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## Secular State and Civil Society: Search for Common Contacts

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**Abstract.** This article is devoted to the study of such complex phenomena as civil society and the secular state and their subsequent influence on each other. The study takes a close look at religious associations, which constitute a structural element of civil society. Freedom of action granted by the state within the framework of secularity allows them to play the role of a link between the individual, the state, and society and coordinates common and private interests, and thus contributes to strengthening relations between these entities. Thus, secularity acts as a fundamental legal value. Taking into consideration the essential features of the secular state, we trace peculiarities of the relationship of religious associations to authorities at the present stage. It is proved that their active citizenship helps the state solve many issues related to meeting diverse needs of the individual. At the same time, the study focuses on the imperfection of Russian legislation governing various aspects of secularity, specifically on the vagueness and inaccuracy of some formulations which lead to a clash of opinions and interests of people with different worldviews and groundless accusations of authorities of clerical tendencies. At the same time, clericalization is a negative factor destabilizing civil society, hindering its normal development. We express an opinion on the admissibility and even expediency of state-church interaction, which, with strict legislative regulation, cannot be identified with the attempts to clericalize power and society. The study also defines the freedom of religion limits (freedom of conscience) in the formation of a secular state and civil society.

**Keywords:** secularity, civil society, secular state, religion, religious associations, freedom of conscience, state-church interaction, legislation.

Research area: constitutional law; constitutional litigation; municipal law.

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## Introduction

Interest for the civil society as research object is getting stronger both in Russia and the entire world. In our country, it is associated with building of a secular state and spiritual resurgence of the country. The desire to establish the ideals of secularity and a civil society is caused by profound transformations in the ideological and religious spheres of social life. Since the 1990-s, Russia has withdrawn from atheistic ideology, stopped fighting against religion and any manifestations of religiousness, and set a course for building a secular state and development of a civil society.

Along with that, liberalization of the state policy concerning religion has generated new problems related to the popularization of new religious movements that may injure the health and property rights of the citizens, escalate religiously-driven conflicts, stimulate activity of terroristic and extremist criminal groups. Unable to react to these serious challenges in an adequate way, today's authorities have to seek assistance from the civil society and major religious denominations. In their turn, religious organizations are also seeking cooperation with the state to create advantageous conditions for operation and development. All this requires a review of the existing approaches to building relations between the civil society, its institutions, and the state with respect to religion.

Moreover, the pertinence of the present topic is caused by numerous discussions on various aspects of the development of relations between the individual, the state and the society in the secular system. The range of existing opinions is quite diverse. Someone may advocate for the domination of pluralism and development of the American-type state-church relations, where the state acts as an equal partner of all denominations, without distinguishing any of them from the rest. The others suggest giving priority to the so-called "traditional" religions that have existed in the territory of Russia for a long time (Orthodox Christianity, Islam, Judaism, Buddhism). The third insist on giving a special status to Orthodox Christianity.

For this reason, the objective of the present research is to carry out a legal analysis of the

peculiarities and tendencies in the relationships between the state, the civil society and its institutions, the optimal (acceptable) governmental policy for religious relations that would facilitate the harmonic development of the personality, the state and the civil society. The nature of these relationships is the main factor that determines whether the dialogue between the civil society and the public authority can or cannot be established.

## Concept of the secular state and the civil society

The greatest achievement of the philosophic thought of the 18<sup>th</sup> – early 19<sup>th</sup> century was the development of the theory of civil society as a society relatively independent from the state, manifesting both individual and collective interests of its members, a society in a continuous movement and development. From the philosophic point of view, civil society features a diversity of connections and relations that develop between its subjects. German philosopher G.W.F. Hegel defined civil society as relations (communication) of persons in their system of needs (Gegel', 1990: 227-228). Contemporary philosophy and theory of law also rely upon the definition of civil society, presenting it as something more than just a number of people, but an aggregation of non-governmental social relationships (moral, religious, national, socioeconomic, family etc.) and their institutions that satisfy the interests of the individuals and groups of individuals. This is a society of the dominating horizontal, not vertical relations and connections between people. In such a society, the central place is occupied by an individual with his rights and freedoms. At the same time, the individual cannot satisfy many of his needs and solve some tasks on his own, which pushes him to contact other people. Again, according to G.W.F. Hegel, "In civil society each member is his own end, everything else is nothing to him. But except in contact with others he cannot attain the whole compass of his ends" (Gegel', 1990: 228). The civil society is developing as long as the interests of the person occupying a public position dominate over his personal ends.

