THE PROBLEMS OF THE LEGAL REGULATION OF PROTECTION OF RELIGIOUS FEELINGS OF BELIEVERS IN RUSSIA: HISTORY AND MODERNITY

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Abstract: This article represents an attempt to analyze the protection of religious feelings of believers in the Russian Federation both from the perspective of historical experience and contemporary realities. It notes the influence of the religious factor in the ideological sphere in Russia and in foreign countries. It emphasizes the traditional appeal of the state to the regulation of this sector, although the nature and volume of such regulation differ in various historical periods. It provides a general analysis of different approaches to the regulation of interaction between the state and religious institutions. It also considers the protection of feelings of believers in different historical periods, and provides an analysis of current attitudes. The authors, on the basis of the analysis of the provisions of the Constitution of the Russian Federation and the development of the constitutional principles in the current legislation, have observed insufficient clarity of the wording of the current legislation in such a sphere in Russia. As a result of the study, a series of conclusions was prepared, in particular, regarding the fact that the introduction of the liability for insulting religious feelings of believers in law, as a result of uncertainty of the concept, is focused more on the protection of religious institutions and sacredness as such, rather than is directly related to the protection of freedom of worship and religion.

Keywords: Law, Constitution, history, religious feeling, security, law.

INTRODUCTION

The relationship of religious and state institutions has always attracted great interest of researchers both in Russia and abroad. In our country, the formation of modern political-legal model of relations between the state and religious institutions is traditionally associated with the adoption of the Constitution of the Russian Federation of 1993, which established the fundamental principles of the state policy in the regulation of religious life of the society. Such principles primarily include the secular nature of the state, assuming, among other things, the separation of the state from the religious institutions and equality of citizens and religious associations to the state (Baranov, 2008).

In accordance with the provisions of the Constitution of the Russian Federation, our state is secular. This is one of the fundamental principles of a modern constitutional state. Religious freedom is involved into the systemic interconnection with the principle of a secular state defined as foundations of the constitutional system of the Russian Federation (Zor'kin, 2009).

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The principle of the secular identity implies the existence of such a legal regime, at which the state institutions and religious institutions exist autonomously, on the one hand, and are involved into interaction, on the other: the state creates conditions for the realization of religious pluralism, and religious associations form a part of civil society and are institutions thereof. Regardless of religious views, opinions, and beliefs, all individuals are equal in the realm of religious diversity. Therefore, secular identity does not imply the essential isolation of the religious associations from public life, social processes and, above all, from the spheres of culture, education, health, social protection, etc. (Barkhatova, 2010)

However, in the present ideological sphere, the religious institutions are exposed to the influence of various destructive factors; in fact, there is a war for consciousness. In such war shots form mass media are aimed at spiritual foundations (Project Russia, 2008). "The media... have become the siege weapon in the war of cultures and the most reliable means of making fools of young" (Buchanan, 2003).

METHODS

The authors used general scientific methods (logical, systemic, functional, etc.); specific scientific methods (formal-legal, comparative-legal, method of specific sociological research, statistical, etc.), the method of constitutional comparative studies, of constitutional interpretation.

RESULTS

The implementation of the ideological diversity in the spiritual sphere within the framework of a secular state implies the guaranteeing role of the ideological diversity in the provision of spiritual and religious values, anticipating the existence of the religious pluralism based on ideological freedom in the religious sphere, and the atheistic pluralism based on the right of everyone not to exercise any religion, in other words, the legal equality of all carriers (subjects) of different ideologies. Accordingly, the legislative establishment of a specific criminal liability for insulting feelings of believers appears to be constitutionally inappropriate, since it is discriminating towards people who do not belong to any confession. In this regard, following the moral and ethical values, received their legal expression in the demands of liberty, equality and justice, it seems necessary to exclude the relevant provisions of Article 148 of the Criminal code of the Russian Federation.

The adoption of the law, introducing the criminal liability for acts that can be qualified as insulting feelings of believers, in our view, constitutes the discrimination and violation of the rights of citizens on the grounds of religion and the contradiction with the mentioned articles of the Constitution of the Russian Federation and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It is also hard to determine what falls under the concept of insulting the feelings of believers, and the amendments made in some regulatory legal acts of the Russian Federation can lead to the criminal prosecution for any criticism of religion.

Another controversial aspect of the criminalization of insulting religious feelings of believers, noted by many authors, is not only a violation of the principle of justice, but also of the principle of equality of all before the law and the courts (Rueva, 2015), since the law provides reduced sentence for the similar insults against disbelievers.

