

РОЗДІЛ 1
АКТУАЛЬНІ ПИТАННЯ КОНСТИТУЦІЙНО-ПРАВОВОГО СТАТУСУ
ЛЮДИНИ І ГРОМАДЯНИНА

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QUESTION ABOUT THE LEGAL STATUS OF SCHOOLS
AND CHURCHES IN THE STATE

ПИТАННЯ ПРО ПРАВОВИЙ СТАТУС
ШКІЛ ТА ЦЕРКВИ У ДЕРЖАВІ

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The article is devoted to the relationship of the school and the church. The author analyzes the current legislation of Ukraine and abroad.

Key words: state, church, school, religion.

Стаття присвячена взаємозв'язку школи та церкви. Автор аналізує чинне законодавство України і за кордоном.

Ключові слова: держава, церква, школа, релігія.

Статья посвящена взаимосвязи школы и церкви. Автор анализирует действующее законодательство Украины и за рубежом.

Ключевые слова: государство, церковь, школа, религия.

Currently existing legislation of Ukraine on Freedom of Conscience and Religious Organizations according to conclusions of international experts is one of the most democratic among that of post-socialist countries of Central and Eastern Europe. Although it con-

tains a whole range of statements, that are to be amended or supplemented today, with the further development of national legislation.

A number of statements of current Law of Ukraine on Freedom of Conscience and Religious Organizations

should be brought into line with international legal norms in the field of religious freedom. There is a number of projects of a new law on Freedom of Conscience and Religious Organizations to be adopted by the Supreme Soviet. The adoption of the new law will influence positively the religious situation in the country, will facilitate to provide with the legal means guaranteed by the Constitution of Ukraine the right of every citizen to freedom of conscience, religion or certain religious activities.

The draft contains a number of proposals that received ambiguous assessments of experts in religion, law and politics. First of all those in reference to the legal status of school and church.

Despite the constitutional statement on separation of church and school, Article 7 paragraph 3 attempts to bring those two closer to each other. It is offered to enable schools and higher education institutions of teaching religious philosophy, religion and religious and cognitive courses, that could be studied on an optional basis. Among the proposed disciplines only religion is a secular discipline, but it is already obligatory for all higher education institutions. To avoid future misunderstandings that could lead to violation of the Constitution of Ukraine the term 'religious disciplines' is the only one that should be kept. Increased attention to religious education is understandable, because the field of education is

one of the channels of reflection and preservation of the culture of peoples, interethnic and interconfessional peace in the society. Not so long ago atheism as an ideology and a form of culture was the dominant idea of upbringing and education in post-socialist countries [1, p. 9].

Recently, the question of introduction of theology in universities rather than religion, and God's Law in schools arises more and more [2, p. 109]. For Orthodox and Greek Catholic this is a question of principle.

There are many examples in Ukraine when the heads of educational institutions, ignoring the constitutional principle of separation of church and school, unauthorizedly introduced religious courses at schools, the God's Law or the Catechism. It is widely believed among the clergy and local officials that schools should teach the doctrine of the dominant religion, or faith which is confessed within a particular region. In state schools. In Lviv region the course 'Spiritual revival' is introduced from the first to the eleventh grade, the reading is provided by the Greek Catholic priests [3, p. 97].

But are the rights of members of other religions taken into account. History shows that the compulsory study of the Law of God in prerevolutionary Russia resulted in a whole range of beyond religious figures and atheists [4, p. 116]. Ukraine is multireligious and this means that some of the

believers will be discriminated. Which in turn will affect the inter-church conflicts. Nowadays we already have cases when children of Protestant families in Galicia were forced to impose the Sign of the Cross or pray to the Mother of God [5].

On the other hand, the state of morality in the society requires inoculating religious values to young people. Moreover the sociological researcher show that the majority of parents in Ukraine stand for the introduction of religious education at schools [6].

It requires to thoroughly analyse foreign experience in order to solve this problem. France was the first country in which the school was separated from the church, but today priests have access to school here. In 1959 a law that allows to open denominational schools was concluded [7, p. 35].

In 1997 President of the USA Bill Clinton signed 'The Rules for Federal Employees on Religious Expression and Manifestation of Religious Beliefs'. The document says about the unacceptability of even the 'sight of state encouragement of religion' [8, p. 116]. According to the Constitution in the U.S. public schools doors are closed for priests [9, p. 120].

It is necessary to clearly divide the functions of church and state in the case of religious education. Practice shows that the substitution of concepts might lead to various kinds of political and ideological speculation

[10, p. 95-96]. It is important to observe the constitutional principle of a secular state, overcoming the tendency to clericalisation of school [11, p. 20].

Democratization of Ukrainian society positively affected the management of religious education. In the times of socialism the only Orthodox seminary operated in Ukraine, now there are 173 religious schools (20,000 hearers) of different faiths [12, p. 20]. Christian churches and religious organizations have Sunday schools for religious communities, where children learn about religion. In higher education institutions religious studies course is among the compulsory subjects [13, p. 106].

