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Russia's War on Political and Religious Extremism: An Appraisal of the Law "On Counteracting Extremist Activity"

I. INTRODUCTION

On May 27, 2002, Tatyana Sapunova became a Russian national hero for taking a stand against anti-Semitism, a move that literally blew up in her face. When she removed a sign reading "Death to Yids," a hidden bomb exploded, severely wounding her legs, hands, and face.¹ Similar acts of terrorism soon followed.²

In recent years, social tensions in Russia have ripened into alarming trends of violence, ranging from street attacks by groups of "skinheads," to riots by soccer fans during Japan's televised defeat of Russia in the 2002 World Cup, to the recent capture of seven hundred hostages by Chechen rebels at a Moscow theater.³

In response to the escalating problem of ethnic and nationalist violence, the Russian Federation enacted the Federal Law On Counteracting Extremist Activity ("Extremism Law").⁴ The Extremism Law codifies a definition of "extremism," prohibits advocacy of extreme political positions, and imposes liability on organizations that do not disavow the "extremist" statements of their members. The law also allows government authorities to

1. Sabrina Tavernise, *Bomb Attack Shows That Russia Hasn't Rooted Out Anti-Semitism*, N.Y. TIMES, June 1, 2002, at A1, LEXIS, News & Business; see also Aleksandr Arkhangelsky & Yekaterina Grigoryeva, *That Tatyana: Russia Doesn't Have a Civil Society, But it Does Have True Citizens*, IZVESTIYA, July 26, 2002, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, Aug. 21, 2002, at 1.

2. See, e.g., *Copycat Anti-Semitic Signs Ripped Down in Voronezh*, MOSCOW TIMES, June 6, 2002, at 2; Nabi Abdullaev, *Another Hate Sign Explodes, One Dead*, MOSCOW TIMES, July 11, 2002, LEXIS, News & Business.

3. See, e.g., *"Tsaritsyno Pogrom Won't Be the Last"—So Says One Moscow Skinhead Leader*, NOVIYE IZVESTIYA, Nov. 13, 2001, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, Dec. 5, 2001, at 5; Oleg Stulov & Sergei Ponomaryov, *Soccer Riot: Fans Trash All of Downtown Moscow*, KOMMERSANT, June 10, 2002, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, July 10, 2002, at 6; Natalia Yefimova et al., *Armed Chechens Seize Moscow Theater*, MOSCOW TIMES, Oct. 24, 2002, LEXIS, News & Business.

4. On Counteracting Extremist Activity, Fed. Law No. 114-FZ (July 25, 2002), Sobr. Zakonod. RF, 2002, No. 30, Item 3031, LEXIS, Int'l Law Libr., RFLAW File (GARANT 12027578) (English) [hereinafter Extremism Law].

suspend, without court order, social and religious organizations and political parties; and creates incentives for local authorities to employ greater scrutiny in the registration and initiation of liquidation proceedings against organizations which the state deems undesirable.

This Comment provides a comparison of the Extremism Law and its amendments to existing legislation. Part II reviews several recent trends motivating the passage of anti-extremism legislation. Part III provides an article-by-article overview of the law and a discussion of its unique provisions. Part IV.A discusses the adequacy of existing laws and prevalent tendencies of inadequate and arbitrary enforcement. Part IV.B discusses the likely impact of the Extremism Law on the freedoms of expression, association, and conscience. It predicts a particularly harsh impact on nonprofit organizations, new religious movements, and religious organizations that have not traditionally maintained a presence in Russia. Part IV.C surveys the potential for perverse application of the law, drawing on actual scenarios that suggest the law may exacerbate the very tensions it seeks to quell. Part V provides a brief conclusion.

II. FACTORS MOTIVATING ANTI-EXTREMISM LEGISLATION

Fragmentation and integration of the Soviet Union into the world community has created new ethnic, political, and social tensions.⁵ The increasing prevalence of racism, nationalism, and concerns about dangerous religious “sects” and “cults” has contributed to a perceived need for additional legislation to combat these phenomena.

It is no coincidence that the Extremism Law was adopted shortly after the widespread appearance of booby-trapped anti-Semitic signs.⁶ The increasing ranks of nationalist, fascist, and other intolerant groups that attribute Russia’s present economic and social

5. See generally Alexander Agadjanian, *Revising Pandora’s Gifts: Religious and National Identity in the Post-Soviet Societal Fabric*, 53 EUR.-ASIA STUD. 473 (2001); Tamara J. Resler, *Dilemmas of Democratization: Safeguarding Minorities in Russia, Ukraine and Lithuania*, 49 EUR.-ASIA STUD. 89, 92–97, 103 (1997); Glenn Chafetz, *The Struggle for a National Identity in Post-Soviet Russia*, 111 POL. SCI. Q. 661, 674–79 (Winter 1996–1997).

6. See *supra* notes 1, 2. For accounts of anti-Semitic acts in Russia, see Polina Tomashevsky, Note, *Russian Jewry: The History of Survival*, 7 BUFF. HUM. RTS. L. REV. 165 (2001) and William M. Cohen, *The Escalation of Anti-Semitic Violence in Russia*, Union of Councils for Jews in the Former Soviet Union (Aug. 15, 1999), at <http://www.fsmonitor.com/stories/081599cohenrp.shtml>.

ills to ethnic and national minorities became a primary motivation behind anti-extremism legislation.⁷ Draft anti-extremism legislation gained additional momentum following the June 2002 soccer riots in Moscow that ended in massive disorder, vandalism of cars and Japanese restaurants, and racial violence, including assaults on five Japanese students.⁸

Russia's Muslims have also become targets of persecution following increased military efforts in Chechnya, the September 11, 2001, terrorist attacks on the United States, and the October 2002 Moscow theater siege.⁹ There is a growing tendency, even within the Muslim community, to marginalize minority Muslim groups as extremists and terrorists.¹⁰ Although Russia has traditionally maintained good relations with Islam, the increased exposure of the predominately Muslim, former Soviet states of Central Asia to Middle-Eastern fundamentalist influences has created new concerns in Russian national security policy.¹¹ These increased tensions represent one motivation for the Extremism Law.

Legislators have also identified religious organizations as particularly prone to exhibit extremist characteristics.¹² The antagonism of Russian legislators toward foreign religious organizations follows in part from Russia's slow acceptance of concepts underlying Western religious pluralism.¹³ The appearance of financially-robust foreign religious groups during the liberalized period of the early 1990s contributed to embittered perceptions by

7. See Viktor Khamrayev, *Response to Skinheads: Vladimir Putin Submits Bill on Combating Extremism*, VREMYA NOVOSTEI, May 7, 2002, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, June 5, 2002, at 9.

8. Stulov & Ponomaryov, *supra* note 3, at 6; see also Aleksandr Arkhangelsky et al., *Defeat: Moscow Police Lose to Soccer Vandals*, IZVESTIYA, June 11, 2002, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, July 10, 2002, at 6; Viktor Paukov, *A New Kind of Riot: Law Enforcement Agencies Weren't Prepared for It*, VREMYA NOVOSTEI, June 11, 2002, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, July 10, 2002, at 7.

9. Susan B. Glasser, *Russia's Muslims Become Targets; Fear, Insecurity Rise Since Theater Siege; "We Are the New Jews," Imam Says*, WASH. POST, Dec. 23, 2002, at A12, 2002 WL 104308528.

10. Igor' Rotar', *Under the Green Banner: Islamic Radicals in Russia and the Former Soviet Union*, 30 RELIGION, ST. & SOC'Y 89, 95-96 (2002).

11. See generally Flemming Splidsboel-Hansen, *The Official Russian Concept of Contemporary Central Asian Islam: The Security Dimension*, 49 EUR.-ASIA STUD. 1501 (1997).

12. See Extremism Law, *supra* note 4, art. 1.

13. LYNN R. ELIASON, PERESTROIKA OF THE RUSSIAN SOUL: RELIGIOUS RENAISSANCE IN THE SOVIET UNION 51 (1991) (noting tsarist and Soviet Russia were "untouched" by the Renaissance, Reformation, and Enlightenment).

the financially-ailing Russian Orthodox Church and its followers that foreign groups were “purchasing souls” at the expense of Russian culture.¹⁴ Consequently, many perceive religious pluralism as a betrayal of “Russian-ness” and the Orthodox Church’s “spiritual rights to Russia.”¹⁵

On a more general level, there are widespread perceptions that foreign religious organizations and new religious movements defraud the spiritually feeble, brainwash vulnerable youth, weaken family affections, discourage fulfillment of citizens’ responsibilities, and, in some cases, even use religion as a cover for espionage. Most of these perceptions are remnants of deeply engrained stereotypes that stigmatize unfamiliar religious traditions as “cults” and “sects.”¹⁶ The understandable response of closely monitoring socially dangerous groups has unfortunately led to broad restrictions that tend to adversely affect many legitimate religious organizations that are not traditionally Russian.

Nationalist populist movements, ethnic minorities, and nontraditional religious organizations all represent potential victims as well as alleged culprits of “extremism.” Although extremism is a blurry concept, many would agree with a definition forwarded by one Russian scholar: “Extremism, as it is well known, is characterized in the most general sense by adherence to extreme views and actions

14. Ralph Della Cava, *Transnational Religions: The Roman Catholic Church in Brazil & the Orthodox Church in Russia*, 62 SOC. RELIGION 535 (2001), 2001 WL 20525099 (emphasizing the Orthodox Church’s financial inability to compete with foreign coffers).

15. Edwin Bacon, *Church and State in Contemporary Russia: Conflicting Discourses*, in RUSSIA AFTER COMMUNISM 113–14 (Rick Fawn & Stephen White eds., 2002); see also Harold J. Berman, *Religious Rights in Russia at a Time of Tumultuous Transition: A Historical Theory*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 303 (Johan D. van der Vyver & John Witte, Jr. eds., 1996) (discussing Orthodox notions that Russia needs time to recover spiritually before foreign religions descend on it); ELIASON, *supra* note 13, at 68 (noting perceptions of “conspiratorial potential” of foreign religions to “reap souls” at the expense of Russian culture).

16. See, e.g., *Duma Appeal on Dangerous Religious Sects*, Religion & Law Research Consortium, Dec. 15, 1996, at <http://www.religlaw.org/template.php3?id=70>. For a discussion on “cults” or “sects” in Russia, see Yana Afanasenko & Matvei Pismanik, ‘Tserkov’—*Sem’ya Detei Bozhiikh: An Indigenous Russian Neoreligious Phenomenon*, 30 RELIGION, ST. & SOC’Y 277 (2002) and Oxana Antic, *The Spread of Modern Cults in the USSR*, in RELIGIOUS POLICY IN THE SOVIET UNION 252–54 (Sabrina Petra Ramet ed., 1993). See generally Eileen Barker, *Why the Cults? New Religious Movements and Freedom of Religion or Belief*, in FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK (Tore Lindholm et al. eds., 2001).

which radically diverge from social norms and rules.”¹⁷ More specifically, recent events have given rise to notions of “religious-political extremism,” which entails “religiously motivated or religiously camouflaged activity, directed at the forceful alteration of the political system or the forceful seizure of power, violation of the sovereignty and territorial integrity of the state, or incitement of religious animosity and hate with these goals in mind.”¹⁸

Russia, of course, is not alone in its struggle against extremist groups.¹⁹ Nor is Russia alone in responding to terrorism by enacting legislation that has drawn criticism from proponents of freedom of association and expression. In discussing Russia’s Extremism Law, it is important to note that many criticisms contained in this analysis also apply to other countries. Russia’s anti-extremism law provides a timely reminder of the complexities of regulating speech, association, and religion, where restrictions can easily transform good intentions into a proverbial “two-edged sword.”²⁰

III. THE LAW “ON COUNTERACTING EXTREMIST ACTIVITY”

The preamble to the Extremism Law declares the law’s purpose to be the “protection of the rights and freedoms of persons and citizens, the principles of the constitutional system, and the integrity and security of the Russian Federation.”²¹ To accomplish these goals, the Extremism Law codifies an official definition of “extremism,”

17. Abdyl Abdulgaganovich Nurullaev, *Religiozno-politicheskiy ekstremizm: ponyatiye, sushchnost', puti preoldoleniye* [*Religious-political extremism: understanding, essence, methods of negotiation*], in DESYAT' LYET PO PUTI SVOBODI SOVESTI [TEN YEARS ON THE PATH OF FREEDOM OF CONSCIENCE] 58 (2002). All translations in this Comment are the author’s unless otherwise noted. In the translations of laws provided by Garant or Lexis-Nexis, the author has taken the liberty of modifying the language where necessary to comport with standard English usage.

18. *Id.* at 59.

