of religious freedom for foreigners or stateless persons, except for instances in which this is explicitly foreseen (e.g. Arts. 24, 11).

3. This parenthetic clause, which does not appear in the draft, is actually contradictory.

In fact the present Constitution of 1977 begins with a functional conception of rights of freedom and guarantees the public subjective rights of the citizen insofar as they are exercised in strengthening socialism and for the building of communism (Arts. 50, 51). Given this principle, corollary to affirming the primacy of the Party understood as the centre of truth and power, freedom of conscience is formulated in the ambiguous way mentioned above.

Abandoning the primacy of the Party (Const., Art. 6), until recently the backbone of the system, brings about enormously important consequences, some of which have been anticipated in the law examined here. From a general point of view these can be schematised in the following way:

- the state acquires sovereignty inasmuch as it no longer considers the Party as a superior entity. (Until recently the Party was considered the sun of the communist universe, while the state was the moon which lived on reflected light);
- the logic of dialectics gives way to the logic of evidence;
- the restitution to the citizen of the right to individuate, recognise and define the characteristics of what is truly human, without having (civil) authorities act as his substitute;
- party primacy is abandoned not only on a national level, but also at the international level and, consequently, along with it, the theory of limited sovereignty is abandoned;
- the principle according to which the true interests of the people are defined as such by the Party, the enlightened *avant-garde*, is abolished;
- the supremacy of the Party in education is abolished;
- the principle that scientific research and the public subjective

rights of citizens are subordinated to party interests is renounced;
 — new coordinates for identifying the limits of abuse of rights have to be introduced (Const., Arts. 39, 11);
 — the socialist conception of legality is superseded.

All this poses the problem of a radical revision of the Constitution and of an impressive number of laws. One thinks, for example, of the laws regulating voluntary associations (soccer teams, clubs, etc.) which posit as a criterion for their recognition the explicit obligation to engage in activities which support the Party. Only in this way will it really be possible to affirm the revolutionary conception of religious freedom enshrined in the law, a conception which represents an overturning of values which lie at the basis of the Constitution of 1977 as well as previous legislation. This also holds for other rights to liberty, inasmuch as religious freedom is the mother of all liberty: in exercising it man responds to ultimate problems involving the meaning of life and in relation to it determines his basic options. In other words, the political will expressed in passing this law must, for coherency, lead to the revision of many other norms. One thinks of the role of trade unions, understood as a school of communism; of Art. 8, II of the Constitution which assigns to associations of workers the task of educating their 'own members in the spirit of communist morals'; and of other norms which will be mentioned later in this article.

4. Clearly the legislator's intent is implicitly to abrogate the preceding normative regulation. Whoever is familiar with the Soviet juridical world would have to agree that an explicit abrogation, included in the instructions on how the law is to be applied, would have been preferable. One must not forget that overcoming the socialist conception of legality will require much time and that the juridical conscience destroyed decades ago will have to be restored to the country. The legislator ought ideally to have formulated a prohibition against issuing verbal instructions and confidential circulars. Although not foreseen in the law, pseudo-norms of this sort have for years legitimised every sort of arbitrary action and discrimination. It is to be hoped that the instructions for application will be adamant in this matter.

5. By analogy Kharchev 1 and 2. Specific recognition of the right of the citizen to disseminate his own religious opinions overrides Article 52 of the Constitution, which legitimises only the right to disseminate atheistic beliefs (anti-religious propaganda). Article 124 of the Constitution of the Soviet Union of 1936 made similar provision; while Article 13 of the Constitution of the RSFSR of 1918 and Art. 4 of the Constitution of 1925 (which, however, was never applied in

practice) granted the right to disseminate both religious and anti-religious propaganda. The modifications introduced in 1929 adapted the law to the real state of affairs by abolishing the right to religious propaganda and replacing it by freedom of religious profession.

