

Religious Freedom in the Russian Federation and the Jehovah's Witnesses

Germana Carobene
University of Naples "Federico II"
carobene@unina.it

ABSTRACT: Anti-extremism legislation has existed in Russia for over a decade, but only recently has it been used to discriminate against, persecute, and eventually “liquidate” the Jehovah’s Witnesses. The article reconstructs the history of anti-minority legislation in Russia, from the Soviet Union to the liberal post-Soviet reforms of the 1990s and the retrenchment in the Putin era. Jehovah’s Witnesses have been the victims of a notion of the Russian nation granting a de facto monopoly to the Russian Orthodox Church, and regarding religious minorities, particularly those headquartered in the West and proselytizing among Orthodox believers, as a threat to national integrity.

KEYWORDS: Jehovah’s Witnesses, Religion in the Russian Federation, Religious Freedom in Russia, “Anti-Extremism” Laws in Russia, Jehovah’s Witnesses in Russia.

Interventions Against Jehovah's Witnesses in the Russian Federation

The application of the “anti-extremism” legislation to minority religious groups, regarded as hostile to the cultural schemes and subversive of the political order, has led to a progressive institutional stiffening of persecution and heavy discrimination in the Russian Federation, especially towards Jehovah’s Witnesses (Cigliano 2013).

Although many of these legislative tools have existed for over a decade, the Russian government only recently has begun to use them in campaigns designed to punish or exclude “non-traditional” religions and movements. In the specific case of the Jehovah’s Witnesses, these measures have taken on the purpose of delegitimizing an entire community, only on the basis of its religious faith, with accusations that vary from illegal missionary activity to offending the religious

sentiments of majority Orthodox believers. Overall, these interventions are part of a wider process of ideological control over society, aimed at stemming, if not stifling, the forces of political and religious dissent. It is a process that has characterized Russian history since its transformation into a Soviet dictatorship, and which offers a new perspective to analyze, even today, the issues of “identity” and “dissent” in this geographical area.

In the Stalinist period, cultural and religious life had been severely limited, to the advantage of the so-called “Russification” policies, which tended to suffocate ideologies that were not homologated with the political objectives of the new state (Zernov 1963; Vasil’eva 1998; Kalkandjieva 2015; Kolarz 1961; Baran 2007, 2014). The Soviet government had, in fact, pursued a strategy of balance between regulation and repression. In the phase of glasnost and perestroika, a different legal scheme prevailed, which was more open to pluralism, including religious. The recognition of the Witnesses in the 1990s seemed to have brought Russian law closer to Western models of the protection of human rights but, with the beginning of the 21st century, the process took a different turn.

The culminating moment of this legal process was represented by the decision of the Russian Supreme Court which, in 2017, qualified the Jehovah’s Witnesses as an “extremist” organization and forced the liquidation of their assets. The religious community has thus been transformed into a “criminal network,” and individual believers have been made vulnerable to arrest, simply for having shared their faith with others, i.e., for carrying out the normal activity of evangelization. This intervention was, however, the culmination of two decades of growing state hostility towards the Witnesses. In fact, at the end of the 1990s, they were sued by the government of the city of Moscow to deny their legitimacy, in a long trial that ultimately led to the ban of the organization. The latest episodes, in chronological order, involved in 2020 two Russian Jehovah’s Witnesses who were deprived of their Russian citizenship, in consequence of verdicts contrary to religious freedom, as was also denounced by the United Nations Working Group on Arbitrary Detention.

The banning of Jehovah’s Witnesses, the confiscation of all their properties in the country and the imprisonment of the devotees—for the first time since the collapse of the Soviet Union—has therefore highlighted a dangerous dictatorial and xenophobic tendency, to the detriment of the right to religious freedom, enshrined in the Russian Constitution. A correct analysis of the current Russian

problems cannot, however, disregard two further considerations: the space of religious freedom in the state, and the particular position of the Jehovah's Witnesses within its social structure. Fundamental in this sense is the reference to the Russian law on freedom of conscience and religious associations of 1997, which, when read jointly with the rules subsequently adopted, appears as inspired by the desire to guarantee the "spiritual security" of Russia, according to a concept that frames the role of the Orthodox Church in safeguarding "national values." In the Presidential Decree 24 of 2000, the administration stated that guaranteeing the national security of the Russian Federation also includes the protection of the cultural, spiritual, and moral heritage of its historical traditions and norms of social life, and the preservation of the cultural wealth of all peoples of Russia. This "spiritual security," the Decree said, also requires countering the negative influence of foreign religious organizations and missionaries.

Within the logic of absolutism, the persistence of endogenous groups, which profess equality as a moral standard, and practice a conduct that does not correspond to the expectations of the regime, nor can be approved by it, constitutes a dangerous and implosive threat to the social order the state tends to build, based on the compactness of the people on the basis of the ideals defined by the leadership (Gentile 2001). In the particular Soviet situation, the establishment of a denominational and hierocratic system, even if not aimed at favoring a single religion, and of a correlated jurisdictional regime in which some religions try to assume privileged status (Russian Orthodox Church *in primis*), finds its own rationale in the need of the post-Communist state to find a superior and historically founded legitimacy of its sovereignty, and to guarantee political stability, to which is added the aspiration of the privileged religions to receive, in exchange for a support of the political system, a special *ius protectionis*.

