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Religious groups and religious organizations in the Russian Federation: Legal aspects of activity

Abstract: The article provides a legal analysis of the activities of religious groups and religious organizations. Activities of religious organizations are regulated by the Federal Law of 1997 which defines religious organizations as associations of citizens of the Russian Federation, other persons permanently and legally residing in the territory of the Russian Federation, formed for joint confession and dissemination of faith and registered as a legal entity recognized in the Russian Federation. Religious groups are voluntary associations of citizens carrying out activities without state legal registration and acquisition of a legal capacity as a legal entity. The author's work is largely based on regional material.

Keywords: religious groups, religious organizations, regulations, law-based state.

The Constitution of the Russian Federation proclaimed that human rights and freedoms are the highest value, everyone is guaranteed freedom of conscience, freedom of religion, including the right to profess any religion individually or jointly with others or not to profess any, freely choose, have and disseminate religious and other beliefs and act in accordance with them. In accordance with paragraph 1 of art. 8 of the Federal Law No. 125-FZ "About Freedom of Conscience and on Religious Associations" (1997),¹ associations of citizens of the Russian Federation, other persons permanently and legally residing in the territory of the Russian

¹ Federal'nyj zakon "O svobode sovesti i o religioznyh ob'edineniâh" ot 26.09.1997, no. 125-FZ, available online: http://www.consultant.ru/document/cons_doc_LAW_16218/ (accessed: 18.06.2017).

Federation, formed for joint confession and dissemination of faith and registered as a legal entity recognized in the Russian Federation as religious organizations.

Normative regulation of the activity of religious organizations for a long time did not have a systemic nature. For the first time, the rule about religious organizations as legal entities was established in art. 13 of the USSR Law No. 1689-1 "About Freedom of Conscience and Religious Organizations" (1990), a similar norm was included in "Fundamentals of Civil Legislation of the USSR and Republics" (1991) adopted by the Supreme Council of the USSR (art. 11).² In the current legislation, provisions regarding religious organizations are contained in various normative legal acts, among which the Federal Law "About Freedom of Conscience and on Religious Associations" occupies a special position. These provisions appeared in the legislation relatively recently and received a variety of legal interpretations. There are differences on many aspects of the functioning of religious organizations, which affects the practice of law enforcement.

Regarding the analysis of the current legal framework of civil law, regulation of relations which involve religious organizations that determine the specificity of their civil and legal status acquires significance, to ensure its further development and improvement. According to official data of the Ministry of Justice of the Russian Federation, as of January 1, 2016, 27,372 religious organizations were registered in Russia. In the Privolzhsky Federal District, 8,162 religious organizations were registered, the largest number of religious organizations among the subjects of the Volga Federal District was registered in the Republic of Tatarstan — 1,788 (in Bashkortostan — 1,401, Nizhny Novgorod Region — 681, Samara Region — 622, Penza Region — 501, Orenburg Region — 472, the Republic of Mordovia — 489, Perm Territory — 450, Saratov Region — 438, Ulyanovsk Region 345, Chuvash Republic 316, Udmurt Republic — 276, Kirov Region — 237, Republic of Mari El — 146).

There are nine confessions registered in the Republic of Mordovia, which demonstrates the republic's tolerant policy toward interfaith relations. Most religious organizations belong to the Russian Orthodox Church — 415 (85%) and to Islam — 61 (12%). The number of organizations of other confessional membership is 13 (3%): Evangelical Christians Baptists — 3, Christians of the Evangelical faith — Pentecostals — 3, Seventh Day Adventists — 1, Lutherans (Ingria Church) — 3, Jehovah's Witnesses — 1, Krishna Consciousness (Vaishnavas) — 1, Judaism — 1.

In recent years, the growth in the number of religious organizations is mainly due to the creation of associations of Orthodox Christians and Muslims. Occupying first position in the number of Orthodox organizations registered in the Volga Federal District is the Nizhny Novgorod Region — 512 organizations, Republic of Mordovia is second — 415 organizations, third, Samara Region — 406 organiza-

² Zakon SSSR "O svobode sovesti i religioznyh organizaciáh" ot 1.10.1990, no. 1989, Vedomosti S"ezda narodnyh deputatov SSSR i Verhovnogo Soveta SSSR ot 10 oktâbrâ 1990, no. 41, p. 813.

tions. The number of Muslim organizations in Tatarstan amounts to 1,356 organizations. The second indicator for Bashkortostan is 964, the third for the Ulyanovsk Region — 128. There has been a steady increase of the number of legally registered religious organizations, demonstrating the willingness of religious organizations to be fully-fledged subjects of civil relations, to make use of all the rights and privileges provided by the Russian Federation law for religious organizations.

