

LEGAL REGULATION OF RELATIONS BETWEEN THE STATE AND RELIGIOUS ORGANIZATIONS IN UKRAINE AND COUNTRIES OF THE EUROPEAN UNION

National Aviation University
Kosmonavta Komarova Avenue, 1, 03680, Kyiv, Ukraine
E-mail: marinachervenкова19@gmail.com

Abstract.

Purpose: to study the current legal regulation of relations between the state and religious organizations in Ukraine and the European Union countries in order to determine the optimal model and mechanisms for their regulation. A system of sectoral legislation and norms of European law are considered. **Methods:** empirical, optimization and comparison. **Results:** an analysis of the legal regulation of relations between the state and religious organizations in the field of education in the process of European integration and reform of the legislation is carried out. The experience of European countries in the regulation of educational religious relations is researched. **Discussion:** national and international regulations relating to relations between the state and religious organizations.

Keywords: the relations between the state and religious organizations, administrative and legal regulation, legal status of religious organizations, the educational sphere, internal organizational processes of education, freedom of conscience and religious organizations.

Introduction. In Ukraine with the advent of independence, qualitative new social relations began to develop, along with their development, the relations between the state and religious organizations, whose administrative and legal regulation should meet the requirements of the present, develop. The existence of religious organizations in Ukraine is objective because they are a special form of realization of the religious life of society. The activities of such organizations are impossible without cooperation with the state. The need to provide a full legal status of religious organizations, the creation of favorable conditions for their activities, the coordination of state-religious dialogue makes relevant scientific research on improving administrative and legal regulation in this area.

Problem and its connection with scientific and practical tasks. In general, relations between a religious organization and the state in many cases depend on the level of socio-economic development of the country, historical traditions that have developed in society. Therefore, today there is an urgent need to determine the optimal model of state-religious relations in Ukraine, the study of international and national legislative regulation, etc. Interest in these problems is explained by the fact

that for a long time the role of religion in the development of society and the influence of religious institutions on the overall process of state formation were underestimated.

The development of effective mechanisms for interaction between the state and religious organizations to minimize cases of abuse of religious freedom and religious activity in the modern system of legal regulation should be one of the important areas of state policy in the field of religious life.

Re-thinking religion as a civilization phenomenon and its inclusion in the social process is not only domestic traits. Such a trend is observed all over the world. One of the main areas of cooperation between religious organizations and state institutions is the educational sphere, which reflects the nature and specificity of such interaction. Such cooperation is based on the constitutionally enshrined principle of non-interference, namely the separation of schools from religious organizations, which is reflected in special legal acts [1].

Analysis of result research. G. Spencer, pointed to the essential social functions of religion: 1) religion serves as the basis for managing the behavior of people, legitimizing its traditional forms; 2) it strengthens family ties; 3) it justifies and

strengthens national unity, which initially should be conceived as religious unity. He drew attention to the values of spiritual values, which, in his opinion, can be a great force that influences social change [2, p. 52].

M. Palinchak emphasizes that scientific incorrectness is used as an argument for incitement of inter-confessional hostility, intolerance in inter-confessional relations [2, p. 53]. The scientist has the right to criticize not religious beliefs, but only the output of their organizational structures for the sphere of what is actually religious, in particular, access to politics, economics, etc. [3, p. 9]. In this regard, the concept of "state-church relations" becomes of particular importance, therefore, it is necessary to provide a clear definition and to disclose its content.

According to Vovk, the "broad" approach to the concept of religion, which in the composition of religious phenomena includes forms of secular religion, is the most balanced and argued, since the religious complex operating in a society has its own sphere of functioning [4, p. 55].

K. Deurre notes that the development of precise terms, precise formulations for a well-considered policy is important. The author emphasizes that inaccurate definitions in the laws governing the activities of religious associations may lead to "the threat of discrimination of religious groups that are found on the verge of determination" [5, p. 160].