Rozenbaum's definition (Art. 3) is more ambiguous; it expresses freedom of conscience in this way:

Guaranteed by Art. 52 of the Constitution of the USSR, liberty of conscience includes the right freely to choose and hold either religious or atheistic beliefs, to profess any religion or none whatsoever, and to engage in religious or atheistic education. On this basis citizens of the USSR have the right freely and independently to determine their own attitude towards religion and to behave and act in consequence, under the condition that they obey the laws of the state.

Rozenbaum's restrictive formulation ought not to cause surprise; because hitherto he had been known to give pseudo-judicial support to arbitrary action taken against the church and believers. Not by accident does his draft refer to religious and atheistic organisations (Art. 4) and dedicate Arts. 20-22 to the defence of the right to atheism and atheist education. Thus, for example, Art. 21 reads:

Citizens of the USSR have the right to manifest and freely disseminate their own atheistic opinions and convictions in oral, written, artistic and other forms, under the condition that this does not violate the present law, disturb public order, offend the sentiments of believers or sacred objects venerated by them or offend either the person or the rights of citizens.

In his note on this norm Rozenbaum 'generously' specifies that holding atheistic demonstrations in places assigned by law for use by believers is not permitted! In his comment on the draft, V. Kochkov also requested protection for the freedom of atheism and atheistic organisations. This was not done in the name of freedom of thought, however, but on the basis of the argument that 'atheistic organisations are not separate from the state' (*sic.*)².

6. The addition of the expression '*po vzaimnomu soglasiyu*', not present in Kharchev 1 and 2 nor in the draft, apparently has an explicative function. The plural 'parents' of the draft could formally indicate each parent separately (in the sense of: the fathers, the mothers), or each pair of parents; this latter sense is probably the correct key for understanding this formulation of the draft. Nonetheless the new formulation also leaves room for ambiguity: on

² *Sotsialisticheskaya zakonnost'*, 1990 No. 10, p. 14.

the one hand it could be understood as a recognition of the family nucleus in its integrity; on the other, as a defense of some right of the state to verify the modality of the decision taken within the family nucleus.

Rozenbaum does not posit the condition of agreement of both parents inasmuch as it is assumed. In Art. 19 he affirms that the celebration of (religious) rites involving minors requires the consent of both parents and of the minor himself, once he has reached his tenth year.

7. In the draft: '*to rear their own children. . .*' Recognition of the parents' right to give their children a religious education was already provided for in Kharchev 1 and 2, Art. 3; while Rozenbaum affirms that 'parents or their legal substitutes have the right to educate their children who are below the age of legal maturity in a religious spirit and to teach them religion', Art. 7. This recognition postulates the abrogation of all norms which hitherto obliged parents to educate their children 'in the spirit of the moral code of the builders of communism', i.e. in atheism. (Cf. Art. 52 of the 1969 *Marriage and Family Code*; Art. 18 of the *Fundamentals of Legislation on Marriage and the Family* of 1979; the *Postanovleniye* on the *Instruction* of 19 June 1973, Arts. 7, 8, 9; and in particular Art. 57. See also Art. 59, II of the Constitution.

One must emphasise that the legislator does not specify either here or in the following Art. 6, II at what age a minor citizen may autonomously choose, even without his parents' consent, to profess a religion and to make even more important decisions (e.g. entering a seminary). Furthermore, he does not clarify whether believing parents, insufficiently instructed in the tenets of their own faith, may delegate to other persons, whether within the family or without, the religious education of their children, even if this does not contradict the letter of the law. It remains to be said that the law does not provide any specific juridical guarantee safeguarding the catechetical instruction provided by religious organisations or by groups of persons outside the educational institutions in which such activity is explicitly foreseen (notwithstanding the generic provisions of Arts. 22 and 23).

8. In the draft: '*exercise of freedom of conscience*'. This modification is correct inasmuch as the exercise of freedom of religion, subject to juridical protection, is better and more specifically defined with respect to the more generic freedom of conscience, as emphasised above.

