

RELIGIOUS BELIEFS AND THE LIMITS OF THEIR ACCOMMODATION IN RUSSIA: Some Landmark Cases of the Russia Supreme Court

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ABSTRACT: The Russian Constitution establishes liberal principles on the exercise of religious freedoms. However, the Russian statutory law does not provide explicit rules on how to implement these principles and what their limits are. This puts the Russian courts in an ambiguous situation, whereby they have to defend the religious minorities pursuant to the constitutional law, although they are practically precluded from granting accommodations to these minorities, otherwise courts could be viewed as depriving the parliament of its legislative function. Meanwhile, the Russian legislative authorities are reluctant to legitimize such accommodations for the minorities. In this situation, the Russian courts of general jurisdiction in concrete cases decide on the factual limits of the protection and thereby indirectly accept the idea of accommodation, which is not elaborated in the statutory law, providing remedies or limitations on its enforcement. The courts are generally indisposed to recognize that their decisions develop the statutory law and therefore tend to shroud their approaches and the criteria in the formalistic language. This paper examines some of the criteria and approaches that the Russian Supreme Court has formulated in several landmark cases concerning religious freedoms. The author underscores the relevance of such an analysis for the comparative research projects, which aim at understanding (dis)similarities of the legal accommodations on religious grounds in different countries.

KEYWORDS: Protection of religious freedoms; Human rights; Russian Supreme Court; Accommodations on religious grounds; Balancing of legal principles.

INTRODUCTION

Courts of law and law-enforcement agencies in various countries use different criteria when deciding on the extent to which a right or a freedom can be restricted or extended. These criteria are of immense importance in the field of religious freedoms, where, under some circumstances, a person may be relieved from a legal obligation because of her religious beliefs. In many countries, courts can also restrict an individual's religious rights in order to

mitigate the possible negative effects on other people or the entire society if that individual's persistence in asserting her religious rights is allegedly found to be detrimental to the public interest. Such cases are heard regularly by supreme and constitutional courts in many Western countries and provoke vivid polemics in societies about what can justify such restrictions and whether they are justifiable at all.

National and supranational courts are not always consistent in imposing limitations on religious liberties and in allowing religious accommodations. Along with formal statutory provisions and abstract principles, courts normally take into consideration expediency and acceptability of certain religious practices for the entire society, their influence on public opinion, and other criteria that are often quite subjective and circumstantial (Bhuta 2014).¹ Religious freedom cannot be framed in the form of rigid normative statements in advance, and, in this sense, cannot be fully formalized in the statutory law, mainly because their main function is to delimit rule-making powers of the state in matters of conscience. According to this logic, the normative statements precede and, to some extent, may supersede the official law in this field, regardless of whether they are posited in the law or not. Historically, religious freedoms in the Western legal tradition asserted their primacy over the posited state norms and finally held the upper hand, giving way to the idea of human rights. In other words, these rights are *prima facie* against the state and its laws, which can sometimes become excessively restrictive.

That is why an analysis of the formal legal enactments can hardly fully describe the factual limits and constraints on religious freedoms that exist in a society. These rights, albeit normatively limitless (or limited by too general formulations), are always constrained by public opinion, which might also affect the case law and administrative practices. At the same time, a purely political analysis of purported influences and power structures does not provide sufficient clues for a proper understanding of the law machinery, which, in every society, constructs its own semi-autonomous mechanisms of regulation (autonomy of procedures, language, legal community, legal technique, etc.), although the degree of this autonomy can naturally vary in different countries. This suggests looking at the language in which courts describe their attitudes toward certain fields of regulation—in the present case, toward religious freedoms and to dwell on what stands behind this language. Such is the central task of the present paper, which considers the approaches of the Russian Supreme Court (hereinafter referred to as RF SC) in what concerns religious freedoms: the real limits of their protection and restriction, as they are formulated in several mainstream cases.

A caveat must be added on the author's own attitude about what he describes here. This paper is focused on analyzing the Russian law (constitutional, statutory, and case law) and the social context of its application. Readers will find here neither the author's value judgments on the cases decided by the Russian courts nor the political critique of these cases. This is a deliberate choice made by the author who intend to keep himself as far as possible on the *Is* side of the philosophical *Is-Ought* divide and to keep his paper at a manageable length. The author's intention here is not to praise or condemn any norms or practices of their application, but provide an examination of how RF SC reasons in its decisions on religious freedoms, and how this reasoning can be representative of the collective mind-sets and attitudes. This analysis can help identify what William Ewald (1995a) called, "law in the minds" at RF SC in matters of religious freedoms; it can potentially serve the consequent political analyses for the comparative law examination of (dis)similarities in the regulation of religious freedoms in Russia and other countries and perhaps for normative judgments by policy-makers or by those who aspire to become such.

¹ As one author suggests, this is exactly the case of the European Court of Human Rights, which adopts two different strategies for the locally grown and imported religious cults and practices.

CONSTITUTIONAL AMBIGUITY

The Russian Constitution recognizes the liberal, Western-style religious freedoms, which include “the freedom of conscience, the freedom of religion, including the right to profess individually or collectively any religion or no religion at all, to freely choose, possess, and disseminate religious and other views and act according to them” (Art. 28). The Constitution also confirms that Russia is “a secular state where no religion may be established as a state or obligatory one” (Art. 14). The basic law for religious freedoms, the Federal Law No. 125-FZ “On Freedom of Conscience and on Religious Denominations” (29 September 1997, as amended) (Homer and Durham 1998), was expected to develop the mechanisms for implementing these liberal freedoms; however, it remained mostly declarative. The 1997 Law in particular does not specify the conditions on which a person may base her conscientious objections and be relieved from certain legal obligations because of her faith and what the criteria are for courts to decide thereupon. Article 2 of the 1997 Law provides that “nothing in this law can be interpreted in a manner that infringes or encroaches on the human rights guaranteed by the Constitution or by international treaties.” Following this principle to the letter, this Law did not add anything about the conditions and the limits of realization of these constitutional and international law principles, apparently considering these principles as self-executing.

There could have been at least two rationales for such a declarative approach in the 1997 Law. On the one hand, in the absence of statutory limits of these freedoms, a strictly formalist interpretation could easily result in the conclusion that religious freedoms have no limits except for those mentioned in para. 3 of Art. 55 of the Russian Constitution.² On the other hand, the Constitution establishes that it has a direct effect (para. 1 of Art. 15), and that the international law is an integral part of the Russian law with primacy over the domestic statutory law (para. 4 of Art. 15). In both these views, the constitutional and international principles can be applied even if there are no statutory norms about the implementation of these principles. As the positivist jurisprudence overwhelmingly prevails in the Russian law, these rationales are likely among the ideas that inspired the authors of the 1997 Law. However, this approach in the Russian realities, taken to the letter, turned out to be destructive for religious freedoms.

