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RUSSIAN FEDERALISM AND RELIGION

Dr. (C) Evgeny Sergeevich Kuchenin

Russian State Social University, Russia

ORCID ID: 0000-0002-3667-2680

KucheninES@rgsu.net

Dr. (C) Maria Sergeevna Lavrentieva

Russian State Social University, Russia

ORCID ID: 0000-0001-9372-892X

mari-lav-702@yandex.ru

Dr. (C) Mikhail Mikhailovich Turkin

Russian State Social University, Russia

ORCID ID: 0000-0003-2797-1408

TurkinMM@rgsu.net

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Abstract

The modern Russian state has proclaimed freedom of conscience and religion as a constitutionally guaranteed human and civil right. The constitutional principle of freedom of conscience and religion is the result of a long process of the historical development of Russia, in which the economic, social and political circumstances and conditions that accompanied its existence were crucial. The importance of the constitutional and legal provision of religious rights and freedoms is necessary, first of all, for the free development of each person and the formation of a full-fledged civil society, as a necessary condition for building a legal and social state. The Russian Federation is a secular state, in which no religion can be established as a state or compulsory one. The formation of a secular state in Russia is associated with the constant expansion confessional space, search for a national ideology, lack of a clear state-confessional policy, which raises a number of practical challenges and problems. The coordination of the public interests of the state and society, religious associations and religious citizens, as well as citizens who do not profess any religion, is of paramount importance in matters of legal regulation in the sphere of religion.

Keywords

Secular state – Religion – Russian federalism – Constitutional rights of citizens

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Introduction

The Russian Federation is declared a secular state, which excludes any interference of religion in the state administration of society. The attitude of modern Russian society to the place and role of religion in the constitutional structure is reflected in the corresponding legal definition, enshrined in the Basic Law, as well as in other constitutional norms.

The implementation of the idea of a secular state in state construction is impossible without the simultaneous implementation of the ideas of the legal and social state, ideas also reflected in the Constitution of the Russian Federation. In these conditions, it is a positive law, understood as a set of rules of conduct established and protected by the state, which acts as the main social regulator of public relations, ensuring law, order and public peace. However, the role of religious norms as a variety of social norms not only does not decrease but, on the contrary, increases due to many different reasons.

Under the conditions of Russian federalism, the main characteristic features of which are determined by the course of the country's historical development and the basis for which are the vast territory of Russia and the exceptional identity of more than 200 nationalities (ethnic groups) living in the subjects of the Russian Federation, the lack of legal regulation of relations in the field of religion and the failure to balance the public interests of society, state and religious associations and citizens poses a threat to the unity of the country and adversely affects the ability of the state to fully ensure the constitutionally guaranteed rights and freedoms of citizens. It should also be noted that the aforementioned regulatory potential of religious norms can be used both in the interests of society and the state and against them.

All this makes it necessary to clarify the idea of a secular state in relation to the conditions of Russian federalism, taking into account the multi-confessional religious beliefs prevalent in the country in order to ensure social harmony as an important factor in the socio-economic and cultural development of the country.

The works of M.L. Voronkova¹, A.F. Meshcheryakova² and I.V. Ponkin³ are devoted to the study of a wide range of issues related to the development of a secular state at certain stages of state development in the Russian Federation.

The relationship between the individual, society and the state, including the problems of legal regulation of religious associations, is the subject of research by A.V. Karpushkin⁴ and A.V. Pchelintsev⁵.

¹ M. L. Voronkova, *Konstitutsionnye osnovy svetskogo gosudarstva v Rossiiskoi Federatsii*, thesis work of doctor of law (Saratov: n.p., 2006).

² A. F. Meshcheryakova, *Svetskoe gosudarstvo v sovremennoi Rossii: konstitutsionno-pravovoi analiz*, thesis work of doctor of law (Penza: n.p., 2009).