9. The reference to morality as a limit on the exercise of freedom of religion merits a comment. It is impossible to ignore the fact that the concept of morality, and similarly that of public order, have no

objective points of reference in the USSR today: morality, in fact, up until recent times was connected to the Party, and only now has research begun on its autonomous roots. Consider that Art. 59, II of the Constitution imposes on all citizens the obligation of respecting the norms of socialist life in common (*'pravila sotsialisticheskogo obshchezhitiya'*). Consequently, the norms of party morality become juridically obligatory and are binding on all members of society, not only on party members. Hence the abrogation of this and other such constitutional norms is imperative, as a consequence of the autonomy and independence that the state has acquired by overthrowing the dominant role of the Party. In the same way the concept of public order has to undergo profound revision: given that Party and state are no longer identified, public order loses its dynamic character and reacquires its original static character (*ne cives ad arma veniant*).

10. In relation to what has been stated above, explicit recourse to international conventions is much more important than reference to the Constitution, which is often in manifest contradiction with obligations assumed by the USSR. Recourse to such obligations, as in Art. 31, was already proposed in the drafts by Kharchev (Art. 27).

11. Cf. Kharchev 1 and 2, Art. 5 and Rozenbaum Art. 8. The principle of equality of citizens independently of religion, approved by the decree of 23 January 1918 (Arts. 2, 3), was quickly ignored in practice and forgotten in legislation. In fact it was not mentioned in Art. 123 of the Constitution of the USSR of 1936, which affirmed the principle of equality. Nonetheless it was reaffirmed in Art. 34 of the Constitution of 1977. The truth was that practical application of this principle was impeded by the more basic principle of the primacy of the Party. Not by mere chance does one arrive at the juridical inequality of religion and atheism, rendered explicit in Art. 52 of the Constitution of 1977. On the other hand, once the attitude of the Party in question relating to religion was defined, how would it have been possible juridically to equate followers of the Party, which the Constitution of 1936 defined as the 'most active and conscious citizens', with proponents of other truths who, *a contrariis*, could not have been but less active and conscious?

12. The provision explicitly prohibits the institution of a *privilegia odiosa*. Analogously: Kharchev 1 and 2, Art. 5, II and Rozenbaum, Art. 8, II. In order that this principle not remain a dead letter, radical modifications to the existing Constitution in all matters referring to the primacy of the Party will have to be made.

13. This precept is already affirmed in the Constitution of 1977 (Art. 52).

14. On the basis of this affirmation one will have to posit a permanent end to that atheistic propaganda which has always subjected believers

to public derision. This is all the more true in view of Art. 5, II: anti-religious propaganda will no longer be publicly financed.

15. The legislator re-proposes a precept enunciated in Art. 6 of the Decree of 23 January 1918. Until there is a law to regulate this matter, one may hope that the intent to exempt decisions from the mere discretionary authority of the judge will leave room for conscientious objection — not just on religious grounds but on general moral grounds. Provision for conscientious objection was introduced in the 1920s and withdrawn again in the 1930s. Nevertheless, it is an encouraging sign that the present legislator has raised the question again.

The norm was foreseen in Kharchev 1 and 2 (Art. 5, IV) and in Rozenbaum (Art. 8, III), who incidentally does not admit the exception provided for in the second part of the paragraph in question.

16. In the draft: *'Church and Religious Organisations'*. This modification is opportune, in that the norm does not intend to define the state's attitude toward religion in general, but rather to specify the principles qualifying the juridical position of churches and confessions, understood in the state's juridical order as organisational structures.

In reality the Soviet regime has always proclaimed itself as separatist, claiming that while the Party is not neutral towards religion, the state is neutral. Actually this affirmation was about as serious as a card trick, since the 'neutrality' of the state totally lost its significance in view of the subordination of the state to the Party.

