

## **LEGAL REGULATION OF MISSIONARY ACTIVITY IN THE CONTEXT OF RIGHT TO FREEDOM OF CONSCIENCE AND RELIGION REALIZATION: TRENDS AND PROSPECTS**

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### **ABSTRACT**

The article the national experience of missionary activity regulation, taking into account the identification of common constitutional grounds for the majority of states restricting the freedom of conscience and religion as a system-forming legal framework. The conclusions are made about a positive potential of content legislative regulation Russian model and the limitations of this form of freedom of conscience and religion and the perspective of its application in the lawmaking practice of foreign countries. The consideration of this model concept as the framework for national legislation unification was justified in order to ensure a uniform law enforcement and accounting in interstate relations.

**Keywords:** freedom of conscience and religion, proselytism, missionary activity, international norms, constitutional bases, restrictions, legal regulation, model, unification.

### **INTRODUCTION**

The constitutions of many democratic states consolidate the freedom of conscience and religion, defining the conceptual basis for its implementation, taking into account the norms of international law. However, the content aspect of this right requires a detailed elaboration [1, pp. 15-35], which is not always reflected in the process of constitutional regulation. In the context of modern state-confessional relations development, one of the components of freedom of conscience and religion is the right to distribute their religious beliefs (proselytism), which makes the basis of missionary activity. Taking into account that many forms of freedom of conscience and religion realization may conflict with the rights and the legitimate interests of other persons, society and a state, it seems reasonable to consider the problem of legal regulation and the restriction of proselytism. Here we can also agree that "a fuzzy legal development of missionary activity ... conceals the danger not only of an interconfessional but also of an inter-state conflict on religious grounds that can provoke a serious geopolitical confrontation" [2, p. 32].

### **METHODOLOGY**

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic and formal-logical one. The opening of the topic was facilitated by the use of formal legal, comparative-legal methods and content analysis.

### **DISCUSSION AND RESULTS**

The analysis of 20 constitutions of unitary (12) and federal (8) states [3] made it possible to reveal that 15 of them consolidate the freedom of conscience and religion with varying degrees of concretization. Each of them contains the norms regulating the grounds for rights and freedoms limitation. According to this criterion, we can distinguish three groups of constitutions: 1) consolidating the general grounds for the limitation of constitutional rights and personal freedoms (Hungary, Russian Federation, the Federal Republic of Germany, Japan, etc.); 2) establishing specific grounds for the limitation of the freedom of conscience and religion, the rights derived from it (Brazil, Greece, India, the Spanish Kingdom, the Republic of Latvia, the Republic of Poland, etc.); 3) the constitutions which do not establish (constitutional) restrictions on the rights and freedoms of a man and a citizen (United States of America).

There are non-typical (rigid) constitutional provisions concerning the freedom of conscience and religion and the rights derived from it. For example, Art. 13 of the Constitution of Greece explicitly prohibits proselytism. On the contrary, the first amendment to the US Constitution prohibits the parliament to issue

the laws that establish a religion or prohibit its free nature. At the same time, the Ninth Amendment clarifies that "The enumeration of certain rights in the Constitution should not be interpreted as the denial or the derogation of other rights preserved by people". However, it is possible to single out typical grounds for (legislative) restriction of human and citizen rights and freedoms in most constitutions, including the freedom of conscience and religion, the protection of life and health of an individual, the provision of morals, public order and security in a state.

Similar provisions permitting the establishment of such restrictions are contained in the fundamental international legal instruments within the sphere of human rights - the International covenant on civil and political rights of 1966 (Article 18) [4] and the Convention for the protection of human rights and fundamental freedoms of 1950 (Article 9) [5]. Consequently, at the present time the sufficient prerequisites for systemic legal regulation of the content and the restrictions of freedom of conscience and religion are developed, including the right to spread their religious beliefs and missionary activity. Moreover, in the current situation this trend is regarded not only necessary, but also as an inevitable one.