Therefore, the case of the Jehovah's Witnesses has implications that transcend the problems of the individual religious group. In this case, the persecutions and condemnations of which they have been, and still are, victims, and their ban, take on the characteristics of a paradigmatic example of how the right to exercise religious freedom is violated in dictatorial systems. Often, the road immediately pursued to obtain legal convictions is, in fact, based on the reference to the alleged "political" and not religious character of the group, to remove it from the protection of religion otherwise guaranteed at the constitutional level. This has been the treatment of *Bibelforscher* (as the Jehovah's Witnesses were called) in

Nazi Germany (Buber-Neumann 2008) and, for diametrically opposed reasons, in the Stalinist dictatorship and in the current phase of the Putin regime.

The accusations were (and are) essentially linked to the legal concept of “betrayal of the Fatherland,” of conspiracy with foreign powers, of the will to weaken the armed forces and the effort for national unity. In short, Jehovah's Witnesses have always been considered as dangerous subversive elements, a “cult engaged in a conspiracy” (Garbe 2008). It is also necessary to consider that the multinational and multireligious reality of the Russian territory and society has constituted a fundamental component of this cultural, religious, and political universe, within which the Russian Orthodox Church has positioned itself as the center of gravity of a complex system. Furthermore, this exclusive bond, leading to an actual identification, highlights the fear of facing religious diversity, potentially able to act as a disintegrating factor of the social fabric. This translates into a position of defense of the national traditions, and an obstacle towards “foreign” religions, not only for the protection of religious monotheism but also as a guarantee of “national security.”

The Historical Presence of Jehovah's Witnesses in Russia

The Jehovah's Witnesses movement is of comparatively recent establishment, is often derogatorily referred to as a “cult,” and is linked to Protestantism, more correctly to Adventism, with whom it has many traits in common. It is part of the religious renewal paths of Christianity, especially of Protestant origin, typical of North American history of the late nineteenth century, which quickly spread to Europe as well. Jehovah's Witnesses have been present in Russia since 1891 but, like all religious denominations, they were banned after the 1917 Revolution and persecuted in the Soviet Union. The history of the movement in the country has therefore been marked since the 1950s by the aversion, both by governments and by society. The spread of their preaching was deemed a threat to political power. Their concepts of peace and equality, which had been considered by the Nazis as a “Bolshevik” threat, were, on the contrary, judged by the Stalinists as dangerous for the stability of Communist power.

Added to this, both in Germany and in the USSR, was the hostility of the dominant Churches (in one case, Catholics and Protestants, in the other, the Moscow Patriarchate) towards such preaching. “Religious extremism”: this is

how we could summarize the motivation that allowed the authorities, first Soviet and then Russian, to systematize the widespread hostility towards the group. The accusation of constituting a political organization, even “disguised,” with revolutionary or in any case subversive intentions against the established state order, was linked to the other charge, perhaps even more serious, of connection to a foreign, enemy power and therefore of being part of an international conspiracy.

Again, the group’s proclaimed pacifism, pushed to the extreme, was seen as indicative of an attempt at destabilization, within totalitarian states that used force and the army to hold power. The Jehovah’s Witnesses’ ideas were therefore in opposition to the interests of the dictatorships, and this led them to consider the religious aspect of their organization as secondary, almost a cover “of convenience,” compared to the international ties with the headquarters of the movement.

The story of the “purple triangles,” a visible symbol of the Jehovah’s Witnesses in the concentration camps in Nazi Germany is now well known (Vercelli 2011; Canonici 1998; Graffard and Tristan 1994). In the decisions issued against the congregation, reference was always made to the anti-patriotic spirit, neutralism, and pacifism, perceived as a deliberate offense to the honor of the German people. In this way, they were perceived as a “foreign” element with respect to the constituting “national community of the people” and, therefore, as dangerous. However, their tragedy fits fully into the European corpus of the history of deportations.

Nevertheless, they were also victims (which is less known) of the Stalinist dictatorship, characterized by a systematization of violence, with thousands of arrests, incarcerations, and deportations, of those accused of not joining the “Soviet system.” As in Adolf Hitler’s (1889–1945) Germany, more than on religious motivations, the accusations against the Jehovah’s Witnesses were centered on their lack of fidelity to the ideals of the state, denial of political leadership, categorical refusal to participate in patriotic ceremonies and to serve the state through the use of weapons, clandestine press activities, and refusal to enroll children in Communist youth organizations (see Solženicyn 1973). A slight improvement in the life of believers was recorded only after the 1960s, but until the implosion of the USSR there were still several cases of trials, within a framework of discrimination common to all religious communities.

Following the entry into force, in 1990, of the law on “freedom of conscience and religious organizations,” the Ministry of Justice was able to register their statute, and so, on February 28, 1991, the religious organization of Jehovah’s Witnesses was officially registered in Russia. However, starting in 1995, the Committee for the Salvation of Youth from Totalitarian Cults, a non-governmental organization aligned with the Russian Orthodox Church, began to denounce the leaders of the community, arguing, in particular, that they oppressed followers with exorbitant demands, putting their families in an economically precarious situation, and fomented the hatred of “traditional” religions. These requests, rejected five times, were finally accepted in 1998, but the conclusion was that, even if the community acted in violation of certain Russian and international laws, it had not committed any criminal offense. However, this resulted in a civil action against the congregation, with the request for its dissolution and the prohibition of its activities. In 2001, a new series of proceedings began, and three years later, in 2004, the Moscow District Court decided to grant the prosecutor’s requests to dissolve the applicant community and to permanently ban its activity. After 2009, however, new and dangerous episodes of violence began to occur.