17. In affirming this basic principle (cf. Kharchev 1 and 2, Art. 4, II; Rozenbaum Art. 9) the legislator does not provide any guarantee of the application of the norm. This problem is relevant: it is sufficient to recall that Art. 52 of the Constitution guarantees to all citizens the right to practice any religion and, in violation of this, some religions or even entire churches have been forbidden — the unregistered Baptists, the Jehovah's Witnesses, and the Ukrainian Catholics, for example. Hence the necessity, in the name of the new atmosphere of freedom being proclaimed, of compiling a list of religious groups to which one does not intend to grant legal existence on the grounds of security, public order or morality, as enunciated in the last paragraph of Art. 3.

18. The legislator does not repeat the statement in the draft that 'the activity of the organs of the state, of its associations and civil servants may not be accompanied by religious functions, rites or ceremonies,' (compare Rozenbaum Art. 6, I). More significant is the extent to which the legislator has attempted to add to the draft, with the intention of affirming genuine separatism, understood as the intent to

take sides neither for religion nor for atheism, and hence to create a secular state. The embargo on state financing of atheism, and consequently of scientific institutes, publishing houses, clubs and the like, is, in this sense, very important. A corollary of this embargo is the necessary elimination from schools of such subjects as atheism. Otherwise the state would be indirectly financing the latter.

19. This affirmation is also very important. It constitutes the premise for definitively abandoning the constitutional principle (Art.47) which subordinates freedom of scientific, technological and artistic research to 'the goal of the building of communism'. In other words this is an affirmation of the non-party character of science, art and technology.

20. This norm, placed at the beginning of the third paragraph of the draft, now constitutes a paragraph on its own.

21. One should note here that the church, understood as a private organisation, has no guarantee of being able to use media which are entirely public (press, radio, television, publishing etc.) or which at best can be ceded to private individuals or organisations which in turn do not possess the financial means needed to guarantee the practical application of what is stated in the norm. Hence the necessity of promulgating a corresponding normative law.

According to the principle of separation of church from state, religious organisations are considered equal to social organisations. It is therefore necessary to establish whether the latter enjoy, on the basis of laws instituting them and regulating their activity, any particular favours or privileges. We have in mind in particular party and semi-party organisations such as the Young Pioneers and the Komsomol, which have always enjoyed innumerable privileges.

22. The final version of this article does not repeat the affirmation in the draft that religious organisations may participate in 'the activity of non-party social organisations', but one may deduce that this is still the case from the final wording here. The legislator correctly does not repeat the prohibition placed by the draft on participation by religious organisations in 'the activity of state organs', which would have prevented the church from taking part in the activity of the Council for Religious Affairs. The legislator limits himself to reaffirming the prohibition on participation in the activity of political parties, and adds that of financing such parties, a limitation which, obviously, does not extend to the organisations' members themselves. (Cf. Art. 5, VI, second part.)

23. This principle is already affirmed in Art. 5, III of the draft.

24. To apply this norm it is not sufficient simply to end the financing of propaganda and of institutes of atheism. As already noted, it will be necessary to provide for a radical change in educational programmes and texts, which were always inspired by the 'truths'

proclaimed by the Party, and consequently by militant atheism.

25. This parenthetic clause has been added to bring the title into agreement with the title of Art. 5.

26. The changes here are purely formal. The concept 'secular' ('*svetsky*') is not understood in the USSR in neutral terms, to indicate that the state sides neither with religion nor atheism. In fact Art. 4 of the *Fundamentals of Legislation of the USSR and the Republics of the Union on Public Instruction* explicitly affirms the necessity of excluding from schools the influence of religion, but not that of atheism. Since the new law intends to place religion and atheism on the same level, it is necessary that the new normative laws on schools be inspired by total neutrality, completely excluding the earlier option for atheism. This necessarily implies modifying not only the syllabus but school textbooks themselves. There still remains the grave problem of an entire generation of teachers formed in the spirit of atheism, and hence incapable of neutrality in this area. In addition, there is the problem, in the name of equality of all citizens, of authorising the clergy to teach in their areas of specialisation in state schools. All this must come about in the name of the genuine secularisation which is now under way. The legislator must find the courage to take a decisive step forward, affirming *apertis verbis* in the name of the new secularism that both the Party and its philosophy be excluded from schools. The draft Kharchev 2 proposes a ban on the teaching of religion and atheism in schools and social institutions (Art. 7); nonetheless there remains the possibility of teaching religion or atheism in state institutions on a voluntary basis, with the consent of the students and their parents.

