



ИНФОРМАЦИЯ ОБ АВТОРЕ

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HISTORICAL AND PHILOSOPHICAL ASPECTS OF THE INTERACTION OF THE STATE, SOCIETY AND CHURCH

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SUMMARY

The article deals with the analysis of the interaction of the state, society and religious organizations, which have formed during a long historical period, and their influence on political processes, as well as the activities of state structures on ensuring freedom of conscience and religion. It is proved that the main values of modern civilization, namely: democracy, human rights, the concept of a social state, the rule of law, civil society are genetically related to Christianity. The state has no criteria for determining the truth of religion – it only has the duty to stand on guard of rights and freedoms of its citizens.

Key words: state, philosophy, society, religion, freedom of conscience, social life, religious organizations, religious communities, civil society, social relations, state power.

ИСТОРИКО-ФИЛОСОФСКИЕ АСПЕКТЫ ВЗАИМОДЕЙСТВИЯ ГОСУДАРСТВА, ОБЩЕСТВА И ЦЕРКВИ

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АННОТАЦИЯ

Статья посвящена раскрытию взаимодействия государства, общества и религиозных организаций, которые образовывались на протяжении длительного исторического периода, и их воздействия на исторические процессы, а также деятельности государственных структур по обеспечению свободы совести и религии. Доказано, что основные ценности современной цивилизации, в частности демократия, права человека, концепция социального государства, верховенство права, гражданское общество, генетически связаны с христианством. Государство не имеет критериев определения истинности религии, оно имеет только обязанность стоять на страже прав и свобод своих граждан.

Ключевые слова: государство, философия, общество, религия, свобода совести, общественная жизнь, религиозные организации, религиозные общества, гражданское общество, общественные отношения, государственная власть.

Introduction. The mechanisms of interaction of the state, society and church are considered in the cultural, historical, social, and legal aspects from the standpoint of political science. The civil society, as a component of the state, is a model of social development that offers balanced mutual control and mutual limitation between state bodies and non-state entities (institutions of civil society) to supervise over the activities of state bodies. At the same time, non-state structures have to correlate their own actions with the laws and take into account the objective needs of the state.

Such foreign and domestic scientists as S. Aleksieiev, V. Babkin, G. Berman, M. Koziubra, O. Kostenko, V. Nerseians, A. Sukhov, D. Uhrynovych, A. Zakhovsky, S. Tokariev, M. Andrianov, A. Kolodnyi, A. Poleshko, P. Rabinovych and others made significant contributions to the study of various aspects of this problem.

The purpose of the article is to study the relations of the church, society and state through an analysis of the main legislative acts that regulate and legitimize the existence of religion and church in society, in particular, ensuring the de-



gree of freedom of conscience and religion of individuals and the activities of religious organizations.

Methods and materials used in the research. The state and institutions of civil society, with all differences between them, have one goal – to consolidate the society. However, the mechanisms of consolidation, as well as the mechanisms of internal interaction, are opposite. Civil society institutions unite people, providing them with the opportunity to realize their own interests freely, and the state as a special institution influences by means of coercion.

Touching upon the historical aspects of the problem, one can state that the history of the relationship between church and state dates back to the Roman era. Roman emperors proceeded from the idea of complete power over the world. The sovereign power was sacred. In this context, N. Berdiaiev wrote: “A sovereign, unlimited and self-sufficient statehood in all its historical forms, past and future, is the result of the deification of the will of man, many or all <...> is the religion of the human, the subjective and conditional, placed on the place of the divine religion...” [1, p. 41].

The attitude of the Romanian emperors to the spread of Christianity in the first 300 years of its existence has evolved from indifference to persecution. However, persecution of the church not only did not destroy the Christian church, but also strengthened it and promoted spreading.

In addition, we note that in the 4th century AD, the first Roman emperor, who realized that the state and the Christian church could interact, was Constantine the Great. He realized that the Christians, who lived in the catacombs and were persecuted, did not lose their faith and did not show hostility to power, the Christians showed themselves as a nondestructive, transformative force. In 313, the Edict of Milan proclaiming toleration was issued. It gave “Christians and everyone else absolute liberty (*liberam potestatem*) to profess the religion that they considered being the best” [2, p. 163]. In 323, Christianity was declared an official

religion of the Roman Empire. Under the influence of the church in the Roman Empire, many laws in relation to slaves were liberalized; norms concerning marriage, family, divorce, women's status, etc. changed. In general, Christianity ennobled the traditions of society, contributed to the development of charitable institutions and the elimination of many rough practices, such as, for example, gladiatorial battles.