Invested of the case, the European Court of Human Rights (ECHR) intervened with a 2010 judgment (Lapi 2011). Accused of interference with consciences, violation of privacy, being a “cult,” religious extremism, incitement to social isolation and behaviors that undermined the harmony of society, according to the Russian authorities, it was concluded that the Jehovah’s Witnesses could represent a “threat to the defense of the rights and the interests of society and public safety.” The ECHR pointed out, however, that the refusal to grant recognition under the 1997 law revealed an interference with the religious organization’s right to freedom of association, and also its right to freedom of religion, as the “law on religions” limited the faculty of a religious association, without legal personality, to carry out a whole series of activities and to modify the articles of its Statute (Carobene 2008). Consequently, it found an interference in the rights of the applicant community, pursuant to the combined provisions of Articles 9–11 of the Convention. In 2015, the Russian Federation also blocked www.jw.org, the official website of Jehovah’s Witnesses, making its advertising within the country a crime.

The culmination of these judicial proceedings was reached with the aforementioned intervention of the Supreme Court that, at the request of the Ministry of Justice, in 2017, defined the Jehovah's Witnesses as an "extremist organization." Its members were thus prohibited from practicing their faith, and the seizure of assets was envisaged. Already in the months following this decision, their places of worship had been searched by the police, and many devotees had been arrested. In 2019, the United Nations Working Group on Arbitrary Detention firmly condemned the arrests of Jehovah's Witnesses, and called on the Russian Federation for the immediate release of the believers illegally detained. In 2020, the European Union also expressed concern over recent reports of torture and other mistreatment suffered by many Jehovah's Witnesses. Both the OSCE (of which Russia is a participating state) and the EU reiterated that Russia is required to stop the ongoing persecution and protect the victims, ensuring that all—including Jehovah's Witnesses—enjoy their human rights peacefully, including the right to freedom of religion or belief. It is also important to remember that the Jehovah's Witnesses are, so far, the only organized religion to which Russian extremism legislation has been applied.

Religious Freedom in Soviet Union Law

Russian history includes a particular approach to the religious phenomenon, which appears as profoundly different when compared to the contexts of the Western European countries (Zenkivskyy 1953). It is known that the conversion to Christianity, before the year 1000, represented for the first Russian state, the so-called Kievan Rus', a fundamental historical turning point, since it meant the entry into the Eastern Christian ecumene and, more generally, into the group of European states. The model that was emerging was linked to the theocratic one of Constantinople and, in this sense, the Orthodox Christian faith modeled the more traditionalist Russian ideology of a different relationship between religion, state, and nation, developing a corresponding geopolitical approach. The ideas of the so-called Slavophiles, still in the present age, perceive, in fact, the Orthodox Church, society, and the state as one, and believe that the Church, as the mystical body of Christ, includes in itself the nation, the people and culture, having the Christian mission at their center (Codevilla 2011; Stroyen 1967; Timasheff 1942; Ferrari 2007; Bordeaux 1970).

The “oriental” vision of a Christian nation as a single community was already structured in the Byzantine and early traditions. This connoted Russian theological and philosophical thought, giving rise to the concept of the “Nation-Church,” and developing the doctrine of Moscow as the “Third Rome,” which led to the elevation of the metropolitan seat to the rank of Patriarchate, strengthening the prestige of the Church (Strémooukhoff 1953; Codevilla 2009; Ellis 1990; Ramet 1988). If this union has kept its importance over time, it has nevertheless undergone a long period of “captivity” since 1721, after its abolition by Peter the Great (1672–1725).

It was only with the beginning of the twentieth century that the Orthodox Church felt the need to get out of this impasse and to re-establish the relationship of harmonious collaboration, that symphony between *Imperium* and *Sacerdotium*, which Russia had inherited from the Byzantine world (Codevilla 2019a; Werth 1993; Daniel-Rops 1964). Following the revolutionary events of 1905, there were further and important consequences for the internal structure of the synodal Church. The idea began to emerge that the Russian Church should definitively break away from the state administration (Walters 1986). The fall of Tsarist Russia meant the end of the Orthodox state model, heir to the Byzantine Empire and its theocratic tradition. Paradoxically, it was only in the midst of the October Revolution that the Church achieved what Peter the Great had denied two centuries earlier, with the restoration of the Patriarchate.

The rise to power of the Bolsheviks, however, radically changed the course of historical events. The Marxist ideology, on which the new political power was based, was absolutely convinced of the need to completely eradicate religious feelings (Codevilla 2019b). According to this approach, the disappearance of religion was perfectly framed within a program of radical renewal of society and restructuring of consciences. The Orthodox Church, completely deprived of its assets, was enslaved to the government, also by virtue of a “lexical trick”: the affirmation, in fact, that church and religion are private affairs did not have the same semantic meaning attributed by Westerners, given that the concept of “private” was not envisaged in the Communist ideology and everything was nationalized, or put under state control. Russian Communism subsequently developed this vision to its extreme consequences, and imposed a concept of revolutionary class struggle, which fatally degenerated into genuine persecution. Religious practice was allowed only in the context of approved religious

associations, limited in fact only to adult citizens, gathered as a community supervised by the state (Berdjaev 1937; Zenkovsky 1957).

The establishment of Soviet power led, in 1918, to the promulgation of a decree on the separation of the church from the state, which recognized freedom of conscience for all citizens, understood both as the right to profess a religious faith but above all not to profess it at all and to make atheistic propaganda. The Socialist state was not, therefore, simply separatist, in the sense of neutral or indifferent, but adopted an explicit discriminatory and repressive policy towards all religious faiths, including the Orthodox (Curtis 1953; Anderson 1944; Alexeev 1953). If during the period of the Second World War the government had referred to the patriotism of the Russian Orthodox Church, in the post-war phase of the 1950s and 1960s the persecutions toward the Orthodox believers began again, leading to total state control over the country's religious life. Thus began a particularly difficult period, which led to multiple attempts to separate the various churches, favored by the Soviet government which, in the division of the Orthodox Churches, saw the possibility of annihilating the Patriarchal one. Furthermore, the 1977 Constitution, establishing the obligation to respect the "rules of Socialist coexistence," had transformed the right to atheism into a duty of the Soviet *bonus civis*, in the sense that this must actively contribute to curing believers from the "disease" of religious faith.