In fact, the constitutional provision in para. 3 Art. 55 contains an empty formula that can be filled with any restrictions whatsoever, including those that stem from the narratives about “traditional values,” which nowadays are in vogue and are widely evoked by the Russian political leadership and chief judiciary (e.g., Hooper 2016).³ The problem of incorporating the traditional values into the discussions on human rights is not specifically Russian (Sundberg 2010); however, this country takes radical measures to protect its identity through banning the “non-traditional” religious cults (Curanović and Leustean 2015). In the same vein, Russia progressively continues insulating itself from the international law — as per the 2015 Ruling of the Russian Constitutional Court (hereinafter referred to as RF CC) — and the ensuing statutory

² Art. 55 of the Russian Constitution warns that “in the Russian Federation no laws shall be adopted cancelling or derogating human rights and freedoms” (para. 2). On the other hand, the next paragraph states that “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” (para. 3).

³ In recent years, especially after the beginning of the Ukrainian crisis, the Russian authorities frequently refer to the traditional values to justify the exceptionalist attitudes toward the West. The term “traditional values” constantly reappears in the official narratives in Russia, which justifies why ordinary courts grant protection to these values even if they are not formally included in the statutory law, regulating the matters of accommodations on religious motives. In a sense, Russia pretends to have the lead in defending traditional values in Europe. These traditionalist discourses also prevail at the Russian Constitutional Court.

amendments have just confirmed that, despite the plain meaning of para. 4 of Art. 15 of the Constitution, the international law has no primacy over the domestic law.⁴

The Russian legal system turned out to be resilient to the idea of the direct effect of the Constitution; this idea was first rejected by RF CC and then by other courts, despite the clear wording of the Constitution itself. The long-lasting struggle between RF CC and RF SC about the direct applicability of the Constitution is illustrative in this sense. Until 16 April 2013, RF SC had instructed its lower (common jurisdiction) courts to apply the Russian Constitution directly when courts find that a federal law (or a presidential edict) contradicts the Constitution and to refrain from applying such legislation or edicts.⁵ In a 1998 Ruling, RF CC condemned this practice, reasoning that no court could abstain from applying legislation unless such legislation was deemed unconstitutional by RF CC.⁶ This discrepancy between the two jurisdictions lasted 15 years until RF SC abandoned its position and removed the controversial points from its 1995 Ruling.⁷

From this standpoint, neither international nor constitutional law can in fact serve as suprastatutory criteria for restricting religious freedoms under Art. 55 of the Constitution or for granting accommodations on religious grounds. Expectedly, in this situation, the courts turned to the traditionalist narratives to connect the reasons of the national security and public morality with the prevailing religious, moral, and other attitudes of the population, which are mostly based on the conservative precepts of the Orthodox Christianity and Islam, which are hostile to religious sects and new (“non-traditional”) religious denominations.⁸ The recent controversial case of banning *Jehovah’s Witnesses* as an extremist organization by RF

⁴ Thus, in a mid-2015 judgment (14 July 2015) No. 21-P, the Constitutional Court has ruled that the decisions of European Court of Human Rights (hereinafter referred to as ECtHR) are not self-executing (“Po delu o proverke konstitutsionnosti polozeniia stat’i 1 Federal’nogo Zakona ‘O ratifikatsii Konventsii ...’” (“In the Matter of Verifying the Constitutionality of the Provisions of Article One of the Federal Law ‘On Ratification of the Convention ...’”). Here the Court especially stressed that the national constitutional courts shall limit the negative impact of ECtHR judgments on their domestic laws and ensure that the principle of subsidiarity is duly observed by ECtHR. As a logical development of this trend, in December 2016, a new constitutional law was adopted (No. 11-FKZ as of 28 December 2016) that conferred on the Constitutional Court the power to exclude the enforcement of ECtHR’s decisions which are deemed to be contrary to the Russian Constitution.

⁵ Points (b), (v), (g), para. 2, Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii (31 October 1995) No. 8, “O nekotorykh voprosakh primeneniia sudami Konstitutsii Rossiiskoi Federatsii pri osuzhestvlenii pravosudia” [“On some questions pertaining to the application of the RF Constitution by courts when administering justice”], Rossiiskaia gazeta (28 December 1995) No. 247.

⁶ Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii (16 June 1998) No. 19-P, “O tolkovanii otdl’nykh polozenii statei 125, 126 i 127 Konstitutsii Rossiiskoi Federatsii” [“On interpreting some provisions of Arts. 125, 126, and 127 of the RF Constitution”], Sobranie zakonodatel’sтва Rossiiskoi Federatsii (1998) No. 25 Item 3004.

⁷ Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii (16 April 2013) No. 9, “O vnesenii izmenenii v Postanovlenie Verkhovnogo Suda Rossiiskoi Federatsii (31 October 1995) No. 8, ‘O nekotorykh voprosakh primeneniia sudami Konstitutsii Rossiiskoi Federatsii pri osuzhestvlenii pravosudia’” [“On amending a Ruling of the Presidium of the Supreme Court No. 8 of 31 October 1995 ‘On some questions pertaining to the application of the RF Constitution by courts when administering justice’”], Rossiiskaia gazeta (24 April 2013) No. 89. More details on this discrepancy will be provided in Section 3 below.

⁸ Thus, 80% of Russians support the ban of Jehovah’s Witnesses in Russia, although most of the respondents have no idea about the religious teaching of Jehovah’s Witnesses (<https://www.levada.ru/2017/07/13/svideteli-iegovy/>). Nearly the same percentage of Russians (79%) support the proposition about taking children away from sectants who familiarize their children with non-traditional religious beliefs (<https://wciom.ru/index.php?id=236&uid=116573>).

SC⁹ can be demonstrative of the dependence of courts on this traditionalist narrative.¹⁰ In this ruling, the Court not only attacked one of the largest Protestant denominations but also challenged the future of all the other religious denominations. The basic argument for closing down *Jehovah's Witnesses* was their "extremism," understood as positioning themselves as the holders of the supreme religious truth. This criterion is theoretically applicable to almost any religious denomination, and this case suggests that RF SC in the very near future can face an uneasy dilemma: either to reconsider their approach in the *Jehovah's Witnesses* case or enforce it onto other religious organizations which, for some reasons, are not considered to be a part of the bloc of traditional religions mentioned in the Preamble of the 1997 Law. Some Hindu, Buddhist, Muslim, and Christian books and cults have also already suffered from evidently disproportional and inadequate judicial interferences. However, political or diplomatic pressure from within or outside Russia helped set aside such decisions and calm down the situation (Antonov and Samokhina 2015). The *Jehovah's Witnesses* case may be a hallmark of formation of another, more restrictive approach.

