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Religious Associations as a National Security Threat: The Russian View in Light of European Standards

Olga Kudriashova
Saint Petersburg State University, St. Petersburg, Russian Federation
<*oabeglova@gmail.com*>

Abstract

This article focuses on the Russian practice of suppressing non-traditional religious associations under the guise of protecting national security. Russian legislation and case law are discussed in light of European standards concerning limitations of human rights, including the principles of legal certainty and proportionality. The author concludes that despite the declaration of the principle of ideological diversity and religious freedom in the Constitution of the Russian Federation (hereinafter, "the RF Constitution"), Russian lawmakers and the judiciary are wary of non-traditional religions, regarding them as a national security threat. This tendency is demonstrated by an analysis of registration requirements, as well as the country's anti-extremism law and the relevant case law. The author examines the following problems of Russian regulation: the vagueness of the law on which the limitations are based and the weak argumentation of judicial decisions by which limitations are imposed. The author concludes that Russian legislation and the relevant case law strongly deviate from the standards set in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in the jurisprudence of the European Court of Human Rights (ECtHR). Meanwhile, according to the RF Constitution, the ECHR is part of the Russian legal system and prevails over Russian laws. The author's aim is to outline the space provided in Russian law for the abuse of non-traditional religions by Russian authorities.

Keywords

religious freedom – right to association – non-traditional religious associations – registration of religious associations – national security protection – anti-extremism law – limitation of human rights

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1 Introduction

This article focuses on a critical issue for Russia today: whether non-traditional religious associations pose a threat to national security and, if so, how far the government can go to limit their activity under the guise of protecting national security. This issue has become particulary important because the activities of religious minorities have been greatly restricted in Russia in the last few years. In July 2016, for example, the so-called Iarovaia Act—a set of counter-terrorism amendments—was passed, introducing harsher punishment for terrorism offences and establishing new public safety measures, including restrictions on missionary activity.[1] According to the amendments, missionary activities may be performed only by registered religious organizations and only in specially designated areas.[2] Throughout the same year, communities of Jehovah's Witnesses were banned as extremist in five Russian cities: in Staryi Oskol (10 February 2016), in Belgorod (11 February 2016), in Elista (25 February 2016), in Orel (14 June 2016), in Birobidzhan (12 October 2016).[3] According to data from the SOVA Center for Information and Analysis, the Russian Ministry of Justice brought a suit before the Russian Supreme Court in 2017 aimed at banning Jehovah's Witnesses throughout Russia.[4] On 20 April 2017, the RF Supreme Court upheld the claim and declared Jehovah's Witnessess to be an extremist organization.[5] According to the judgment, the headquarters of Jehovah's Witnesses in Russia along with 395 local communities were to be closed and their property seized.[6]

1 For more details about the Iarovaia Act, see "Prezident RF podpisal antiterroristicheskii 'paket Iarovoi'," garant.ru (7 July 2016), available at <http://www.garant.ru/news/782190/>.

2 See Art. 8 of the Federal'nyi zakon "O vnesenii izmenenii v Federal'nyi zakon 'O protivodeistvii terrorizmu' i v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v chasti ustanovleniia dopolnitel'nykh mer protivodeistviia terrorizmu i obespecheniia obshchestvennoi bezopasnosti" (6 July 2016) No. 374-FZ, *Rossiiskaia gazeta* (8 July 2016) No. 149.

3 See Marina Kravchenko, "Nepravomernoe primenenie antiekstremistskogo zakonodatel'stva v 2016 godu", SOVA Center for Information and Analysis (23 March 2017), available at <http://www.sova-center.ru/misuse/publications/2017/03/d36651/#_Toc477792624>.

4 For more details about the treatment of Jehovah's Witnesses and other religious minorities, see Ol'ga Sibireva, "Problemy realizatsii svobody sovesti v Rossii v 2016", SOVA Center for Information and Analysis (30 March 2017), available at <http://www.sova-center.ru/religion/publications/2017/03/d36694/#_Toc478291117>.

5 This judgment has not yet been published. For information about the judgment, see "Verkhovnyi sud prinial reshenie o likvidatsii Upravlencheskogo tsentra Svidetelei Iegovy v Rossii", SOVA Center for Information and Analysis (20 April 2017), available at: <http://www.sova-center.ru/misuse/news/persecution/2017/04/d36871/>.

6 *Ibid.*

The related Russian legislation and case law are examined in this article from the perspective of European standards on religious freedom, as reflected in the ECHR and the jurisprudence of the ECtHR. The comparative study of the Russian and European views on the limitation of religious associations is critical since, in recent years, the conflict between traditional Russian values and European standards has been the subject of discussion among both politicians and scholars.[7] On the one hand, Russia joined the ECHR and recognizes the jurisdiction of the ECtHR, thereby demonstrating adherence to European standards.[8] On the other hand, in a number of cases, the ECtHR and the Constitutional Court of the Russian Federation (hereinafter, "the RF Constitutional Court"), while relying on the same principles, have reached very different conclusions.[9]

As a number of scholars have noted, the period of the 1990s in Russia (as well as in the majority of post-Soviet states) was marked by the revival of religion and its dynamic transfer from the private sector to the public arena.[10] This process started after the enforcement in 1990 of the Law of the Russian Soviet Federative Socialist Republic (RSFSR) on Religious Freedom,[11] which guaranteed freedom for religious movements, including those of foreign origin, and reduced the government's power to oversee their activities. As a result, in addition to the rebirth of traditional religions—most importantly,

7 See the discussion of the Konstantin Markin case in Valerii Zor'kin, "Predel Ustupchivosti", *Rossiiskaia gazeta* (29 October 2012), 246.

8 The ECHR was ratified by the Russian Federation in 1998: Federal'nyi zakon "O ratifikatsii Konventsii o zashchite prav cheloveka i osnovnykh svobod i protokolov k nei" (30 March 1998) No. 54-FZ, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* (hereinafter, "*SZRF*") (1998) No. 14 item 1514.

9 See, for example, Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii "O svobode sovesti i o religioznykh ob"edineniiakh v sviazi s zhalobami religioznogo obshchestva svidetelei Iegovy v gorode Iaroslavle i religioznogo ob"edineniia Khristianskaia tserkov' proslavleniia" (23 November 1999) No. 16-P, *Rossiiskaia gazeta* (16 December 1999); and *Kimlya and Others v. Russia,* ECtHR Judgment (1 October 2009) Application Nos. 76836/01 and 32782/03. The conclusions that the RF Constitutional Court and the ECtHR reached in these cases will be compared in Part 5 of this article.

10 See Jose Casanova, *Public Religions in the Modern World* (The University of Chicago Press, Chicago, 1994), 3–5; Silvio Ferrari, "Individual Religious Freedom and National Security in Europe after September 11", *Brigham Young University Law Review* (2004), 357–384, at 357; Veronika Kravchouk, "New Religious Movements and the Problem of Extremism in Modern Russia", *Brigham Young University Law Review* (2004), 507–533, at 507.

11 RSFSR Zakon "O svobode veroispovedanii" (25 October 1990) No. 267-1, *Vedomosti SND i VS RSFSR* (1990) No. 21 item 240.

Orthodoxy—new religious associations also appeared.[12] They gained access to various social institutions and entered the public sphere: for example, the Church of Unification began distributing religious literature in public schools, while the Church of Scientology provided humanitarian assistance to children affected by the Chernobyl disaster.[13] Sometimes, their activities conflicted with official policy on various issues of public concern. One relevant example is the activity of Jehovah's Witnesses in Russia, who have repeatedly been accused of destroying families, calling for the refusal of medical treatment (in particular of blood transfusions) and civil obligations (in particular from military service), and for disrespecting official state symbols and holidays.[14] By some accounts, the enthusiastic attitude of Russian society and the government to new religious movements had already come to an end by 1992, and a number of political parties, such as the Communist Partry and Liberal Democratic Party of Russia, opposed foreign religious movements as part of their political programs, regarding them as a threat to traditional Russian ideology.[15] Thus, we can see that the trend of suppressing religious minorities witnessed in recent years has been going on since the beginning of the 1990s.

As some scholars have noted,[16] the liberalization of religious activity and the emergence of new religious movements that got under way after the dissolution of the Soviet Union (1990s) posed potential threats of extremism, terrorism, and the spread of harmful organizations from abroad operating under the guise of religious organizations. The Russian government's concerns about such threats can be seen in its repeated attempts to control new religious movements. In late 1996, for example, the RF State *Duma* requested that then-President Boris El'tsin, in the name of national security, restrict the activity of allegedly destructive religious entities, including those that were controlled by foreign organizations.[17] The State *Duma* suggested a number of measures,

12 The best known of these are Jehovah's Witnesses, Scientologists, Mormons, and Moonies.

13 See Aleksandr Shchipkov, *Vo chto verit Rossiia* (Russkii Khristianskii Gumanitarnii Institut, St. Petersburg, 1998), 145.

14 Reshenie Golovinskogo raionnogo suda Severnogo AO g. Moskvy (26 March 2004), available at <http://www.k-istine.ru/sects/iegova_witness/iegova_witness_court.htm>.

