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FREEDOM OF RELIGION AND CONSCIENCE IN CHINA AND RUSSIA: SEARCHING FOR NEW COMMONS

Natalia Igorevna Shumakova

South Ural State University (National Research University), Chelyabinsk, Russia

Elena Viktorovna Titova

South Ural State University (National Research University), Chelyabinsk, Russia

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ABSTRACT

The main hypothesis of this article is a possibility of creating a new convention by China and Russia for protecting the fundamental human right to freedom of religion and conscience on a new international level, independent from the West. The need of developing such a convention or even a new international organization is conditioned by the withdrawal of Russia from the Council of Europe and the European Convention on Human Rights. We suggest that this cooperation can be beneficial for both parties because it should help secure their sovereignty and improve the implementation of national legislations. The aim of our research is to propose measures of increasing the efficiency of realization of freedom of religion and conscience in China in Russia. In order to reach it, we employed such methods of legal comparativistics as functional, normative and external comparative analysis and studied the Chinese and Russian specifics of the legal recognition and protection of this right. The findings of our study suggest that the existing limitations of it should be seen as a response to challenges China and Russia have been facing as developing multicultural and policonfessional states. We also discovered that despite its cultural, ideological and political differences, Russia and China share a number of almost identical mechanisms for the realisation of religious liberty.

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1. INTRODUCTION

Professor Y. Onuma, one of the most known lawyers and scholars advocating for changes in the approach towards the international law, in his 1996s work “In Quest of Intercivilizational Human Rights”, prognosed the use of human rights for further interventions with the sovereignty of developing countries. To prevent a possible conflict that could destabilize the international order, he called for “an intercivilizational approach” (later – “transcivilizational”) that would reduce the West-centric dominance in the discourse on human rights. By modern researchers, that view of his on both the history and future of international law is considered unique and significant [8]. Almost three decades later, the world has faced irrevocable changes that proved Yasuaki’s forecast to be true: Russia, China, Brazil, and other countries not only are criticized for their refusal of complete implementation of the Western-orientated human rights standards that disagree with their own historical and cultural specifics but also are threatened with sanctions.

On 15 March 2022, the Parliamentary Assembly adopted “Opinion 300: Consequences of the Russian Federation's aggression against Ukraine”, according to which, the Russian Federation could no longer be a member State of the Organization. On 16 March 2022, the Committee of Ministers voted to expel Russia from the Council of Europe. On 16 March 2022, Russia withdrew from the Council of Europe, and 6 months later on 16 September 2022, it ceased to be a party to the European Convention on Human Rights. According to the Ministry of Foreign Affairs of the Russian Federation’s “Statement on initiating the process of withdrawing from the Council of Europe” these changes are not supposed to affect the rights and freedoms of Russian citizens because “the Constitution of the Russian Federation does not provide lesser guarantees of them than the European Convention on Human Rights. The provisions of the core CE treaties and legal acts are incorporated in Russian legislation”. Nevertheless, Russian legal experts such as Nver Kasparyan (Advisor of The Federal Chamber of Advocates of the Russian Federation) insist that the withdrawal from the Council of Europe “creates a vacuum” that needs to be filled in (as expressed in his commentary to *Advokatskaya Gazeta* on March 16, 2022).

Considering the strengthened cooperation between the BRICS nations, it seems to be only a matter of time when a new international human rights organization, that takes into account the historical and cultural specifics of developing countries, will emerge from this partnership. However, in order to start this process, it’s important to study the commons and differences in approaches of the BRICS countries towards the realization of human rights.

We support the opinion that religion still “remains a principle driver of politics” [15] with one correction -- it plays that role far beyond “European civilization”. Furthermore, religion has an impact on decision-making and actions of individuals [16] [17], it also has a regulatory effect on enterprises’ pollution behaviour [19], enhances firms’ performances and interacts with formal market institutions [20], and, allegedly, even affects bureaucratic corruption [18]. These two factors are the reason why religious freedom is often found under state control in developing countries. In the light of China and Russia being criticised for violation of the right to freedom of religion and conscience, we employed legal comparativistics to study their current specifics of the realisation of this right as multicultural and policonfessional states. Our research revealed that the main goal of the existing limitations of this right in Russia and China is to maintain the territorial integrity, social stability and public order. We also discovered that, despite their historical and cultural differences, these countries use similar mechanisms to reach this goal. Given the results, we made a set of suggestions for a hypothetical new convention that can help increase the efficiency of legal recognition and protection of this fundamental human right in both states.