In this paper, I do not intend to undertake a historical or cultural investigation into the particularities of the Russian (Orthodox) attitude to rights; rather, I will confine my analysis to the jurisprudence of RF SC that preceded its findings in the *Jehovah's Witnesses* case. This jurisprudence is increasingly becoming correlated with the ideology of the Russian Orthodox Church, which is expressed in documents such as the 2000 *Social Doctrine* or 2008 *Basic Teaching on Human Dignity, Freedom, and Rights*. This is no surprise, mainly because the Russian Orthodox Church exerts an important moral influence on society and politicians (Stoeckl 2016); the Church benefits from this influence and fights those concurring denominations whose teachings are hostile to its dogma and its institutional interests. Some researchers even claim that the mechanisms for balancing religious rights with other rights and privileges in Russia have some specific traits that contribute to the state policies for the formation of new national identities (Agadjanian 2017; also see Gvozdev 2001; Simkin 2003; Garrard and Garrard 2008; Marsh 2011; Fagan 2012; Lunkin 2013).

METHODOLOGY

We will depart from the hypothesis that there is a correlation between the legal formalism, prevailing in the Russian law, and the approaches elaborated by RF SC in the field of religious freedoms. This connection will be illustrated in Section 3 by presenting some mainstream cases of RF SC. The formalist approach is based on the premise that laws contain responses to all the legally relevant issues so much so that the task of judges involves revealing these responses through the careful interpretation of the laws and of the legislator's will, enshrined in these laws. This old-fashioned legal positivism might explain why the Russian law does not explicitly recognize the doctrine of "religious accommodation" – formally, all rights and obligations are posited only in laws, so that, according to Charles Montesquieu, judges may remain "mouths that pronounce the words of the laws" (see de Montesquieu 1989) and have no discretion whatsoever. If a judge attempts to introduce an exception into a legal rule (e.g., a baker shall

⁹ The Ruling that banned the *Jehovah's Witnesses* in Russia was made by the RF Supreme Court on 20 April 2017 in case No. AKPI 17-238 (the full text in Russian is available at <http://www.jw-org.info/2017/05/tekst-reshenija-verhovnogo-suda-o-likvidacii-Svidetelej-Iegovy.html>). This ruling was upheld by the Appellate Collegium of the RF Supreme Court on 17 July 2017 (available at http://vsrf.ru/stor_pdf.php?id=1564706), and, on 16 August 2017, the RF Ministry of Justice placed the *Jehovah's Witnesses* on the list of extremist organizations.

¹⁰ Surely, it is not an easy task to formulate what this public morality really is, and I do not intend to do it here. Nonetheless, one can find a remarkable coherence in the statements on what is and what shall this morality be, which come from the state authorities and from other sociopolitical institutions, such as the Russian Orthodox Church or the political parties. Exemplarily, the "opposing" parties sitting in the Russian parliament (the *Communists*, the *Liberal Democrats*, led by Zhirinovskiy and *Just Russia*, headed by Mironov) are even more hostile to religious and other minorities than the governmental party – *United Russia*.

sell his cakes to everyone except when selling cakes to certain people contradicts his beliefs), in the Russian legal theory, this could be taken as an expression of judicial activism and be condemned as expropriation of the legislative function by the judge. It is interesting that the term “judicial discretion” in the Russian legalese still has pejorative meaning and is equated to arbitrariness (Trochev 2016). Moreover, this formalism negates the idea of accommodation, referring to the secular character of the State and the constitutional principle of equality before the laws (Art. 19 of the Russian Constitution), which is interpreted to exclude any preferences based on the religious status of a person. In spite of not being recognized in the prevailing doctrine, the idea of accommodation makes its way through the Russian case law and jurisprudence, whilst courts show an evident proclivity for granting such accommodations to traditional religious denominations and especially to the Russian Orthodox Church and the state-recognized Muslim spiritual congregations (*dukhovnoe upravlenie musul'man*). Analyzing key precepts of the prevailing formalist theory can illuminate the conceptual reasons of the discrepancy between the constitutional principles of religious freedoms and the practice of their implementation or, more precisely, their non-implementation. In the Russian law, principles generally work only if supported by the relevant statutory provisions, which pave the way for the implementation of these principles in the law-enforcement practice (Kühn 2011).¹¹

The prevailing legal theory in Russia follows the first positivism of the 19th century in the spirit of John Austin or Jeremy Bentham who saw law as solely a set of sovereign's commands (Butler 1996). Consequently, within this positivist paradigm, only subsumption (legal syllogism) can be accepted as the legitimate means of establishing and applying the law in concrete cases. In light of this theory, such procedures as balancing or proportionality tests are rather viewed as theoretical attempts to justify judicial discretion or arbitrariness or even latently introduce “alien Western values” under the guise of a liberal moral discourse (Antonov 2017c). The Russian legal system is traditionally oriented to this formalist theory. Given the hierarchy of legal rules set out in Art. 15 of the Constitution—the Constitution itself, the international law, the constitutional and ordinary statutes, the by-laws—judges have no authority to introduce and apply principles except for those that are expressly fixed in laws, treaties, and other posited sources of the law. Furthermore, they are prohibited from refusing to apply any laws because of their presumed contrariety to such principles. This approach is dubbed as legality (formerly known as “Socialist legality”) and, in procedural codes, it requires that judges be bound by the law only (e.g., Art. 195 of the RF Civil Procedure Code, Art. 7 of the RF Criminal Procedure Code). This attitude in particular found its expression in the above-cited dispute between RF CC and RF SC about the direct effect of the Constitution, which seems to be a result of the formalist interpretation of *Rechtsstaat* (law-bound state, *pravovoe gosudarstvo* in Art. 1 of the Constitution), where the law is independent of the other social regulatory mechanisms and absolutely prevails over them (Nethercott 2007).

Nonetheless, the reality in Russia and elsewhere is that legal norms cannot provide solutions to all the possible cases, forcing judges to go beyond the posited norms to render reasonable decisions in the multitude of cases where the law might remain silent or ambiguous. To this effect, judges sometimes have to discard some posited norms if their application under given circumstances would result in unjust or unreasonable decisions. This is especially true about such difficult cases as those connected with religious freedoms.