15 See Roman Lunkin and Sergei Filatov, "Konets 90-x: vozrozhdenie religioznoi neterpimosti", in G. Vitkovskii and A. Malashenko (eds.), *Neterpimost' v Rossii: starye i novye fobii* (Carnegie Moscow Center, Moscow, 1999), 135–150, at 140.

16 Kravchouk, *op.cit.* note 10, 511–512. See also Marat S. Shterin and James T. Richardson, "Effects of the Western Anti-Cult Movement on Development of Laws Concerning Religion in Post-Communist Russia", 42 *Journal of Church and State* (2000), 247–271, at 249.

17 Postanovlenie Gosudarstvennoi Dumy Rossiiskoi Federatsii "Ob obrashchenii Gosudarstvennoi Dumy Rossiiskoi Federatsii Federal'nogo Sobraniia Rossiiskoi Federatsii k

including: establishing a list of traditional Russian religions, creating special agencies to review the activities of religious movements, making participation in the activities of allegedly destructive religious movements a criminal offense, and drafting a concept of religious security in Russia. The latter step happened in 1997, with the publication of the National Security Concept, which determined that national security included protecting Russia's cultural and spiritual heritage, historical traditions, and social norms; preserving the cultural assets of Russian peoples; and establishing a state policy on the spiritual and moral education of the population.[18] The Concept established the notion that protecting national security required resistance to the allegedly negative influence of foreign religious organizations and missionaries.[19] This brought to the fore recognition of the religious security of Russian society as an important part of national security. The Federal Law on Freedom of Conscience and on Religious Associations, adopted in October 1997, asserted in its preamble that Orthodoxy played a special role in Russian history and culture and that Christianity, Islam, Buddhism, Judaism, and other religions that were considered part of Russia's historical heritage were deserving of particular respect.[20] The Law on Religious Associations aimed to foster the development of traditional religions in Russia and to prevent the activity of new, allegedly destructive religious movements, including those of foreign origin. The Law on Religious Associations established two categories of religious associations (religious organizations, which enjoyed certain privileges, and religious groups, which were less privileged) with an extremely different scope of rights based on the amount of time they had been present in Russia.

There was very little discussion of the above-mentioned request on the part of the State *Duma*—that the President restrict the activities of certain religious associations—or of the National Security Concept,[21] while the Law on

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Prezidentu Rossiiskoi Federatsii ob opasnykh vozdeistviiakh nekotorykh religioznykh organizatsii na zdorov'e obshchestva, sem'i, grazhdan Rossiiskoi Federatsii" (15 December 1996), available at <http://stolica.narod.ru/docs_vl/duma/004.htm>.

18 Ukaz Prezidenta Rossiiskoi Federatsii "Ob utverzhdenii kontseptsii natsional'noi bezopasnosti Rossiiskoi Federatsii" (17 December 1997) No. 1300, *Rossiiskaia gazeta* (26 December 1997) No. 247.

19 *Ibid.*

20 RF Federal'nyi zakon "O svobode sovesti i o religioznykh ob"edineniiakh" (26 September 1997) No. 125-FZ, *Rossiiskaia gazeta* (1 October 1997) No. 190 (hereinafter, "the Law on Religious Associations").

21 The author failed to find any discussions of the State Duma's request. The reason may be that the request consisted mainly of intentions and proposals but did not contain any concrete legal norms.

Religious Associations was the subject of heated discussions both in Russia and abroad. In 1999, for example, the Russian Ombudsman published an opinion on the compatibility of the Law with Russia's international legal obligations.[22] According to the Ombudsman, the distinction between the two categories of religious associations established in the Law on Religious Associations was contrary to the ECHR and the case law of the Convention bodies insofar as religious groups, in contrast to religious organizations, were not subject to registration, were not granted the status of legal entities, and were deprived of many rights. Furthermore, the Law on Religious Associations discriminated against religious organizations that were not in possession of a document that could prove that they had had a presence in Russia for at least fifteen years.[23] The Council of Europe criticized the Law on Religious Associations for the same defects that the Russian Ombudsman had highlighted.[24] For example, it was noted that religious groups did not enjoy most of the rights of religious organizations, but to be recognized as such they had to be either classified as a traditional religion or had to have existed as a registered religious group for at least fifteen years.[25]

Hence, we can see that, in the 1990s, Russia went from being a very liberal regime in terms of the activities of religious movements toward a more restrictive approach based on the distinction between privileged "traditional" and unprivileged "non-traditional" religions.[26] These changes were not unfounded:

22 Zakliuchenie Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii "O proverke sootvetstviia Federal'nogo zakona 'O svobode sovesti i o religioznykh ob"edineniiakh' mezhdunarodno-pravovym obiazatel'stvam Rossiiskoi Federatsii" (22 April 1999), available at <https://www.referent.ru/1/10200>.

23 *Ibid.*

24 The Information Report by the Committee of the Parliamentary Assembly of the Council of Europe (hereinafter, "the Monitoring Committee") on the honouring of obligations and commitments by the Russian Federation (2 June 1998), paras. 26 and 27; the Report by the Monitoring Committee on the honoring of obligations and commitments by the Russian Federation (26 March 2002), para. 97.

25 *Ibid.*

26 The linking of religious activity with national security threats has taken place not only Russia but in many European states as well. As Silvio Ferrari notes, during the last two decades, some religions have shown themselves to be a threat to public safety and security. According to Ferrari: "a few European states have overreacted and behaved as though all new and nonmainstream religious movements are dangerous sects". As an example of such an overreaction, Ferrari refers to the list of sects prepared in France and Belgium that combine a truly dangerous organization with legitimate groups. Meanwhile, he notes that, in Western Europe, as opposed to Eastern Europe, a more measured approach is gradually emerging based on the idea that more must be learned about these new

the lack of religious experience in Russia made it difficult for Russians to distinguish reputable religious organizations from religious movements known abroad for their scandalous activity and even from terrorist organizations that aimed to exercise psychological control over their victims.[27] In this context, the government was facing the problem of balancing the right to religious freedom as a basic human right with protecting national security. In responding, however, restrictions aimed at protecting citizens and the state from terrorist and extremist threats were also applied to harmless non-traditional religious movements. The requirements to register religious associations and the anti-extremism law were also used by the authorities to disproportionately burden non-traditional religious associations. These legislative measures and how they have been applied in practice will be the focus of this article.

In the subsequent sections, the author will briefly examine the different roles that religious organizations play in the state and in society, as well as the potential danger of religious associations. Then the key principles of religious freedom and the limitation thereof under the RF Constitution and the ECHR will be compared. In this regard, the author will also explore the notion of national security as the legitimate aim of such limitations. The main part of the article will then compare Russia's registration requirements, anti-extremism limitations, and relevant Russian case law with the ECtHR's approach. With respect to the methodology adopted for this article, there are a plethora of judgments on the prohibition of religious texts and associations in Russia that the author analysed in her role at St. Petersburg State University's Center of Expertise (*Tsentr Ekspertiz*).[28] The aim of the article, however, is to present the main trends in Russian case law; therefore, a selection of the many cases available have been highlighted. In particular, the author emphasizes those cases that would arguably be impermissible in light of European standards.[29]

The conclusion addresses the compliance of Russian regulations with European standards. The author considers that, although the ECtHR provides

religious movements. As for Eastern Europe, a generalized distrust toward all new religious movements still prevails and provides a strong foundation for the enactment of severely restrictive provisions. See Ferrari, *op.cit,* note 10, 359–360.

27 The scandalous activity of non-traditional religious movements in Russia is described in detail in Aleksandr Dvorkin, *Sektovedenie. Totalitarnie sekti* (Khristianskaia biblioteka, Nizhnii Novgorod, 2014).

28 More information about this institution is available at <http://spbu.ru/science/expert/centr>.

29 Some of these cases are available at <sudact.ru>, but the author found most of them in the archives of the Ministry of Justice and of St. Petersburg State University's Center of Expertise.

Council of Europe member states with a certain margin of appreciation in religion cases, Russian legislation and case law do not comply with the general requirements for the limitation of human rights. In particular, the vague notions of national security and religious extremism do not comply with the requirement of legal certainty, and the Russian courts allow the disproportionate limitation of religious freedom.

2 Views on the Role of Religious Associations in the State

Neither the ECHR nor the ECtHR's jurisprudence establishes a desired model of state-religious relations, leaving this issue to the discretion of the member states themselves. The author would agree with Ian Leigh and Rex Ahdar that the ECtHR's role is "to safeguard the religious rights of citizens of member states, not to re-write the constitutional design of the nation to further some ideal of separation of church and state".[30] Along these same lines, the ECtHR stated in the case of *Otto-Preminger-Institute v. Austria*: "It is not possible to discern throughout Europe the uniform conception of the significance of religion in society; even in a single country such conceptions may vary."[31] In this case, a private audiovisual media association, OPI, announced a series of films, including a satirical perfomance about Christian doctrine. The public prosecutor brought criminal proceedings against OPI's manager and seized the film. The ECtHR did not find the seizure of the film to be a violation of freedom of expression, taking into account a certain margin of appreciation on the part of the government in assessing the necessity of interference with rights. At the same time, the margin of appreciation should not be unlimited and should go hand in hand with judicial oversight on the part of the ECtHR.[32] According to the ECtHR, the guarantees of religious freedom established in Article 9 of the ECHR and the principles of neutrality and non-discrimination impose certain requirements on the state-church relationship.[33] In particular, the ECtHR has pointed out that member states may treat religious movements differently without discrimination. According to the ECtHR, a difference of treatment is

30 Ian Leigh and Rex Ahdar, "Post-Secularism and the European Court of Human Rights: Or How God Never Really Went Away", 75(6) *Modern Law Review* (2012), 1064–1098, at 1096.