The new norm reintroduces and amplifies Art. 9 of the Decree of 1918. One notes that a pluralistic system presupposes the legalising of non-state (public) educational institutions in which it would be possible to impart an education according to predetermined ideological and moral ideas. The first sentence of this article, however, seems to contradict this; mention is made of a system of 'state education' in harmony with the Constitution (see also the following note). There remains the fact, already mentioned, that up to now teachers have always been chosen on the basis of party criteria. What guarantee of neutrality can be given by such teachers? It seems to us that the only way to overcome this situation is to institute a mixed scholastic system, in which private schools would compete with public schools.

Nonetheless one must emphasise that the law is more tolerant than the draft, which affirmed that the teaching and learning of religion must take place 'privately'. Rozenbaum's formulation, in the first part of Art. 7, is more restrictive, as indeed it must be:

In accordance with the Constitution the school (public instruction) in the USSR is separated from the church. Public instruction in the USSR is secular in character and excludes the influence of religion. Teaching of religious doctrines is permitted only in religious institutes intended for the formation of ministers of cults. It may also be done privately, at home or through religious associations, but without creating to this end special institutes of instruction in which general subjects are also taught.

This affirmation presupposes that religion must always be an isolated phenomenon, even though the total intolerance of previous legislation has been superseded. It also presupposes that the church ought to be isolated from the social context.

27. This third paragraph is quite new. At first sight it seems to be aimed at ending the previous situation of intolerance, when the law permitted only freedom of worship, and expressly denied the church any educational, cultural, charitable or missionary activities. It is equally significant that the legislator did not accept the draft's variant of Art. 6 which affirmed that 'teaching of religious doctrines is not permitted in institutes in which other subjects of general cultural interest are taught.'

Of great importance in this article is the statement that religious organisations have the right to set up 'educational establishments and groups for the religious education of children and adults', and also 'to engage in teaching in other forms, making use of premises that they own or that are made available for their use for this.' This article, as well as Arts. 11, I and 24, II, thus establishes that the absolute monopoly of the Party is overcome along with the consequent negative cultural intolerance legitimised in Art. 25 of the present Constitution, which affirms that 'in the USSR there exists only one system of instruction, which is being perfected', and which 'serves the communist education of youth'. Continuing coherently down the road to liberalisation, the legislator will have to abolish this constitutional norm. He will also have to give serious practical thought to the possibility of authorising free, non-state schools and the teaching of religion in the state schools themselves in those cases where such instruction is requested by the pupils or by their families.

28. Section II of the law was modified to the greatest degree both in a substantial and formal sense. First of all the legislator has not hesitated to resolve a question left unanswered in the draft regarding the various types of religious organisations. He has opted for two structural forms of organisation: the first is undeveloped and lacks legal status; the second is capable of assuming various structures, all of which would be endowed with legal status. For the first structural

form the law does not presuppose any juridical qualification with reference to number of members or duration in time.

In his revision of the law the legislator has chosen to insert two new norms (Arts. 11 and 12). The first provides the possibility of founding major and minor seminaries. The second fills a lacuna in the draft and deals with an important fundamental: the statutes of religious organisations. In this context one may recall that the registration of statutes is the necessary condition which allows juridical status to be obtained and provides for the full enjoyment of those rights which are foreseen by law. Only the instructions which will now be issued by the individual republics, the wording of new statutes and their everyday application will confirm whether the state genuinely intends to depart from the pattern of its own legal past.