³ I. V. Ponkin, *Sovremennoe svetskoe gosudarstvo: konstitutsionno-pravovoe issledovanie*, thesis work of doctor of law (Moscow: n.p., 2014).

⁴ A. V. Karpushkin, *Konstitutsionnye osnovy i genezis vzaimootnoshenii obshchestva i religioznykh obedinenii v Rossiiskoi Federatsii*, thesis work of doctor of law (Penza: n.p., 2009).

⁵ A. V. Pchelintsev, *Svoboda veroispovedaniya i religioznye obedineniya v Rossiiskoi Federatsii (konstitutsionno-pravovoe issledovanie)*, thesis work of doctor of law (Moscow: n.p., 2012).

The secularism of the modern state in the context of building a legal and social state in the Russian Federation and the formation of civil society in the country is analyzed in the works of S.V. Kalashnikov⁶ and Yu.I. Skuratov⁷.

The problems of realizing the religious rights of citizens and the activities of religious associations have become the focus of attention of A. Agafonova⁸, M. Bulavina⁹, S. Rozenko¹⁰, D.H. Davis¹¹.

Value orientations in the work concerning the construction of a secular state are determined on the basis of the views of the famous sociologist Jürgen Habermas¹².

The policy of religious federalism in Asia has been studied by B. He, L. Allison-Reumann and M. Breen¹³.

Methods

The study is based on the dialectical method of knowledge, which allows identifying the relationship of various aspects of legal regulation of public relations related to religious freedom in the context of the proclamation of a secular state in both public and private spheres.

The axiological, historical, system, formal-legal, comparative-legal and other methods of scientific research were also used in the work. At the same time, the axiological and dialectical methods were of decisive importance and formed the basis of the methodology of the work.

The initial method of studying the essence of religious freedom, as well as the nature and direction of interaction between public authorities and religious associations, was the system method. In addition, when writing the work, logical techniques were used at various stages – the methods of analysis and synthesis, induction and deduction, analogy, extrapolation and others. The combination of such methods made it possible to identify problems in the studied area and to justify ways to solve them.

⁶ S. V. Kalashnikov, *Konstitutsionnye osnovy formirovaniya grazhdanskogo obshchestva v Rossiiskoi Federatsii* law (Moscow: n.p., 2001).

⁷ Yu. I. Skuratov, *Sovremennaya kontsepsiya sotsialnogo gosudarstva v Rossiiskoi Federatsii (evraziiskii kontekst). Aktualnye problemy sovremennoi yuridicheskoi nauki i praktiki. Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii: Ulan-Ude, 14 iyunya 2017* (Ulan-Ude: Sbornik trudov konferentsii, 2017).

⁸ A. A. Agafonova, "Realizatsiya printsipa svetskogo gosudarstva v Rossii: sovremennoe sostoyanie i perspektivy razvitiya", *Vestnik Tomskogo gosudarstvennogo universiteta* Vol: 2 num 4 (2012).

⁹ M. A. Bulavina, "On the legal content of the "secular state" concept", *Izvestiya MGTU 166 "MAMI"* num 2 Vol: 20 (2014).

¹⁰ S. V. Rozenko, "Problema ustanovleniya zakonodatelnykh ogranichenii religioznoi svobody v Rossiiskoi Federatsii", *Vestnik Yugorskogo Gosudarstvennogo Universiteta. Issue num 1 Vol: 40* (2016).

¹¹ D. H. Davis, "Russia's New Law on Religion: Progress or Regress?", *Journal of Church and State* Vol: 39 num 4 (1997): 645-655.

¹² J. Habermas, "Postsekulyarnoe obshchestvo — chto eto? Chast 2", *Rossiiskaya filosofskaya gazeta* num 5 Vol: 19 (2008).

¹³ B. He; L. Allison-Reumann y M. Breen, "The politics of secular federalism and the federal governance of religious diversity in Asia", *Federal Law Review* num 46 (2018): 575-594.

