“In the Spirit of Symphony”

On Russian Orthodox Church's Refinement of Secular Legal Standards in the Russian Federation

Alexander Ponomariov

Postdoctoral Researcher, Passau, Germany

aponmaster@gmail.com

Abstract

In the last few years, the Russian Orthodox Church (ROC) has increased its influence over the legislation of the Russian Federation. The ROC transports the ‘divine’ meanings onto secular legal standards, and the state takes over the substantive message of the relevant canon laws. The Russian leadership admitted the establishment of a symphonic relationship with the ROC between 2009 and 2018 in connection with the pontificate of Patriarch Kirill. The “spirit of symphony” stretches even to the new redaction of the Russian Constitution (2020) that speaks about “the faith in God, transmitted by the ancestors” (Art. 67^{1.2}), and defines and protects marriage as a heterosexual union (Art. 72.1¹). Although the church faces certain opposition to its anti-abortion stance, it has managed to lobby some pro-life reservations in procedural law. Besides, the recent close cooperation with the State Duma promises a further rapprochement between the ROC and the Russian state.

Keywords

Russia – law – Constitution – abortion – marriage – church

1 Introduction

The year 2020 put forth an update of the Constitution of the Russian Federation,¹ when President Putin announced on 15 January 2020, and then, on 20 January 2020, submitted his amendments, which, along with some later modifications, entered into force on 4 July 2020.² Among other things, the Russian Constitution now mentions "the faith in God, transmitted to us by the ancestors" (Art. 67^{1.2}).³ It is a case of the well-known constitutional *invocatio dei*,⁴ which was introduced for the first time in recent Russian history. This clause was formally proposed on 25 January 2020 by the Russian Orthodox oligarch and Deputy Head of the World Russian People's Council, Konstantin Malofeev,⁵ Patriarch Kirill of the Russian Orthodox Church (ROC) being its Head since 2009. The Council, in this respect, is a secularized extension of the Russian Orthodox Church. On 1 February 2020, Kirill personally spoke up about the inclusion of the God-clause into the Constitution, basing his opinion on the following precedent: if the national anthem of the Russian Federation contains the lyrics "[our] God-protected native country" (*Богом хранимая родная земля* / *Bogom khranimaya rodnaya zemlya*), the Supreme Law can also mention it.⁶

Although the clause is eye-catching, it is rather secondary in comparison with some other amendments, the goal being the potential prolongation of

1 For instance: Shashkova et al., *On Modifications to the Constitution*.

2 *Executive Order of the President of the Russian Federation dated 3 July 2020 No 445*.

3 «Российская Федерация – объединённая тысячелетней историей, сохраняя память предков, передавших нам идеалы и веру в Бога, а также преемственность в развитии Российского государства, признаёт исторически сложившееся государственное единство» / «Rossiiskaya Federatsiya – ob'edinënnaya tysyacheletnei istoriei, sokhranyaya pamyat' predkov, peredavshikh nam idealy i veru v Boga, a takzhe preemstvennost' v razvitii Rossiiskogo gosudarstva, priznaet istoricheski slozhivsheesya gosudarstvennoe edinstvo» ("The Russian Federation – united by a thousand-year-old history, preserving the memory of the ancestors who transmitted to us the ideals and the faith in God, as well as the continuity in the development of the Russian state – acknowledges its historically formed state unity"). *Constitution of the Russian Federation*.

4 See Neo, *Express Recognition of Deity in Constitutions*.

5 *The Russians, 1000-year-long History, and the Faith in God*.

6 «Если в гимне может быть "богом хранимая родная земля", почему об этом не может быть сказано в нашей Конституции?» / «Esli v gimne mozhet byt' "bogom khranimaya rodnaya zemlya", pochemu ob etom ne mozhet byt' skazano v nashei Konstitutsii?» ("If there can be [the expression] 'God-protected native country' in the anthem, why cannot our Constitution speak about it?"). *Patriarch Kirill Proposed to Include the God-clause into the Russian Constitution*.

Vladimir Putin's presidency, should he decide to run for it in 2024. This political maneuver has its logic besides the desire of Putin to stay in the Kremlin, as it also has suppressed speculations about the imminent transition of supreme power in the country and provided mid-term predictability for the political class.

The fact that the amendment to the Constitution concerning God was accepted by the Kremlin is an example of a new reality – of how much the modern Russian state needs the symbolic capital of religions for its political agenda. The word *religions* in the plural reflects this reality because the amendment contains no referral to any concrete denomination and aims to please all religious organizations. This aspect was pointed out by the Constitutional Court of the Russian Federation,⁷ which even interpreted this clause in the way that the Russian state must consider the significant role of religion in the history of Russia as a sovereign state:

The inclusion of the faith-in-God clause into the text of the Constitution of the Russian Federation [...] does not imply a rejection of the secular character of the Russian state, [...] because, in its formulation, it [inclusion] is not associated with a confessional affiliation [...] and is only intended to emphasize, in the implementation of state policy, the need to take into account the historically significant socio-cultural role that the religious component has played in the formation and development of Russian statehood.⁸

7 *Conclusion on Compliance with the Provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation.*

8 «Включение в текст Конституции Российской Федерации указания на веру в Бога, [...] не означает отказа от светского характера Российского государства, [...] поскольку по своей формулировке не сопряжено с конфессиональной принадлежностью, [...] и призвано лишь подчеркнуть необходимость учёта при осуществлении государственной политики той исторически значимой социально-культурной роли, которую религиозная составляющая сыграла в становлении и развитии российской государственности» / «Vklyuchenie v tekst Konstitutsii Rossiiskoi Federatsii ukazaniya na veru v Boga, [...] ne oznachaet otkaza ot svetskogo kharaktera Rossiiskogo gosudarstva, [...] poskol'ku po svoei formulirovke ne sopryazhenno s konfessional'noi prinadlezhnost'yu, [...] i prizvano lish' podcherknut' neobkhodimost' ucheta pri osushchestvlenii gosudarstvennoi politiki toi istoricheski znachimoi sotsial'no-kul'turnoi roli, kotoruyu religioznaya sostavlyayushchaya sygrala v stanovlenii i razvitii rossiiskoi gosudarstvennosti». *Conclusion on Compliance with the Provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation*, p. 14.

