



THE LEGISLATIVE PROBLEMS CONCERNING RELIGIOUS ACTIVITIES AND RELIGIOUS ASSOCIATIONS IN THE RUSSIAN FEDERATION AND KAZAKHSTAN

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ABSTRACT

The article analyses the legislative provisions concerning the freedom of religion and religious associations in Russia and Kazakhstan. The author presents the core norms and provisions of the legislation in both states. The author expresses the opinion that the valid legislation concerning the freedom of religion and religious associations in Russia and Kazakhstan is relatively stable. The constitutional fundamentals of freedom of religion in the legislation of both states stay the same while the unessential changes can be found.

KEYWORDS: State, denomination, confession, law, religious association, legal regulation, traditional religion, freedom of religion.

INTRODUCTION

The law, having the primary legal effect, is characterized by certain features. Thus, it regulates the most important social relations. Today the issue of freedom of religion and religious associations is highly relevant. The aforementioned developing social relations are of complex nature. They combine aspects of social, political, spiritual and economic relations. The legal regulation of the relations is of normative nature. The comparison of legislative regulations in Russia and Kazakhstan, undoubtedly, has theoretical and practical value. Religion being a social institution is a part of the societal structure. Religion is also a form of social consciousness which expresses the certain ideas and regulates social relations and exists as a system of norms and provisions of a person's conduct in a society. Since the ancient times, religion is considered to be an important part of a social life. Since the emergence of religion, the one can notice the bond not only between religion and an individual but also between tribes, kindred, cities, and the whole societies. It is impossible to study religion outside of the social system and political regime. From the ancient tribal times to the times when national governments have been developed, religion was and still is the most important part of social and political history. Therefore, the things that are

considered to be separate today, in the past were developing in one united direction. Current intergovernmental and religious relations have been developed on the basis of universal tendencies. Nevertheless, they can be characterized by the unique tendencies which have been formed on the basis of social, cultural and political conditions in the framework of the societal history. Thus, if during the ancient times the government was forming social relations only based on religion, then during the development of the bourgeois state, the government had to develop the religious relations under the pluralistic conditions.

METHODS

The relations between republic and religion, religious traditions had influenced the governmental history, social and political stability. Today, there are different understandings and concepts of state ecclesiastical relations, and each one of them has its own history of development. For example, the most ancient of the universal religions (Buddhism and Hinduism) and their relations with the state is absolutely different from the relationships between monotheism and the state. Monotheistic Judaism, Christianity and Islam have their own unique characteristics that are connected to religious traditions. For instance, in Christianity, among three

main confessions and in the framework of geo-cultural dissemination, there are absolutely different examples. In a research area of inter-state and religious relations, the notion of “state and ecclesiastical relations” has been often used. Noticeably, state and ecclesiastical relations as a research subject was appeared in the framework of Western European social and political context and has been disseminated throughout the world.^[1]

In accordance with the opinion of the prominent history and the state and church relations researcher, Edward James Wudt, the subject of state and ecclesiastical relations was linked to the history of Christianity and Western civilization and is considered to be important because of its universal form for culture and religious traditions.

According to Derek Davids, another prominent academic in the area, a church is a governmental notion. It has been formed in XVI century in the European history and it is the notion of western civilization. This notion is still used by the USA and the Western states as a definition of the relations between the government and religion. The state and ecclesiastical relations is the system of historically emerged and developed relations between the state (the system of institutions exercising power on the identified territory) and religious associations and groups. The main forms of the cooperation between the governmental power and religious associations are the reconstruction of the churches and cathedrals, the return of property, privileges exemptions, the conclusion of the cooperation contracts, rehabilitation of victims of repressions, and the determination of the religious holidays as a day-off. These notions are changing in accordance with the inner social truthfulness.

THE RESULTS

Nowadays, the notion of state and ecclesiastical relations is used not only in the context of relations between government and a church but more broadly, including the relations between a state and other religions. The reason behind it is that in addition to the traditional churches new religious types and structures have been developed. Another reason is that the need to form institutional structures and relations by determining relations between government and other religions (Hinduism, Judaism, Buddhism and Islam).

Thus, during the last 50 years, the academic literature started to use notions “state-interfaith relations” and “state-confessional relations” in order to describe the relationship between the state and the religious associations.

Kazakhstan is considered to be a multinational, multi-confessional state in comparison to the European multicultural and multi-confessional societies. Due to the majority of Kazakhs and Russians living in Kazakhstan, both Islam and Orthodox prevail. In addition, Russians and Kazakhs who have been living together for centuries

have a lot in common, for example, social relations and state-religious relations. If compare our society to the Western society, then the difference in a social system can be found. The Western states use individual philosophy while we use more general philosophy. Furthermore, there is a strong connection between the religious beliefs and the nation.

The type of the state-confessional relations that has been undertaken by the state has the certain influence on organizational and legal forms of the religious communities and on the content and directions of the religious activity. In the case of Russia, several historical models of the state-confessional relations can be deduced. The first model existed in the Russian Empire and was characterized by the supremacy of Orthodox religion as the main religion while recognizing the restricted rights for the several “accepted” confessions. The second model, radically secular, has been formed in the Soviet Union when the governmental policy was focusing (especially during some periods) on the de-institutionalization of the religion by the political and legal means.^[2]

The modern understanding of the freedom of the religion underlines the securing of the democratic rights and freedoms which guarantee freedom in the context of religion, freedom of opinion and the opportunity to express it by the actions (under the condition that the others rights will be respected). Today many states enshrined these rights in legislation. In reality, the rights remain “ideals” that are implementing slowly. Noteworthy, at the time of the implementation of the rights and freedoms, the legal person performs self-regulation of his/her conduct.