Results

We substantiate the need for constitutional consolidation of the legislation on religion and religious activity, which is based on the religious diversity of the country, among the subjects of the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. This need is also due to the fact that traditional religions for certain regions of the country, with their inherent religious rites, traditions, customs and objects of worship, as part of the culture of the peoples and nationalities inhabiting the subjects of the Russian Federation, are elements of cultural heritage, in their totality forming the national heritage of Russia, which is the object of special legal protection.

In addition, we substantiate the need to make changes to the legislation on local self-government providing for the expansion of its competence to interact with religious associations in order to ensure the rights of citizens to freedom of religion and use the potential of religion in matters of moral education and law enforcement.

Discussion

The genesis of the idea of a secular state

Understanding of the world by thinkers of the past, their comprehension of the essence of the phenomena and events of the surrounding reality led them to think about the central role of a person who has consciousness and reason and transforms the world in accordance with their needs in the process of creation, which naturally provoked thoughts, if not about negation, then diminishing the role in this process of any higher beings – gods. (In the name of fairness, it should be noted that mankind has not yet unambiguously explained the reasons for the emergence of life on earth, including the cause of humanity itself; the discussions on this subject are often based on the opposite or even mutually exclusive views of modern scholars.)

The idea of a secular state has developed over the centuries and can be traced in the works of the Justinian Emperor of Byzantine, the medieval scholasticist Thomas Aquinas, the Christian theologian Martin Luther, the Italian thinker Niccolo Machiavelli and many others¹⁴. The very idea of a secular state, in which the state power is separated from the church and cannot ensure the implementation of religious regulations, was present in the works of Marsilius of Padua in the 14th century¹⁵. Subsequently, the idea of a secular state developed in close connection with the idea of the right and then the social state in the works of modern thinkers such as Thomas Hobbes, John Locke, Jean Jacques Rousseau, Thomas Jefferson, Alexis Tocqueville, Georg Wilhelm Friedrich Hegel, Immanuel Kant, Max Weber, Charles Louis Montesquieu¹⁶.

Russian thinkers N.Ya. Danilevsky, N.M. Korkunov, P. I. Novgorodtsev, K.P. Pobedonostsev, V.S. Solovyov and others paid no less attention to this idea. They focused primarily on the issues of the philosophical content of state-church relations and secularization, which is probably associated with the strongest traditions of Russian Orthodoxy¹⁶.

¹⁴ I. V. Ponkin, *Sovremennoe svetskoe gosudarstvo...*

¹⁵ M. A. Bulavina. *On the legal content of the "secular state"...*

¹⁶ A. V. Pchelintsev, *Svoboda veroispovedaniya i religioznye obedineniya...*

These ideas of the legal, social, secular state are proposed in the framework of theories and concepts that offer different views on the essence and content of such concepts as law and the state. However, these views are united by the purpose of law and the state, which consists primarily in ensuring the realization of an objective human need to exist in interaction with other people and the coordination of personal and public interests.

It is noteworthy that every religion, in fact, pursues the same goal – to ensure the agreement between a person and society. Admittedly, this similarity extends to the corresponding types of social norms – religious norms and rules of law. Another similarity is that both are based on people's ideas of right and wrong, good and evil, as well as justice. This seems to be a prerequisite for interaction in the context of the constitutional declaration of secularism of the state.

It must be acknowledged that the various concepts of the secular state are based on the hypothesis that religious norms, as a type of social norms, only apply to a certain part of society – the faithful – and are provided for by most of their consciousness.

The most important distinguishing feature of legal norms is that they extend their effect to all members of society, are established and protected by the state and are provided by the force of its coercion. Certainly agreeing with this thesis and strongly supporting the efforts to implement the idea of the rule of law, it is necessary to recognize no less significant influence on society of religion.