2. MATERIALS AND METHODS

The scope of previous academic works shows that the realisation of the right to freedom of religion and conscience is widely discussed among Russian and Chinese researchers. Typically, Russian scholars study the legal nature of this right and consequences of implementation of Article 148 The Criminal Code of The Russian Federation (Kuznetsov and Yalovoy, Revisiting the protection of freedom and belief and freedom of religion under criminal law, 2020; Miroshnikova, The freedom of religion in the context of the freedom of conscience, 2017; Skorokhodov, The freedom of conscience and the freedom of religion: doctrinal and formal borders, 2019; Sokolovsky, Freedom of conscience and freedom of religion: approaches and understanding, 2022), whereas the Chinese dedicate their manuscripts to the studying of historical background of the Chinese religious policy and its current state or criticism of legal restrictions of this right (Leung, China’s Religious Freedom Policy: The Art of Managing Religious Activity, 2005; Li, Freedom in handcuffs: religious freedom in the Constitution of China, 2020; Hu and Zheng, Social Media, State Control and Religious Freedom in China, 2019; Wenyong, Taking freedom of conscience seriously, 2010; Lin, Religion as an object of state power: The People's Republic of China and its domestic religious geopolitics after 1978, 2018; Tao, The Historical Foundations of Religious Restrictions in Contemporary China, 2017; etc.). Additionally, there is a cultural studying that calls for understanding of the specifics of Russian cultural values through its history and geography, both of which, in our view, play an important role in the development of Russian-Chinese relations [1].

It is against this backdrop we employed such methods of legal comparativistics as functional, normative and external comparative analysis to conduct our own research. Firstly, we studied the legal nature of the right to freedom of religion and conscience in China and Russia, and examined what mechanisms are used for its legal recognition and protection, and what limits are established by the Chinese and Russian legislators. Secondly, we identified the differences and commons in the approaches towards this right. And then finally, given the results, we suggested a set of measures to improve the efficiency of its realisation.

The legal framework for the realisation of freedom of religion and conscience in China and Russia includes the Chinese and Russian Constitutions, constitutions and charters of the subjects of the Russian Federation, laws of the Chinese special administrative regions and nationality regions, other legal acts and normative documents.

In China, the freedom of religious belief is guaranteed by Article 36 of the Constitution of the People's Republic of China (amended 2018). This legal norm is adopted by the Basic Law of Hong Kong Special Administrative Region (Article 32) and the Basic Law of Macao Special Administrative Region (Article 34) with an additional guarantee of the freedom of conscience which is not mentioned in the Constitution of PRC. This is the basis for all the Chinese legislation that regulates the realisation of these freedoms in the republic.

The rest of Chinese legal norms that forms the mechanism of their realisation can be put in the following categories:

- Non-discriminatory legal norms: Article 34 of the Constitution of the People's Republic of China (amended 2018), Article 3 of the Electoral Law of the National People's Congress and Local People's Congresses of the People's Republic of China (amended 2004); Article 5 of the Organic Law of the People's Courts of the People's Republic of China (amended 2006), Article 7 of Measures for Election of Deputies from the Chinese People's Liberation Army to the National People's Congress and Local People's Congresses at or Above the County Level (1996), Article 8 of the Organic Law of the Urban Residents Committees of the People's Republic of China (1989), Article 12 of the Organic Law of the Villagers Committees of the People's Republic of China (1998), Article 12 of the Labor Law of the People's Republic of China (1994), Article 3 of the Trade Union Law of the People's Republic of China (amended 2009), Article 3 of the Law for Red Cross in the People's Republic of China (1993), Article 4 of the Compulsory Education Law of the People's Republic of China (2006), Article 9 of the Education Law of the People's Republic

of China (1995), Articles 11 and 53 of the Autonomy Law of Nationality Regions in the People's Republic of China (amended 2001), Article 2 of the Regulations on Religious Affairs (2004).

