Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
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RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.
http://www.dilemascontemporaneoseducacionpoliticayvalores.com/
Año: VI Número: Edición Especial Artículo no.:28 Período: Marzo, 2019.

TÍTULO: Estado vs. Religiones históricamente representadas en el estado: puntos de concurrencia y planos de distinción.

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RESUMEN: El artículo está dedicado al estudio de los imperativos impulsores y determinantes de las interacciones del estado secular y las organizaciones religiosas (especialmente, históricamente representadas en el estado), los límites y modos de tales interacciones. Los autores abordan la cuestión de los límites de la intervención y, por el contrario, la no injerencia del Estado en los asuntos de las asociaciones religiosas. Se examina la cuestión de la naturaleza y el contenido del respeto por parte del estado de los reglamentos normativos internos de las organizaciones religiosas, acerca de la medida debida por el estado al respecto. Se muestra la naturaleza y el contenido de la autonomía de las organizaciones religiosas y sus órdenes internas.

PALABRAS CLAVES: derechos y libertades religiosos, autonomía, estado laico, relaciones entre el estado y organizaciones religiosas, derecho constitucional.

TITLE: State vs. Religions historically represented in the state: points of concurrence and planes of distinction.

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ABSTRACT: The article is devoted to the study of the impelling imperatives and determinants of interactions of the secular state and religious organizations (especially - historically represented in the state), the limits and modes of such interactions. The authors address the issue of the limits of intervention and, on the contrary, non-interference of the state in the affairs of religious associations. The issue of the nature and content of respect by the state for internal normative regulations of religious organizations, about the measure due for the state in such respect is examined. The nature and content of the autonomy of religious organizations and their internal orders are shown.

KEY WORDS: religious rights and freedoms, autonomy, secular state, relations between the state and religious organizations, constitutional law.

INTRODUCTION.

The study of the legal status of religious organizations in a secular state, the fundamentals that impel imperatives and determinants, the limits and conditions of interaction between a secular state and religious organizations inevitably leads to the question of the limits of intervention and, conversely, non-interference of the state in the affairs of religious associations. This question, in turn, deduces the following questions: 1) about understanding and interpretation of the content, determinants and

limits of autonomy of religious associations and autonomous extralegal normative order in the sphere of religion (religious order of a religious organization);

2) about the possibilities, modes and features of the interaction of public legal order and autonomous extralegal normative order in the sphere of religion (understood according to Ponkin (2014);

3) about on the limits of intervention of a secular state in the internal affairs of religious organizations;

4) about the nature and determinants of state respect for the internal regulations of religious organizations, on the content of guarantees of such respect.

Explicit scientific incompetence of this range of issues in juridical science, a very small number of publications on this thematic horizon and related topics (Droit des religions en France et en Europe: Laïcité et liberté religieuse: 2011; Liberté religieuse et régimes des cultes en Droit français. 2005.; Pena-Ruiz, 2006; Ponkine, 2005; Poulat, 2001; Traité de Droit français des religions, 2003.; Markhgeym, Novikova, Tonkov, Butko, 2016) (and this in the context of high scientific-theoretical and applied interest in this topic) determines the relevance of the present study.

DEVELOPMENT.

Research methodology.

The article is based on the using of research methods of system analysis, synthesis, and classification. Through the use of these research methods the author's concept of describing the determinants of interaction and the distinction between a secular state and religious organizations has been developed. In addition, a review, generalization and comparison of approaches to the settlement of these issues in different countries of the world (with the allocation of criteria) allowed descriptively describe and model the answers to these questions.

The empirical basis was the arrays of legislation, judicial practice, other official documents of 14 states of the world (Austria, Hungary, Greece, Denmark, Spain, Poland, Portugal, Russia, Romania,

USA, Finland, France, Czech Republic, Chile), reflecting the foundations and paradigms of interaction between a secular state and religious organizations.

Discussion and results.

The guarantees of respect by the state for the internal establishments of religious organizations are enshrined in a number of international acts and in the national laws of democratic legal states.