A certain driver for such society development is a system of social associations established to satisfy various interests and needs of the citizens. Religious associations hold a firm place in the civil society structure as well. Actively promoting their position, they make a significant influence almost on all spheres of life, developing contacts both with the citizens presenting different convictions and views of religion, other subjects of the civil society, and the state itself. The latter, in its turn, is involved in supporting religious associations as an essential element of the civil society by building secularity-based relations with them<sup>1</sup>.

Positioning itself as secular, a state is striving to achieve and maintain the balance of interests between representatives of different religions and their associations, at the same time remaining neutral, showing no preference to any denomination to prevent possible confrontations and conflicts between them. It is well-known that besides uniting people, religion may also play a disintegrating function. As Iu.A. Nisnevich fairly remarked, "Acting as a source of union for these or those social communities, religion claims its absolute and only rightfulness, opposing the communities it unites to the others, united by other religions" (Nisnevich, 2019).

There are many evidences of this phenomenon in the global history. The consolidating potential of a religion and Orthodox Christianity in particular manifested itself stronger than ever during the Great Patriotic War, when there was a need for bringing people together to overcome the common enemy. In her thesis, O.Iu. Vasil'eva emphasizes that "despite the savage repressions of the clergy and believers, the majority of both remained genuine patriots of their Motherland" (Vasil'eva, 1990: 23).

The destructive power of religion is demonstrated by the experience of the Middle East (Iran, Palestine, Syria), where religious wars and conflicts break out every now and then. A French philosopher and political figure, R. Garaudy also speaks of the possibility of

emergence of a revolutionary movement at the junction of politics and faith (Garaudy, 1979: 312). The American colleagues also point out the important role of religion in the revolutions in the USA. "We are aware of the crucial role that religion played in America's revolutionary struggle", write I. Kramnic and R.L. Moore (Kramnic, Moore, 2005: 14).

Taking into account the duality of religion as a social regulator, the secularity category becomes especially topical and practically significant in our country, which is a unique "laboratory" of beliefs. Thus, in the year 2018, there were 30,325 religious organizations officially registered in the country (Sostav i kolichestvo religioznykh organizatsiy..., 2019). To compare, in 2004 there were 21,187 (Shakhov, 2007: 3). With the growth of this number, the relationships of the religious associations with the civil society, the state and each other become more and more complex and diverse. Besides, a lot of religious organizations and groups operate without any official registration as a legal entity. The majority of these religious associations are made up by Orthodox Christians, constituting over a half of the total number of believers. Muslims are the second largest religious group. This is why a secular state developing in the contemporary period has to remain neutral, indifferent and independent of any religious association, and the civil society should be tolerant and respectful.

According to Article 14 of the Constitution of the Russian Federation, "The Russian Federation shall be a secular state". According to the concept, all the clauses concerning secularity of the state were initially supposed to be collected in the "Civil society" chapter (Mitiukov, 2018), emphasizing the importance of implementing this model of social order. However, in the final version they turned out to be scattered around different articles. Thus, independence of the state from any religious association and the absence of any national or obligatory religion are stated in the same Article 14; freedom of conscience is proclaimed in Article 28, equality of all persons regardless of attitude to religion is established in Article 19 etc. The formulation of Article 14 itself can-

<sup>1</sup> In English and American definition dictionaries the meaning of the word *secularity* is usually defined through the adjective *secular*: "the state or quality of being secular" (Academic Dictionaries and Encyclopaedias, 2019).

not be recognized as good, as it does not define the concept and features of a secular state. All the legislator did was a declaration. The Federal Law “On Freedom of Conscience and Religious Associations” (Federal law, 1997) does not contain any definition of the secular state either. It creates difficulties in interpretation and implementation of the provisions of the Constitution concerning secularity of the Russian Federation. As this definition is judgmental, any lawyer may interpret it in his or her own way, relying upon his or her own ideas of religion, its place and role in the society and the state.

It is not a rare situation when the meaning of this legal category is artificially distorted and adjusted to the interests of certain groups or people, which is absolutely unacceptable. A secular state is either equalled with an atheistic one that opposes religion, or considered as religion-free, isolated from religion, or is claimed to be independent from the religious factor. This is why it is absolutely fair to claim that “to ensure clear understanding, the legal definition of the *secular state* term in the constitution needs to be specified (by means of interpretation of the article of the RF Constitution by the Constitution Court of the Russian Federation, or a conceptual definition of the term in the federal legislation)” (Sabaeva, 2014: 28).