19. See generally JOHN GEORGE & LAIRD WILCOX, AMERICAN EXTREMISTS: MILITIAS, SUPREMACISTS, KLANSMEN, COMMUNISTS, & OTHERS 15 (1996) (“*Extremism*, broadly defined, existed in America virtually from the moment it was inhabited by humans.”); HANS-GEORG BETZ, RADICAL RIGHT-WING POPULISM IN WESTERN EUROPE 4 (1994) (“Recent electoral trends illustrate the dramatic rise, diffusion, and expansion of radical right-wing populist support in Western Europe.”); RAND C. LEWIS, A NAZI LEGACY: RIGHT-WING EXTREMISM IN POSTWAR GERMANY 6 (1991) (defining German right-wing extremism to include “those individuals who use[] illegal means of activity, such as criminal actions, and espouse[] the strong right-wing nationalist ideology”).

20. See *infra* Parts IV.A, C.

21. Extremism Law, *supra* note 4, pmb1.

extends several provisions of the Criminal Code to reach the preparatory stages of extremist activities and organizations whose members make extremist statements, and requires local and regional authorities to prevent and suppress the activities of extremist groups.

A. Article-by-Article Overview

Articles 1 through 5 of the Extremism Law deal with the general framework of the law and its goals. Article 1 proposes a definition of extremism that focuses on four areas: (1) activities of social, religious, or other organizations; (2) promotion of Nazi, or Nazi-like paraphernalia; (3) public incitement to participation in extremist activities; and (4) financing the previously mentioned activities.²²

Article 2 affirms the principles of observance and protection of the rights of citizens and legal organizations, the law, openness, national security, prevention of extremist activity, cooperation with

22. Because the most significant contribution of the Extremism Law is the codified definition of extremism, upon which all other provisions of the law depend, the full text definition of "Extremist Activity" as defined by Article 1, is available here:

1. Activity of social and religious associations, or other organizations, whether through the mass media or by physical persons' premeditated organization, preparation and execution of actions directed at:

- forceful change of the fundamental constitutional structure and destruction of the integrity of the Russian Federation;
- undermining the security of the Russian Federation;
- seizure or appropriation of commanding authority;
- creation of illegal armed forces;
- carrying out terrorist activity;
- incitement of social, racial, nationalistic or religious animosity;
- debasement of national dignity;
- creation of massive disorder, hooligan activities, and acts of vandalism motivated by ideological, political, racial, nationalistic or religious hatred or hostility, or otherwise motivated by hatred or hostility toward a social group;
- propaganda of exclusivity, advocating either superiority or inferiority of citizens on the basis of religion, social, racial, national, religious or linguistic affiliation;

2. Propaganda and public demonstration of Nazi paraphernalia or symbolism, or paraphernalia or symbolism similar enough to be confused with Nazi paraphernalia or symbolism;

3. Public summons to, or commission of, the above-indicated activities;

4. Financing or encouraging the above-indicated actions, including providing the means for accomplishment of such activities through financial means, real estate, educational, polygraphic or material or technical resources, telephone, fax or other means of communication, informational services, or other types of material or technical resources.

Extremism Law, *supra* note 4, art. 1.

social and religious organizations and citizens, and punishment for commission of extremist acts.²³ Based on these principles, Article 3 states that counteraction of extremist activity will occur through adoption of preventive measures and disclosure, prevention, and suppression of extremist activity of public and religious associations.²⁴

Article 4 subjects federal and local bodies of the Russian Federation to the present law.²⁵ Article 5 requires the bodies to take preventive measures, including educational and propagandistic measures, aimed at counteracting extremism.²⁶

Articles 6 through 8 deal with the issuance of official warning letters concerning the “inadmissibility of extremist activity” to organizations or persons found to be in violation of the law. Article 6 authorizes the Procurator-General of the Russian Federation or his subordinate to issue a written warning to the head or leader of any organization based on confirmed information regarding an organization’s preparation to conduct “wrongful acts . . . containing signs of extremist activity,” even if such acts lack sufficient grounds for criminal liability.²⁷ The letter will indicate the impermissibility of the activity and the grounds for issuance of the warning, as well as requirements for correcting the violations.²⁸ The warning may be appealed in a court of law, but if the conditions and requirements contained in the warning letter are not fulfilled, the recipient of the letter may face administrative and/or criminal liability.²⁹

Article 7 establishes a two-month deadline for removal of the violations indicated in a warning letter.³⁰ If an organization appeals the warning letter and a court finds the activities are legal, the organization may resume its activities. However, if the organization does not correct the violations indicated in the warning letter within the allotted time, or if during twelve months from the issuance of the warning “new facts [are] revealed testifying to signs of extremism in their activities,” the organization will be subject to liquidation and

23. *Id.* art. 2.

24. *Id.* art. 3.

25. *Id.* art. 4.

26. *Id.* art. 5.

27. *Id.* art. 6.

28. *Id.*

29. *Id.*

30. *Id.* art. 7.

its activities will be banned.³¹ Article 8 applies similar procedures to mass media, threatening termination for failure to correct violations noted in the warning letter.³²

Articles 9 and 10 deal with liability, liquidation, and suspension of social and religious organizations. Article 9 allows liquidation of social and religious organizations in cases involving “violations of the rights and freedoms of man and citizen, infliction of damage to the personality and health of individuals, the environment, public order, public security, property and economic interests of natural and juridical persons, society and the state, or that poses a real threat of inflicting such damage.”³³ Groups without legal entity status may be banned by court decision.³⁴ Article 10 allows the state to suspend the activities of a social or religious organization while liquidation proceedings on the decision to ban the organization are still pending.³⁵

Articles 11 through 13 deal with the dissemination of extremist materials through the mass media, public communication networks, and publication and other means of distribution. Article 11 allows the government to shut down a mass media outlet through court order in cases of extremist activity on the same grounds as indicated in Article 9, where the stated harm is caused through extremist activity utilizing the press, television, or radio broadcasting mediums.³⁶ Additionally, Article 11 allows a court of law to suspend the sale or circulation of printed editions or radio or video recordings of these unauthorized uses of media, as well as to seize unsold publications or productions containing extremist material from inventories and wholesale and retail outlets.³⁷

Article 12 bans the use of public communication networks to conduct extremist activity.³⁸ Article 13 prohibits the spread of printed, audio, video, or other materials containing any of the characteristics of extremism, including official materials of extremist organizations or material authored by persons previously convicted

31. *Id.*

32. *Id.* art. 8. Similarly, this warning may be appealed in a court of law. *Id.*

33. *Id.* art. 9.

34. *Id.*

35. *Id.* art. 10.

36. *Id.* art. 11.

37. *Id.*

38. *Id.* art. 12.

in accordance with “international legal acts for crimes against peace and humanity.”³⁹ An organization that publishes extremist materials twice within twelve months will be deprived of publishing rights.⁴⁰ Article 13 also establishes a federal list of extremist materials that may not be distributed in the Russian Federation and establishes administrative or criminal liability for persons who manufacture or store such materials.⁴¹

Articles 14 and 15 establish liability for government officials and other natural persons. Article 14 imposes liability on a government official or employee for statements suggesting “the need for admissibility, possibility, or desirability of extremist activity made in public or in the discharge of their official duties, or with an indication of the post held.”⁴² This article also imposes liability for an official’s failure to adopt measures within his or her sphere of jurisdiction to suppress extremist activity.⁴³ Article 15 imposes administrative and criminal liability on all persons who conduct extremist activity and requires public or religious organizations to publicly denounce extremist statements made by representatives of the organization within five days in order to avoid imputed respondeat superior liability. Article 15 also restricts people who have participated in extremist activities from participation in government or military service and from working in educational institutions or detective or security agencies.⁴⁴

Article 16 prohibits extremist activity during meetings, rallies, demonstrations, street processions, and pickets. Organizers of large events are responsible to see that extremist activity does not occur during those events and to suppress in a timely manner extremist activities that may arise.⁴⁵ Article 17 applies all the foregoing provisions to public, religious, and other non-profit organizations of foreign states by banning any such organization whose activities are determined to be extremist. The ban entails cancellation of

39. *Id.* art. 13.

40. *Id.* para. 3.

41. *Id.*

42. *Id.* art. 14.

43. *Id.*

44. *Id.* art. 15.

45. *Id.* art. 16.

registration and prohibition on creating successor organizations in any form.⁴⁶

B. Unique Provisions of the Extremism Law

Although many of the provisions of the Extremism Law restate provisions of existing laws, consolidation of scattered legal provisions into a single law that addresses an increasingly prevalent need serves a valuable purpose and facilitates application and enforcement. In making this consolidation, these changes actually expand the scope of behavior characterized as extremist.

Specifically, the Extremism Law codifies an official definition of extremism, expands liability for subversive activities and actions that incite racial tensions to include “planning, organizing, and preparing,”⁴⁷ holds organizations accountable for extremist statements of their members, requires local and regional government officials to prevent extremism, empowers local and federal officials to suspend organizations without a court order, and amends the Criminal Code to prohibit organization of, and participation in, extremist organizations.

1. Codified definition of extremism

The provisions included in this definition are unique only to the extent that Article 1 categorizes these activities within the formal definition of “extremism.”⁴⁸ Although the practical effect of this formalization is unclear,⁴⁹ a quick perusal of existing law reveals that these activities are already prohibited by the Constitution, the Criminal Code, and other laws governing applicable forms of non-commercial association.⁵⁰ In most cases, legislation accompanying the Extremism Law replaces the language of other laws—laws that previously dealt with behaviors now characterized as extremism—with references to the Extremism Law. For example, Article 16 of

46. *Id.* art. 17.

47. *Id.* art. 1.

48. See *supra* note 22 for the full text of the Extremism Law’s definition of “extremism.”

49. See *infra* Parts IV.A, C.

50. See *infra* note 81.

the law On Public Associations (“Association Law”),⁵¹ Article 14 of the law On Freedom of Conscience and Religious Associations (“Religion Law”),⁵² Article 9 of the law On Political Parties,⁵³ and Article 4 of the law On Mass Media⁵⁴ all previously prohibited organization of public and religious organizations that advocate forceful alteration of the constitutional order of the Russian Federation, and many of the other of the actions included in Article 1 of the Extremism Law. Although amendments to existing legislation enacted in connection with the Extremism Law appear to merely substitute the language describing extremist behavior with reference to the Extremism Law, thereby consolidating and streamlining Russian law, these changes actually do much more.

For example, the Association Law forbids the *creation* of public associations whose “goals are aimed at a forcible violation of the foundations of the constitutional system and a violation of the

51. On Public Associations, Fed. Law No. 82–FZ (May 19, 1995), *Sobr. Zakonod. RF*, 1995, No. 21, Item 1930, LEXIS, Int’l Law Libr., RFLAW File (GARANT 10064186) [hereinafter Association Law], *amended by* On the Introduction of Amendments and Addenda into Legislative Acts of the Russian Federation in Connection with Enactment of the Federal Law On Counteracting Extremist Activity, Fed. Law No. 112–FZ (July 25, 2002), *Sobr. Zakonod. RF*, 2002, No. 30, Item 3029, LEXIS, Int’l Law Libr., RFLAW File (GARANT 12027576) [hereinafter Amendments and Addenda]. Part 4 of the Amendments and Addenda adds, “A public association may be liquidated and the activity of a public association, which is not a legal entity, may also be prohibited in the order and on the grounds, stipulated in the Federal Law On Counteracting Extremist Activity.”

52. On Freedom of Conscience and Religious Associations, Fed. Law 125–FZ (Sept. 26, 1997), *Ross. Gazeta*, Oct. 1, 1997, LEXIS, Int’l Law Libr., RFLAW File (GARANT 71640) [hereinafter Religion Law], *amended by* Amendments and Addenda, *supra* note 51, pt. 2, para. 1 (“The activity of a religious association may be suspended, a religious organization may be liquidated and the activity of a religious association, which is not a religious organization, may be prohibited in the order and on the grounds, envisaged in the Federal Law On Counteracting Extremist Activity.”).

53. On Political Parties, Fed. Law No. 95–FZ (July 11, 2001), *Sobr. Zakonod. RF*, 2001, No. 29, Item 2950, LEXIS, Int’l Law Libr., RFLAW File (GARANT 83523) [hereinafter On Political Parties], *amended by* Amendments and Addenda, *supra* note 51, pt. 15 (“A political party may also be liquidated in the order and on the grounds, envisaged in the Federal Law On Counteracting Extremist Activity.”).