The autonomy of religious organizations in relation to a secular legal state (expressed more broadly in an autonomous, extralegal normative order in the sphere of religion) implies institutional (including official-hierarchical), organizational-active, rule-making, arbitral and other autonomy of religious organizations, their substantiveness (independence of existence and functioning) and self-reference in determining of its own intrastructural order and, more broadly, the said autonomous extralegal normative order. In turn, the autonomy of religious organizations corresponds not only to the compelled, by virtue of the constitutional principle of secularity, obligations of the state to recognize such autonomy, but also respect of religious organizations by the state, including their internal institutions. The recognition of the autonomy of religious organizations, determined by the imperatives of the secularity of the state, also compels the state to respect those and, most importantly, refrain from unreasonable and excessive interference in the internal affairs of religious organizations (including the questions of the implementation of religious traditions, religious worship of rites and ceremonies, formation of the internal structure, definition and implementation of internal official-hierarchical relations and religious-" jurisdictional" powers) (Ponkin I.V. 2015).

Of special interest is how and how much the imperative of respect of the state for the internal institutions of religious organizations is reflected in acts and documents — concordats, national laws of states, judicial practice.

Thus, this imperative is enshrined, for example, in paragraph 1 of Article 12 of the Law of Poland from May 17, 1989 “On Guarantees of Freedom of Conscience and Religion”, paragraphs 1 and 2 of Article 15 of the Law of Portugal No. 16/2001 from June 22, 2001 (as amended in 2012) “On religious freedom”, paragraph 1 of Article 8 of the Law of Romania No. 489/2006 from January 8, 2007 “On freedom of religion and general regime of religious associations”, paragraph 2 of Article 15 of the Federal Law of Russia “On Freedom of Conscience and Religious Associations”. As well as in Article 1 of the Concordat dated on July 28, 1993 between the Holy See and the Republic of Poland, the Preamble of the Concordat from May 18, 2004 between the Holy See and the Portuguese Republic, paragraph 4 of Article 2 of the Agreement from July 28, 1976 between the Holy See and the Government of Spain on the waiver of privileges and on the appointment of bishops, Article 1 of the Agreement between the Spanish State and the Holy See on economic issues from January 03,1979.

It is reasonable to single out the following most significant determinants of framing of relations between the state and religious organizations:

1) Guarantees of restriction (limitations, truncation) of the powers of public authority in relation to religious associations, established in the form of legal prohibitions: 1.1) the legal prohibition for the state to interfere in the definition of its attitude to religion by a citizen; 1.2) a legal prohibition for the state to impose on religious associations the implementation of the extrinsic functions for them; 1.3) the legal prohibition for the state to interfere in the activities of religious associations, not inconsistent to the law; 1.4) a legal prohibition to the state to establish any restrictions on religious rights and freedoms of a person solely by law only – and only to the extent that it is necessary in the aim of the protection the foundations of the constitutional system, morality, health, rights and legal interests of a person and a citizen, ensuring of the country's defense and the state's security; 1.5) a legal prohibition for the state to prevent illegally the implementation of rights to freedom of conscience and freedom of religion; 1.6) a legal prohibition for the state to prevent the activities of religious

organizations or the holding of divine worship, other religious rites and ceremonies; 1.7) a legal prohibition for the state to prevent illegally the acceptance of religious or other beliefs or rejection of them, joining in religious association or leaving of it; 1.8) a number of legal prohibitions for the state, determined by guarantees for the protection of religious secrets – a guarantee of the inadmissibility of interrogation as a witness of a clergyman about the circumstances that became known to him from confession, the guarantee of the inadmissibility of interrogation as a witness of clergymen of religious organizations that have passed the state registration – about the circumstances that became known to them from confession; the guarantee of the inadmissibility of bringing the clergyman to responsibility for refusing to testify about circumstances that have become known to him from confession;

2) Guarantees of the autonomy of religious associations, determining the refraining of bodies of state power in their intervention (intrusion) in the internal affairs and rule-making competence of religious associations (from these guarantees follow guarantees of non-interference of the state in the specified issues): 2.1) determined by the secularity of the state the legal guarantees of separation of religious associations from the state, determining the autonomy of their activities and a certain plenitude of the authority in self-regulation; 2.2) legal guarantees of the freedom of everyone not to be forced to report about the attitude to religion, to define their attitude to religion, to confessing or refusing to profess a religion, to participation or non-participation in divine worship, other religious rites and ceremonies, in the activities of religious associations, to teaching religion; 2.3) legal guarantees of the establishment of religious associations and the implementation of their activities in accordance with their own hierarchical and institutional structure; 2.4) legal guarantees for religious associations to choose, appoint and replace their personnel in accordance with suitable conditions and requirements and in the order, prescribed by its internal regulations; 2.5) the guarantee of respect by the state of internal regulations (self-regulation norms, lex canonica) of religious organizations, if these regulations do not contradict the legislation of the Russian Federation; 2.6) the guarantee of free