In a civil society, the religious relations (state-church relations<sup>2</sup>) may emerge both as bilateral and multilateral, with the subjects being the state, a religious association and citizens with different worldview attitudes. All of them need to acknowledge and follow the unified regulations of community life, established by the legislation of the state that proclaims itself to be secular.

<sup>2</sup> The interpretation of the definition of “state-church relations” as a diversity of relations established only between the state and religious associations, popular in published researches, is hard to agree with. This definition narrows the term, as it misses out the interests of the individual, making him a passive onlooker, an observer, while the individual with his rights and freedom is the main value of a democratic state. However, care for an individual is the major task of the religious associations. For this reason, to our mind, it is more rational to define the state-religious relations through the prism of human rights in the context of freedom of conscience (Fedotova, 2017).

### **Secularity is the basis for interaction between the state and the civil society**

In the today’s reality, the state and religious associations maintain a continuous dialogue, though keeping some distance between each other. From the scientific point of view, in the secularity system the state-church interaction is not refused from. German researcher of the state-church relations W. Brugger describes six possible models: 1) animosity between state and church; 2) strict separation between state and church in theory and practice; 3) separation with practical accommodation; 4) division plus coordination and cooperation; 5) formal unification of state and church; 6) formal and material union of state and church (Brugger, Karayanni, 2007). In these terms, Russia belongs to the fourth type, where there is no separation between the state and the church, as long as, based on the separation of their activity spheres, they do not only treat each other with respect, but also develop a cooperation. The cooperation approach is typical not only for our country, but also, for example, for Germany. Regardless of the absence of the constitutional back clauses, Italy, Spain, Poland, Hungary and some Latin American countries cooperate with the growing number of religious associations through agreements and concordats.

The cooperation between the state and religious associations is especially productive in the sphere of education. Schools, colleges and other state and municipal educational institutions constitute the civil society system together with the religious associations. Being parts of one and the same whole, they contact each other. And if in the past the religious component in secular schools caused a lot of reprimands<sup>3</sup>, today some significant corrections have been introduced into the legal regulation of the issue. The legislator resolved that the academic subjects, disciplines (models) and courses containing any religion-related information may be (not should be!) included into the main curriculum. According to the new Federal law “On Education in the Russian Federation” (Federal

<sup>3</sup> And again, the reason is the vague formulation of the education secularity principle in the Law of the Russian Federation “On Education” (par. 4, art. 2) (Law of the Russian Federation, 1992), which by the present time has already expired.

Law, 2013), the religious component does not contradict the secular format of the state and municipal educational institutions, provided that the course of Fundamentals of Spiritual and Moral Culture of the Peoples of Russia is selective as per the legislative requirements.

Selectiveness means, that the parents (legal representatives) of the students are entitled to choose the subject to be taught. The educational institutions are imposed an obligation to develop several subjects, courses, or disciplines (modules) and introduce them into the curriculum for the students (their legal representatives) to make their choice.

At the same time, children still may study religious dogma on a voluntary basis beyond any school curriculum (optionally) based on a written declaration of the parents (legal representatives) and with the consent of the student. This right is provided by par. 1.1 of the Order of the Ministry of Education of the Russian Federation “On Granting the State and Municipal Educational Institutions an Opportunity to Teach Religion to Children outside the Curriculum” (The Order of the Ministry of Education of the Russian Federation, 2003).

We suppose that the legislator was wrong to omit the principle of voluntariness in the text of the Federal Law “On Education in the Russian Federation” (Federal Law, 2013). On the opposite, the law should have been expanded to let the parents (legal representatives) of the students refuse from the course on the Fundamentals of Spiritual and Moral Culture of the Peoples of Russia if, for example, they are not satisfied with the contents, volume of the course or the arrangement of the learning process. Unfortunately, educational institutions face some difficulties in this regard (Pronina, 2017; Almazova, 2017) and do not always satisfy the requirements set before them. Moreover, the opportunity to refuse from the course allows the atheists, people indifferent to religion or believers who trust teaching the religious dogmas to their children only to specialized religious organizations (for example, a church Sunday school) to exercise their freedom of conscience. It is especially interesting to look at the experience of Italy, where, just like in Russia, secularity of the state co-exists with

one religious denomination prevailing over others (Catholicism). The religious dogmas are taught at public schools. The parents, or their substitutes, who wish to excuse their children from religious classes, submit a written declaration to the school.