Let us clarify that some aspects of proselytism are reflected in the European legislation. But as a rule their regulation is carried out in the context of freedom of speech and public speeches. For example, in France, during the performance of proselytistic activities in public places, the restrictions must be observed specified by law for public events; There is also the prohibition on the demonstration of religious attributes in public places [6]. However, modern researchers note the negative social consequences of the insufficient regulation of proselytism in a number of Western countries [1, p. 15; 7, pp. 43-45]. Judicial practice is developed in the same direction: disputes related to the distribution of religious beliefs are considered within the framework of citizen right to the freedom of an opinion, the freedom of speech and press, and the right to gather in public places peacefully.

So, despite the existence of a categorical prohibition on the establishment of legislative restrictions concerning the free practice of religion in the First Amendment to the US Constitution, judicial practice took a different path. Different categories of public places started to distinguish in terms of protection level (low or high), the realization of the right to the freedom of public speeches, including those associated with proselytism. For example, urban areas, public parks, sidewalks and the areas around administrative, legislative institutions or courts are a high-protection area. They are traditionally designed for public communication and the expression of an opinion. School sites and the territories of the courts or municipal administrations are low protection zones. The level of regulations and restrictions for public speeches will be higher there. The general principle is that public places are for everyone. At the same time, it is recognized that reasonable rules for the use of public places help different speakers to use such places effectively and within the framework of the law [8, pp. 549-550].

The judgment in A. Lovell's case, who distributed religious literature in a public place is indicative one in this issue. The higher court found the city administration decision unlawful and violating the freedom of speech, prohibiting the distribution of any literature without a written permission of an administration representative [9]. However, this decision recognized the admissibility for the establishment of reasonable restrictions conditioned by the requirements of public order protection - not only for the distribution of literature, but also for various forms of public expression of a (religious) point of view in public places.

Besides, within the framework of judicial practice on the disputes related to proselytism, the priority to the right of private property over an individual right to the expression of freedom was established. Thus, the consolidation of a private owner right to prohibit certain types of activities, including public speeches on his territory (for example, on the territory of a shopping center) was fixed. And it does not matter whether it is a closed facility or several outdoor shops [8, p. 551].

In its turn, the European Court of Human Rights gave an interpretation for the provisions of Article 9 within the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 in relation

to the disputes related to proselytism. He noted that the freedom to practice one's religion also includes the right to try to convince one's neighbor, for example, through "training". Without this, the freedom to change (one's own) religion or belief, recorded in the Convention, "would remain a dead letter" [10].

However, the prohibition on proselytism was recognized as compatible with the Convention, if it is accompanied by coercion or other abuses [11]. However, there is an opinion that the European Court of Human Rights can not fully guarantee the protection of religious rights of an individual due to the periodic use of law "neutrality" concept in its decisions related to the rights recorded by the Article 9 of the Convention [12, p. 363].

In this regard, the experience of the Russian legislator, which applied the model of legal regulation for missionary activity as the form of freedom of conscience and religion realization for the first time in 2016, represents a certain research interest. Article 28 of Russian Federation Constitution, Article 3 of the Federal Law "On the freedom of conscience and on religious associations" [13] (hereinafter - the Law on the freedom of conscience) determined the most important components of this freedom content. But only relatively recently, as the part of additional measures establishment to counter terrorism and public safety provision, a detailed legal regulation was provided concerning the issues of their religious beliefs distribution (including the recruitment of new members in religious associations, the implementation of missionary activities).

The legal concept of missionary activity is recorded currently in Article 24.1 of the Law on Freedom of Conscience. One can single out the following signs of missionary activity: its specific content - the distribution of information about one's doctrine, that is, actions aimed at this information obtaining by an uncertain circle of persons or the transfer of this information to an uncertain circle of persons; The public nature of activity; Its specific focus (goal) - the involvement of individuals who are not the members of a particular religious association; A limited circle of entities carrying out this type of activity - religious associations or their authorized citizens and (or) legal entities. This legal structure became a novelty in Russian Federation legislation.