Research of their legal status is currently very topical. For example, the increasing dynamics of religious organizations in the Republic of Mordovia is as follows: 2011 — 354, 2012 — 409, 2013 — 433, 2014 — 454, 2015 — 489. Thus, the number of religious organizations established in the Republic of Mordovia for the past five years increased by 28%. Currently, the legislation of the Russian Federation establishes universal legal regulations for all religious associations, implying that they are provided with the full scope of the rights and obligations of a legal entity regardless of confessional affiliation.

Legal relations in the field of implementation of worldview rights and freedoms are regulated by normative legal acts belonging to different branches of law. The legal acts on freedom of conscience and religious associations include the Constitution of the Russian Federation, international acts and international treaties of the Russian Federation, federal laws, laws of the subjects of the Russian Federation, decrees of the president of the Russian Federation, resolutions of the government of the Russian Federation, and normative acts of ministries and departments. Legal acts and norms that make up this branch of legislation are interrelated, have a hierarchy and limits of regulation. In this hierarchy, a special role belongs to the Constitution of the Russian Federation, which has the highest legal power, has direct effect and is applied throughout the territory of Russia.

The Constitution of the Russian Federation regulates the most fundamental issues of the implementation of freedom of conscience. Among such conceptual issues are the following: in the Russian Federation ideological diversity is recognized (art. 13); the Russian Federation is a secular state (art. 14); no religion can be established as a state or mandatory religion (art. 14); religious associations are separated from the state and are equal (art. 14); the state guarantees the equality of human rights and freedoms, regardless of their attitude toward religion, prohibits any form of restriction of the citizen's rights on the grounds of religious affiliation (part 2 of art. 19); everyone is guaranteed freedom of conscience, freedom of religion, including the right to profess individually and jointly with other religions or not to profess any, freely choose, have and disseminate religious and other beliefs and act in accordance with them (art. 28); propaganda or agitation that incites religious hatred and enmity is prohibited, propaganda of religious superiority is prohibited (art. 28); everyone has the right to association, no one may be forced to join or stay in any association (art. 30); a citizen of the Russian Federation in case his conscience or religion contradicts the performance of military service, as well as in other cases established by federal law, has the right to replace it with an alternative civilian service (part 3 of art. 59).

The secular nature of the Russian Federation is one of the attributes of a modern constitutional state. The principle of secularism of the state means that it guarantees freedom of religion, no religion or non-religious ideology can be established as mandatory; religious associations are separated from the state, they do not participate in elections to public authorities and local self-government bodies, they do not participate in the activities of political parties and political movements; the state does not impose on religious associations the performance of functions of public authorities, local self-government bodies, it does not interfere in the internal affairs of religious associations; there are no religious courts in the state judicial system; religious norms cannot be sources of law in the state.

One of the most important components of Russian legislation in the field of freedom of conscience are the universally recognized principles and norms of international law and international treaties of the Russian Federation. For the first time in the history of Russia, the Constitution (part 4 of art. 15) includes the provision declaring universally recognized principles and norms of international law and international treaties of the Russian Federation as part of its legal system. Thus, it opens up the possibility of direct action and implementation of acts of international law, such as the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

The legal basis for the activities of religious organizations is consolidated in art. 123.26–123.28 of the Civil Code of the Russian Federation. Religious organizations, because they are one of the forms of non-profit organizations, are covered by Federal Law No. 7-FZ “About Non-Profit Organizations” (1996) (hereinafter — the Law concerning Non-Profit Organizations).

The law on non-profit organizations presupposes an independent regulation of relations with the participation of religious organizations. Thus, art. 1(4) of the Law concerning Non-Profit Organizations establishes the rule that art. 6, paragraph 6 (non-profit organizations acting as a foreign agent), art. 13–19, 21–23 (creation, reorganization and liquidation of non-profit organizations), art. 28–30 (management of a non-profit organization), art. 32 (control over the activities of a non-profit organization) do not apply to religious organizations. Particular qualities of their legal status, creation, reorganization and liquidation, as well as their management, are determined by a special law (paragraph 4 of art. 6 of the Law concerning Non-Profit Organizations).