The Laws on Freedom of Conscience of the 1990s

The adherence to new legislative models on freedom of conscience only started with the political opening promoted by Mikhail Gorbachev. The process of détente that began in 1985 with his appointment as party secretary and, in particular, the phase of perestroika, determined the approval of the law of 1990, which guaranteed the perfect equality of all religious denominations and the full exercise of the right to freedom of conscience (Carobene 1991; Codevilla 1998). It also imposed a complete semantic revolution of the Soviet concept of freedom. The new law defined freedom as a right that could be exercised individually or together with others; ample space was given to religious organizations, which were legally granted the right to obtain legal personality, in an equal position.

However, the subsequent phase of the so-called "religious awakening" did not bring about major upheavals in the discipline and guarantees given to religion,

due especially to the position granted to the Russian Orthodox Church within the political and social structure. The liberal tendencies of the law determined, in fact, an increase in foreign missionary activity, and the renewed success of dynamic religious movements, including the Jehovah's Witnesses, immediately arousing some concern within the Russian Orthodox Church, which began to press for a stricter law (Codevilla 2008). The weakness of the "rule of law" has gradually become an endemic feature of the system, which has now become a so-called "dictatorship of the law." The Russian legislative approach, in fact, leverages on principles and ideas that are not exactly those of the liberal European tradition of the protection of human rights, but are still culturally anchored to the Tsarist and Socialist past, even if, after the collapse of the Soviet Union, it had to establish new standards of human rights protection.

The 1993 constitutional text and subsequent adhesions to international organizations, such as the Council of Europe, introduced a conceptually new *noyau* of rights compared to the past, at least on a theoretical level. This allowed the country to comply with the requirements of freedom of religion, opinion, and information of the liberal West. The Constitution stated, in Articles 14 and 28, that the Russian Federation is a secular state that guarantees freedom of religion and belief, as well as the ideal of separation between the church and the state (Codevilla 1998; Pospelovsky 1984; Fletcher 1973). Furthermore, it is proclaimed that it is the people and not the party, the Soviet, the collective that is the holder of sovereignty and the only source of power. The implosion of the Communist ideology in the same years made it no longer possible to identify secularism with the exclusion of religious phenomena from the social life of the country. At least at a tendential level, secularism should now be defined as a principle of neutrality or indifference towards religion of the political power.

In 1996, by joining the Council of Europe, Russia undertook, *inter alia*, to adapt the 1990 law on religious freedom to European standards. A reform was thus approved by the Duma, the Russian Parliament, in 1997, but on the contrary, it seemed aimed at bringing the protection of religious freedom back to the period of the Church's submission to temporal power (Anderson 1994; Durham and Homer 1998; Shterin 2000; Medvedev 2002). The recognition of the "particular role of Orthodoxy in the history of Russia, in the formation and development of its spirituality and culture" is immediately evident from a first reading of the Preamble, where a respect is proclaimed for "Christianity, Islam,

Buddhism, Judaism, and other religions, which form an integral part of the historical heritage of the peoples of Russia” (Fagan 2012). With this law, the tradition at the center of Orthodox theology thus becomes a political category, also through the reference to the symbiotic relationship between “Russian” and “Orthodox” (Carobene 2008).

The approval of this law, and its endorsement by the highest hierarchies of the Orthodox Church, therefore highlighted the desire of the latter to place itself in a position of supremacy over all the other denominations existing in the country that, after the collapse of the regime, had acquired greater force of penetration. There were less worries about the ensuing situation of enslavement to temporal power, which carried the role of the Church centuries back in history (Baran 2006a, 2006b; Richardson and Van Driel 1994). The rights of the “other” Orthodox not part of the Patriarchate of Moscow, non-Orthodox Christians, and those belonging to the “new religious denominations” were thus severely limited. This law has therefore clearly granted innumerable advantages to the Patriarchate of Moscow, which was eager to strengthen ties with the political power.

The law operated by strengthening the Patriarchate’s position of dominance, and avoiding an opening towards religious minorities, unlike what was foreseen in the previous legislative document. It also favored the representatives of power who dreamed of a single national ideology of the “Slavophile” type, capable of bringing together “Orthodoxy,” “national spirit,” and “autocracy,” taking a dangerous step back in time. Limits on freedom of religion have been established when necessary, among other things, in order to “guarantee the defense and security of the state,” in evident contrast with the specific terms of article 9.2 ECHR. It should also be considered that, alongside this legislation, there is the coexistence of a plurality of norms, since there are more than eighty federal and thirty national laws governing the activities of religious associations.

In 1999, the Constitutional Court ruled that the state has the right to provide limitations in order not to automatically assign the status of religious organizations to, and not to allow the legalization of, “cults” that violate human rights or commit illegal and criminal acts, as well as the power to hinder missionary activity (Škarovskii 2003).