RF CC, in its own right, continuously demonstrates its inclination to formally abide by the principle of secularity and to abstain from laying down any clear-cut principles or approaches in the matters of religious freedoms. The most important case of intervention of RF CC into the religious matters has hitherto concerned the question, which was rather formal: a 1999 Ruling

¹¹ In this perspective, Russia cannot be far from other post-Soviet countries.

on the reregistration of religious denominations.¹² This ruling did not contain any substantial argumentation about legal principles and policies in the religious domain, applying instead general principles of law. The abstention of RF CC from interfering in religious matters (Antonov 2017a)¹³ expectedly led to a lack of legal certainty (predictability) in these matters.

In this penumbra and lacunae situation, the ordinary courts (courts of general jurisdiction), headed by RF SC, have developed a jurisprudence that somehow fills this gap.¹⁴ Below, I will analyze the selected rulings from the case law of RF SC, which might illustrate the main arguments applied repeatedly in the Court's reasoning about religious freedoms. My analysis of the practice of RF SC will be confined to the introductory aims of this paper: I will consider only the cases published in the official journal of the Court: Bulletin of the Supreme Court of Russia (hereinafter referred to as the Bulletin).¹⁵ The case reports published in the Bulletin will have a wider audience as compared with the unpublished decisions,¹⁶ and consequently exert more influence on the practice of the lower courts and the entire legal system. Moreover, in this Bulletin, RF SC promulgates decrees of its Plenum of rulings of its Presidium, which have a normative character and a binding force onto the lower courts and indirectly also onto all the members of the Russian legal order. This normative character implies that, if a decision of a lower court diverges from the position formulated in such decrees and rulings, it can be overturned on this ground (point 3 of Art. 391.3; point 5 of para. 4 of Art. 392 of the RF Civil Procedure Code; point 3 of Art. 341, and point 5 of para. 1 of Art. 350 of the RF Administrative Procedure Code). For the purposes of this paper, I have chosen to focus on these landmark cases and the normative decrees in order to conceive an idea about the case law of the RF SC, prior to the *Jehovah's Witnesses* case cited above.

Evidently, this analysis cannot examine all the "law in action" in Russia, forcing me to exclude all the court decisions that were pronounced by the ordinary courts of law, as their

¹² In this case, RF CC rejected the claim about unconstitutionality of the requirement that religious organizations are to be periodically reregistered but ruled that no obligation to reregister is on those organizations that were incorporated in Russia prior to the 1997 On Freedom of Conscience Law (Ruling No. 16-P (23 November 1999). In another "positive" ruling (No. 2-P from 17 February 2015), RF CC legitimized the power of the General Attorney Office to obtain, directly or indirectly, any information from the religious denominations to assure that they observe the laws.

¹³ Nonetheless, there are some cases in which RF CC adjudicated on the matters concerning religious freedoms. Without intending to cite negative statements on the inadmissibility of the applications (*opredelenie*), the most important rulings (*postanovlenie*) are (except for the 1999 Ruling cited above and the rulings that have been delivered prior to the enactment of the 1997 Federal Law On Freedom of Conscience): (a) the case where the ban to create religious political parties was held to be constitutional (Ruling No. 18-P from 15 December 2004), (b) the case where RF CC dismissed the claim about the inapplicability of the rules for liquidation of the legal entities to the liquidation of the religious organizations (Ruling No. 26-P from 06 December 2011), (c) the case where RF CC declined the application about the unconstitutionality of the requirement that the religious denominations shall ask in advance for permission to conduct mass religious cults (Ruling No. 30-P from 05 December 2012).

¹⁴ When courts provide *de facto* accommodations, their choice rather hinges on varying political expediency and on the general logic of the constraints that shape the interrelation between the courts and the other organs of the State power. There are other mechanisms and organizations that mitigate the relationship between the State and the religious denominations in Russia, the most important organ being the *Presidential Council for Interrelations with Religious Denominations*. The logic of their activities is rather political and goes beyond the scope of this paper.

¹⁵ The Bulletin is published monthly and its issues can be freely accessed at: <http://www.supcourt.ru/second.php>

¹⁶ These unpublished decisions can nonetheless be accessed via the official site of RF SC: <http://www.supcourt.ru/indexA.php>. Decisions and acts of the courts of law in Russia can be accessed via the site of the governmental system "Pravosudie" ("Justice"): <http://www.sudrf.ru>. The research engines of these sites are not much user friendly and, by far, not all court acts are in fact registered in these systems. It is also possible to use the private legal databases, such as "KonsultantPlus" (www.consultant.ru) or "Garant" (www.garant.ru). Other Russian databases, such as Lexis-Nexis or Westlaw, provide a more convenient access to court practice. Full access to these private databases requires payment.

analysis would require an extensive research.¹⁷ I will also exclude the cases that have been examined and decided by RF SC and have not been included in the case reports published in the Bulletin.¹⁸ In addition, it is worth noting that “electronic justice” in Russia is not a very reliable tool. Even if a large amount of workload were run at the courts in the electronic form today and many decisions were made available through the electronic resources, there still remained an array of cases that would not be transmitted to any databases; this is mainly because of concerns over national security, confidentiality, or simply because of the irresponsibility of the court clerks and a lack of due supervision over them. To my knowledge, no other scientific research has hitherto been conducted in Russia to establish the degree of reliability of the legal databases in this regard.

In the following section, I will provide a brief overview of the court argumentation retrieved from the case reports of RF SC, mentioning *ratio decidendi* of the relevant cases and describing the reasoning of the Court in general recommendations it provides to the lower courts. As noted above, the highest instance of this Court (its Plenum) is entitled to issue binding decrees on how to interpret and apply the acting laws. The commentaries made by the Plenum (“decrees”) are not necessarily connected with the particularities of the concrete cases and are of general character. In the Russian legalese, both general commentaries of the court practice, given by the Plenum of this Court, and the decisions made by RF SC (by its Cassation Collegium or its Supervisory Collegium—Presidium) in individual cases are equally labelled as “*postanovlenie*.” To avoid confusion, I will use two distinct English terms, “decree” and “ruling,” for these types of Court acts (the general and the individual ones). RF SC sometimes considers cases as the first instance and then its acts are made in the form of “decision” (*reshenie*).

Not all the retrieved cases are important to understand the Court approaches in the stated category of cases. In some cases, “religious freedoms” are only occasionally mentioned in the case reports and do not offer any specific recommendations or comments on this matter. I will omit these “irrelevant” results and focus on those that can contribute to elucidating the Court’s principles and policies in “religious” cases. The comments made by RF SC on ECtHR’s judgments in the matters of religious freedoms are not presented here, which would have otherwise forced me to substantially widen the subject matter of my research and provide a comparative analysis of these comments and of ECtHR’s arguments.¹⁹ I will also exclude the rulings and decrees that only concentrate on the procedural aspects (e.g., which court fee is to be paid or to which district court should the payment be made to, etc.) or on the aspects that are irrelevant to this paper (e.g., extradition cases, real estate disputes, custody disagreements between parents, etc.); I will, however, focus on the cases where the principal issues of protection of religious beliefs are concerned.

