

THE RUSSIAN ORTHODOX CHURCH AT THE  
COUNCIL OF EUROPE: RELIGIOUS RIGHTS, FREE  
EXPRESSION AND TRADITIONAL VALUES

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*The Russian Orthodox Church, a purveyor of "traditional values" in Russia and the internal lobby out of which Russia's notorious "anti-gay propaganda law" and an anti-blasphemy law emerged, has come to play an interesting role at European institutions, and particularly at the Council of Europe and the European Court of Human Rights. The Church, which outside of Russia largely operates under the radar, has had a lasting impact on the human rights institution. Lessons learned from the Court have been used to further cement its role within Russia, through an erosion of secularism and entrenchment of Orthodoxy. This note explores the Church's role within the Council, focusing on the way that it has influenced the development of the Council's view on the interaction between religion, the state, free expression and society, and ultimately on the case law of the ECtHR. The note explores these issues through two case studies: Sindicatul "Păstorul cel Bun" v. Romania, and Mariya Alekhina and Others v. Russia. It will also analyze the ways in which the Church has promoted an alternative conception of human rights for Russia, and asks whether the Church should be viewed as a proxy for the Russian state. The question of what the Russian state has to gain from this alliance will also be explored.*

*All translations from Russian are the author's.*

## I. INTRODUCTION

In 2016, the Patriarch of the Russian Orthodox Church, Kirill, met with Pope Francis in Cuba. In a historic public relations stunt, the two discussed the plight of Christians in zones of conflict such as Syria, after a 1,000 year schism between the Orthodox and Catholic Churches.<sup>1</sup> At the height of tensions between Russia and the West over Syria and Ukraine, the meeting not only symbolized a religious thaw, but also had foreign policy implications. If the Catholic and Orthodox Churches could finally overcome centuries of bad blood, Russia and the West should also be able to find common ground.<sup>2</sup> The meeting exemplified the importance of the Russian Orthodox Church (ROC or Church) to Russia's foreign policy, and its stake in world affairs.

The Church does not merely play an informal foreign policy role. It does not veil its diplomatic intentions or initiatives, having formalized a role for itself at the Council of Europe (CoE or Council) by establishing the "Representative of the Russian Orthodox Church to the Council," through the office of the "Representation of the Russian Orthodox Church in Strasbourg."<sup>3</sup> The Church also pays keen attention to the docket at the European Court of Human Rights (ECtHR or Court). It frequently expresses its positions on pending cases, and has even formally participated in proceedings as a third party. Moreover, while the Church itself has only officially intervened in one case, Russia has intervened in several cases related to religious rights in ways that reflect the ROC's stance, which suggests a blurring of the line between the two actors.<sup>4</sup>

This note explores the Church's role within the Council, and more particularly, the way that it has influenced the development of the Council's view on the interaction between relig-

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1. Stephen F. Cohen, *The Pope and the Russian Patriarch Have Ended their 1,000-Year Cold War*, THE NATION (Feb. 17, 2016), <https://www.thenation.com/article/archive/the-pope-and-the-russian-patriarch-have-ended-their-1000-year-cold-war/>.

2. *Id.*

3. See generally *Representation of the Russian Orthodox Church in Strasbourg*, REOR STRASBOURG, <http://strasbourg-reor.org/?tagid=1> (last visited Apr. 27, 2021) (providing news coverage of the ROC's Strasbourg office).

4. *Italy Thanks Russia for Support in Lautsi vs. Italy Case*, INTERFAX RELIGION (June 23, 2011), <http://www.interfax-religion.com/?act=news&div=8538>.

ion, free expression, state, and society. This note will also analyze the ways in which the Church has impacted case law at the ECtHR. The following questions will be addressed: How has the Church promoted an alternative conception of human rights for Russia at the Council? Should the Church be viewed as a proxy for the State? How has the Church's rhetoric about religion and "traditional values"<sup>5</sup> at the ECtHR been used by the ROC and Russian government to justify an erosion of secularism within Russia itself and an entrenchment of Orthodoxy? Why does the Russian state act on behalf of the Church in matters seemingly central to the Church, and what does it gain from this alliance?

The relationship between the ROC, internal Russian constitutional changes, and the blurring of the boundary between church and state both domestically and internationally will be examined through the lens of the ROC's role at European human rights institutions, both as an independent actor, as well as a not-so-veiled surrogate of the state.

Part I of this note will establish the foundational underpinnings of the relationship between the ROC, Russia, and the Council. This Part is broken down into six sub-sections, beginning with an analysis of the importance of the Council and ECtHR to Russia, despite its many public losses at the Court (Part I-A). The note then moves into an overview of church-state relations in Russia (Part I-B), the Church's foreign policy ambitions (Part I-C), an analysis of the institutional foundation for the Church's role at the Council (Part I-D), the Church's conception of religious rights (Part I-E), and finally an analysis of the rhetorical overlap found in documents produced by the Church and the Council (Part I-F). Following this foundation, Part II of the note will delve into two case studies, which are emblematic of the ways in which the Church uses the Court to promote its vision of values. The first ECtHR case this note will explore is a 2013 case, in which the ROC directly intervened on behalf of Romania, *Sindicatul "Pastorul*

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5. See generally Melissa Hooper, *Russia's 'Traditional Values' Leadership*, FOREIGN POL'Y CTR. (May 24, 2016), <https://fpc.org.uk/russias-traditional-values-leadership/> (describing Russia's global campaign to defend "traditional values").

Cel Bun” v. Romania,<sup>6</sup> arguing that Orthodox priests should not have the right to form a trade union as per Article 11 of the European Convention on Human Rights (ECHR) (Part II-A). The second is the ECtHR’s *Mariya Alekhina and Others v. Russia*, or *Pussy Riot* case, which was decided against Russia in 2018 (Part II-B).<sup>7</sup> This case illustrates Russia’s articulation of how Article 10 of the ECHR, which clarifies the right to freedom of expression, should be interpreted in light of religious freedom. Statements made by Russia and Church leaders regarding this case provide an interesting window into how Russia has formulated a distinct view of human rights that prioritizes religious rights (not just for individuals, but for institutions and religions themselves), and has created a narrative of a war against Orthodoxy and Christianity both within Russia and abroad. Part III of this note briefly paints a picture of the current challenges and achievements of church-state relations in Russia before concluding.

## II. FOUNDATIONAL UNDERPINNINGS

### A. *The Importance of the Council of Europe and the ECtHR for Russia*

Before examining the role of the ROC at the Council, it is essential to understand the importance of the Council for Russia. In 1996, Russia was inducted into the Council of Europe,<sup>8</sup> which is a regional international human rights institution, consisting of forty-seven member states that are signatories to the European Convention on Human Rights.<sup>9</sup> The European Court of Human Rights is a structure within the CoE, and reviews human rights cases that arise out of the ECHR.<sup>10</sup> Russia’s induction into the CoE marked the beginning of what many hoped would be a new page in post-Cold War relations. While

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6. *Sindicatul “Păstorul cel Bun” v. Romania*, App. No. 2330/09, ¶ 173 (July 9, 2013), <http://hudoc.echr.coe.int/fre?i=001-122763> [hereinafter *Sindicatul*].

7. *Mariya Alekhina and Others v. Russia*, App. No. 38004/12 ¶¶ 75–77 (July 17, 2018), <http://hudoc.echr.coe.int/eng?i=001-184666> [hereinafter *Mariya Alekhina*].

8. *Council of Europe and Russian Federation*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/moscow/field-office> (last visited Mar. 1, 2021).

9. *Who We Are*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/about-us/who-we-are> (last visited Mar. 30, 2021).

10. *Id.*

many questioned the prudence of welcoming Russia into the CoE at a time when Russia's path towards democracy was hardly set in stone, this step was widely viewed as essential to Russia's democratization process and as a way to ingrain the values espoused by the European Convention on Human Rights into Russia's rapidly developing political system.<sup>11</sup>

In recent years, the European Court of Human Rights has played three key roles in regard to Russia. First, it has become a forum for Russian political dissidents and prisoners of conscience, such as Aleksei Navalny, Ilya Yashin, and Pussy Riot, to seek justice and publicly shame Russia. These high-profile cases predictably lead to decisions against Russia and condemnation on the world stage.<sup>12</sup> Second, the Court has shaped Russian jurisprudence. There is evidence that the European Court of Human Rights has had a positive effect on the development of Russian legal concepts, with Russian legislation adapting to the ECtHR's decisions.<sup>13</sup> Third, the ECtHR's ability to protect human rights has achieved respect within Russian society. According to the independent analytic center, Levada Center, fifty-eight percent of respondents were favorable to Russia's participation in the Council of Europe.<sup>14</sup> In the words of Russian human rights lawyer, Pavel Chikov, "if

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11. *E.g.*, JEAN-PIERRE MASSIAS, IFRI RUSSIA/NIS RESEARCH PROGRAM, *RUSSIA AND THE COUNCIL OF EUROPE: TEN YEARS WASTED?* 4 (Jan. 2007), [https://www.ifri.org/sites/default/files/atoms/files/ifri\\_CE\\_massias\\_ang\\_jan2007.pdf](https://www.ifri.org/sites/default/files/atoms/files/ifri_CE_massias_ang_jan2007.pdf), (describing Russian accession as an encouraging and productive factor in its democratic transition and its subsequent regressions as weakening the Council's authority).

12. *E.g.*, *Navalny Must be Freed, European Rights Court Tells Russia*, BBC (Feb. 17, 2021), <https://www.bbc.com/news/world-europe-56102257> (describing the ECtHR's condemnation of Russia's imprisonment of opposition leader Alexei Navalny).

13. *E.g.*, Ilya Azar, *'Dvushechku' otsidet kazhdy iz nas moralno gotov*, [*Two Years' Each of Us is Morally Prepared to Sit in Prison*] NOVAYA GAZETA (Aug. 16, 2019), <https://novayagazeta.ru/articles/2019/08/26/81723-dvushechku-otsidet-kazhdyy-iz-nas-moralno-gotov> (naming an ECtHR decision as one of the reasons for the incitement to hatred statute (Criminal Code § 282) being decriminalized).

