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## **The features of constitutional and legal regulation of religious activities in the context of sustainable development of European countries**

In the article the constitutional and legal basis for regulating the activities of religious associations in European countries was analyzed. Religious associations are an important element of the social structure of society. In order to maintain stability and security in society it is important to correctly formulate the relations between the state and religious associations. Therefore, the study of constitutional and legal ways of regulating relations between religious associations and the state in the developed countries of the world as well as the definition of the parties necessary for the country is the main purpose of this article. As a result of the study it was found out that in most European countries a differentiated method of regulating religious relations is widely used which differs in the diversity of the state's attitude to religious associations. In European countries along with the traditional religions of secularism the country is in the process of granting special status. In turn, it is used to combat destructive religious movements in the country. The Republic of Kazakhstan as well as in the Law on the last adopted religion outlined the role of Pro-Orthodox Christianity and the role of Islam in the Hanafi madhhab. However, Hanafi madhhab did not give any preference to religious denominations for other religious reasons since the Constitution stated all public associations were equal before the law.

*Keywords:* religious organization, official religion, traditional religion, secular state, freedom of conscience and religious beliefs.

### *Introduction*

The features of legal regulation of religious organizations in different countries of the world do not question the dominant role of the state in relations with the religious community, just as with many other social institutions. State power in the modern world being Supreme in relation to any other social power penetrates into all spheres of life, despite the existence in the political and legal systems of various institutions aimed to limit such penetration. The regulatory role of the state in relation to various subjects raises many questions and problems. The situation in the state-confessional sphere shows that the state faces the objective of developing a new one, including constitutional and legal policy in relation to religion and religious organizations. It is especially important in the conditions of active use of religion for political purposes, the emergence of new religious technologies, and the formation of a multicultural and multireligious society. Foreign experience can play an invaluable role in the improvement of legislation and in the definition of new policies, the study of which is devoted to this research.

### *Methods of research*

General scientific and special-legal methods were used in the process of the research. A comparative legal method has become as the main method of research, due to the objectives set in it. The author also applied historical-legal, concrete-legal methods, as well as general scientific methods of analysis and synthesis, induction, modeling, formalization, logical and historical.

### *Results*

Considering practice of constitutional-legal regulation of freedom of religion in foreign countries, it is necessary to allocate five types of states which in turn should be classified into subtypes: 1) religious states (theocratic states, countries with theocratic signs of their form, state-church); 2) countries with state religion (state church patronized by the state religion (church)); 3) states that adhere to the principle of neutrality with respect to religious associations (neutral states, states with a concordat system of interaction with religious associations); 4) countries adhering to the principle of separation of religious associations from the state; 5) the state with the border status. Necessary attention in the article is paid to research of the content of international legal regulation religious freedom. The work notes that the most important principles and norms of international law relating to religious freedom are integrated into Kazakhstani domestic law.

*Discussions*

In Great Britain, the concept of «official religion» is enshrined at the official legal level. The monarch is officially the head and supporter of the «Church of England». During the coronation, he makes a commitment to protect the rights and interests of the Anglican Church. On the recommendation of the Prime Minister, the bishops and abbots of cathedrals are appointed to the highest Church positions by the monarch power. It should be noted that the two bishops (Canterbury and York), as well as 26 bishops, are members of the House of Lords as spiritual peers. Meetings of the chambers of the British Parliament begin with a prayer read by a priest of the Anglican Church. Still marriages have legal force decorated with the clergy of the Church of England.

The Evangelical Lutheran Church as an official religion is enshrined at the constitutional level also in Sweden and Denmark. According to part 1, paragraph 4, of the Danish Constitution, «the Evangelical Lutheran Church is the official Church of Denmark and as such enjoys the support of the state» [1; 314]. According to the form of government of Sweden, the monarch, as well as princes and princesses should be adherents of this faith. Otherwise, a different religion may result in the deprivation of the right to inherit the throne [2; 802]. The status of traditional confessions in Ireland, Spain, Finland, France, Bulgaria, Greece and a number of other States is enshrined at the legislative level.