The experience of our neighbor-country Slovakia in the school field deserves attention and study, it is the country where the church is not separated from the state. Church in the Slovak society has always actively influenced all spheres of social and even political life. The strong influence of the church took place during the First Czecho-Slovak Republic. That was the position of the Catholic Church in Slovakia which did not enable the first President of the Chechoslovak Republic T. G. Masaryk confirm the separation of church and state on constitutional level. During the years 1939-1944 it were the religious leaders who stood at the head of Slovak statehood. During the period of socialism, a great deal of oppression, insult and bullying harassed the church

[14, p. 444-470]. The situation somewhat improved after the events of 1968.

A special group of norms of law issued by Czechoslovakia after 1990 are provisions relating to areas of church school. The defining legal norm that regulated the activity of the Church in public life was a joint decree of the Ministry of Schooling, Youth and Sports of the Slovak Republic and the Ministry of Health of the Slovak Republic s.536/1990 Zb. On the establishment and operation of church schools [15]. This decree regulated not only a matter of establishing the church schools. The fact that the adoption of this resolution was positively evaluated by ecclesiastical circles is shown in the article ‘Creating a new church schools for Slovaks’ which states that ‘the long-awaited opportunity to create church schools in Slovakia has become a reality’ [16, p. 3].

During the academic year 1990-1991 there were six church schools in Slovakia. Four of them belonged to the Ministry of Schooling, Youth and Sports, and two (of medical direction) to the Ministry of Healthcare. The experience related to the establishment of church schools was used also during the foundation of church schools in the academic year 1991-1992 [17, p. 7].

The resolution of the Federal Ministry of Labour and Social Protection s.571/1990 Zb. “On the salaries of teachers of the law of God” also concerned school matters [18].

Law of the National Council of the Slovak Republic (NC SR) On school establishments expanded the field of churches and religious organizations in the scope of educational works.279/1993 Zz. This law states that than not only natural persons and legal entities may be the founders of the school institutions but also churches and religious organizations. Church school educational institutions can be established in coordination with the Ministry of Education of SR in the presence of the statute and other documents. The state can allocate notation from the state budget for their activities, for example, to create conditions for teaching disabled children, children with poor mental development, children from poor families and children of foreign language environments [19, p. 142].

The state has also published several new legal regulations governing churches and religious organizations in their work with young people (Decree of the Ministry of Education and Science on youth homes SR s.196/1994 Zz), recreation centres and educational institutions for children and young people with an annual activity (Decree of Leisure of the Ministry of Education and Science SR s.291/1994 Zz) and school groups by interest (Decree of school interest groups of the Ministry of Education and Science of the Slovak Republic s.291/1994 Zz).

In the conclusion to the field of educational activities we refer to the law

on system of primary and secondary schools 350/1994 Zz (school law), which determines the nature and types of church schools as follows: “Church schools or schools of religious organizations are church primary schools, special schools, church secondary schools, church centres of practical training, church elementary art schools and church colleges”.

Thus, the analysis of legal rules governing church-state relations makes it possible to assert that there was done a lot for the freedom of conscience and religion in the Slovak Republic. Relations between the state and religious organizations are based on mutual cooperation and trust, which positively contributes to the development of both particular churches and state. According to the Constitution of the Slovak Republic church and state are not separated, which makes a very strong influence of the church on education and socio-political life.

The principle of religious education is provided in public schools of the Polish Republic. Legislation on Education stipulates that students of middle school age independently decide whether to study religion or not. But the concordat between the Vatican and Poland denies this right of Catholics. As long ago as 1991 the Polish Constitutional Court resolved that under the principle of neutrality of the state the content of religious education is determined by the church.

In Hungary, Romania and Croatia religious education in the primary and secondary schools is carried out at the school premises, but optionally.

An example of the detailed regulation of the church and school relations is Germany. Although in public schools in Germany religion is a compulsory subject, their experience in the part of the legal regulation of optional training can be used in Ukraine.

Legislation of Britain, Spain and Belgium requires that religion, out of respect for moral values of other faiths, is to be taught in schools in neutral terms. In European countries they agreed on the need to introduce the course of history of the main monotheistic religions in schools. The main argument for presenting such a model of theological disciplines is to promote better understanding between people of different national and religious beliefs.

In countries whose constitutions defined the principle of separation of church and state, and school from the church (including Ukraine) the law should be observed. For a citizen of a state the Constitution should be as Bible for a Christian, Koran for a Muslim and Torah for a Jew.

However, the UN Declaration (1981) “On the Elimination of All Forms of Intolerance and discrimination on grounds of religion or beliefs” stresses (Article 5 / 2) that every child has the

right of access to education in the field of religion or belief in accordance with his/her parents' desire ... while guiding principle is the interests of the child”.

Concerns about growing clericalisation of Russian society are stated in a letter of the Russian Academy of Sciences to the President of Russia Putin V. V. Russian scientific elite opposed the introduction of “Law of God” called “Fundamentals of Orthodox Culture” in all schools of secular state. Scientists rightly believe that in such a multireligious and multinational country to protrude only one confession

means to contribute to its collapse.

Summarizing the above mentioned, it should be noted that today the religious organizations in Ukraine have legally reasonable opportunity to give religious education to their faithful and their children. A well-known Ukrainian religion expert Viktor Yelenskyi's proposal proves to be rather suitable. He offers to open church schools, especially as there is no prohibitions on such schools in the Ukrainian legislation. And today there are many Catholic and Protestant Sunday church schools in Transcarpathia.

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