

LEGAL MEANS OF PROTECTING RUSSIAN SOCIETY FROM THREATS IN THE RELIGIOUS SPHERE: CONSTITUTIONAL FOUNDATIONS

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Introduction

The significance of the religious life of society is often underestimated. However, events taking place in the past decades in Russia and abroad demonstrate how religious beliefs prevalent in a particular society can have a global impact in the contemporary world.

In the modern world we are witnessing two major tendencies: on the one hand, the process of secularisation, on the other hand, the rise in religious consciousness and growing religious confrontation in the world, which, according to many analysts, can lead to serious threats to national security provision systems all over the world, and first of all, in Russia.¹ Thus, providing religious security in Russia seems of utmost importance.

According to Article 10 of the Russian Constitution (adopted on 12 December 1993 by popular vote),² the state power in Russia is based on the separation of powers into legislative, executive and judicial. In turn, Part 1 of Article 46 of the Russian Constitution contains a guarantee to everyone of judicial protection of his/her rights and freedoms. Threats in the religious sphere affect a wide range of human rights of utmost importance. Therefore, the role of the judiciary in ensuring religious security occupies a special place. Courts have the possibility to give complete and thorough consideration of cases which deal with religious security, and it is up to the courts to provide full and effective protection of individuals and citizens in this particular field.

We define religious security in Russia as a condition necessary for the protection of individuals, society and the state from internal and external threats

¹ Zorkin V.D. Ob ugrozah konstitutsionnomu stroyu v XXI veke i neobhodimosti provedeniya pravovoj reform v Rossii [On the Threats to the Constitutional System in the XXI Century and the Necessity to Undertake Legal Reform in Russia] // Zhurnal Rossijskogo Prava [Journal of Russian Law]. 2004. No. 6. P. 7; Shusteeva A.I. InstitutSIONalno-pravovoe obespechenie gosudarstvenno-konfessionalnoy bezopasnosti v postsovetsoj Rossii [Institutional and Legal Implementation of State-Confessional Security in Post-Soviet Russia]: Post-Doctoral Thesis (Law), 23.00.02. Rostov-on-Don, 2008. 165 P.; Amirokova R.A. Politicheskij ekstremizm v sovremennom politicheskom processe Rossii [Political Extremism in the Contemporary Political Process in Russia]. PhD thesis (23.00.02 — political institutions, ethno-political conflict studies, national and political processes and technologies). Cherkessk, 2006. URL: http://www.scholar.ru/speciality.php?page=36&spec_id=91 (last accessed: 1.02.13).

² Sobr.Zakonod.RF. 2009. No. 4. Art. 445.

which emerge and exist in the religious sphere; a condition which would ensure stable constitutional development of the Russian Federation.³

We would like to point out several threats to religious security in Russia:⁴

A) Religious extremism, which constitutes a threat to an individual and to the state as such;

B) The threat of losing religious traditions of the Russian people as a result of globalisation, which constitutes a threat to an individual and to the state;

C) Activities of non-traditional destructive religious groups, domestic and foreign, which constitute a threat to the state as a whole and to an individual;

D) Making wrong foreign policy decisions without considering the factor of religion;

E) Proselytising as a threat to an individual;

F) Religious crimes;

G) Endogenous threats to an individual in the religious sphere.

It is not possible to find protection in court from all the enumerated threats. Russian laws and legal mechanisms do not provide for protection against some of these threats, such as proselytising, religious crimes or making wrong foreign policy decisions without taking into account the factor of religion. However, we should not underestimate the court's role in the protection against most threats which emerge in the religious sphere.

Besides, in the process of the provision of religious security, it is necessary to take into account the experience of foreign countries, in particular, post-Soviet countries. Former USSR republics have largely similar legislative frameworks, and therefore, many legal norms of one CIS state can be applicable in another state. Thus, we believe that the Constitution of the Republic of Estonia (adopted on 28.06.1992 by referendum)⁵ contains norms which largely contribute to the provision of religious security. We take a closer look at these Estonian legal norms in the following parts of the article. We believe that similar constitutional norms could be applicable in Russia. Later we examine to what extent the judiciary in Russia provides protection against the above-mentioned threats in the religious sphere.