The Roman Catholic, Lutheran Church, Judaism, in some lands and Orthodox communities are officially recognized as «subjects of public law» in the regulatory legal acts of Germany. The state is actively involved in the financing of Church social institutions. Article 4 of the Constitution enshrines «the inviolability of freedom of belief, conscience, religious and spiritual convictions, and the unhindered practice of religious rites» [3; 234]. No one is obliged to declare his or her religious convictions under Constitutional law. The authorities have the right to ask about belonging to a religious community only insofar as the rights and obligations of the individual depend on it or official statistics require it. Coercion to participate in Church rites or festivals or to use a religious form of oath is prohibited. The Constitutions of some lands regulate relations between the state and churches in detail. So, 142–150 articles of the Constitution of the state of Bavaria guarantee the protection of the priests in the fulfillment of their duties. Any public reproach of religion, its institutions, priests, members of monastic orders as servants of religion is prohibited and punished.

The constitutional legislation of the Republic of Austria includes the following concepts: «legally recognized Church or religious society», «legally recognized religious teaching». The Roman Catholic Church (according to the Concordat between the Republic of Austria and the Vatican of July 5, 1933), the Augsburg, Swiss and Orthodox churches (according to the Law of June 23, 1967), Judaism (Law 1984, as amended), Islam (Law of July 15, 1917, as amended of 1988) are historically recognized [4; 92].

The Belgian Constitution enshrines the concept of «recognized religion» (Article 24, paragraph 1, item 5). It provides for the possibility of spiritual and religious education at the expense of the state (Article 24, paragraph 3, item 2). The state is obliged to pay salaries and pensions to servants of worship. They include representatives of 6 confessions who have proved their service to the society and received its recognition [5].

It can be said that there are contradictions in determining the legal status of confessions in the Constitutions of Greece and Bulgaria. The Constitution of Greece proclaims the freedom of «known religions» on one hand and prohibits proselytism (Article 13, item 1, 2), on another hand, and enshrines the provision of the dominant religion — the Eastern Orthodox Church (Article 3). The preamble is characteristic of the religious nature of prayer. However, the Constitution establishes the same control of the state both for the servants of the dominant and all known religions, and recognizes the same obligations for them [6]. The Constitution of Bulgaria of 1991 also proclaims freedom of faith, equality and separation of religious institutions from the state (Article 13 item 1, 2). However, in the same Article 13 the Eastern Orthodox religion is established as a traditional faith [7]. The scientists — constitutionalists have often emphasized this inconsistency.

As a rule, the constitutional consolidation of the state as secular includes the following constitutional norms: equality of religious confessions. Thus, according to Article 14 of the Constitution, the Russian Federation is declared a secular state, where no religion can be established «as state or compulsory» legal. The principle of equality is proclaimed before the law and separation from the state of religious associations [8].

Freedom of conscience and religion, prohibition of persecution on religious grounds, coercion to give information about religious views. For example, in accordance with Article 28 of the Constitution of the Russian Federation, «everyone is guaranteed freedom of conscience, freedom of faith, including the right to

profess individually or jointly with others any religion or not to profess any, freely choose, have and spread religious and other convictions and act in accordance with them»; Article 41 of the Constitution of the Portuguese Republic: «Freedom of conscience, religion and worship shall be inviolable. No one may be persecuted, deprived of his or her rights or released from his or her civil duties and obligations because of his or her religious convictions or activities. None of the authorities are not entitled to anyone to ask questions about the convictions or religious activities, with the exception of statistical data collection of an anonymous. No one can even be prosecuted for refusing to answer these questions») [9; 600]; the right of religious organizations to independent activity (Article 16 of the Charter of basic rights and freedoms of the Czech Republic declares: «Churches and religious communities independently manage their Affairs, in particular, establish their authorities, determine their clergy, establish monasteries and other Church institutions independent of state authorities» [10]; items 3–6 of Article 137 of the German Constitution of 1919 (still in force) provides: «Every religious society independently arranges their Affairs and manages them within the boundaries of the binding law for all, also confers their positions without the participation of the state or the civil community. Religious societies acquire legal capacity on the basis of general provisions of civil law... remain publicly legal corporations, as they have already been. Other religious societies should be granted the same rights at their request if they guarantee long-term existence by their structure and number of members. If several such public law societies are joined into the Union, such Union is also a public law Corporation. Religious societies, which are publicly legal corporations, have the right to tax on the basis of civil tax lists in accordance with the provisions of land law») [11]; separation of the Church from the state, from school, differentiation of their spheres of activity (Article 99 of the Constitution of Latvia «the Church is separated from the state»; Article 41 of the Constitution of Croatia: «All religious communities are equal before the law and separated from the state. Religious communities, in accordance with the law, have the right freely and publicly to perform religious rites, establish and manage schools, colleges, and other institutions, social and charitable institutions. In their activities, they enjoy the protection and assistance of the state») [12, 13];