The retrieved results will be organized in their temporary sequence. It is important to note that, for ethical considerations, details such as the names of claimants, defendants, and

¹⁷ To give an idea about the quantity of cases in the field, I accessed the database “Rospravosudie” (<https://rospravosudie.com>), using three combination of keywords with the limitation from 1 June 2017 to 1 June 2018. The combination of the keywords “freedom of belief” (svoboda veroispovedania) within this lapse of time yielded 594 results; the combination of “freedom of consciousness” (svoboda sovesti) gave 1,394 hits, and “religious freedoms” (religioznye svobody) yielded 14,932 results. The cases (court decisions, statements, and other acts) retrieved in the two first retrievals mentioned are mostly reproduced in the third retrieval, which is very comprehensive.

¹⁸ A search with the keywords “religious freedoms” in the private database “KonsultantPlus” returned 379 results for the cases considered by RF SC alone in the time span between 2002 and 2018.

¹⁹ Pursuant to para. 4 of Art. 15 of the Russian Constitution, norms and universally recognized principles of the international law constitute an integral part of the Russian law and have primacy over the national legislation in case of conflict. Russian scholars have different opinions about the normative value of the jurisprudence of the supranational courts (e.g., ECtHR); however, there is a consensus that such jurisprudence shall be at least respected. Thus, in its Bulletin, RF SC sometimes publishes ECtHR’s judgments and other jurisdictional organs (e.g., the Human Rights Commission of the UN); although quite rarely, courts cite this jurisprudence.

judges as well as the dates and addresses shall not be disclosed. RF SC's data-protection policy requires that the anonymity of the parties of court disputes and judges be protected against illegal influence. This practice differs from that of the state commercial (*arbitrazh*) courts that publish their decisions online without attempting to conceal the details.

THE RUSSIAN SUPREME COURT ON RELIGIOUS FREEDOMS: A SELECTIVE ANALYSIS

I begin my analysis with a noteworthy dilemma that arose before the Russian courts in the mid-1990s; this dilemma concerned the young men's dodging of the draft if they claimed that the military service contradicted their religious beliefs. For such deviation, young men could be subject to criminal liability, and RF SC needed to decide either to enforce this liability in accordance with the statutory law or to clear the young men from the criminal charges with reference to their constitutional right to alternative civilian service. This dilemma even led to a confrontation between the two major Russian courts (i.e., RF SC and RF CC) about whether a conscientious objection can serve as a legal ground for relieving the draft dodgers.

The situation was legally complicated in that, despite the fact that the 1993 Art. 59 of the RF Constitution had introduced the right to alternative non-military (civilian) service for those who did not intend to be drafted based on conscientious objections, until 2002 (when the law on alternative civilian service was adopted) there had been no laws or regulations elaborating what the specifications of this alternative service were, how it was expected to be carried out, and under what conditions. In order to abstain from applying the acting laws about criminal and administrative liability of those who avoided the military service, the courts either had to introduce the rules of the alternative service themselves and thereby replace the legislators or clear the young men from their criminal charges, referring to the direct effect of the Constitution and its Art. 59. RF SC chose the latter option and asserted that the courts of law should enforce the Constitution even in the absence of laws and regulations (the issue of direct applicability has many times been reiterated by RF SC before and thereafter), and therefore courts shall acquit conscientious objectors.

This approach has been embodied in a series of RF SC rulings. Hence, in the *Overview of court practice* for the first (Bulletin 1996: 10)²⁰ and the second quarters of 1996 (Bulletin 1997: 3), the Court indicated that, in the absence of laws on the alternative non-military service, the courts shall apply directly Art. 59 of the Constitution and consequently shall not enforce the Penal Code and the 1993 Federal Law "On military service," which imposed criminal liability on conscientious objectors. This position has been confirmed in RF SC Decree No. 8 (31 October 1995) "On certain questions of application of the RF Constitution in administration of justice by courts" (Bulletin 1996: 1), where RF SC instructed the lower courts to directly enforce the RF Constitution, when these courts find a discrepancy between the federal law and the Constitution; they were also ordered to refrain from enforcing such legislation (points (b), (v), (g), para. 2 of Decree No. 8).

As noted earlier, RF CC had disagreed with this position and, in 1998, condemned it as an encroachment on its exclusive competences—no court of law in Russia can abstain from enforcing the federal legislation unless such legislation has been deemed unconstitutional by RF CC itself. It implied that RF SC and its subsidiary courts of law could not deviate from the application of the federal laws, even if these courts found that these laws contradicted RF Constitution. In such a case, these courts are recommended to suspend the proceedings and to submit an inquiry to RF CC. Recalling the dispute between RF SC and RF CC above, it is worth

²⁰ The first number refers to the year of publication and the second number after colon refers to volume of the Bulletin.

noting that RF CC managed to win the case. The case of this dispute confirms my hypothesis that the constitutional principles in Russia do not work properly if the mechanisms of their implementation are not established by the statutory law.

The aforementioned RF SC Decree No. 8 also touched on a number of other principal issues and in particular on balancing the freedom of religious rituals with other human rights and freedoms. The courts of law were instructed to heed the potential conflict between the values protected by the Constitution and to assume responsibility for a choice between them. However, this responsibility involved resolving possible value conflicts in light of RF SC decrees and rulings. As a starting point for the analysis, RF SC took the expression of religious beliefs: Art. 28 guarantees the right to propagate and disseminate religious beliefs; however, Art. 13 of the Constitution prohibits the creation of organizations that foment religious dissent. This latter prohibition, in the Court's opinion, is absolute and cannot be overridden with reference to any religious freedom (point 11 of the Decree). Therefore, RF SC has in advance determined which value has priority: this is the characteristic of the formalist jurisprudence, which leaves ordinary judges no room for activism and exempts them from balancing the principles. In the subsequent issue of Bulletin (Bulletin 1996: 2), the chairman of RF SC, Vladimir Lebedev, published his commentary on this Decree, in which he also underlined that the constitutional right to establish religious organizations is not absolute and is limited by the provisions of Art. 13 of the Constitution. This reasoning illustrated that religious freedoms could obtain remedies in courts if it is proven that their utilization does not contravene the statutory laws against religious dissent. In other words, religious freedoms can be suppressed if they are considered dangerous under the anti-extremist laws. Herein, the origins of the argumentation embodied in the 2017 *Jehovah's Witnesses* decisions can be discerned.