- Non-privilegatory legal norms: Article 3 of the Military Service Law of the People's Republic of China (1984).
- Legal norms that ensure the separation of religion from education: Article 8 of the Education Law of the People's Republic of China (1995), Article 4 of the Law for Promoting Private Education in the People's Republic of China (2002), Article 7 of the Regulations for Chinese and Foreign Cooperation in Running Schools (2003), Article 44 of the Regulations on Religious Affairs (2017).
- Legal norms that regulate religious activity and affairs: Article 2 of the Law for Assembly and Demonstration in the People's Republic of China (1989), Article 7 of the Advertisement Law in the People's Republic of China (1994), Articles 11 of the Autonomy Law of Nationality Regions in the People's Republic of China (amended 2001), Article 92 in the General Provisions of the Civil Law in the People's Republic of China (2017), Articles 148 and 149 in the Basic Law of Hong Kong Special Administrative Region (1990), Articles 128 and 133 the Basic Law of Macao Special Administrative Region (1999), Articles 4-11 in the Provisions of Administration for Religious Activities of Foreigners in the Territory of the People's Republic of China (1994), the Regulations on Religious Affairs (2017), Articles 30 and 31 in the Regulations for Administration of Print on August (2001), Article 6 in the Provisional Regulations of the People's Republic of China Governing Land Use Tax in Cities and Towns (amended 2013), Articles 2-5 in the Measures on the Examination, Approval, and Registration of Venues for Religious Activity (2005), Articles 2-8 in the Rules and Regulations of Administration for Religious Activities of Foreigners in the Territory of the People's Republic of China (2000), Administrative Measures for Religious Groups (2019), Administrative Measures for Religious Clergy (2020), Administrative Measures for Religious Institutions (2021), Administrative Measures for Internet Religious Information (2022), Administrative Measures for Financial Affairs of Religious Premises (2022), Management measures for the reincarnation of living Buddhas in Tibetan Buddhism (2007), Measures on Establishing Religious Schools (2007), Articles 141, 148, and 148 of the Basic Law of Hong Kong Special Administrative Region (1990).
- Legal protection of religious liberty: Article 251 of the Criminal Law of the People's Republic of China (amended 1997), Articles 11 and 53 of the Autonomy Law of Nationality Regions in the People's Republic of China (amended 2001), Articles 1-3 of the Provisions of Administration for Religious Activities of Foreigners in the Territory of the People's Republic of China (1994), Article 4 of the Regulations on Religious Affairs (2017).

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- Legal norms included in administrative regulations on religion issued by the State Administration for Religious Affairs.
 - The White Paper “China’s Policies and Practices on Protecting Freedom of Religious Belief” (2018).

In Russia, the right to freedom of religion and conscience is guaranteed by Article 28 of the Constitution (amended 2020), whereas Article 29 prohibits provocation of religious intolerance and protects the freedom of opinion. These guarantees are doubled in the constitutions and charters of the subjects of the Russian Federation. Federal law No. 125-FZ “On Freedom of Conscience and Religious Associations” (amended 2022) defines the state's relationship with religion and regulates religious affairs in Russia as well as Article 123.26 of The Civil Code of the Russian Federation (amended 2022), whereas Articles 148 of the The Criminal Code of The Russian Federation (amended 2022) and Article 20.3.1 of the Code of Administrative Offences of the Russian Federation (amended 2023) provide legal protection of this right. Another federal law, No. 76-FZ “On the Status of the Military Personnel ” (amended 2022) regulates the realisation of religious freedom by the military personnel in Article 8. Article 2 of No. 113-FZ “On the Alternative Civilian Service” (amended 2020) guarantees the right to replace military service on conscription with alternative civilian service if serving in the military contradicts with religious or other beliefs of a citizen. On top of that, Article 14 of the Constitution establishes separation of church and state and guarantees that no religion can be established as the State religion in Russia. Additionally, there is a collection of resolutions and rulings of The Constitutional Court of the Russian Federation published as “The state of the freedom of religion as of 2021”.

Russia is also a member of The Eurasian Economic Union and according to Article 1.3 of the Decision of the Board of the EE Commission N 30 (amended 2023) "On measures of non-tariff regulation" any printed materials (religious included) can be a subject of control and be banned from import and export if found dangerous for human health, public order, territorial and social integrity, etc.

The listed materials and methods allowed us to conduct our analysis, given the results of which, we reached the goal of our study.