Thus, in the system of current legal regulations, the detached regulation of relations on the establishment and activities of religious organizations is gradually being built up (art. 123.26–123.28 of the Civil Code of the Russian Federation, art. 6 of the Law concerning Non-Profit Organizations). The federal law “About Freedom of Conscience and on Religious Associations” is one of the most important basic laws in the field of freedom of conscience. Unlike the former USSR Law No. 1689-1 “About Freedom of Conscience and Religious Organizations” (1990), the current Law about Freedom of Conscience established several fundamentally

new provisions. The procedure for the establishment of religious organizations was significantly changed, and reduced the list of persons capable of being founders and participants in a local religious organization.

The right to establish a local religious organization was recognized only for Russian citizens. Foreign citizens and stateless persons can only be members of a religious organization on the condition of on their permanent and legal residence on the territory of the Russian Federation. The law also introduced a new concept — a religious group, which recognizes a voluntary association of citizens formed to joint confession and propagation of faith, carrying out activities without state legal registration and acquisition of a legal capacity as a legal entity. Religious groups have the right to perform services of religious worship, other religious ceremonies, as well as the teaching of religion (art. 7, paragraph 2). However, a religious group cannot independently gain rights and create duties identical to those of religious organizations, participate in civil processing, be a plaintiff and defendant in court, create religious institutions, etc.

There is no objective data on the number of religious groups established on the territory of the Russian Federation. In addition, the law enforcement bodies of the Russian Federation notice the activation of the activities of associations of citizens formed to meet spiritual (religious) needs, acting as religious groups. The activities of some of them have a clearly pronounced extremist nature, which is confirmed by judicial practice. Thus, by the decision of the Supreme Court of the Russian Federation (April 10, 2008), activities of the unregistered international religious organization “Nurdjular” are prohibited. On May 7, 2009, the Supreme Court of the Russian Federation made a similar decision regarding the international religious association “Tablighi Jamaat”. On December 27, 2010, the Supreme Court of the Republic of Mordovia recognized the religious group “Noble Order of the Devil” as an extremist organization and its activities were prohibited. In addition, the results of the voluntary seclusion of the members of the religious group “Gornji Jerusalem”, better known as “Penza hermits”, clearly demonstrates the urgent need for a realistic view of the number of religious groups on the territory of the Russian Federation. Federal Law No. 261-FZ “About Amending the Federal Law About Freedom of Conscience and on Religious Associations” (2015)³ has introduced conceptual changes affecting the legal status of religious groups. Since July 24, 2015, the order of notification of the beginning of the activity of a religious group has been changed. In accordance with art. 7 of the Law about Freedom of Conscience, a religious group notifies the commencement of its activities to the territorial body of the Ministry of Justice of Russia, at the place of the activity of the religious group in written form. Subsequently, the religious group submits a no-

³ Federal’nyj zakon “O vnesenii izmenenij v Federal’nyj zakon O svobode sovesti i o religioznyh ob’edinenenijah” ot 13.07.2015, no. 261-FZ, available online: http://www.consultant.ru/document/cons_doc_LAW_182634/ (accessed: 22.06.2017).

tice on the continuation of the activity at least once every three years from the date of the last notification to the territorial body of the Ministry of Justice of Russia. The notification is submitted in accordance with the form approved by order of the Ministry of Justice of Russia No. 234 “About approval of the form for notification of the beginning of the activity of a religious group” (2015). Notifications are also provided by religious groups which previously informed local self-government about the creation and start of activities. Moreover, the reports from religious groups submitted earlier to local authorities did not contain the required amount of information provided in the notice. These amendments to the Law about Freedom of Conscience establish a system of monitoring religious groups. At the same time, from July 24, 2015, paragraph 3 art. 8 of the Law on Freedom of Conscience was declared invalid, according to which the religious organization was obliged to inform annually the body which made the decision on its state legal registration to continue its activity.

At the same time, reports on activities, the personal structure of the governing bodies, the purposes of spending money and the use of other property, including that received from international and foreign organizations, foreign citizens, stateless persons, as well as their actual expenditure (use) are required to represent those religious organizations that received money and other property from international and foreign organizations, foreign citizens, and stateless persons, within one year. In addition, the law abolished the requirement to confirm the existence of a religious group for at least 15 years, thereby eliminating obstacles to obtaining the status of a legal entity for representatives of new religious movements existing on the territory of the Russian Federation for less than a specified period and not having their own centralized structures regarding annual re-registration. Federal Law No. 341-FZ “About Amendments to the Federal Law About Freedom of Conscience and on Religious Associations and Other Legislative Acts of the Russian Federation” (2015) has changed the order of control of the justice bodies over the activities of religious organizations.