DISCUSSION

The Russian law concerning the freedom of religion and religious associations was adopted less than 30 years ago. Adopted after the transition from the policy of governmental atheism, the Law of the USSR October, 1, 1990 № 1689 “On the Freedom of Religion and Religious Associations”,^[3] gave to certain parishes and churches the status of the legal entities (since the end of the 20s the Soviet legislation did not give such status to the religious associations). Religious associations have gotten the right to own property, litigate to protect rights, use the mass media, freely teach religion to the children and adults. Priests got the right to perform a religious ceremony in the army, hospitals and social security institutions, in jails and camps.

Importantly, the Constitution of the Russian Federation states that Russia is a secular state (Art. 14). The main principles of a secular state are the separation of the religious associations from a state, the principle of equality before the law, the prohibition to establish and operate the religious associations which aimed to incite religious hatred. In addition, pursuant to the Constitution,

no religion can be established as a governmental or mandatory.

The Chapter II of the Constitution “Rights and Freedoms of Man and Citizen” states “everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with other any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them” (Art. 28).

On September 26, 1997, the new federal law “On the Freedom of Religion and Religious Associations” (hereinafter – the Law) was adopted. The Law substituted the previous law of 1990 “On the Freedom of Confession”. The Law did not elaborate on the definition of the freedom of religion and freedom of confession better than it was done in the Constitution.+ No definitions of the freedom of religion and freedom of confession were given. Thus, the new Law was not better than the previous one. The law of 1990 gave the citizen the right to freely choose, have and disseminate religious and atheistic belief, act in accordance with them and establish atheistic social organizations (Arts. 3, 4) under the condition of the legal compliance. The law in force allows citizen only to have “religious or *other* beliefs” (Art. 3(1)), but it does not declare the separation of the atheism from a school (as it was in the previous law).^[5]

It’s worth mentioning that any religious organization on the territory of the Russian Federation must be recognized, e.g. officially registered. A religious organization may be established only voluntarily without any coercion, violence and deception. Importantly, founders of a religious organization must be local residents. For example, in Leningrad Oblast, a founder may be a Russian citizen having a registration at the place of residence, persons without citizenship or foreign citizen permanently living in the region (for example, those who have residence permit). In addition, despite the fact that religious organizations may perform different types of activities (charitable, cultural, educational, entrepreneurial), their main aim and objective are to conduct religious activities, e.g. perform religious ceremonies, services and preaching.

THE INTERPRETATION OF THE RESULTS

The analysis of the normative and legal data in the context of state-religious relations on the post-Soviet territory is necessary for the development of the effective cooperation strategy between the Russian Federation and the CIS countries. The analysis of the religious policy of one of the key Russian partners, Kazakhstan, is especially relevant and important.

SUMMARY

The models of the state-religious relations implemented in Russia and Kazakhstan were mostly identical until autumn 2011. Afterwards, the system of the state-

religious relations in the Republic of Kazakhstan was improved and became completely different from the Russian model.

On October 11, 2011, the law № 483-M “On religious activity and religious associations” was adopted.^[6] This law is slightly different from the previous law of the Republic of Kazakhstan (January 15, 1992, № 1128-X11) “On the freedom of confession and religious associations”.^[7] The new law was aimed to secure appropriate legal framework to fight the religious extremism and to prevent the transfer of the religious organizations into the governmental entities of Kazakhstan.

Currently, there is a collision in law. On the one side, the new law “On the Religious Activity and Religious Associations”, undoubtedly, gave the government additional instruments for counteracting the dangers in the religious sphere. On the other side, the new provisions complicate the activities of the traditional religions in Kazakhstan.

CONCLUSION

Kazakhstan is implementing a concordat model of state-religious relations as one of the types possible for social partnership between Kazakhstan and religious associations acting on its territory. Nevertheless, the concordat relations have been established only for the Catholic church. Thus, the legal status of other religions and confessions, especially traditional for Kazakhstan Orthodox religion and Islam, became less stable which do not lead to the religious security of the society. In our opinion, the constitutional agreements between traditional religions and the government are necessary in order to achieve the social partnership, which may be similar to those of valid concordat between Kazakhstan and the Catholic church. Those agreements may ensure more stable status and may allow them to cooperate with the government in order to guarantee the religious security of the society. In addition, we convinced that concordat principle of the state-religious relations would be successful in the Russian Federation.^[8]

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REFERENCES

1. Krishnaswami A. Study of Discrimination in the Matter of Religious Rights and Practices // Religion and Human Rights: Basic Documents. New York: Center for the Study of Human Rights; Columbia University Press, 1998; 39.
2. Jonathan Fox. A World Survey of Religion and the State. Cambridge Press University, 2008; 115-116.

3. The Law of the USSR “On the Freedom of Religion and the Religious Associations”, 01.10.1990, *Vedomosti SND USSR and VC USSR*, 1990; 41; 813.
4. Federal Law № 125-FKZ, 26.09.1997 (version of 06.07.2016) "On the Freedom of Religion and the Religious Associations, *Rossiiskaya Gazeta*, October 01, 1997; 190.
5. Trofimov Y.F. *Religion and Politics*, Karaganda: Bolashak-Baspa, 2012; 51.
6. The Law of the Republic of Kazakhstan “On the Religious Activity and the Religious Associations”, 11.10.2011, № 483-M, *Kazakhstanskaya Pravda*, October 15, 2011; 330-331.
7. The Law of the Republic of Kazakhstan “On the Freedom of Religion and the Religious Associations”, 15.01.1992, via: <http://www.pavlodar.com/zakon/?dok=00160&all=all.html> (last visited: 19.05.2018).
8. Tarasevich I.A. Problems of the Legislation of the Republic of Kazakhstan on the Religious Activity and the Religious Associations, *Business in Law*, 2013; 104-107.