54. On Mass Media, RF Law No. 2124–1 (Dec. 27, 1991), *Ross. Gazeta*, Feb. 8, 1992, LEXIS, Int’l Law Libr., RFLAW File (GARANT 10064247) [hereinafter Media Law], *amended by* Amendments and Addenda, *supra* note 51, pt. 3 (“The activity of a mass medium may also be stopped in the order and on the grounds, stipulated in the Federal Law On Counteracting Extremist Activity.”).

integrity of the Russian Federation.”⁵⁵ This provision focuses on the goals of the organization at the time of its creation. In addition to prohibiting these actions in the activity and goals of an organization, the Extremism Law additionally includes *planning, organizing, and preparing* to perform these acts in its definition of extremist activity.⁵⁶

Additionally, the prohibition of “propaganda of exclusion, advocating either supremacy or inferiority of citizens on the basis of religion, social, racial, national, religious or linguistic affiliation” is a substantive expansion of grounds for liquidation or denial of registration.⁵⁷ For example, Article 282 of the Criminal Code prohibits “[a]ctions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and also propaganda of the exceptionality, superiority, or inferiority of individuals by reason of their attitude to religion, national, or racial affiliation.”⁵⁸ Article 282 only applies to public and religious associations if the prohibited actions are committed in public or with the use of mass media,⁵⁹ whereas the Extremism Law does not limit its prohibition to these circumstances.⁶⁰

This expansion is problematic, especially with respect to religious organizations, because many religions distinguish themselves by claiming exclusive truth based on some superior doctrinal basis. A religious group may face extremism accusations based on private doctrinal discussions during regular worship services.⁶¹

55. Association Law, *supra* note 51, art. 16, *amended by* Amendments and Addenda, *supra* note 51, pt. 4; *cf.* Religion Law, *supra* note 52, art. 14; On Political Parties, *supra* note 53, art. 9; Media Law, *supra* note 54, art. 4.

56. Extremism Law, *supra* note 4, art. 1.

57. *Id.*

58. Criminal Code of the Russian Federation, No. 63-FZ (enacted June 13, 1996, effective Jan. 1, 1997), *Sobr. Zakonod. RF*, 1996, No. 25, Item 2954, LEXIS, Int'l Law Libr., RFLAW File (GARANT 10008000) [hereinafter UK RF]. Article 282, serving as the code's key provision on hate crimes, further increases the term of punishment from “two to four years” to “three to five years” when “committed: (1) with the use of violence or with the threat of its use, (2) by a person through his official position, [or] (3) by an organized group.” *Id.* art 282.

59. *Id.*

60. *Compare* Extremism Law art. 1, *supra* note 22, *with supra* notes 51–54 (establishing extremist activity as a ground for liquidation).

61. *See infra* Part IV.B.3.

2. Expansion of inchoate liability

The Extremism Law empowers the Procurator-General to issue a warning to an organization if he or she perceives characteristics of extremism in the organization's activities, even "in the absence of grounds for criminal liability."⁶² If the organization does not comply with the requirements of the warning, the Procurator-General may then file suit against the organization.⁶³

It is not clear whether "in the absence of grounds for criminal liability" refers to a missing element of *corpus delicti* or merely to inadequate evidentiary grounds for establishing probable cause. On the one hand, this provision deserves credit for providing a creative approach to a difficult problem. While people and organizations are potentially liable for extremism, a concept not easily defined, the law provides notice, opportunity to comply, and judicial review of the warning.

On the other hand, this provision may be subject to abuse by low-level officials, who may use the warning letter to harass or coax organizations into compliance with their demands based on the threat of further proceedings. Additionally, there is some ambiguity in the translation: while the English version states that failure to comply with the warning letter may be grounds for holding the organization or individual criminally liable, the Russian version does not explicitly mention *criminal* liability in case of failure to comply with the warning.

Lack of clarity on this provision may serve as a loophole for local prosecutors to threaten criminal proceedings against persons or organizations which have not technically committed criminal offenses. The possible use of intimidation tactics by regional authorities may be sufficient to control extremist tendencies but might also be used to burden legitimate organizations which do not have the means to challenge state actions in court.

62. Extremism Law, *supra* note 4, art. 6, para. 1. The warning must be in writing and indicate concrete grounds for the warning of inadmissibility of extremist activity and committed breaches. *Id.* art. 7. The organization has two months from issuance of the warning to correct the violations. *Id.* The warning to a social or religious organization may also be issued by federal executive justice bodies or regional justice agencies. *Id.* In all cases, the warning can be appealed in court. *See id.* art. 6, para. 3; *id.* art. 7, para. 3. Of course, the justice ministry will institute criminal proceedings without issuing a warning if the activities of the organization already rise to an established level of criminality.

63. *Id.* art. 6, para. 2.

3. Expansion of vicarious liability

The Extremism Law establishes several situations in which vicarious liability may be imposed on organizations for the extremist activities of other persons. Social or religious organizations may be held liable for extremist statements or activities of leaders or members of their governing bodies and subject to a finding that the organization is an extremist organization if the organization does not officially denounce the extremist statement or activity within five days.⁶⁴ Similarly, organizers of large public events may be held liable for failing to ensure the event does not attract extremists, invoking the use of symbols or attributes or spread of extremist materials, or failing to timely suppress extremism.⁶⁵

The provisions relating to statements made by leaders or representatives of an organization represent a beneficial approach to uprooting extremist tendencies in the accused organizations because the warning puts the organization on notice that the state has perceived extremist tendencies in the actions of its members or representatives and allows them opportunities to correct the alleged misconduct within five days. If the organization disagrees with the allegation it may choose to adopt the statement of its representative by default and then appeal the warning in court.⁶⁶ Similarly, the potential liability of event organizers will put them on notice that they must take proper security precautions to prevent outbursts of violence or other dangerous situations. This will encourage organizations and organizers of public events to be more conscious of their affiliations and of the probable consequences of their activities.

4. Fighting extremism on the local level

The Extremism Law requires local authorities to participate in the battle against extremism by requiring them to take preventive measures. Articles 4 and 5 call on all governmental organs of the Russian Federation to become involved in the prevention and suppression of extremism. Article 4 reads, "The federal bodies of state power, the bodies of state power of the subjects of the Russian

64. *Id.* art. 15.

65. *Id.* art. 16.

66. *Id.* art. 6.

Federation, and the local self-government bodies shall take part in the counteraction of the extremist activity within their jurisdiction.”⁶⁷ Article 5 requires these same bodies to take preventive measures including “educational and propagandistic measures aimed at the prevention of extremist activity.”⁶⁸

These provisions serve as a potent reminder for local authorities to be more vigilant in reviewing registration applications. Additionally, the law establishes liability for government officials for “non-adoption . . . within [their] sphere of jurisdiction of measures to suppress extremist activity.”⁶⁹ The provision imposing liability on government officials for inaction has the potential to promote better efforts on the local level where laws are often unenforced.⁷⁰ However, in the absence of federal guidelines and accountability, this may produce disparate regional outcomes driven by local politics.⁷¹

5. Suspension of organizational rights

While judicial proceedings for liquidation or determination that the organization is extremist are pending, the government organ that issued the warning and initiated liquidation proceedings may suspend the activities of the organization on the basis of a statement by the Procurator-General or his subordinate without a judicial order.⁷² Previously, only a court could issue a final decision restricting the rights conferred by legal entity status.⁷³ Although suspension may be appealed in court, the presumption of valid suspension based on the prosecutor’s discretion represents a significant expansion of existing law.

Similarly, publication or distribution of extremist materials may result in suspension of an organization’s publishing rights. Extremist materials include specific references to works that are by the law’s

67. *Id.* art. 4.

68. *Id.* art. 5.

69. *Id.* art. 14.

70. See *infra* Part IV.A for a discussion of arbitrary actions and refusals of local administrators to enforce the Extremism Law against groups with whom they may have beneficial affiliations.

71. See *infra* Part IV.C for hypothetical and actual examples of paradoxical outcomes arising from the broad discretion provided to local leaders under the Extremism Law.

72. Extremism Law, *supra* note 4, art. 10, paras. 3, 4.

73. See Association Law, *supra* note 51, art. 44; Religion Law, *supra* note 52, art. 14; On Political Parties, *supra* note 53, art. 39.

definition extremist, such as materials from the National Socialist Workers' Party of Germany or the Fascist Party of Italy, or other works which call for the commission of extremist activity, justify national or racial supremacy, or encourage the commission of crimes directed at social, ethnic, racial, or religious groups.⁷⁴

Once a court declares that certain materials are extremist in nature, those materials will be included in a federal list that will be published periodically in the media.⁷⁵ Organizations whose materials are included in the list of extremist materials twice during the course of twelve months will lose the right of conducting publishing activities.⁷⁶

6. Amendments to the Criminal Code

The Extremism Law adds two new articles to the Criminal Code.⁷⁷ Articles 282.1 ("Organizing an Extremist Community") and 282.2 ("Organizing the Activity of an Extremist Community") make the creation of, or participation in, extremist organizations a criminally punishable offense.⁷⁸ Article 1 of the Extremism Law defines an extremist organization as one for which a court has issued a decision on liquidation because of the organization's involvement in extremist activity.⁷⁹ Persons who are affiliated with an organization found to be extremist by a court of law may therefore be found criminally liable by mere association with the organization.

IV. ANALYSIS

The definition of extremist activity attempted in Article 1 of the Extremism Law, although detailed and ostensibly well intentioned, remains somewhat vague and unpredictable in its foreseeable application. The Extremism Law significantly expands the police power of the state and creates opportunities for potentially mischievous application, especially on the local level where enforcement tends to be arbitrary and self-serving, a fact that suggests a strong potential for negative impact on legitimate

74. See Extremism Law, *supra* note 4, art. 1; *supra* note 22 (full text of Article 1).

75. Extremism Law, *supra* note 4, art. 13.

76. *Id.*

77. See Amendments and Addenda, *supra* note 51, pt. 9.

78. *Id.*

79. *Id.*

expression, association, and religious practice. Prior to discussing this impact, this section addresses the problem of selective enforcement.

A. Adequacy of Existing Laws and Inadequate Enforcement

Critics of the Extremism Law note that the problem of proliferating acts of ethnic and nationalist violence lies in the lack of enforcement, rather than in the inadequacy of existing laws.⁸⁰ The Criminal Code and other laws address the concerns and dangers outlined in the Extremism Law's definition of extremism.⁸¹ The Criminal Code also imposes

80. See, e.g., Mikhail Vinogradov, *State Duma Abolishes Skinheads: Deputies Pass Anti-Extremist Law*, IZVESTIA, June 7, 2002, at 1, reprinted in CURRENT DIG. POST-SOVIET PRESS, July 3, 2002, at 1–2 (“[T]he law isn’t as necessary as it seems—its main provisions are already included in the Criminal Code and the Code of Criminal Procedure. Granted, for some reason they aren’t being enforced.”); *Extremism: Prophylaxis Best Defense*, MOSCOW TIMES, June 6, 2002, at 8 (“[A] law on extremism is not required to fight [hate crimes]; existing laws are sufficient. The key is the political will to enforce them.”).

81. Compare each of the following elements from the Extremism Law's definition of “extremism,” (set forth *supra* note 22) with provisions of existing legislation:

- “Forceful change of the fundamental constitutional structure.” Cf. KONST. RF art. 13(5) (1993) (“The creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system . . . shall be prohibited.”); UK RF, *supra* note 58, art. 278 (“Actions aimed at the . . . forcible change of the constitutional system of the Russian Federation, shall be punishable by deprivation of liberty for a term of 12 to 20 years.”); *id.* art. 279 (“Organization of an armed rebellion or active participation in it for the purpose of overthrowing or forcibly changing the constitutional system of the Russian Federation . . . shall be punishable by deprivation of liberty years.”).

- “Undermining the security of the Russian Federation.” Cf. KONST. RF art. 13(5) (1993) (“[U]ndermining [the] security [of the Russian Federation] . . . shall be prohibited.”); UK RF, *supra* note 58, art. 275 (“High Treason”); *id.* art. 276 (“Espionage”); Code of Administrative Offenses of the Russian Federation, Fed. Law No. 195–FZ (Dec. 30, 2001) (amended Apr. 25, 2002), *Sobr. Zakonod. RF*, 2002, No. 1, Part I, Item 1, art. 17.13, LEXIS, Int’l Law Libr., RFLAW File (GARANT 12025267) [hereinafter KAP RF] (“Disclosing Information about Security Measures”).

- “Seizure or appropriation of commanding authority.” Cf. KONST. RF art. 3(4) (1993) (“[N]o one may usurp power in the Russian Federation. Seizure of power or usurping of state authority shall be prosecuted by federal law.”); UK RF, *supra* note 58, art. 278 (“Forcible Seizure of Power or Forcible Retention of Power”).

