

# Religious Liberty in Russia: Legal Considerations

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## RUSSIA'S COUNCIL OF EUROPE MEMBERSHIP: AN EXPRESSION OF HOPE





Ernst Mühlemann, Rapporteur  
of the Council of Europe  
Political Affairs Committee

“Russia does not yet meet all Council of Europe standards. But integration is better than isolation; cooperation is better than confrontation.”

“Russia’s Request for Membership of the Council of Europe,” document 7443, 2 January 1996

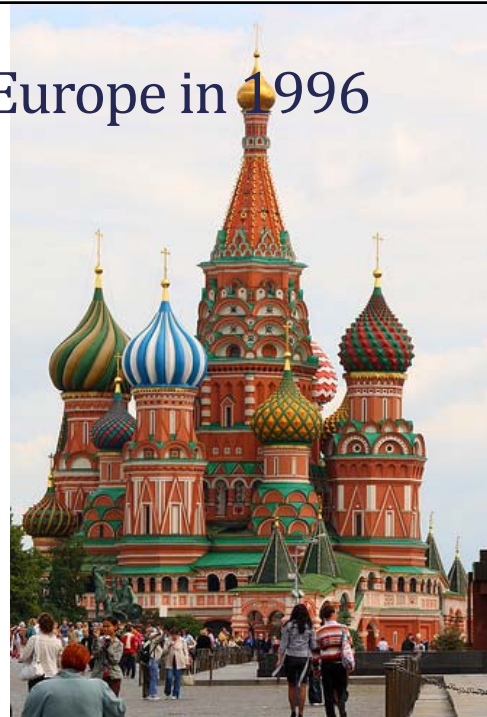


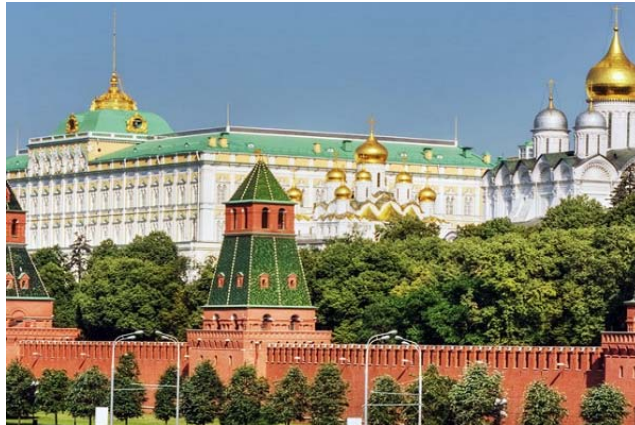
## Russia joined Council of Europe in 1996

### Russia’s Commitments

- Russia committed to implement European Court of Human Rights decisions
- Russia committed to bring the law on freedom of religion in line with Council standards
- Russia committed to participation in a “political dialogue” with the Committee of Ministers

PACE, "Opinion No. 193 (1996) on Russia's Request for Membership in the Council of Europe."





## RUSSIA'S CONSTITUTIONAL COMMITMENT TO HUMAN RIGHTS, THE RULE OF LAW, AND INTERNATIONAL NORMS



### Russia's Constitution Provides for Direct Application of International Norms

**Article 15.4** “ The universally-recognized norms of international law and international treaties and agreements of the Russian Federation ***shall be a component part of its legal system.*** If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement shall be applied.”  
(Emphasis added).



## Basic Rights and Liberties under International Law Are Guaranteed by the Russian Constitution

- **Article 17.1** “The basic rights and liberties in conformity with the commonly recognized principles and norms of the international law *shall be recognized and guaranteed in the Russian Federation and under this Constitution.*” (Emphasis added).



## Russians Were Assured That Their Rights Can Be Vindicated in International Human Rights Tribunals

**Article 46.3** “In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.”



- Unfortunately, Russia has not lived up to the hope expressed in its admission to the Council of Europe nor to the promises embodied in its constitution.
- In the field of freedom of religion or belief, not only has performance not improved; we have seen steady deterioration of protections.



