

РОЗДІЛ 1
АКТУАЛЬНІ ПИТАННЯ КОНСТИТУЦІЙНО-ПРАВОВОГО СТАТУСУ
ЛЮДИНИ І ГРОМАДЯНИНА

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ON RESEARCH METHODOLOGY
OF LEGAL ASPECTS OF FREEDOM OF RELIGION

ПРО МЕТОДОЛОГІЇ ДОСЛІДЖЕННЯ
ПРАВОВИХ АСПЕКТІВ СВОБОДИ РЕЛІГІЇ

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The article analyzes the concepts of “freedom of worship” and “freedom of religion”, their meanings and peculiarities of methodological use in the context of Ukrainian state and religious policies.

Key words: freedom of worship, freedom of religion, religion.

У статті аналізуються поняття «свобода віросповідання» і «свобода релігії», їх значення і особливостей методологічного використання в контексті українських державних і релігійної політики.

Ключові слова: свобода віросповідання, свобода релігії, віросповідання.

В статье анализируются понятия «свобода вероисповедания» и «свобода религии», их значения и особенностей методологического использования в контексте украинских государственных и религиозной политики.

Ключевые слова: свобода вероисповедания, свобода религии, вероисповедание.

Over two decades of Ukraine's independence have created a system of the religious sphere, to include relationships between churches, the church and the society, the church and the individual, which is distinct from the Soviet model. The freedom of worship that guarantees the possibility of free choice of religion and free expression of one's attitude towards religion has become the key formative factor to such functioning.

Many scholarly papers have been devoted to the problem of "freedom of worship" by Ukrainian political scientists, philosophers and religious scientists, such as M. Babiy [1, p. 5-12], K. Diurem [2, p. 85-105], A. Kolodnyi [6, p. 4-12] and others. Numerous papers by the Center of Church Problems and Ethno-Confessional Research (at the I.F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine) associates M. Rybachuk, O. Utkin, M. Kyriushko and others; works by scientists of the Taras Shevchenko National University of Kyiv Religion Studies Department V. Lubskiy, T. Horbachenko, O. Predko, Y. Kharkovshchenko and others; works by the H.S. Skovoroda Institute of Philosophy associates A. Kolodnyi, L. Fylypovych, P. Yarotskyi, M. Babiy, O. Sahan, S. Zdioruk and others are an important contribution to Ukrainian and European historiography.

The article aims to identify the concept of freedom of worship in the con-

text of current models of state-church relationship.

It is important to note that only the external aspect of freedom of worship can be subject to legal regulation, i.e. the person's practical activities and the external influence of his/her outlook on his/her acts. As correctly emphasized by P. Rabynovych and M. Khavroniuk, "it is impossible to allow or forbid a thought itself, to regulate the process of emergence, alteration or disappearance of thoughts in an individual conscience by legislation or other legal means..."[9]. Hence thought, intellectual activity, a person's inner world including the complex process of an individual's ideological self-determination is beyond the limits of legal regulation.

In scientific literature, the nature of freedom of worship as a legal category has traditionally been defined by an individual's attitude towards religion. For example, a modern Russian lawyer B. Ebzeyev, taking example from Lenin's generally known definition, interprets the freedom of worship as the individual's independence in his/her spiritual self-determination, including his/her attitude towards religion and church, and actions that correspond to his/her beliefs, whether religious or atheistic [4, p. 5-12].

This approach is an obvious oversimplification of the multiaspectual phenomenon of freedom of worship, which covers various spheres of ideo-

logical and cultural self-determination and individual's self-realization. What is missing in some researchers is the obvious fact that religion, by virtue of its nature, completely provides realization of goal and conceptualization. In particular, religion defines the main problem of human life, forming the ideas of absolute values, ideals and ways of achieving them. That is the reason why the ideological systems have emerged in the heart of religions, especially world religions. According to O. Utkin, all moral and ideological issues have been solved by means of religion in course of human history [5, p. 132-141]. Undoubtedly, religion has become a powerful factor motivating human behavior largely because of its ideological function, i.e. by forming human and societal attitude towards reality based on religious values and norms. As L. Khodkova correctly states, religion is based on tradition. The experience of hundreds of generations gives the religious norms a sacral character, making them a strict standard of behaviour and a compulsory stereotype [11]. Therefore, the meaning of freedom of worship cannot be tied to religion as a source of ideas about absolute senses (the sense of life and death, matter and the Universe, etc.) that determine, in one way or another, the life of the whole society.

Moreover, the process of emergence and development of the notion

of freedom of worship testifies that it is the attitude towards religion that determines the peculiarity of this complex phenomenon as it is understood today. This concept of freedom of worship is usually referred to as narrow [10, p. 15-19].