14. *Uchastie Rossii v Rabote Soveta Evropy i Evropeiskogo Suda po Pravam Cheloveka*, [*Russia's Participation in the Work of the Council of Europe and European Court of Human Rights*] LEVADA CTR. (Apr. 8, 2019), <https://www.levada.ru/2019/04/08/uchastie-rossii-v-rabote-soveta-evropy-i-evropejskogo-suda-po-pravam-cheloveka/>.

you ask society . . . where they can count on justice, in a Russian court or the ECtHR, then you will get only one answer.”<sup>15</sup>

Given Chikov’s assessment of the positive effect that the ECtHR has had on reining in internal Russian policy, and the humiliation that Russia has faced on the world stage through the high-profile cases decided against it, the question must be raised as to why Russia has remained a Council member. One simple answer is that the Council is too important to Russia’s image both domestically and abroad. Severing ties with the Council and ECtHR could cause a strain in relations with Europe and its own population, which Russia is not prepared to contemplate. However, a more nuanced answer considers the subtle effect that Russia has had in shaping the Council and the ECtHR as a voice of traditional values within the Court. This promotion of traditional values is directly tied to the role of the ROC within internal Russian politics and international affairs.

Membership in the CoE benefits Russia in four principle ways. First, when its policy preferences win, Russia influences legislation at the ECtHR and the development of norms. Second, when it loses at the ECtHR, it can argue that the West is trying to impose its interests onto Russia, strengthening domestic narratives around the need to defend unique Russian values. Third, being a member of the ECtHR allows Russia to more credibly accuse the West of failing to live up to its own democratic and human rights standards, highlighting Western hypocrisy.<sup>16</sup> Finally, the presence of the Russian Federation and ROC in Strasbourg has arguably allowed Russia to create coalitions with other conservative and religious players in Europe, such as the Alliance Defending Freedom (ADF).<sup>17</sup>

The Church, a purveyor of traditional values in Russia, has become an essential component to Russia’s strategy at the Council of Europe and the ECtHR. Although the Church largely operates under the radar outside of Russia, it has had a lasting impact on the Council and the Court. Reciprocally, lessons learned from the Court have been used to further cement

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15. Azar, *supra* note 13.

16. Rick Gladstone, *Russian Diplomat’s Speech Depicts the West as Hypocritical*, N.Y. TIMES (Sept. 27, 2014), <https://www.nytimes.com/2014/09/28/world/russian-diplomats-speech-depicts-the-west-as-hypocritical.html>.

17. Mariya Alekhina, *supra* note 7, ¶ 177.

its role within Russia through rhetorical condemnation of Russia's losses at the ECtHR and the articulation of traditional values.

### B. *Church-State Relations in Russia*

The ROC enjoys a privileged position in Russia, despite the fact that the Russian Federation is formally a secular state.<sup>18</sup> Russian Orthodoxy is legally defined as one of four “traditional religions” in Russia<sup>19</sup> and thus receives benefits that other non-historically Russian religions do not.<sup>20</sup> Though Judaism, Islam, and Buddhism are also awarded the coveted label of “traditional,” Russian Orthodoxy has come to play a much more political role in contemporary Russia than the other “traditional” Russian religions. Campaigns to build churches throughout Russia and instill a sense of Orthodoxy amongst the population are just a few of the Church's initiatives.<sup>21</sup> The state has found its alliance with the Church convenient, as the Church has been a source of moral authority and a pillar around which to create a post-Soviet identity.<sup>22</sup> In the past fifteen years, the Church has achieved policy gains in Russia such as the implementation of non-mandatory religious education in schools,<sup>23</sup> the return of property appropriated dur-

18. St. 14 Konstitutsii RF; *see generally* IRINA PAPKOVA, *THE ORTHODOX CHURCH AND RUSSIAN POLITICS* (2011) (providing an overview of the role of the Church in modern Russia).

19. Federal'nyi? Zakon RF o Svoboda Religioznogo Soznaniya i Religioznykh Organizatsiy [Federal Law of the Russian Federation on Freedom of Religious Consciousness and Religious Organizations], *Sobranie Zakonodatel'stva Rossii'skoi? Federatsii [SZ RF]* [Russian Federation Collection of Legislation] 1997, No. 125-FZ, <http://pravo.gov.ru/proxy/ips/?docbody=nd=102049359> [hereinafter *Freedom of Religious Consciousness Law*].

20. *See generally* U.S. DEP'T OF STATE, 2018 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: RUSSIA (2018), <https://www.state.gov/reports/2018-report-on-international-religious-freedom/russia/> (describing a wide array of legal targeting of religious minorities).

21. Maxim Trudolyubov, *Russia: A Church-Building Nation Whose Traditionalism Is a Myth*, WILSON CTR. (May 17, 2019), <https://www.wilsoncenter.org/blog-post/russia-church-building-nation-whose-traditionalism-myth>.

22. *Id.*

23. Olga Iakimova, *A Decade of Religious Education in Russian Schools: Adrift Between Plans and Experience*, PONARS EURASIA POL'Y MEMO NO. 676 (PONARS Eurasia, D.C.) (Nov. 2020), [https://www.ponarseurasia.org/wp-content/uploads/2020/11/Pepm676\\_Iakimova\\_Nov2020.pdf](https://www.ponarseurasia.org/wp-content/uploads/2020/11/Pepm676_Iakimova_Nov2020.pdf).

ing the Revolution,<sup>24</sup> the passage of an anti-blasphemy and anti-gay propaganda law,<sup>25</sup> and most recently, the inclusion of the word “God” in the revised constitution of the Russian Federation.<sup>26</sup>

However, the relationship between church and state in Russia is not as simple as one institution merely being the puppet of the other. Rather, it is a symbiotic and sometimes uneasy coalition. The state is aware of the importance of the Church and the need to remain in its good graces in order to maintain the ability to influence its hierarchy. The Church has argued that, while it seeks independence from the state, it also strives to play a significant political role.<sup>27</sup> This has manifested itself in the Church’s lack of respect for the state’s secularism, as it has sought a privileged position for Orthodoxy within Russia and attempted to influence legislation. Resistance to secularity is not confined to Russia, but has extended into the types of values and positions that the Church promotes abroad, particularly at the Council of Europe, as highlighted throughout this note.

### C. *The Russian Orthodox Church and Foreign Policy*

Russian foreign policy and Church interests have overlapped as Russia has sought to exert influence within Europe. As Metropolitan Ilarion Alfeev, the Head of the ROC’s Department for External Church Relations,<sup>28</sup> made clear in a 2003 address, the ROC seeks to actively participate in the legislative

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24. Sophia Kishkovsky, *Russia to Return Church Property*, N.Y. TIMES (Nov. 23, 2010), <https://www.nytimes.com/2010/11/24/world/europe/24iht-moscow.html>.

25. *Putin Signs ‘Blasphemy’ and ‘Gay Propaganda’ Bills*, MOSCOW TIMES (July 1, 2013), <https://www.themoscowtimes.com/2013/07/01/putin-signs-blasphemy-and-gay-propaganda-bills-a25404>.

26. St. 67.2 Konstitutsii RF.

27. *See Bases of the Social Concept*, DEP’T EXTERNAL CHURCH RELS. MOSCOW PATRIARCHATE, <https://mospat.ru/en/documents/social-concepts/xvi/> (last visited May 13, 2021) [hereinafter *Bases*] (“At the same time, the Church may request or urge the government to exercise power in particular cases, yet the decision rests with the state.”).

28. The Department for External Church relations maintains relations with churches as well as government bodies and international organizations. *Department*, RUSS. ORTHODOX CHURCH DEP’T EXTERNAL CHURCH RELS., <https://mospat.ru/en/departement/> (last visited May 13, 2021).

process of the European Union and protect the interests of the Orthodox Christians living outside of Russia's borders:

It is precisely here, in Brussels, that the architecture of a future single, united Europe is being created . . . thousands and thousands of Orthodox Christians belonging to the Moscow Patriarchate live in the European Union, and soon other Eastern European countries, in which still more of our flock live, will join.<sup>29</sup>

This type of rhetoric and focus on the presence of ethnic Russians, Russian-speakers, or Russian citizens, is one that has frequently cropped up throughout the past two decades in Russian foreign policy, grounding Russia's military intervention in Georgia in 2008<sup>30</sup> and more recently in Ukraine in 2014.<sup>31</sup> In the latter, the language of "protecting the rights of Orthodox Christians" overlaps and is often synonymous with the language of protecting the rights of Russian speakers,<sup>32</sup> which has become commonplace in Russian foreign policy parlance.<sup>33</sup>

The commonality between Russia's foreign policy narrative and the ROC's language is not coincidental. The ROC has long played a foreign policy role, developing its policies within its Department for External Church Relations. This Department, in the words of Robert Blitt, "operates as a foreign ministry that hosts ambassadors, travels widely, and interacts with the United Nations, European Union, and Organization for Security and Cooperation in Europe (OSCE), among other in-

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29. *Consecration of the Patriarchal Church of the Holy Trinity and Premises of the Representation of the Russian Orthodox Church to the European Institutions in Brussels*, RUSS. ORTHODOX CHURCH REPRESENTATION EUR. INSTS., <http://www.orthodoxru.eu/index.php?content=article&category=news&id=2003-03-31&lang=en> (last visited Mar. 1, 2021).

30. Uri Friedman, *Putin's Playbook: The Strategy Behind Putin's Takeover in Crimea*, THE ATLANTIC (Mar. 2, 2014), <https://www.theatlantic.com/international/archive/2014/03/putins-playbook-the-strategy-behind-russias-takeover-of-crimea/284154/>.

31. *Id.*

32. Yuri Zoria, *With Donbas Occupation, Russia Brought Religious Persecution Alien to Ukraine: Report*, EUROMAIDAN PRESS (Nov. 23, 2018), <http://euromaidanpress.com/2018/11/23/with-donbas-occupation-russia-brought-religious-persecution-alien-to-ukraine-report/>.