31 *Otto-Preminger-Institute v. Austria*, ECtHR Judgment (20 September 1994) Application No. 13470/87, para. 50.

32 *Ibid.*

33 See, for example, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria,* ECtHR Judgment (31 July 2008) Application No. 40825/98, para. 92.

discriminatory if "it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised".[34]

Meanwhile, the requirement for neutrality can be interpreted in many ways. The variety of approaches to neutrality can be seen in the research by Leigh and Ahdar cited earlier.[35] In their work, they classify four different versions of neutrality. *First*, neutrality can be understood as "the *equi-distance* of the state from all religions so they are treated even-handedly and given due public expression and recognition, but no one religion or worldview is favored".[36] *Second*, neutrality can be interpreted as equal treatment of religions and secular institutions—no better, no worse.[37] *Third*, neutrality can be regarded as equal respect, which "permits differences in treatment by the state in situations either where fundamental rights are not engaged or where differences in treatment can be justified".[38] *Finally*, there is a version of neutrality according to which religion must remain in the private sphere, and the state treats religions and other non-rational beliefs (such as astrology, clairvoyancy, New Age, belief in UFOs, etc.) in the same way.[39] This research was chosen as an indicative example of how varied states' neutrality may be in relation to religion. Meanwhile, in practice, we see that states' attitudes to religion are not neutral. The variety of relations between states and religious associations is perfectly described by Kathleen Sullivan.[40] Sullivan describes four visions. The *first* (the *secularist vision*) regards religious organizations as dangerous quasi-governments that have a strong impact on society. From this point of view, the social impact of religious associations is mainly harmful, as they pose a threat to social peace.[41] The *second* vision (the *separationist vision*) regards religious organizations as valuable private associations that play an important role as intermediaries between individuals and the state.[42] According to this view, the social impact of religious organizations should be protected by the state by providing these associations with the right to exercise their beliefs freely and to determine their own identities and missions. Both of the above-mentioned

34 *Ibid.,* para. 96.
35 Leigh and Ahdar, *op.cit.*, note 30, 1079.
36 *Ibid.*
37 *Ibid.*, 1081.
38 *Ibid.*, 1079.
39 *Ibid.*, 1082.
40 Kathleen M. Sullivan, "The New Religion and the Constitution", 116(5) *Harvard Law Review* (2003), 1397–1421.
41 *Ibid.,* 1403.
42 *Ibid.,* 1406.

approaches understand religion as a powerful force in society. The *third* vision (the *accommodationist vision*) describes religious organizations as "discrete and insular minorities" among private associations that require protection from unequal treatment, as well as special guarantees and broad religious exemptions from general laws.[43] According to the *last* view (the *assimilationist vision*), religious organizations are best understood as ordinary interest groups indistinguishable from other social associations.[44] According to this approach, religious associations should be regulated in the same way as other private organizations.

In describing the above-mentioned taxonomies, it is not our aim to choose the best version of relations between the state and religion. That said, we do see two contradictory views on the issue of the potential threat of religious associations to national security. On the one hand, religious associations are able to provoke and intensify threats, as some of them may conflict with official state policy and provoke increased tension in society. On the other hand, the free development and co-existence of various religious associations can stimulate tolerance in society and therefore decrease potential tensions and threats of extremism.[45] Experts have pointed out that it is typical for non-democratic regimes (such as those based on communist ideology) to regard religion as a threat, while democratic states (such as Western European countries) usually declare themselves to be tolerant and respectful of religions.[46] However, in fact, tolerance appears to apply in Western Europe only to majority religions (such as Christianity), but is limited regarding minority religions.[47] As for Russia, we will see from the following analysis that Russian constitutional principles declare freedom of religious association,[48] while Russian legislation and case law show that non-traditional associations are regarded as a potential danger to state and society.

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43 *Ibid.*, 1408.

44 *Ibid.*, 1409.

45 Vladimir Iashin, "Novye religioznye dvizheniia: Mezhdu extremizmom i indifferentnost'iu", 3(46) *Nauchnyi vestnik Omskoi akademii MVD Rossii* (2012), 39–42, 41.

46 See Amos N. Guiora, "Religious Extremism: A Fundamental Danger", 50 *South Texas Law Review* (2008–2009), 743–768, 761; David Kowalewski, "Protests for Religious Rights in the USSR: Characteristics and Consequences", 39 *Russian Review* (1980), No. 4, 426–441, 426.

47 *Ibid.,* 426.

48 Konstitutsiia Rossiiskoi Federatsii (25 December 1993), *SZRF* (2014) No. 31 item 4398 (as amended) (hereinafter "RF Constitution"): the principle of ideological diversity (Art. 13), freedom of religion (Art. 28), freedom of association (Art. 30), and freedom of assembly (Art. 31). Unless otherwise noted, English translations from the RF Constitution are taken from <http://www.constitution.ru/en/10003000-03.htm>.

In summary, this section described various models of relations between state and religious associations that can exist in the world. The states parties to the ECHR are expected to observe the requirements of the ECHR that were briefly outlined at the beginning of this section. As Russia is also under the jurisdiction of the ECHR, we will examine in the following sections whether Russia's treatment of religious associations satisfies the requirements of the ECHR. We will start in the next section with the fundamental principles laid down in the RF Constitution and then examine Russian law and practice.

3 Key Principles of the ECHR and the RF Constitution

In this section, the author will describe similarities and differences in the key principles of the RF Constitution and the ECHR that are relevant to religious freedom, the activities of religious associations, and the limitation of rights. The comparison of the ECHR requirements and Russian constitutional provisions will help us understand whether the practice of the abuse of non-traditional religious associations in Russia has any constitutional basis.

The key principles of the RF Constitution and the ECHR that are relevant to religious freedom can be summarized as follows: (1) the general principles of pluralism and non-discrimination; (2) the principles that establish and define religious freedom itself; (3) the principles concerning particular spheres for the realization of religious freedom; and (4) limitation principles. From an analysis of the texts of the RF Constitution and the ECHR, we can conclude that most of these principles are similar in the two documents. *First*, both documents establish the principle of the prohibition of discrimination on the grounds of religion.[49] *Second*, the principle of pluralism is established in both documents. The RF Constitution directly establishes pluralism as the core principle of the Russian state system. According to Article 13 of the RF Constitution, ideological diversity is recognized, and no ideology may be proclaimed as a state ideology or as obligatory. Article 14 prohibits the establishment of a state or obligatory religion and further asserts the principle of the separation of religious associations from the state. Although the principle of pluralism is not

49 *Ibid.,* Art. 19(2) provides that: "The State shall guarantee the equality of rights and freedoms of man and citizen regardless of [...] religion. All forms of limitations of human rights on [...] religious grounds shall be banned." See the European Convention for the Protection of Human Rights and Fundamental Freedoms, *CETS* (1950) No. 005 (hereinafter, "ECHR"), Art. 14: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [...] religion."

established directly in the ECHR, it is emphasized in the jurisprudence of the ECtHR as the core principle of a democratic society.[50] *Third*, both documents establish in a similar manner the notion that religious freedom is a fundamental human right and provide for its various individual and collective aspects.[51] Both documents address other related fundamental rights that are important for the realization of religious freedom, such as freedom of expression, freedom of assembly, freedom of association, and the right to privacy and family life.[52] *Fourth*, both documents contain limitations clauses with similar general requirements: limitations should be established by law and be necessary in a democratic society for the protection of such values as health and morals, the rights of others, and public safety.[53]

At the same time, there is a significant difference between the Russian and European approaches to the scope of application of limitations. According to Article 9 of the ECHR, limitations may be imposed only on manifestations of religion but not on the right to have or change a religious belief. We cannot find such a differentiation in the Russian Constitution, in which all elements of freedom of religion fall under the general limitation clause established in Article 55(3): "The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State."[54] The RF Constitution also contains special prohibitions on religious grounds. According to Article 29(2), propaganda or activism that arouses religious hatred and hostility are prohibited, as is propaganda of religious supremacy. According to Article 13(5), the establishment and activities of public associations whose goals and activities are aimed at

50 See, for example, *Handyside v. the United Kingdom* (7 December 1976) Application No. 5493/72, para. 49: the ECtHR stressed that a democratic society cannot exist without "pluralism, tolerance and broadmindedness".