Setting objectives. In Ukraine, the system of relations between the state and religion in the field of education is characterized by separation of secular and spiritual internal organizational processes of education, and at the same time, the joint activity for the purpose of proper spiritual and moral education of the population within the framework of secular educational institutions through the introduction of optional educational disciplines of moral, ethical and spiritual orientation. In general, cooperation between religious organizations and state institutions in the educational sphere is at the stage of formation and conceptual definition of the principles and methods on which the joint activity of secular and spiritual educational systems will be based.

Legal regulation of state-church relations is one of the real and effective ways to guarantee the protection of rights in the field of religion. The system of state-church relations in modern Ukraine is regulated both by international and national normative-legal acts.

Presenting main materials. The regulation of this sphere of public relations by international law

is stipulated by Article 32 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations": if an international treaty in which Ukraine participates, other rules are established than those contained in the legislation on freedom of conscience and religious organizations, then the rules of the international treaty [6]. The law establishes the priority of international law over national legislation in the area of freedom of conscience.

The question of freedom of conscience in the field of education is regulated by a number of international legal acts.

According to Article 26 of the Universal Declaration of Human Rights, 1948, the Constitution states that education should aim at the full development of the human person and increase respect for human rights and fundamental freedoms. Education should promote mutual understanding, tolerance and friendship among all peoples, racial or religious groups.

The Declaration of Principles of Tolerance of 1995, approved by resolution 5.61 of the General Conference of UNESCO of November 16, 1995, raises pressing issues of intolerance of society in various spheres of public life, including religious ones. Article 4.2. concerns the upbringing in the spirit of tolerance. The article states that States parties should encourage methods of systematic and rational education of tolerance that reveal the cultural, social, economic, political and religious sources of intolerance that underlie violence and alienation. Education policies and programs should promote better understanding, solidarity and tolerance in relations between individuals and between ethnic, social, cultural, religious and linguistic groups as well as nations.

The Convention on the Elimination of Discrimination in Education of December 14, 1960, in accordance with Article 1 (1), discriminates as "any distinction, exception, restriction or superiority in the field of education on the basis of religion".

Article 5 of the Convention states: "States Parties to this Convention consider that education should aim at the full development of the human person and greater respect for human rights and fundamental freedoms; it should promote mutual understanding, tolerance and friendship among all peoples and all racial or religious groups; parents and, where appropriate, legal guardians should be able to freely provide the religious and moral upbringing of children in accordance with their own beliefs, no one or any group of persons taken as a whole should be obliged to impose religious educa-

tion, is incompatible with their convictions " [7]. Such a right is also enshrined in Art. 13 of the International Covenant on Economic, Social and Cultural Rights of 16.12.1966 [8] and Art. 18 of the International Covenant on Civil and Political Rights of 16.12.1966 [9], to which Ukraine acceded.

With regard to national legislation, the exercise of the right to freedom of religion and its implementation in the field of education are carried out on the principles of secularity of the Ukrainian state. According to Art. 35 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of world outlook and religion. The church and religious organizations in Ukraine are separated from the state, and the school is from the church. No religion can be recognized by the state as obligatory. This provision of the Constitution is specified in Article 6 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations", which states that the state system of education in Ukraine is separated from the church (religious organizations), has a secular character. Access to different types and levels of education is provided to citizens irrespective of their attitude to religion. Limitations on conducting scientific research, including funding by the state, propagation of their results or inclusion in general education programs on the basis of conformity or non-compliance with the provisions of any religion or atheism are not allowed.

The above-mentioned legal relations also regulate the norms of the Law of Ukraine "On Higher Education", the Law of Ukraine "On Vocational Education", the Law of Ukraine "On General Secondary Education", the Law of Ukraine "On Preschool Education" and the Law of Ukraine "On Out-of-School Education".