- “Creation of illegal armed forces.” Cf. KONST. RF art. 13(5) (1993) (“[S]etting up armed units . . . shall be prohibited.”); UK RF, *supra* note 58, art. 205 (“Terrorism . . . committed: . . . with the use of firearms shall be punishable by deprivation of liberty for a term of eight to fifteen years.”); *id.* art. 205.1 (“[A]rming or training of a person with the aim of perpetrating the said crimes . . . shall be punishable by deprivation of freedom for a term of four to eight years.”); *id.* art. 279 (“Organization of an armed rebellion or active participation in it for the purpose of overthrowing or forcibly changing the constitutional system of the Russian Federation, or of breaching the territorial integrity of the Russian Federation, shall be punishable by deprivation of liberty years.”).

- “Carrying out terrorist activity.” *Cf.* UK RF, *supra* note 58, art. 205 (“Terrorism”); On the Fight Against Terrorism, Fed. Law No. 130–FZ (July 25, 1998), *Sobr. Zokonod. RF*, 1998, art. 3808, http://www.fas.org/irp/world/russia/docs/law_980725.htm [hereinafter *Terrorism Law*].
- “Incitement of social, racial, nationalistic or religious animosity.” *Cf.* KONST. RF art. 13(5) (1993) (“The creation and activities of public associations . . . aimed at . . . instigating social, racial, national and religious strife shall be prohibited.”); UK RF, *supra* note 58, art. 148 (“Obstruction of the Exercise of the Right of Liberty of Conscience and Religious Liberty”); *id.* art. 239 (“Organization of an Association Infringing upon the Liberties and Rights of Individuals”); *id.* art. 282 (“Incitement of National, Racial, or Religious Enmity”).
- “Debasement of national dignity.” *Cf.* KONST. RF art. 13(5) (1993) (“[V]iolating the integrity of the Russian Federation . . . shall be prohibited.”); *id.* art. 21(1) (“Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation.”); UK RF, *supra* note 58, art. 110 (“Incitement to [s]uicide . . . [by means of] systematic denigration of the human dignity of the victim”); *id.* art. 130 (“Insult”); *id.* art. 282(1) (“Actions aimed at . . . abasement of human dignity”).
- “Creation of massive disorder, hooligan activities, and acts of vandalism motivated by ideological, political, racial, nationalistic or religious hatred or hostility, or otherwise motivated by hatred or hostility directly in relation to a social group.” *Cf.* UK RF, *supra* note 58, art. 149 (“Obstruction of the Holding of a Meeting, Assembly, Demonstration, Procession, or Picketing, or of Participation in the Aforesaid”); *id.* art. 213 (“Hooliganism”); *id.* art. 214 (“Vandalism”); KAP RF, *supra*, art. 20.1 (“Disorderly Conduct”); *id.* art. 20.2 (“Violating Established Procedure[s] for Arranging or Conducting a Meeting, Rally, Demonstration, Procession or Picket”).
- “Propaganda of exclusivity, advocating either superiority or inferiority of citizens on the basis of religion, social, racial, national, religious or linguistic affiliation.” *Cf.* KONST. RF art. 29(2) (1993) (“The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.”); UK RF, *supra* note 58, art. 282 (“Incitement of National, Racial, or Religious Enmity”).
- “Propaganda and public demonstration of Nazi paraphernalia.” *Cf.* KAP RF, *supra*, art. 20.3 (“Displaying Fascist attributes and symbolism for the purpose of popularization of such attributes and symbolism shall entail the imposition of an administrative fine in the amount of from five to ten times the minimum amount of labour wages by confiscation of the Fascist attributes and symbols, or an administrative arrest for a term of up to fifteen days accompanied by confiscation of the Fascist attributes and symbols.”).
- “Public summons to, or commission of, the above-indicated activities” *Cf.* UK RF, *supra* note 58, art. 205.1 (“[P]ersuading a person to participate in a terrorist organization, the arming or training of a person with the aim of perpetrating the said crimes . . . shall be punishable by deprivation of freedom for a term of four to eight years.”); *id.* art. 280 (“Public Appeals for a Forcible Change of the Constitutional System of the Russian Federation”).
- “Financing or . . . providing the means for accomplishment of such activities.” *Cf.* UK RF, *supra* note 58, art. 205.1 (“[F]inancing of an act of terrorism or a terrorist organization shall be punishable by deprivation of freedom for a term of four to eight years.”); On Countering the Legalization of Earnings Received in an Illegal Way (Money Laundering), Fed. Law No. 115–FZ, art. 6 (Aug. 7, 2001), *Ross. Gazeta*, Aug. 9, 2001, LEXIS, Int’l Law Libr., RFLAW File (GARANT 12023862) [hereinafter *On Money Laundering*] (subjecting financial transactions involving large volumes to “compulsory control”).

aggravated liability for crimes committed by groups and organizations,⁸² and higher sentences for crimes motivated by racial, ethnic, or religious hatred.⁸³

Notwithstanding existing laws that allow prosecution of the actions targeted by the Extremism Law, there are foreseeable benefits from the consolidation of scattered provisions into one law, such as ease of application and greater attention to grounds for regulating extremist behavior. It may also simply provide a greater psychological impulse to regulate more strictly social, political, and religious organizations.

These benefits, however, may not overcome the problem of selective and seemingly arbitrary enforcement. Ironically, while the rise in neo-Nazi violence served as the most visible justification for the adoption of the Extremism Law, law enforcement appears to have partnered up with members of such nationalist movements in certain instances in order to fight other groups which are arguably extremists.

One explanation for lax enforcement of existing laws in relation to ultra-nationalist groups appears to be that law-enforcement authorities benefit from their antics. When a skinhead assaulted a black U.S. Marine in 1999, it took international publicity of the case to prompt an investigation, an arrest, and legal action against the

82. See UK RF, *supra* note 58, art. 205(2) (“Terrorism . . . committed: . . . by a group of persons in a preliminary conspiracy . . . shall be punishable by deprivation of liberty for a term of eight to fifteen years.”); *id.* art. 205(3) (“Deeds stipulated in the first or second part of this Article, if they have been committed by an organized group, . . . shall be punishable by deprivation of liberty for a term of ten to twenty years.”); *id.* art. 282(2)(c) (raising the sentence from two to four years to three to five years for incitement of national, racial, or religious enmity when “committed: (a) with the use of violence or with the threat of its use; (b) by a person through his official position; [or] (c) by an organized group”).

83. See UK RF, *supra* note 58, art. 63(1)(f) (describing circumstances aggravating punishment, including “commission of a crime by reason of national, racial, or religious hatred or enmity”); *id.* art. 105(2)(k) (raising the standard sentence by five years for murder); *id.* art. 111(2)(f) (raising the standard sentence by two years for intentional infliction of grave injury); *id.* art. 112(2)(f) (raising standard sentence by two years for intentional infliction of injury of average gravity to health); *id.* art. 117(2)(h) (raising standard sentence four years for torture); *id.* art. 244(2)(b) (raising the standard sentence from one month’s income or labor or three months imprisonment to restraint or deprivation of liberty for three years or imprisonment for three to six months for outrages upon bodies of the deceased and their burial places); *id.* art. 357 (making genocide punishable by deprivation of liberty for twelve to twenty years, capital punishment, or deprivation of liberty for life).

skinhead.⁸⁴ Less prominent victims have had greater difficulty in obtaining redress. This and similar instances have given rise to accusations of police sympathy toward the skinhead cause.⁸⁵

On the one hand, enforcement is precisely what the Extremism Law ensures by requiring action by local government officials,⁸⁶ as well as potentially prohibiting, through court decision, persons who have engaged in extremist activity in the past from participating in government, municipal or military service, or employment in the police force or in private security companies.⁸⁷

On the other hand, the lack of enforcement guidelines and a strong potential that the law may be applied arbitrarily to serve political interests—a practice that is readily apparent in authorities' dealings with social and religious groups and political parties—both suggest that authorities are using the law to restrict expression and burden undesirable organizations. Reports so far suggest that the Extremism Law has had little effect on the efforts of law enforcement officials, who have continued to dismiss racially motivated violence as “hooliganism” and who “deny that there is a racial component.”⁸⁸ Meanwhile, there is evidence that the Extremism Law is already

84. Acting under pressure from the United States, authorities found and arrested the skinhead responsible for assaulting the U.S. Marine. However, the pending trial further united Russia's skinhead community, leading to skinhead protests outside the U.S. Embassy. The perpetrator, twenty-two-year-old Semyon Tokmakov, was eventually released. See Aleksandr Tarasov, *Pogroms Have Already Begun: 30,000 Skinheads Are “Sanitizing” Our Cities*, OBSHCAYA GAZETA, Mar. 29–Apr. 4, 2001, at 15, reprinted in CURRENT DIG. POST-SOVIET PRESS, May 23, 2001, at 2.

85. Lidia Andusenko, *Neo-Nazis Stage Pogrom in Honor of Hitler's Birthday*, NEZAVISIMAYA GAZETA, Apr. 24, 2001, at 1–2, reprinted in CURRENT DIG. POST-SOVIET PRESS, May 23, 2001, at 4 (“The skinheads sometimes call themselves ‘trash collectors’ and ‘city sanitation workers,’ because another of their goals is to rid society of drug addicts, homosexuals, pedophiles and the destitute. . . . Needless to say, this ideological orientation . . . finds, if not overt support, then at least secret sympathy from many representatives of military, security and law-enforcement agencies.”). In an interview, one skinhead corroborated this claim: “Sometimes the cops treat us with understanding, maybe because they realize that in a certain sense we’re helping them.” Viktor Kostyukovsky, *“Garden-Variety” Fascism*, NOVIYE IZVESTIYA, Sept. 17, 2002, at 1, 5, reprinted in CURRENT DIG. POST-SOVIET PRESS, Oct. 16, 2002, at 11.

86. See Extremism Law, *supra* note 4, art. 14 (“[N]on-adoption by an official in accordance with his sphere of authority of measures to suppress extremist activity shall entail the responsibility set by the legislation of the Russian Federation.”).

87. See *id.* art. 15, para. 2.

88. See *Putin's Anti-Extremism Drive Is Failing, Rights Group Charges*, 3 BIGOTRY MONITOR, Jan. 31, 2003, at <http://www.fsmonitor.com/stories/013103Russia.shtml> (reporting charges by the Moscow Helsinki Group).

being used to discriminate against religious believers and human rights organizations.⁸⁹

B. Impact of the Extremism Law on Fundamental Freedoms

The fact that legal grounds exist but are not enforced suggests other motivations for enacting anti-extremism legislation. Some critics have suggested that “the law is a ‘club’ to be wielded against political parties and nongovernmental organizations”⁹⁰ and to be used by special services in taking revenge against “unfavorable” organizations.⁹¹ In light of potential abuses, this section considers the effect of the Extremism Law on the fundamental freedoms of expression, association, and conscience.

1. Freedom of expression

The Extremism Law imposes restrictions that narrow the range of permissible expression. Russia’s international human rights obligations require some restrictions on expression that incites racial, national, or religious animosity. However, broad restrictions on expression, especially in a climate where the mass media is largely state-controlled, suggest a potential for repressive and mischievous application.

The Russian Federation Constitution guarantees “freedom of ideas and speech” to everyone and prohibits forced expression or rejection of convictions.⁹² Article 13 prohibits the establishment of an official state ideology and affirms the commitment to protecting ideological diversity.⁹³ The broad language of Article 29 protects freedom of the press: “Everyone shall have the right to freely look for, receive, transmit, produce, and distribute information by any legal way.”⁹⁴ Similarly, the constitution guarantees the right to mass

89. *Id.* (referring to a human rights group in Krasnodar, and disparate treatment of individuals whose religious requirements conflict with public policy).

90. Vinogradov, *supra* note 80, at 1.

91. *Antiektremistckii zakon ogranichit deyatel'nost' religioznikh organizatsii* [Antiextremism legislation restricts the activity of religious organizations], MIR RELIGII, June 7, 2002, at http://www.religio.ru/arch/07Jun2002/news/3862_print.html.

92. KONST. RF art. 29(1), (3) (1993).

93. *Id.* art. 13.