51 See RF Constitution, *op.cit.* note 48, Art. 28: "Everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with other any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them." See also ECHR, *op.cit.* note 49, Art. 9(1): "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

52 RF Constitution, *op.cit.* note 48, Arts. 29 and 30; ECHR, *op.cit.* note 49, Arts. 10 and 11.

53 See ECHR, *op.cit.* note 49, Art. 9; and RF Constitution, *op.cit.* note 48, Art. 28.

54 RF Constitution, *op.cit.* note 48.

the forcible changing of the basis of the constitutional order and either violate the integrity of the Russian Federation, undermine its security, create armed units, or instigate religious strife are prohibited. As we can see from the limitation provisions in the RF Constitution, state security concerns are among the justifications used for restricting freedom of religion.

The ECHR does not contain a similar general limitations clause and does not mention state security issues among the legitimate aims for restricting freedom of religion.[55] However, interests of national security are mentioned in the wording of limitations of related rights: freedom of expression, freedom of assembly and freedom of association, and the right to privacy and family life.[56] Hence, we can conclude that, under the ECHR, national security may be permitted as a legitimate aim in cases concerning religious matters only if the above-mentioned rights are involved, e.g., in cases concerning the dissolution of political parties for statements on religious issues that are inconsistent with national law.[57] The author failed to find any examples in ECtHR case law in which the limitation of religious freedom was discussed in the context of the necessity to protect national security. The same conclusion was reached by Silvio Ferrari, who points out that the ECtHR's case law on national security has dealt only with secular matters, such as disclosure of classified information, prohibition of reporting interviews with representatives of proscribed political organizations, or the banning of associations because of they have totalitarian aims.[58] In religious cases, the ECtHR usually appeals to other legitimate aims such as "public order"[59] or the "protection of the rights and freedoms of others".[60]

Our analysis reveals that the foundations of the Russian and European approaches to religious freedom and its limitations are very similar. The problem is that the declared principles and the applicable limitations of rights are interpreted differently and applied in different ways in practice. As we will see from the following analysis, the ECtHR and the Russian courts have different views on which limitations meet the requirements of legal certainty and

55 ECHR, *op.cit.* note 49, Art. 9(2): "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others."

56 *Ibid*, Arts. 8, 10, and 11.

57 *Freedom and Democracy Party v. Turkey*, ECtHR Judgment (8 December 1999) Application No. 23885/94.

58 See Ferrari, *op.cit.*, note 10, 371.

59 See *S.A.S. v. France*, ECtHR Judgment (1 July 2014) Application No. 43835/11, para. 117.

60 *Ibid.*

proportionality. To demonstrate this difference, we will start in the next section with a comparison of how the notion of national security is determined in international and in Russian legal documents and how it is interpreted by the ECtHR and by the Russian courts.

4 National Security as a Legitimate Aim of Limitations

No generally accepted definition of national security can be found either in legal documents or in academic literature. In international documents on human rights,[61] national security protection is mentioned as among those legitimate aims that justify the limitation of rights, but exactly what national security means is not specified. We found out only two non-binding international documents on human rights that establish the notion of national security. According to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, national security includes the protection of the existence of the nation, the territorial integrity of the state, and its political independence against force or threat of force.[62] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information associates national security with the protection of a country's existence and its territorial integrity against a threat or the use of force from an external threat, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.[63] From the above-mentioned definitions, we can conclude that the key aspects of national security are territorial integrity and sovereignty of the state.

The ECHR mentions national security protection as among those legitimate aims that justify the limitation of certain rights.[64] However, in invoking the protection of national security as the reason for limiting rights, the states parties have to respect two general requirements. *First*, they have to observe the criteria of legal certainty. The ECtHR emphasizes that, in cases related to national security protection, the interpretation of the notion of national security

61 See International Covenant on Civil and Political Rights, U.N.T.S. No. 14668, Vol. 999 (1976), 171, Arts. 12, 19, 21, and 22; ECHR, *op.cit.* note 49, Arts. 8, 10, and 11.

62 The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (hereinafter, "The Siracusa Principles"), UN Doc. E/CN.4/1985/4, Annex, 30 (1985), reprinted in 7(3) *Human Rights Quarterly* (1985), 29.

63 The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996), available at <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

64 See, for example, Arts. 8, 10, and 11 of the ECHR, *op.cit.*, note 49.

used to limit rights—and the executive's assessment of what poses a threat to national security—should not be arbitrary.[65] According to the ECtHR, expanding the notion of national security is not permitted; the assessment that a national security threat exists must be based on demonstrable facts.[66] *Second*, the general proportionality principle must be observed. This means that when decision makers are considering limiting a right that is protected under the ECHR, they have to balance the severity of the interference with the need for action. In essence, they must decide whether limiting a right is justified by a "pressing social need" when applying such measures.[67]

The Siracusa Principles describe how to balance the needs of national security protection with conflicting human rights. First, states should not invoke national security as a justification for measures aimed at suppressing opposition or at perpetrating repressive practices against their population. Moreover, national security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.[68] Most experts agree that any restriction justified on national security grounds must be implemented in response to a threat to the country as a whole, and must be necessary to protect the country's political independence or territorial integrity from the use, or threatened use, of force.[69] To sum up, national security protection can be used as a legitimate aim if the ECHR allows that legitimate aim to limit a certain right (in general, limitations clauses can be found in Section 2 of the relevant ECHR right) and if there is a threat of violent change to the government, state institutions, or state borders.

In contrast to the narrow understanding of national security found in the ECHR, the definition of national security in Russian legislation is very broad. According to the RF Federal Law on Security, 'national security' is used as a universal term to designate various kinds of security: national, social, individual,

65 See *Nolan and K. v. Russia,* ECtHR Judgment (12 February 2009) Application No. 2512/04, paras. 71–72.

66 *Ibid.*

67 See *Gorzelik and Others v. Poland*, ECtHR Judgment (17 February 2004) Application No. 44158/98, paras. 95–96.

68 The Siracusa Principles, *op.cit.* note 62, 6.

69 Sandra Coliver, "Commentary on the Johannesburg Principles on National Security, Freedom of Expression and Access to Information", in Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, and Stephen Bowen (eds.), *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information* (Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1999), 9.

environmental, and others.[70] The Law on Security grants the RF President the power to determine the country's national security concept and the basic areas of state policy for the protection of national security. According to the National Security Strategy of the Russian Federation,[71] national security is defined as the security of the individual, society, and the state from external and internal threats, thereby providing for constitutional rights, appropriate living conditions, sovereignty, territorial integrity, and the sustainable social and economic development of the state. Such a broad and unclear definition allows the executive branch to interpret as a national security threat whatever it likes. For example, in the case of *Liu v. Russia*, the ECtHR stated that Russian law "leaves the authorities a wide degree of discretion in determining which acts constitute a threat to national security".[72] In this case, national authorities refused to disclose information explaining why the applicant posed a national security risk on the grounds that it was a state secret.[73] The promotion of religious ideology that is seen as incompatible with Russian spiritual traditions can also be covered under this broad definition of threats to national security. As was mentioned above, Russia is not bound by any specific international obligations on how to determine national security. However, Russia is bound by the ECHR requirement that limitations on rights be "prescribed by law".[74] According to the ECtHR, "foreseeability" is one of the requirements inherent in the phrase "prescribed by law" and therefore "a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail".[75]

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70 RF Federal'nyi zakon "O bezopasnosti" (28 December 2010) No. 390-FZ, *Rossiiskaia gazeta* (29 December 2010) No. 295, Art. 1 (hereinafter, the "Law on Security").

71 Ukaz Prezidenta RF "O Strategii natsional'noi bezopasnosti Rossiiskoi Federatsii" (31 December 2015) No. 683 (hereinafter, "RF National Security Strategy"), *SZRF* (4 Juanuary 2016) No. 1, item 212.

72 *Liu v. Russia*, ECtHR Judgment (6 December 2007) Application No. 42086/05, para. 57.

73 *Ibid.*, para. 61.

74 See *Khudoyorov v. Russia,* ECtHR Judgment (8 November 2005) Application No. 6847/02, para. 125. The ECtHR stated that the standard of 'lawfulness' set by the Convention "requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail".

75 *The Sunday Times v. the United Kingdom*, ECtHR Judgment (15 July 1977) Application No. 6538/74, para. 49.

An example of the arbitrary use of the notion of a "national security threat" can be seen in a judgment by the Shchelkovskii District Court in the Moscow *Oblast'*.[76] In this case, materials written by L. Ron Hubbard were banned because they were deemed to be extremist. In its decision, the court cited the conclusions of a complicated psycholinguistic expert opinion provided during the preliminary investigation according to which the sum of the works represented an ideological doctrine intended to transform society and to create an isolated social group whose aim was to destroy other social groups. On the grounds of this expert conclusion, the court stated that Hubbard's works should be banned as extremist.[77] We find it confusing that the court based its decision on such vague and subjective expert findings, which can hardly be verified. Moreover, the court did not indicate in its decision why each particular text produced a national security threat. The court did not even refer to the definition of national security, nor did it make any attempt to interpret the notion of national security or the notion of extremist activity in relation to the circumstances of the case. The author failed to find any attempt at interpretation of national security by courts in other cases that concerned prohibition of religious texts or associations.[78]

In summary, the arbitrary interpretation or expansion of the notion of a national security threat is not permissible under the ECHR, and any assessment that such a threat exists should be based on demonstrable facts. In Russia, we can find an excessively broad interpretation of national security threats, which is used to justify restrictions on non-traditional religious associations. One such restrictive measure is a registration requirement, which will be analyzed in the next section.