Interaction between the state and religious associations concerning teaching religion and culture-related subjects is regulated by Article 87 of the Law. It includes the expert assessment of the taught disciplines by religious associations (par. 3), assistance in the preparation of teaching and learning materials (par. 6) and opportunity of public accreditation of the educational institution and its teaching staff (par. 12). As we can see, the legislator chose a liberal way and provided a range of authorities to the religious associations, which is completely supported by us. In our opinion, studies of the Fundamental of Spiritual and Moral Culture of the Peoples of Russia helps children understand and comprehend the world outlook of their people, the questions of good and evil, morality and righteousness, and, therefore, avoid the destructive influence of pseudo-religious entities in the future<sup>4</sup>.

By the way, counteraction to any destructive pseudo-religious entities is one of the aspects of religious security, in which the church and the state can successfully cooperate. The first of the European countries that proclaimed itself a secular state, France, has succeeded in it. For 18 years, it has been operating the Act to Reinforce the Prevention and Suppression of Sects Which Infringe Human Rights and Fundamental Freedoms. It restricts publicity of the pseudo-religious entities and prevents all possible abuses they may commit by expanding criminal liability of legal entities for certain crimes by means of, inter alia, elimination

<sup>4</sup> There are no official statistic data on the number of the destructive sects operating in Russia, just like there is no actual legal definition of a sect. According to different specialists, there are around 600-800 of such associations, including 80 major ones. The number of people involved in such organizations reaches one million people, 70% of them being young people aged from 18 to 27. Through the blame of the sects, nearly 250 thousand children became orphans. Moreover, the magicians, sorcerers, astrologists, healers, fortune-tellers and other occultists operating on an illegal basis and providing a threat to the lives and health of people are innumerable.

of such entities. It remarks (Art. 1): “Peut être prononcée, selon les modalités prévues par le présent article, la dissolution de toute personne morale, quelle qu’en soit la forme juridique ou l’objet, qui poursuit des activités ayant pour but ou pour effet de créer, de maintenir ou d’exploiter la sujétion psychologique ou physique des personnes qui participent à ces activités, lorsque ont été prononcées, contre la personne morale elle-même ou ses dirigeants de droit ou de fait, des condamnations pénales définitives”<sup>5</sup>.

Russians have been cautious about such daring legislative initiatives; however, it is not unlikely that with the growing number of the pseudo-religious entities which threaten the life and health of individuals, infringe their personal and property rights, the question of passing a similar legal regulation may find its place in the agenda. That was what happened with the regulation establishing criminal liability for the insult of the religious convictions and feelings of the believers, when the state had to take such radical measures under the pressure of the community and representatives of religion and to introduce an amendment into Art. 148 of the Criminal Code of the Russian Federation on “Obstruction of the Exercise of the Right of Liberty of Conscience and Religious Liberty”.

Such legal changes were a consequence of the scandalous criminal case of the hooliganism committed by the members of Pussy Riot punk rock group, who expressed their religious hatred at the Epiphany Cathedral in Yelokhovo and at the heart of the Orthodox culture and tradition, the Cathedral of Christ the Saviour in Moscow. Let us remind you that on February 21, 2012 five young women were detained by the law reinforcement bodies for an act of hooliganism, which was described as imitation of a religious ritual in a dancing form, performance of obscene songs, insulting utterances to people present at the church, the clergy and Orthodox Christians in general. Later, the offenders edited a video and posted it on the Internet to gain publicity. Russian Orthodox Church explicit-

ly did not approve of the act and sought strict punishment for the guilty (Bremer, 2013). One of the most authoritative and reliable social institutions, the Church advocated its traditions, morality and righteousness.

Another sphere where the presence of religion is not argued even by the keenest sceptics is social life. The state-church interaction here meets the aim of a both secular and social state (Article 7 of the Constitution of the Russian Federation). A lot of people are in need for a material support today. The state represented by its bodies and institutions is not always capable of providing personal assistance and individual approach to every person to solve his or her problems. However, the church has the resources to support social programmes and to help some people individually. This is the manifestation of its essence; for this reason, it is preferable for the state to support the initiatives of the religious associations as much as possible and to cooperate with them.