Based on the notions of the ideal of relations between the church and the state, as well as the historical and cultural peculiarities of one or another state, it is possible to determine three main forms of their interaction:

1. In the western parts of the Roman Empire, where the state appropriated power and many functions of the church, such form as caesaropapism was created. In the modern world, caesaropapism is more manifested in Protestant countries (Great Britain, Sweden, Denmark, Greece), where there is one or more state churches.

2. Another form, on the contrary, involves subordination of the state to religious institutions. In this type of relationship, an independent state power is practically absent. In Christian states, such a form of government is known as papocaesarism. It is a characteristic feature of the Catholic states in which the Pope, the Roman high priest, has not only church power but also state one (as well as a number of Islamic states, where the chief cleric is above temporal authority). In accordance with S. Prokofiev, the church proclaiming itself a state is Catholicity, and the state proclaiming itself a church is Catholicism [3].

3. In Byzantium in the 6th century AD, the principle of symphony in the relationship between the church and the state was formed. Further consolidation of the allied relations between the church and the state was characteristic feature of the Byzantine Empire after the division of the Roman Empire into the Western Roman Empire and the Eastern Roman Empire in 395. Byzantine emperors often acted as ardent defenders of the church and Orthodoxy, they used the authority of the church to strengthen statehood.

The characteristic feature of the legislative creativity of that period (8th century) was the desire to influence on the morality of people and the entire range of relations between citizens by means of legal norms. The church was an ally of the state in that process.

The basic concept of the Byzantine model of the church and state relations comes to the following: the church stands above the state, in such a way, the Canon is above the Law – “the Secular and Holy power are treated one another as body and soul; they are necessary for a state system in the same way as body and soul for a living person. The prosperity of the state lies in harmony and consent” [4, p. 8]. However, this model could only be used in a multi-confessional state (that is, one recognized state religion) with a Christian head. For lack of these conditions, it is utopia to rely on the implementation of the symphony of the authority and the church.

The Reformation processes had great consequences for the church in Europe. The Reformation initiated a new phenomenon of culture, which characterized its current state of secularization. The Latin word “*secularus*” means laical, secular, and first this term meant the transformation of church property into secular one. Today it has a much wider and deeper meaning. Secularization means denial of religion in all spheres of public life. First, European secularization included church property (financial values), and then church, religious ideas. Gradually, the concept of “secularization” acquired a political sense, according to which the secular ruler had no needs of any church legitimization, while the spiritual authority had to continue to meet the requirements of the state. N. Smelzer defines this phenomenon as “a process in which belief in the supernatural and its related rituals is called in question, and institutions of religion lose their social influence” [5, p. 483].

The first significant secularization of the church property took place in the Frankish Empire (Frankish period) and it was carried out by the Carolingian Majordomo C. Martel. Thus, the economic power of the church was limited,



since under feudalism power was based on the possession of estates. For centuries, the church protested against this first wave of secularization. The formation of national and territorial states led to the second wave of secularization, which was promoted by the Reformation. That wave acquired a slightly different shade – the reformers emphasized not so much the alienation of church property, but the idea, according to which nobody had state power except secular leadership.

Subsequently, the concept of secularization became ideological and political. The last stage of secularization is the Soviet period, which was held under the motto of the socialization of property. In general, secularization is nothing more than a consistent implementation of one of the ideas of the program of the European Enlightenment. Secularization, which for centuries has been legal in terms of the expropriation of church property, attracted all aspects of culture in many countries of the world over the last decades. Historically, under the influence of secularization, there were other principles in which, in the modern world, relations between the state and the church were established in different countries. The principle of separation of the church from the state is one of them. The genesis of this principle has two forms.

In Europe, this division was the result of anticlerical, anti-church struggle (secularization in the ideological and political context) when the state relates itself to one or another anti-Christian or anti-religious ideology. This principle establishes non-interference of the state in the affairs of the church, but at the same time limits its place and role in the life of society, depending on the ideology that the state professes. France, which survived the revolution of 1789, was the first country in Europe where the church was separated from the state. The French bourgeoisie (its separate representatives), which led the revolution, declared the war not only on the aristocracy, but also on the Christian faith and the clergy.

There was another genesis of this principle. The first state to adopt this principle was the United States of America. In 1791,

the Bill of Rights was adopted, in which the principles of the relationship between the poly-confessional state and the state church system were formed [3].