This issue has also been at stake when RF SC considered the headscarf case (Bulletin 2004: 2), in which several Muslim women challenged the police instruction that forced them to remove the headscarf when taking passport photos. The Court allowed the traditional religions to be given an exemption. In the first instance, RF SC turned down the petition (with a reasoning similar to that of ECtHR in the case *Karaduman v. Turkey*, 16278/90), following the formalist approach. However, the Cassation Collegium of RF SC quashed the verdict, invalidating the restriction (Ruling No. KAC-03-166 as of 15 May 2003). The Court reasoned that the main function of passport photos is to project a citizen in the way he or she usually appears in the social life. Therefore, if some Muslim women tend to wear a headscarf in their daily life, this can be used to justify their taking photos with the headgear on. Laws of Russia do not ban the headscarf in public, and therefore the imposed limitations were found unjustified and in violation of the religious freedoms of Muslim women. Meanwhile, this development set a precedent in some areas of Russia in the years when the country was witnessing the rise of the civilizational debate during the first term of Putin's presidency—Russia's mission is to reconcile the East and the West—which led to the rise of Eurasianism (the Eurasian Economic Community from 2001, etc.). The 2004 "passport photo" case would eventually illustrate that Russia offered its Muslim communities better terms of coexistence than what the EU did (RF SC in this case taking a more liberal position than ECtHR). In this RF SC ruling, one can also discern the traditionalist rhetoric about the established patterns of behavior in society and their conformity with the general societal values.

In a series of hijab cases considered by RF SC between 2012 and 2016, the Court reasoned that wearing hijab in schools could be allowed, not as a religious accommodation, but as a tribute to national traditions. As hijab is an Arabian custom and not a Russian (Tatar, Bashkir, Chechen, etc.) tradition, there is no justification for allowing it in public schools. The ratio decidendi of these cases was expressed by President Vladimir Putin who interfered in the matter in 2004 and publicly announced that wearing hijab in schools was not acceptable, mainly because there has never been such a tradition in Russia, even in its Muslim regions. This reasoning implied that

religious accommodation could legitimately be conceded to “traditional” religions only on condition that such religious practices are compatible with national traditions. This reasoning was repeatedly used afterwards when the Russian courts struck down several regulations at the request of the Orthodox or Muslim communities who intended to respect the national traditions of the public religious ceremonies; such permission however was not granted to the religious minorities.

This policy can be illustrated by another case considered in 2004, where the Court gave a wide interpretation of the 1997 Law on issues of corporate status of local religious organizations (Bulletin 2004: 10). The Muslims living in one of the towns of the Kamchatka region established a local religious organization, in which the Muslims living in other neighboring towns also attended. The RF Ministry of Justice claimed that this establishment was illegal, because the members did not live in one locality, as required by the 1997 Law. The petition of the Ministry about closing down this organization was turned down by the RF SC (Ruling No. 60-Г04-3 as of 06 February 2004). It argued that, according to the logic (but not pursuant to the literal text!) of that Law, “local organization” implies the territory of a subject of the Russian Federation. As far as all the members of the “Kamchatka Muslim Religious Community” lived in the Kamchatka region (oblast’), which is one subject of the Russian Federation, there were no impediments to their creating their community. It is in these years that, using similar arguments, Jehovah’s Witnesses, Scientologists, and other minorities desperately fought to convince the Russian state to accept them as legitimate religious denominations.

In the Ruling No. 49-Г04-48 (21 May 2004), the RF SC commented on the religious educational activities and formalities to be observed when running them (Bulletin 2004: 11). In the case of the Church of Scientology’s branch office “Dianetica” in Bashkiria, the Court ruled that representing a religious dogma in the form of a scientific conception and regularly teaching this conception is a particular kind of education. Thus, teaching the conception of Lon Habbard is not solely a missionary activity but also a continuing process of the transfer of scientific-religious knowledge or an educational process which, according to the Russian legislation, requires obtaining a license. In the opinion of the Court, the religious education exercised by a religious denomination is fully eligible for license requirements, as the Russian laws do not provide any exemptions for religious education in this regard. Along with the facts of exercising psychic pressure, including hypnosis on adherents,²¹ the fact of illegal (i.e., without a license) educational activity may serve as a ground for the liquidation of this religious denomination. In the judgment rendered several years later, RF SC (Ruling No. 31-Г07-8 as of 16 October 2007) confirmed this ruling and argued that running educational activities without license can be the only reason for closing down a religious organization (the Biblical Centre of Evangelic Church in Chuvashia).²² These findings are confirmed by the observation that other religious schools (Orthodox, Catholic, Lutheran, and other Christian denominations) normally obtain licenses for running religious education at theological seminaries. However, they discarded the difference between professional education (e.g., theological studies at a religious university) and day-to-day meetings involving discussions that are commonplace in many Russian public schools, where the traditional religions are studied. In the case of Dmitri Bondar who challenged the legitimacy of teaching religion (dogma of the traditional religions) at schools and its indirect inclusion in the curricula, the Court took an adverse position. Reasoning quite formalistically, RF SC rejected the petition and disagreed with the idea that the constitutional principle of secularity can be a hindrance to the decision of the RF

²¹ Similar arguments have been made by RF SC before (e.g., in the Ruling No. 58-Г2-38 (26 November 2002)) against “Dianetica” in Khabarovsk.

²² This was subsequently reconsidered by ECtHR, which found the violations of the right to religious freedom in the requirement of licensing of Sunday schools (Biblical Center of the Chuvash Republic v. Russia, application No. 33203/08, First Section Judgment as of 14 July 2014).

Ministry of Education to incorporate religious dogma into school teaching and allow priests to visit school classrooms (see Ruling of the RF SC in case No. АКПМ13-810 13 October 2013).

Exemplarily for this selective approach, the Cassation Collegium of the RF SC (Bulletin 2005: 5) stressed that the constitutional right to freedom of religion also implies the possibility for prisoners to exercise their religious cults in prisons and, for this effect, to bring literature, icons, and other religious items to prison cells. This right was restricted by para. 23 of the Regulation No. 224, approved by the RF Ministry of Justice on 30 July 2001. This restriction was challenged by a prisoner who claimed that his religious freedoms were being arbitrarily restricted, mainly because he was unable to pray without icons. The First Instance Collegium of RF SC invalidated this paragraph. Reconsidering this case on the cassation petition of RF General Attorney Office, the Cassation Collegium of SC RF agreed (Ruling No. KAS04-351 as of 2 September 2004) with the findings of the first instance, stressing that human rights and liberties can be restricted only to assure national security, public morality, and health and rights of other citizens (the balances of Art. 55 of the RF Constitution); this was not the case in what concerns the right of prisoners to exercise their religious cults in line with the established traditions. In RF SC's opinion, these balances will not be affected if prisoners follow their religious practices in their own cells, rendering unjustified the arguments of the General Attorney that prisons have prayer rooms and libraries for such practices. This case is consistent with the reasoning of RF SC in the previous cases, where it confirmed that religious accommodation can be granted to the "traditional" religious cults (to the Orthodox cult of icons in this case).