The centuries-long existence of the Russian Orthodox Church – the world's largest local Orthodox church – in Russia and its inevitable and undeniable influence upon the Russian state makes it compelling to research the connection between the adoption of some laws of the Russian Federation or amendments to them and the canon law of the modern ROC. Herein, I analyze two major recent developments in Russia: the now-constitutional definition of marriage as a union of man and woman and ROC's policy regarding abortion. A smaller chapter on the interconnection of the Federal Law on the sovereign Internet (2019) and the relevant canon law of the ROC rounds up this contribution.

2 Russian Government Admits the Symphony of Authorities (2018)

20 years of Putin's record as a ruler of Russia have been marked not only by geopolitical transformations with worldwide repercussions, such as the take-over of Crimea in 2014 and the military involvement in Syria since 2015. Some developments are of legal nature: a range of Federal Laws reflected a clear influence of the ROC. The new redaction of the Constitution crowned this process in 2020.

Inevitably, the church interacts with the state in which it dwells. In modern Russia, the interaction between state and church is expressed in the ROC doctrine as a symphony of authorities. Kirill became Patriarch in February 2009, during the presidency of Dmitri Medvedev (2008–2012). The latter, as President of Russia, congratulated him on the occasion and listened to Kirill's presentation on the Byzantine principle of the symphony of authorities and his vision of its implementation in the Russian Federation, which I elsewhere call 'reloaded' and 'reinvented' symphony:⁹

The spirit of symphony, not its letter, must implement themselves [*sic*] within the frame of that field of legislation and based on those constitutional provisions that [already] exist. This opens up wonderful prospects for the development of church-state relations in such a way that neither the state nor the church would interfere in each other's affairs,

9 See Ponomariov, *The Visible Religion*, p. 307.

[yet] respect each other's position on these internal affairs and, at the same time, build a wide-range interaction, dialogue, and cooperation.¹⁰

It seems to be the first direct exposure of the Russian leaders to this theopolitical concept. In return, on 1 February 2018, the then-Prime Minister Medvedev (Putin being the President again) came to congratulate Patriarch Kirill on the ninth anniversary of his pontificate. In the course of their conversation, Medvedev came up with a theopolitical statement unprecedented for a top government official and a person number two in the Russian polity, defining the relationship between the ROC and the Russian state at that point as an established symphony of authorities: "I would like to express a hope for the preservation of those special relations that were established during your pontificate, that is, the relations that you some time ago defined by the Greek word 'symphony,' and which [relations] are remaining in this capacity."¹¹ There are a few novelties with regard to this statement. First, the relationship of symphony has been admitted by the modern Russian state. Second, the state localized the establishment of symphony between February 2009 and February 2018, implying it had not existed in the Russian Federation before. Third, the state would like to keep this status quo.

10 «Дух симфонии, но не буква, должны реализовывать себя в рамках того законодательного поля и на основе тех конституционных положений, которые существуют. Это открывает замечательные перспективы развития церковно-государственных отношений таким образом, чтобы ни государство, ни церковь не вмешивались в дела друг друга, уважали взаимную позицию друг друга по этим внутренним делам и одновременно выстраивали широкую систему взаимодействия, диалога и сотрудничества» / «Dukh simfonii, no ne bukva, dolzhny realizovyvat' sebya v ramkakh того zakonodatelnogo polya i na osnove tekhn konstitutsionnykh polozhenii, kotorye sushchestvuyut. Eto otkryvaet zamechatel'nye perspektivy razvitiya tserkovno-gosudarstvennykh otnoshenii takim obrazom, chtoby ni gosudarstvo, ni tserkov' ne vmeshivalis' v dela drug druga, uvazhali vzaimnuyu pozitsiyu drug druga po etim vnutrennim delam i odnovernemno vystraivali shirokuyu sistemu vzaimodeistviya, dialoga i sotrudnichestva». *Patriarch Kirill Called on Church and State for Cooperation*.

11 «Хотел бы выразить надежду на сохранение тех особых отношений, которые сложились в период Вашего патриаршества – отношений, которые Вы изначально обозначили греческим словом "симфония", которые в настоящий момент в таком состоянии и пребывают» / «Khotel by vyrazit' nadezhdu na sokhranenie tekhn osobykh otnoshenii, kotorye slozhilis' v period Vashego patriarshestva – otnoshenii, kotorye Vy iznachal'no oboznachili grecheskim slovom "simfoniya", kotorye v nastoyashchii moment v takom sostoyanii i prebyvayut». *Medvedev Wished Patriarch Kirill to Preserve the Symphony in Church-State Relations*.

In his reply to Medvedev, Kirill expressed a broader interpretation of symphony¹² than was originally conceived not only in the seminal *Bases of the Social Concept* of the ROC (111.4),¹³ written and published under Kirill's supervision (2000), but also by Emperor Justinian I on the relationship between βασιλεία (royal power) and ἱερωσύνη (priesthood)¹⁴ in the East Roman Empire.¹⁵ One of the reasons for the special attention paid by Kirill to this concept, in my opinion, is Justinian's statement that nothing may be as desirable to emperors as the respect and dignity of the priests.¹⁶ Building on this premise, the *Bases*