The legal basis of interaction between the state and the Church (part 4 of Article 25 of the Constitution of Poland 1997: «Relations between the Republic of Poland and the Catholic Church are determined by the international Treaty concluded with the Apostolic laws») [14; 732]; normative legal basis of the status of religious organizations, some property rights of the Church, the peculiarities of their realization and limits (part 6 of Article 10 of the Constitution of Albania 1998: «Religious associations have the status of a legal entity. They are independent in the management of their capital in accordance with their principles, rules and canons, without taking into account third interests»; part 2 of Article 138 of the Weimar Constitution of Germany 1919: «the Property and other rights of religious societies and religious unions on their institutions, deposits and other property intended for the purposes of worship, educational and charitable, is guaranteed») [15].

A similar model of interaction between confessions and the state exists in France, Italy, Hungary, the Czech Republic, the Commonwealth of Independent States (CIS) and many other countries.

The Italian Constitution, as the constitutional legal basis of the social order, enshrines the essential role of the various churches. Their status is determined by Articles 3, 7, 8 of the section «Basic principles», as well as Articles 19 and 20. Due to the fact that more than 90 percent of the population is Catholics, a separate constitutional article is devoted to the status of the Catholic Church. According to Article 7 of the Constitution, «the state and the Catholic Church are independent and sovereign in their respective spheres». Their interaction is regulated more details by the Lateran pacts of 1929 in the modern version. Moreover, they provide a number of advantages for the Catholic Church in order to ensure the «spiritual unity of the nation» (extraterritoriality of papal country residences, ensuring public order, means of communication, water supply of the Vatican, release of clergy from military service, recognition of the civil effectiveness of canonical marriage, etc.). Article 8 of the Italian Constitution declares the free and equal existence before the law of non-Catholic confessions, their right to form organizations in accordance with their statutes [16].

The Russian Federation, Lithuania, Latvia, the Czech Republic, Slovakia and a number of other countries have recently adopted new special laws on freedom of conscience and the status of religious organizations in connection with changes in the social and political system. They set priorities for historically traditional faiths, set probation periods for newly registered religious movements, and set legal restrictions for their activities.

For example, Article 3 of the Federal law of the Russian Federation provides for the possibility of limiting freedom of conscience and freedom of faith in order to protect the foundations of the constitutional system, morality, health, rights and legitimate interests of the individual, to ensure national defense and state

security; deliberate insult of religious feelings of citizens, propaganda of religious superiority, property damage, placement of texts, images insulting religious feelings of citizens are strictly prohibited [17].

The Republic of Belarus also proclaims the constitutional principle of secularism of the state. Article 16 of the Constitution of the Republic of Belarus emphasizes that religions and faiths are equal before the law. The state does not interfere in the determination of the citizen's attitude to religion, the definition of religious affiliation, does not impose on religious associations, the functions of public authorities, state institutions and local authorities. Secularism of education is ensured; the establishment and anonymous activities of religious organizations are not allowed. However, on the basis of written statements of parents and adult students themselves, interaction with registered religious organizations is allowed outside of school hours, taking into account their influence on the formation of spiritual, cultural and state traditions of the people of Belarus. The activity of religious associations is protected from state interference, if it does not contradict the legislation of the Republic of Belarus [18].

The basic conceptual provisions contain in the Law of the Republic of Belarus «On freedom of conscience and religious organizations» concerning the guarantee of equality of the rights of believers and non-believers, the definition of the conditions for the establishment, state registration and liquidation of religious organizations, their rights and conditions of activity, enhancing the role and functional significance of the state administration for religious Affairs and others. The Preamble of the Law declares «the defining role of the Orthodox Church in the historical formation and development of spiritual, cultural and state traditions of the Belarusian people». At the same time, the spiritual, cultural and historical role of the Roman Catholic Church, Evangelical Lutheran Church, Islam and Judaism in the territory of Belarus is also noted. The defining requirements of this Law are the prohibition of propaganda and agitation, the creation of religious associations that incite national and religious hatred, discrimination aimed at forcibly changing the foundations of the constitutional system, violation of territorial integrity; the creation of armed groups. The establishment of any religion as a state religion is prohibited.