33. Friedman, *supra* note 30.

ternational organizations.”<sup>34</sup> This alliance of rhetoric has been used by the Church to strengthen its autonomy both domestically and abroad. As Robert Blitt writes:

The Patriarch [of the ROC] today enjoys the ear of Russia’s Foreign Ministry and plays a key role in both formulating and advancing Russian interests abroad. Consequently, the breakdown in the constitutional principle of secularism so evident in domestic affairs has spilled over into Russia’s foreign policy, leading to the bizarre reality whereby a secular state is advocating on behalf of religious Orthodoxy and “traditional” values abroad.<sup>35</sup>

The overlap between internal and external Church interests is not new. It is notable that the current Patriarch of the ROC, Kirill, before being elected Patriarch, was the head of the Church’s Department for External Church Relations. Kirill himself has a murky history of participation in Church diplomacy sensitive to Soviet interests, having been allowed to travel to the West during the Soviet period. In 1974, he became a representative to the World Council of Churches in Geneva.<sup>36</sup> He worked with the Russian Orthodox Archbishop, Nikodim Rotov, who was widely believed to be a KGB agent, and at the time, was the head of the ROC’s Department for External Church Relations.<sup>37</sup> This history of foreign policy work has in many ways informed Kirill’s Patriarchy and his vision for Europe. In his words:

When I led the Department for External Church Relations, I participated in discussions on the project for a European Constitution, which was led by the late President of France, Jacques Chirac . . . Christians in Europe did not achieve a mention of the con-

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34. Robert C. Blitt, *Russia’s “Orthodox” Foreign Policy: The Growing Influence of the Russian Orthodox Church in Shaping Russia’s Policies Abroad*, 33 U. PA. J. INT’L L. 364, 366 (2011).

35. *Id.* at 365.

36. Kirill, *Svyateishy Patriarch Moskovsky i vseya Rusi (Gundaev Vladimir Mikhailovich)* [*Kirill, the Holy Patriarch of Moscow and all Russia (Gundaev Vladimir Mikhailovich)*], RUSSKAYA PRAVOSLAVNAYA TSERKOV, <http://www.patriarchia.ru/db/text/31754.html> (last visited Mar. 1, 2021).

37. Felix Corley, *The Svyatoslav Files: Metropolitan Nikodim and the KGB* (2018), [https://www.academia.edu/37223006/The\\_Svyatoslav\\_Files\\_Metropolitan\\_Nikodim\\_and\\_the\\_KGB](https://www.academia.edu/37223006/The_Svyatoslav_Files_Metropolitan_Nikodim_and_the_KGB).

tribution of Christianity to the history of the continent . . . So, it was not just in our country at that time, but on the European continent that there were not the right conditions for the formation of common principles for believers.<sup>38</sup>

Kirill has decried what he sees as Europe's failure to prioritize the rights of believers. Almost a decade before he would become the Patriarch, the link between the ROC and foreign policy was explicitly laid out in a Church document authored by Kirill and others in the Department for External Church Relations entitled, "The Basis of the Social Concept."<sup>39</sup> Language from this document has emerged in discussions between the Church and the Council and will be considered in section E.

Finally, it is important to understand the narrative that the ROC offers the Russian state at the Council. While relations with the West were tense prior to Russia's 2014 intervention in Ukraine, the event marked the death-knell in the relationship and has forced Russia to more actively peddle its unique vision of human rights and norms in opposition to the West's, both at home and abroad. The ROC's argument, which sometimes coincides with the Russian state's, can be summed up as follows: Western secularization is hostile to Christians and has failed to protect Christians from increased persecution. This is frequently discussed in Russian, and particularly Orthodox, media.<sup>40</sup> This narrative allows Russia to occupy the moral high-ground while rejecting the admonishments it receives from the West and human rights organizations. For example, the myth of Orthodox persecution forms part of Russia's narrative against Ukraine: A recent schism in the Ortho-

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38. *Vystuplenie Svyateishogo Patriarkha Kirilla na obedinyonnom zasedanii Mezhreligioznogo soveta Rossii i Khristianskogo mezkhkonnessionalnogo konsultivnogo komiteta* [Speech by His Holiness Patriarch Kirill at a joint meeting of the Interreligious Council of Russia and the Christian Interfaith Advisory Committee], RUSSKAYA PRAVOSLAVNAYA TSERKOV (Feb. 28, 2020), <http://www.patriarchia.ru/db/text/5598921.html>.

39. Bases, *supra* note 27.

40. E.g., *Zapad zamalchivaet narusheniya prav veruyushikh na Ukraine, zayavil mitropolit*, [The West is Silent About Violations of the Rights of Believers in Ukraine, Said the Metropolitan] RIA NOVOSTI (Feb. 16, 2019), <https://ria.ru/20190216/1550978237.html> (claiming gross violations of Ukrainian Orthodox believers' human rights were being covered up by the European Union).

dox Church and the perceived second-class status of ethnic Russians (often Orthodox) in Ukraine have served as a rhetorical pretext for continued Russian intervention.<sup>41</sup> The annexation of Crimea and Russia's presence in Russian-ethnic majority Eastern Ukraine is thus framed as a struggle for human rights, rather than as a purely geopolitical maneuver.

This narrative of a war against Christianity, among other things, is used to justify the privileged position that the ROC occupies in Russia,<sup>42</sup> and has been employed as Russia has methodically passed religiously-inspired laws domestically.<sup>43</sup> The increasing influence of religion in Russian legislation can be seen most recently in Putin's constitutional reforms, which among other undemocratic measures, essentially unravel Russia's secularity by inserting the word "God" into the constitution and elevating Russia's constitution above international law.<sup>44</sup> It could also be argued that the ROC's advocacy for the inclusion of a reference to God in the constitution, and the incorporation itself, provided a veneer of moral authority for the illiberal nature of these reforms. As will be examined at the end of this note, the overlap between the Church's rhetoric in light of proposed constitutional changes and criticism of the West, including the ECtHR, is symbolic of a larger dynamic in which the ROC's role at the Council is just one manifestation.

#### D. *The Russian Orthodox Church's Institutional Presence at the Council*

The ROC has two offices which engage with European institutions and the Council of Europe. One is the Representative Body to European International Institutions and the other is the Representation of the ROC in Strasbourg. In 2002, at the behest of the Patriarch of the ROC, Aleksii II, the Church

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41. *Id.*

42. Helen Haft, *Russia: 'The Church Has an Enemy in Every Home.' It's Television*, FREE SPEECH DEBATE (Aug. 9, 2017), <https://freespeechdebate.com/discuss/russia-the-church-has-an-enemy-in-every-home-its-television/>.

43. Aleksandr Soldatov, *Mysli: Aleksandr Soldatov. 'Religioznaq motivatsiq' Repressivnykh Praktik v RF. Doklad na VI Qkuninskikh Chteniyakh* ["Religious Motivation" of Repressive Practitioners in the Russian Federation], CREDO PRESS (Mar. 10, 2021), <https://credo.press/236164/>.

44. William Pomeranz, *The Putin Constitution*, WILSON CTR. (Mar. 30, 2020), <https://www.wilsoncenter.org/blog-post/putin-constitution>.

formally established its representative body to European international institutions in order to “expand the dialogue between the Russian Orthodox Church and European international organizations.”<sup>45</sup> Among other activities, the representative office aims to:

Carry out a direct dialogue between the leadership of the Moscow Patriarchate [ROC] and European intergovernmental organizations.

Participate in the discussion of questions regarding European integration, the rights of believers in European Union countries, legislation in the sphere of human rights, migration [ . . . ].

Provide factual information about the activity and religious teaching of the Russian Orthodox Church to Western and Russian mass media outlets.<sup>46</sup>

Importantly, this office was almost explicitly created with the intention of influencing the development of legislation and formulating the direction of human rights law in Europe. The then-Head of the Office, Ilarion Alfeev, summarized the role of the Church and drew a direct link between the Church and a united Europe:

Here in Brussels, legislative norms are being created which will become binding for all Europeans, something which is of great interest to the Orthodox Church. What kind of society shall we live in when a single European home is built? [ . . . ] According to which laws will it live? What will be the place of God? Will there be any place for Christian values or will these values be locked up in tiny private rooms? Will European society be inspired by Christian values or will it be pagan? . . . Just as the Church in Russia, Belarus, Ukraine, Moldova, Georgia and other republics of the former Soviet Union participates in legislative processes today . . . so does the Church consider

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45. *Predstavitelstvo Russkoi Pravoslavnoi Tserkvi pri evropeiskikh mezhdunarodnykh organizatsiyakh* [*The Representation of the Russian Orthodox Church to European Organizations*], RUSS. ORTHODOX CHURCH REPRESENTATION EUR. INSTS., [http://orthodoxru.eu/index.php?content=article&category=misc&id=about\\_us&lang=ru](http://orthodoxru.eu/index.php?content=article&category=misc&id=about_us&lang=ru) (last visited Mar. 1, 2021).

46. *Id.*

it absolutely necessary to do the same in united Europe.<sup>47</sup>

As Russia has sought to find its place in Europe, a return to “Christian values” is Russia’s way of finding a common cultural heritage with Europe, despite the animosity of the twentieth century. Without a robust shared political history of liberal democracy between Europe and Russia, the state has relied on the ROC to boil Europe down to its Christian roots, and uses this as the indelible link tying Russia to Europe. This reflects the duality of Russia’s focus on traditional values. On the one hand, it is at odds with a Western vision of human rights. At the same time, it is a value system that seeks to be European, transnational, and appealing to conservative segments of European society. In this sense, it is not “isolationist,” but seeks to model itself as an alternative to Western values.

In the aftermath of the collapse of the Soviet Union, as Russia integrated into the European community in the early 2000s and shed its Communist past of religious repression, perhaps the Council did not foresee what would become of its engagement with Russia’s Church. Instead of identifying it as the illiberal player that it would become, the CoE may have viewed the Church’s activism as a sign of Russia’s progression towards toleration and human rights in light of its seventy years of notorious antireligious persecution.<sup>48</sup> As time has gone on, however, the values that the Church has sought to ingrain within the European community have often been antithetical to the ECHR and secular boundaries.