- 12 «“Симфония созвучия и согласия” является идеальным образом отношений в обществе, государстве, семье и в любом коллективе. [...] Симфония там, где есть общие цели, общее целеполагание, желание и стремление работать сообща [...]. Вот так сформировались церковно-государственные отношения современной России» / «“Simfoniya sozvuchiya i soglasiya” yavlyaetsya ideal'nym obrazom otnoshenii v obshchestve, gosudarstve, sem'e i v lyubom kollektive. [...] Simfoniya tam, gde est' obshchie tseli, obshchee tselepolaganie, zhelanie i stremlenie rabotat' soobshcha [...]. Vot tak sformirovalis' tserkovno-gosudarstvennye otnosheniya sovremennoi Rossii» (“The ‘symphony of consonance and harmony’ is an ideal type of relations in a society, state, family, and in any collective. [...] Symphony is where there are shared goals, joint goal-setting, [and] a desire and intention to work together [...]. This is how the church-state relations of modern Russia have been formed”). *Medvedev Wished Patriarch Kirill to Preserve the Symphony in Church-State Relations*.
- 13 «Государство при симфонических отношениях с Церковью ищет у нее [...] благословения на деятельность, направленную на достижение целей, служащих благополучию граждан, а Церковь получает от государства помощь в создании условий, благоприятных для проповеди и для духовного окормления своих чад, являющихся одновременно гражданами государства» / «Gosudarstvo pri simfonicheskikh otnosheniyakh s Tserkov'yu ishchet u nee [...] blagosloveniya na deyatel'nost', napravlennuyu na dostizhenie tselei, sluzhashchikh blagopoluchiyu grazhdan, a Tserkov' poluchaet ot gosudarstva pomoshch' v sozdanii uslovii, blagopriyatnykh dlya propovedi i dlya dukhovnogo okormleniya svoikh chad, yavlyayushchikhsya odnovremenno grazhdanami gosudarstva» (“Under the symphonic relations with the church, the state seeks in it [...] a blessing [public support] for the activities [policies] targeting the well-being of its citizens, and the church receives help [funding] from the state in creating conditions favorable for taking spiritual care of its children [parishioners] who simultaneously are citizens [voters] of the state”). *Bases of the Social Concept of the ROC*.
- 14 *Nov. VI*, pp. 35–36. Justinian wrote “priesthood,” not “church,” although the ROC takes the former to mean the latter.
- 15 Although *Praefatio* to *Nov. 6* is the central and most quoted text regarding the concept of symphony, its rhetorical nuances, allusions, and highly sophisticated puns remain under-researched (cf. footnotes 16–17). A detailed discussion of it, as well as other relevant laws of Justinian and beyond will follow in a critical study on the Russian ‘symphony’ that I am currently preparing. See in this respect: Capozza, *Sacerdotium nelle Novelle di Giustinian*; Schminck, *Ex occidente lux*?
- 16 *Nov. 6*: “Ὡστε οὐδὲν οὕτως εὖν εἴη περισπούδαστον βασιλεῦσιν ὥς ἡ τῶν ἱερέων σεμνότης, [...]” This phrase employs the potential optative to signify possibility or likelihood as an

of the *Social Concept* stipulates that the symphony with the state can occur if, inter alia, the priesthood is “comfortably arranged in everything” (*во всем благоустроено* / *vo vsem blagoustroeno*). This argument is not even a mistranslation of Novella 6 – it is indeed a reinvented concept of symphony because the Greek original speaks here about the priesthood being “blameless in every way” (*ἄμεμπτος εἴη πανταχόθεν*).¹⁷ On the other hand, the authority of Emperor Justinian, the great codifier of Roman law and a saint of the Orthodox church, and the concept of symphony are instrumentalized by the ROC to counterbalance the might of the state and hedge the church's relative independence.

Symphony was originally proposed by the East Roman state in order to achieve concrete political goals of the moment.¹⁸ Justinian had issued Nov. 6 in March 535 CE on the eve of the war against the Arian barbarians in Italy, which began a few months later, as he needed the public support of the Pope of Old Rome, as well as of the empire-wide Orthodox communities.¹⁹ Nevertheless,

opinion of the speaker. Cf. the *Bases of the Social Concept*: «Поэтому ничто не лежит так на сердце царей, как честь священнослужителей, [...]» / «Poetomu nichito ne lezhit tak na serdtse tsarei, kak chest' svyashchennosluzhitelei, [...]» (“Therefore, nothing lies at the heart of kings so [near] as the honor of priests, [...]”).

- 17 Nov. 6: “Εἰ γὰρ ἡ μὲν ἄμεμπτος εἴη πανταχόθεν καὶ τῆς πρὸς θεὸν μετέχῃ παρρησίας, [...]” (“Oh, if only the priesthood were blameless in every way and shared the outspokenness toward God! [...]”). This sentence uses the optative of wish referring to the future and making no distinction between realizable and unrealizable, introduced by the strong modal expression. Besides, the verb *μετέχω* implies partaking in a common cause or sharing responsibility. Cf. the *Bases of the Social Concept*: «И если священство будет во всем благоустроено и угодно Богу, [...]» / «I esli svyashchenstvo budet vo vsem blagoustroeno i ugodno Bogu, [...]» (“And if the priesthood is comfortably arranged in everything and pleasing to God, [...]”).
- 18 Nov. 6: “[...] πεπιστεύκαμεν, ὥς δι’ αὐτῆς μεγάλα ἡμῖν ἀγαθὰ δοθήσεται παρὰ Θεοῦ, καὶ τὰ τε ὄντα βεβαίως ἔξομεν τὰ τε οὐπω καὶ νῦν ἀφιγμένα προσκτησόμεθα” (“[...] we have been confident that, through it [the honoring of priests and church dogmas], great assets will be given to us from God, and that we will firmly hold the existing ones and additionally gain the ones that have not yet arrived”). Cf.: “Presumably [this is] a reference to hope for success in the Italian campaign that was about to begin.” Miller/Sarris, *The Novels of Justinian*, p. 98.
- 19 In particular, the follow-up Novella 9 of April 535 CE granted the Pope the right to claim ecclesial property within the span of one hundred years, instead of the standard thirty years, which applied “in all the catholic churches that are located up to the ocean strait [Gibraltar]” (*in totas catholicas ecclesias, quae usque ad oceani fretum positae sunt*). By stressing the “catholic” (i.e., orthodox) status of the mentioned Christian communities, the clause excluded the Arian churches in the Western part of the Empire that was not yet controlled by Constantinople. Besides, Nov. 9 urged the Western judges, who were *Christiani et orthodoxi*, to enforce this law not only in future litigations but also in the cases already forwarded to courts (*sed etiam in his [causis] quae iam in iudicium sunt deductae*). The law and its enforcement at that point made sense if Justinian had designed a plan to

Praefatio to Nov. 6 has become a thing in itself, normally referred to without invoking the historical context.

The concept of symphony remains a focal point for religion and law scholars, historians, and sociologists.²⁰ Moreover, it is rejected by the Ecumenical Patriarchate in its brand-new document on social ethics (2020), which competes with the document of the ROC, because it encourages the church's encroachment on the prerogative of the state, as well as on the liberties of secular democracies.²¹ Other models have been recently proposed to describe the church-state relations in the Russian Federation. They deal with different levels of church-state cooperation (national, regional), different aspects and degrees of interaction.²² As we can see, however, the Russian government now admits the symphony with the church, and this factor cannot be bypassed.

