

Certain specifics of relations between the state and religious organizations in the light of social and legal innovations

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Abstract. The article presents an analysis of trends in the development of modern Russian legislation on freedom of conscience and religion. Adoption of the Federal Law No. 374-FZ “On Amendments to the Federal Law on Countering Terrorism and Certain Legislative Acts of the Russian Federation Regarding the Establishment of Additional Measures to Counter Terrorism and Ensure Public Security” has changed the existing legislation related to the issues of terrorism and extremism. According to a number of scholars, the main trends are due to the expansion of state oversight functions in the sphere of religious freedom and the increasing missionary practice. Analyzing the amendments made to the Federal Law No. 125-FZ “On Freedom of Conscience and Religious Associations,” the author believes that the changes introduced into the legislation do not hinder the exercise of freedom of conscience and religion. The implementation of restrictive policies depends not only on the legal norm, but also on the qualifications of law enforcement agencies authorized to implement this policy.

Keywords: religion, religious organization, conscience, freedom of conscience and religion, legal innovation

1. Introduction

The religious and socio-political situation of the beginning of the XXI century does not allow the state to treat the problem of extremism and terrorism on religious grounds with a liberal approach in the mid-1990s. According to the legislator, the Federal Law No. 374-FZ “On Amendments to the Federal Law “On Countering Terrorism” and certain legislative acts of the Russian Federation regarding the establishment of additional measures to counter terrorism and ensure public security” (Federal Law No. 374) is dedicated to preventing the practice of committing crimes motivated by religious extremism [1]. This law expands the powers of local governments in the field of countering extremism, as well as the powers of law enforcement agencies. The law establishes new requirements for the activities of telecom operators and Internet providers, related to the need to provide information obtained through communications to law enforcement agencies for decoding. The regulation of issues related to the exercise of the right to freedom of conscience and religion is subject to increased control by the legislator in the field of missionary activity. On the one hand, the innovations proposed by the legislator should prevent the already known patterns of activity of criminal groups. On the other hand, innovations should perform a preventive function. Analyzing the content of the regulatory framework, as well as the results of scientific synthesis, the author of this work intends to undertake an objective study of the positive and negative aspects of the Federal Law No. 374 in terms of its impact on the legislation regulating the activities of religious organizations.

2. Materials and Methods

One of the main reasons for the emergence of the Federal Law FZ No. 374 were the practice of countering extremist and terrorist activities, as well as the need to prevent such activities on religious grounds. The main materials that allow to reveal the meaning of the content of the Federal Law No. 374 are the following: Federal Law No. 125 “On Freedom of Conscience and Religious Associations”, Federal Law No. 115 “On Countering the Legalization (Laundering) of Proceeds from Crime and Financing Extremism”, Federal Law No. 114 “On Countering Extremist Activities”, Federal Law No. 35 “Countering Terrorism”, Code of Administrative Offenses of the Russian Federation, Housing Code of the Russian Federation.

In conducting the study, the author relied on the following methods. The method of formal legal analysis was used in studying the nature of legal innovations and the effectiveness of their impact on the existing system of legislation governing the sphere of extremist and terrorist activities on religious grounds. The study of the socio-political situation associated with the implementation of the entire volume of the legal framework is based on the application of the method of socio-political analysis. The method of comparative analysis contributed to the study of the impact of legal innovations on the state of socio-political relations that are emerging after the adoption of the Federal Law No. 374.

3. Results

The main ideology of innovations in the legislation on freedom of conscience was connected with the nature of the normative acts themselves. Thus, the Federal Law of August 7, 2001 No. 115-FZ “*On Counteracting the Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism*” clarified the conditions for preventing individuals from establishing religious organizations. Federal Law No. 114-FZ “*On Countering Extremist Activities*” introduced the concept of “extremist activity”, highlighting compositions related to religious ideology and the practice of attitude to religion. After a series of scandalous events related to the attempt to recognize the text of the “Bhagavad Gita” as an extremist material, the legislation on countering extremist activity was supplemented with the prohibition of classifying religious texts of world religions as extremist literature. The Federal Law of March 6, 2006 No. 35-FZ “*On Counteracting Terrorism*” introduces a ban on the activities of organizations, including religious organizations, recognized as terrorist by a court decision. According to part 2 of article 24 of this law, an organization committing crimes under the articles of the Criminal Code of the Russian Federation is recognized as a terrorist [2].

The adoption of amendments to the Federal Law No. 125-FZ in connection with the above-mentioned normative acts did not cause open opposition in the society, since the specification of the norms clearly corresponded to the content of the laws and did not lead to innovations in the very structure of the law No. 125-FZ.

The last amendments were made in connection with the entry into force on July 6, 2016 of Federal Law No. 374-FZ, which singled out “missionary activity” and regulated it with a new chapter in Law No. 125-FZ “*On Freedom of Conscience and Religious Associations*” [3]. In addition, the law caused changes in the Code of the Russian Federation on Administrative Offenses, since clauses 3, 4, 5 were added to Article 5.26 (concerning the labeling of literature, audio and video materials distributed or issued by a religious organization as part of missionary activity, fines for violating the requirements of legislation on missionary activity and the same violations committed by foreign citizens). Also, changes were made to article 17, paragraph 3 of the Housing Code (ban on missionary activities in residential premises) and to article 22, paragraph 3.2 of the Housing Code (ban on transfer of residential premises to non-residential, with a view to carrying out religious activities).