76 Reshenie ot 29 iiunia 2011 g. Shchelkovskii gorodskoi sud (Moskovskaia oblast') (29 June 2011) No. 2-724/11, available at <http://sudact.ru/regular/doc/UBVCRsohTiX/?regular-txt=хаббард&regular-case_doc=&regular-doc_type=&regular-date_from=28.10.2011&regular-date_to=30.10.2011&regular-workflow_stage=&regular-area=&regular-court=Щелковский+городской+суд+%28Московская+область%29&regular-judge=&_=1442837908266>.

77 *Ibid.*

78 See, for example, Reshenie Klintsevskogo gorodskogo suda Brianskoi oblasti (19 October 2010); Reshenie Kirovskogo raionnogo suda goroda Ufy respubliki Bashkortostan (20 September 2010); Reshenie Promyshlennogo raionnogo suda goroda Samary (22 September 2010); and Reshenie Koptevskogo raionnogo Suda goroda Moskvy (21 May 2007), archive of the RF Ministry of Justice.

5 Registration Requirements as a Preventive Limitation

The Law on Religious Associations repeats the constitutional principles of secularism and pluralism of ideologies and establishes the equality of religious associations under the law.[79] However, we can find in the content of the Law different approaches to traditional and non-traditional religious associations. The basis of this different treatment is laid out in the preamble to the Law on Religious Associations, which contains a reference to recognition of the special contribution of Orthodoxy to Russian history and to the establishment and development of Russian spirituality and culture and special respect for traditional religions such as Christianity, Islam, Buddhism, and Judaism.[80] Though the preamble does not contain directly applicable legal norms, it creates the foundations for understanding and interpreting this legal act.

The Law on Religious Associations differentiates between traditional and non-traditional religious associations on the basis of their legal status and their level of privileges by using registration requirements as a filter. In Russia, the registration requirements are rather rigorous and include: (1) membership criteria (no fewer than ten citizens of the Russian Federation); and (2) criteria concerning the length of existence on a particular territory of the Russian Federation (not less than fifteen years).[81] As Renata Uitz notes, the registration of religious associations is a double-edged sword, as it can both facilitate and suppress religious freedom.[82]

The Law on Religious Associations establishes two categories of religious associations: religious groups and religious organizations (local and centralized).[83] Religious groups, which do not require registration and have the appropriate legal status, have the right to conduct worship services and rituals and to teach religion to their members. However, they are not able to open a bank account, own property, issue invitations to foreign guests, publish literature, enjoy tax benefits, or conduct worship services in prisons or state-owned hospitals, or among the armed forces.[84] Thus, they are, in fact, denied

79 Law on Religious Associations, *op.cit.* note 20, Art. 4.

80 *Ibid.,* Preamble.

81 *Ibid.,* Art. 9. At the time of the writing of this article, the criterion concerning the length of time that an association has existed on a particular territory of the Russian Federation (not less than fifteen years) had been removed from the Law on Religious Associations (*op.cit.* note 20) by RF Federal'nyi zakon "O vnesenii izmenenii v RF Federal'nyi zakon 'O svobode sovesti i o religioznykh ob"edineniiakh'" (13 July 2015) No. 261-FZ, *Rossiiskaia gazeta* (16 July 2015) No. 154.

82 Renata Uitz, *Freedom of Religion* (Council of Europe, Strasbourg, 2007), 94.

83 Law on Religious Associations, *op.cit.* note 20, Arts. 7 and 8.

84 *Ibid.,* Art. 7(3).

a majority of opportunities for the collective realization of religious freedom. Their activities are limited to private affairs among the members of the group itself. In contrast, registered religious organizations enjoy a broad range of rights.[85]

As we can conclude from the provisions of the Law on Religious Associations, the registration requirements and the associated privileges demonstrate a clear distinction between traditional and non-traditional religious associations. The latter are often regarded as prone to dangerous activity and thereby denied full enjoyment of religious freedom.[86] As a result of these requirements, a number of religious organizations, including those operating in Russia prior to the entry into force of the Law on Religious Associations, failed to re-register and were deprived of their legal status.[87] Such application of the Law on Religious Associations has resulted in a number of complaints to the RF Constitutional Court on the incompatibility of registration requirements with the RF Constitution.[88] In these cases, the RF Constitutional Court did not support the applicants and failed to recognize registration requirements as unconstitutional. Thus, in 1999, two religious associations (the Religious Society of Jehovah's Witnesses in Yaroslavl and the Christian Glorification Church) challenged the provisions of the Law before the RF Constitutional Court. The case concerned the requirement for the re-registration of religious organizations that had been founded before the Law on Religious Associations entered into force.[89] As the applications were similar, the RF Constitutional

85 *Ibid.,* Chapter 3.

86 Kravchouk, *op.cit.* note 10, 520–521.

87 *The Moscow Branch of the Salvation Army v. Russia,* ECtHR Judgment (5 October 2006) Application No. 72881/01.

88 See Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii No. 16-P, *op.cit.* note 9. See also Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii "O zhalobe religioznogo ob"edineniia 'Nezavisimyi rossiiskii region Obshchestva Esusa' na narushenie konstitutsionnykh prav i svobod punktami 3, 4 i 5 stat'i 8, statiami 9 i 13, punktami 3 i 4 stat'i 27 Federal'nogo zakona 'O svobode sovesti i o religioznykh ob"edineniiakh'" (13 April 2000) No. 46-O, *Rossiiskaia gazeta* (16 May 2000); and "Ob otkaze v priniatii k rassmotreniiu zhaloba grazhdan I.A. Zaikovoi, N.H. Ivantsovoi, V.A. Ilukhina, S.V. Kadeeva. I.A. Nikitina, A.G. Prozorova, V.G. Rabotneva, N.P. Sergeevoi, N.R. Khalikovoi i F.F. Khalikova na narushenie konstitutsionnykh prav punktom 1 stat'i 9 i punktom 5 stat'i 11 Federal'nogo zakona 'O svobode sovesti i o religioznykh ob"edineniiakh'" (9 April 2002) No. 113-O, *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (2002) No. 6.

89 In particular, the Law on Religious Associations, *op.cit.* note 20, Art. 27(3), according to which religious associations that cannot confirm that they have had a presence in Russia for a term of not less than fifteen years should re-register annually for a period of fifteen years so as to be granted the status of a legal entity. As a result, they cannot enjoy most of the rights of a religious organization during that period.

Court combined them into one case. In their applications, both religious associations complained that the Public Prosecutor's Office, in accordance with the Law on Religious Associations, required that they re-register on an annual basis and also prohibited the enjoyment of a significant number of rights because they were not in possession of a document confirming their existence in Russia for a term of at least fifteen years. The RF Constitutional Court stated that the protection of public safety and public order, health or morals, and the rights of others, established in the RF Constitution (Article 55(3)), the International Covenant on Civil and Political Rights (Article 18(2) and (3)) and the ECHR (Article 9(2)) were legitimate aims for limiting religious freedom.[90] This empowered the state to establish special legislative barriers against automatic legalization of religious movements that are suspected of violating human rights and perpetuating unlawful and criminal acts and to prohibit missionary activities if they are incompatible with respect for the freedom of thought, conscience, and religion of others. In summary, according to the RF Constitutional Court, the registration requirements established with respect to nontraditional religions are consistent with the constitutional principles on the limitation of rights (Article 55(3)) and, moreover, with the ECHR's limitations clause (Article 9(2)). Is this decision consistent with the ECtHR's case law?

As was mentioned before, the ECtHR's general position on religious freedom is as follows. On the one hand, Council of Europe member states are given a margin of appreciation to assess the existence of a need to limit religious freedom and the extent of any such necessity. It is clear that "jurisprudence on non-discrimination under Article 14 falls short of requiring strict equality in the treatment of different religions by the state and leaves scope for some difference in treatment on religious grounds where there is 'reasonable and objective justification'".[91] On the other hand, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary state intervention.[92] The state should use its power to protect society from religious associations only as an exception and with convincing and compelling reasons, corresponding to a pressing social need.[93] With respect to the legalization of religious movements, the ECtHR recognizes that member states are entitled to verify whether a movement or association

90 Postanovlenie No. 16-P, *op.cit.* note 9.

91 See Leigh and Ahdar, *op.cit.* note 30, 1092.

92 *The Metropolitan Church of Bessarabia and Others v. Moldova*, ECtHR Judgment (13 December 2001) Application No. 45701/99, para. 118.