'Institutional symphony' can hardly occur in Russia without 'personal symphony' between Patriarch Kirill and the top state leaders such as Prime Minister Medvedev. In 2018, Medvedev – and not Putin – acknowledged the symphony to the Patriarch because Kirill had introduced this concept to him and during his presidency. The developments analyzed below reflect the institutional interaction at the top level. The constitutional amendment on marriage took place "in the spirit of symphony," according to Kirill's definition, whereas the anti-abortion campaign of the ROC has so far delivered a limited rapprochement with the state.

establish effective control over the Western provinces in the then-immediate future. See in this regard: Nov. IX; Kaiser, *Die hundertjährige Verjährung*.

20 See Antonov, *The Varieties of Symphonia and the State-Church Relations in Russia*; Antonov, *Church-State Symphonia*; Makrides, *Orthodox Christianity and State/Politics Today*; Jianu, *Symphonia and the Historical Relationship between State and Church*; Kostogryzova, *Symphony of Authorities as a Principle of Byzantine State Law*; Hovorun, *Is the Byzantine "Symphony" Possible in Our Days?*; Lauritzen, *Symphonia in the Byzantine Empire*; Belyakova, *Symphony of Authorities or a Free Church in a Rule-of-Law State*; Leustean, *The Concept of Symphonia in Contemporary European Orthodoxy*; McGuckin, *The Legacy of the 13th Apostle*. The following classical work remains relevant: Dvornik, *Early Christian and Byzantine Political Philosophy*.

21 "[Symphony] cannot, however, be invoked as a justification for the imposition of religious orthodoxy on society at large, or for promotion of the Church as a political power." *For the Life of the World*. Ostensibly, the document reflects the minority status of the Ecumenical Patriarchate in Turkey and, above all, of one of many churches in the USA and elsewhere in the world, which is different from the formidable role the ROC plays in the Russian Federation.

22 See Köllner, *Religion and Politics in Contemporary Russia*, pp. 135–143; Stoeckl, *Three Models of Church-State Relations in Contemporary Russia*.

3 Marriage as Union of Man and Woman (2020)

Until 2020, the interpretation of marriage in Russia as a heterosexual union of man and woman was deduced from the Family Code of the Russian Federation (1995), whose Article 1.3 and, especially, Article 12 “Preconditions for the Conclusion of Marriage” in Paragraph 1 lays down the following: “The conclusion of marriage requires mutual and voluntary consent of the man and the woman who enter into marriage, as well as their attainment of the marriageable age.”²³ Given the referral to man and woman, the conclusion about the heterosexual interpretation of marriage in the Russian Federation was evident.²⁴ The Constitution 2020 in Article 72.1ж¹ contains a clause on marriage that it clearly defines as a union of man and woman: “The Russian Federation and the constituent entities of the Russian Federation are jointly responsible for the [...] protection of the institution of marriage as a union of man and woman.”²⁵ Here, the Constitution not only provides a supreme definition of marriage in the Russian Federation but also stipulates the sovereign protection of this understanding in its jurisdiction. Besides, according to the opinion of the Constitutional Court of the Russian Federation (2020), the Russian state is not bound by any applicable norm of law to either support or protect same-sex unions, although it must preclude arbitrary intrusion into private life.²⁶ It is noteworthy that the Court’s text is in some respects in consonance with the earlier canon law of the ROC (cf. footnote 41).

23 «Для заключения брака необходимы взаимное добровольное согласие мужчины и женщины, вступающих в брак, и достижение ими брачного возраста» / «Dlya zaklyucheniya braka neobkhodimy vzaimnoe dobrovol'noe soglasie muzhchiny i zhenshchiny, vstupayushchikh v brak, i dostizhenie imi brachnogo vozrasta». *The Family Code of the Russian Federation*.

24 See Grishaev, *Clause-by-Clause Commentary on the Family Code of Russia*.

25 «В совместном ведении Российской Федерации и субъектов Российской Федерации находятся: [...] защита института брака как союза мужчины и женщины» / «V sovmeestnom vedenii Rossiiskoi Federatsii i sub'ektov Rossiiskoi Federatsii nakhodyatsya: [...] zashchita instituta braka kak soyuza muzhchiny i zhenshchiny».

26 «Ни из Конституции Российской Федерации, ни из принятых на себя Россией международно-правовых обязательств не вытекает обязанность государства по созданию условий для пропаганды, поддержки и признания союзов лиц одного пола [...]. Вместе с тем это не означает, что предлагаемое положение о браке как союзе мужчины и женщины снимает с государства конституционные обязанности не допускать произвольного вторжения в сферу частной жизни, [...]» / «Ni iz Konstitutsii Rossiiskoi Federatsii, ni iz prinyatykh na sebya Rossiei mezhdunarodno-pravovykh obyazatel'stv ne vytekaet obyazannost' gosudarstva po sozdaniyu uslovii dlya propagandy, podderzhki i priznaniya soyuzov lits odnogo pola [...]. Vmeste s tem eto ne oznachaet, chto predlagayemoe polozhenie o brake kak soyuze muzhchiny i zhenshchiny

The heterosexual approach to marriage is rooted in Russia, in particular, due to the teaching of the church. It is noteworthy that the constitutional decision-making in January 2020 began with the initiative to amend the Constitution with the clause on *family* as a union of man and woman, when the Co-Chairman of the Working Group on Amendments to the Constitution, Andrei Klishas, upheld the proposition of Malofeev²⁷ to define family (not *marriage*, at that point) as a union of man and woman.²⁸ Already on 3 February 2020, the ROC spoke about the amendment and put forth its proposal to change "family" to "marriage":

According to the applicable Russian law, the legal effect is generated [only] by the [officially] registered marriage. Hence, the spouses' joint owned property emerges [only] in [their] marriage, the answer to the question who of the spouses shall live with [their] common underage children, as well as the issue of alimony to the spouses and children, arises after the termination of [their] marriage. Therefore, it is marriage that should be defined as a union of man and woman, and not family.²⁹

snimaet s gosudarstva konstitutsionnye obyazannosti ne dopuskat' proizvol'nogo vtorzheniya v sferu chastnoi zhizni, [...]» ("Neither the Constitution of the Russian Federation nor the international legal obligations assumed by Russia imply the obligation of the state to create conditions for the promotion, support, and recognition of unions of persons of the same sex [...]. However, this does not mean that the proposed provision on marriage as a union of man and woman removes from the state the constitutional obligation to prevent arbitrary intrusion into the sphere of private life, [...]"). *Conclusion on Compliance with the Provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation*, p. 17.