The wide concept of freedom of worship is primarily reflected in the main international legal acts in the field of human rights, regulating the relationships in ideological sphere, such as the Universal Declaration of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention of Human Rights) [7, p. 27-46].

Articles 18 and 19 of the Universal Declaration are very important for us as almost every international document includes references to them. These articles mostly emphasize the freedom of thought and the freedom of worship. Consequently, the Declaration gives equal rights to people of different outlooks, religious or non-religious and guarantees the right to choose not only a religion, but also atheism. The Declaration clearly develops the concept of freedom of religion to freedom of worship, which includes "the freedom of developing a religion with its organization into a state religion". The Declaration guarantees everyone the right to practice their religion of an individual or community, in public or private, to manifest religion or belief in

teaching, practice, worship, and observance of religious rites. This article guarantees the right of free association of coreligionists into religious organizations, founding churches and thus, the state's responsibility to recognize them officially. Beside the freedom of beliefs, search for and free access to them, the Declaration guarantees freedom of expressing one's beliefs and ideas and the right to spread information about them, and most importantly, by any means and regardless of frontiers.

It follows that freedom of religion is not created or granted by the state. People and religious groups have this right simply by virtue of being human and belonging to the human race [2, p. 85-105].

The document clearly defines the causes of restrictions of religious activities. These are the absence of appropriate recognition and respect of rights and freedoms of others in a democratic society, failure to observe fair moral demands, neglect of public order and people's desire for general welfare [6, p. 4-12].

The analysis of the content of Article 18 shows the absence of clear criteria for differentiation of "freedom of thought", "freedom of worship" and "freedom of religion". Hence the freedoms of thought, worship and religion should obviously be viewed as a single freedom, single right that means every human's right to practice and change

a religion or belief, therefore, in terms of content this concept is the most adequate to the legal concept of "freedom of worship".

However, the concepts of "freedom of worship" and "freedom of religion" are closely related, but not identical. While the first one covers a broad sphere of human spiritual and ideological existence, in which a person is free to self-determination and self-realization, the second one concerns the problem of self-determination and self-realization in the system of religion and the freedom of activity of religious associations ("freedom of church"). Freedom of religion in its personal dimension is characterized by the concept of "freedom of faith", which can also be seen as the "freedom of religious conscience".

The freedom of religion, being one of the important structural components of the freedom of worship, "concerns what is the good of the human spirit... everything connected to free functioning of religion in society" [3].

It should be noted that we characterize the free, non-binding self-determination in one of the important spheres of spiritual life, in religious sphere, by the concept of "freedom of religious choice", or, in a broader sense, "freedom of belief". In the process of such self-determination under conditions of multiconfessionality, an individual chooses voluntarily (without compulsion) a certain belief out of many

diverse religions (Orthodoxy, Catholicism, Protestantism, Judaism, Islam, Buddhism, one of the non-traditional faiths, etc.), i.e. a certain confessional paradigm, values, and not simply religion.

The freedom of belief includes the following structural components:

a) the freedom of individual to freely choose a certain confession;

b) the freedom of practicing, adopting and changing one's confession;

c) the freedom of thought, belief, free practice of one's confessional beliefs and their propagation;

d) the freedom of religious self-expression, which implies practicing one's faith, individual or group worshipping in public or private, observing the rites, instructions and rituals of one's confession, building one's life in accordance with its values;

e) the freedom of obtaining and using religious information, acquiring religious knowledge in a religious education system, providing such education to one's children;

f) the freedom of declaring the essence of one's faith to the society and governmental bodies;

g) the freedom of creating religious organizations, applying for membership and leaving such communities [1, p. 5-12].

The articles of international legal documents, legislative acts, the Constitution of Ukraine concerning free-

dom of religion implicitly extend it to the religious communities, indicating individual freedom to "practice their religion and beliefs individually as well as together with other people, practice religious and ritual rites and doctrines". The principle "together with other people" indicates the believers' right to voluntarily unite with their coreligionists to form religious communities, i.e. "brotherhoods of faith, worship and service to God" for group religious practice, "worship, which, in their opinion, pleases God and helps the salvation of their souls" [8, p. 91-134] and for free cult performances, ceremonial acts, rituals, rites, spreading the basics of their doctrine, missionary and other activities.

In other words, a religious community (a religious association, community, church, denomination, group etc.) is a free formation of coreligious citizens aiming to satisfy their needs.

The freedom of activity of religious organizations in social science is mostly defined by the notion of "freedom of church". It characterizes the degree of autonomy and independence of religious organizations in their liturgical, ritual activities, forming their internal and management structure, their legal status, the possibility of free realization of their mission and the goals of their creation. Thus, this notion reflects the socio-juridical, political and economic possibilities of autonomous functioning of the church,

religious associations, communities and other religious organizations in the state.