#### E. *The ROC’s Influence on Rhetoric at the Council*

There is a notable overlap between language used in internal ROC documents and rhetoric at the Council. In 2000, the ROC adopted the “Basis of the Social Concept.” This document represents the Church’s official view on church-state re-

47. *Consecration of the Patriarchal Church of the Holy Trinity and Premises of the Representation of the Russian Orthodox Church to the European Institutions in Brussels*, RUSS. ORTHODOX CHURCH REPRESENTATION EUR. INSTS., <http://www.orthodoxru.eu/index.php?content=article&category=news&id=2003-03-31&lang=en> (last visited Mar. 1, 2021) (emphasis added).

48. See generally DIMITRY V. POSPIELOVSKY, *Soviet Antireligious Campaigns and Persecutions*, in 2 A HISTORY OF SOVIET ATHEISM IN THEORY AND PRACTICE, AND THE BELIEVER ix (1988), <https://link.springer.com/content/pdf/bfm%3A978-1-349-19002-7%2F1.pdf>.

lations. It explicates the Church's policy positions on issues such as mass media, homosexuality, property, education, bioethics, and foreign policy. With regard to foreign relations and international law, the "Social Concept" acknowledges that the international legal system is based on secular values. However, XVI, 4 states that:

The Church seeks to assert Christian values in the process of decision-making. . . . She strives for the recognition of the legality of religious worldview as a basis for socially significant action (including those taken by state) . . . which should influence the development (amendment) of international law and the work of international organisations.<sup>49</sup>

The document is notable because some of the aspirational ideas it presents have been methodically incorporated into secular Russian law.<sup>50</sup> It would also appear that through the ROC's influence at the Council of Europe, certain ideas in the Social Concept have made their way into the discourse of international human rights institutions.

In 2006, within the context of Russia's Chairmanship of the Committee of Ministers of the Council of Europe, the Russian Presidency of the Council of Europe organized an international conference entitled the "Dialogue of Cultures and Inter-Faith Cooperation," which was held in Nizhny Novgorod.<sup>51</sup> The conference produced a document entitled the "Volga Forum Declaration," which broadly called for a stronger commitment to interfaith dialogue, but also made comments that echo the Social Concept. The "Volga Declaration" states that conference participants affirm a:

commitment to the universal values and principles which form the common heritage of their peoples and the true source of individual freedom, political liberty, public ethics, civil responsibility and the rule of law . . . these values should not contradict the continent's cultural and religious traditions and cannot

49. Bases, *supra* note 27.

50. These policy wins include the law against gay propaganda, the anti-blasphemy law, and religious education in schools.

51. James Barnett, *The White Paper on International Dialogue "Living Together in equal dignity,"* [http://cingo-strasbourg.eu/Archive/Site\\_web\\_en/MS\\_courants\\_en/AJLB\\_en.pdf](http://cingo-strasbourg.eu/Archive/Site_web_en/MS_courants_en/AJLB_en.pdf) (last visited Mar. 1, 2021).

be challenged nor undermined. Attempts to draw them into conflict are the results of ignorance or manipulation.<sup>52</sup>

While not explicitly stating what the participants might find objectionable in the conflict between universal values and religion, the participants are likely referring to secularization. The limits on the values hinted at are clarified in a further paragraph of the Volga Declaration on media-relations, which reads as follows:

“With due regard to the fundamental right to freedom of expression . . . media could be encouraged to reflect society’s diversity. . . and to report on ethnic, cultural and religious matters in a sensitive manner, avoiding demeaning stereotypes and generalization . . . .

Media self-regulation is an important element in this context, and for reconciling the right to freedom of expression and information with respect for human dignity and the protection of the reputation or the rights of others.”<sup>53</sup>

The idea of media reporting on religious matters in a sensitive manner and regulating itself in order to “reconcile” the right to free expression and respect for human dignity is a diluted and slightly more refined version of what appears in the “Social Concept”:

“XV. . . . the information of the spectator, listener and reader should be based not only on the firm commitment to the truth, but also concern for the moral state of the individual and society . . . .

XV. 3. . . . profound and principled conflicts have been seen to emerge in relations between the Church and the secular mass media. This happens whenever the name of God is blasphemed, other blasphemies are pronounced, the information about church life is systematically distorted consciously and

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52. Dialogue of Cultures and Inter-Faith Cooperation (Volga Forum), *Volga Forum Declaration* (Sept. 2006), [http://cingo-strasbourg.eu/Archive/Site\\_web\\_en/Reference\\_en/volga\\_en.pdf](http://cingo-strasbourg.eu/Archive/Site_web_en/Reference_en/volga_en.pdf).

53. *Id.*

the Church and her servants are deliberately slandered . . . .”<sup>54</sup>

Given that the Volga Forum was sponsored by Russia and focused upon interreligious dialogue, it seems reasonable to read the Volga Declaration within the context of the Church’s Social Concept. The Volga Declaration’s focus on media “regulating” itself for the sake of preserving human dignity and the reputation of others seems to suggest that criticisms of the Church, religion, and blasphemy may fall into the category of disfavored speech. As is examined below, this was more or less the argument of Russia and the Orthodox Church in the Pussy Riot case at the ECtHR. For example, the idea that media can harm the dignity of believers grounded Russia’s argument for banning the video of Pussy Riot’s performance.

The principles expressed in the Volga Declaration were not purely aspirational, but have been further codified by the Council. As Russia touts on its home page of the Permanent Representation of the Russian Federation to the Council of Europe:

As a consequence of the Russian presidency in the Committee of Ministers in 2006 the White Paper on intercultural dialogue “Living together in Equal Dignity” was developed and adopted by the Committee of Ministers on May 7, 2008. The White Paper addresses such problems as cultural diversity in the modern European societies and the ideological framework for intercultural dialogue and its interreligious aspects.<sup>55</sup>

In addition to this White Paper, approximately one year after the Volga Forum, in 2007, the Parliamentary Assembly of the Council of Europe adopted a recommendation on “state, religion, secularity and human rights.” Articles 22 and 23 speak directly to the question of religious dialogue with the Council, proposing annual meetings between “representatives of religions traditionally present in Europe and of civil society.”<sup>56</sup>

54. Bases, *supra* note 27.

55. *History of the Russian Federation’s Participation in the Council of Europe*, PERMANENT REPRESENTATION RUSS. FED’N COUNCIL OF EUROPE, [https://coe.mid.ru/en\\_GB/istoria-ucastia-rossii-v-sovete-evropy](https://coe.mid.ru/en_GB/istoria-ucastia-rossii-v-sovete-evropy) (last visited Mar. 1, 2021).

56. EUR. CONSULT. ASS. DEB. 3d Sess. 1804 (June 29, 2007).

This focus on religions “traditionally present” echoes Russia’s own legislation which favors “traditional religions.”<sup>57</sup> This suggests that religions historically present in Europe are given priority over others in charting Europe’s future and influencing the human rights agenda.

The recommendation attempts to reconcile continued cooperation with religious organizations with their support for the CoE’s fundamental values:

23.3. reaffirm the principle of the independence of politics and law from religion;

23.5. exclude from the consultation any grouping that does not clearly support the Council of Europe’s fundamental values, namely human rights, democracy and the rule of law;<sup>58</sup>

While the recommendation as a whole encourages the maintenance of a regular dialogue with religious institutions, Articles 23.3 and 23.5 theoretically limit the scope of religious participation. Article 23.3 affirms the value of secularism and independence of politics from religious institutions, and Article 23.5 preemptively states that religious institutions that do not share human rights values will not be engaged in dialogue. Article 23.3 is interesting because it seems that the recommendation itself was due in-part to an interference from religious institutions, which openly want not only a dialogue with the Council, but also to actively influence the development of legislation. As is emphasized below, the ROC’s lobby within the ECtHR and its financial ability to assist in hiring lawyers, such as it did in *Sindicatul “Pastorul Cel Bun” v Romania*,<sup>59</sup> is blurring the boundary between church and state and is evidence of the direct role that religious institutions can play in shaping the ECtHR’s case law.

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57. Freedom of Religious Consciousness Law, *supra* note 19.

58. EUR. CONSULT. ASS. DEB. 3d Sess. 1804 (June 29, 2007).

59. *Besedy s batyushkoi. Khristianstvo v Evrope* [Conversations with a Priest. Christianity in Europe], SOYUZ (Sept. 29, 2015), <https://tv-soyuz.ru/peredachi/besedy-s-batyushkoy-efir-ot-29-sentyabrya-2015g> [hereinafter Conversations].

F. *The ROC's Conception of Religious Rights and Free Expression*

In 2008, the ROC published a spin-off of its “Social Concept,” this time with a focus on human rights, in a document entitled the “Basis of the Teachings of the Russian Orthodox Church on Dignity, Freedom and Human Rights.”<sup>60</sup> The document outlines the conflict between what the Church sees as increasing secularization and religious ethics and human rights standards which often “enjoy the highest authority in social life and interpersonal relationships.”<sup>61</sup> The Church declares that it “sees a huge danger in legislative and social support for what is considered various vices – for example, sexual promiscuity and deviance.”<sup>62</sup> As Sebastian Rimestad writes of the Church’s various declarations on human rights:

These ROC documents, especially the 2008 ‘Basis,’ clearly show that Orthodox Christians “intended to propose their own, alternative vision of human rights, with a different foundational approach and with different orientations and emphases.” The ROC tends to portray human rights as partly incompatible with basic Christian teachings, which posit that Man as created by God, has a dignity based on moral values.<sup>63</sup>

One area that the Church views as incompatible with its teachings is freedom of speech that might offend religious feelings. With regard to freedom of speech, the 2008 document states that “it is especially dangerous to offend religious and national feelings, distort information about the life of religious communities, peoples, and social groups and identities.”<sup>64</sup> On freedom to create art, the Church considers that:

[A] violation of sacred objects cannot be justified by references to the rights of artists, writers or journal-

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60. *Osnovy ucheniya Russkoi Pravoslavnoi Tserkvi o dostoinstve, svobode i pravakh chekoveka* [The Basis of the Teaching of the Russian Orthodox Church on Dignity, Freedom and Human Rights], RUSSKAYA PRAVOSLAVNAYA TSERKOV, <http://www.patriarchia.ru/db/text/428616.html> [hereinafter Teachings].