The Threat of Religious Extremism

An unquestionable threat to security in the religious sphere is religious extremism, which constitutes a threat to individuals and to the Russian state as a whole. The role of courts in the process of combating religious extremism cannot be overestimated. First of all, it is up to the court to define particular religious groups as extremist.

Besides, the courts' work is crucial when it comes to the classification of information materials distributed by religious groups and individuals as extremist. Thus, according to part 2 Article 13 of the Federal Law "On Countering Extremist

³ Tarasevich I.A. *Religioznaya bezopasnost' Rossijskoj Federatsii* [Religious Security of the Russian Federation]. Tyumen, 2013. p. 288.

⁴ Ibid. Ps. 31, 50.

⁵ Constitution of the Republic of Estonia (adopted at a referendum on 28.06.1992). URL: <http://www.worldconstitutions.ru/archives/105> (last accessed: 25.01.14).

Activities” of 25 July, 2002 No. 114-FL (as amended on 02.07.2013)⁶ information materials can be classified as extremist exclusively by a federal court.

The Threat of Losing Religious Traditions of the Russian People

As far as the threat of losing the religious traditions of Russian people is concerned, it must be noted that in recent years we are witnessing a tendency when Russian courts make decisions in specific cases taking into account the interests in the religious sphere of the majority of the Russian population. Thus, on 11 October 2002 Chekhov City Court of Moscow Region, after examining a complaint made by a religious group of Evangelical Christians “The Grace of Christ”, which was to do with the refusal on the part of the City Administration of Chekhov (Moscow Region) to give permission to hold a public worship, decided to dismiss the applicant’s demands. The Court came to the conclusion that the refusal under consideration was also within the boundaries of the law because “The Church of Evangelical Christians professes a religion which differs from the religion accepted by the majority of the local people...”⁷ The Court also noted that the actions of Chekhov City Administration listed in this complaint did not violate the rights of the Church of Evangelical Christians “Grace of Christ” because they did not pose any impediment to public worship which could be held inside cult buildings and other buildings suitable for this purpose.”

The fact of taking into account religious traditions of the majority of the Russian population can be welcomed, since it is a significant factor in the provision and strengthening of the religious security of Russian society.

Activities of non-traditional for Russian society destructive religious groups

Another threat to religious security is to do with the activities of religious groups (domestic and foreign) which are non-traditional for Russian society, and which constitute a threat to the state as a whole and to individuals.

In the field of religious security it is only possible to prove human rights violations by a religious group in court. Establishing the evidence base is quite difficult and depends on the peculiarities of the rights that are violated. We must note if there is at least one basis for elimination or prohibition of the activities of religious groups mentioned in Part 2 of Article 14 of the Federal Law “On the Freedom of Consciousness and Religious Groups” from 26 September 1997 No. 125-FL (as amended on 02.07.2013)⁸, we can talk of the violation by such groups of human rights guaranteed in the Constitution. This can include a violation of the right to liberty, security of person, property, family, human dignity, health and life. The court plays the key role in the determination of such factors which must undergo complex analysis. It is also important to establish the cause-effect relationship between the activities of a given religious group and the harmful consequences which followed, which can only be effectively proven in a course of judicial proceedings.

⁶ Sobr.Zakonod.RF. 2002. No. 30. Art. 3031.

⁷ Barankevich v. Russian Federation, 26.07.2007 // ECHR Bulletin. Russian Edition. 2008. No. 10. P. 128 - 136.

⁸ Sobr.Zakonod.RF. 1997. No. 39. Article 4465.

It is important to emphasise that frequently representatives of a religious group by using their right to religious freedom guaranteed to everyone, violate not only the human right of choosing a particular religion but also rights such as personal safety, the right to information, privacy, etc. Violation of these rights is indirect, through violation of the right to freedom of religion, which makes the question of judicial protection of freedom of religion especially important. In such a situation a whole range of constitutional values and guarantees is involved, and cases of their violation must be addressed in court.