3. RESULTS AND DISCUSSION

Our analysis revealed that the realisation of the right to freedom of religion and conscience in China regulated by three major mechanisms:

1. The legal recognition and protection of this right
2. The state control of religion and religious affairs
3. The legal protection of secularism
4. The legal support of the socialist ideology with the dominant role of Marxism-Leninism and communism values (as expressed by Xi Jinping, the president of the People's Republic of China at 19th National Congress of the Chinese Communist Party)

It appears that the goal of the Chinese legislation is not only to provide an efficient legal recognition and protection of this right, but also to completely eliminate religion from social institutions such as education. For that, China puts under the state control all “religious affairs that involve state interests or the social welfare” (Article 6, Religious Affairs Regulations). That includes: the state approval of places of group religious activity and their inspection by the Religious affairs departments, control of religious clergy, control of activity of religious groups and institutions, control of religious activity of foreigners, control of religious information on the internet, etc. It is also noticeable that the Chinese legislators try to secure their country from an external influence that can possibly destabilise the multinational and policonfessional society of the republic through religions. Professor B. Leung, whose findings were made almost two decades ago but remain important to this day, explains that this is one of the historical and cultural specifics of China, where, despite the ideological conflict between “dialectic materialism and religious idealism”, the government aims to demonstrate the prevalence of religious liberty (Leung, 2005). Nevertheless, the Chinese Communist Party has reasons to fear that religion can be used as a tool to weaken or divide the country [7] [12]. More recent research works, tend to criticise the Chinese approach towards the protection of religious liberty. R. Rusnandi, for instance, insists on lifting up the current limitations, including the digital control, because they separate China from integration into the process of globalisation of religious liberty [10] Here, we want to appeal to Dr. Tao's research, according to which, such integration wouldn't correlate with the policy of the Chinese Communist Party. However, we also consider fair their opinion that the complete eradication of religion in China is not in the interests of the Chinese government either [12]. Those are confirmed by the provisions of the White Paper “China's Policies and Practices on Protecting Freedom of Religious Belief”.

We find it significant that neither the Constitution of China nor other laws guarantee the Chinese freedom of conscience – it's only mentioned in the Basic Law of Hong Kong Special Administrative Region (Article 32) and the Basic Law of Macao Special Administrative Region (Article 34) without any

definition. Does it mean that the freedom of conscience has no legal protection in the republic? If we appeal to the definition of freedom of conscience provided by The Big Legal Dictionary (Panov, Stscherba, 2009) where it is described as “the freedom of an individual from any ideological control, the right of every person to independently choose for themselves a system of spiritual values, which covers all aspects of intellectual and spiritual human life” to interpret the Chinese legislature, we can suggest that Article 130 of Civil Code of the People’s Republic of China (“The persons of the civil law enjoy their civil-law rights according to their own will and in accordance with law free from any interference”) and Article 25 of the Basic Law of Macao Special Administrative Region (“All Macao residents shall be free from discrimination, irrespective of their nationality descent, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status or social conditions”) can be seen as such. But it’s important to note, that when we talk about the Chinese protection of the freedom of conscience, we acknowledge that it is limited by the official ideology of this country. For example, Article 24 of the Chinese constitution establishes “teaching in morality and patriotism” which means an interference with people’s individual moral and spiritual choices. So, as well as it goes with religious freedom, the law protects only “normal activity” that fits the core principles of the official ideology.

According to the results of our analysis of the Russian legislation, the country has more efficient legal recognition and protection of the right to freedom of religion and conscience. Not only this right is guaranteed by its Constitution and Constitutions/Charters of its subjects, but it also has a strong legal support provided by the Criminal Code, the Civil Code, the Code of Administrative Offences and federal laws. Primarily, it can be explained by the simple fact that Russia and China have different systems of government. As a democratic state with liberal values, Russia, for example, doesn’t have a state ideology and recognizes human rights and freedoms as the major value. Thus, the mechanisms of realisation of the right to freedom of religion and conscience in it are supposed to work mainly towards its protection. But Russia is also a secular state that enforces this principle in its laws (Article 4 of the Federal law No. 125-FZ “On Freedom of Conscience and Religious Associations”). Nevertheless, the Russian legislation doesn’t give an impression that its main goal is to protect social institutions from religious influence. This is supported by the amendment added in the Russian Constitution in 2020: “The Russian Federation... is preserving the memory of the ancestors who passed on to us ideals and faith in God” (Article 67¹). The fact that a discipline known as "Fundamentals of Religious Cultures and Secular Ethics" is taught at Russian schools can be seen as another proof. We consider these historical and cultural specifics of the Russian Federation where both religion and secularism are seen as tools to unite its multinational and multicultural citizens [13].