activity of religious organizations to act in accordance with their internal regulations, if they do not contradict the legislation of the Russian Federation, and have the legal capacity provided for in their statutes; 2.7) a guarantee of the free establishment by religious organizations in accordance with their internal regulations of conditions of the activities of clergy and religious personnel, as well as the requirements for them, including in terms of religious education.

The above determinants fully find constructive correspondences (with different layouts of accents) in the following specialized legislative acts (in current acting editions): for Austria - in the Federal Law of Austria dated January 9, 1998 “On the legal personality of religious denominations”; for Hungary – in the Law of Hungary of 2011 “On the right to freedom of conscience and religion and on the legal status of churches, denominations and religious communities”; for Greece – in the Law of Greece No. 4301/2014 of 2014 “On the legal status of religious communities and their organizations in Greece and other provisions on the competence of the General Secretariat for Religious Affairs”; for Denmark – in the law of Denmark from 24.06.2013 “On the management and functioning of the National Church”; for Spain – in the in the Organic Law of Spain No. 7/1980 from July 05, 1980 “On Religious freedom”; for Poland – in the Law of Poland dated on July 17,1989 “On Guarantees of Freedom of Conscience and Religion”; for Portugal – the Law of Portugal No. 16/2001 from June 22, 2001 “On Religious Freedom”; for Russia – in the Constitution of the Russian Federation, the Federal Law from September 26, 1997 No. 125-ФЗ No. 125-ФЗ “On Freedom of Conscience and Religious Associations”, in a number of other acts; for Romania – in the Law of Romania No. 489/2006 from January 8, 2007 “On Freedom of Religion and the General Regime for Religious Associations”; for Finland – in the Law of Finland from November 26,1993 No. 1054 “On the Evangelical Lutheran Church”; for France - in the Constitution of the French Republic and in the Law of France from December 9, 1905 “On the separation of churches and the state”; for the Czech Republic – in the Law of the Czech Republic No. 3/2002 of 2002 “On Freedom of Religion and the Status of Churches and

Religious Associations and on Amendments to Certain Laws"; for Chile - in the Law of Chile dated on October 14, 1999 No. 19.638 "On the legal structure of churches and religious organizations".

Moreover, if in relation to religious sects of an antisocial orientation, the issues mentioned at the beginning of the article are solved approximately the same everywhere, then with regard to historically represented (traditional) religious denominations (religious organizations representing the respective religions) these issues become very complicated, and realizable reference practice becomes very diverse.

The processes of de-globalization and re-sovereignty actualize the issue of the place and the significance of the so-called traditional religious organizations. Historically represented in this particular state (more precisely, the country), traditional religious denominations (religious organizations representing the respective religions) implicitly perform important functions. Among such functions, Kaygorodtsev identifies the following most important (in public space and for public interests) functions (Kaygorodtsev, 2019, p.13-15):

1) fundamental-value and order-forming functions: 1.1) the creation (along with a number of other determinants) of the foundation and framework of the constitutional design of statehood; this is all the more important if we are talking about building a strong state that is unthinkable without reliance on the own civilizational foundations; 1.2) framing (setting, sorting in the retained rigid frameworks) of the primordial exclusively-indigenous for the peoples of the sociocultural and spiritual-moral order ("dispositive"), image and lifestyle (conjugated images and ways) of life and a unique civilization code, which forms the basis for them and ensures proper (of the positive modality) homeostasis of national statehood; 1.3) framing of the moral order, which is traditional for the Russian cultural space; 1.4) objectification (along with a number of other determinants) of the image of the Motherland and one of the foundations of patriotism; 1.5) the determination of attitudes towards the highest state power, its legitimation in the eyes of the population;