As already noted, religious norms have a significant regulatory potential based on the formation of moral guidelines in the behavior of people. Religious norms are able to effectively manage the behavior of people because they make legitimate behavior a need formed by the worldview and internal beliefs of a person. For example, in Orthodoxy, the wedding rite is more conducive to the preservation and internal well-being of the family than the secular institution of marriage. It should also be noted that very rarely religious norms are in direct conflict with the norms of law, especially in traditional religions. Issues of religious faith are one of the main elements of the individual's worldview, it's spiritual, moral, cultural and often national identity, which has been repeatedly reflected in the history of Russia. The most important thing is that religious associations and groups are part of civil society¹⁷. An effective civil society in a legal state is the main element that ensures that the state is bound by law, as well as legal protection of the individual and society¹⁸, the justice of the law as a social regulator, the justification of law enforcement practice in order to harmonize the interrelated interests of the individual, society and the state. Under the conditions of the formation of the law-governed state, it is not only impossible to exclude the possibility of the faithful to influence the decisions of the authorities, but also extremely undesirable. In this regard, it is not accidental that many lawyers and sociologists of modern time note the trend towards the revival of religion and talk about the emergence of a post-secular society¹⁹.

¹⁷ S. V. Kalashnikov. *Konstitutsionnye osnovy formirovaniya grazhdanskogo obshchestva v Rossiiskoi Federatsii*, (Moscow: n.p., 2001).

¹⁸ A. L. Shilovskaya; M. A. Volkova; S. J. Starodumova; R. R. Lenkovskaya & A. A. Neznamova, "On Correlation between the Means of Protection of Rights in Family Law and Civil Law", *International Journal of Civil Engineering and Technology* num 9 Vol: 10 (2018): 1686–1694.

¹⁹ J. Habermas, *Postsekulyarnoe obshchestvo — chto eto? Chast 2...*

According to Article 14 of the Constitution of the Russian Federation, Russia is a secular state, in which no religion can be state or compulsory. At the same time, recognizing the supreme value of human and civil rights and freedoms in the norms of the Constitution, the state also guarantees freedom of religion and the right to practice any religion, to choose, profess and disseminate religious beliefs and act in accordance with them, taking on the obligation to ensure equal rights and freedoms of citizen regardless of their attitude to religion and prohibiting any form of restriction of citizens' rights on the basis of religious affiliation (in accordance with the provisions of Articles 19 and 28 of the Constitution of Russia).

It is the state that ensures the implementation of the constitutional rights and freedoms of citizens associated with the ability to practice any religion or not to profess any. The implementation of these constitutional provisions takes place in the norms of the current legislation – federal²⁰ and of the subjects of the Russian Federation.

Note that the Federal Law "On Freedom of Conscience and Religious Associations" determines that the legislation in the study area consists of norms of the Russian Constitution, the Civil Code of Russia, the aforementioned federal law and other normative acts of Russia adopted in accordance with them, as well as normative acts of constituent entities of the Russian Federation. The adoption of this federal law in the context of constitutional provisions and international norms was a great democratic achievement of Russia²¹.

Problems of implementing the idea of a secular state in the conditions of Russian federalism

The Russian Federation came to the point of forming a democratic state in the 1990s without sufficient experience in the field of a legal guarantee of human rights in the sphere of religion. Researchers note the imperfection of legislation in the field of religion, affecting the effectiveness of the implementation of constitutional norms^{22,23,24}. No fewer problems in the implementation of the constitutional principles of a secular state and religious freedom are found in law enforcement practice, as evidenced by the numerous appeals of citizens in connection with the protection of their religious rights to both the national judicial authorities and the European Court of Human Rights.

An example is the Case of Kimlya and others v. Russia, considered by the European court of human rights on October 10, 2009²⁵, which appeals against the refusal of the Russian authorities to register branches of the Church as religious organizations and notes that in this case, there was a violation of Articles 9 and 11 of the Convention for

²⁰ Federal Law No. 125-FL on Freedom of Conscience and Religious Associations. September 26, 1997.