In Ukraine, on September 5, a new Law on Education No. 2145-VIII (hereinafter referred to as the Law) was adopted [10]. Article 3 of the Law guarantees equal access to education. No one can be restricted in the right to education. The right to education is guaranteed irrespective of religious or other beliefs. Article 14 grants the right to establish non-state institutions of out-of-school education in the presence of the necessary material and technical and scientific-methodological basis, pedagogical and other workers, to religious organizations whose statutes (provisions) are registered in the order established by law.

Article 31 of the Law regulates the peculiarities of relations between educational institutions and religious organizations. Thus, private educational in-

stitutions, in particular religious organizations founded, have the right to determine the religious orientation of their own educational activities. The leadership of educational establishments, pedagogical, scientific and pedagogical and scientific workers, state authorities and local self-government bodies and their officials is prohibited from attracting applicants for education and labor. educational establishments to participate in events organized by religious organizations (except for private educational institutions), in addition to activities provided for by educational programs Additional requirements for the implementation of pedagogical (scientific and pedagogical) activities in private educational institutions are determined by their constituent documents.

Also, according to the Law, pedagogical, scientific and pedagogical and scientific workers are obliged: to form the desire for mutual understanding, peace, harmony among all peoples, ethnic, national, religious groups in education seekers; parents of educational instructors are obliged: to form a culture of dialogue, a culture of life in mutual understanding, peace and harmony among all peoples, ethnic, national, religious groups, representatives of various political and religious views and cultural traditions, different social backgrounds, family and property status. The state provides parents with education assistance in the performance of their duties, protects the rights of the family. The bodies of state power and local self-government should respect the right of parents to bring up their children in accordance with their own religious and philosophical beliefs, and the subjects of educational activity must take into account appropriate convictions during the organization and implementation of the educational process, which should not violate the rights, freedoms and legitimate interests of other participants in the educational process. Other rights and duties of the parents have gained Educational establishments may be established by the legislation, the constituent documents of the institution of education and the contract on the provision of educational services (if any) (Articles 54, 55 of the Law).

These provisions generally correspond to the accepted concept of secular state-religious relations. However, there are a number of problematic issues, for example, the legislator gives religious organizations the right to establish "additional requirements for the implementation of pedagogical (scientific and pedagogical) activities in private educational institutions", which are determined by their constit-

uent documents, but there are no imperative requirements for the main provisions of such constituent documents of religious organizations in the field of education. Equally important is the equalization of the rights of persons studying in religious educational institutions, with students and students of public schools and universities.

Today, religious organizations, as noted above, have the right to establish educational religious institutions and teach there, but these institutions in the legal field are not equal to secular educational institutions and their participants do not have the amount of rights granted to students or students. state educational institutions. Accordingly, the non-recognition of the state of a school places it in a state of inadequacy of the educational system. Diplomas of such institutions are not recognized by state institutions, its students do not have privileges, which are used by their colleagues from secular high schools, in particular, privileges for travel. Academic degrees in the field of theology also have no legal weight [11, p. 127]. In our opinion, the provision of official status to educational institutions would be an effective mechanism for administrative regulation of education, since such establishments would have to register and license, the state could effectively monitor the observance of educational programs and thus protect the rights of citizens to education. It should be clearly stipulated that the state should not finance such institutions and interfere with their internal activities.

The question of the possibility of teaching religion in public schools was the subject of the attention of the UN Human Rights Committee, which, in commentary (1993) No. 22 (48) to Article 18 of the International Covenant on Civil and Political Rights (1966), established that studies at public schools, as far as the common history of religions and ethics is concerned, is allowed, if done in a neutral and objective manner. But a state education that relates to the teaching of a particular religion or belief is incompatible with the Covenant, if there are no exceptions or alternatives for parents or tutors [12].

It should be noted that the Ukrainian legislator operates an outdated conceptual apparatus in the regulation of religious relations. The notion of "church", "religious organization", "freedom of conscience," "state-religious relations," etc. Uncertainty of concepts, the lack of unification of legal norms, legislation that does not meet the needs of the present, complicates the process of regulation of legal relationships and leads to the spread of legal nihilism among the population.