From a formal point of view, therefore, in Russia religious freedom for minorities is still currently in force. It applies only, however, to the four “respected/traditional” religions (non-Orthodox Christianity, Islam, Buddhism,

and Judaism) and to the other “religious organizations” that register with the authorities. What is happening is the implementation of an inverse process to that of secularization, and a clear governmental orientation towards Orthodoxy as a state religion. This is reflected in a wide range of possibilities recognized to it within the army and the education system, and the Russian Orthodox Church’s participation in public events. It claims the role of a new ideology, a kind of special Orthodox thinking. However, this bond of union between Church and nation, between Orthodox religion and traditional national values, seems to be in clear contrast with the secular and separatist regime outlined by the Constitution.

This law, in the years following its approval, has been continuously subject to discussions and amendments. In 2004, in order to make some improvements and to provide a precise legal definition of missionary activity, the Department of the Russian Parliament that deals with religious and social organizations considered four proposals of amendments (Simons and Westerlund 2016). They, however, were not accepted, given the religious stability that the country enjoyed in those years. A subsequent attempt to modify it was made in 2007, with the declared intention of protecting atheism, which was also rejected (Codevilla 2007).

The amendments to this rule, introduced with a series of federal laws that followed one another until 2016, also established numerous cases in which, through a judicial procedure, it is possible to order the prohibition of religious activities, if not the dissolution of the organizations themselves, widening the scope of the restrictions to which religious groups must submit. In 2013, it was stated that domicile and residence in the Russian Federation may be denied to foreign citizens engaged in subversive activities. The latter, however, were not defined with sufficient clarity, thus allowing arbitrary and discriminatory applications of the law.

Currently, all religious communities without legal status should inform the authorities about their existence and activities. Still, another amendment required religious organizations, which receive foreign funding, to report information to the Ministry of Justice about their budget plans, activities, and leadership. The government therefore has the right to inspect, without any warning, the financial activities of the religious groups that receive funding from abroad, or are suspected of illegal activity or extremism.

The “Anti-Extremism” and Counter-Terrorism Legislation

Since the beginning of the new century, the legislation on religious organizations has been grafted on to the law on combating extremist activities, which has granted the authorities the power to censor freedom of religion and expression, and to criminally prosecute a wide spectrum of religious activities, defining a whole federal list of prohibited “extremist” materials (Codevilla 2007; Rousselet 2000; Moniak-Azzopardi 2004; Curanovic 2012).

Since 2012, the intensification of the fight against extremism in Russia has therefore manifested itself through a series of interventions aimed at suppressing political opposition and, progressively, also non-traditional religious groups. This situation has also been perceived as discriminatory in Europe and, in fact, in the same year the Parliamentary Assembly of the European Council adopted a further resolution (no. 1896/2012) denouncing the violation of fundamental human rights in Russia, emphasizing the impediments to the normal development of civil society. The resolution was, however, totally ignored in Russia.

In 2013, a law introduced substantial changes to art. 148 of the Criminal Code and art. 5.26 of the Code of Administrative Offences, which, although with slightly different formulations, include liability and penalties up to six years in jail for public actions that express a clear lack of respect for society and have the intention of offending the religious feelings of believers. The ambiguity of these normative formulations, which are undoubtedly anomalous in a secular state, is obvious.

The anti-extremist legislation of 2014, although formally enacted because of the need to combat terrorism, has also allowed dangerous interferences in the sphere of religious practices. It has, in fact, introduced with Art. 282.1 and 282.2 a criminal liability for inducing, recruiting, or otherwise involving a person in extremist organizations. This is how the concept, absolutely indefinable at a legal level, of the “inductor to participation,” distinguished from the mere member/adept, was included in the law. The law frames as extremist activity the propaganda of the exclusivity, superiority, or inferiority of a person, on the basis of religious affiliation or attitude to religion.

The authorities are also extremely suspicious of religious practices that may seem incompatible with the public order, including the refusal to serve in the military. Sometimes, the unknown nature of some denominations or their links to

foreign entities could be arbitrarily linked to alleged terrorist or subversive activities. The case of the Jehovah's Witnesses is paradigmatic in this respect. The ambiguous notion of "extremism," mentioned in the Russian laws, allows the authorities to interfere in religious activities, and to prosecute believers. The policy of the government in the religious sphere is perfectly embedded in a process of ideological control of the society, albeit in a different sense than that exercised during the Communist period.

The most recent anti-terrorism law, passed in 2016, further aggravated the situation of Christian churches other than the Russian Orthodox, and other faiths. This law, in fact, forbids any pastoral or missionary activity by foreigners who have only a tourist visa, unregistered organizations, and foundations that do not have an immediate religious purpose. In addition, religious activities (catechisms, training, liturgical celebrations) carried out in private apartments have also been prohibited. Religious denominations are obliged to sign an employment contract in order to invite a person to Russia for religious activities. The laws also prohibit missionary activities in public places, as they could allegedly violate security and public order, engage in extremist activities, separate families, violate the person or rights and freedoms of citizens, harm the morality and health of citizens, including through the use of drugs, and incite citizens to disobey their statutory obligations. Finally, foreigners wishing to engage in religious activities will not be able to receive a humanitarian visa to enter the country. The Russian Orthodox Church continues to maintain a position of privilege, but only as it remains an institution functional and subservient to the political power.

Among the most significant criticisms of these anti-terrorism regulations, introduced as part of the "Yarovaya package," is that of the United States Commission on International Religious Freedom, which stresses that the provisions of the law, under the pretext of tackling terrorism, would grant the government radical powers to reduce civil liberties, including the introduction of broad restrictions on religious practices, which would make it very difficult for religious groups to operate (Kravchenko 2018). These measures would allow the Russian authorities to further crack down on smaller religious communities that are critical of the government and the President, and to jail dissidents.