²¹ D. H. Davis, "Russia's New Law on Religion: Progress or Regress?", *Journal of Church and State* Vol: 39 num 4 (1997): 645-655.

²² A. V. Pchelintsev, *Svoboda veroispovedaniya i religioznye obedineniya v Rossiiskoi Federatsii (konstitutsionno-pravovoe issledovanie)* thesis work of doctor of law (Moscow: n.p., 2012).

²³ A. F. Meshcheryakova, *Svetское gosudarstvo v sovremennoi Rossii: konstitutsionno-pravovoi analiz*, thesis work of doctor of law (Penza: n.p., 2009).

²⁴ M. L. Voronkova, *Konstitutsionnye osnovy svetskogo gosudarstva v Rossiiskoi Federatsii*, thesis work of doctor of law (Saratov: n.p., 2006).

²⁵ The judgment of the European Court of Human Rights "The Case of Kimlya and Others v. Russia" (complaints N 76836/01, 32782/03). October 1, 2009.

the protection of human rights and fundamental freedoms. As a result of the consideration of this case, the Court acknowledged that the applicants had suffered legal costs and expenses in connection with their repeated attempts to register the religious organization of the Scientology Center, as well as a violation of the proceedings before the domestic court. The European Court found that there had been a violation of Article 9 of the Convention for the protection of human rights and fundamental freedoms, interpreted in the light of Article 11 of the Convention.

A significant drawback of the legal regulation of religious associations is the insufficient consideration of the factor of multi-confessional beliefs spread in Russia in the conditions of functioning of the federal state since the competence of the subjects of the Russian Federation in this area is not defined.

It is worth noting the point of view of B. He, L. Allison-Reumann and M. Breen, who, when studying the politics of secular federalism and the federal management of religious diversity in Asian countries, came to the conclusion that those of the federal states that prefer one or another religion are the most illiberal, creating problems when the state does not seek to exercise its authority in a way that contradicts or undermines religious beliefs²⁶. The Federal administration of religious diversity is formulated according to three main types: accommodation in the center, accommodation in units and group accommodation. A particular religion at the federal level is often given privileged status and minority faiths are protected at the unit or group level. The presence of religious groups in multi-faith states is an important complement for minorities who support the dominant religion, mitigating potential negativity in society and the state.

In general, the analysis of the opinions of scholars who study the problems of interaction between religious associations and the state allows distinguishing two groups of problems.

First, it is the clericalization of public and power institutions, affecting various aspects of the secularism of the state (education, public service, lobbying interests of various religious associations, etc.)²⁷.

Second, problems in the implementation of religious rights of citizens (difficulties in the religion of some, usually non-traditional religions, the actual inequality in the implementation of certain rights of religious citizens and atheists, the actual inequality of persons professing different religious views, etc.)²⁸.

These problems do not contribute to the unity of society, create the ground for religious extremism and do not contribute to the balance of interests of state-power institutions, religious associations and society as a whole²⁹.

²⁶ B. He; L. Allison-Reumann y M. Breen, "The politics of secular federalism and the federal governance of religious diversity in Asia", *Federal Law Review* num 46 (2018): 575-594.

²⁷ A. A. Isaeva, "Konstitutsionnyi sekulyarizm v Rossii: poeziya printsipov i proza pravoprimereniya", *Vestnik Tomskogo gosudarstvennogo universiteta* Vol: 45 num 6 (2012).

²⁸ S. V. Rozenko, "Problema ustanovleniya zakonodatelnykh ogranichenii religioznoi svobody v Rossiiskoi Federatsii", *Vestnik Yugorskogo Gosudarstvennogo Universiteta*. Issue 1 Vol: 40 (2016).

²⁹ A. A. Agafonova, "Realizatsiya printsipa svetskogo gosudarstva v Rossii: sovremennoe sostoyanie i perspektivy razvitiya", *Vestnik Tomskogo gosudarstvennogo universiteta* num 2 Vol: 4 (2012).