Contrary to the general opinion, Russian courts do not always protect the interests of the Russian Orthodox Church, the prime example of which is the controversial case of restitution, whereby the interests of the State and of the Church seem to be in permanent conflict. In a 2004 ruling (Ruling No. ГКПМ04-1253 as of 5 October 2004), RF SC dismissed the application of the St. Elea-the-Prophet Orthodox temple in Moscow (Bulletin 2005: 6), which claimed the invalidity of point 8 of Regulation No. 490 of the RF Government about the process of transferring the ownership of the former ecclesiastical buildings to the religious denominations that had possessed these buildings prior to the 1917 Revolution. The ground for this claim was that the federal laws on this issue imperatively prescribed the restitution of all the ecclesiastical buildings to the churches. Nonetheless, the controversial regulation allowed discontinuing the restitution under certain conditions. Therefore, in the claimant's opinion, the Government exceeded the bounds conferred on it by the laws. The Court disagreed with and rejected the petition, reasoning that the obligation of restitution was not absolute and the rights of religious denominations should be balanced with the ownership rights of the actual possessors of the buildings. In this case, the Court had to balance religious freedoms not only with the historical traditions but also with the state interest: equating the latter with the public interest (RF SC prioritized it over other values). Afterward, this argument would resurge in cases of *Jehovah's Witnesses*, when the Russian courts started to confiscate the real properties of this denomination after its liquidation.²³

One of the controversial arguments about the tax legislation for the Russian adepts of the ultra-Orthodox beliefs for several years involved the taxpayer's identification number (TIN). They fought against having a TIN, arguing that it was unacceptable to categorize human beings by numeric identifiers and thus to replace the names given in baptism. The Russian courts consequently dismissed such claims.²⁴ RF SC (Ruling No. ГКПМ00-402 as of 30 May

²³ In Saint Petersburg, the real property was confiscated in 2018, following the decision of the Sestroretsk district court. See: http://www.rapsinews.ru/judicial_news/20180503/282635534.html. The same decision was taken by the Petrozavodsk court in Karelia in 2018 (see <http://www.interfax.ru/russia/606962>) and in a number of other regions.

²⁴ Recently, the Federal Law No. 94-FZ as from 1 May 2017 has changed this approach and prohibited attributing numeric names to children.

2000) argued that such tax identification was compatible with the principal religious beliefs and therefore did not violate any freedoms. This finding was endorsed by RF CC (Ruling No. 287-O as of 10 July 2003). The new arguments that had been considered in 2004 by two courts of Tambov region appealed to the freedom of conscience and human liberty and reasonability in general. The petitioner insisted that the tax inspector should first inform the taxpayer about the TIN chosen for her and attribute it only after the taxpayer has confirmed that this number did not contradict her beliefs. The courts of the first and the second instances allowed the petition, reasoning that, in this situation, there were no concerns over national security or public morality and therefore religious freedoms could not be limited under Art. 55 of the Constitution. RF SC (Bulletin 2007: 2) quashed these decisions and argued (Ruling No. 13-B05-13 as of 1 March 2006) that the state organs were not under the obligation to heed taxpayers' religious beliefs in each case. The fact that attributing a TIN is not contrary to the credos of the main religious denominations in Russia will suffice, which was confirmed by the favorable position expressed by the Holy Synod of the Russian Orthodox Church in its statement of 7 March 2000.²⁵ In this case, the argument of the petitioners about the contrariety of tax identification to their personal religious beliefs was not supported, because they failed to prove that this identification did not fit the national traditions or the religious creeds of the "traditional" denominations.

Shaping its symbolic policy, RF SC found that certain signs and images are absolutely inadmissible for displaying and worshipping and that the utilization of such signs can constitute a ground for closing down a religious denomination (Ruling No. 18-Г07-1 as of 6 February 2007). In this case, the Ingilistic Aryan Church of Old-Believers challenged the interferences of the RF General Attorney Office in exercising their rituals. The petitioner reasoned that the image of the swastika used in their rituals is an old Aryan symbol of the sun, which had served as a cult object long before the National Socialists in Germany began using this symbol for their ideology. Dismissing the petition, RF SC argued that the image of the swastika has a clear cultural connotation in the contemporary societies and its utilization normally evokes the ideology of Nazism (Bulletin 2007: 12). The existence of any religious denominations worshipping the swastika is incompatible with the basic codes of the public morality in Russia. The sole fact of worshipping this symbol suffices to prohibit the activity of such denominations, regardless of the historical context in which the "new Aryans" interpret the swastika, and how they associate this symbol with their beliefs. Here, RF SC also confirmed that it evaluated the religious cults and their symbols against the backdrop of the prevailing tradition, whilst individual or even collective religious convictions do not bear legal relevance when deciding about religious accommodation.

We finish this concise analysis with two decrees of RF SC, whereby it balanced the religious freedoms with the legitimate purposes of struggle against terrorism and extremism. In court practice, these are the frequent cases for initiating criminal procedures against non-traditional religious denominations and are common for treating the "non-traditional" religious denominations in Russia (Gross 2003; Ortner 2016).

A large number of the religious cases considered by the Russian courts of law concerns situations where religious literature or websites are blocked or prohibited if they are found to be "extremist." An important guide in the Court's policies in this category of cases is provided by Decree No. 11 of RF SC Plenum "On judicial practice in criminal cases having extremist character" (Bulletin 2011: 8 as of 28 June 2011). Here, the Court provided its vision, requiring that the courts of law observe the balances between the requirements of the domestic and international law as well as between the values of privacy, security, and religious freedom, considering that conflict in certain situations is likely. RF SC made national security prevail

²⁵ Later, in the decision of 3 December 2009, ECtHR rejected as inadmissible the consequent petition of Tamara Scugar, a claimant, in the case of ITN v. Russia (Application No. 40010/04).

over religious freedoms, although this is not explicitly stated in the text. In this decree, the Court does not offer a clear “weighting formula,” implying that the courts of law themselves can choose between the conflicting values, heeding the factual circumstances of cases as well as the instructions given by RF SC to its subsidiary courts.