According to Article 39 of the Law of the Republic of Belarus «On freedom conscience and religious organizations» the legal liability provides in case of violation of the legislation of the Republic of Belarus on freedom of conscience, faith and religious organizations, namely: for creation and activity of religious organizations and their members directed against sovereignty, integrity of the constitutional system of the Republic of Belarus, the civil consent connected with violation of the rights and freedoms of citizens; establishment of religious organizations in state authorities and institutions, military units and educational institutions; involvement of minors in religious communities against their will, without parental consent; desecration of religious objects and structures; violation of the secrecy of confession, inciting religious enmity or discord, insulting citizens in connection with their religious views. Article 8 of the Law emphasizes «the prevention of the use of state symbols, meetings, rallies, election campaigning of a political matter... speeches, appeals, insulting representatives of public authorities, officials and individuals». The advantage of the Belarusian legislation is the presence of Article 3 of the Law «Basic terms and concepts used in this Law», explaining the basic concepts and establishing their uniform application. It should also be noted the detailed regulation of the legal status in Articles 10–11 of the state administration for religious Affairs. The law introduces a mandatory state religious expertise upon receipt of religious literature in the library Funds, it is required mandatory marking indicating the full name of religious organizations and their confessional affiliation literature, other printed, audio and video materials produced by religious organizations. For example, these provisions lack in the relevant Russian Federal law.

The legislation of the Republic of Belarus and the Russian Federation coincides in fixing actually identical reasons of refusal in registration and liquidation of the religious organizations. It reflects the main trends in the development of religious legislation in European countries at the present stage. The activity of a religious organization must be stopped in case of violation of public security of the state and public order, propaganda of war, incitement of social, racial, national discord, misanthropy, destruction of the family, encroachment on the rights and freedoms of citizens, human personality, suicide or refusal of the need for medical care, in the case of use in hypnosis, drugs, other psychotropic drugs. The prohibition also ensues when forced to commit depraved acts, renunciation of their property in favor of a religious Association, preventing a follower from leaving a religious Association with the use of real threats of harm to life, health, property, appeals to commit illegal actions by followers, renunciation of duties; obstruction of obtaining compulsory education.

Any destructive activity of religious organizations is suppressed by law. It is the state that protects against encroachments on the rights and freedoms of the individual, and is the expression of the interests of the whole society.

Currently, the Church is an active participant in the struggle for peace, against terrorism, for the equality of nations. The problem of preventing wars occupies an important place in the activities of Christian clergy. The world Council of Christian churches actively and consistently condemns racism and colonialism, allocating significant funds to support anti-racist movements. Religious associations take an active part in solving environmental problems. Thus, the all-European all-Christian Assembly called for the Christians of the European continent to ask their governments to do everything in their power to prevent the destructive use of natural resources, to preserve the favorable environment and ecological diversity of the planet. Thus, in the «Fundamentals of the social concept of the Russian Orthodox Church» it is noted that the Orthodox ethics contradicts the division of nations into good and bad, the humiliation of any nation, that in the course of ethnic conflicts the Orthodox Church does not stand on whose side, except for the obvious manifestation of aggression, violence or injustice by one of the parties to the conflict.

### *Conclusions*

Religious associations fulfill the functions of saving historical and cultural confessional monuments, providing psychological assistance and support to believers, carrying out charitable activities, and organizing spiritual educational institutions. Currently, however, multi-confessional contention is intensified. In our opinion, this trend to some extent is a consequence of the lack of material and financial resources, especially in post-socialist countries; there is a lack of highly qualified clergy, activation of preaching activity of new non-traditional religious communities. In the Republic of Belarus and other post-Soviet republics the situation is complicated by the border confessional position of the States, challenging the right of possession of religious architectural structures and property, various religious confessions in connection with their belonging to these temples at different historical stages, as a rule, the lack of a law on restitution.