It is extremely difficult to prove a violation of a constitutional right to family by religious destructive groups non-traditional for Russian society in court. Sometimes people are forced to denounce their family. The result of such a negative influence can be a de facto or de jure dissolution of a family, conflicts between family members and destruction of a friendly atmosphere within a family. Marriage and divorce are voluntary actions. The Russian Family Code contains provisions for divorce, but does not deal with motives for divorce. However, dissolution of a family is a fact, and instigating family dissolution is a form of pressure, depriving an individual of his/her voluntary will. One of the methods to establish the fact of pressure upon an individual to denounce his/her family is examining the doctrine of a given religious group. The results of such analysis can become a basis for closing down or prohibiting the activities of the given religious group. Dissolution of family links was proven and became one of the reasons for closing down and prohibiting the activities of the “Religious Group of Jehovah Witnesses in Moscow”, which is confirmed by the court decision (Golovinsky Court of the Northern Administrative District of Moscow, 26 March 2004).⁹

Thus, we can state the fact that some destructive religious groups non-traditional for the Russian society misuse their right to the freedom of conscience and religion guaranteed by the state in order to exercise psychological and physical pressure, which leads to human rights violations. It is only possible to uncover such cases of misuse by means of a relevant judicial process.

Of special interest for our research is the Decree of the Russian Constitutional Court from 05.12.2012 No. 30-P “On Checking Whether Point 5 Article 16 of the Federal Law “On the Freedom of Conscience and Religious Groups” is in line with the Constitution, and Point 5 Article 19 of the Law of the Republic of Tatarstan “On the Freedom of Conscience and Religious Groups” due to a complaint by Human Rights Commissioner in the Russian Federation”¹⁰. In this Decree the Constitutional Court of Russia confirmed that Point 5 of Article 16 of the Federal Law “On the Freedom of Conscience and

⁹ Jehovah's Witnesses of Moscow and others v. Russian Federation, 10.06.2010 (No. 302/02). The case involves the right to freedom of religion, freedom of speech, freedom of association. The Court found breaches of Articles 9, 11, 14, Article 6 para. 1, European Convention on Human Rights// Rossijskaja Khronika Evropejskogo Suda [Russian Chronicle of the European Court of Human Rights]. 2011. No. 2.

¹⁰ Sobr.Zakonod.RF. 2012. No. 51. Art. 7324.

Religious Organisations” does not presuppose consideration of differences in those worships and religious meetings which might require measures from public authorities to ensure public order and those which might not, and thus contradict the Constitution of the Russian Federation, Articles 17 (Part 3), Articles 18, 19 (Parts 1 and 2), Article 28, 31 and 55 (Part 3).

In other words, the Constitutional Court of the Russian Federation basically confirms the factual inequality of religious groups, some of which might constitute a threat to the society due to their rituals, and some groups which do not. Here we are faced with a rather difficult theoretical problem of distinguishing between the two. We believe, in order to sort this problem out, it could be appropriate to differentiate between religious groups which are traditional for society and those which are non-traditional, and enhance the legal personality of the former. In particular, it could be appropriate to simplify the requirements for public worship ceremonies and events for traditional groups, which would be spelled out in appropriate legal norms on traditional religions.

Some religious groups represent a serious potential threat to the society. Such groups must notify the authorities of any public events they plan to hold. This measure is absolutely justified - the state cannot be sure of the trustworthiness of religious organisations which have broken the law before, or whose ideology has been the basis of human rights violations. From this perspective, it seems indispensable to analyse case-law of foreign countries, since it is often the way to find information about possible threats to the society posed by a particular religious group. Special attention must be paid to religious groups which are relatively recent in Russia, which emerged in the Russian territory a few decades ago.

In considering the question of giving some religious groups the status of traditional, we must note that the utmost priority in this regard must be given to the Russian Orthodox Church (Moscow Patriarchy). As far as this section of the article is concerned, we must emphasise that the majority of public events held by the Russian Orthodox Church (with some exceptions, for example, organising swimming on the Day of Epiphany), do not seem to require notification of the relevant authorities. Russian Orthodox Church, in its more than a thousand years' history, has proven that its rituals and public events are absolutely harmless to everyone.

Division of subjects of the Russian Federation on the principle of nationality as a way of developing threats to religious security

One of the possible threats to security in the religious sphere is the federal form of the state in Russia based on the nationality principle. Such a model of state organisation poses a threat in the way of possible self-identification of various nations with a particular religion, a phenomenon which is accelerating in Russia, thus leading to the strengthening of separatist tendencies.