Previously, control was carried out as by the order prescribed by art. 32 of the Federal Law “About Non-Profit Organizations”, according to which all religious organizations receiving an income of 3 million rubles during the year were required to submit annual reports to the justice bodies stating the total amount of funds of the religious organization expended in a year. As a result, most religious organizations submitted reports to the justice bodies, which in turn had the right to check and otherwise monitor the financial and economic activities of religious organizations by requesting financial and economic documentation, by conducting inspections.

The main changes are as follows:

1. Religious organizations are excluded from the effects of art. 32 of the Federal Law “About Non-Profit Organizations”. The order of control over their activities will be determined by the Federal Law “About Freedom of Conscience and

on Religious Associations” and the Federal Law “ About Protection of the Rights of Legal Entities and Individual Entrepreneurs while State Control (Supervision) and Municipal Control”.

2. Only religious organizations financed from international or foreign sources will hand over reports to the justice bodies. Other religious organizations are exempt from the delivery of these statements.

3. Opportunities of the justice bodies to verify the financial and economic activities of religious organizations are severely limited. Such verifications will be carried out only in one of three cases:

— the religious organization had received financial assistance from international or foreign sources within a year;

— information on violations of the legislation by the religious organization in the sphere of its activities was received from the state or municipal authorities;

— information was received from the mentioned bodies regarding extremism (terrorism) in the activity of the religious organization.

Documents on the financial and economic activities of religious organizations will be requested by judicial authorities only from religious organizations which satisfy at least one of the three conditions listed. In other religious organizations, the judicial bodies are not entitled to request and receive financial and economic documentation

4. The new law limited the list of those structures where judicial bodies are entitled to receive information on the financial and economic activities of religious organizations. Such information can be obtained only from state control and supervisory bodies, including Rosfinmonitoring, the Federal Tax Body, and statistical agencies. Banks and other credit and financial institutions are excluded from this list. Therefore, they do not have the right to request and receive information about the financial and economic activities of religious organizations. In addition to the Law about Freedom of Conscience, at the federal level there are other legal acts that contain norms concerning the implementation of freedom of conscience and the activities of religious associations. They can be divided into several groups. The first, and largest group is formed by laws and other legal acts, where religious associations are not directly subjects of them, but these legal acts contain norms restricting the interference of the state and its institutions in the activities of religious associations, ensure the implementation of the right to freedom of conscience and religion, and equality of citizens’ rights regardless of their attitude to religion. This group includes, for example, the Law of the Russian Federation No. 2124-1 “About the Mass Media” (1991), Federal Law No. 8-FZ “About Burial and Funeral Affairs” (1996) and others.

Separately, we can distinguish a group of laws that regulate the observance and procedure for implementing the rights of religious followers in organizations and institutions, the peculiarities of which impose certain restrictions on the rights and freedoms of citizens residing in them (military units, places of depriv-

ation of liberty, hospitals, etc.). These include the Criminal Executive Code of the Russian Federation, Federal Law No. 76-FZ "About the Status of Servicemen" (1998), etc.

Several laws and other normative acts regulate the procedure for carrying out certain types of activity of religious organizations (educational, charity, etc.). An independent group of legal acts is formed by laws that provide legal responsibility for violating the law on freedom of conscience. This is primarily the Criminal Code of the Russian Federation, the Code of the Russian Federation on Administrative Offenses, Federal Law No. 114-FZ "About Counteracting Extremist Activity" (2002).

In addition, civil law norms governing the establishment and activities of religious organizations are also contained in legal acts issued by the president and the government of the Russian Federation, as well as normative acts of ministries and other federal executive bodies. For example, Decree No. 212 of the Government of the Russian Federation "About measures to implement certain provisions of federal laws regulating the activities of non-profit organizations" (2006), in addition to the procedure for interaction between the Ministry of Justice of the Russian Federation and the Federal Tax Body, also forms of documents, religious organizations in the creation, in liquidation, as well as to amend the Unified State Register of Legal Entities. The Ministry of Justice of the Russian Federation, in accordance with the Decree of the President of the Russian Federation No. 1313 "Issues of the Ministry of Justice of the Russian Federation" (2004) exercises functions on regulatory and legal regulation provided for by legislation on non-profit organizations. For example, the Ministry of Justice of Russia approved Decree No. 53 "About State Religious Expert Examination" (2009), Decree No. 455 "About Approval of the Administrative Regulations for the Provision by the Ministry of Justice of the Russian Federation of a State Service for Decision-Making on State Registration of Non-Profit Organizations" (2011).

Thus, the legal regulations of religious organizations have come a long way. At the same time, the formation of the regulatory framework that regulates the legal status and activities of religious organizations is being carried out to this day.

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