According to the Decree of the President of Ukraine of December 9, 2010, No. 1085/2010 "On the Optimization of the System of Central Bodies of Executive Power", such a central executive body is the Department for Religious Affairs and Nationalities of the Ministry of Culture of Ukraine [13]. Also, the Decree of the President of Ukraine No. 388/2011 approved the Regulation on the Ministry of Culture of Ukraine, according to paragraph 1 of which the Ministry of Culture of Ukraine is a specially authorized central executive body in the field of religion [14]. All other state institutions that are called to exercise state control over observance of the law on freedom of conscience and ensuring the implementation of religious rights by persons, in particular, the prosecutor's offices, local executive bodies and local self-government bodies, carry out the specified activities within the limits of their competence [15].

The lack of a clear normative definition of the limits of the competence of state institutions in carrying out the said control takes control powers beyond the boundaries of the laws, referring to subordinate acts (first of all, to the decrees of the President of Ukraine), which details the competence of executive bodies.

Based on the classification of models of state-church systems, one can draw the conclusion that state-church relations in the countries-members of the European Union range from a favorable separation to effective cooperation. Even countries where there are national or state churches can be placed in this range.

We will consider the most striking features of the three major models of state and church relations, for example, Germany, Italy and Greece.

The German constitution guarantees neutrality of the state in matters of religion. Article 1 of the Constitution establishes the principle of freedom of religion "freedom of conscience, religion and belief is an integral part of human dignity". Article 3 enshrines equality of rights, prohibits any discrimination on the basis of religion, "no one can be discriminated against, and nobody can be given preference through his ... faith, religious or political views." Article 4 of the German Constitution defines: freedom from faith, conscience, religious and ideological beliefs cannot be violated; guaranteed unrestricted exercise of religious activity; nobody can be obliged to go to military service or to take arms, if it does not correspond to his religious convictions.

Article 7 regulates educational issues: "Religious education is part of a program of public schools. The state has the right to supervise, but religious education should be conducted within the framework of the views of specific religious communities. Teachers cannot be forced to hold religious education against their will. "That is, religious education in schools is approved but not obligatory. The largest churches have their own schools that receive state funding in the same way as other non-religious public and private schools. The same applies to children's preschool institutions. Religious education in schools is compulsory. But the fathers have the right to choose lessons from ethics instead of religious lessons. If at a public school there are at least 6-8 students belonging to a certain religion, they must be provided with the lessons of the respective religion. The federal states resolve the issue of religious education on their own, mainly conducting a policy to implement federal legislation. According to Article 7 of the Constitution, the discipline "Religion" in accordance with Article 14 of the Constitution is set out in accordance with the basic principles of the religion concerned and is equivalent to the school discipline required for the state curriculum. The competence of parents and schools in this issue is enshrined in Article 8 of the Constitution [16].

Some provisions of the Italian Constitution are devoted to religious communities (Article 8): relations between the state and the Catholic Church are being built through concordades that have the same legal force as international treaties; affirms that all religious communities are equally free from the law and formulate relations with religious communities; different from the Catholic Church, giving them the right "to organize themselves according to their own charters to the extent that they do not contradict the current legislation" [17].

The state can deal only with the legal structure of the churches through a formal agreement. Any amendments to the agreements can only be made through a bilateral agreement between the state and the church. The state has no right to change the agreement on its own initiative. It guarantees organizations that have reached such an agreement with the state that their existing legal status will not be changed against their will.

Regarding the individual rights to religious freedom and equality, the Italian legal order is in accordance with the provisions of international law and the principles that are in most constitutions of Western countries. Legislation in Italy also pro-

vides for the mandatory teaching of religion in all primary, secondary and special schools, in educational institutions for the training of teachers and caregivers of children's institutions in Austria (with the consent of parents), Sweden, Italy and Spain [18, p. 69].