We find it necessary to mention that neither the Russian Constitution nor other legal acts provide a definition of the freedom of conscience. Although this freedom is guaranteed by the main law of the country, the nature and elements of it remain unclear, hence the problematic character of its realisation. Some Russian scholars tend to include the definition of the freedom of conscience into what they call “the negative dimension” or the right not to belong to any religion, however, the legal practice suggests otherwise: the freedom of religion is the right to choose world-outlook and act accordingly, hence, the collisions in laws [9]. A. Kuznetsov and O. Yalovoy even insist that, currently, there is no legal protection of the freedom of conscience in Russia because Article 148 of the Criminal Code, that is supposed to provide it, covers exclusively the relationships that occur in the process of realisation of religious liberty, and excludes the freedom of conscience [4]. Here, we share Professor Skorokhodov’s point of view that these freedoms have different subjects: the freedom of conscience belongs to every individual, whereas the freedom of religion – only to believers, therefore, the freedom of conscience is broader [11]. We also support the idea of A. Kuznetsov and O. Yalovoy about the necessity of separation of the right to freedom of religion and conscience in two different institutions in order to raise the efficiency of their realisation [4]. Additionally, we want to mention that in 2020, HSE University conducted a syntax analysis that discovered a direct connection between abstract terminology and difficult textual structures used in Russian laws and problems with their correct implementation [2]. Foreign studies here are also not to be ignored. M. Hanukai, for example, in his research work “Russian Actionism as Biopolitical Performance: Shifting Grounds and Forms of Resistance” sees a violation of the right to freedom of conscience and expression in the criminalisation of blasphemy in Russia [3].

Apart from the differences and commons listed above, our study also revealed the following similarities in the Chinese and Russian approaches towards the right to freedom of religion:

- Obligatory state registration of religious organisations (Article 11 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Article 7 of the Religious Affairs Regulations)
- State control of the activity of religious organisations and groups (Article 11 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Administrative Measures for Religious Groups; Administrative Measures for Religious Institutions; Article 6, 18, 21 of the Religious Affairs Regulations)
- Religious organisations and groups are allowed to maintain foreign relations (Article 20 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Article 9, 17 of the Religious Affairs Regulations)

- Religious organisations are allowed to possess property (Articles 21-22 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Articles 49-51 of the Religious Affairs Regulations)
- Religious organisations are allowed to establish religious schools and educational centres (Article 19 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Measures on Establishing Religious Schools; Articles 11-18 of the Religious Affairs Regulations)
- Religious organisations are allowed to publish literature (Article 17 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Article 45 of the Religious Affairs Regulations)
- Financial activity of religious organisations is a subject of state control; (Article 25.1 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Article 582 of the Russian Civil code; Administrative Measures for Financial Affairs of Religious Premises, Articles 52, 56, 57 of the Religious Affairs Regulations)
- Missionary activity and pilgrimage are subjects of state control (Articles 17.1, 24.1-24.2 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Articles 3, 12 and 15 of the Rules for the Implementation of the Provisions on the Administration of Religious Activities of Aliens within the Territory of the People’s Republic of China)
- Religious activity of foreigners is a subject of state control (Article 13, 25 and 25.1 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Provisions of Administration for Religious Activities of Foreigners in the Territory of the People’s Republic of China)
- Religious activity that violates or abuses laws is forbidden (Article 14 of No. 125-FZ “On Freedom of Conscience and Religious Associations”; Article 36 Constitution of the People's Republic of China, Article 3 of the Religious Affairs Regulations)

Meanwhile, we consider the most significant differences the following:

- There are only 5 state-sanctioned religions in China (Buddhism, Catholicism, Daoism, Islam, and Protestantism) and only organisations associated with them are permitted to register with the government, hold worship services, provide religious education, etc.
- In Russia, the government does not interfere with lawful religious activities and has no influence on citizens' determination of attitude to religion and religious affiliation. Russia recognizes and protects religious and ideological pluralism.
- In China, religious groups and organisations are supposed to assist the people’s government in implementations of laws (Article 8 of the Religious Affairs Regulations), whereas in Russia, there

is a complete separation of religion and state (Article 4 of the No. 125-FZ “On Freedom of Conscience and Religious Associations”).