61. *Id.*

62. *Id.*

63. Sebastian Rimestad, *The Interaction Between the Moscow Patriarchate and the European Court of Human Rights*, 40 REV. CENT. & EAST EUR. L. 31, 38 (2015) (internal citations omitted).

64. Teachings, *supra* note 60.

ists. Modern legislation usually protects not just the life and property of people, but symbolic values, such as the memory of the dead, places of burial, historical and cultural memorials, and state symbols. That type of defense should be expanded to include faith and sacred objects, which are dear to religious people.<sup>65</sup>

The idea of protecting religious objects and faith, as opposed to an individual adherent to a religion, is at odds with the ECHR, which protects an individual's right to believe and practice their faith, rather than the faith itself.<sup>66</sup> The focus on religion as an object that has rights and can be offended, as well as on the institution of a church, is one that the ROC has sought to promote within the ECtHR.

While this note is devoted to examining the ROC at the Council and ECtHR, it is worth noting that the ROC is not the only religion that seeks to influence European institutions. For example, the Holy See has observer status at the CoE.<sup>67</sup> There is potential overlap between broader lobbying efforts of Christian organizations at the E.U. and the dynamic that exists between Churches and the Council. The trend of religious interventions in policy-making is evident and was formalized in Article 17 of the Treaty on the Functioning of the European Union (Lisbon Treaty), which entered into force in 2009.<sup>68</sup> According to Sergei Mudrov, the inclusion of religious references, particularly Article 17 in the Lisbon Treaty, was the result of lobbying by Christian churches, including Orthodox churches.<sup>69</sup> Article 17 makes clear that the European Union respects religious institutions and their status in member states. By "[r]ecognising their identity and their specific contribution, the Union shall maintain an open, transparent and

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65. *Id.*

66. Convention for the Protection of Human Rights and Fundamental Freedoms art. 9, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR].

67. *Holy See // Observer State*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/portal/holy-see> (last visited May 13, 2021).

68. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community art. 17, Dec. 13, 2007, 2702 U.N.T.S. 1.

69. Sergei A. Mudrov, *Religion in the Treaty of Lisbon: Aspects and Evaluation*, 31 J. CONTEMP. RELIGION 2, 16 (2016).

regular dialogue with these churches and organisations.”<sup>70</sup> In the words of Roberta Metsola, who is tasked with implementing Article 17, the article “sends a clear signal that the E.U. is far more than just an economic organisation; it is fundamentally about people, about human dignity, and for the common good . . . we need to keep in mind our values, our spirit . . . to keep this spirit, the dialogue with religious and philosophical organisations is essential . . . we can, together, contribute to a value-based debate on European policies.”<sup>71</sup> As Mudrov writes, “the Russian Church also welcomed that, in the light of Article 17, the churches are not placed alongside the NGOs, interest groups, and social partners.”<sup>72</sup>

This approach became an object of criticism, as the line between engaging faith groups in dialogue and allowing them to shape policies is a thin one that risks intervention by religious organizations in secular practices. The space that the E.U. has carved out for religious organizations through “interreligious cooperation and dialogue” measures, in David Pollock’s words, is “contrary to E.U. general principles.”<sup>73</sup>

The idea that religious institutions have the right to participate in policy-making is arguably premised on their independence from states which gives them distinct interests. In the case of Russia, however, the inclusion of the Church serves as an additional means by which the Russian state can influence policy. As in the case of Pussy Riot, which will be explored in-depth later, the boundary between the Church and the state in Russia is blurry, and the effect that the ROC has had on state policy is clear. While it is too simplistic to assume that the Church is entirely a marionet of the state, and vice versa, in some cases, the Church has likely pushed Russia to pursue a more conservative agenda. This is especially true particularly at a time when Russia-Western relations have faltered,

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70. *Dialogue with Churches, religious associations or communities, philosophical and non-confessional organisations*, EUR. PARLIAMENT: AT YOUR SERVICE, <https://www.europarl.europa.eu/at-your-service/en/be-heard/religious-and-non-confessional-dialogue> (last visited Mar. 1, 2021).

71. *Id.*

72. Mudrov, *supra* note 69.

73. David Pollock, *Article 17: Reasons for Concern*, THINKING ABOUT HUMANISM (Oct. 29, 2010), [http://www.thinkingabouthumanism.org/wp-content/uploads/2013/03/David\\_Pollock.pdf](http://www.thinkingabouthumanism.org/wp-content/uploads/2013/03/David_Pollock.pdf).

and the Westernizers within the Russian foreign policy elite have little to show for their pro-Western policy agenda.

Having laid out the institutional basis for the ROC's role at the Council, the note will now explore the ways in which the Church has influenced conceptions of church-state relations and freedom of expression in ECtHR case law.

### III. THE ROC'S INFLUENCE ON THE ECtHR

#### A. *Case of Sindicatul "Păstoral cel Bun" v. Romania*

In 2013, the Court issued a decision against a group of priests who sought to form a trade union, and upheld Romania's policy of not recognizing clergy trade unions formed without the consent of a bishop. The ECtHR held that the policy did not constitute a violation of Article 11 of the Convention,<sup>74</sup> which guarantees "the right to form and to join trade unions."<sup>75</sup> The only exceptions to Article 11 are those that are "prescribed by law and are necessary in a democratic society . . . for the protection of the rights and freedoms of others."<sup>76</sup>

The case illustrated a critical dynamic between states with powerful religious institutions and the Court. The ROC (Moscow Patriarchate) intervened as a third party on behalf of Romania, one of the only cases in which it has formally done so.<sup>77</sup> Moldova, Poland, Georgia, and Greece also intervened as

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74. *Sindicatul*, *supra* note 6, ¶ 173. The policy was upheld on the following grounds, see also *supra* note 6, ¶ 157, 158, 172 "157. Accordingly, the Court is prepared to accept, as the national courts did, that the interference complained of had a legal basis in the relevant provisions of the Statute of the Romanian Orthodox Church and that these provisions satisfied the "lawfulness" requirements established in its case-law (see, *mutatis mutandis*, *Miroiubovs and Others*, cited above, § 78). 158. Lastly, the Grand Chamber agrees with the parties that the interference pursued a legitimate aim under Article 11, namely the protection of the rights of others, and specifically those of the Romanian Orthodox Church. Unlike the Chamber, it can see no reason to take into account the additional aim of preventing disorder. 172. In conclusion, regard being had to the reasons set out in its judgment, the County Court's refusal to register the applicant union did not overstep the margin of appreciation afforded to the national authorities in this sphere, and accordingly was not disproportionate."

75. ECHR, *supra* note 66, art. 11.

76. *Id.*

77. Rimestad, *supra* note 63, at 46.

third parties.<sup>78</sup> With the exception of Poland, where the Catholic Church plays a significant role, all intervening states are Orthodox majority countries. While the case was framed as addressing an issue of the independence of churches from their host-state governments, the fact that Georgia, Moldova, and Greece intervened raises questions about the firmness of the division between church and state in the countries at issue.

The basis of the Romanian Archdiocese of Craiova's argument was that the Church should be exempt from allowing its priests to form unions as per Article 11 because forcing it to allow trade unions amongst its clergy would jeopardize "the autonomy of religious communities as guaranteed by the Constitution."<sup>79</sup> The Archdiocese argued that since priests are subject to canon law, they must submit to the hierarchy defined by Orthodox tradition, rather than to secular law. This was undermined during the litigation by the fact that priests were paid in large part by the state, contradicting the idea that the Church was a fully independent actor, and arguably placing it within the ambit of the state. However, the state countered that it did not provide remuneration directly to priests, but rather to the Church, who, in an exercise of its autonomy, went on to distribute the funds as it saw fit.<sup>80</sup> Despite this clear connection to the state, the ECtHR decided against the applicants and Romania succeeded in carving out this special sphere for religious associations.

The third-party submissions on behalf of states in this case are interesting due to their advocacy for wide autonomy for churches. Poland argued that churches should have free reign to determine amongst themselves "which activities were to be treated as part of religious practice or as having an impact on their internal organization and mission."<sup>81</sup> Poland added that "to entrust this role to the domestic courts would be a source of conflict and would require the courts to settle religious matters, in breach of the autonomy of religious denominations and the State's duty of neutrality."<sup>82</sup> This intervention suggests that churches should have broad leeway to determine for

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78. *Sindicatul*, *supra* note 6, ¶ 110–19.

79. *Id.* ¶ 18.

80. *Id.* ¶ 97.

81. *Id.* ¶ 116.

82. *Id.*

themselves what is integral to their autonomy, and thus which rules they should be exempted from. The Georgian government argued that “the Contracting States and their courts should enjoy a wide margin of appreciation in safeguarding the autonomy of religious communities from any threats” and that “[t]he State should refrain from encouraging any form of dissent within such communities.”<sup>83</sup>

Georgia’s comment notably mentions “dissent” within religious communities. This is significant because throughout the post-communist world, there have been various conflicts within established churches.<sup>84</sup> In the case of Russia, dissidents have been at odds with the Church hierarchy because they feel that the establishment is too political at the expense of the integrity of the religious institution.<sup>85</sup> In this case, the group of priests who were seeking to form a trade union were not an anti-religious institution, but a religious force that had a distinct set of interests that did not correspond to those of the church hierarchy. Here, Romania was favoring the dominant religious authorities and thus influencing the internal workings of the Church, arguably subverting dissent. By remaining allied with the Church hierarchy, which plays an important social and political role in all of the intervening countries, the states may be attempting to maintain a constructive symbiotic relationship with their respective church authorities, safeguarding continued influence. Not only are these countries, along with Russia (which did not intervene as a state), concerned about the ways in which their churches operate domestically, additional research is needed as to whether or not the countries are granted more leeway in conducting internal business that may contravene the ECHR by establishing excep-

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83. *Id.* ¶ 119.