The accusation of "extremism," with its extremely broad definition, may include in this case the peaceful promotion of the "superiority of one religion

over another,” thus also leading to the banning of religious texts, or even to the obligation to dissolve religious groups, as happened in the case of Jehovah’s Witnesses. Numerous accusations are based on the ambiguous definitions contained in the law, in particular, where it defines, for example as “dangerous” the propaganda of exclusivity, superiority or inferiority of a person on the basis of her religious affiliation, something which does not seem only aimed at preventing hate speech on the basis of religious motivations. On the contrary, an attitude of suspicion is implied, which is reflected in the use of the adjective “non-traditional” and the term “cult” (in Russian, “секта,” *sekta*), which are firmly rooted, in a negative sense, in the official vocabulary. The most worrying elements of these laws and their application are essentially linked to the considerable and arbitrary interference of the state in the internal organization and doctrines of religious communities, and in the creation of discrimination between the religious communities themselves.

The recent amendment of the Russian Constitution in 2020, promoted by Putin, approved by the Constitutional Court, by the Parliament, and by the citizens themselves in a referendum, in addition to the extension of the prime minister’s mandate, inserted an explicit reference to God in the Constitutional text, accepting the explicit requests of the current Patriarch. The art. 67 was integrated with the addition of the formula:

the Russian Federation, unified by a millenary history, preserving the memory of the ancestors who transmitted to us the ideals and faith in God as well as the continuity in the development of the Russian state, recognizes the historically established state unity.

Conclusion

The examination of this legislative evolution makes it possible to highlight how the substantial profile of the significant legal interests in Russia is linked not so much to the (omitted) recognition of individual and collective rights of freedom, as to the emergence, in increasingly stronger forms, of a real totalitarian ideology. Its characteristics as a way of thinking are, *inter alia*, the anti-pluralistic intolerance (which obviously involves intolerance of dissent as an expression of plurality of ideas), and a millenarian tension, perhaps not to spirituality but to nihilistic destruction (Fisichella 1992). The churches are suppressed or coopted,

that is, concretely, ideologized, and obliged to respect the line drawn by the propaganda, with evident and important repercussions in the legal sphere.

The right to freedom of religion includes the right to express one's belief in community with others, and the expectation that believers can associate freely, without arbitrary state intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society. The duty of neutrality and impartiality of the state should therefore be incompatible with any provision authorizing the government to assess the legitimacy of religious beliefs.

Even the European Court, in its intervention in favor of Jehovah's Witnesses against Russia, made it clear that any interference must correspond to an "urgent social need" (Lapi 2011). A need is something "necessary," not just "useful" or "desirable," and European institutions actively promote this standard of religious liberty. Gradually, we witnessed an expansion of the European concept of freedom of religion, which should have had important effects on domestic laws, consolidating this fundamental right and extending it to all religions, not only traditional but also "new" in a given country.

With reference to Russia, however, these important legal developments, due to political pressure, may remain only within the speculative, theoretical sphere. In fact, on July 14, 2015, the Russian Supreme Court ruled that the country could set aside an ECtHR ruling, in the event of a conflict with the fundamental principles and norms of the Constitution, and this resolution was transformed into federal law in the same year. The following year, on April 19, 2016, the Russian Constitutional Court established for the first time the inapplicability of a judgment of the ECtHR, affirming the supremacy of the Russian constitutional rule over a supranational decision whose interpretation seemed to conflict with the Federal Constitution. The logical consequence was the impossibility of enforcing, in the specific case, the intervention of the European Court (Abashidze, Ilyashevich, and Solntsev 2017).

The danger of such a legal approach is obvious. As is well known, according to international law, a state cannot invoke the provisions of its domestic law to justify the non-execution of a treaty. The application of this norm implies that the conventional bonds cannot yield, even if in individual and specific cases, in the face of the (conflicting) constitutional norms of a contracting state, even of norms that define its constitutional identity. The state would have the only remedy, to

safeguard its constitutional identity, of withdrawing from the treaty. This hypothesis, however, is not feasible for those multilateral documents which, for the matter dealt with, have assumed strategic political importance in the context of relations between states of the same geographical area. For the purposes it pursues, this trend cannot, moreover, be confused with the so-called doctrines of “counter-limits,” on the basis of which the constitutional embankment placed on supranational law was essentially designed to safeguard a standard of protection of humans rights not known or not applied at the supranational level (Bowring 2015).

What seems to emerge from this impasse is that the national supreme and constitutional courts may experience difficulties in establishing a dialogue with the European Court of Human Rights and, above all, in accepting interference in the so-called domestic jurisdiction. The emergence of increasing tensions between the defense of the constitutional identity of the contracting states and the fulfillment of the obligations deriving from the ECHR should, however, lead to the necessary identification of new instruments. This could also be implemented through an amendment of the Convention, which would ensure a stable dialogue between courts, providing the Strasbourg judge with full and effective awareness of the functioning of an internal system, before assessing its compatibility with the conventional system, to avoid dangerous and arbitrary implosions of the European system of protection of human rights, deriving from the failure to implement the decisions of the European court.

The particular juridical position of Jehovah’s Witnesses in the Russian Federation, within a legal framework of freedom so strongly compromised, therefore takes on a further symbolic value, in which the defense of freedom of religion must be placed as an insurmountable limit to dictatorial tendencies. The Soviet state had tenaciously pursued a political strategy that attempted to establish a relationship between regulation and repression. After the 1991 reform, with the easing of state pressures, however, the will to control of the dominant Church emerged, associated with the general attitude of mistrust towards the new “cults” that emerged in Europe at the end of the 20th century due to the originality of their message, which could not be framed within the schemes of traditional religions.