- China is a country with one official ideology, whereas the Constitution of Russian Federation guarantees pluralism of ideologies and beliefs (Articles 13 and 14).

Another finding of ours highlights another important fact: despite their differences in the approaches towards legal recognition and protection of the right to freedom of religion and conscience as well as the understanding of its nature, China and Russia pursue identical goals. In summary, the current mechanisms in these countries are supposed to: 1) to protect territorial and social integrity; 2) to protect public order; 3) to promote religious tolerance and the unity of peoples. These goals are established by the Chinese (Article 36) and Russian (the preamble) Constitutions and doubled in other national laws such as Russian No. 125-FZ “On Freedom of Conscience and Religious Associations”.

4. CONCLUSION

Our study shows that the current mechanisms of legal recognition, protection and limitation of the freedom of religion and conscience in Russia and China have historical and cultural premises and should be seen as a response to challenges faced by these states as developing multicultural and policonfessional countries, where the main goal is to maintain the territorial and social integrity, public order and sovereignty. Given the results, we conclude that despite its differences, Russia and China share enough mechanisms to develop a common international legal act to improve the efficiency of realisation of the right to freedom of religion and conscience. However, we think Dr. Tao’s claims that any further limitations of this right can provoke social tensions [12] should not be ignored. Therefore, we suggest to avoid developing new mechanisms for restrictions. Instead, we offer a set of measures that, in our view, should help improve the performance of already existing laws:

1. The lack of adequate terminology lowers the efficiency of realisation of legal acts, hence the importance of developing a universal definition of the freedom of conscience.
2. Combining freedom of religion with a freedom of conscience may create collisions in law. Thus, we find it necessary to separate them in two different legal institutions.
3. It’s obvious that neither China nor Russia considers these freedoms infinite. Establishing to what extent they can be limited in the interests of society can prevent their violation and abuse. Here, an exhaustive definition of “normal legal activity” will be useful.

We disagree with the notion that China is intended to completely eradicate religions on its territory and consider that there’s a sufficient number of evidence to suggest otherwise. Furthermore, according to

research of P. Liang and Sh. Xiao, religions already serves as a support for the current government because believers are the most active voters in rural areas [14]. However, we tend to support the opinion that the Chinese Constitution protects the inner freedom of religious belief, but not the freedom of religious practice [6] because, according to our findings, not only seeks the government of China ways to control every single element of religious activity, it also tends to see it as a threat and therefore, takes coherent steps towards turning it into another tool of the state's official ideology. The consequences of such a policy may cause an effect opposite to the aims of the Chinese government, and destabilise the society [12]. Russia, on the other hand, recognises the importance and independence of religion on the constitutional level but still hasn't succeeded in the correct implementation of the legal protection of these guarantees and that also causes tensions in the society and collisions in law [9] [4]. Thus, we consider that a development of common measures to ease the current limitations should become a matter of further research.

Additionally, we find it important to note that the establishment of any new human rights organisations or conventions should not be done with the purpose to antagonize the existing international law but to harmonize it, make it functional for all states.

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ABOUT THE AUTHORS



Natalia Igorevna Shumakova – PhD student in Constitutional law at the South Ural State University (National Research University)
Address: Lenin Ave.76, Chelyabinsk, Russian Federation
e-mail: asp21sni179@susu.ru
ORCID ID: [0009-0004-6063-0650](https://orcid.org/0009-0004-6063-0650)



Elena Viktorovna Titova – Doctor of Law, Associate Professor, the Head of Constitutional and Administrative Law Department, the Head of Law Institute of the South Ural State University (National Research University)
Address: Lenin Ave.76, Chelyabinsk, Russian Federation
e-mail: titovaev@susu.ru
ORCID ID: [0000-0001-9453-3550](https://orcid.org/0000-0001-9453-3550)
Google Scholar ID: [Pqj6OiQAAAAJ](https://scholar.google.com/citations?user=Pqj6OiQAAAAJ)

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