84. *E.g.*, Jonathan Luxmoore, *Polish Church Evicts Liberal Journal after Criticism*, THE TABLET (Jan. 15, 2021), <https://www.thetablet.co.uk/news/13745/church-evicts-liberal-journal-after-criticism> (describing the sudden cancellation of a newspaper’s lease by the Krakow Archdiocese); Sergei Chapnin, *Orthodoxy Without Christ*, FIRST THINGS (Jan. 6, 2016), <https://www.firstthings.com/blogs/firstthoughts/2016/01/orthodoxy-without-christ-an-interview-with-sergei-chapnin> (interviewing an author recently fired from the Journal of the Moscow Patriarchate for criticizing its policies); *Ukraine Orthodox Church Granted Independence from Russian Church*, BBC (Jan. 5, 2019), <https://www.bbc.com/news/world-europe-46768270> (noting the deepening split between the Russian and Ukrainian Churches).

85. Chapnin, *supra* note 84.

tions for their churches abroad. Are the exemptions that the governments lobby for on behalf of their churches really more about negotiating exceptions for the state (under the guise of the Church) to defy requirements of the Convention?

In the ROC's intervention, the Church argued that "it was impossible in practice to extend the scope of the ordinary legislation to religious communities, and such an approach would cause intractable problems for such communities, including the Russian Orthodox Church."<sup>86</sup> Exempting churches from the demands of secular law threatens to undermine the fundamental distinction between church and state, giving churches undue preference and allowing them to operate on a parallel legal plane.<sup>87</sup> With regard to the issue of trade unions, allowing churches to contravene Article 11 strips the churches of accountability and favors the Church hierarchy, rather than individual believers who work in the Church.

The ECtHR's judgment in *Sindicatul* sets a precedent allowing for an extremely wide scope of permissible activities and exemptions for churches. While the stated intention is to ensure the independence of churches from the state and protect their autonomy, the decision risks allowing the application of canon law rather than secular law in matters that are not strictly necessary to ensure the autonomy of religious freedom and the Church. In many of the countries that intervened, due to the fact that the Church often acts politically,<sup>88</sup> there is a

86. *Sindicatul*, *supra* note 6, ¶ 123.

87. As Frank Cranmer writes: "The majority's emphasis on the state's duty of neutrality between religious communities and 'the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them' meant, in effect, that the case was going to be analysed on the basis of the Church's Statute rather than in terms of secular labour law." Frank Cranmer, *Trade Union Rights, the Romanian Orthodox Church and Article 11 ECHR: Sindicatul Pastorul cel Bun v. Romania*, L. & RELIGION UK (July 10, 2013), <https://www.lawandreligionuk.com/2013/07/10/trades-unions-rights-the-romanian-orthodox-church-and-article-11-echr/>.

88. *E.g.*, Justyna Pawlak & Alicja Ptak, *As Poland's Church Embraces Politics, Catholics Depart*, REUTERS (Feb. 3, 2021), <https://www.reuters.com/article/us-poland-church-insight/as-polands-church-embraces-politics-catholics-depart-idUSKBN2A30SN> (describing the increasingly explicit connection between the Catholic Church and Polish Politics); Eka Chitanava, *Georgia's Politics of Piety*, OPEN DEMOCRACY (Sep. 30, 2016), <https://www.opendemocracy.net/en/odr/georgia-s-politics-of-piety/> (reviewing the relationship between the Georgian Church and politics).

risk that these exceptions favor the Church hierarchies, and by proxy, ensure continued cooperation between religious institutions and the states, in both domestic and international matters.

In addition to what this case may reflect about larger church-state dynamics in the countries involved, the ROC's intervention in this case reflects its jurisprudential ambitions. In an interview on Russian Orthodox TV, the ROC's Permanent Representative to the Council of Europe, Philip Ryabikh, spoke of the Church's role in *Sindicatul* and the effectiveness of serving as a third party in ECtHR cases:

For us to participate in this type of work, we need serious expertise and jurisprudential support. This is not money for beautiful interiors or limousines or anything like that, but for serious work, so that our position is heard. Because even if what you say in mass-media might resonate with society, from the point of view of procedure, it will not have much influence . . . As a rule, lawyers' calculations carry a lot of weight. When these things are presented in a particular way, they can have a real effect. Slowly we are flexing our 'muscles' of cooperation with various lawyers, and in order to do that, are searching for financial support.<sup>89</sup>

The above-quote demonstrates how the ROC is attempting to bridge the gap between rhetoric at the CoE and substantively influencing legislation. Ryabikh condemned the fact that "the 'group of 35' [the unregistered union] proposed resolving problems that emerge within the Church with the help of secular methods, which presuppose the work of trade unions, pressure and legal procedures."<sup>90</sup> This reveals that the Church hopes to influence legislation in a way which will exempt it from secular rules.

While the autonomy of religious institutions is essential to religious freedom, autonomy should not be limitless. Too much autonomy risks elevating religious institutions to a status

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89. Conversations, *supra* note 59.

90. *V RPTS odobrili reshenie protiv profsoyuzu svyashennikov v Rumynii* [The Russian Orthodox Church approved the decision against the trade union of priests in Romania], RIA NOVOSTI (July 10, 2013), <https://ria.ru/20130710/948875230.html>.

above secular institutions and threatens to undermine the authority of the state. While the churches frame the argument as one of a division between church and state, as elucidated in the *Sindicatul* case, it is also a conflict between the powerful hierarchies of religious institutions and religious believers engaged in work for those institutions. The importance of which patriarch and bishops are favored by politicians cannot be underestimated in post-Soviet space.<sup>91</sup> Ensuring extensive autonomy for the Church in ordering its own affairs allows for the Church to act more freely in both politics and foreign policy, and interventions by the state on behalf of churches may be an attempt to curry favor with the Church hierarchy in order to ensure continued cooperation. The next case demonstrates how the Russian state presents arguments at the ECtHR in a way that mirrors the Church's interests.

#### B. *Mariya Alekhina and Others v. Russia*

The focus on internal Church politics and autonomy is, in some sense, a red herring. While the Church claims that it wants autonomy for itself, it also wants to be free to influence secular legislation. This dynamic is illustrated by the ECtHR's *Pussy Riot* decision, *Mariya Alekhina and Others v. Russia*.<sup>92</sup> While the ROC did not act as an intervener, it was central to the 2012 *Pussy Riot* trial in Russia and the resulting passage of anti-blasphemy legislation. In the case before the ECtHR, the Russian state acted on behalf of both itself and the Church, demonstrating the ways in which the Church has influenced secular legislation and conceptions of human rights in Russia.

##### 1B. *Pussy Riot on Trial in Russia*

In 2012, the feminist punk group *Pussy Riot* donned fluorescent balaclavas, rushed towards the altar of Moscow's famed Cathedral of Christ the Savior, and shoddily performed a

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91. See David Masci, *Split Between Ukrainian, Russian Churches Shows Political Importance of Orthodox Christianity*, PEW RESEARCH (Jan. 14, 2019), <https://www.pewresearch.org/fact-tank/2019/01/14/split-between-ukrainian-russian-churches-shows-political-importance-of-orthodox-christianity/> (describing differences in support for the respective churches in different regions of Ukraine).

92. *Mariya Alekhina*, *supra* note 7.

“punk-prayer” that condemned Putin, the Patriarch, and the Church’s corruption and ties to the state:

Congregations genuflect  
 Black robes brag, golden epaulettes  
 Freedom’s phantom’s gone to heaven  
 Gay Pride’s chained and in detention  
 The head of the KGB, their chief saint  
 Leads protesters to prison under escort

. . . .

Patriarch Gundyayev believes in Putin  
 Better believe in God, you vermin!  
 Fight for rights, forget the rite-  
 Virgin Mary, Mother of God, banish Putin, banish  
 Putin<sup>93</sup>

The participants were promptly arrested mid-performance, and three were ultimately sentenced to two-year jail terms for “hooliganism.”<sup>94</sup> The video of the performance was classified as “extremist” material and therefore blocked.<sup>95</sup> The charges against Pussy Riot were based on an “expert analysis” of their words, which found “that the performance and video had been motivated by religious hatred.”<sup>96</sup> This analysis came from a report commissioned by the state after a previous group of experts had failed to find that Pussy Riot’s actions were motivated by religious hatred.<sup>97</sup> The report was co-authored by Igor Ponkin,<sup>98</sup> who is a lawyer and the chairman of an organization called the “Institute for Government-Confessional Relations and Rights.”<sup>99</sup> Ponkin is also a member of a government committee on church-state relations.<sup>100</sup> He often works in conjunction with Philip Ryabikh, the Church’s Representative to

93. Pussy Riot, *Punk Prayer (English Translation)*, GENIUS, <https://genius.com/Pussy-riot-punk-prayer-english-translation-lyrics> (last visited Mar. 1, 2021).

94. Mariya Alekhina, *supra* note 7, ¶¶ 48, 55.

95. *Id.* ¶ 76.

96. *Id.*

97. *Id.*

98. *Expert whose findings led to Pussy Riot Charges Won’t Testify*, RAPSİ RUSS. L. INFO. AGENCY. (Aug. 6, 2012), [http://rapsinews.com/judicial\\_news/20120806/264131846.html](http://rapsinews.com/judicial_news/20120806/264131846.html).

99. *Ponkin Igor Vladislavovich [Igor Vladislavovich Ponkin]*, GU MVD, <https://50.xn—b1aew.xn—p1ai/gumvd/OS/Sostav/item/1938938/> (last visited Mar. 1, 2021).

100. *Id.*

the Council, and during the *Sindicatul* case, expressed his opinion regarding trade unions along with Ryabykh in Strasbourg.<sup>101</sup>

Prior to reaching the ECtHR, throughout the Russian trial, the ROC framed Pussy Riot as part of a larger war against Orthodoxy and led a media campaign against them.<sup>102</sup> While Russia's conviction of Pussy Riot led to a major international outcry and, within Russia, the Church's reputation was arguably harmed<sup>103</sup> by the fact that it was viewed to be behind the punishment,<sup>104</sup> the case nevertheless set the stage for what could be described as an "Orthodoxization" of legislation, the process of which will be described below.