The norms contained in this paragraph are quite innovative. Former legislation provided for but one religious organisational structure, that of the 'religious association' — in canon law, the parish — which jurisprudence and doctrine considered as being an autonomous unit, separate not only from its social context, but also from the hierarchical structure of the church itself. In accord with his anti-ecclesiastical attitude, Rozenbaum offers to individual religious communities the possibility of belonging to the hierarchical structure or not (Art. 14, IV). The legislator does not accept these reactionary attitudes and rejects their intolerant spirit. He has simplified the procedure for the establishment of parishes and has reduced the number of citizens deemed necessary for a quorum. He has expressly provided for diverse forms of religiously-orientated organisational structures and approved radical norms regarding institutes of religious instruction. He has fully legitimised the church's rights to charitable and missionary activity, as well as that economic activity which safeguards the church's freedom. In particular, noting the failure of the idea of fraternity advocated by communism, the legislator has a positive attitude towards the church's charitable activity and grants it fiscal benefits as a reward for conducting activity which for decades was the exclusive privilege of the state.

It was always clear in Rozenbaum's draft (Art. 14) that the legislator's intent was finally to recognise the legitimacy of the church's activity. This was understood not only as the freedom to conduct community worship, but as a more complex reality. This was even more so the case in the Kharchev's drafts (Art. 8, ff.); these drafts proclaimed principles now present in the law in a more complete and organic formulation, albeit without constituting an immediate and full guarantee of (religious) liberty. However the premise that the interests of the people are not those identified and indicated by the Party allows for optimism.

It will now be necessary to examine the instructions for application, above all to verify whether in practice the law is going to be interpreted in a spirit different from that of the past. If, on the one hand, the presuppositions which justify the so-called historical-political interpretation of the law have vanished, on the other hand one should not forget that the administration of justice will continue to remain in the hands of individuals who applied the former discriminatory and intolerant laws to the letter, always in agreement with the Party's interpretation. In the same way, Soviet scholars who study the legislation on relations between church and state must adapt themselves to the new spirit of tolerance, and abandon positions which are not reconcilable with the new law. For example, it is no longer possible to defend freedom of religion for the individual citizen and deny it to the church as an institution.

29. These organisational structures are not mentioned in the draft. The list obviously permits a wide spectrum of organisational forms.

30. This affirmation is significant in that it implies recognition of the hierarchal structure of churches and religious confessions.

31. The change is formal with respect to the draft. One must emphasise that the proclamation of this principle represents an innovation, in that it appears to guarantee the autonomy of religious organisations and supersedes the former interference of the state, sanctioned in Art. 14 of the Law of 1929.

32. The changes are formal in character.

33. The legislator adds that religious leaders and centres also have the right to constitute fraternities and missionary organisations, as is foreseen in Art. 7.

34. This corresponds to Art. 11 of the draft, and to Kharchev 1 and 2, Art. 9, II. The issue is not clear in Rozenbaum (Arts. 14-16).

35. Art. 14 corresponds to Art. 8 of the draft, albeit with some important clarifications.

36. In other words, the legislator is taking positive account of the existence of a hierarchial structure in the church and has repudiated the principle, sanctioned by former legislation and doctrine, whereby every single religious association was considered to be independent of the ecclesiastical body to which it belonged.

37. Rozenbaum (Art. 16) foresees that religious organisations will, according to their respective importance, be registered at different levels with the state authorities.

38. The draft (Art. 12) did not foresee the need to justify a refusal in written form. This is a guarantee which aims to protect the liberty of the church. (Analogous norms are in in Kharchev Art. 11 and Rozenbaum Art. 16.)

39. The norm corresponds to Art. 13 of the draft. The addition, which

implies the intent of the legislator not to permit another *jus singulare* in questions of religious organisations, is important. On the question of appeal, cf. Kharchev Art. 14 and Rozenbaum Art. 16.