93 *Gorzelik and Others v. Poland, op.cit.* note 67, para. 95.

carries on activities that are harmful to the population.[94] According to the ECtHR, a registration requirement (which can be regarded as one tool of verification) generally is not prohibited by the ECHR.[95] At the same time, the ECtHR sees it as a violation of the ECHR if a registration requirement is too harsh and if the absence of registration prevents unregistered religious associations from effectively enjoying the right to freedom of religion.[96] An example of this view can be found in the *Metropolitan Church* case, which concerned the Moldovan government's refusal to recognize the applicant church.[97] The government argued that, although the applicant church was not recognized, it was permitted to continue its activities without hindrance, in particular, its members could meet, pray together, and manage the church's assets.[98] The ECtHR concluded that mere non-interference on the part of the state was not enough to provide the right to manifest religion in community in accordance with the ECHR.[99] The ECtHR stressed that, in the absence of recognition, the applicant could not organize itself and could not operate; it could not enjoy most of its rights, including the right to legal protection, and therefore mere tolerance without recognition was insufficient.[100] In this case, therefore, the registration requirement could not be regarded as an issue that fell within the state's margin of appreciation or as a measure corresponding to "a pressing social need".

The ECtHR used similar reasoning in cases against the Russian government concerning the issue of the state's refusal to recognize religious associations.[101] In one of these cases, the ECtHR stated that the Law on Religious Associations in fact ruled out the possibility that unregistered religious groups could enjoy collective rights.[102] The ECtHR referred to the position of the Parliamentary

94 *Manoussakis and Others v. Greece,* ECtHR Judgment (26 September 1996) Application No. 18748/91, para. 40.

95 See the relevant case law: *Manoussakis and Others, ibid.; the Metropolitan Church of Bessarabia, op.cit.* note 92.

96 See *The Metropolitan Church of Bessarabia, op.cit.* note 92, para. 129.

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*

100 *Ibid.*

101 The author of the present work searched for relevant cases using the HUDOC database and managed to find four cases adjudicated during the 2000s: *The Moscow Branch of the Salvation Army v. Russia*, *op.cit.* note 87; *Church of Scientology Moscow v. Russia,* ECtHR Judgment (5 April 2007) Application No. 18147/02; *Jehovah's Witnesses of Moscow and Others v. Russia,* ECtHR Judgment (10 June 2010) Application No. 302/02; and *Kimlya and Others v. Russia, op.cit*. note 9.

102 See *Kimlya and Others v. Russia, ibid.*

Assembly of the Council of Europe, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the Russian Ombudsman, and Russian courts that the restricted status of non-registered religious groups "did not confer on these groups a set of rights of sufficient scope for carrying out important religious functions".[103] The ECtHR then concluded that these religious groups were effectively unable to enjoy their rights to freedom of religion and association and that the state did not rely on any relevant or sufficient reasons that could justify the lengthy waiting period that a religious organization had to endure prior to obtaining legal status.

The view of the ECtHR is supported by the 2004 ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*. According to the *Guidelines*, access to the basic rights associated with legal personality—for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued—should be available without excessive difficulty.[104]

To sum up, the stringent registration requirement contained in the Law on Religious Associations does not allow non-traditional religious associations to exercise a number of activities, thus interfering with their religious freedom and freedom of association. The RF Constitutional Court and the ECtHR have provided different assessments of this law: the RF Constitutional Court concentrates on the legitimate aim justifying the registration requirement; the ECtHR examines the consequences of non-registration such as the inability of unregistered religious groups effectively to enjoy religious freedom, which is not justified by any sufficient reasons on the part of the state.

6 Anti-extremism Law as a Subsequent Limitation

The Law on Religious Associations establishes the possibility of suspending or prohibiting the activity of religious organizations in case they violate the law (Article 14). With respect to the protection of national security, we should focus on violations of the law such as actions intended for extremist activity (Article 14(2)). According to the National Security Strategy,[105] extremist activity on the part of religious organizations is regarded as a threat to national

103 *Ibid.*, para. 87.

104 OSCE Office for Democratic Institutions and Human Rights, *Guidelines for Review of Legislation Pertaining to Religion or Belief* (OSCE/ODIHR, Warsaw, 2004), 17, available at <http://www.osce.org/odihr/13993>.

105 RF National Security Strategy, *op.cit.* note 71.

security aimed at undermining the unity and territorial integrity of the state. According to the Strategy, extremism is often developed under the guise of religion.[106] This idea served as the basis for the concept of religious extremism, according to which religious ideology is regarded as one possible element in society supporting extremism.[107] Religious extremism is defined in legal surveys as an activity motivated by religion or using religion as camouflage to have an unlawful impact on the political system.[108] As at least one researcher has noted, religion is a strong enough force that it can strengthen various nationalist and separatist movements that threaten the security of the Russian multinational state.[109]

The Law on Extremism contains definitions of various types of extremist actions, including actions based on religious concerns. According to the Law on Extremism, the following types of religious activities are prohibited: (1) propaganda of an exceptional nature promoting the superiority or deficiency of individuals on the basis of their religious affiliation or attitude to religion; (2) incitement of religious discord; and (3) violations of human rights in connection with a person's religious affiliation or attitude to religion.[110] In addition, the Law on Extremism contains different means of combating extremism, including prosecutors' warnings and notices (Articles 6 and 7), the banning of materials containing extremist elements (Article 13), and suspending or prohibiting the activities of religious entities (Articles 9 and 10). In conjunction with related norms of other legal acts,[111] the Law on Extremism provides prosecutors and courts with significant powers to restrict extremist activity.

106 *Ibid.*

107 Evgenii Zabarchuk, "Religioznyi ekstremizm kak odna iz ugroz bezopasnosti rossiiskoi gosudarstvennosti", *Zhurnal rossiskogo prava* (2008) No. 6, 3–10, 3.

108 Kravchouk, *op.cit.* note 10, 507.

109 See, for example, Zabarchuk, *op.cit.* note 107.

110 RF Federal'nyi zakon "O protivodeistvii ekstremistskoi deiatel'nosti" (hereinafter, "the Law on Extremism") (27 June 2002) No. 114-FZ, *Rossiiskaia gazeta* (30 July 2002) Nos. 138–139, Art. 1.

111 See Ugolovnii Kodeks Rossiiskoi Federatsii (13 June 1996) No. 63-FZ, *SZRF* (17 June 1996) No. 25, item 2954: liability for extremist activity is established in Arts. 278 (violent seizure or holding of power), 280 (public incitement to extremist activity), 282 (incitement of hatred or enmity or violation of human dignity), 282(1) (founding an extremist association), 282(2) (organizing the activities of an extremist organization), and 282(3) (financial support of extremist activity). See also Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniiakh (30 December 2001) No. 195-FZ, *SZRF* (7 January 2002), No. 1, item 1: liability for extremist activity is established in Arts. 20(3) (public demonstration of Nazi symbols or symbols of an extremist organization or other symbols prohibited by law) and 20(29) (producing and disseminating extremist materials).

Article 1 of the Law on Extremism describes what kinds of activities are to be recognized as extremist, but it does not include any general definition that might be helpful in understanding extremism as a concept.[112] Instead, it contains a list of extremist actions, which are rather dissimilar. For example, some of these activities are directed against individuals on the basis of their affiliation with certain social groups (incitement of social, racial, national, or religious discord or propaganda of an exceptional nature; superiority or inferiority of individuals on the basis of their social, racial, national, religious, or language affiliation or attitude to religion); some are directed against state agencies and officials (obstruction of public authority or making knowingly fraudulent accusations of extremism against officials); some concern violations of voting rights (obstruction of the exercise of voting rights); and yet others concern terrorism (public justification of terrorism or terrorist activity).[113] As we can see from these examples, there is no general feature unifying all these actions and clarifying what extremism is.

Besides the absence of a general definition of extremism in Article 1 of the Law on Extremism, the wording on some extremist actions is excessively broad. These include actions with a "religious" aspect (incitement of religious discord and promoting the exceptional nature, superiority or inferiority of individuals on the basis of their affiliation with a religion or attitude to religion).[114] It is not clear which specific actions should be understood under "incitement of religious discord" (*vozbuzhdenie religioznoi rozni*), as the definition does not make it possible to distinguish dangerous *incitement* from permissible actions that are outwardly similar. Initially, according to the Law on Extremism, an action falling under this definition should be committed in connection with violence or a threat of violence. This requirement was removed from the Law on Extremism, and the definition was, in fact, deprived of any clear criteria.[115]

112 The notion of extremism is not defined in international legal documents binding on Russia except for the Shanghai Convention on Combating Terrorism, Separatism and Extremism (hereinafter, "the Shanghai Convention") (15 June 2001), available at <http://www.refworld.org/docid/49f5d9f92.html>. According to Art. 1(1) of the Convention, extremism "is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as violent encroachment upon public security, including organization, for the above purposes, of the illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties". The Convention establishes that the states parties thereto may provide a broader application of this term in national law (Art. 1(2)).

113 The Law on Extremism, *op.cit.* note 110, Art. 1.

114 *Ibid.*

115 The Law on Extremism *op.cit.* note 110, Art. 1 (as amended).

Moreover, it is not clear which actions constitute "propaganda of an exceptional nature, superiority, or deficiency of individuals on the basis of their religious affiliation or attitude to religion" (*propaganda iskliuchitel'nosti, prevoskhodstva ili nepolnotsennosti lichnosti po priznaku religioznoi prinadlezhnosti ili otnosheniia k religii*).[116] Any propaganda contained in particular religious teachings that is aimed at proving the superiority of a certain religion above other ideologies can potentially be defined as extremism. Meanwhile, an inherent part of most religious teachings is an attempt to convince people that a particular worldview provides a superior explanation of the universe compared to other worldviews.[117] Therefore, it can be concluded that it is not clear from definitions of extremism how the particular actions identified as unlawful threaten national security or how the aim of protecting national security is achieved by prohibiting such actions.[118] This opens up space for a very broad interpretation of extremism in practice, which can be used consciously or unconsciously as a tool to suppress rights.