The Pussy Riot trial within Russia served as a pretext for the passage of a law "against offending the feelings of religious believers," or Article 148 of Russia's Criminal Code. This law, which was lobbied for by the ROC, was passed in tandem with a law "against homosexual propaganda."<sup>105</sup> Given that Pussy Riot's performance was framed as an attack on Orthodoxy, the resulting law, aimed at protecting the feelings of believers, was justified as a way to protect an increasingly vilified Orthodox community and illustrated the Church's view of the right balance between freedom of speech and respect for religions.<sup>106</sup>

101. *Predstavitel RPTS v Strasburge vystupil protiv profsoyuzov v Tserkvi* [*The Representative to the ROC in Strasbourg opposed the trade unions in the Church*] RIA NOVOSTI (June 7, 2012), <https://ria.ru/20120607/668069481.html>.

102. Haft, *supra* note 42.

103. *Rossiyanе ob RPTS i Gruppe "Pussy Riot,"* [*Russians on the ROC and "Pussy Riot"*], LEVADA CTR. (May 2, 2012), <https://www.levada.ru/2012/05/02/ros-siyane-ob-rpts-i-gruppe-pussy-riot/>.

104. *Id.*

105. This law takes language directly from the Church's Bases of the Social Concept, which states that "the Church denounces any propaganda of homosexuality. Without denying anybody the fundamental rights to life, respect for personal dignity and participation in public affairs, the Church, however, believes that those who propagate the homosexual way of life should not be admitted to educational and other work with children and youth, nor to occupy superior posts in the army and reformatories. Bases, *supra* note 27, at § XII 9; see *Russian Duma Passes Law Banning 'Gay Propaganda'*, BBC (June 11, 2013), <https://www.bbc.com/news/world-europe-22862210> ("Under the new law, private individuals promoting 'homosexual behaviour among minors' face fines of up to 5,000 roubles (£100; \$155) while officials risk paying 10 times that amount. Businesses and schools could be fined up to 500,000 roubles.").

106. Haft, *supra* note 42.

The Pussy Riot trial within Russia was one of the first in what would become dozens of cases against atheists and critics of the Church under Russia's blasphemy law, Article 148.<sup>107</sup> The classification of Pussy Riot's performance as extremist material set off a trend in Russia, which saw an anti-extremism law, Article 282 of the Criminal Code,<sup>108</sup> frequently applied to atheists and individuals who would post critical memes and comments online about the ROC.<sup>109</sup> Russia's anti-extremism measures, while ostensibly aimed at preventing terrorism, thereby became another tool for the ROC to control the domestic discourse surrounding Orthodoxy and to preserve the Church's own privileged position. The application of punitive measures against critics of religion reveals the extent to which religion plays a role in day-to-day judicial proceedings within Russia and the blurring of the line between church and state.

## 2B. *Pussy Riot at the ECtHR*

In 2018, the ECtHR issued a decision on the case of Pussy Riot in favor of the applicants. Though the ROC did not act as an intervenor, the Russian state in many ways served as a proxy for the Church, employing its talking points. While the ECtHR reviewed a series of alleged violations of the ECHR concerning the condition of Pussy Riot's detention, this note will focus only on the Article 10 violations (freedom of expression), which also implicate Article 9 (freedom of belief).<sup>110</sup>

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107. UGOLOVNIY KODEKS ROSSIYSKOY FEDERATSII [UK RF] [Criminal Code] art. 148 (Russ.).

108. *Id.* art. 282.

109. *Misuse of Anti-Extremism in February 2017*, SOVA CTR. INFO. & ANALYSIS (Mar. 16, 2017), <https://www.sova-center.ru/en/misuse/news-releases/2017/03/d36596/>; JOELLE FISS & JOCELYN GETGEN KESTENBAUM, U.S. COMM'N INT'L RELIGIOUS FREEDOM, VIOLATING RIGHTS: ENFORCING THE WORLD'S BLASPHEMY LAWS 22 (2020), [https://www.uscirf.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20\\_final\\_0.pdf](https://www.uscirf.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20_final_0.pdf).

110. "Article 9: 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others; Article 10 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and

Russia argued that their conviction of Pussy Riot and the subsequent banning of the video of their performance was “necessary in a democratic society” and therefore proportional.<sup>111</sup> The government accused Pussy Riot of provocation in a place so central to Russian Orthodoxy, and stated that their actions “had undermined tolerance and could not be regarded as a normal exercise of Convention rights.” In addition, the state took issue with the fact that Pussy Riot uploaded a video of their performance online, “where it had been viewed several thousand times a day, which had thereby made their performance even more public.”<sup>112</sup> The government referred to the clause in Article 10 on “duties and responsibilities” to claim that Pussy Riot had exceeded the permissible bounds of behavior and that the state’s interference was “necessary in a democratic society.” The applicants countered that they specifically chose the Cathedral of Christ the Savior, due to the fact that Patriarch Kirill used the “venue” politically. “In particular, he had criticized demonstrations against President Putin in the Cathedral and had announced that he supported him for a third term as President.”<sup>113</sup>

While the ROC did not intervene as a third party in the Pussy Riot case at the ECtHR, the Alliance Defending Freedom (ADF), a far-right Christian organization and a self-declared “legal army,”<sup>114</sup> intervened on behalf of Russia, writing that “there was a growing intolerance against Christians

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impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” ECHR, *supra* note 66, arts. 9-10.

111. Mariya Alekhina, *supra* note 7, ¶ 177.

112. *Id.* ¶ 178.

113. *Id.* ¶ 182.

114. The ADF is known for their anti-LGBT positions and their participation in the *Masterpiece Cakeshop* Supreme Court case. Sarah Posner, *The Christian Legal Army Behind Masterpiece Bakeshop*, THE NATION (Nov. 28, 2017), <https://www.thenation.com/article/archive/the-christian-legal-army-behind-masterpiece-cakeshop/>.

throughout Council of Europe member States.”<sup>115</sup> The Russian government endorsed portions of the ADF’s submission,<sup>116</sup> which reveals the coalition of conservative and religious forces at the Council.<sup>117</sup>

The decision against Russia in this case exposes the ways in which even losses at the ECtHR can be utilized for domestic purposes. Pussy Riot’s performance was a critique of both Putin and the Church. Even though the ROC was not officially involved in the case at the ECtHR, it was vocal in its condemnation of the outcome and used the issue to bolster its domestic narratives. In its published commentary on the decision, the ROC took issue with the way in which the Court balanced Articles 9 and 10 of the ECHR.<sup>118</sup> The Church viewed the decision as giving free reign to anyone who might want to use a church building as a public forum, despite the fact that the Court acknowledged that in some cases sanctions might be appropriate.<sup>119</sup>

Igor Ponkin prepared a long commentary on what he viewed as the flaws in the ECtHR’s decision: “‘Pussy Riot,’ in reality, incited hatred in the Church of Christ the Savior, through the direct offense of believers . . . curses (including obscene words) were expressed towards the Virgin Māry and God, and in relation to everyone who saw their actions . . . and

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115. Mariya Alekhina, *supra* note 7, ¶ 184.

116. *Id.* ¶ 177.

117. The ADF and the ROC representative to European International Organizations and Strasbourg, Philip Ryabikh, are in contact, and in 2018 participated in an event together. The event which was organized by ADF, discussed the issue of what the participants view as a dearth of representation for Christian values in Europe, and planned to more actively promote Christian views. *V Strasburge proshel krugly stol po voprosam khristianskogo podkhoda k pravovomu uregulirovaniyu pologogo prosvesheniya v shkolakh*, [In Strasbourg a Round Table on Questions of Christian Approaches to Sexual Education in Schools Took Place], REOR STRASBOURG (Apr. 28, 2018), <http://www.strasbourg-reor.org/?topicid=1294>.

118. *Kommentarii predstavitelstva pusskoi pravoslavnoi tserkvi pri sovete Evropy k resheniyu ESPCH po delu uchastnits pank-performansa v khrame Xhrista Spasitelya* [The Commentary of the Representative of the Russian Orthodox Church at the Council of Europe on the Decision of the ECtHR on the case of the Pussy Riot members at the Cathedral of Christ the Savior], REOR STRASBOURG (Aug. 13, 2018), <http://www.strasbourg-reor.org/?topicid=1296>.

119. Mariya Alekhina, *supra* note 7, ¶ 214.

who saw the video online . . . .”<sup>120</sup> Here, Ponkin reiterates the theory that the video of the performance is itself a violation of others’ religious rights and the freedom to practice. He conflates the video with the performance itself and views the video as tantamount to an offense. Ponkin frames the Court’s decision as “contradicting the goals of the Convention.”<sup>121</sup> Not only does he believe that the ECtHR wrongly decided the case, failing to see what he considers a clear incitement to hatred, but he also accuses the ECtHR of being politically motivated, biased against Christians, and justifying “anti-Christian extremist actions.”<sup>122</sup>

Russia appealed the ECtHR’s decision, but was denied.<sup>123</sup> Following this rejection, Philip Ryabikh called the decision “a blow to the defense of religious freedom in Europe.”<sup>124</sup> He proceeded to cite cases brought before the ECtHR which he views as signs of the threat to religious freedom. In his condemnation of the Pussy Riot decision, he alludes to another case brought before the ECtHR, *Eweida v. United Kingdom*.<sup>125</sup> In *Eweida*, the Court addressed whether British Airways, a private company, could ban employees from displaying religious symbols. On this question, the Court ultimately found that to do so was a violation of Article 9 of the ECHR. Ms. Eweida, the applicant, was paid compensation.<sup>126</sup> However, despite the

120. Igor V. Ponkin, *Zaklyuchenie na postanovlenie Evropeiskogo suda po pravam cheloveka ot 17.07.2018 po delu ‘Mariya Alekhina i drugie protiv Rossii,’ [Conclusions on the Holding of the ECtHR from 07/17/2018 on the Case of ‘Mariya Alekhina and Others v. Russia]* 28-29 (Sept. 17, 2018), [http://www.state-religion.ru/files/Ponkin\\_17-09-2018.pdf](http://www.state-religion.ru/files/Ponkin_17-09-2018.pdf).

121. *Id.* at 37.

122. “The preconceived bias and ideological motivation of the European Court of Human Rights were manifested in its decision in the principled justification of anti-Christian extremist actions . . . .” *Id.* at 2.

123. *Russia Agrees to Compensate Jailed Pussy Riot Members after ECHR Ruling*, MOSCOW TIMES (Dec. 6, 2018), <https://www.themoscowtimes.com/2018/12/06/russia-agrees-compensate-jailed-pussy-riot-members-after-echr-ruling-a63725>.