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## US Commission for International Religious Freedom 2017 Report – Russia Chapter



“Russia represents a unique case among the countries in this report—it is the sole state to have not only continually intensified its repression of religious freedom since USCIRF commenced monitoring it [in 1998], but also to have expanded its repressive policies to the territory of a neighboring state, by means of military invasion and occupation. Those policies, ranging from administrative harassment to arbitrary imprisonment to extrajudicial killing, are implemented in a fashion that is systematic, ongoing, and egregious.”

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## Problematic Performance in the European Court of Human Rights

Of the cases in which the Court has found a violation of Article 9 of the European Convention (freedom of thought, conscience and religion), 14% have been against Russia – behind only Turkey (17%) and Greece (20%)

(Overview ECHR 1959 – 2016, European Court of Human Rights, March 2017)



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## Legal Restrictions on Religion in Russia

- “Yarovaya Law” limiting missionary work, religious persuasion and sharing of religious beliefs even in a believer’s home (July 2016)
- Extremism prosecutions and ban of Jehovah’s Witnesses (2016-2017)

“Religious faiths wonder what’s next as Russian court bans Jehovah’s Witnesses”

Cimaron Neugebauer | Thursday, April 20th 2017 | KUTV.com



Members of Jehovah’s Witnesses wait in a court room in Moscow, Russia, on Thursday, 20 April 2017. Russia’s Supreme Court has banned the Jehovah’s Witnesses from operating in the country, accepting a request from the justice ministry that the religious organization be considered an extremist group, ordering closure of the group’s Russia headquarters and its 395 local chapters, as well as the seizure of its property. (AP Photo/Ivan Sekretarev)

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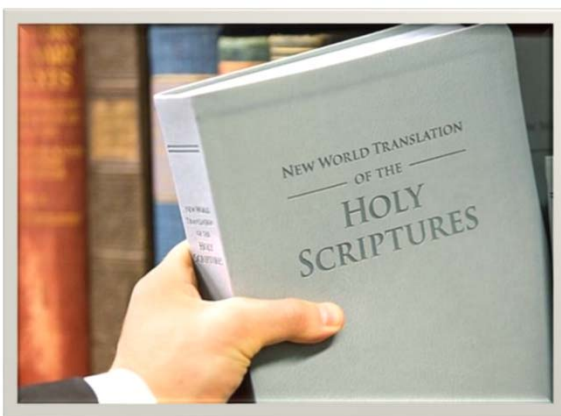
## 190 cases against missionary activity in Russia in the past year

“As many as 190 cases to punish individuals and communities for violating Russia’s ‘anti-missionary’ restrictions are known to have reached court in the year since they came into force on 20 July 2016. Prosecutions under Administrative Code Article 5.26, Parts 3, 4, and 5 have steadily increased throughout this 12 month period. Activities as diverse as holding prayer meetings in private homes, posting worship times on a religious community’s website, and giving a lecture on yoga have all been interpreted by police and prosecutors as ‘missionary activity’, due to the broad definition now enshrined in the Religion Law.”

See Victoria Arnold, “RUSSIA: ‘Anti-Missionary’ punishments full listing,” *Forum 18 News Service*, 9 August 2017 ([http://forum18.org/archive.php?article\\_id=2306](http://forum18.org/archive.php?article_id=2306)).



## Abuse of Overly Broad Extremism Law

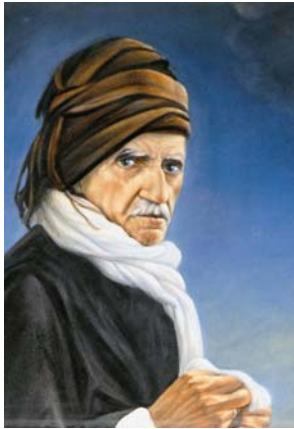


- Jehovah’s Witnesses’ New World Translation Of The Holy Scriptures was banned as extremist despite a law prohibiting banning copies or quotations from the Bible as extremist. A local court held that the New World translation of the Bible was not a Bible and thus unprotected by law.