Culture, spiritual and moral development, character education, development of patriotism, protection of the family, maternity and childhood, rehabilitation of the accused, combat against alcoholism and drug addiction are the common areas where the religious associations can provide a doubtless and priceless support to the state. Therefore, it is the life itself that changes the state-church interaction. We witness the state and religious associations reaching out for each other as structural elements of the civil society. It becomes obvious that it is the time to specify the legal requirements for separation of the religious associations from the state at the legislative level, to establish a space for them to contact, to designate the spheres of mutual cooperation and sole influence areas of the state, forms, objectives, ways of cooperation etc. Such bill has already been developed<sup>6</sup>. In the discussions, conceptual remarks and suggestions on the legal techniques, terms and formulation of some provisions have been presented (V tsentre problemnogo analiza..., 2008). However, the general concept of the bill and its further passing is worth an

<sup>5</sup> The subject matter is the French Act No. 2001-504 of June 12 2001 (Proposed legislation ...). The final version of the passed bill is published on the official website of the National Assembly of France (Assemblée nationale).

<sup>6</sup> The bill was prepared by the Centre for Problem Analysis and State-Authority Project Development (Iakunin et al., 2009).

approval. We believe it requires some further review with regard to the presented remarks and opinions of the religious associations in order to finalize it, to bring it up to the discussion in the community as it was once done with the Federal Law “On the Police” (Federal law, 2011)<sup>7</sup>. At the present moment, there are some promising conceptual projects which, as remarked by the Minister of Education of the Russian Federation O.Iu. Vasilyeva in one of the interviews, still remain up-to-date (Vasil’eva, 1990) and can be therefore used by the legislators. For instance, in the year 2001 under the order of the Administration of the President of the Russian Federation, Department for the Study of Religion, Russian Academy of State Service (RASS) developed a document titled “Conceptual Foundation for the State-Church Relations in the Russian Federation” (Kontseptual’nye osnovy...). It may take years to discuss natural development of the state-church policy, absence of such function of the state and underdeveloped condition of the civil society. But a number of religious confessions happened to be more forward-looking than politicians, operating their domestic documents as practical guidelines for building proper relations with the secular authorities and taking part in the social development issues<sup>8</sup>. One of such documents is Section III “The Church and the State” of the Fundamentals of the Social Concept of Russian Orthodox Church (Osnovy sotsial’noy kontseptsii..., 2000). It may be suggested that, being a powerful social regulator, the state should follow the example of the religious institutions to say its word by unifying the ex-

isting doctrines and adjusting them to today’s legal reality.

### **Secularity as self-limitation of the state in certain spheres**

Studying secularism issues, the French philosopher and writer Henri Peña-Ruiz equalled secularity to self-limitation of the state (Pena-Ruiz, 2003). According to him, this is the state that needs to determine the borders of interaction with the religious associations (by limiting itself) through exercising its legislative function. The analysis of the provision of the Federal Law “On Freedom of Conscience and Religious Associations” (Federal Law, 1997) reveals that there are very few restrictions that would hinder the interaction between the state and religious associations today. They concern some aspects associated with the immediate participation of the religious associations (not its members!) in the political life and administrative activities of the state. According to par. 5 art. 4, a religious association shall not perform the functions of the state authority bodies, other state organs or institutions, local self-government bodies; it shall not participate in the elections to the state authorities and local authority bodies, it shall not be involved in the activity of any political parties and movements, shall not provide them any material or other kind of assistance. At the same time, the state shall not impose any functions of the state authority bodies, other organs, institutions and local authority bodies on the religious associations (par. 2 art. 4). Moreover, the law makes a provision concerning the obligation of the state to ensure secularity of education (subpar. 4 par. 2 art. 4). In the rest of the spheres, religious associations are granted maximum freedom for cooperation with the state as an equal partner, which they successfully implement, guided by the principle “do as you like unless expressly prohibited by law”.

The restrictions for participation of the church in the political and administrative activity is easy to explain and understand. Just like any religious doctrine, politics (from Ancient Greek πολιτική “state affairs”) is an ideological phenomenon. At the same time, the church shapes the conscience of a wider strata of soci-

<sup>7</sup> The subject matter is the Federal Law “On the Police” (Federal Law, 2011). It should be reminded the bill of the law was discussed on the official website <http://zakonoproekt2010.ru/>, where everyone interested could see the text of the document and leave their suggestions and remarks to be considered by the Expert Council of the Ministry of Internal Affairs of Russia for regulation development.