40. The law correctly dedicates an entire paragraph to this subject. Cf. Kharchev 1 and 2, Arts. 15-18. Rozenbaum only hints at this subject in Art. 18; and his proposals do not differ appreciably from previous provisions.

41. The law does not expressly provide for the faculty to appeal against an eventual refusal: this is foreseen in ordinary civil procedural law, to which the law makes reference in other places.

In view of the current situation regarding church property in the Soviet Union, the legislator should have been courageous enough to have considered making full reparations to the church and faithful for all properties stolen from them. A timid provision for preferential treatment in favour of religious organisations is insufficient. Buildings or houses of worship should be restored to the use for which they were originally intended at the time of their construction. In the Soviet Union, where a great number of churches (not to mention those already destroyed) have been adapted to profane, if not outright anti-religious use, it is desirable that the question of restoring the church's property, although anticipated in the text of the law, be considered in a separate set of instructions.

It seems to us that the possibility not only of moral but also of financial reparation should be considered, which would permit the church to restore damaged buildings and face the colossal tasks before it with adequate financial means. It is an innovation in the new law to exempt financial contributions from taxation and to authorise the churches to solicit contributions (even outside houses of worship); but these provisions fall short of financial justice.

42. Cf. Art. 14 of the draft. Religious organisations are now permitted to own land.

43. Cf. Art. 15 of the draft. This norm is important under the heading *de jure condendo*: it is sufficient to recall the present debate on restoring church property. The principle in the last paragraph appeared in Art. 18, I of the draft. The legislator does not repeat the affirmation of Art. 18, II which reads: 'Religious organisations have the obligation to care for and use those buildings and other property which belong to the state and have been entrusted to them, and to do so in agreement with their specifically defined uses.'

44. This norm is innovative and positive. It permits religious organisations to choose which charitable organisations they wish to assist financially. This provision should in fact put an end to the scandal of the church's being constrained to finance ambiguous institutions of dubious purpose, such as the Soviet Peace Fund and others.

45. Cf. Art. 16 of the draft. Listed among the activities of religious organisations are editorial and printing enterprises. Tax exemption of funds destined for charitable works has now been granted: cf. Art. 23, III.

46. Cf. Art. 17 of the draft. In part II the legislator does not provide for the intervention of local authorities in deciding who receives a certain property when a religious organisation ceases to exist. He refers the matter to ordinary normative law. Thus it is highly desirable that the normative law which granted privileged status to vague social and state needs as against the needs of religious organisations should be explicitly repealed. One positive feature is that arbitrary and discretionary interventions by local authorities have been ruled out.

47. Cf. Art. 19 of the draft. Two important paragraphs (III and VI) have been added. An end is effectively put to the use of military service for political indoctrination (religious rites are permitted even in military hospitals). Provision is made for religious organisations to operate within public institutions. To appreciate the originality of Art. 21 it is sufficient to recall that previous legislation permitted the presence of clergymen in hospitals and prisons only at the request of gravely ill or dying persons and with the prior approval of the authorities. In addition, religious rites had to be celebrated in 'places appropriately isolated' (Law of 1929, Art. 58, II).

As regards persons authorised to request the celebration of rites and religious functions in the aforementioned places, the legislator refers non-specifically to the 'citizens present in them'. Hence it seems that (future) normative instructions will have the task of specifying whether such requests can be made by employees of these institutions — a nurse, for example, who requests that a priest assist a gravely ill person. A positive factor is that no direct act of authorisation is explicitly required. In the past authorisation was required, and if it was not forthcoming, there was no appeal.

The draft Kharchev 1 and 2 foresaw that the explicit permission of the authorities would have to be given for the celebration of rites in hospitals, institutes and prisons (Art. 20, II). Rozenbaum proposed that in such institutions the celebration of religious rites be permitted without impediment, but he was referring exclusively to the case of the gravely ill (Art. 19).