27 *The Russians, 1000-year-long History, and the Faith in God.*

28 *Proposal Made to Amend the Constitution with Provision on Family as Union of Man and Woman.*

29 «В действующем российском законодательстве правовые последствия порождает зарегистрированный брак. Так, общее имущество супругов возникает в браке, решение вопроса о том, с кем из супругов будут проживать общие несовершеннолетние дети, равно как и вопроса об алиментных обязательствах в отношении супругов и детей, происходит после прекращения брака. Поэтому в качестве союза мужчины и женщины следует определить брак, а не семью» / «V deistvuyushchem rossiiskom zakonodatel'stve pravovye posledstviya porozhdaet zaregistrirovannyi brak. Tak, obshchee imushchestvo suprugov vznikayet v brake, reshenie voprosa o tom, s kem iz suprugov budut prozhivat' obshchie nesovershennoletnie deti, ravno kak i voprosa ob alimentnykh obyazatel'stvakh v otnoshenii suprugov i detei, proiskhodit posle prekrashcheniya braka. Poetomu v kachestve soyuza muzhchiny i zhenshchiny sleduet opredelit' brak, a ne sem'yu». *The ROC Proposed to Define in Constitution Marriage, not Family, as a Union of Man and Woman.*

Besides, a family can consist of just a mother and a child, of grandparents and grandchildren, etc., yet marriage in Russia is understood as a union of man and woman; therefore, if the amendment were ever included in the Constitution, it would be opportune in relation to “marriage,” and not “family.”³⁰ These modifications were accepted, and now, the Supreme Law of the Russian Federation professes the traditional definition of marriage thanks to the Russian Orthodox Church, whose canon law on the issue is outlined below.

4 Ecclesiae Russicae Justae Nuptiae → Jus Rei Publicae Russicorum

In recent Russian history, the ROC briefly expressed its take on marriage in chapter X.2 of the *Bases of the Social Concept*. Only on 1 December 2017, at the jubilee Council of Bishops in Moscow dedicated to the centennial of the restoration of patriarchy in Russia, the ROC adopted an extended document, *On Canonical Aspects of Church Marriage*.³¹ Three moments are of special relevance here. First, the document begins with a Preamble that marriage is a union of man and woman established by God (*Брак есть установленный Богом союз мужчины и женщины* / *Brak est' ustanovlennyi Bogom soyzuz muzhchiny i zhenshchiny*). It is a traditional position with referrals to the Book of Genesis (see below), the Gospel according to Matthew, and to the words of Apostle Paul in the Epistle to Ephesians equating marriage with the union of Christ and Church.³² The latter figure of speech is founded in the Greek language, in which the word *church* (ἐκκλησία) is feminine.

Second, the canon law incorporates a part of Article 12.1 of the Family Code of the Russian Federation, paraphrasing it as a “public and free declaration of will of the man and the woman.”³³ It highlights how ‘symphonic’ Patriarch Kirill is in terms of church-state relations. Third, the document refers to

30 *The ROC Proposed to Define in Constitution Marriage, not Family, as a Union of Man and Woman.*

31 *On Canonical Aspects of Church Marriage.*

32 «Муж есть глава жены, как и Христос глава Церкви [...]. Но как Церковь повинуетя Христу, так и жены своим мужьям во всем» / «Muzh est' glava zheny, kak i Khristos glava Tserkvi [...]. No kak Tserkov' povinuetsya Khristu, tak i zheny svoim muzh'yam vo vsem» (“The husband is the head of the wife, just as Christ is the Head of the Church [...]. But as the Church obeys Christ, so [must] the wives obey their husbands in everything”). *On Canonical Aspects of Church Marriage.*

33 «[Вступление в церковный брак (венчание) предполагает] открытое и свободное волеизъявление мужчины и женщины, [...]» / «[Vstuplenie v tserkovnyi brak (venchanie) predpolagaet] otkrytoe i svobodnoe voleiz'yavlenie muzhchiny i zhenshchiny, [...]». *On Canonical Aspects of Church Marriage.*

Roman law: "Marriage is a union of man and woman, a commonality of all life, a co-participation in divine and human law," reads the principle of Roman law, which was [also] included in Slavic ecclesial law sources (*Kormchaya*, chapter 49).³⁴ This Russian version is based on Slavic translations of Byzantine sources such as the *Basilica*³⁵ (*Bas.* 28, 4, 1),³⁶ promulgated in 888 and declared an exclusive code of law in then-Byzantium in 1166,³⁷ which represents an intermediate stage between the classical Latin text (*Dig.* 23, 2, 1)³⁸ and the Slavic text of the 13th century. The church needs this reference to demonstrate the dual nature of marriage conclusion, given that Christians in the Roman state used to formalize their marriages according to both civil and ecclesial requirements.³⁹ In this regard, at present, "the church marriage ceremony in the countries, in which it engenders no legal effect, shall be performed after the civil registration of marriage."⁴⁰ Besides, the double emphasis on *ius divinum* (through referrals to the Bible and Roman law) should underscore the supreme understanding of marriage as a heterosexual union. To make its argument even stronger, the document additionally negates the right of homosexual unions to marriage, some of whose wording is identical to the opinion of the Constitutional Court (cf. footnote 26).⁴¹

34 «Брак есть союз мужчины и женщины, общность всей жизни, соучастие в божеском и человеческом праве» – гласит принцип римского права, вошедший и в славянские церковные правовые источники (Кормчая, гл. 49)». *On Canonical Aspects of Church Marriage*.

35 See Scheltema/van der Wal, *Basilicorum Libri LX*.

36 "Ἡγάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις τοῦ βίου παντός, θείου τε καὶ ἀνθρωπίνου δικαίου κοινωνία."

37 See Chitwood, *Byzantine Legal Culture and the Roman Legal Tradition*, pp. 33, 35.

38 "Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio." Mommsen/Krueger, *Corpus Iuris Civilis*.