124. *V RPTS nazvali reshenie ESPCH po delu ‘Pussy Riot’ udarom po zashite religioznoi svobody*, [At the ROC They Have Called the ECtHR Decision on “Pussy Riot” a Blow to the Protection of Religious Freedom], INTERFAX (Dec. 5, 2018), <https://www.interfax.ru/russia/640794>.

125. *Eweida and Others v. United Kingdom*, App. Nos. 48420/10, 59842/10, 51671/10 & 36516/10 (May 27, 2013), <http://hudoc.echr.coe.int/fre?i=001-115881>.

126. *Id.* ¶ 114.

positive outcome, the case was reported on in Russian media and was incorporated into the Church's narrative about the supposed persecution of Christians in Europe. As Philip Ryabikh wrote of the case, "It sometimes looks like Europe's secular authorities are trying to totally expel Christianity from Europe . . . The Russian Orthodox Church cannot watch this without expressing its protest!"<sup>127128</sup>

The ROC's investment in the development of ECtHR case law and stance on the application of Articles 9 and 10 serves a number of purposes. While the Church would like for the ECtHR to accept its position and for its worldview to become the norm abroad, losses at the ECtHR can nonetheless serve a domestic agenda. By the time the Pussy Riot case was decided by the ECtHR, six years had passed since their initial performance and the reputational damages against Russia and the Church had already been done. While a verdict against Pussy Riot would have been welcomed by the Church and Russia, to a certain degree, the trial was political theater. While Pussy Riot received compensation and a semblance of justice, in the years since the decision, Russia's losses in the ECtHR with regard to traditional values have strengthened the Church domestically and bolstered the ROC's narrative of a war against Christianity which can only be won by further distancing Russia from Europe and eroding Russia's secularity.

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127. *Persecuting Christianity . . . in Europe*, PRAVMIR (July 11, 2012), <http://www.pravmir.com/persecuting-christianity-in-europe/>.

128. *About us*, ORTHODOXRIGHTS.ORG, <http://orthodoxrights.org/sample-page> (last visited May 14, 2021). This protest and the idea that there is persecution of Orthodox Christians in Europe is voiced in an organization, Orthodox Rights, founded by the Representation of the Russian Orthodox Church to the Council of Europe, which monitors "the rights and freedoms of Orthodox Christians in Europe." Orthodoxrights.org, decries the "exclusion of religion from public life – media, education, culture, and health. Unfortunately, new legislation too often becomes an instrument to violate the rights of believers and their freedom of religion, thus provoking tensions and conflicts within society." It goes on to call for the monitoring of the rights of Orthodox Christians in all forty-seven CoE countries, with the goal of presenting "the results of such monitoring to European societies, to the Council of Europe and to other international European organisations." Orthodoxrights.org's English language website tracks instances of violations of Orthodox rights and paints a picture of a persecuted religious group in Europe, in an effort to influence the conversation about human rights in favor of religious rights.

## IV. CURRENT CHALLENGES

In 2019, in a major schism, the Orthodox Church of Ukraine was recognized as independent from the ROC,<sup>129</sup> reshuffling alliances across the Orthodox world, forcing a split between the ROC and Constantinople,<sup>130</sup> and dealing a blow to the ROC's soft-power diplomacy.<sup>131</sup> Metropolitan Ilarion Alfeev condemned the ECtHR's failure to address the ongoing religious controversies in Ukraine and asserted that it was because "Russia is presented in the West as the anti-hero, and Ukraine is the hero. In the West there is a conspiracy of silence organized around these events: nobody talks about them, and nobody writes about them."<sup>132</sup> The West's failure to respond to what Russia sees as a human rights crisis affecting Russian Orthodoxy in Ukraine has further entrenched the gap between Russia and the West, as Russia seeks to promote its alternative vision of human rights. Additionally, the situation has been used as fodder for propaganda to justify ongoing Russian involvement in Ukraine and the economic cost of the annexation of Crimea and sanctions.

While the ROC and Russian government have at times been in tension, with the Church being linked to various scandals,<sup>133</sup> the state is still reliant upon the Church in forming a national identity. As relations continue to worsen with the West, the Westernizers within the Russian elite are losing the ideological battle to the traditionalists.

In early 2020, Putin announced a proposal for constitutional reforms, providing a scheme that would extend his rule,<sup>134</sup> and reimagine fundamental tenets of the Russian Constitution of 1993, which was written when it appeared that Rus-

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129. *Ukraine Orthodox Church Granted Independence from Russian Church*, *supra* note 84.

130. Iannis Carras, *Moscow, Kyiv, Constantinople: What Happens after the Ukrainian Church Crisis?*, OPEN DEMOCRACY (Feb. 21, 2019), <https://www.opendemocracy.net/en/odr/moscow-kyiv-constantinople-what-happens-after-ukrainian-church-crisis/>.

131. *Id.*

132. *Zapad zamalchivaet narusheniya prav veruyushikh na Ukraine, zayavit mitropolit [The West is Silent on Violations of the Rights of Believers in Ukraine, Declares the Metropolitan]*, RIA NOVOSTI (Feb. 16, 2019), <https://ria.ru/20190216/1550978237.html>.

133. Haft, *supra* note 42.

134. *Id.*

sia was on the road to democratization. The Russian state's dissatisfaction with the ECtHR played a central role in the discourse justifying these constitutional reforms. The day after the proposed constitutional changes were announced, one of which included the prioritization of Russian law over international law, Putin said that there were forces that sought to "control Russia from outside . . . . Sometimes it is the European Court. We fulfill all of its decisions, but, unfortunately, the Court sometimes makes clearly incorrect decisions. This is unacceptable."<sup>135</sup> The constitutional amendments passed in July of 2020.<sup>136</sup> One of the most jarring changes to the Constitution is the inclusion of the word "God," which for all intents and purposes seems to undermine the status of Russia as a secular state.

Patriarch Kirill has pointed to ECtHR decisions and European influence as central justifications for the constitutional reforms, including the proposed addition of the word "God." In a lengthy address before Russia's Interreligious Advisory Board and Christian Interconfessional Consulting Committee, Patriarch Kirill highlighted the importance, in his view, of the inclusion of "God" in the Russian Constitution, tying the necessity directly to his dissatisfaction with secularism in Europe and the ECtHR:

[T]he amendments to the Constitution that protect our sovereignty, give us a guarantee against the fulfillment of morally provocative questions from the decisions of international institutions . . . . For example, . . . there are a range of decisions that came out of the European Court of Human Rights, which essentially force our country to allow for the parades of sexual minorities . . . .

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135. Rossiya 24, *Putin: U kogo-to vsegda voznikaet soblazn poupravlyat Rossiye so storony* [For Someone there is always a Temptation to Control Russia from the Outside], YOUTUBE (Jan. 16, 2020), <https://www.youtube.com/watch?v=CQDAvo7RB5XY>.

136. Isabelle Khurshudyan, *Russians Overwhelmingly Back Amendments that will Keep Putin in Power, Early Results Show*, WASH. POST (July 1, 2020), <https://www.washingtonpost.com/world/europe/all-eyes-on-turnout-in-vote-on-amendments-to-keep-putin-in-power/2020/07/01/a292b564-ba00-11ea-97c1-6cf116ffe26cstory.html>.

The mention of the value of belief in God in the Constitution would be a strengthening of the historical and spiritual continuity of the peoples of our country, who do not think of themselves outside of religion. Therefore, it seems to me to be very important that a mention of the value of belief in God actually goes into the Constitution.<sup>137</sup>

The Patriarch's speech makes clear the extent to which the Church is invested in ECtHR decisions, as well as the Church's ties to the state. As quoted earlier in this note, the Patriarch also made reference in this speech to the failure of the E.U. to include "God" in its constitution.<sup>138</sup> As Russia moves further away from the European community, the ROC plays a role in justifying the state's actions and providing them with moral legitimacy, while also achieving many of the goals that the Church has long had on its agenda.

## V. CONCLUSION

The ROC is not content with a secular state, and in the past several decades has diligently and methodically undermined Russia's secularity by imbuing legislation with religion. The inclusion of "God" in Russia's constitution is the latest legislative win for the ROC. However, it remains to be seen whether this recent move represents the state's success in wresting the monopoly on "God" away from the Church, or whether future alliances, such as those described in this paper will continue to be a reality, as Russia seeks to promote its own vision of human rights both at home and abroad.

The ROC's role at the Council of Europe and ECtHR serves both domestic and international purposes. Its focus on ensuring the autonomy of religious institutions, as in the case of *Sindicatul*, is not merely about independence, but about obtaining and preserving exemptions from secular law, reflecting the Church's unwillingness to accept the primacy of state law

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137. *Vystuplenie Svyateishogo Patriarkha Kirilla na obedinyonnom zasedanii Mezhreligioznogo soveta Rossii i Khristianskogo mezhkonnfessionalnogo konsultivnogo komiteta*, [The Holy Patriarch Kirill's Speech at the United Meeting of the Inter-religious Council of Russia and Christian Multi-Confessional Consultation Committee] RUSSKAYA PRAVOSLAVNAYA TSEKOV (Feb. 28, 2020), <http://www.patriarchia.ru/db/text/5598921.html>.

138. *Id.*

in a secular context. Moreover, by ensuring “independence” from internationally accepted standards such as the ECHR, the churches may be creating spaces for the state to flout the Convention, suggesting a porous boundary between church and state. It also reflects the alliance of conservative and traditional values at the Council and the degree to which the intervening countries value their churches and seek to maintain control and influence over their hierarchies in an attempt to further use the church for their political goals.

The Pussy Riot case at the ECtHR reflects the ambiguous nature of Russia’s engagement with the Court. On the one hand, the decision against Russia further ingrained Russia’s already poor reputation on human rights in the West. On the other, while Pussy Riot obtained some measure of justice from the ECtHR, the decision against Russia served a Church and Russian narrative that has facilitated the entrenchment of traditional values, a reversal of secularization, the further articulation of religious rights that favor anti-blasphemy regulations at the expense of free speech, and ultimately, the strengthening of Orthodoxy within Russia.