The weighting and balancing of the values of religiosity and security in light of competing values of the right to life and religious freedom have been substantially discussed in Decree No. 1 “On certain questions of court practice in criminal cases against terrorist activities” (Bulletin 2012: 4 as of 09 February 2012). The Court stressed that there can be no religious excuse for terrorist activities and, when balancing the right of citizens to exercise religious activities with their obligation to abstain from terrorist activities as well as supporting or justifying these activities, the Russian courts shall recognize the priority of the value of security, which guarantees such fundamental human rights and freedoms of a believer as the right to life or to freedom of consciousness. The utilization of religious freedoms is possible only to the extent to which a religious denomination a believer belongs to does not itself violate or negate these rights, similar to what is common in “totalitarian sects.” This balancing, in Court’s opinion, is justified from the standpoint of the international law, according to which, religious organizations may not justify terrorist activities with reference to religious freedoms. From this perspective, religious freedoms have a subordinate place in the hierarchy of human rights and freedoms; their limitation is acceptable for the sake of protecting human life, liberty, and security, as these values underpin the whole legal order of Russia.

Due to the scarcity of legal regulation and the variability of different reasons for accommodations on religious motives, the Supreme Court decreed in 2016 that religious organizations and groups be closed down (Decree No. 64 “On certain questions in the cases connected with suspending or closing down NGOs and banning activities of public or religious unions that do not have the status of legal entities” as of 27 December 2016). For the most part, this decree specifies the procedural technicalities. However, in point 26, RF SC discusses an important substantive question. The Court explicitly recognized that the Russian law does not contain any clear and unambiguous criteria for closing down a religious union; hence, the matter of liquidation depends on how the judge appreciates the violations committed by the religious union or group. To provide guidelines for judges, the Court in this point provides several examples of grave violations (e.g., the instigation of religious or national hatred, the negation of rights and freedoms, etc.), committed by the denominations that engaged in activities contrary to the Russian culture and traditions. Here again, RF SC reiterated the link between religious freedoms and national traditions, prioritizing the latter over the former.

CONCLUSION

This analysis illustrates several RF SC policies connected with religious freedoms, which paved the way to the 2017 *Jehovah’s Witnesses* decision. The legal argumentation in Russia can be characterized as mostly rule based. If there were a statute that clearly regulated any matter, the courts of law would be reluctant to re-evaluate or reinterpret the rules of such statute from the reasonability, justice, and other non-formal perspectives. If there is no statutory law on religious matters, courts are likely to reject such cases, unless the matter concerns the national traditions and/or public interest. This fact is obvious in many verdicts issued by ECtHR against Russia in cases of religious freedoms, whereby the Russian courts have obsessively maintained absolute fidelity to the 1997 Law without taking account of the absurdity of applying the rules in some concrete situations.²⁶ However, in some hard cases, RF SC goes beyond the literal meaning of the rules and reasons in terms of values, policies, and weighting and balancing

²⁶ For example, Judgment of ECtHR in the case *Jehovah’s Witnesses of Moscow v. Russia*, (10 June 2010), application No.302/02.

the rights and freedoms. The literal wording of the anti-extremist legislation leaves the Court no choice but to ban almost all religious denominations, because they insist on their spiritual excellence over the other denominations and, in this sense, fall under the category of “extremism,” understood as “propaganda of national or religious superiority” over other religious groups. This literal approach was followed in the *Jehovah’s Witnesses* case. Nonetheless, the analysis in this paper shows that RF CS has more flexible methods of reasoning, which permit it to avoid the application of this legislation to “traditional denominations” and even to grant them exemptions from the general legal obligations. However, utilizing the technique of doublespeak, the Russian courts of law refuse to make RF CS argumentation transparent and explicitly recognize the substantial difference in protecting “traditional” and “non-traditional” religions. On the contrary, courts insist that protection is equal, and that they abide by the constitutional principles. As the analyzed case law demonstrates, the situation is different, and this doublespeak predictably leads to contradictions in argumentation between RF SC and its affiliated courts.

This analysis can represent a typical example of the major paradoxes of the Russian law, in that the Russian state endorses the liberal norms and principles that do not fit the actual political situation but interprets them in an obvious contradiction to their original and literal meanings. This doublespeak in the official narratives touches on the rule of law, democracy, non-discrimination, human rights, supremacy of the international law, and other pillars of the Russian constitutional order that are solemnly proclaimed albeit largely disrespected (Antonov 2017b). As the example of the anti-extremist laws or of the laws protecting religious feelings demonstrates, the authorities tend to introduce legislation that allows overruling the constitutional principles of the freedom of religion without repealing these principles. The Russian courts continue the strategy of doublespeak and, by formally supporting the liberal constitutional principles, reinterpret them in a conservative sense, which generally reflects the conservative moods prevailing in the population. This implies using a specific argumentation, referring to national values, traditions, popular mind-sets, etc. Whether this court practice is a direct result of political interference and influence is not discussed in this paper. One can however suggest that, even if such influences persist in the Russian law, they are not the only factor involved in shaping the court practice. There are also considerable informal mechanisms of “social control” in every society, which impose on the judiciary the common values shared by the majority. In their own right, these values affect the formation of attitudes, prejudices, and judges’ biases, influencing their decisions. My general comments on the political, historical, and legal frameworks for the protection of human rights have been provided elsewhere (Antonov 2014; also see Clark 2013 on the influence of sovereignty talks on the issues of religious freedoms); hence, I will not discuss the broader cultural and social contexts of the legal regulation of religious freedoms.

Summarizing twenty-five years of the jurisprudence development of ECtHR in religious cases, one cannot fail to observe that the first case was presented to this Court from Greece (the 1993 case of *Kokkinakis v. Greece* (application No. 14307/88)); several other complicated and controversial issues on religious freedoms have been raised ever since by Greece, Russia, Romania, Moldova, and other Orthodox countries (i.e., the countries in which the Orthodox denomination is prevalent and/or has a privileged status). It has been justly noted that religious identities may, to certain extent, prefigure believers’ attitudes toward the legal regulations, which is the case of Orthodox Christianity, for example (Hämmerli and Mayer 2014). At the same time, the stance of the advocates of the Orthodox religious denominations on law and rights renders the legal interpretation and application of laws in the Orthodox countries somewhat special, compared with the legal regulations in other societies (Stoeckl 2014). Unveiling the real policies under the formalist language of court decisions, the example of Russia can provide an important ground for further research into the particularities of understanding the divide between sacred and profane and religious and non-religious in Orthodox societies.

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