39 *On Canonical Aspects of Church Marriage*.

40 «В связи с этим церковное браковенчание в тех странах, где оно не влечет за собой гражданско-правовых последствий, совершается после государственной регистрации брака» / «V svyazi s etim tserkovnoe brakovenchanie v tekhn stranakh, gde ono ne vlechet za soboi grazhdansko-pravovykh posledstviy, sovershaetsya posle gosudarstvennoi registratsii braka». *On Canonical Aspects of Church Marriage*.

41 «Церковь категорически не признаёт и не признает союзы лиц одного пола в качестве брака вне зависимости от признания или непризнания таковых гражданским законодательством, а также другие формы сожительства, не соответствующие ранее данному определению брака как союза между мужчиной и женщиной» / «Tserkov' kategoricheski ne priznaet i ne priznaet soyuzy lits odnogo pola v kachestve braka vne zavisimosti ot priznaniya ili nepriznaniya takovykh grazhdanskim zakonodatel'stvom, a takzhe drugie formy sozhitel'stva, ne sootvetstvuyushchie ranee dannomu opredeleniyu braka kak soyuza mezhdu muzhchinoi i zhenshchinoi» ("The Church categorically rejects and will not recognize unions of persons of the same sex as a marriage, irrespective

law.⁴⁶ Thus, the ROC substantiates the heterosexual character of marriage via a combination of three different sources that it considers authoritative: the Bible, the Family Code of Russia, and Roman law. Ultimately, in 2020, this church position made its way into the Constitution of the Russian Federation.

5 Nasciturus Pro Jam Nato Habetur

The abortion issue represents the central and, thus far, one of the least successful legal avenues in the church's consistent attempt to turn its pro-life position⁴⁷ into secular legislation. The ROC uses various methods to push through its agenda on abortion.⁴⁸ In January 2011, the ROC forwarded to the state authorities of the Russian Federation its *Propositions for the Improvement of the National Policy on Family and Childhood Care*.⁴⁹ Inter alia, the church wanted the state law to secure a mandatory waiting period (“period of silence”)

⁴⁶ *On Canonical Aspects of Church Marriage*.

⁴⁷ «Эмбрион является человеком. В связи с этим ему принадлежит ряд прав, которые необходимо отстаивать. а) Право на человеческую идентичность. [...] б) Право на жизнь. [...] в) Право на развитие. [...] Православная Церковь подчёркивает, что фундаментальные права эмбриона как человеческой личности должны быть закреплены в законодательстве» / «Embrion yavlyaetsya chelovekom. V svyazi s etim emu prinadlezhit ryad prav, kotorye neobkhodimo otstaivat'. a) Pravo na chelovecheskuyu identichnost'. [...] b) Pravo na zhizn'. [...] v) Pravo na razvitie. [...] Pravoslavnaya Tserkov' podchërkivaet, chto fundamental'nye prava embriona kak chelovecheskoj lichnosti dolzhny byt' zakrepleny v zakonodatel'stve» (“The embryo is a human being. In this regard, it has certain rights that must be protected. [These are:] (a) The right to human identity. [...] (b) The right to life. [...] (c) The right to development. [...] The Orthodox Church emphasizes that the fundamental rights of the embryo as a human person must be enshrined in legislation”). *On Inviolability of Human Life from the Moment of Conception*. Although this document is yet to be formally enacted (soon), it represents an extended version of chapter XII.2 of the *Bases of the Social Concept*.

⁴⁸ «Законодательство, касающееся аборт, – характерный пример не только того, как РПЦ выступает в роли государственной церкви, но и того, как она представляет себя в качестве сообщества верующих, равные права которых государство должно уважать» / «Zakonodatel'stvo, kasayushcheesya abortov, – kharakternyi primer ne tol'ko того, kak RPTs vystupaet v roli gosudarstvennoi tserkvi, no i того, как она predstavlyaet sebya v kachestve soobshchestva veruyushchikh, равные права kotorykh gosudarstvo dolzhno uvazhat'» (“The legislation on abortion is a characteristic example of not only how the ROC plays the role of a state church, but also how it presents itself as a community of believers, whose equal rights must be respected by the state”). Stoeckl, *Three Models of Church-State Relations in Contemporary Russia*, p. 214.

⁴⁹ *Propositions for the Improvement of the National Policy on Family and Childhood Care*.

before the surgery and demanded to exclude the operations for abortion, except for some cases, from the state medical insurance.

The Federal Law *On Bases of Public Healthcare in the Russian Federation*,⁵⁰ containing the famous Article 56 on abortion, was passed ten months after the ROC's *Propositions*. Although the ROC was an official consultant of the government on this issue, whose role was extraordinary,⁵¹ the state disregarded most of the church's initiatives. Instead, the adopted legal norm underlined the woman's right to take independent decisions on her pregnancy (Art. 56.1). One of the church-liked provisions in the law was the waiting period, although it ranged from two to seven days, and not two weeks (Art. 56.3). The formulation "not earlier than seven days" (*не ранее семи дней / ne ranee semi dnei*), however, can imply a longer period in practice. Besides, the physicians received the right to refrain from performing an abortion in non-lethal cases (Art. 70.3). This right was personally lobbied by the ROC's chief lawyer and abbess Ksenia Chernega. It traces back to her earlier research articles,⁵² as well as to the *Bases of the Social Concept* (XII.2).⁵³ In 2014, President Putin signed some amendments to this law that stiffened legal responsibility for the non-compliance with the "informed voluntariness" and the waiting period.⁵⁴

In January 2019, the State Duma of Russia hosted the VII Christmas Parliamentary Conference, with Duma's Chairman Viacheslav Volodin presiding. Volodin proposed to create a Working Group of representatives of all factions and relevant committees of the Duma, which, among other things, would deliberate on financing abortions from the federal budget.⁵⁵ The creation of the Group followed the address of Patriarch Kirill who brought up poor demographics in Russia. Already on 13 February 2019, the first meeting of the Working Group took place. It was chaired by the Deputy Chairman of the State Duma, Peter Tolstoy, and focused on a special legal status for large families, as well as the initiative to reduce the list of allowed cases of pregnancy termination under the compulsory health insurance program.⁵⁶

50 Federal Law dated 21 November 2011 No 323-FL.

51 See Stoeckl, *Three Models of Church-State Relations in Contemporary Russia*, p. 212.

52 See Chernega, *Some Legal Aspects of Abortion*; Chernega, *Juridical Aspects of the Right of Doctors*.

53 «Церковь призывает государство признать право медицинских работников на отказ от совершения аборта по соображениям совести» / «Tserkov' prizyvaet gosudarstvo priznat' pravo meditsinskih rabotnikov na otkaz ot soversheniya aborta po soobrazheniyam sovesti» ("The Church calls upon the state to recognize the right of medical workers to refuse from performing an abortion based on [their] convictions of conscience").