Last time there is actual opposition to destructive influence of pseudo-religious organizations of neopaganism, occult, Satanism and other groups. A strategy of social solidarity with the rejection of confrontational ideologies is necessary to prevent and overcome the negative consequences and to prevent the spread of ideas of religious extremism, promotion of traditional humanistic values, program actions for increase the level of social economic development of the country and material welfare of the population. Spiritual purity, moral perfection, tolerance, compassion and mutual understanding are the conditions of peace and prosperity of any state.

The secular nature of the state, enshrined in Part 1 of Article 1 of the Constitution of Kazakhstan, does not mean and does not imply the anti-religious or atheistic nature of the state or its «equidistance» from all religious associations and the isolation of religious associations from other civil society institutions and from the state, does not impose a ban on cooperation of the state and traditional religious organizations to which they express their affiliation or preferred attitude or culturally relate to the most of the citizens of Kazakhstan, in various spheres of public life. And the concept of «secular nature» is not identical to the concepts of «anti-religious» or «atheistic» nature and does not contain an indication of «equidistance of the state from all religious associations» or any distance at all. The relationship between the state and religious organizations as a set of historically evolving and changing forms of interrelation between the institutions of the state and the institutional structures of religious associations is a specific area of domestic and foreign policy of the state. The analysis of constitutional legal norms allowed classifying all types of relations between the state and religious organizations into seven principles and forms of manifestation: I) separation of religious associations from the state; II) equality of all religious associations; III) the secularism of the civil service and local self-government; IV) secularism of the education system; V) the inadmissibility of direct state financing of religious organizations; VI) a ban on religious organizations from directly participating in the political struggle; VII) the establishment of a special regime of monuments of history and culture, which are both religious values and shrines.

Of course, the secular model of government is preferable to other theoretically possible models of state religious policy in a multi-religious and multi-ethnic state, which is Kazakhstan. And, in all likelihood, the state in its religious policy will have to combine the implementation of the constitutional principles of freedom of conscience and equality of all religions before the law, ensuring the interests of national security in the spiritual sphere, priority attention to the preservation, revival and development of the historical cultural heritage of the peoples of Kazakhstan, their traditional spiritual values, including religious.

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### **Еуропа елдерінің тұрақты дамуы жағдайында діни бірлестіктердің қызметін конституциялық-құқықтық реттеу ерекшеліктері**

Мақалада еуропа елдеріндегі діни бірлестіктердің қызметін реттеудің конституциялық құқықтық негізіне талдау жасалған. Діни бірлестіктер — қоғамның әлеуметтік құрылымының маңызды элементі. Қоғамда тұрақтылық пен қауіпсіздікті сақтау үшін мемлекет пен діни бірлестіктердің қарым-қатынасының дұрыс қалыптасуы өте маңызды. Сондықтан әлемнің дамыған мемлекеттеріндегі діни бірлестіктер мен мемлекеттің қарым-қатынасының реттеудегі конституциялық құқықтық жолдарын зерттеу, олардың елімізге қажетті тұстарын айқындау — осы ғылыми мақаланың негізгі мақсаты. Зерттеу нәтижесінде Еуропа елдерінің басым бөлігінде діни қарым-қатынасты реттеуде дифференциалық әдістің кеңінен қолданылатыны анықталды, бұл дегеніміз мемлекеттің діни бірлестіктерге қарым-қатынасының әртүрлілігімен ерекшеленеді. Еуропа елдерінде секуляризммен қатар, елдегі дәстүрлі діндерге ерекше мәртебе беру процесі қатар жүрде. Бұл, өз кезегінде, елдегі деструктивті діни ағымдармен күресу мақсатында қолданылады. Қазақстан Республикасы да соңғы қабылданған дін туралы заңында осы бағытты үлгі етіп, осы заңның преамбуласында елімізде ханафи мазхабындағы ислам мен православ бағытындағы христиан дінінің еліміздегі орынын ерекше атап көрсеткен. Бірақ бұған қарамастан, бұл діндерге өзге діни ағымдар алдында заң жүзінде ешқандай артықшылық бермеген, себебі Конституцияда барлық қоғамдық бірлестіктер заң алдында бірдей деп көрсетілген.

*Кілт сөздер:* діни бірлестіктер, ресми дін, дәстүрлі діндер, зайырлы мемлекет, ар-ождан бостандығы.