The definition of religious extremism was the subject of supervisory review by the RF Constitutional Court in 2013.[119] The circumstances of the case were the following: the applicant's copy of a book by L. Ron Hubbard was confiscated by an ordinary court because the book had been banned as extremist.[120] The applicant argued before the RF Constitutional Court the constitutionality of the notions of extremist activity and, in particular, of "incitement of discord" (*vozbuzhdenie rozni*) and "promoting the exceptional nature, superiority or deficiency of individuals" (*propaganda iskliuchitel'nosti, prevoskhodstva ili nepolnotsennosti lichnosti*). According to the applicant, these notions were not clearly defined and were therefore subject to arbitrary application by the state.

116 *Ibid.*

117 See, for example, para. 37 of the "Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation", adopted by the Venice Commission at its 91st Plenary Session (15–15 June 2012), CDL-AD(2012)016, available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e>.

118 It should be mentioned that it is not the aim of this article to suggest an ideal notion of extremism. Defects in anti-extremism legislation are not the core issue in the article and are mentioned only in relation to the problem of the suppression of non-traditional religious associations.

119 Opredelenie Konstitutsionnogo Suda RF "Ob otkaze v priniatii k rassmotreniiu zhaloby Kochemarova Vladislava Sergeevich na narushenie ego konstitutsionnykh prav polozheniiami punktov 1 i 3 stat'i 1 i chasti tret'ei stat'i 13 Federal'nogo zakona 'O protivodeistvii ekstremistskoi deatel'nosti'" (2 July 2013) No. 1053-O.

120 Reshenie ot 29 iiunia 2011 g. Shchelkovskii gorodskoi sud (Moskovskaia oblast'), *op.cit.* note 76.

The Constitutional Court stressed that the mentioned notions of extremism were based on provisions found in the RF Constitution (Articles 13(5) and 29 (2)) and they therefore could not be unconstitutional.[121] As for the applicant's argument about legal uncertainty, the Constitutional Court stated that the legislator could use evaluative and generally accepted notions that were clearly based on the law or explanations of the courts. The Constitutional Court added that the courts applying anti-extremism laws should analyze all the circumstances of a particular case.[122] The Constitutional Court thus decided that the notions of extremism were clearly defined and constitutional.[123] In its judgment, however, the Constitutional Court did not provide any assessment of the widespread practice of disproportionate anti-extremism limitations[124] and left the interpretation of vague notions of extremism entirely to the discretion of the courts.

The definition of extremist notions in Russian legislation was strongly criticized at both the national and international levels. As for the national level, the Ombudsman of the Russian Federation noted in his annual report for 2012[125] that extremism did not have any clear criteria in Russian legislation and that the qualification of certain actions as extremist depended mainly on the discretion of law enforcement bodies. The Ombudsman stressed that measures to combat extremism should satisfy the requirement of legal certainty, according to which everyone should be able to foresee the possible consequences of their actions and decisions.[126]

As for the international level, according to the Opinion of the Venice Commission of 2012 on the Federal Law on Combating Extremist Activity,[127] these definitions are vague and do not contain the criterion of violence.[128]

121 Opredelenie Konstitutsionnogo Suda RF, *op.cit.* note 119, para. 2.

122 *Ibid.*

123 *Ibid.*

124 Concerning the widespread practice of disproportionate anti-extremism limitations, see later in this section.

125 "Doklad upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii za 2011 god" (20 February 2012), available at <http://old.ombudsmanrf.org/ombudsman/document/ezhegodnye_doklady/717-2011>.

126 *Ibid.,* point 6.

127 "Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation", adopted by the Venice Commission, *op.cit.* note 117.

128 The only definition of extremism contained in an international treaty binding on Russia is to be found in the Shanghai Convention. *op.cit.* note 112, Art. 1. According to Art. 1 of the Convention, the definition of extremism contains the criterion of violence.

Vagueness of legal provisions was found unlawful by the ECtHR in *The Sunday Times* case.[129]

There is a danger of the unequal and arbitrary application of uncertain extremist notions by the courts and other law enforcement bodies in cases concerning the recognition of a particular activity or texts as extremist. The argumentation found in authoritative decisions based on ambiguous definitions can be weak, and their conclusions can be unpredictable. In this context, the author analyzed Russia's Federal List of Extremist Materials[130] and available court decisions in which religious texts were recognized as extremist and religious associations were banned as extremist.[131] Among these decisions, the author managed to find interesting examples of the prohibition of religious texts and of religious associations as extremist, which demonstrates the weakness and arbitrariness of courts' argumentation and assessment of what poses a national security threat.[132]

From the author's point of view, religious texts should be banned as extremist only if they produce a real threat, and not just a potential one. This approach meets the requirement of Article 55(3) of the RF Constitution, according to which limitations should be imposed only if they are "necessary" (not just rational or desirable) "for protection of national security".[133] However, the courts usually do not examine the reality of the threat produced by a particular text or by the concrete actions of the association they are going to ban.[134]

129 *The Sunday Times v. the United Kingdom*, *op.cit.* note 75.

130 The Federal List of Extremist Materials has been maintained since 2007 by the RF Ministry of Justice under Art. 13 of the Law on Extremism. The list includes materials that have been recognized as extremist and whose dissemination has been banned by a court decision.

131 It is worth mentioning that most related decisions have not been published and that the author had to use the resources of rights protection organizations, such as the SOVA Center for Information and Analysis (available at <sova-center.ru>) and resources provided by the St. Petersburg State University Center for Counteracting Extremism and Corruption (available at <spbu.ru>) and the RF Ministry of Justice.

132 See, for example, Reshenie Klintsevskogo gorodskogo suda Brianskoi oblasti (19 October 2010); Reshenie Kirovskogo raionnogo suda goroda Ufy respubliki Bashkortostan (20 September 2010); Reshenie Promyshlennogo raionnogo suda goroda Samary (22 September 2010); and Reshenie Koptevskogo raionnogo Suda goroda Moskvy (21 May 2007), archive of the RF Ministry of Justice.

133 For more, see Ol'ga Beglova, "Liuboi li ekstremizm protivopraven?" 4 *Vestnik Sankt Peterburgskogo Gosudarstvennogo Universiteta, Seriia 14, Pravo* (2011) No. 4, 61–69.

134 See, for example, Reshenie Koptevskogo raionnogo Suda goroda Moskvy (21 May 2007); Reshenie Klintsevskogo gorodskogo suda Brianskoi oblasti (19 October 2010); Reshenie Kirovskogo raionnogo suda goroda Ufy respubliki Bashkortostan (20 September 2010);

In fact, it is not the court itself that examines the content of an ideology and the potential threat it poses. These issues are decided by non-legal experts (linguistic, historical, or sociological) who usually participate in cases concerning religious extremism.[135] As we can conclude from the texts of court decisions, expert testimony is, in fact, the only reliable basis of judgment, and the courts do not seek out any additional legal assessment.[136] The only comment of the court on expert testimony is that the court did not have any grounds to distrust an expert who possessed the necessary qualifications and had been notified of the liability for false testimony.[137] For example, the fourteen books written by Said Nursi were banned as extremist in 2007 by a judgment of the Koptevskii District Court.[138] The Court's conclusion was based entirely on the testimony of several expert witnesses presented by the prosecutor. The Koptevskii Court reported that the conclusion of the experts described the books as containing a complex ideology based on an intolerant attitude to other ideologies and aimed at inciting religious hatred and provoking inter-religious tension. The Court stated that it had no reasons to distrust the experts and thereby concluded that the works should be recognized as extremist. This decision provided the basis for banning as extremist the Nurdjular group, which published, translated, and distributed Nursi's books. The ban was imposed by a decision of the Supreme Court[139] upon an application from the Prosecutor-General of the Russian Federation. The Prosecutor-General of the Russian Federation stated that the activity of the Nurdjular international religious entity and its units in Russia threatened international and inter-religious stability in society and the

and Reshenie Promyshlennogo raionnogo suda goroda Samary (22 September 2010), archive of the RF Ministry of Justice. For more, see Beglova, *ibid.*

135 The appointment of experts is not obligatory in such cases under the law, but the author did not manage to find any cases in which experts did not participate.

136 There is no law that prescribes publishing an expert's testimony either along with the court's decision or separately. Most such expert testimonies are unavailable publicly, but some can be found on the sites of human rights protection organizations such as the SOVA Center for Information and Analysis (available at <sova-center.ru>). That said, the main expert's arguments and conclusions are cited by the court directly in its decision.

137 See Reshenie Klintsevskogo gorodskogo suda Brianskoi oblasti (19 October 2010); Reshenie Kirovskogo raionnogo suda goroda Ufy respubliki Bashkortostan (20 September 2010); and Reshenie Promyshlennogo raionnogo suda goroda Samary (22 September 2010), archive of the RF Ministry of Justice.