54 Federal Law dated 21 July 2014 No 243-FL.

55 The State Duma Held VII Christmas Parliament Conference.

56 V.A. Krupennikov, MP and Deputy Chairman of the State Duma Committee.

During the meeting, the head of the Legal Department of the Moscow Patriarchate, Ksenia Chernega, suggested recognizing the foetus as a subject of law.⁵⁷ The abbess argued there is some inconsistency in the legislation because the Civil Code of the Russian Federation, following Roman law (*Dig.* 1, 5, 7),⁵⁸ allows one to make a will in favor of the unborn child.⁵⁹ In her opinion, the Russian succession law thus recognizes the human foetus as a subject of law. In this context, the abbess suggested taking into account the norms of international law enshrined in the *Convention on the Rights of the Child*, according to which, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before* as well as after birth" (Preamble).⁶⁰ She suggested including this formulation into the Federal Law *On Basic Guarantees of the Rights of the Child in the Russian Federation*, whereafter all further regulations on abortion would be justified due to the legal protection of the unborn child.

Back in 2002, Chernega published a research paper⁶¹ in which she referred to Part 1 of Article 1116 of the Civil Code of the Russian Federation "Persons Entitled to Succession," which (Art.) reads: "*Citizens* who are alive at the moment of the commencement of succession, as well as the ones conceived

57 *The State Duma Promised to Find a Balanced Solution.*

58 "Qui in utero est, perinde ac si in rebus humanis esset custoditur, quotiens de commodis ipsius partus quaeritur: quamquam alii antequam nascatur nequaquam prosit" ("[He/she,] who is in the uterus is protected to the degree as if it were in [regular] human affairs, as long as is required for the benefit of the foetus: however, no one else shall in any way benefit [from it] before the birth").

59 This principle of Roman law comes across various jurisdictions. For example, the Russian law defines the moment of conception and the prerequisite to be born alive but omits the implication of being dead at birth (*see footnote 62*). The German Civil Code lays down the following: "[The person] who was not alive at the time of the commencement of succession, yet had been already conceived, is considered to have been born before the commencement of succession" ("Wer zur Zeit des Erbfalls noch nicht lebte, aber bereits gezeugt war, gilt als vor dem Erbfall geboren"), although it does not explicate the precondition to be born alive. The People's Republic of China in its Civil Code, which entered into force on 1 January 2021, in Chapter 2 "Natural Persons" (自然人), Section 1 "Civil Legal Capacity and Civil Capacity to Act" (民事权利能力和民事行为能力), Article 16 stipulates the legal effect of not being born alive: "[With regard to succession,] the foetus is deemed to have civil legal capacity. However, if the foetus is delivered stillborn, its civil legal capacity shall be non-existent from the beginning" ([...], 胎儿视为具有民事权利能力。但是, 胎儿娩出时为死体的, 其民事权利能力自始不存在). Unlike the German law, the Chinese law did not lay down the moment in time when the foetus must be conceived. And the Roman law limits the beneficiaries of succession by excluding the inevitable caretakers. See: *Bürgerliches Gesetzbuch; The Civil Code of the People's Republic of China.*

60 *Convention on the Rights of the Child.*

61 Chernega, *Some Legal Aspects of Abortion.*

during the testator's lifetime and born alive after the commencement of succession, can be called upon to succession.”⁶² She noted that the lawmaker calls the foetus here a “citizen,” and not a “part” of the mother's body. It is an interesting observation, although, in my opinion, the wording rather seems to be “a slip of the tongue.”

According to another speaker at the meeting, Anna Kuznetsova, the Commissioner for Children's Rights under the President of the Russian Federation, if a woman, who is pregnant five weeks or longer, gets killed, it implies a death of two persons. Now, there seems to be a misunderstanding. Paragraph (g) of Part 2 of Article 105 “Murder” of the Penal Code of the Russian Federation stipulates, as one of the qualifying elements, a murder of a woman who is known to the perpetrator to be pregnant (*заведомо для виновного находящейся в состоянии беременности* / *zavedomo dlya vinovnogo nakhodyashcheysya v sostoyanii beremennosti*).⁶³ This Article makes the foetus an aggravating factor. Apparently, Kuznetsova extrapolated Paragraph (a) of Part 2 “Murder of Two or More Persons” onto Paragraph (g).

Kuznetsova is a mother of seven children and a wife of an Orthodox priest. The church teaching is thus likely to resonate with her and may have a certain impact on her activity; her appointment as Commissioner by President Putin in 2016 (prolonged until 2024) reflects the rapprochement between church and state. In May 2020, the Commissioner for Children's Rights released an annual report that summarized the abovementioned arguments regarding prenatal life and added a few new ones to the list. In particular, the retail sale of abortion drugs in the pharmacies should be restricted, and the funding for the clinics should be proportional to the abortion cases because the clinics should be interested in child protection and not in the termination of pregnancy. These proposals were submitted to the Federal Assembly of the Russian Federation.⁶⁴

Overall, although the ROC's position on intrauterine life faces certain resistance, it has been able to lobby some procedural reservations in this respect. Besides, the recent close cooperation on family policies with the State Duma, as well as the rigid anti-abortion adjudication in Poland in October 2020 that

62 «К наследованию могут призываться *граждане*, находящиеся в живых в момент открытия наследства, а также зачатые при жизни наследодателя и родившиеся живыми после открытия наследства» / «K nasledovaniyu mogut prizyvat'sya *grazhdane*, nakhodyashchiesya v zhivykh v moment otkrytiya nasledstva, a takzhe zachatye pri zhizni nasledodatelya i rodivshiesya zhivymi posle otkrytiya nasledstva». *The Civil Code of the Russian Federation*.