(<https://www.rferl.org/a/russia-jehovahs-witnesses-bible-translation-banned/28684384.html>)



## Hundreds of Other Religious Publications Have Been Banned as “Extremist”



Nursi Ban



Bans on Numerous Publications of Jehovah's Witnesses

## Other Religious Freedom Violations

- Ban of the Bhagavad Gita
- Declaring a variety of legitimate scholarly and religious works as extremist
- Use of religious registration laws to bar religious activities of numerous “non-traditional” groups
- Anti-Proselytizing Laws
- Overly broad anti-extremism laws
- Application of laws in discriminatory ways, such as branding Jehovah's Witnesses as extremist because of their views of the exclusive truth of their beliefs, despite the fact that many if not most religious groups hold exclusivist views of this type.
- Disbanding of entire denominations and expropriation of their property.



## National Prosecution Patterns That Obfuscate Systematic Repression

- **Step 1.** Condemn large numbers of religious publications and websites as “extremist” in separate local court cases in various jurisdictions around the country.
- **Step 2.** Dissolve various local church units on the basis of continued use and dissemination of these materials (which are routinely used elsewhere).
- **Step 3.** Issue a warning to the central body of the religion in question to cease supporting, participating in, or otherwise contributing to the dissemination of the ‘extremist’ materials.
- **Step 4.** Accuse central organization of failing to take preventative measures aimed at eliminating the reasons for or the conditions facilitating extremist activity.
- **Step 5.** Based on further ‘violations’ after the notice bring an action to liquidate the organization and its affiliates.
- **Risk:** It is very difficult to respond to conclusory allegations that multiple publications are “extreme” and that actions of hundreds of churches and thousands of believers that are described in a conclusory manner but in fact constitutes systematic repression.



## Russia has formalized permitting objections to European Court of Human Rights rulings



- **July 2015** - Russian Constitutional Court held that Russia could fail to enforce a ECtHR judgment if that is the only possible way to avoid a violation of the fundamental principles and norms of the Russian Constitution (*Resolution of the Constitutional Court of the Russian Federation No. 21-P of July 14, 2015*)
- **December 2015** – Federal law passed, adopting the July decision as federal law. (*Federal Law No.7-FKZ of December 14, 2015*)
- **April 2016** – Russian Constitutional Court ruled for the first time that a European Court decision cannot be implemented in Russia (*Anchugov and Gladkov v. Russia*)



## But Russia retains some commitment to the rule of law and fundamental rights.

- Russia has not backed out of Council of Europe
- There are some cases where the Russian Constitutional Court has protected minority religious groups
  - Russian Constitutional Court permitted Jesuits to attain national registration and struck down restrictive provisions of 1997 Religious Organizations Law
  - In July 2017 Russian Constitutional Court overturned expulsion of Mormon missionaries for violating vague registration law



## What is to be done?

- Remember and encourage the original hopes for Russia's enhanced compliance with human rights norms as a result of being included in the Council of Europe.
- Do not compromise standards.
- Long term persuasiveness of justice
- Find more effective ways to use existing mechanisms in an effort to find more creative ways to use existing mechanisms.



## COUNCIL OF EUROPE APPROACHES TO ADDRESSING RELIGIOUS FREEDOM CONCERNS IN RUSSIA

## Parliamentary Assembly



- Resolutions
- Reports
- Fact-finding missions
- Committee on the Honouring of Obligations and Commitments by Member States
- Committee on Legal Affairs and Human Rights and Subcommittee on Human Rights

## Committee of Ministers

- Responsible for supervising execution of Court decisions

*(Art. 46 European Convention, as amended by Protocol 11)*

- Resolutions
- Can sponsor special conferences
- Fosters dialogue



## Conclusion

- Socially constructed injustice remains unjust.
- Human rights norms are not self-enforcing, and ultimately their legitimacy rests on persuasion, not interstate compulsion.
- We need to encourage dialogue
  - To remove obstacles to compliance and
  - To remind officials (and others) of persuasive reasons behind their commitments.
- We need counter an emerging pattern that allows small legal distortions to be rolled together to undergird major religious repression.
- We need to mobilize our constitutional and human rights institutions so that they reinforce each other, rather than competing for priority of position.
- We need to build on the hope that we can help each other achieve the vindication of our rights.