94. *Id.* art. 29(4).

communication and prohibits censorship.⁹⁵ These freedoms are also protected by international norms.⁹⁶

Although American arguments for free speech are worth noting, Russia tends to side with the European approach to restrictions on expression that affords greater protection to dignity and honor.⁹⁷ Even some American scholars recognize that “each society must decide for itself where to draw the line between freedom of expression and the demands of public order and security.”⁹⁸

Article 1 of the Extremism Law identifies several expression-related components of extremism. These include incitement of social, racial, nationalistic, or religious animosity; debasement of national dignity; propaganda of exclusion; advocacy of supremacy or inferiority based on religious, social, racial, national, or linguistic affiliation; propaganda and public demonstration of Nazi or Nazi-like paraphernalia; and public summons to other illegal activities, such as overthrow of the constitutional order or subversion against national security.⁹⁹

As a preliminary matter, the restrictions on hate speech provided in the Extremism Law may actually be required by international

95. *Id.*

96. *See, e.g.*, European Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, art. 10(1), *reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 140 (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter ECHR]; Universal Declaration of Human Rights, Dec. 10, 1948, art. 19, *reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 57 (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter UDHR]; International Covenant on Civil and Political Rights, Mar. 23, 1976, art. 19(2), *reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 69 (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter ICCPR]. Russia ratified the ICCPR on October 16, 1973. *See* Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, at <http://www.unhchr.ch/pdf/report.pdf> (last visited Apr. 1, 2003).

97. *See* Winfried Brugger, *Ban on or Protection of Hate Speech? Some Observations Based on German and American Law*, 17 TUL. EUR. & CIV. L.F. 1, 14–15 (2002) (noting historical reasons for differences between U.S. and European cultures of free expression); Laura R. Palmer, *A Very Clear and Present Danger: Hate Speech, Media Reform, and Post-Conflict Democratization in Kosovo*, 26 YALE J. INT’L L. 179, 205 (2001) (noting that America was born of dissent and distrust of government institutions and generally arguing that the preference of American law for unfettered freedom of speech does not present a workable model for “post-conflict” and transitional societies).

98. Eric Stein, *History Against Free Speech: The New German Law Against the “Auschwitz”—and Other—“Lies,”* 85 MICH. L. REV. 277, 319 (1986) (discussing restrictions in German law prohibiting Holocaust denial).

99. *See generally* Extremism Law, *supra* note 4, art. 1.

human rights norms.¹⁰⁰ Article 20(2) of the ICCPR reads, “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”¹⁰¹ Exercise of the right to freedom of expression “carries with it special duties and responsibilities . . . [and] may therefore be subject to certain restrictions”¹⁰² The corresponding general comment further explains that “these required prohibitions are fully compatible with the right of freedom of expression[,] . . . the exercise of which carries with it special duties and responsibilities.”¹⁰³

The United Nations Human Rights Committee concludes the comment by stating that in order for ICCPR Article 20 “to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation.”¹⁰⁴ However, because freedom of expression is crucial to a democratic society, attempts to suppress even the most insidious forms of expression should be scrutinized under the European Convention’s “necessary in a democratic society” test.¹⁰⁵ Although Russia may derogate from its commitment to freedom of expression in times of public emergency in order “to ensure the safety of

100. See generally Michael O’Boyle, *Right to Speak and Associate Under Strasbourg Case-Law With Reference to Eastern and Central Europe*, 8 CONN. J. INT’L L. 263 (1993); Peter Krug, *Censorship as an International Obligation?*, POST-SOVIET MEDIA L. & POL’Y NEWSL., Nov. 17, 1993, at <http://www.vii.org/monroe/issue02/krug.htm>; Elizabeth F. Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, 29 STAN. J. INT’L L. 57 (1992).

101. ICCPR, *supra* note 96, art. 20(2).

102. *Id.* art. 19(3) (limiting, however, the restrictions to “such as are provided by law and are necessary: (a) For respect of the rights or reputation of others; (b) For the protection of national security or of public order[,] . . . or of public health or morals”).

103. United Nations Human Rights Committee General Comment No. 11(19), July 29, 1983, para. 2, *reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 96 (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter Gen. Cmt. No. 11].

104. *Id.* (urging that states “which have not yet done so should take the measures necessary to fulfill the obligations contained in Article 20”); *cf.* International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1965, art. 4(c), *reprinted in* RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 112 (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter CERD] (“[States s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”).

105. See ECHR, *supra* note 96, art. 10(2) (noting that restrictions 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 of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”).

citizens and the protection of the constitutional system,”¹⁰⁶ this is only permissible for limited durations in time of emergency.

Several justifications exist for the regulation of expression, particularly racist or hate speech. Racist speech often serves as a precursor to direct violence or psychological injury against minorities.¹⁰⁷ Hate speech may also result in indirect harms to minorities “by affecting the way others perceive minority groups, making it more likely that those exposed to racist propaganda will engage in acts of discrimination and even violence against minorities.”¹⁰⁸ Some have re-characterized hate speech as a “mechanism of subordination” rather than a form of communication, therefore affording it a lower level of protection.¹⁰⁹

If the purpose of public discourse in democratic societies is to form public consensus, then this presupposes “community” and “civility rules” in order to function and flourish.¹¹⁰ Thus, restrictions on hate speech primarily aim to preserve “individual dignity” and a “civil tone” in society, rather than actually reducing the level of violence associated with such speech.¹¹¹ This justification for speech restrictions demonstrates one important difference between the American and European approaches: the American approach tends to prohibit hate speech only where there is an imminent danger of illegal harm, whereas the European approach seeks to prevent hate speech much sooner in order to preserve individual and group

106. KONST. RF art. 56 (1993). *Cf.* ICCPR, *supra* note 96, art. 4; ECHR, *supra* note 96, art. 15. A declaration of a state of emergency is governed by the law On State of Emergency, Fed. Konst. Law No. 3-FKZ (May 30, 2001), *Sobr. Zokonod. RF*, 2001, No. 23, Item 2277, LEXIS, Int'l Law Libr., RFLAW File (GARANT 12023122) [hereinafter *On State of Emergency*]. A state of emergency is a “temporary measure applied exclusively to ensure the security of citizens and the protection of the constitutional system of the Russian Federation,” *id.* art. 1(2), is introduced by presidential decree, *id.* art. 4, and may not exceed sixty days, *id.* art. 9.

107. ROBERT C. POST, *CONSTITUTIONAL DOMAINS: DEMOCRACY, COMMUNITY, MANAGEMENT* 293–94 (1995).

108. JAMES WEINSTEIN, *HATE SPEECH, PORNOGRAPHY, AND THE RADICAL ATTACK ON FREE SPEECH DOCTRINE* 128 (1999).

109. POST, *supra* note 107, at 310 (quoting Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2358 (1989)).

110. *Id.* at 300; *see also* GEORGE & WILCOX, *supra* note 19, at 55 (distinguishing between extreme views, which promote democracy, discussion, and debate of problems, and the extremist approach, which “muddies the waters of discourse with invective, defamation, self-righteousness, fanaticism, and hatred, and impairs our ability to make intelligent, well-informed choices”).

111. WEINSTEIN, *supra* note 108, at 138; *see also* Tomashevsky, *supra* note 6, at 181.

dignity and promote open civil discourse.¹¹² Free speech that contributes to the public discourse presupposes at least a minimum level of mutual respect, which racist speech undermines by silencing minorities, making the very object of democracy unattainable.

Although principles of dignity and civility seem to justify the Extremism Law's restrictions on inflammatory hate speech, there may be reason for concern about potential politically-motivated misapplication or selective application to moderate groups or even to the very groups that the restrictions were designed to protect. This is especially problematic in Russia's case for two reasons: First, the Extremism Law gives added incentive to local authorities to err on the side of cautiousness, a policy that would tend to declare marginal groups extremist because failure to take adequate measures to prevent extremism may entail liability of the responsible state official. Second, the Extremism Law forwards an overly broad definition of extremism.

Both features suggest that the law may be misapplied and selectively enforced. Ultimately, an objective court of law will determine whether an organization is extremist. However, while that determination is pending, local registration officials have considerable discretion to restrict organizations through suspension of legal entity rights. Broad definitions of extremism, which regional officials are disposed to apply selectively, will likely lead to a chilling effect on legitimate democratic and political expression.

Broad restrictions on expression also risk the possibility that the attitudes underlying denied expression will reemerge in more extreme forms as a result of "martyring extremists."¹¹³ As a practical matter, the publicity surrounding prosecutions for hate speech may produce the same—or even more effective—result of inciting hate mongers to violence.¹¹⁴ Germany has faced this problem in its attempts to regulate Holocaust denials and Nazi paraphernalia, where neo-Nazi sentiment has moved into larger mainstream

112. See Brugger, *supra* note 97, at 21.

113. WEINSTEIN, *supra* note 108, at 152–53.

114. *Id.* at 150–53 (“[H]ate speech prosecutions run the very real risk of creating some of the dangers that hate speech laws are meant to prevent by giving publicity to racist organizations they could not purchase at any price.”).

audiences.¹¹⁵ Apparently this is already occurring in Russia to some extent, as the Russian Communist Party has attempted to form alliances with Russian National Unity, a neo-Nazi party.¹¹⁶

Furthermore, speech restrictions in an atmosphere of state controlled mass media increases the ability of the state to exert pressure on marginal groups by influencing popular opinion. The Organization for Security and Cooperation in Europe has recently expressed concern about Russia's media restrictions, noting "very serious concerns regarding Russia's commitment to freedom of expression."¹¹⁷ Generally, attempts to control information in post-Soviet Russia have resulted in reassertion of authoritarian, rather than popular, control—a result that further stifles democratic development.¹¹⁸

At the extremes, prohibitions against hate speech do not seem unreasonable. However, given the potential for broad interpretation of extremism, it is not clear who will benefit and who will suffer from the Extremism Law. The uncertainty surrounding the definition of a difficult concept like extremism paired with regional variation in extremism problems and increased incentives for government officials to crack down on extremism suggests that enforcement of the Extremism Law may result in disparate and paradoxical outcomes.¹¹⁹

2. *Freedom of association*

The Extremism Law creates several potential threats to freedom of association for social and religious organizations, as well as for political parties. First, the Extremism Law permits the suspension of social and religious organizations for an indefinite period of time without judicial proceedings, pending determination by a court of

115. See David E. Weiss, *Striking a Difficult Balance: Combatting the Threat of Neonazism in Germany While Preserving Individual Liberties*, 27 VAND. J. TRANSNAT'L L. 899, 902 (1994).

116. See *Russian Communists Ready for Alliances Including Neo-Nazis*, 3 BIGOTRY MONITOR, Feb. 28, 2003, at <http://www.fsmonitor.com/stories/022803Russia.shtml>; see also *supra* Part IV.A.

117. OSCE Media Watchdog Concerned Over Increased Pressure on Media in Russia, OSCE Press Release, Nov. 3, 2002, at http://www.osce.org/news/generate.php3?news_id=2859&uid=2.

118. See Francis H. Foster, *Information and the Problem of Democracy: The Russian Experience*, 44 AM. J. COMP. L. 243, 290 (1996).

119. See *infra* Part IV.C.

law as to whether the organization is extremist. Second, as a practical matter, the Extremism Law creates incentives for local authorities to regulate more strictly the registration of such organizations, which will increase the instances of violation of freedom of association already being experienced by social and religious organizations. Because the law poses certain, unique challenges for religious organizations, those organizations will be treated separately in the next section.¹²⁰ This section focuses primarily on nongovernmental organizations, public associations, and political parties.

The Russian Federation Constitution guarantees freedom of association. This guarantee extends to all social spheres and includes the right to freely associate with public or social organizations, religious organizations, and political parties.¹²¹ A “public association” is a voluntary, self-governing, non-profit formation organized by individuals united by common interests through the legal entity structure of a public association.¹²² The right to association includes the right to establish associations for the protection of common interests, the achievement of common goals, and the realization of the rights and lawful interests of individuals.¹²³ Public associations are equal before the law.¹²⁴ Freedom of association is protected by international norms.¹²⁵

120. *See infra* Part IV.B.3.

121. *See* KONST. RF art. 30(1) (1993).

122. Association Law, *supra* note 51, art. 5.

123. *Id.* art. 3.

124. KONST. RF art. 13(4) (1993).

125. *See, e.g.*, UDHR, *supra* note 96, art. 20 (“1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association.”); ECHR, *supra* note 96, art. 11(1) (“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”); ICCPR, *supra* note 96, art. 22(1) (“Everyone shall have the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”).

The European Court of Human Rights has repeatedly held that freedom of association entails the right to legal entity status as an integral part of the right to association. *See* Freedom & Democracy Party (OZDEP) v. Turkey, App. No. 23885/94, Eur. Ct. H.R. (1999), *available at* <http://www.echr.coe.int> (holding that freedom of association may not be breached unless the association creates a threat to democracy); United Communist Party of Turkey v. Turkey, App. No. 19392/92, Eur. Ct. H.R. (1998), *available at* <http://www.echr.coe.int> (holding that associational rights apply to political parties); Sidiropoulos v. Greece, App. No. 26695/95, Eur. Ct. H.R. (1998), *available at* <http://www.echr.coe.int> (holding that legal entity status is an integral part of freedom of association).