The procedure for the performance of such activities was regulated. In particular, if it is not carried out in the premises and buildings of a religious organization, in the places of pilgrimage, in cemeteries and other places listed in Part 2, Article 24.1 of the Law on Freedom of conscience, then the persons who exercise it, except for a leader, a member of a collegial body and (or) a clergyman of a religious organization, it is necessary to have the documents established by law and confirming their authority from a religious association for this activity. The territorial boundaries of foreign citizen missionary activity are set quite rigidly.

Russian legislation also contains a number of restrictions during the implementation of missionary activities, conditioned both by the issues of public security provision, and the protection of rights, freedoms and legitimate interests of an individual. For example, according to part 6, Article 24.2 of the Law on freedom of conscience, this activity is not allowed: the violation of public order, extremism, an encroachment on an individual, his rights and freedoms, the inducement to unlawful activities, the damage to the health of citizens and other unlawful acts. In general, the content analysis of the of chapter III.1 provisions from the Law on Freedom of Conscience allowed to conclude that a structural model of missionary activity regulation is built on the generally recognized principle of other person rights and freedoms violation inadmissibility. At the same time, there is an emphasis on the basic constitutional rights of a person and a citizen with an international recognition.

A special attention should be paid to its purpose for a proper understanding of the activity essence on the distribution of religious teachings, indicated by Russian legislator as missionary ones and the established legal restrictions. It is the involvement of new individuals in the membership (members, followers) of a religious association. Consequently, not all public distribution of information about the doctrine can be

regarded as missionary activity in the sense that is given to these provisions by the Russian legislator. So, for example, the distribution of such information for the expansion of the number of followers concerning this or that doctrine without their involvement in the composition of a specific religious association is not referred to missionary activity. Hence, it is not exposed to the corresponding restrictions provided for missionary activity. In particular, citizens can exercise their right to the freedom of religion in this form freely without any approval from existing religious associations of the same faith or other entities. The ways of citizen involvement in the activities of specific religious associations are limited through the regulation of missionary activities.

The developed legislative restrictions are associated with an attempt to establish control over the activities of religious associations. Its purpose is the timely detection and the suppression of unlawful activities, the facts of a person's rights and legitimate interest violation, the involvement of new persons in the activities of illegal religious associations. The imposition of responsibility on religious associations for the violation of its implementation procedure by the persons authorized by them is dictated by the desire to order missionary activity.

At the same time, not all ways and forms of religious beliefs distribution are recognized in Russian Federation as legitimate ones including those not related to missionary work. In particular, it is prohibited to distribute religious beliefs and information about a doctrine, if it is related to the violation of the rights of others (for example, with the compulsion to confess or to refuse to profess religion, to participate or not to participate in the activity of religious associations, to religious instruction, with obstruction of implementation Other persons of their right to freedom of religion, with the implementation of extremist activities). The limitations on proselytism in public places, connected with the need to take measures aimed at the provision of public order and security are quite justified. Such activity should be carried out in the manner established for rallies, marches and demonstrations.

## CONCLUSIONS

The considered views of Russian legislator are seen as fully compatible not only with constitutional provisions, but also with the meaning of international act norms in the field of human rights. This is evidenced by the practice of the European Court of Human Rights. The provisions of the International covenant on civil and political rights, which do not specifically stipulate the rights of a person to change religious beliefs look less clearly on this issue. Consequently, reasonable limitations in the process of religious beliefs spread can not be considered as contradicting the Covenant. In this regard, the Russian experience of legislative regulation can be considered as a positive one.

Thus, the right to freedom of conscience and religion is certainly one of the fundamental rights of an individual. However, it can not be considered as an absolute one. Its reasonable limitations, including the ways and the forms of religious belief public distribution, can be considered as necessary to ensure the balance of interests of a particular individual and other persons, society and a state. The international and national legislation of many countries is being developed in this direction, including Russian Federation legislation. It seems that only legislative regulation will allow to avoid state-confessional conflicts and law enforcement arbitrariness in this sphere.

From this point of view, the concept of missionary activity legal regulation model, which was implemented by the Russian legislator in 2016, can be perceived as a framework in order to unify the national legislation, its uniform understanding and accounting in interstate relations on the issues of freedom of conscience and religion provision.

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