The settlement of these issues for the Russian Federation is all the more necessary in view of the complicated international situation and the increased competition of states, in which geopolitical opponents use, among other things, religious and ideological tools to influence the foundations of the state system of the opposing countries.

In search for ways to improve legislation in the field of religion, researchers, among others, raise the question of the applicability in the Russian Federation of various models of a secular state – secularizing (the USA, France, Ireland, the Netherlands), characterized by the equal status of all religious associations, and cooperative (Germany, Spain, Italy), in which the state protects traditional religions for this country to some extent.

It is obvious that the choice of a certain model of the existence of a secular state is due to many factors and conditions associated with the functioning of the state. In relation to the Russian Federation, its federal structure, in which each of the subjects has a unique set of socio-cultural, economic, demographic, geographical and other factors, is of paramount importance³⁰.

Only a part of the constituent entities of the Russian Federation have the character of national state formations and are created on the basis of the nationality of the people who live in them, for the most part, professing, as a rule, a particular religion. A significant number of subjects of the Russian Federation are created on a territorial basis and the population of these entities is characterized by a variety of religious beliefs. This circumstance also makes us pay attention to the scope of competence in this area of local self-government bodies, which should have a significantly greater amount of authority in the sphere of interaction with religious organizations. The very essence of local self-government is an independent solution to local issues by the population and assumes its broad participation in solving religious issues.

Conclusions

New requirements designed, first, to increase the effectiveness of protecting the religious rights of citizens and, second, to balance the public interests of society and the state and the interests of religious associations, are associated with the legal regulation in the field of religious activity and the interaction of the state and its bodies with associations in the context of the growing role of religion in state-building. Failure to balance these interests poses a threat to the unity of Russian society.

One of the constitutional foundations of the Russian state is its federal structure and the Constitution of the Russian Federation provides for the definition of subjects of jurisdiction of the Russian Federation and the subjects of the Russian Federation, which provides for the consideration of factors and conditions of various nature that determine the specifics of legal regulation in different spheres of life in different regions. However, the legislation in the sphere of religion is not included among the subjects of the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, which does not contribute to the implementation of the principle of a secular state, taking into account the federal structure.

³⁰ Yu. I. Skuratov. Aktualnye problemy sovremennoi yuridicheskoi nauki i praktiki. Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii: Ulan-Ude, 14 iyunya 2017. (Ulan-Ude: Sbornik trudov konferentsii, 2017).

It should be noted that the combination of federal regulation and the adoption of regional legislation will allow taking into account the interests of various faiths in a federal state.

In view of the foregoing, it is proposed that part 1 of Article 72 of the Constitution of the Russian Federation be supplemented with a provision on the subject of joint jurisdiction of the federal center and the constituent entities of the Russian Federation – legislation in the field of religion, which will create constitutional foundations for harmonization of national legislation on religion and increase the effectiveness of protecting religious rights of citizens.

The prospects for the development of this research area are multifaceted, taking into account the priority of democratic values, the establishment of the rule of law in states with a federal form of government. A little-studied problem in Russia is the study of the institute of bringing to justice for crimes and administrative offenses in the sphere of freedom of conscience and religious associations. Thus, criminal liability for violation of the right to freedom of conscience and religion (Article 148 of the Criminal Code of the Russian Federation) is exclusively under the federal jurisdiction and administrative responsibility for violation of the legislation on freedom of conscience, freedom of religion and religious associations (Article 5.26 of the Russian Federation Administrative Offence Code) is under the joint federal and regional jurisdiction. In this regard, the feature of Russian federalism in this area should be noted. Consideration of the specifics of regulating religious issues in conjunction with the model of federalism in various foreign countries will significantly improve the effectiveness of the Russian model of a federal state, taking into account the Russian multi-ethnic and multi-confessional nature. These issues require further scientific understanding and research.