The principle of the radical separation of the church from the state provided for mutual non-interference in the affairs of each other, the liberty and independence of religious communities, the neutral character of the state in relation to all religions. Unconditionally, the practice of coexistence of the state and religious denominations is unlikely to allow the state to observe the absolute neutrality. Nevertheless, in the United States of America, the majority of believers are Christians, and therefore the president swears on the Bible oath. People celebrate state Christian holidays, and the moral values of the Christian religion are recognized as fundamental in the relationship among them. In this regard, it would be appropriate to mention the concept of “civil religion”, first used by J.-J. Russo in “The Social Contract” in 1762, and developed by E. Durkheim in “Elementary Forms of Religious Life” in 1912, which means beliefs, symbols, rituals and institutions that legitimize the social system and unite people in an attempt to develop political goals. The fact is that one of the components of civil religion in the United States is the elements of the Jewish and Christian tradition [3].

In practice, a number of modern states formed other forms of church and state relations, they are different from the radical separation of the church from the state, when the church has the status of a private corporation or has a state character. Great Britain, Finland, Norway, Denmark and Greece keep state church ideology. In Germany, the Catholic, Evangelical and several other churches have the status of corporations of public law, while other religious communities are completely separated from the state.

In our time, the states of the world can be divided into two types: secular and those, which live according to religious norms, having legal status. This is typical of most Islamic countries (Saudi Arabia, Qatar, Oman, Libya, and Iran).

In secular states based on the principle of the separation of state and church,

two models were formed: separation and cooperation.

In the separation type of relations, there is no special legislation regulating these relations. A “wall” is built between the state and religious associations; religion is superseded from all spheres of state activity. Here, the idea of “separation”, in which the state has no affairs to the church, and the church – to the state, they live in two separate spheres. Although this practice ensures equality of religions before the law, yet it gives the state full right to restrict all denominations, provides secularism in various spheres of state and public life.

Separation model operates effectively in the USA, France and a number of other countries. It has received the greatest development in the USA, where even the largest religious community has equal rights with other denominations, foreign and American religious organizations are equal before the law. There is no special government body supervising over activities of religious organizations. The decision to exempt them from taxes is taken by the Federal Tax Service, which thoroughly checks whether they pursue commercial purposes. Controversial issues are resolved by the courts.

This model of relations between the state and religious organizations has developed in the United States because of a combination of three main factors:

- 1) polyconfessional population, a lack of a dominant religious organization;
- 2) high (over 95%) religiousness of citizens, which does not require special efforts by the state to support religious organizations;
- 3) a developed and influential judicial system, the respect of the majority of the population to the law.

In the cooperation model, another idea of the separation principle is realized; when the church and the secular are divided, but interact, cooperate. In the cooperative type of relations, the state protects leading, traditional denominations, cooperates with them in many spheres of public life, and provides minor denominations only with basic civil rights. These relationships are governed by constitutional norms,



as well as agreements and arrangements with churches and religious associations.

The cooperation model of state and church relations operates in most countries of Western Europe. Providing freedom of religion for all religions, the state supports the most authoritative churches: the Anglican – in the UK, the Catholic – in Italy and Spain, the Orthodox – in Greece, the Lutheran – in Sweden, Denmark, Norway, and Finland. The experience of these countries affirms that the accordance of privileges and the state support of one or more denominations do not cause restrictions on the rights of other religions. A cooperative model of state and church relations involves the state support of one or more dominant religious organizations in the prohibition of discrimination against citizens, depending on their attitude to religion and observance of human rights.

A cooperative model of state and church relations is viable only if the leading denomination makes a clear choice in favor of freedom of religion, does not seek to use its influence on the state and on the population to restrict the rights of religious minorities. A more complicated and contradictory transition to a cooperative model of state and church relations takes place in those countries where attempts are made to strengthen statehood, relying on a single religious organization, restricting the rights of other denominations and religions. This way does not promise a progress towards democracy, impedes the development of full-fledged cooperation of the state with a wide range of religious organizations in the field of charity and spiritual education [6, p. 76–78].

The current classification of church and state systems in Western Europe was formed under conditions of both ethnic and national traditions. In the Western philosophy of religion, it is considered differently, but researchers often distinguish three types: the system of concordat, the system of national churches (approved by the state law) and the system of separation. This classification emphasizes the formal aspects of church and state relations and does not pay enough attention to their con-

tent. However, it cannot be argued that the formal categories of separation, concordat, and national churches systems as a result of historical development were leveled, became equivalent. The formation of church and state relations through concordat (Italy, Spain) clearly differs from formation through the state law, as in the case of Belgium, or from a mixed system with the preponderance of the principle of the unity of national churches or dominant one (England, Greece). In this case, the principles of the concordat have the same force as the provisions of international law, and therefore they cannot be changed unilaterally. That is, they provide more reliable protection to churches than state laws.