2) protective functions: 2.1) retention of topology and framing of the existing pattern of distribution and interaction of organically complementary (mutually complementary) national-cultural, religious, and spiritual-moral identities of the peoples of Russia, ensuring resistance (resistance to negative impacts) and resilience (ability to survive negative periods with the least losses) of such a picture in conditions of the pressure of foreign orders; 2.2) providing (similar to the immune system of a living organism) of prevention mechanisms for "infection" by destructive (carrying extremely high danger to the state and society — "virulent", "disease-causing") ideologies and constructs, detection and identification on the distant approaches of those of such dangerous ideologies and constructs that mimic under systems of self-evident judgments, "universally recognized imperatives", "universal human values" (free from ideology paradigms do not exist); 2.3) the retention of the population from the introjective apotropy imposed from the outside to their traditional values, ways of life and lifestyles and the introjective pathological xenophilia imposed from the outside and its proliferation (growth within the people); 2.4) ontologization and objectification of an independent moral evaluation of specific power project initiatives, specific actions of state authorities and specific state policies, the behavior and statements of individual representatives of the authorities, to keep the authorities from rolling in the field of defects, dysfunctions, imbalances;

3) relational functions: 3.1) referencing and conjugation of various cultures of the peoples of Russia; 3.2) referencing and conjugation of the cultures of the peoples of a given state and the cultures of the peoples of other states of the world; 3.3) the functions of the international representative of the state;

4) functions of a kind of replacement of the efforts of the state where they should be, but they do not exist or are insufficient (social care for orphans, the sick, the elderly, people with no fixed abode, beggars, help them in re-socialization, provision of primary social assistance, etc.) (Kaygorodtsev, 2019, p.13–15).

It is not by chance that the institute of military chaplaincy is the clearest example of state interaction with traditional religious organizations. The uniqueness and high constitutional and legal significance of the institute of military chaplains (religious ministers carrying out religious spiritual care and feeding in the Armed Forces and assigned to them for these purposes) as the most important guarantee of constitutional freedom of religion (including collective) of military personnel of the Armed Forces is determined by the fact that in conditions of the imperative prohibitions on the creation (recruitment) of military subdivisions on religious grounds determined by the secularity of the state, as well as on the creation and functioning of religious organizations in such subdivisions, the institute of chaplainship conventionally (jointly by the involved parties) provides legal and organizational procedural framing (creates, defines the limits of permissible) of lawful ways and conditions for access of the above-mentioned persons to the realization of religious rights (first of all - in remote locations of military subdivisions) without damage for the interests of military service and at the same time sustainable means of retention (reduction of opportunities) of the state from legally and practically unreasonable interference in these highly personal questions of the military (for more details, see (Chelpanova, 2018, p. 13). And in these issues, autonomy (Redkina, 2016) of religious organizations also manifests itself.

In a number of lawsuits of USA, the representation and functioning of chaplains in the Armed Forces and even in legislative (representative) bodies of state power in the USA at the federal and subjective (of states) levels received judicial support based on recognition of the value and significance of the constitutional tradition of chaplains. Thus, the constitutionality of the status of chaplains was confirmed in the Decision of the US Supreme Court in the case “March against Chambers” dated by 04/07/1983 No. 463 U.S. 783 (1983), the decision of the Supreme Court of the United States in the case dated by 05.05.2014 No. 572 U.S. (2014) “Town of Greece v. Galloway”, the decision of US

Court of Appeals for the District of Columbia dated by 28.10.1983 in the case “Murray v. Buchanan” and a number of other judicial acts.

Findings.

Determined by the secularity of the state, the imperative of the acceptance and respect of the autonomy of religious communities, recognized by the state, means in particular that the state should recognize the right of these communities to act in accordance with their own rules and interests, the state is obliged to respect their internal regulations and practices. Such autonomy allows to religious organizations to independently and self-referentially determine for themselves their specific powers and tasks, decide exactly how the operating controls of a religious organization can implement such powers and tasks, as well as determine the nature and degree of institutional interaction with the state and society, with their segments and institutions. The state has the right to influence the activities of religious organizations through the implementation of basic legal regulation and implementation of legally and de facto reasonable administrative measures, within the limits defined at the constitutional level.

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RECIBIDO: 6 de febrero del 2019. **APROBADO**: 18 de febrero del 2019.