References

Agafonova, A. A. "Realizatsiya printsipa svetskogo gosudarstva v Rossii: sovremennoe sostoyanie i perspektivy razvitiya". Vestnik Tomskogo gosudarstvennogo universiteta num 2 Vol: 4 (2012).

Bulavina, M. A. "On the legal content of the "secular state" concept". Izvestiya MGTU 166 "MAMI" num 2 Vol: 20 (2014).

Davis, D. H. "Russia's New Law on Religion: Progress or Regress?". Journal of Church and State Vol: 39 num 4 (1997): 645-655.

Federal Law No. 125-FL on Freedom of Conscience and Religious Associations. September 26, 1997.

Habermas, J. "Postsekulyarnoe obshchestvo — chto eto?". Rossiiskaya filosofskaya gazeta num 4 Vol: 18 (2008).

Habermas, J. "Postsekulyarnoe obshchestvo — chto eto? Chast 2". Rossiiskaya filosofskaya gazeta num 5 Vol: 19 (2008).

He, B.; Allison-Reumann, L. y Breen, M. "The politics of secular federalism and the federal governance of religious diversity in Asia". Federal Law Review num 46 (2018): 575-594.

Isaeva, A. A. “Konstitutsionnyi sekulyarizm v Rossii: poeziya printsipov i proza pravoprimereniya”. Vestnik Tomskogo gosudarstvennogo universiteta num 4 Vol: 6 (2012).

Kalashnikov, S. V. Konstitutsionnye osnovy formirovaniya grazhdanskogo obshchestva v Rossiiskoi Federatsii thesis work of doctor of law. Moscow. 2001.

Karpushkin, A. V. Konstitutsionnye osnovy i genezis vzaimootnoshenii obshchestva i religioznykh obedinenii v Rossiiskoi Federatsii. thesis work of doctor of law. Penza. 2009.

Meshcheryakova, A.F. Svetskoe gosudarstvo v sovremennoi Rossii: konstitutsionno-pravovoi analiz thesis work of doctor of law. Penza. 2009.

Pchelintsev, A. V. Svoboda veroispovedaniya i religioznye obedineniya v Rossiiskoi Federatsii (konstitutsionno-pravovoe issledovanie) thesis work of doctor of law. Moscow. 2012.

Ponkin, I. V. Sovremennoe svetskoe gosudarstvo: konstitutsionno-pravovoe issledovanie thesis work of doctor of law. Moscow. 2014.

Rozenko, S. V. “Problema ustanovleniya zakonodatelnykh ogranichenii religioznoi svobody v Rossiiskoi Federatsii. Vestnik Yugorskogo Gosudarstvennogo Universiteta”. Issue 1 Vol: 40 (2016).

Shilovskaya, A. L.; Volkova M. A.; Starodumova S. J.; Lenkovskaya R. R. y Neznamova A. A. “On Correlation between the Means of Protection of Rights in Family Law and Civil Law”. International Journal of Civil Engineering and Technology num 9 Vol: 10 (2018): 1686–1694.

Skuratov, Yu. I. Sovremennaya kontseptsiya sotsialnogo gosudarstva v Rossiiskoi Federatsii (evraziiskii kontekst). Aktualnye problemy sovremennoi yuridicheskoi nauki i praktiki. Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii: Ulan-Ude, 14 iyunya 2017. Sbornik trudov konferentsii, Ulan-Ude. 2017.

The judgment of the European Court of Human Rights "The Case of Kimlya and Others v. Russia" (complaints N 76836/01, 32782/03). October 1, 2009.

Voronkova, M. L. Konstitutsionnye osnovy svetskogo gosudarstva v Rossiiskoi Federatsii thesis work of doctor of law. Saratov. 2006.

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DR. (C) EVGENY SERGEEVICH KUCHENIN / DR. (C) MARIA SERGEYEVNA LAVRENTIEVA
DR. (C) MIKHAIL MIKHAILOVICH TURKIN