DISCUSSION

According to the Article 28 of the Constitution of the Russian Federation, everyone has the right to freely, individually or collectively exercise any religion, not to profess any, to freely choose, exercise and disseminate religious and other views, convictions and act in accordance with them.

Article 19 of the Constitution of the Russian Federation provides the equality of everybody before the law regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitudes to religion, convictions, the fact of belonging to public associations and other circumstances. Any forms of restriction of the rights of citizens on social, racial, national, linguistic or religious identity are prohibited.

Based on the above provisions of the Constitution of the Russian Federation, the state is obliged to equally protect interests and to ensure the legal equality of all carriers (subjects) of different beliefs, without any discrimination.

At that, the legislator, given the historical multireligious pattern of Russia, shall comply with the provisions of Part 1 of Article 17 of the Constitution of the Russian Federation, according to which the rights and freedoms of man and citizen are guaranteed in the Russian Federation, according to the universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Ruling of the Constitutional Court of the Russian Federation, 1999). Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms recognizes the right of everyone to freedom of thought, conscience and religion. Article 14 of the above international act includes provisions prohibiting the discrimination on religious basis in any form.

The Russian Federation is a multireligious and secular state, where many confessions and other religious movements, beliefs, concepts, opinions are equal under the law and may not infringe rights, freedoms and legitimate interests of others. Everyone in Russia, as in a secular state, has the right not to exercise any religion, to promote the atheistic views and to act in accordance with them, however, without offending feelings of believers. But according to the current Russian legislation, the freedom of conscience is understood only as freedom of choice of religion and

freedom of worship, without considering the rights of citizens not to exercise any religion at all.

In 2013, resonant amendments to the Criminal Code were adopted, providing the liability for the "insulting religious feelings" (Article 148 of the Criminal Code). Let us consider some of the aspects of the problem.

First of all, it should be mentioned that the so-called "protection of religious feelings of believers" is not exclusively Russian legal phenomenon. Many countries in different periods provided responsibility for such violations. At the same time, the attitude to it considerably varies in different countries – from imposing the death penalty as the punishment to the rejection of this crime.

The consolidation of the liability for insulting religious feelings, blasphemy, sacrilege is typical for Muslim countries; we could take Iran, Afghanistan, Algeria, Turkey, etc. as an example. And we are not talking only about the protection of Islamic values and feelings of Muslims. The Egyptian law prohibits blasphemy against Islam, Christianity and Judaism; India and other countries have adopted a similar approach. There was the case recorded when proceedings were brought pianist Fazil Sey, for the utterance that "low-life buffoons, thieves and jesters" are all "Allah lovers" (Ivanova, 2013).

The liability for "defamation of religion" is provided in many European countries, for example, in Finland, Denmark, Greece, Germany, Poland, Holland, Iceland, Spain, Croatia, Italy, Norway, Portugal, the Czech Republic and Switzerland and others (Matthew, 2009)

However, it should be mentioned that the attitude to such offences in Europe has been changing since the mid-twentieth century, whereby a series of acts of the Council of Europe contained the recommendations for the decriminalization of blasphemy, sacrilege, and religious insults. For example, on 23 October 2008 the Venice Commission published a report on blasphemy (European Commission for Democracy through Law, 2008). According to it, "the inclusion of religious insults into the number of offences is not necessary or desired" and "blasphemy should be excluded from the offences." In some countries, such provisions were cancelled (Iceland, Italy, Netherlands), in others attempts of cancellation of the regulations were not successful (Denmark, Finland).

The consolidation of the responsibility for insulting the feelings of believers is more typical for countries with a significant influence of the religious factor. In this sense, the position of Russia is ambiguous, since religious institutions, regardless of the confession, had been under pressure of the state for a long time; only in recent years the government began to actively support them.

The protection of religious feelings of believers was different in different periods of history of Russia. If we talk about the period of Ancient Russia, its distinguishing feature was the fact that the adoption of Christianity did not simultaneously undermine the pagan Slavic tribal beliefs. Russia remained under the influence of

these beliefs for a long time, they kind of intertwined with the Christian creed. At the same time, only the Christian institutions were under the protection of secular power, as it contributed to the purpose of strengthening Russian national identity and the idea of subordination of the Church to the secular rulers (Ismailov, 2010). The strengthening of the position of the official Church survived hereafter.

Even in the 17th century, there were prerequisites for the formation of a tolerant attitude towards the dissidents, representatives of alternative religious movements.

In 1763, some of the opposition religious movement got the right to freedom of religion, but the purpose was to control the religious movements by the state. The specific feature of the fight for religious freedom in those conditions was that it was conducted under the slogans of the moral revival of Christianity, the liberation of religious life and the Church from worldly influences. The fight was aimed at the elimination of the strong alliance of the Orthodox Church and the state.