Explaining the innovations of the legislation, representatives of the “Slavic Legal Center” (this is a legal service to assist religious organizations and citizens) noted that the proposed norms are not related to the total ban on the spread of religion and persecution of religion. Panic attitudes, characteristic of a part of society, are connected with the ignorance of citizens and religious organizations about the essence of the norm. Another tendency characteristic of the current situation is the desire of certain unscrupulous politicians to take advantage of the ignorance of believers for their

own selfish purposes. Meanwhile, the amendments adopted to the main law regulating the activities of religious organizations are caused by the need to restore order in the field of the dissemination of beliefs through the popularization of religious literature and public events [4].

According to experts of the “Slavic Legal Center”, the adopted Federal Law No. 374-FZ specifies the norms of the Federal Law No. 125-FZ, since this law distinguishes missionary activity as one of the hallmarks of religious associations. According to lead lawyer V. V. Ryakhovsky, the concept of “missionary activity” includes the following five elements: activities of a religious association, the activities of authorized persons of a religious association, the dissemination of information about the dogma of a religious association, the external nature of the spread of dogma, the dissemination of information in order to involve outsiders in the activities of a religious organization [4]. On the one hand, the adoption of this provision allows to suppress the activities of persons forming various kinds of associations, not related to the essence of religious associations. On the other hand, this practice relieves responsibility from religious associations operating legally in the territory of the Russian Federation for the activities of distributors of various kinds of religious literature and practice.

Thus, the main trends related to the emergence of the Federal Law No. 374-FZ are manifested in the form of toughening of responsibility for crimes related to terrorism and extremism. The legislator sees the need for stricter regulation of missionary activity, prohibition of missionary activity in residential premises, prohibition of missionary activity without the permission of the head of a religious organization. According to the newly adopted legislation, restrictive tendencies exist regarding the content of missionary activity. Thus, according to paragraph 6 of Article 24.2 of Federal Law No. 374-FZ, the motivation for refusing to provide medical care is prohibited in the content of missionary activity. This aspect as a religious axiom of soteriological teaching was present in the dogma of “Jehovah's Witnesses”. Another limitation is associated with the prohibition of the refusal of a citizen to perform civil duties. One of the duties of a citizen in the Russian Federation is to protect the state and undergo compulsory military service.

4. Discussions

Despite this, the adoption of the Federal Law No. 374 of July 6, 2016 was perceived negatively by society, in the spirit of manifestation of totalitarian tendencies. Thus, A. V. Shigurov notes the disproportion of the requirements of the law to constitutional and significant goals, and he believes that the requirements of the law violate the constitutional rights of man and citizen, as well as the norms of international law [5]. Focusing on the problem of hypertrophy of anti-extremist legislation, A. V. Kuznetsova came to the conclusion that it was necessary to rethink the causes of extremism and terrorism and the need to limit the powers of law enforcement agencies. Since the definitions of the law are imperfect, the punishments are too harsh, and in general, the practice of applying the amendments contradicts the Constitution of the Russian Federation. However, the amendments regulating the freedom of conscience and activities of religious associations are recognized by the researcher as possible [6]. The reaction of the professional community to the Federal Law № 374-FZ cannot be considered unambiguous. Focusing on the problems of implementation of this legislation arising from the incompetence of law enforcement agencies, I. V. Zagrebina notes that, at the moment, there are no guarantees in the Russian Federation that religious beliefs will be considered without special restrictions as any other beliefs. According to I. V. Zagrebina, the basis of the problem lies in the legal illiteracy of officials of state authorities who are called upon to implement the newly adopted norms [7].

5. Conclusion

Describing the realities introduced into life by the “Ozerov-Yarovaya package”, we need to note the activity of religious organizations in the development of new norms. However, this cannot be said about some law enforcement officers, whose competence includes the implementation of this legislation. So, in August 2016, Adventist Christians of the city of Biysk distributed to the people on the street of Maima village a brochure “10 basic rules for a happy life”, and also a collection of

various legislative acts on freedom of conscience and religious associations. Meanwhile, social activists reported to the Ministry of Justice that believers distribute religious literature containing information about Adventist dogma, while aiming to involve outsiders in the activities of a religious organization. The Ministry of Justice accused the believers of an administrative offense, namely the implementation of missionary activities in violation of the law. A lawyer who defended Christians, filed a complaint against the administrative protocol of the Ministry of Justice of the Republic of Altai. In that complaint, he pointed out that in the protocol the facts were given erroneously, and the actions of the Adventists were interpreted incorrectly, in violation of the meaning of the law [8]. The court held in this case discontinued the proceedings due to the absence of an administrative offense.

Given the realities of the XXI century, the legislator is trying to meet the two key objectives. On the one hand, the legislator is trying to resist the emergence and spread of religious ideologies banned in the Russian Federation, and therefore makes an attempt to more strictly regulate legislation on missionary activity. On the other hand, there is mistrust in the society towards the authorities, which causes a negative legislative experience. Religious organizations that are faced with the need to comply with the legislation, tend to positively perceive this task, increasing their level of legal literacy. From the analysis of the few practices of applying new legislation, it follows that the success of its implementation depends 90% on the first level, which is a police officer who is called upon to implement the accepted norms without violating their meaning.

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