Recently, Greek legislation is increasingly subject to changes in the aspect of the regulation of various issues related directly to religious activities. In particular, a ban was imposed on attending priests of schools and collectively attending classes in worship, cancellations of passports, confiscation of vacancies of parish priests, etc.

In elementary and secondary schools, education is conducted in accordance with the tenets and traditions of the Orthodox Church, but non-Orthodox students are not required to attend the relevant courses. Parents have the right to educate their children in accordance with their own religious beliefs. Each recognized religious denomination in Greece, moreover, has the right to open their own schools [19, p. 103].

Conclusions. Consequently, the study and analysis of the models of relations between the state and religious organizations is relevant, since, regardless of the form of government and state structure, modern society is in an intensive secularization.

At the same time, the relationship between the state and the church directly depends on the level of freedom of religion in society. The states that pursue a policy of preserving the history and traditions of the state are markedly different from other legal states. Thus, the issue of administrative regulation of the state and religious organizations in the field of education has a number of problems and theoretical discussions such as the need to unify the legislation, improve the conceptual apparatus, provide equal rights to persons in the field of religion, the need for the development of state institutions for the regulation of religious relations, etc.

In our opinion, the solution to all these problems needs to be addressed in compliance with the principle of separation of the school from religious organizations and the improvement of legislation in accordance with the norms of international law.

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**ПРАВОВЕ РЕГУЛЮВАННЯ ВІДНОСИН МІЖ ДЕРЖАВОЮ
ТА РЕЛІГІЙНИМИ ОРГАНІЗАЦІЯМИ УКРАЇНИ
ТА КРАЇН ЄВРОПЕЙСЬКОГО СОЮЗУ**

Національний авіаційний університет
проспект Космонавта Комарова, 1, 03680, Київ, Україна
E-mail: marinachervenкова19@gmail.com

Мета: вивчити поточне правове регулювання відносин держави та релігійних організацій в Україні та країнах Європейського Союзу з метою визначення оптимальної моделі та механізмів їх регулювання. Розглядається система галузевого законодавства та норми європейського права. **Методи дослідження:** емпіричний, оптимізація та порівняння. **Результати:** проведено аналіз правового регулювання відносин держави та релігійних організацій у сфері освіти в процесі європейської інтеграції та реформування законодавства. Досліджено досвід європейських країн у регулюванні освітніх релігійних відносин. **Обговорення:** національне та міжнародне законодавство, що стосується відносин між державою та релігійними організаціями.

Ключові слова: відносини між державою та релігійними організаціями, адміністративно-правове регулювання, правовий статус релігійних організацій, освітня сфера, внутрішні організаційні процеси освіти, свобода совісті та релігійні організації.

**ПРАВОВОЕ РЕГУЛИРОВАНИЕ ОТНОШЕНИЙ МЕЖДУ ГОСУДАРСТВОМ
И РЕЛИГИОЗНЫМИ ОРГАНИЗАЦИЯМИ
В УКРАИНЕ И СТРАНАХ ЕВРОПЕЙСКОГО СОЮЗА**

Национальный авиационный университет
проспект Космонавта Комарова, 1, 03680, Киев, Украина
E-mail: marinachervenкова19@gmail.com

Цель: изучить действующее правовое регулирование отношений между государством и религиозными организациями в Украине и странах Европейского Союза с целью определения оптимальной модели и механизмов их регулирования. Рассмотрена система отраслевого законодательства и норм европейского права. **Методы исследования:** эмпирический, оптимизация и сравнение. **Результаты:** проведен анализ правового регулирования отношений между государством и религиозными организациями в области образования в процессе европейской интеграции и реформирования законодательства. Исследован опыт европейских стран по регулированию образовательных религиозных отношений. **Обсуждение:** национальные и международные нормы, касающиеся отношений между государством и религиозными организациями.

Ключевые слова: отношения между государством и религиозными организациями, административно-правовое регулирование, правовой статус религиозных организаций, образовательная сфера, внутренние организационные процессы образования, свобода совести и религиозные организации.