In the 19th century, the understanding of freedom of conscience was supplemented by the new components. In the "Table dictionary" (compiled by Petrashevsky), it was mentioned that tolerance is the lowest level of freedom of religion.

At the same time, the government continued to regulate the religious sphere. According to the "Code of Laws of the Russian Empire", all religions in the country were divided into 3 groups: the state (Orthodoxy), tolerant (Catholicism, Protestantism, Armenian-Gregorian Church, Buddhism, Judaism, paganism) and intolerant (the cult of the Doukhobors, Iconoclasts, Molokans, Skoptsy and Judaizers).

The seduction of Orthodoxy, the spread of heresies and schisms, of materialistic, atheistic views and a number of others were considered special types of crime ("the Penal Code").

The revolutionary situation in Russia in the early twentieth century adjusted its religious policy. In particular, the Tsar's Manifesto of February 26, 1903 included a promise to grant religious freedom, which was confirmed by the decree of 1904 and the Manifesto "On the Improvement of State Order" (October 17, 1905).

In the modern sense, unlike the medieval and later phases, the responsibility for insulting religious feelings is not aimed at protecting any religious institutions, but solely at the protection of individual rights, in this case, rights of a believer, the freedom of conscience and religion. Matetskaya allocates the two models of religion – traditional and modern. The first is almost universal. The second had been developed only in Western societies as a result of secularization, but widespread outside the Western world, often coming into conflict with the local traditional practices. The traditional model relies on the recognition of the objective existence of the sacred and implies the guard for this sacred from the attacks, since such attacks threaten not only the individual, but also his/her group and the existing order in general, but not the sacred, which is invulnerable to man. The concept of

desecration, blasphemy and sacrilege imply to this model. The modern model does not recognize the ontological nature of the sacred, or simply ignores the question of the status of the sacred, but it protects the right of individual to exercise any faith, because it's his/her private matter (Matetskaya, 2015).

The protection of feelings of believers does not fall under any of these models, because, on the one hand, the offensive actions that believers respond to do not limit their right to keep their religion and, therefore, are not related to the protection of freedom of religion, on the other hand. In a secular state, it does not even make sense to talk about special protection of sacredness.

According to Volkov, the introduction of article, directly aimed at the protection of religious feelings, into the criminal code, is not an appropriate and adequate solution of the problem, especially given the fact that this problem is exaggerated, and in the modern Russian society is given more attention than it deserves. It seems that the existing law, if properly applied, is enough to protect feelings of believers (Volkov, 2013).

The legal regulation of realization of freedom of conscience in Russia is regulated by the Federal Law "On Freedom of Conscience and on Religious Associations", which (with the exception of Article 3) does not contain provisions, regulating the legal status of people who do not execute any religion (atheists, agnostics, those with uncertain atheistic worldview), which, in our opinion, is a discrimination against this category of people. The legislator must resolve the rules related to not only the traditional religions, but also to those categories who hold atheistic views.

Accordingly, there is no legal certainty as to the permissibility of existence of certain views, ideologies, concepts, beliefs, etc. that are not consistent with the principle of religious pluralism and ideological diversity. The implementation of the ideological diversity in a secular state implies both religious and atheistic pluralism, based on ideological freedom of a person to exercise any religion or not to exercise any. This provision in the context of the constitutional principles of equality and justice, in our opinion, is the prohibition of discrimination in this area. And the fact that the Criminal Code of Russia sets out the regulations aimed at the protection of one category of citizens, and the rights of the other received no protection, in our opinion, is nothing but discrimination.

The problematic aspect here is the provision of spiritual and religious equality and at the same time, of combating the religious fundamentalism that undermines the basic principles of the secular state.

In a democratic state, what the Russian Federation is claimed to be, the law should not randomly interfere into the religious sphere, where the regulation of social relations occurs through a combination of social norms: moral, religion, etc. In the spiritual (religious) sphere, the legal regulation should establish mainly the

general provisions, at the absence of invasion into the spiritual (intimate and (or) sacral for many) freedom of people.

Religious pluralism is based on ideological freedom in the spiritual realm. In a secular state, the principle of religious pluralism is a necessary element of ideological diversity and is a part of its (state) constitutional order, the fundamental basis of the democratic legal state.