63 *The Penal Code of the Russian Federation*.

64 See *Report on Activities of the Commissioner for Children's Rights*, pp. 49–50.

could serve as a competing conservative pattern,⁶⁵ set up a trend for a further rapprochement between church and state in Russia.

6 From “Digital Antichrist” to the Law on Sovereign Internet (2019)

Another peculiar moment is worth mentioning in light of the church-state interaction on legal matters. On 1 November 2019, the debated law on the sovereign Internet, *Amendments to the Federal Law of 1 May 2019 № 90-FL On Communication and the Federal Law On Information, Information Technologies, and Protection of Information*,⁶⁶ signed by President Putin on 1 May 2019, partly came into force in Russia.⁶⁷ It aims at ensuring a secure and sustainable operation of the Internet and envisages alternative domestic encryption and backup for the functioning of the Internet in Russia after a hypothetical disconnection from without. The law brings about the substantive proposition of the ROC on a self-sufficient national encryption system alternative to the international codes, expressed as early as 2000 in a document on the “digital Antichrist”:⁶⁸

We call upon the authorities of Russia and other CIS countries, in which the Orthodox are a dominant population, to raise the question of removing the blasphemous symbol [666] from barcodes by changing the international encryption system. If this be impossible, we deem it necessary to create an alternative national electronic language.⁶⁹

The church proposition was upheld in 2008 even by the Communist Party of the Russian Federation, which, at that point, was campaigning against the

65 *Planowanie rodziny, ochrona płodu ludzkiego i warunki dopuszczalności przerywania ciąży.*

66 *Federal Law dated 1 May 2019 No 90-FL.*

67 See a critical take: Epifanova, *Deciphering Russia's “Sovereign Internet Law.”*

68 See Ponomariov, *The Visible Religion*, pp. 152–156.

69 «Призываем власти России и других стран СНГ с преобладающим православным населением поставить вопрос об устранении из штрих-кодов кощунственного символа путём изменения международной системы написания соответствующих знаков. Если же это будет невозможно сделать, считаем необходимым создание альтернативного национального электронного языка» / «Prizyvaem vlasti Rossii i drugikh stran SNG s preobladayushchim pravoslavnyim naseleniem postavit' vopros ob ustranении iz shtrikh-kodov koshchunstvennogo simvola putём izmeneniya mezhduarodnoi sistemy napisaniya sootvetstvuyushchikh znakov. Esli zhe eto budet nevozmozhno sdelat', schitaem neobkhodimym sozdanіe al'ternativnogo natsional'nogo elektronnoy yazyka». *Respect the Feelings of Believers.*

Federal Law *On Personal Data* (2006).⁷⁰ The 2019 law demonstrates that it took the political elites almost twenty years to come to the conclusion that is in line with the substantive appeal of the church, of course, by expressing the fear of the “digital Antichrist” in a secular language. As a result, “the end of the world” in the canon law translated in the Federal Law into the end of the World Wide Web within the jurisdiction of the Russian Federation. It is indicative in this regard that person number two in the ROC, Metropolitan Hilarion, the right hand of Patriarch Kirill and his possible successor, publicly approved the essence of the legislation, although he criticized its procedural shortcomings.⁷¹

7 Conclusion

In the few recent years, the Russian Orthodox Church has increased its influence over the legislation of the Russian Federation. The state and the church in Russia need each other for various reasons. The ROC takes the incentive for transporting ‘divine’ meanings onto secular legal standards, and the state takes over the substantive message of the relevant canon laws. The Russian leadership has admitted the establishment of a symphonic relationship with the ROC between 2009 and 2018 in connection with the pontificate of Patriarch Kirill. This relationship could be further broken down into ‘personal symphony’ between Kirill and the top state leaders, such as Vladimir Putin and Dmitri Medvedev, and ‘institutional symphony,’ which largely depends on the personal factor. The “spirit of symphony” even stretches to the new redaction of the Russian Constitution (2020) that now includes the clause on “the faith in God, transmitted by the ancestors” (Art. 67^{1.2}), and defines and protects marriage as a heterosexual union (Art. 72.1^{Ж1}). Although the church faces certain opposition to its rigid anti-abortion stance, it has managed to lobby some pro-life reservations in procedural law. Besides, the recent close cooperation with the State Duma speaks in favor of a further rapprochement between the ROC and the Russian state in the coming years.

Biography

Alexander Ponomariov studied Orthodox theology in Moscow, Russia, and earned his M.A. and Ph.D. degrees at the University of Passau, Germany. His

⁷⁰ See Kashin, *Globalization is a Threat to Human Rights*.

⁷¹ *The ROC Stands for Reasonable Restrictions of the Internet in Russia*.

research interests include the interconnection of religion, law, and politics. Inter alia, he is the author of an innovative Hebrew reconstruction of the Lord's Prayer – *Journal of Northwest Semitic Languages* 41 (1/2015) – and the monograph *The Visible Religion: The Russian Orthodox Church and Her Relations with State and Society in Post-Soviet Canon Law* (1992–2015), Frankfurt am Main and New York: Peter Lang 2017.

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Государственной Думы, заместитель председателя Комитета Государственной Думы по информационной политике, информационным технологиям и связи В.А. Крупенников принял участие в первом заседании Рабочей группы при Государственной Думе по законодательному регулированию социально значимых вопросов / 3 fevralya deputat Gosudarstvennoi Dumy, zamestitel' predsedatelya Komiteta Gosudarstvennoi Dumy po informatsionnoi politike, informatsionnym tekhnologiyam i svyazi V.A. Krupennikov prinyal uchastie v pervom zasedanii Rabochei gruppy pri Gosudarstvennoi Dume po zakonodatel'nomu regulirovaniyu sotsial'no znachimyykh voprosov], 14.02.2019, <http://krupennikov.ru/sobytiya/346-13-fevralya-deputat-gosudarstvennoj-dumy-v-a-krupennikov-prinyal-uchastie-v-pervom-zasedanii-rabochej-gruppy-pri-gosudarstvennoj-dume-po-zakonodatel'nomu-regulirovaniyu-sotsialno-znachimyykh-voprosov> (date of last access: 01.12.2020).