The notion of “freedom of church” is one of the important structural components of the freedom of religion closely related to the freedom of worship, but is not a part of its structure. In this context the rights and freedoms of religious organizations should be viewed as a derivative of every believer’s right for freedom of faith.

The notion of “freedom of church” structurally includes the freedom of creating, managing and functioning of religious organizations, the freedom of liturgical practice, and also the freedom of economic, financial and charitable activities. The structure of the freedom of church also includes:

- the freedom of religious organizations to establish and maintain freely accessible places of worship and congregation;

- the freedom of educating, instructing and replacing staff according to their requirements and standards;

- the freedom of seeking and obtaining voluntary financial and other donations;

- the freedom of consulting with other religious cults, institutions and organizations, including foreign ones, aimed at cooperation and better understanding of each other’s needs, rights and freedoms;

- the freedom of creating and maintaining respective charity and humanitarian institutions;

- the freedom of producing, acquiring and using objects and materials needed for performing religious rites, rituals and traditions in the appropriate amount.

- the freedom of establishing religious educational institutions, Sunday schools, conducting religious education; the freedom of organized missionary activities, dissemination of religious beliefs and the basis of a certain doctrine [1, p. 5-12].

The above considerations on the sociology of religion are of selective character. They aim to illustrate the thesis that religion is organically integrated into social structure as one of its most important components and is constantly closely interacting with other elements of social architectonics. Therefore, the issue of freedom of religion as a social entity is important.

Thus, the notions of “freedom of worship” and “freedom of religion” are closely related, but not identical. While the first one covers a broad sphere of human spiritual and ideological existence, the second concerns the problem of self-determination and self-realization in the system of religion and the freedom of activity for religious societies. Hence it is important to distinguish these notions, which will have theoretical and historical, political, and practical importance. One of the most impor-

tant functions of the specified notion is that its application substantially helps to increase the theoretical level of analyzing the religious and ecclesiastical state policies, find adequate principles

and values of state regulation of religious sphere, set the degree of justification of political and juridical decisions, and predict its direct and indirect socio-political consequences.

LITERATURE:

1. Babiy M. Freedom of religion: problems of theoretical comprehension and practical implementation and protection. // Religious Freedom: Research Yearbook. Department of Religion Studies of H. Skovoroda Institute of Philosophy, the National Academy of Sciences of Ukraine. Collection of scholarly papers "Freedom of Religion and Democracy: Old and New Challenges". Ed. A. Kolodnyi, Doctor of Philosophy. Kyiv, UAR, № 15 2009, p. 5-12.
2. Diurem K. Legislation on religious associations as a factor ensuring freedom of religion and belief. // Religious Freedom: Research Yearbook. Department of Religion Studies of H. Skovoroda Institute of Philosophy, the National Academy of Sciences of Ukraine. Collection of scholarly papers "Freedom of Religion and Democracy: Old and New Challenges". Ed. A. Kolodnyi, Doctor of Philosophy. Kyiv, UAR, № 16 2011, p. 85-105.
3. Declaration on Religious Freedom. // Second Vatican Council. Constitutions. Decrees. Declarations. Brussels: Living with God, 1992, 577 p.
4. Ebzeyev B.S. Dialectics of individual and collective in the organization of society and its reflection in the Constitution. // State and Law, № 2, 2004, p. 5-12.
5. Utkin O.I. State and law. Legal regulation. // Viche, № 12, 1996, p. 132-141.
6. Kolodnyi A. Freedom of worship in the international legal guarantees. // Religious panorama. Informational-analytical journal. Kyiv, 2006, p.4-12.
7. Convention for the Protection of Human Rights and Fundamental Freedoms. // Collection of Council of Europe's Treaties. Ukrainian version. Kyiv, the Parliament edition, 2000, p.27-46.
8. Locke J. A letter concerning toleration. // John Locke. Collected works in three volumes. V.3. Moscow, Mysl, 1988, 668 p. (Phylosophic Heritage, V. 103), p. 91-134.
9. Rabynovych P.M. The human and citizen rights. P.M. Rabynovych, M.I. Khavroniuk. Kyiv, Atika, 2004, 464 p.
10. Fediuchek I. Legal and phylosophic aspects of freedom of worship. // Religious Freedom: Research Yearbook. Department of Religion Studies of H. Skovoroda Institute of Philosophy, the National Academy of Sciences of Ukraine. Collection of scholarly papers "Freedom of Religion and Democracy: Old and New Challenges". Ed. A. Kolodnyi, Doctor of Philosophy. Kyiv, UAR, 2006, p. 15-19.
11. Khodkova L.P. Religious Studies. A Manual. [Text]. L.P. Khodkova. Lviv, Afisha, 2000, 312 p.