The state does not require associations to register in order to enjoy associational rights. However, to acquire the additional rights afforded by legal entity status, such as the right to enter into transactions in the name of the association or to invite foreign persons to the Russian Federation, the Russian Civil Code requires social organizations to register with the local departments of justice.¹²⁶ Although registration may be denied if the documents submitted for registration do not comply with the requirements of law, registering authorities cannot deny registration merely because the authorities consider the goals of the organization socially undesirable.¹²⁷ The Association Law accords organizations the broad power to determine their internal structure, purposes, and activities.¹²⁸

As applied to public associations and religious groups, the Extremism Law potentially runs afoul of Article 6 of the European Convention, which guarantees “a fair and public hearing within a reasonable time by an independent and impartial tribunal” in the determination of an individual’s civil rights, obligations, or of any criminal charge.¹²⁹ Article 10 of the Extremism Law empowers government organs of registration to suspend social and religious groups pending examination by a court of law of the alleged extremist statements or activities for which the Procurator-General seeks liquidation or a permanent ban.¹³⁰ This suspension entails a complete cessation of activities, including organizing or holding meetings and maintaining bank deposit accounts.¹³¹

126. Grazhdanskii kodeks Rossiiskoi Federatsii [Civil code of the Russian Federation] art. 51(1), in *NOVIYE ZAKONI ROSSII* [NEW LAWS OF RUSSIA] (Pravo i zhizn, 2002) [hereinafter GK RF].

127. *Id.* art. 51(1), para. 2.

128. Association Law, *supra* note 51, art. 15.

129. ECHR, *supra* note 96, art. 6. For further discussion of the Russian Federation’s track record on due process, see Jeffrey Kahn, *Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia*, 35 U. MICH. J.L. REFORM 641, 689–90 (2002) (“Struggling with its Soviet legacy, the Russian Federation is only gradually accumulating new conceptions of the role of the state, rights of individuals, and the rule of law. . . . But the ECHR is a start, and a step, in the right direction.”).

130. Extremism Law, *supra* note 4, art. 10, para. 2.

131. *Id.* art. 10, para. 3. The organization may appeal the suspension in court if the reviewing court ultimately finds in favor of the organization it may resume its activities. *Id.* art. 10, paras. 3, 4.

Although the provision of a right to appeal the suspension is a mitigating feature of Article 10, it does not fully redeem the provision from tension with Article 6 of the European Convention, which requires that the impartial tribunal take place “within a reasonable time.”¹³² The absence of any limitation on the duration of the suspension exacerbates the potential lack of due process and creates the potential for undue delay in determination of organizational rights. The absence of such a limitation may easily become a strategic weapon of delay for prosecutors who may not be able to succeed in obtaining a decision for liquidation, but who may find it desirable to “wait out” undesirable organizations.

Moreover, the Extremism Law provides additional psychological stimulus to regional and local authorities to deal more harshly with religious and social organizations, a feature which compounds the concerns over suspension noted above. Consider the incentives that the Extremism Law provides: the law specifically requires local and regional authorities to become involved in the battle against extremism,¹³³ while at the same time establishing liability for local and regional authorities who do not take sufficient measures within their sphere of jurisdiction to prevent and suppress extremist activity. Although the law is vague on the nature of this liability, it is not difficult to see that in order to avoid potential penalties, local authorities will tend to overcompensate to avoid liability for not preventing extremism. This will likely lead to further tightening of registration procedures and a greater frequency of liquidation proceedings.

Additionally, because of the effect the law will have on regional registration authorities in creating incentives to become more strict in registration procedures, it will tend to exacerbate the existing problem with the registration procedures for social and religious organizations. Specifically, legitimate organizations who comply with the procedures will be subject to delays, threats of judicial proceedings, and burdensome requests, while illegitimate organizations may attempt to circumvent the registration procedures and operate illegally.

An illustrative series of cases resulted from the re-registration campaign following the enactment of the Association Law in 1995.

132. ECHR, *supra* note 96, art. 6.

133. Extremism Law, *supra* note 4, art. 4.

The Association Law affirms the right of individuals to form public associations “on a voluntary basis for the protection of the common interests and the achievement of common goals.”¹³⁴ The Association Law likewise ensures that registration cannot be denied on the mere judgment of the state registration body that creation of the organization is not expedient.¹³⁵ At the time of its enactment, the Association Law also imposed a requirement that organizations previously registered must re-register.

Although authorities cannot deny registration on the ground that an organization does not serve a valuable purpose, regional and local administrators have taken advantage of the re-registration requirement to eliminate “undesirable” organizations.¹³⁶ According to a reported statement by one official, the requirement for nongovernmental organizations to re-register was “aimed at reducing the number of organizations with a strong political focus and aspirations to get on the ballot before the State Duma election, and at isolating radical and extremist political groups . . . for the sake of the public good.”¹³⁷ Although this was the stated purpose of the Association Law’s re-registration requirement, the Association Law actually “affected those who, in reality, promote public interests, such as human rights, environmental and other organizations.”¹³⁸

The re-registration requirement presented a number of difficulties to organizations that were already registered. However, local and regional authorities have reportedly used several responses to further complicate this process. These responses include making unreasonable requests from parties seeking registration beyond the requirements imposed by the Association Law, failing to provide explanations of the grounds for denial of registration, failing to provide reasonable explanations or clarification on the proper form of documents required by the region, and failing to provide notice of deficiencies in the submission forms soon enough to allow for timely

134. Association Law, *supra* note 51, art. 3.

135. *Id.* art. 23.

136. See *Report on the Violations Committed in the Course of Registration and Re-registration of Public Associations in the Russian Federation in 1999*, 2 INT’L J. NOT-FOR-PROFIT L., (Feb. 15, 2000), at http://www.icnl.org/journal/vol2iss4/ar_yuril.htm [hereinafter *Report on Violations*] (noting that human rights and environmental organizations have been the most vulnerable).

137. *Id.* (summarizing statement by Minister of Justice, Pavel Krashennikov).

138. *Id.*

correction and resubmission.¹³⁹ The arbitrary variation of registration procedures and interpretations of registration laws has resulted in what one former insider admittedly calls “crushing . . . organizations one after another”¹⁴⁰

Russian authorities appear skeptical of the prospects of a privately-controlled, nonprofit sector acquiring functions previously administered by the state. One explanation for this may be the state’s fear of losing influence over economic and social development, even when the state is clearly incapable of performing necessary social functions. Another explanation may be fear of political competition.¹⁴¹ Incumbent politicians apparently recognized the political advantage of restricting the number of political parties that may compete for votes in upcoming elections.¹⁴²

Authorities explained the re-registration campaign of 1996–1999 as an attempt to rid the landscape of radical and extremist groups for the public good; however, practical application of the law led to a much more expansive campaign imposing significant difficulties on legitimate, non-radical, non-extremist organizations as well. The Violations Report concludes that “[i]llegitimate, and sometimes insulting demands made by officials of justice departments to human

139. *Id.* Authorities often refuse to re-register organizations based on the organization’s support for unpopular regional political positions. *Id.* (noting several environmental organizations, including, among others, the Don Green Party, which was denied registration without explanation for opposing the opening of the Rostov Atomic Power Plants); *see also* Irina Demytyeva & Ilya Medovoi, *The Authorities Are Getting Rid of Society’s Rough Edges*, OBSHCAYA GAZETA, May 2–15, 2002, at 15, *reprinted in* CURRENT DIG. POST-SOVIET PRESS, June 5, 2002, at 2.

140. Demytyeva & Medovoi, *supra* note 139, para. 4 (statement of Yury Kostanov, lawyer and former director of the Moscow Justice Administration) (“[W]hen I was director[,] . . . if [a nongovernmental organization’s] charter wasn’t quite up to the mark, I could say, ‘Revise it and we’ll register you.’ . . . Now registration has to be denied outright; no corrections are allowed. And if you haven’t been re-registered, you’ll be destroyed.”).

141. *See Report on Violations, supra* note 136. Governor of Ryazan, V.N. Lyubimov, argued against an extension of the re-registration deadline for the 1995 Association Law to allow more organizations to re-register because this would increase the number of political parties, of which, he considered, “there are far too many” already. *Id.*

142. Jeremy Bransten, *Putin Seeking New Legislation to Combat Extremism*, RFE/RL NEWSLINE, May 10, 2002, at <http://www.rferl.org/nca/features/2002/05/10052002083148.asp> (“[E]xperts express concern that Putin’s bill could be misused to shut down mainstream opposition parties.”). Political parties have already begun to feel the effects of the Extremism Law. *See* Pavel Aptekar, *Berezovsky’s Party Denied Registration*, VREMYA NOVOSTEI, July 15, 2002, at 1, *reprinted in* CURRENT DIG. POST-SOVIET PRESS, Aug. 14, 2002, at 7; *Party in Russian Enclave Warned About Extremism*, BBC MONITORING, Aug. 30, 2002, 2002 WL 26566810.

rights groups and other [nongovernmental organizations] applying for re-registration, were so common that they suggest a conscious policy directed against nongovernmental organizations,” a policy that “threatens the development of civil society in Russia.”¹⁴³ Evaluating this result in light of the stated policy—elimination of radical and extremist groups—it appears that application of the Association Law was misguided, allowing problems of extremism to persist while denying non-extremist groups re-registration due to mere technicalities and arbitrary requirements.

The experience of the Association Law and reported statements by officials indicate that eliminating extremism was not the sole aim of the Association Law’s re-registration requirement; as noted previously, elimination of political competition, retention of state authority, and other political motivations have led to denials of registration.¹⁴⁴ And if the same tendency of local and regional authorities to employ varying and arbitrary requirements in reviewing registration submissions continues, there is little guarantee that organizations will be shielded from similar difficulties under the Extremism Law. The practical effect of these alterations is an expansion of state power under the Association Law to liquidate and suspend public associations and nongovernmental organizations.

143. *Report on Violations*, *supra* note 136; *see also* Dementyeva & Medovoi, *supra* note 139, at 3 (quoting Stanislav Markelov, lawyer) (Nongovernmental organizations are the “building blocks of a civil society [and] need . . . to be defended by all possible legal means. Otherwise, we’ll live to see the day when indictments read, ‘He is a member of such-and-such an organization, and therefore he has committed a crime.’”).

144. In fact, in some instances even the Office of the President of the Russian Federation has requested denial of certain registrations for political advantage. Valentin Kovalyov, former Minister of Justice (1995–1997) admits:

When I was . . . minister of justice, the president’s staff used to send me unambiguous directives to deny registration to various nongovernmental organizations for the purpose of, for example, limiting the number of participants in the electoral process as elections to the State Duma or other governmental structures drew nearer. I also got similar “orders” from the director of the FSB, the minister of internal affairs, the secretary of the Russian Federation Security Council and, what was even worse for me as a minister, from the chairman of the government. Attempts to use legal procedures to achieve political goals were made back then, and they are still being made today. . . . I say this openly, especially since I never followed those instructions.

Dementyeva & Medovi, *supra* note 139, at 3.

3. *Freedom of conscience*

The Extremism Law's provisions on suspension and increased involvement of local authorities will affect religious organizations at least to the same extent as they will affect social organizations and political parties. Religious organizations are presently subject to a registration scheme very similar to that described in the previous section in connection with the Association Law. And religious organizations have encountered the same difficulties in obtaining registration. However, religious organizations, as explicit targets of the Extremism Law, deserve a separate discussion because religious association, which entails freedom of conscience, expression, and belief, receives a higher level of protection under international norms.¹⁴⁵

The Russian Federation Constitution guarantees freedom of religion, conscience, and belief. Article 13 ensures political and ideological diversity, while declaring that the state may not establish an obligatory ideology.¹⁴⁶ Article 14 declares that Russia is a "secular state," prohibits the establishment by the state of an obligatory state religion, and declares all religious associations equal before the law and separate from the state.¹⁴⁷ Article 28 guarantees to every person "freedom of conscience, freedom of religion, including the right to profess individually or together with others any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them."¹⁴⁸ International norms also protect freedom of conscience and religion.¹⁴⁹ The European

145. See Lance S. Lehnhof, Note, *Freedom of Religious Association: The Right of Religious Organizations to Obtain Legal Entity Status Under the European Convention*, 2002 BYU L. REV. 561, 581 (arguing that "religious associations are entitled to at least the same, and probably a higher, level of protection under Article 11 than other types of associations"). One factor supporting this conclusion is the language of the ICCPR, *supra* note 96, art. 18, which parallels language in ECHR, *supra* note 96, art. 9, protecting freedom of conscience. The ICCPR specifically states that the protections provided in Article 18 may not be subject to derogation, even in times of emergency, while still allowing derogation from protections of freedom of association and expression. See ICCPR, *supra* note 96, art. 4(2); cf. KONST. RF art. 56(3) (1993) ("The rights envisioned in [Article 28 (freedom of conscience)] . . . shall not be liable to limitations.").