138 See Reshenie Koptevskogo raionnogo Suda goroda Moskvy (21 May 2007), archive of the RF Ministry of Justice.

139 Reshenie Verkhovnogo Suda Rossiiskoi Federatsii (10 April 2008) No. GKP108-859, archive of the RF Ministry of Justice.

territorial integrity of the Russian state. As we can see from the text of the RF Supreme Court's decision, the prosecutor stated: "the activities of the Nurdjular religious association in the Russian Federation involved the infliction of harm on individuals and the infringement of individual rights and freedoms. Adherents of Nurdjular formed groups with a positive attitude toward death, combined with a readiness for self-sacrifice in the name of their doctrine; they promote the superiority or inferiority of individuals on the basis of their attitude to religion, as well as enmity between Muslims and non-believers."[140]

As we can see from its decision, the Supreme Court did not require that this statement be proved by any concrete facts. On the basis of the abovementioned prosecutor's statement and based on the fact that Nursi's books were previously banned as extremist, the Supreme Court concluded:

> "The activities of [...] Nurdjular in Russia are aimed at the creation of social groups with a positive attitude to death, combined with a readiness for self-sacrifice in the interests of their doctrine. Through commercial bodies and organizations under its control, Nurdjular finances educational institutions and creates groups for studying Risale-i-Nur. Thus, favorable conditions are created for the formation of a resource base for other extremist or terrorist organizations using Islamic rhetoric. The Nurdjular religious association has no official status in the Russian Federation."[141] Therefore, the threat posed by the Nurdjular group to human rights and national security was associated not with particular actions on the part of this religious association, but with the content of the religious ideology being practiced by the followers of Said Nursi.

We should compare the Russian approach with that of the ECtHR in cases concerning limitations placed on religious associations. The ECtHR usually notes that limitations must be "necessary in a democratic society", which means that any limitations must correspond with a "pressing social need"; thus, the notion of being "necessary" does not have the flexibility found in expressions such as "useful" or "desirable".[142] As for the reality of the threat to national security found in the case of the *Metropolitan Church of Bessarabia*, the ECtHR concluded that, insofar as the Church was not engaged in political activity, the

140 *Ibid.*

141 *Ibid.*

142 See *Svyato-Mykhaylivska Parafiya v. Ukraine*, ECtHR Judgment (14 June 2007) Application No. 77703/01, para. 116; *Gorzelik and Others v. Poland, op.cit.* note 67, para. 95; *The Moscow Branch of the Salvation Army v. Russia, op.cit.* note 87, para. 62.

possibility that it could produce a threat to national security and the territorial integrity of the state remained hypothetical and should be proved by concrete facts.[143] In addition, the ECtHR mentioned that: "[the] state's duty of neutrality and impartiality [...] is incompatible with any power on the state's part to assess the legitimacy of religious beliefs".[144] Therefore, we can assume that the ECtHR associates threats to national security with the concrete political activity on the part of a religious association, not with the content of a particular ideology.

Meanwhile, we should keep in mind that the test of necessity in a democratic society is primarily determined through the principle of proportionality and the margin of appreciation.[145] Therefore, the conclusion depends to a large extent on the political context and the role of religion in a state. This statement can be substantiated by the ECtHR's argumentation in cases concerned with limitations imposed on the manifestation of Islam in Turkey. The case *of Refah Partisi and Others v. Turkey* concerned the dissolution of a political party by the Constitutional Court on the grounds that its activities were contrary to the principle of secularism. The manifestation of Islam in such a manner amounted to exerting pressure on people who did not follow that practice and created discrimination on the grounds of religion or belief.[146] According to the government, the members of Refah advocated the use of violence in order to resist certain government policies or to gain power and retain it. They submitted that a number of acts and speeches by Refah members constituted incitement to a popular uprising and the generalized violence characterizing any "holy war".[147] The applicants argued that their dissolution was not a proportionate measure for the protection of national security, public order, or the rights of others. Although some Refah members mentioned the possibility of recourse to force, the party never used force in its activities. The ECtHR stated that a political party introducing sharia law could hardly be regarded as an association complying with the democratic ideal on which the ECHR is based and that member states may therefore oppose such political movements in light of their historical experience.[148] The ECtHR stated that the acts and speeches of

143 *The Metropolitan Church of Bessarabia and Others v. Moldova, op.cit.* note 92, para. 125.

144 *Ibid.,* para. 123.

145 The test is described in a speech by Douwe Korff, "The Standard Approach Under Articles 8–11 ECHR and Article 2 ECHR", para. 5, available at: <http://ec.europa.eu/justice/news/events/conference_dp_2009/presentations_speeches/KORFF_Douwe_a.pdf>.

146 *Refah Partisi and Others v. Turkey,* ECtHR Judgment (13 February 2003) Application Nos. 41340/98, 41342/98, 41343/98, 41344/98, para. 27.

147 *Ibid.,* para. 84.

148 *Ibid.*, para. 124.

Refah's members and leaders revealed its long-term policy aimed at setting up a regime based on sharia law and that Refah Partisi did not rule out recourse to violence in order to implement its policy. Thus, the ECtHR concluded that "in view of the fact that these plans were incompatible with the concept of a 'democratic society' and that the real opportunities Refah had to put them into practice made the danger to democracy more tangible and more immediate, the penalty imposed on the applicants by the Constitutional Court, even in the context of the restricted margin of appreciation left to Contracting States, may reasonably be considered to have met a 'pressing social need'".[149] This example substantiates the statement made above that the conclusions of the ECtHR are based to a considerable degree on the historical background and political context of the particular state.

A similar approach can be found in the case of *Leyla Sahin v. Turkey*.[150] Though this case concerns a person's individual right to manifest religion by wearing a headscarf, the ECtHR stated that the impact of wearing such a symbol, which has taken on political significance in Turkey in recent years, must be borne in mind.[151] As in the *Refah* case, the ECtHR stressed that there were extremist political movements in Turkey that sought to impose on society as a whole their religious symbols and conception of a society founded on religious precepts. It cited its conclusions from the *Refah* case that each member state may, in accordance with the provisions of the ECHR, take a stance against such political movements based on its historical experience.[152]

7 Conclusions

A comparative analysis of the provisions of the ECHR and the RF Constitution related to religious freedom shows that the European and the Russian views on the basic principles and values associated with religious freedom appear to be rather similar. Yet, the interpretation and implementation of these principles in Russian legislation and the relevant case law demonstrate that the Russian approach strongly deviates from the European standards on religious freedom established in the ECHR and the relevant case law of the ECtHR.

In Russia, non-traditional religious movements are, in fact, subjected to severe restrictions, since national security threats are associated not with

149 *Ibid.*, para. 132.

150 *Leyla Sahin v. Turkey*, ECtHR Judgment (10 November 2005) Application No. 44774/98.

151 *Ibid.*, para. 115.

152 *Ibid.*

particular dangerous activities but with the content of any ideology considered inconsistent with Russian spiritual traditions. The urgent legislative problem is the vagueness of the notion of national security as a legitimate reason for restrictions on religious freedom and of the notion of religious extremism as a threat to national security. We can agree that the majority of legislative provisions are abstract and that the courts should interpret norms in relation to concrete cases. Meanwhile, abstractness should not result in the arbitrary application of the law by the courts or the unequal treatment of religious associations. Clear criteria for a national security threat (particularly the use of force or the threat of violence) can be found, for example, in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, according to which:

> A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force. [...] in particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including [...] to entrench a particular ideology.[153]

Another problem is found in arbitrary judicial decisions based on weak argumentation, whereby the reality of the threat is not examined and substantiated. This problem can be resolved by applying the proportionality test created by the case law of the Federal Constitutional Court of Germany[154] and spread to the rest of Europe.[155] This test has been described in academic research as universal and preferred for substantiation of limitations of human rights.[156]

In summary, it is clear that the state, which establishes the framework for the exercise of religious freedom, cannot be deprived of its right (and obligation) to protect national security. Meanwhile, the measures of protection should be

153 Principle 2 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (November 1996) Art. 19, available at <www.article19.org.>.

154 For more, see Robert Alexy, "Balancing, Constitutional Review, and Representation", 3(4) *International Journal of Constitutional Law* (2005), 572–581.

155 For more, see Nicholas Emiliou, *The Principle of Proportionality in European Law: A Comparative Study* (Kluwer Law International, London, 1996).

156 See Alec Stone Sweet and Jud Mathews, "Proportionality Balancing and Global Constitutionalism", *Columbia Journal of Transnational Law* (2008) No. 47, 68–149.

balanced with human rights guarantees, in particular religious freedom and the freedom of association. This balance depends on many factors, such as the role of religion in the state, the historical background, and the social and political context. That is why the ECtHR provides Council of Europe member states with a certain margin of appreciation in deciding whether and to what extent limitations are necessary.[157] Meanwhile, this margin of appreciation is limited by the general standards of human rights established in the ECHR and the ECtHR case law, which are the part of Russian national legal system.

157 *The Metropolitan Church of Bessarabia and Others v. Moldova, op.cit.* note 92, para. 119.