Ethno-religious separatism often becomes a foundation for the development of religious extremism as one of the forms of extremism as such. As a rule,

representatives of radical nationalist and religious organisations resort to religious extremism in the pursuit of their interests.¹¹

To a great extent, it depends on the Constitutional Court of the Russian Federation to control and neutralise this factor which threatens religious security in Russia. The Constitutional Court of the Russian Federation is a judicial body of constitutional control, which by means of constitutional proceedings, exercises judicial power.

According to the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” from 12.07.94 No. 1-FKZ (as of 05.04.2013),¹² the Constitutional Court of the Russian Federation has wide competences in the field of security provision. It is up to the Court to deal with a big number of conflicts of law, which will necessarily emerge as a result of reforming the federal system of the Russian state. This reform presupposes the creation of bigger subjects of the Federation, which we believe is necessary in the context of strengthening religious security.

Here we would like to mention the issue of possible creation in some subjects of the Russian Federation of specialised courts which would function on the basis of religious norms. This topic is frequently raised by the media.

As far as this issue is concerned, we must note that creating a parallel court system will unquestionably create a potential for a split within society, since the judicial system is in a way a spine upon which the whole construction of the state is held. Therefore, we are of the firm opinion that the Russian court system should be represented as the hierarchy. In this regard, it is unacceptable to set up courts in some subjects of the state which would function on principles other than those prescribed by the Russian Constitution.

Case of foreign and international legal bodies in the framework of security provision in the religious sphere in Russia

Among the threats to religious security in Russia we noted a threat that is to do with taking foreign policy decisions without considering the factor of religion, which can lead to serious mistakes. In this context, it is necessary to remark that decisions of foreign and international judicial bodies which deal directly with religious security in Russia must undergo mandatory scrutiny. Analysis of such decisions can give us an idea of how important the factor of religion is in international relations.

It must be noted that some ECHR cases must be regarded as direct interference in Russia’s internal affairs. Thus, in the ECHR case from 01.10.2009 *Kimlya and others v. Russian Federation*,¹³ it was de facto recognised that the rule set up by the norms of the Federal Law “On the Freedom of Conscience and Religious Organisations”, which required religious groups to prove their existence for a period

¹¹ Zabarchuk E.L. Religioznyj extremism kak odna iz ugroz bezopasnosti rossijskoy gosudarstvennosti [Religious Extremism as One the Threats to the Russian State System] // Zhurnal Rossijskogo Prava [Journal of Russian Law]. 2008. No. 6. P. 8.

¹² *Rossiyskaya Gazeta*. 23 July 1994.

¹³ ECHR Bulletin. Russian Edition. 2010. No. 4. P. 3, 36 - 54.

of 15 years in order to be registered as legal persons, did not meet European legal standards.

Those who criticise the Russian system of ensuring a right to religious freedom constantly point out that Russian law-makers who set up an obligation for religious groups to prove their existence for 15 years within the given territory in order to be registered as legal persons, violated Article 9 of the European Convention of Human Rights.¹⁴ These critics, however, constantly fail to mention that point 2 of the same article of the Convention lists a number of possible limitations, such as: prescribed by law and necessary in a democratic society for the protection of public order, health or morals or rights and freedoms of others.

We believe that a 15-year requirement for a religious group is a measure directed at the provision of societal security, public order, health or morals or at the human rights protection, and thus, absolutely justified.

Besides, in the ECHR decision (01.10.2009, *Kimlya and others v. Russia*) there is information that the City Court in Nizhnekamsk in the process of examining this case came to a conclusion that in the Russian legal system, denying registration of a religious group as a legal person does not violate the right to freedom of religion. In similar cases, only the right to freedom of association can be examined. We believe that when the ECHR examines the substantive side of the decisions, it must pay more attention to the mentality, the legal particularities and traditions of the “respondent States”.¹⁵

Religious Education and Endogenous Threats to Security in the Religious Sphere

Among the threats to security in the religious sphere we also include religious crimes. Based on the analysis of case-law in Russia, we come to the conclusion that cases which must be considered religious are practically not considered at all. Viewed from this perspective, the current judicial system of human rights protection does not have a sufficient level of legal means. This situation is due to the fact that religious motives are not considered by the Russian Criminal Code as qualifying elements. Also, a key reason in this very situation is the lack of proper training of prosecutors and judges. In order to examine cases which deal with religious crimes it is necessary to have proper knowledge, skills, methods and experience, and all of this is lacking to a very big extent.