146. KONST. RF art. 13 (1993).

147. *Id.* art. 14.

148. *Id.* art. 28.

149. See, e.g., UDHR, *supra* note 96, art. 18; ECHR, *supra* note 96, art. 9; ICCPR, *supra* note 96, arts. 18, 27.

Court of Human Rights, in a well-developed series of cases, has continuously held that freedom of conscience entails more than the mere right to hold a personal belief, strongly suggesting that the right to legal entity status is included in the right to freedom of conscience.¹⁵⁰

First in 1990 and then again in 1997, the Russian government enacted legislation governing the practice of religious organizations. The 1990 law created a fairly liberal regime that promoted the growth of foreign religious organizations and, in some instances, led to a rise in religion-related abuses. A concern over the spiritual security of the country led to the enactment of the 1997 Religion Law, which provided a stricter registration regime intent on mitigating the activities of dangerous “sects” and “cults.”¹⁵¹

The registration provisions of the 1997 Religion Law, which grant privileged status based on the religion’s duration of presence in Russia, are the most controversial parts of the law because they discriminate between “traditional” religions, new religious movements, and foreign religions.¹⁵² In spite of declaring all religions equal before the law, the registration provisions of the Religion Law undermine equal treatment. The annual re-registration procedure for organizations that have not reached a fifteen-year threshold of existence on Russian soil conflicts with the constitutional protection against retroactivity,¹⁵³ with international norms,¹⁵⁴ and with

150. *Canea Catholic Church v. Greece*, App. No. 25528/94, Eur. Ct. H.R. (1997), <http://www.echr.coe.int> (legal entity status protected); *Hasan & Chuash v. Bulgaria*, App. No. 30985/96, Eur. Ct. H.R. (2000), <http://www.echr.coe.int> (right to association subsumed in discussion of freedom of conscience); *Sidiropoulos v. Greece*, App. No. 26695/95, Eur. Ct. H.R. (1998), <http://www.echr.coe.int> (legal entity status is an integral part of association).

151. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT (2002), <http://www.state.gov/g/drl/rls/irf/2002/13958.htm> [hereinafter RELIGIOUS FREEDOM REPORT].

152. W. Cole Durham, Jr. & Lauren B. Homer, *Russia’s 1997 Law On Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT’L L. REV. 101, 119 (1998); see also T. Jeremy Gunn, *Caesar’s Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 EMORY INT’L L. REV. 43, 90 (1998) (“[T]he rationales . . . are merely pretexts to discriminate against all religious activities that, in the eyes of the government, appear to be new to the Russian soil.”); Arina Lekhel, Note, *Leveling the Playing Field for Religious “Liberty” in Russia: A Critical Analysis of the 1997 Law “On Freedom of Conscience and Religious Associations,”* 32 VAND. J. TRANSNAT’L L. 167, 211 (1999).

153. KONST. RF art. 54(1) (1993).

decisions of the Russian Constitutional Court, which have generally upheld the requirement but have allowed a grandfather provision for organizations registered prior to 1997.¹⁵⁵ Accounts of difficulty in acquiring legal entity status through registration are plentiful.¹⁵⁶ Of course, without legal entity status many religious organizations are unable to fully function because they lack the legal ability to rent meetinghouses, purchase property, and hold bank accounts. As noted earlier, several features of the Extremism Law increase the likelihood that local authorities will use the law to discriminate against non-traditional religious groups by further complicating the registration process.

Legislators who think the Religion Law's restrictions do not go far enough in countering extremism and curbing the proliferation of nontraditional religions have proposed a series of draft laws that would strengthen the Religion Law's grasp. In 2002, Alexander Chuyev, Deputy Chairman of the Committee for Public Associations

154. See United Nations Human Rights Committee General Comment No. 22(48), July 20, 1993, para. 2, reprinted in RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 92 (Tad Stahnke & J. Paul Martin eds., 1998) ("Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion of belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.").

155. RELIGIOUS FREEDOM REPORT, *supra* note 151.

156. See *id.* Several particularly high profile cases illustrate the onerous nature of the Religion Law's registration regime. Jehovah's Witnesses have remained a constant target of what the Council of Europe's Monitoring Committee has called "harassment against a religious minority" where criminal and legal proceedings against the group proceeded for up to six years. *Id.*; see also Charlotte Wallace, *The Jehovah's Witnesses Case: Testing the 1997 Law "On Freedom of Conscience and Religious Associations" and the Russian Legal Process*, 32 CAL. W. INT'L L.J. 39 (2001).

The Salvation Army has faced accusations of paramilitary activity and endured seemingly pretextual reasons for being denied registration, such as inadequacy of submitted documents. RELIGIOUS FREEDOM REPORT, *supra* note 151. However, the Salvation Army enjoyed brief success in March 2002 when the Constitutional Court held that authorities improperly liquidated the organization after its many failed attempts to register. *Id.*

Other instances of discrimination include visa denials, see, e.g., Geraldine Fagan, *Previously Unpublicised Case Brings Number of Expelled Catholics to Seven*, KESTON NEWS SERV., Sept. 17, 2002, at <http://www.keston.org/knsframe.htm>, and favoritism in the courts, see *Putin's Anti-Extremism Drive*, *supra* note 88 (contrasting two regional court decisions: in one, a court held that Orthodox believers were exempt on religious grounds from using mandatory tax identification numbers, while in the other, a court held that Muslim women were required to remove their headscarves for passport photographs because Interior Ministry policy trumped their religious beliefs).

and Religious Organizations, introduced a draft law—"On Traditional Religious Organizations"—which would raise the fifteen-year requirement to eighty years to obtain the most privileged level of legal entity status.¹⁵⁷ In early 2003, such proposals continued to circulate in the Duma.¹⁵⁸

At an initial level, the Extremism Law will affect religious organizations in much the same way as it will affect social organizations and political parties as discussed in the previous section (i.e., through a tightening of registration and liquidation procedures as well as the potential for arbitrary application and pretextual use to achieve political goals).¹⁵⁹ Several religious groups have expressed concern about the Extremism Law's vague definition of extremism and its potential for mischief.¹⁶⁰

157. Sergey Yugov, *A Barrier to Religious Extremism to be Created in Russia*, PRAVDA.RU, Feb. 12, 2002, at <http://english.pravda.ru/society/2002/02/12/26363.html> ("[T]he necessity for creation of such a law . . . has been pressing for a long period already. . . . The state is to stimulate traditional religious associations (Orthodoxy, first of all) to resist the religious extremism and numerous preachers and missionaries who invade Russia from the West.").

158. Frank Brown, *Lawmakers Support "Values" of Nation's "Traditional Religions,"* RUSSIAN INTERCESSORY PRAYER NETWORK, Mar. 20, 2003 (on file with author).

159. For accounts of regional application of the Religion Law and supplementary local laws, see Lauren B. Homer & Lawrence A. Uzzell, *Federal and Provincial Religious Freedom Laws in Russia: A Struggle For and Against Federalism and the Rule of Law*, 12 EMORY INT'L L. REV. 247, 248 (1998) (noting that "repressive features [of the federal Religion Law] . . . ha[ve] led many regional administrations to conclude that they can act arbitrarily and with impunity in dealing with religious minorities").

160. See, e.g., Geraldine Fagan & Tatyana Titova, *Diverse Opposition to Measures Outlawing "Religious Extremism,"* KESTON NEWS SERV., July 17, 2002, at <http://www.keston.org/knsframe.htm> ("From a legal point of view and taking into account the law's possible application to religious organisations . . . [Lev Simkin, a Moscow lawyer who represents the Church of Jesus Christ of Latter-day Saints (Mormons) in Russia,] considered the law to be 'wholly dubious.'"); Pnina Levermore, *Anti-Extremism Law in Russia Could Worsen Anti-Semitic Hate Crimes*, JEWISH BULL., June 21, 2002, at <http://www.jewishsf.com/bk020621/comm3.shtml> ("On its face, this proposed law seems like a good idea. . . . However, without a clear and precise definition of what 'extremism' is, such legislation could in fact pose a threat to those who need its protection most."); Fred Weir, *Russian Bill Pits Free Speech Against National Security*, CHRISTIAN SCI. MONITOR, June 21, 2002, <http://www.csmonitor.com/2002/0621/p09s01-woeu.htm> (noting adequacy of existing law and tendency to silence valid criticism); Jonathan Gallagher, *Leader Sounds Caution on Russia's Draft Religion Laws*, ADVENTIST NEWS NETWORK, April 16, 2002, at <http://www.adventist.org/news/data/2002/03/1018968540/index.html.en> ("We are opposed to the drafts on religious extremists [which pose] definite challenges to religious freedom You do not need to identify 'religious' extremists, but to deal with all extremists in the same way.").

Moreover, there is an additional concern that implicates freedom of expression, association, and conscience. One definition of extremism in Article 1 includes “propaganda of exclusivity, advocating either supremacy or inferiority of citizens on the basis of religion, social, racial, national, religious or linguistic affiliation.”¹⁶¹ This definition is problematic for several reasons. First, most religious doctrines claim to have a superior grounding in truth. This definition would even affect the Russian Orthodox Church, which regards itself as the exclusive claimant to Russian spirituality.¹⁶² Second, regulation of how a religious organization perceives doctrinal matters risks an impermissible overreach by state authorities into essentially internal matters. One Moscow lawyer notes the potential implication of this provision: “Any religious organization considers its doctrine to be the true one, and a state official might find incitement to religious discord in that.”¹⁶³ Fearing these possibilities, social and religious groups, as well as individuals, might withdraw from the public discourse as a result of a chilling effect on free speech and the open discussion of religious ideas necessary for a pluralistic, democratic society.

Moreover, such a prohibition, if taken literally, will result in a declaration that all proselytizing religious groups are extremist organizations subject to arbitrary suspension, liquidation, or a complete ban—a result that would be even more oppressive than the Religion Law’s fifteen-year provision. For many religious organizations, proselytism is an integral part of religious belief and practice and this right has repeatedly been upheld by the European Court of Human Rights.¹⁶⁴ This hypothetical possibility demonstrates the potential for arbitrary application. Although seemingly tenuous in the abstract, this element of “extremism” may serve as grounds for denial of registration or liquidation of religious organizations if a local administration is intent on eliminating a particular social, religious, or political organization.

161. Extremism Law, *supra* note 4, art. 1.

162. Fagan & Titova, *supra* note 160 (quoting Mikhail Kuznetsov, professor at the Russian Academy of Sciences, who raised the question: “We Orthodox are against ecumenism: but if we believe Orthodoxy is the only right faith, or if Muslims believe their faith to be the best, why prosecute them?”).

163. *Id.* (quoting Moscow Professor and Lawyer, Lev Simkin).

164. See *Larissis v. Greece*, App. Nos. 23372/94, 26377/94, 26378/94, Eur. Ct. H.R. (1998), available at <http://www.echr.coe.int>; *Kokkinakis v. Greece*, App. No. 14307/88, Eur. Ct. H.R. (1993), available at <http://www.echr.coe.int>.

C. Potential for Arbitrary Discretion and Perverse Application

One obstacle to the enforcement of existing laws has been the absence of a sufficient definition of extremism. The Extremism Law, while fairly clear in its foreseeable application to truly reprehensible behaviors, fails to provide the needed guidance in the less obvious cases. Instead, criticisms abound that the law's definition of extremist activity is excessively broad.¹⁶⁵ A vague, overly-broad definition fails as a prior restraint to provide notice by which parties can shape their behavior and frame their speech and risks ultimately leading to dubious application, if not blatant abuse.

Several critical hypothetical scenarios have explored the potential of the definition of extremism provided in the Extremism Law. One commentator has argued that the law seeks "to create a uniform person tolerant of every belief This is secularized totalitarianism, we will have to be tolerant of all scoundrels."¹⁶⁶ Although admittedly far-fetched, another commentator notes the contextual nature of the definition of extremism: "[I]f someone says that 'capitalists are greedy' or even that 'skinheads are no good,' one cannot but perceive it as 'extremist propaganda.'"¹⁶⁷ The same commentator suggests a more realistic application: "To forbid 'the propaganda of exclusiveness' of religious communities is to impose an extremely harsh constraint on the preaching of all the main religions."¹⁶⁸ Another possibility for potential abuse that follows from these examples is that the state will befriend certain groups based on their ability to assist in marginalizing others.