The current political phase is, however, linked to a more centralized form of state control, with greater restrictions on individual and collective freedoms. The

characteristics of the Jehovah's Witnesses movement have, therefore, evidenced in even clearer forms the difficult balance between the protection of religious freedom and the states' claims that they need to defend themselves from the centripetal forces, potentially implosive, that can operate within their structure.

It is well known that secularism is based on two fundamental principles: first, the inviolability of human rights, which constitute the pre-condition of political power and therefore of the state and, second, the importance of a culture and institutions that guarantee the effectiveness of pluralism. The analysis of the peculiarities of Russian history and of the problems of the Jehovah's Witnesses offer, in this sense, an important perspective. They call into question the effectiveness of the European model of recognition and guarantee of religious pluralism if it is not subordinated to a real and effective control by supranational bodies that can guarantee the effectiveness of rights (Mazzola 2012; Licastro 2014).

References

- Abashidze, Aslan K., Marianna Ilyashevich, and Alexandr Solntsev. 2017. "Anchugov & Gladkov v. Russia." *American Journal of International Law* 111(2):461–68.
- Alexeev, Wassilji. 1953. *The Foreign Policy of the Moscow Patriarchate, 1939–1953*. New York: Research Program on the U.S.S.R.
- Anderson, John. 1994. *Religion, State, and Politics in the Soviet Union and Successor States*. Cambridge: Cambridge University Press.
- Anderson, Paul B. 1944. *People, Church and State in Modern Russia*. New York: McMillan.
- Baran, Emily B. 2006a. "Negotiating the Limits of Religious Pluralism: The Anti-Cult Movement in the Russian Orthodox Church, 1990–2004." *The Russian Review* 65:637–56.
- Baran, Emily B. 2006b. "Faith on the Margins: Jehovah's Witnesses in the Soviet Union and Post-Soviet Russia, Ukraine, and Moldova, 1945–2010." Ph.D. diss. University of North Carolina, Chapel Hill, NC.
- Baran, Emily B. 2007. "Contested Victims: Jehovah's Witnesses and the Russian Orthodox Church." *Religion, State and Society* 35:264–78.

- Baran, Emily B. 2014. *Dissent on the Margins: How Soviet Jehovah's Witnesses Defied Communism and Lived to Preach About It*. Oxford: Oxford University Press.
- Berdjaev, Nicolas. 1937. *The Origin of Russian Communism*. London: University Press of Glasgow.
- Bordeaux, Michael. 1970. *Patriarch and Prophets: Persecution of the Russian Orthodox Church Today*. New York: Praeger.
- Bowring, Bill. 2015. "What's in a Word: 'Sovereignty' in the Constitutional Court of the Russian Federation." *Russian Journal of Communications* 7(3):328–36.
- Buber-Neumann, Margarete. 2008. *Under Two Dictators: Prisoner of Stalin and Hitler*. London: Pimlico.
- Canonici, Guy. 1998. *Les Témoins de Jéhovah face à Hitler*. Paris: Albin Michel.
- Carobene, Germana. 1991. "La recente legge sovietica sulla libertà di coscienza e organizzazioni religiose." *Diritto Ecclesiastico* 2–3:428–52.
- Carobene, Germana. 2008. "L'affaire di Scientology. La qualificazione in via giudiziaria di una confessione nel contesto 'europeo' della libertà di religione." *Stato Chiese e pluralismo confessionale*, April 14. Accessed December 9, 2020. <https://bit.ly/2KLylUr>.
- Cigliano, Giovanna. 2013. *La Russia contemporanea. Un profilo storico*. Rome: Carocci.
- Codevilla, Giovanni. 1998. *Stato e Chiesa nella Federazione Russa. La nuova normativa nella Russia postcomunista*. Milan: La Casa di Matriona.
- Codevilla, Giovanni. 2007. "Il progetto di legge Tjul'kin per modificare la legislazione sulle associazioni religiose." *Stato, Chiese e pluralismo confessionale*, July 16. Accessed December 9, 2020. <https://bit.ly/2Kdy5xW>.
- Codevilla, Giovanni. 2008. *Lo zar e il patriarca. I rapporti tra trono e altare in Russia dalle origini ai giorni nostri*. Milan: La Casa di Matriona.
- Codevilla, Giovanni. 2009. "Ortodossia e linguaggio sui diritti umani in Russia. Nuovo legame tra religione e politica." *Stato, Chiese e pluralismo confessionale*, February. Accessed December 9, 2020. <https://bit.ly/34uQuNs>.
- Codevilla, Giovanni. 2011. *Chiesa e Impero in Russia. Dalla Rus' di Kiev alla Federazione Russa*. Milan: Jaca Book.
- Codevilla, Giovanni. 2019a. "La Chiesa Ortodossa Russa e le riforme dell'inizio del XX secolo." *Stato, Chiese e pluralismo confessionale*, June 17. Accessed December 9, 2020. <https://bit.ly/2WwGBud>.