Thus, there is no the only approach to the formation of relations between the church, the society and the state. These relations are formed on the general civilized principles, under the influence of ethnic and national traditions. The main directions of such relations lie in the cultural, social and political spheres and they are determined by a specific historical context. Researchers distinguish societies with a single national church, multi-confessional societies with a dominant church and societies, where secular life is separated from religious one. The influence of religion on the socio-political life in each of these societies is different; this classification is rather conditional and it is determined primarily by the legislation of the country. The real modern life of most European states is rather secularized herewith.

As for the Muslim countries, the situation is opposite. The religion has a state status and it has enormous influence on social and political life.

Conclusions. Summarizing the above, we can ascertain that the main values of modern civilization, namely: democracy, human rights, the concept of a social state, the rule of law, civil society are genetically related to Christianity. Despite the conflicts between the concrete historical forms of Christian churches and the adherents of the aforementioned values, which repeatedly took place in history and sometimes took the form of frank persecutions from both

sides, there is no principal conflict between the gospel doctrine and the credo of the modern world.

Perspective Christian values and “sacred objects” of modern civilization complement each other. Principal openness, incompleteness, and invariance of modern society presuppose the existence of transcendental values that the state (and the society itself) is incapable of producing from itself.

Transcendental (or religious) values, through their nature, cannot be imposed on a person from outside, by force – their perception is due to the faith in the act of conscious choice non-determined by heterogeneous factors. In creating the conditions for such a choice there is the religious justification of freedom as “the holy of holies” of modern civilization.

Because of an interest in religion, the state can and should become a hindrance to pseudo-religious totalitarianism, which encroaches on human freedom and moral foundations of society. In addition to that, it is necessary to observe the principle of respect for human spiritual autonomy, non-interference of the state in its own religious (or pseudo-religious) practice. The state has no criteria for determining the truth of religion – it only has the duty to stand on guard of rights and freedoms of its citizens, and therefore, to adequately respond to any experiments on the human psychology.

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ПРАВОВЫЕ ЗАПРЕТЫ И ОГРАНИЧЕНИЯ. ИХ ВЗАИМОСВЯЗЬ, СООТНОШЕНИЕ, ОБЩИЕ И ОТЛИЧНЫЕ ПРАВОВЫЕ ЧЕРТЫ

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АННОТАЦИЯ

В статье проводится анализ соотношения правовых запретов и правовых ограничений, которые применяются как в теории, так и на практике в процессе регулирования общественных отношений в государстве. Осуществляется анализ юридической и специальной литературы, которая направлена на исследование, раскрытие понятий правовых запретов и ограничений. В результате анализа обосновывается соотношение понятий правовых запретов и ограничений, проводится раскрытие их общих и отличных черт, их сопоставление, а также механизмы их взаимодействия.

Ключевые слова: правовые ограничения, правовые запреты, общественные отношения, обязанность, механизм взаимодействия, методы правового регулирования.

LEGAL PROHIBITIONS AND RESTRICTIONS. THEIR RELATIONSHIP, THE RATIO OF GENERAL AND LEGAL FEATURES

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SUMMARY

The article analyzes the relationship between legal prohibitions and legal restrictions, which are used both in theory and in practice in the regulation of social relations in the state. The analysis of legal and specialized literature, which is aimed at research, disclosure of the concepts of legal prohibitions and restrictions. As a result of the analysis, the correlation of the concepts of legal prohibitions and restrictions is justified, the disclosure of their common and distinct features, their comparison, as well as the mechanisms of their interaction is carried out.

Key words: legal restrictions, legal prohibitions, social relations, obligation, mechanism of interaction, methods of legal regulation.

Постановка проблемы. Одним из первых методов регулирования общественных отношений, который существовал как до появления государства, так и после, является метод использования правовых запретов и ограничений. Использование запретов и ограничений возникло в форме социальной нормы, которая до появления понятия права регулировала отношения в обществе, в том числе указывала на права и обязанности субъектов отношений. В качестве примера уместно привести слова Джона Локка о том, что человек в догосударственном обществе может распоряжаться своей личностью, собственностью и свободой лишь в пределах,

установленных соответствующими запретами, основным из которых является запрет нарушения прав и свобод других индивидов. Данный запрет являет собой «закон природы», которым «управляется естественное состояние и который обязателен для каждого» [14, с. 11]. Но все же, анализируя современную специальную и юридическую литературу, можно прийти к тому, что даже на сегодняшний день нет четкого понимания правовых запретов и правовых ограничений в направлении их объединения, а также не даны ответы на следующие вопросы: каким способом они должны действовать, чтоб достичь максимального правового эффекта; как соотносить