Two actual scenarios indicate that the present legislation has already been invoked in ways that raise the question of who the Extremism Law is designed to protect. The first scenario involves a nongovernmental organization, the Novorossiisk Committee for Human Rights, which felt the early brunt of the law when the regional deputy governor told the organization's leader: "[W]e will

165. Alexander Verkhovsky, *Taking Anti-Extremism to Extremes*, JOHNSON'S RUSSIA LIST, at <http://www.cdi.org/russia/johnson/6401-1.cfm> (last visited Apr. 1, 2003).

166. Fagan & Titova, *supra* note 160 (quoting Mikhail Kuznetzov, Professor, Russian Academy of State Sciences).

167. Verkhovsky, *supra* note 165.

168. *Id.*

test the new law on extremism on your organization.”¹⁶⁹ The Novorossiisk Committee represents a group of Meshketian Turks in the Krasnodar Krai who have endured intense discrimination at the hands of government authorities.¹⁷⁰ The Meshketian Turks are a “Turkish-speaking Muslim ethnic group deported in 1944 from Southern Georgia to Central Asia,” and “about 290,000 Meshketians live within the borders of the former U.S.S.R.”¹⁷¹ Krasnodar authorities have discriminately refused to grant the Turks a registered place of residence, effectively depriving them of recognition as Russian citizens, access to higher education, and social services.¹⁷²

The deputy governor’s statement accusing the Novorossiisk Committee for Human Rights of extremist activity came after the committee was accused on local television of “helping extremists with foreign money” and “grossly interfering with the affairs of the krai.”¹⁷³ With a backdrop of state-imposed media restrictions, the potential for biased spread of news coverage may tend to result in politicized media campaigns against undesirable groups the state wishes to eliminate, as this situation seems to demonstrate. The Meshketian Turks’ situation also demonstrates that it is not obvious which group the Extremism Law will protect and whom it will indict: the Meshketians, the human rights nongovernmental organization advocating social justice for the Meshketians (or undermining regional security, depending on how the facts are spun), or the government. The Extremism Law provides grounds for holding any of the three groups liable, but it is apparently not enough—in Krasnodar—that regional administration policy openly

169. Aleksandr Verkhovskii, *Who is Really Threatened by Russia’s Law on Extremism?*, 3 RFE/RL (UN) CIVIL SOCIETIES, July 24, 2002, at <http://www.rferl.org/ucs/2002/07/30-240702.html>.

170. *Id.*

171. Memorial Human Rights Center, Moscow, Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination (2000), at <http://www.memo.ru/hr/discrim/ethnic/disce00.htm> [hereinafter Compliance of the Russian Federation]; see also CERD, *supra* note 104, art. 4(c) (“State parties . . . [s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”).

172. Compliance of the Russian Federation, *supra* note 171.

173. Verkhovskii, *supra* note 169.

discriminates against refugee groups on the grounds of racial and national hostility.¹⁷⁴

What is an admittedly complicated situation demonstrates a rather simple point: despite the publicized motivations for anti-extremism legislation portraying victims of racially-motivated violence and discrimination as the ultimate benefactors of the law, the law may actually be applied by the state in ways that exacerbate, rather than heal, ethnic tensions and divisions. Depending on regional politics and the nature of regional-federal relations, the regional administration could face either liability for its own extremist policies or applause for preventing and uprooting extremist developments in the population.

The second scenario, involving Russia's Muslim community, demonstrates how the law's vague definition of extremism may result in dubious application. Racist and nationalist groups that persecute Muslims may clearly be found guilty of impermissible racist or nationalistic speech and/or incitement of racial violence, if not subject to outright criminal liability under the Extremism Law and the Criminal Code. However, Islamic groups may also themselves be targeted by state authorities as potential extremists. The Federal Security Service is apparently cracking down on Islamic groups and has recently compiled a blacklist of Islamic organizations which the Supreme Court is presently reviewing for terrorist connections.¹⁷⁵

An interesting variation of this development is the preparation of a similar blacklist by Muslim groups which includes "politicians, officials, and journalists who 'have a bad attitude toward Islam.'"¹⁷⁶ One official in the Karelia region found himself on the list for opposing the construction of a mosque: "He believes that drawing up such lists and publishing them in the press incites religious enmity, which is punishable under the Criminal Code."¹⁷⁷

How the law affects Muslims may depend on politics within the Muslim community. Ideological divides between Russia's Muslim

174. *Id.* (noting that "regional authorities create most of the problems, relating to racial discrimination").

175. *See Several Islamic Organizations May Soon be Outlawed in Russia*, INTERFAX, Feb. 12, 2003, at http://www.interfax.ru/show_one_news.html?lang=EN&group_id=28&id_news=5619714&tz=0&tz_format=MSK&req=several%20islamic.

176. *Russia's Muslims Compile Blacklists of "Enemies of Islam,"* 3 BIGOTRY MONITOR, Feb. 28, 2003, at <http://www.fsmonitor.com/stories/022803Russia.shtml>.

177. *Id.*

communities have resulted in perpetual accusations that all other Islamic minorities are “Wahhabi extremists.”¹⁷⁸ Although Islam does not have a hierarchical organization, the Russian state has informal relations with two “official” Muslim leaders who serve as the spiritual leaders of Russia’s European and Asian Muslims.¹⁷⁹

As this article goes to press, the dust is settling from a recent threat of prosecution against one of Russia’s Muslim leaders. As a U.S.-led invasion of Iraq became imminent, Supreme Mufti Talgat Tadzhuiddin, leader of the Russian Spiritual Board of Muslims, called for a holy war against the United States and advocated “set[ting] up a fund from donations and us[ing] the money to buy weapons to fight America and food for the people of Iraq.”¹⁸⁰

In response, the Russian Prosecutor General’s office threatened the organization with prosecution for “inciting ethnic and religious discord” if he repeated the call to arms.¹⁸¹ Tadzhuiddin’s Spiritual Board of Muslims responded to this warning by recanting its statement. Instead of promoting a jihad, the Board voiced support for President Putin’s policy “calling for settlement of the Iraq crisis through peaceful means” and advocated for a less extreme course of action, stating: “We are praying to God to make the anti-Iraq coalition’s leaders and soldiers repent.”¹⁸²

This recent incident demonstrates the effectiveness of the Extremism Law in re-channeling protest in appropriate directions; in this case, legitimate expression of indignation and calls to religious believers to pray for a peaceful outcome replaced calls to citizens to take up arms against the U.S. It also demonstrates the potential for various factions of Russian Islam to marginalize competing factions.

178. Mikhail Zherebyatev, *Religious Freedom and the War On Extremism*, 1 *RUSSIA & EURASIA REV.*, Aug. 13, 2002, http://russia.jamestown.org/pubs/view/rer_001_006_002.htm. “Wahhabi” refers to one branch of Sunni Islam “that has become a pejorative term in Russia because of persistent allegations that ‘Wahhabi extremism’ was to blame for terrorist attacks linked to the war in Chechnya.” *RELIGIOUS FREEDOM REPORT*, *supra* note 151.

179. The most prominent Muslim communities in Russia are the Spiritual Directorate of Muslims in European Russia and Siberia, headquartered in Ufa and led by Mufti Talgat Tadzhuiddin, and the Russian Council of Muftis, based in Moscow and led by Chief Mufti Ravil Gaynutdin. See *RELIGIOUS FREEDOM REPORT*, *supra* note 151.

180. *Russian Muslim Body Calls for Jihad on USA*, *BBC MONITORING*, April 3, 2003, 2003 WL 17800003.

181. *Russian Mufti Threatened with Prosecution Over Call for Jihad Against U.S.*, *CAN. PRESS*, April 4, 2003, 2003 WL 18251999.

182. *Russia’s Muslims Issue New Statement on Iraq*, *BBC MONITORING*, April 7, 2003, *LEXIS*, News & Business.

In response to Tadzhuiddin's statement, the Russian Council of Muftis, under the direction of Ravil Gaynutdin, denounced the leadership of Tadzhuiddin and refused to endorse the jihad.¹⁸³ By denouncing Tadzhuiddin and taking a moderate approach on the pending invasion of Iraq, Gaynutdin effectively aligned himself and the Council of Muftis with official Kremlin policies.

The Extremism Law may be used by the state to force a consolidation of the two hierarchies into one central Islamic organization, with the aim of creating "a single hierarchical Muslim organization, like the 'Muslim Patriarchate' that existed in Tsarist and Soviet Russia"—a policy that would "greatly facilitate state control at the expense of religious freedom."¹⁸⁴ The prospect of official endorsement of a moderate form of Islam by the state explains the enthusiasm of some Muslim leaders for the Extremism Law.¹⁸⁵ However, Muslim minority communities will likely resist such attempts based on beliefs of doctrinal purity. The European Court of Human Rights has addressed this issue in three pertinent cases holding that alleviating social tension among competing factions within a religious community does not justify encroachments on the religious autonomy of a religious community.¹⁸⁶ Critics, however, suggest this is "the likeliest outcome of Russia's war on extremism."¹⁸⁷

Attempts to control Islamic fundamentalism by treating all Muslims alike—especially like "Islamic Extremists"—are likely to

183. *Russian Muslim Organizations Clash Over Jihad*, BBC MONITORING, April 23, 2003, 2003 WL 19628034.

184. RELIGIOUS FREEDOM REPORT, *supra* note 151.

185. See Fagan & Titova, *supra* note 160 (summarizing statement by Damir Khazrat Gizatulin, assistant chairman of the Spiritual Directorate of Muslims in European Russia that "the law could only help law-abiding citizens, while it was 'simply essential' for dealing with law-breaking ones"); *Russia's Top Muslim Cleric "Alarmed" by Spread of Islamic Extremism*, BBC MONITORING, Dec. 10, 2002, 2002 WL 104148878. (quoting Mufti Tadzhuiddin, accusing Islamic minority groups of "Wahhabism").

186. See *Serif v. Greece*, App. No. 38178/97, Eur. Ct. H.R. (1999), <http://www.echr.coe.int> (holding that legislation providing state control over the selection of Muftis violates freedom of conscience guaranteed by ECHR, art. 9); *Hasan & Chuash v. Bulgaria*, App. No. 30985/96, Eur. Ct. H.R. (2000), <http://www.echr.coe.int> (holding that interference with the internal organization of a Muslim community violates ECHR, art. 9); see also *Metropolitan Church of Bessarabia v. Moldova*, App. No. 45701/99, Eur. Ct. H.R. (2001), <http://www.echr.coe.int> (holding that refusal to register a schismatic group because of possible ensuing tensions with the Metropolitan Church of Moldova does not justify violation of ECHR, art. 9).

187. Zherybatev, *supra* note 178.

further engender discord among Russia's various Islamic communities.¹⁸⁸ The prospect of forced reconciliation of Russia's two largest Muslim communities by "[e]xerting pressure on any particular group of believers can lead to negative results: forcing them to go underground really means nudging them towards terrorism."¹⁸⁹ However, as Tadzhuiddin's recent voluntary recant of the call for jihad against the United States demonstrates, the law may effectively achieve the opposite, positive effect of deterrence.

As government officials attempt to prevent and referee potential conflicts, they too may face penalties for taking action against the wrong group. While it has been noted that the potential liability for inaction on the part of responsible state officials increases officials' incentive to act, the difficulty of determining which organization to target creates incentives to implement the law in arbitrary, politically motivated ways.

V. CONCLUSION

The Extremism Law is part of President Vladimir Putin's plan to restore Russia to a state of law and order as he pledged in 2000: to rein in power from the regional elites and oligarchs and establish a "dictatorship of the law" to strengthen the Russian state.¹⁹⁰ Putin's tough stance on extremism reflects a commitment to counter escalating tensions that threaten the safety and security of the Russian Federation and its citizens.

While the Extremism Law may result in more effective law enforcement, increased monitoring of the registration of organizations, and prevention of truly dangerous tendencies, the law also vests considerable power and discretion in local administrators who have demonstrated a tendency to act capriciously in relation to social and religious groups and who may use the law to marginalize political opponents. A broad definition of extremism coupled with incentives for authorities to overcompensate in preventing extremist tendencies will likely result in greater difficulties for legitimate, law-

188. See Rotar', *supra* note 10, at 129; see also R. Christopher Preston, *Islam in Russia Under the Federal Law On Freedom of Conscience and On Religious Associations: Official Tolerance in an Intolerant Society*, 2001 BYU L. REV. 773, 804.

189. Rotar', *supra* note 10, at 135 (citation omitted).

190. Gregory Feifer, *Putin's Mask of Reform*, MOSCOW TIMES, Nov. 9, 2000, LEXIS, News & Business.

abiding foreign social and religious organizations, a result that appears to be another underlying purpose of the Extremism Law.

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