- Codevilla, Giovanni. 2019b. *Il terrore rosso sulla Russia ortodossa (1917–1925)*. Milan: Jaca Book.
- Curanovic, Alicja. 2012. *The Religious Factor in Russia's Foreign Policy*. London: Routledge.
- Curtis, John Shelton. 1953. *The Russian Church and the Soviet State, 1917–1950*. Boston: Little Brown.
- Daniel-Rops, Henri. 1964. “L'Église orthodoxe et l'URSS.” *Revue des Deux Mondes*, November 1:3–18.
- Durham, W. Cole, Jr., and Lauren B. Homer. 1998. “Russia's 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal.” *Emory International Law Review* 12(1):101–246.
- Ellis, Jane. 1990. *The Russian Orthodox Church: Conformity and Dissent*. London: Routledge.
- Fagan, Geraldine. 2012. *Believing in Russia: Religious Policy After Communism*. London and New York: Routledge.
- Ferrari, Silvio. 2007. “Tra geo-diritti e teo-diritti. Riflessioni sulle religioni come centri transnazionali di identità.” *Quaderni di diritto e politica ecclesiastica* 15(1):3–14.
- Fisichella, Domenico. 1992. *Totalitarismo. Un regime del nostro tempo*. Rome: La Nuova Italia Scientifica.
- Fletcher, William C. 1973. *Religion and Soviet Foreign Policy, 1945–1970*. London: Oxford University Press.
- Garbe, Detlef. 2008. *Between Resistance and Martyrdom: Jehovah's Witnesses in the Third Reich*, Madison, WI, and London: The University of Wisconsin Press.
- Gentile, Emilio. 2001. *Le religioni della politica*. Rome and Bari: Laterza.
- Graffard, Sylvie, and Léo Tristan. 1994. *Les Bibelforscher et le nazisme (1933–1945): ces oubliés de l'histoire*. Paris: Tirésias.
- Kalkandjieva, Daniela. 2015. *The Russian Orthodox Church, 1917–1948: From Decline to Resurrection*. New York: Routledge.
- Kolarz, Walter. 1961. *Religion in the Soviet Union*. New York: St. Martin's Press.
- Kravchenko, Maria. 2018. *Inventing Extremists: The Impact of Russian Anti-Extremism Policies on Freedom of Religion or Belief*. Washington DC: United States Commission on International Religious Freedom.
- Lapi, Chiara. 2011. “La difficile posizione giuridica dei Testimoni di Geova in Russia di fronte alla Corte di Strasburgo.” *Stato, Chiese e pluralismo confessionale*, June 20. Accessed December 9, 2020. <https://bit.ly/2WwmRa9>.

- Licastro, Angelo. 2014. *Unione europea e “status” delle confessioni religiose. Fra tutela dei diritti umani fondamentali e salvaguardia delle identità costituzionali*. Milan: Giuffrè.
- Mazzola, Roberto, ed. 2012. *Diritto e religione in Europa. Rapporto sulla giurisprudenza della Corte Europea dei diritti dell'uomo in materia di libertà religiosa*. Bologna: il Mulino.
- Medvedev, Roy. 2002. *Post-Soviet Russia: A Journey Through the Yeltsin Era*. New York: Columbia University Press.
- Moniak-Azzopardi, Agnieszka. 2004. “Les Religions et l'État en Russie. Une relation équivoque.” *Le Courrier des Pays de l'Est* 5:28–38.
- Pospielovsky, Dimitry. 1984. *The Russian Church Under the Soviet Regime, 1917–1982*. New York: St Vladimir Seminary Press.
- Ramet, Pedro, ed. 1988. *Eastern Christianity and Politics in the Twentieth Century*. Durham, NC: Duke University Press.
- Richardson, James T., and Barend Van Driel. 1994. “New Religious Movements in Europe: Developments and Reactions.” In *Anti-Cult Movements in Cross-Cultural Perspective*, edited by Anson D. Shupe and David G. Bromley, 129–70. New York: Garland.
- Rousselet, Kathy. 2000. “L'Église orthodoxe russe et le territoire.” *Revue d'études comparatives Est-Ouest* 35(4):149–71.
- Shterin, Marat. 2000. “Church-State Relations and Religious Legislation in Russia in the 1990s.” In *Religious Transitions in Russia*, edited by Matti Kotiranta, 218–50. Helsinki: Alexander Institute.
- Simons, Greg, and David Westerlund. 2016. *Religion, Politics and Nation Building in Post-Communist Countries*. London and New York: Routledge.
- Škarovskii, Michail. 2003. *La Croce e il potere*. Milan: La Casa di Matriona.
- Solženicyn, Aleksandr Isaevič. 1973. *АРХИПЕЛАГ ГУЛАГ*. Paris: Seuil.
- Strémooukhoff, Dimitri. 1953. “Moscow the Third Rome: Sources of the Doctrine.” *Speculum* 28(1):84–101.
- Stroyen, William. 1967. *Communist Russia and the Russian Orthodox Church, 1943–1962*. Washington: Catholic University of America Press.
- Timasheff, Nicholas Sergejevitch. 1942. *Religion in Soviet Russia, 1917–1942*. New York: Sheed & Ward.
- Vasil'eva, Ol'ga. 1998. *Russia martire. La Chiesa Ortodossa dal 1917 al 1941*. Milan: La Casa di Matriona.
- Vercelli, Claudio. 2011. *Triangoli viola. Le persecuzioni dei Testimoni di Geova nei Lager nazisti*. Rome: Carocci.
- Walters, Philip. 1986. “The Russian Orthodox Church and the Soviet State.” *The Annals of the American Academy of Political and Social Science* 483:135–45.

- Werth, Nicolas. 1993. "Le Pouvoir soviétique et l'Église orthodoxe de la collectivisation à la Constitution de 1936." *Revue d'études Est-Ouest* 24(3-4):41-9.
- Zenkivskyy, Vasyl Vasylovych. 1953. *History of Russian Philosophy*. New York: Routledge and Kegan Paul.
- Zenkovsky, Serge A. 1957. "The Russian Church Schism: Its Background and Repercussions." *The Russian Review* 16(4):37-58.
- Zernov, Nicholas. 1963. *The Russian Religious Renaissance of the Twentieth Century*. New York: Harper & Row.