As Martyshko (Martyshko, 2013) rightly noted, the main question raised during the discussion of the bill refers to a primary, fundamental phrase, which it is based on – religious feelings expression. Certain public figures have criticized this notion, pointing out that its record in the legislative environment may lead to numerous abuses as a result of the blur of its contents. So, Khakamada said that "feeling is a vague concept", which does not give a complete idea of what exactly is meant by the specified expression (Khakamada, 2012). A similar opinion (mostly from a legal, not linguistic point of view) was expressed in an open discussion on the "Svoboda" radio by human rights activist Lev Ponomarev ("feelings are elements not very tangible, one has one feelings, another has others", "insulting feelings of believers is not a legal term") (Kara-Murza, 2012). The use of the phrase "religious feelings" was considered incorrect even by some representatives of those circles of society, which can be hardly suspected of the negative attitude to religion as such. For example, a priest and publicist P. Adelgeim commented on this expression as follows: "feelings need to be educated, the rights need to be protected" (Belanovsky, 2012).

As Zhelvis has pointed out, some very rude remarks can be considered as the "insults of the public taste" and considered clearly unacceptable, even if they are not addressed to a certain person (Zhelvis, 2000). However, even if we interpret the term "insult" quite broadly, it remains unclear what lexical units are beyond the legitimate usage in each case. This is due to a huge variety of forms of religious beliefs and feelings (this part of the expression we will analyze below), and to a criterion of voluntariness that is associated with the concept of abuse. Even if we assume that a message, expressing a dismissive attitude towards religion, expressed in the presence of the one, considering himself/herself a faithful citizen and expressed in a form that can be clearly considered indecent, will really directly touch the honor and/or dignity of a specific person, it will not be offensive in every sense of the word as long as the speaker isn't aware that he/she is talking to a follower of the respective confession. Open expression of hostility against the religion views that is not accompanied by attacks on someone's personality, is also not an insult.

The concept of "feelings" cannot be fully analyzed and expressed using the terms of right, since it is deeply individual and cannot be subjected to definite measurement. According to the "Big Definition Dictionary of the Russian language", one of the meanings of feeling is an internal mental state of the person, his/her spiritual experience; the ability to respond to life impressions (Kuznetsov, 1998).

This definition emphasizes the individual, deeply personal origin at the very basis of this concept. Moreover, from a legal point of view, it is hard to say what feelings exactly belong to the category of religious, and why their protection should go beyond the legal norms already established by the legislation with regard to any other opinions. As such, the phrase seems to exempt groups of citizens that don't clearly demonstrate manifestations of religious feelings (atheists or agnostics) from the protection of the law. Given the fact that the term "religious feelings and beliefs", in principle, have no definition, they, depending on the context, may refer to almost anything, and there is no guarantee that it is even possible to separate the legal reality, which it can correspond. Probably, this term was assumed to associate with other expression given in the bill – religions, constituting an integral part of the historical heritage of Russia. But even if we interpret this term from this point of view, it remains unclear how it is supposed to determine the extent of "inherence" and how broadly should we understand the meaning of "historical heritage". The problem is that both those terms are deprived of adequate definitions and are completely based on appropriate units of natural language, involving only a subjective interpretation. With regard to the legal realities, such practice can be very destructive and, as we have emphasized earlier (Martyshko, 2011), can result in creation of wordings having a clearly manipulative nature. For example, this terminological combination does not provide information about whether or not the religious feelings of the so-called "Rodnovers" or the Protestants should be protected (these religious groups are relatively small, but their representatives have reason to believe that both, Slavic paganism, and beliefs, common among the Volga German Protestant can be considered "an integral part of historical heritage"), and does not allow to confidently answer the question of what to do with the protection of feelings of atheists (atheism is not a religion, but at the same time, it had, of course, a considerable influence on the formation of "historical heritage" of the past century). From our point of view, the above terminological units belong to the terms having a manipulative potential because of the lack of definitions and the presence of the obvious possibility of subjective interpretation.

CONCLUSION

It appears that the consolidation of the liability for insulting religious feelings of believers in law:

- is not directly linked to the protection of freedom of conscience and religion, as the insults by themselves do not limit the ability of the person to exercise various forms of religious cults; in addition, the existing legislation of the Russian Federation, in our view, sufficiently protects the freedom of conscience and religion, there was no need in additional protection;
- is focuses not only on protection of religious feelings, but, as a result of the uncertainty of this concept, is more designed to protection of the religious

- institutions and sacredness as such, which, in fact, contradicts with the principle of secularism;
- is partly aimed at strengthening the religious component of Russian society, which for a long time was in a religious vacuum; this is an attempt to form a unifying idea, able to cement the society together, to resist the imposition of so-called "Western values", to set them against the conservatism, based on the strengthening of religious values;
- introduction of the term "believer" to the legislative turnover and securing
 of special protection for his/her feelings actually violates the principle of
 equality, since it goes beyond the boundaries of legal protection of all people
 who do not exercise any religion.

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