48. This section is original. The instructions for application of the law will nevertheless have to stipulate that those importing such materials should not be burdened by having to pay customs duties. In the 1920s, existing legislation formally proclaimed similar principles, which were ignored in practice. Guarantees will therefore have to be provided for the application of these norms. For example, state printing houses should not be allowed to refuse to print religious materials without

good reason, and the availability of paper, ink and other materials necessary for printing must be guaranteed.

In regard to religious literature, one could ask why the law does not foresee the restitution to its legitimate owner of religious literature arbitrarily confiscated in the past, as well as reparations for what was destroyed. Formal proclamation of the right to a religious education is after all worthless if at the same time there is no guarantee that the means needed for this education will be freely available.

49. Cf. Art. 20 of the draft. The changes are formal.

50. Cf. Art. 21 of the draft. The first paragraph is a new addition. Other than charitable activity, cultural-formative activity is expressly provided for. This clause marks a radical departure from the norms of 1929. The state finally acknowledges the value and legitimacy of activities traditionally engaged in by the church.

51. This norm presupposes implicit recognition of the supernatural nature of the church; as does the following paragraph.

52. Cf. Art. 22 of the draft. It is significant that the legislator expressly recognises the right of religious organisations to invite foreigners (non-citizens) to teach religious subjects, and thus, in a wider sense, legitimises missionary activity in the USSR. In this respect one notes that the number of theology professors and catechists in the USSR is extremely small, and insufficient to satisfy growing demand. Also, the cultural level of the clergy, for decades isolated from sources of study and information, is often quite modest.

53. Cf. Art. 23 of the draft. The changes are formal.

54. Cf. Art. 24 of the draft.

55. Cf. Art. 25 of the draft. The changes are formal. One cannot doubt that champions of atheism such as Rozenbaum will be displeased to note that the law grants the same rights to all citizens as far as social security is concerned, regardless of whether they work for religious organisations. Rozenbaum has always argued against this in his juridical writings.

56. Cf. Art. 26 of the draft.

57. This section is a reworking of Arts. 27-29 of the draft. The content of this article is of a very general character and consequently it is to be hoped that the authorities in the various republics will provide complementary legislation. One fundamental question is that of granting to representatives of religious organisations full participation in the Council for Religious Affairs, thus producing an institution which will be genuinely concerned to guarantee religious liberty. The Council is an agency of control and coordination; in the absence of representation on the part of the churches, the following consequences would be likely:

— Coordinating the activity of state organs in matters concerning religion would become a matter of applying political directives dictated by a state incapable of guaranteeing neutrality. A serious risk would be that of creating an (official) state church, which would enjoy privileges in exchange for supporting the state itself, specifically in justifying the latter's sovereignty.

— Juridical recognition of religious organisations would remain a mere discretionary act of the state. The very right of appeal against state decisions is not guaranteed in the Soviet legal system.

— Only the presence of church representatives will guarantee correct and just application of the law. This is even more true inasmuch as the law is intended to protect the interests of believers, and not those of a state which has renounced its party character.

— Without the presence of believers on the Council the state certainly could not offer assistance in concluding agreements with other state organs.

— Without representatives of the churches the Council would subordinate all religious questions to mere political interests. There remains the problem of the presence in these organisations of employees who in the past have been involved in various kinds of dubious activity.

— State employees, unassisted by representatives of the churches, are certainly neither competent nor prepared to work for understanding and tolerance amongst the various religions.

After decades of continuous persecution and discrimination, we believe that the state has a moral obligation to allow believers and churches to participate in the Council. The urgency of such participation is heightened by the generic character of numerous clauses, the absence in many cases of specific guarantees for the rights proclaimed, the silence of the legislator on certain important topics (one thinks of religious marriages), and above all by the need for the Council to make a definitive break with its past.

We believe that the work of this Council will indeed be of great importance for the concrete and effective institution of a regime of religious liberty in those countries which presently constitute the Soviet Union.