Thus, in order to ensure security in the religious sphere in the Russian Federation, we believe it is important to raise the educational level of the representatives of the judicial branch, in particular, by organising special courses on security in the religious sphere for them. Such courses should at least give the participants necessary knowledge about religious doctrines which represent a societal threat.

¹⁴ Sultanov A.R. *Zatshita svobody sovesti, rasprostraneniya ubezhdenij cherez prizmu postanovlenij Evropejskogo suda po pravam cheloveka* [Protection of freedom of consciousness and dissemination of ideas by means of ECHR case-law]. M.: Statute, 2013, P. 544.

¹⁵ We believe it appropriate to quote Celsus, a Roman philosopher, Plato's follower (second half of the II century): “It is wrong to make decisions or give advice based on some particular part of the law, without considering the law as a whole.” (Digesta. 1.3.24).

Besides, such courses can raise the moral level of Russian judges, a condition we believe necessary for the stable development of Russia. According to a scholar O.I. Tsybulevskaya, moral and humanistic foundations are “necessarily present in the process of law implementation. It is not enough to adopt good, “wise” laws, it is

necessary to implement them in the right way, which meet the moral requirements. Moral characteristics of those who implement these laws, especially of judges, are also important.”¹⁶ High moral standards can be found in the doctrine of traditional religions in Russia, in particular, the Russian Orthodox Church. Studying the foundations of Christian anthropology, apologetics and theology by the judges could lead to invigoration of the Russian judicial system.

In the beginning of this article we already mentioned that in the process of providing for security in the religious sphere it is difficult to do it without the legislative experience of foreign countries. In particular, some norms in the Constitution of the Estonian Republic are no doubt directed at the protection of morals, which, in turn, become an important way of protection against many threats which stem from the religious sphere of society.

Thus, six articles of the Constitution of the Estonian Republic, contain a possibility to limit basic human rights and freedoms for the sake of protecting morals (Articles: 24, 26, 40, 45, 47, 124). Especially relevant for our research is Article 40, which states that “Everyone is free to perform religious rituals by himself or jointly with others, as long as this does not infringe morals.” In the Russian Constitution there is only one norm (Article 55, Part 3), which allows limitations on human rights for the sake of the protection of morals. We believe that the protection of morals in the contemporary world is especially important, which makes the emphasis put by an Estonian law-maker on the protection of morals quite justified and even necessary. Guardians of morality in the Estonian Republic are the court, state institutions, local committees and their officials and the legislator- Riigikogu.

It must be emphasised that quality education in the field of religion is necessary for everyone in order not to become a victim of endogenous threat. The state must make sure that individuals have a possibility to obtain relevant knowledge to avoid becoming victims of endogenous threats. The state must ensure that everyone has access to relevant knowledge in order not to fall victim to a destructive religious group or a dangerous doctrine. Many difficulties in the process of provision of religious security can be overcome by providing the Russian population with necessary religious education.

We believe that many extremist deeds, as well as activities of certain destructive religious groups take place due to incomplete knowledge about their own religion, as well as about religions of other people.

¹⁶ Tsybulevskaya O.I. *Nravstvennye osnovy sovremennogo rossijskogo prava* [Moral Foundations of Contemporary Russian Law]: Post Doctoral Thesis, Law: 12.00.01. Saratov, 2004. p. 430.

Conclusion

Among the threats to security in the religious sphere in Russia we mentioned proselytising. At this point in time, Russian courts cannot protect individuals against proselytising, since Russian laws do not provide for such a possibility. Up to now, the very term “proselytising” has not had a clear legal definition, as well as the term “religious crime”. These terms are still to be introduced into the legal field.

We believe that if the necessary corrections to the substantive and procedural legal norms are introduced, Russian courts will be quite able to provide for security in the religious sphere for the state, for society and for an individual. Besides, Russia’s scientific and practical experience can be useful to foreign countries which have already faced the threats in the religious sphere or to those countries which might face all negative aspects of this phenomenon. This experience is especially important for post-Soviet states.

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