<sup>8</sup> By today, the Fundamentals of the Social Concept of Russian Orthodox Church, Fundamentals of the Social Programme of Russian Muslims, Fundamentals of the Social Concept of Russian Union of Christians of Evangelical Faith, Fundamentals of the Social Teaching of the Seventh-day Adventist Church of Russia, Social Position of the Protestant Church of Russia, Fundamentals of the Social Concept of Judaism in Russia, Social Concept of the Evangelical Church of the Augsburg Confession have been developed.

ety, being therefore capable of influencing their opinion and political position; it is tempting to use it as a tool in the political struggle, race for power, which can be destructive for both the state and the church. Performing all functions of the state, the church would not be able to concentrate on its major role, which is care for the spiritual and moral development of man. It risks losing its independence and turning into a political structure with a different legal status. It would be enough to recall the reforms of Peter the Great, when the authority established its control over the administrative and financial activities of the church, laying down its rule from the position of power. The state may also get dependent of a certain confession and turn from a secular to a clerical one.

It was fairly commented by I. Kramnic and R.L. Moore: “No religious group may legislatively dictate its conscience to other people when the only issue is that conscience’s claim. If religious leaders attempt to pass legislation by arguing that it is God’s will, if individuals run for office saying they do so with God’s blessing, if members of a religious lobby endorse candidates for office only because they claim to be born-again Christians, they offend both American politics and the religious rules of this country set up to protect the free exercise of religion” (Kramnic, Moore, 2005: 130).

The processes associated with the excessive (!) presence of the religious factor in politics and, therefore, excessive influence of a religious association on all spheres of social life, are usually referred to as clericalization<sup>9</sup>. Its main threat is the replacement of the political will with the ambitions of an individual religious association<sup>10</sup>, withdrawal from the constitutional principles and democratic ideas

<sup>9</sup> Term derived from “clericalism”, mostly used when speaking about Roman Catholic Church. In its turn, clericalism (from Latin *clericalism* “related to church”) is a social and political movement intended to enhance the role of the church in the political and spiritual life of the society and acting through the political parties and different religious organizations located in a number of countries of the world (Populiarnaia entsiklopediia, 2009: 114).

<sup>10</sup> On the nationwide scale, the contemplations of clericalization cast a pall over Russian Orthodox Church, which, considering its historical contribution into the development of the Russian state, *de facto* enjoys the status of ‘primus inter pares’. Some reprimands also concern Muslim religious associations,

without which the civil society would not be able to function in a proper way. For Russia, clericalization means a step back to its monarchic past, when there was not even a trace of a civil society. All it had was some separate pre-requisites for such after the reforms of Alexander II (abolishment of serfdom, judicial reform, administrative reform, local self-government reform).

However, it is wrong to equalize any contacts of the state and religious associations to clerical manifestations. Those only occur in the event of major violation of the restrictions established for religious associations by law in the political and administrative spheres, which, as we can see in the text of the Federal Law “On Freedom of Conscience and Religious Associations” (Federal Law, 1997) and the Federal Law “On Political Parties” (Federal Law, 2001) are not that many. At the present moment, none of the political parties represented in the State Duma of the Federal Assembly of the Russian Federation is made up on a religious basis, though there have been some attempts in the recent past<sup>11</sup>. There are no religious leaders who occupy any official public positions at the state or municipal level. There are no religious associations that support any political parties. The clergymen do not participate in the elections, do not run any election campaigns to support any candidates.

However, today the statements of a visible inclination of some state administration bodies to clericalization are becoming more and more frequent. For example, visiting religious service on the major Christian holidays, Christ-

the influence of which dominate in some constituent entities of the Russian Federation (Tatarstan, Chechnya etc.)

<sup>11</sup> In the year 2006, a bill on cancelling the prohibition of establishing political parties on the basis of religious affiliation was brought to consideration of the Lower House of the Russian Parliament. The explanatory note pointed out the contradiction of the current regulation to the constitutional principle of ideological diversity. The authors of the bill considered it unfair to prohibit the establishment of any political entities of religious nature, while there are political parties oriented at the protection of the atheistic and anti-religious interests in the country. At the same time, previously, in the year 2004, the Constitutional Court of the Russian Federation sustained the Federal Law “On Political Parties” (par. 3 art. 9) (Federal Law, 2001) on the prohibition of establishing any political parties on the basis of religious affiliation.



mas and Easter Sunday, has become a tradition for the senior-most officials. This is an overlap of the interests of the public person as a citizen entitled to freely exercise any religion and as a representative of public authorities. Doubtlessly, open demonstration of personal preferences may bring discredit upon a politician or a public figure, but at the same time the law does not provide any instructions on how to behave in such a situation. The problem appears to be best approached from the position of tolerance<sup>12</sup>, which is the spiritual guarantor of the freedom of conscience and the major value of any civil society. In this regard, the desire of the state leaders to expand their contacts with the representatives of other religious denominations should be encouraged.

Another accuse has been heard: in the lead-up to the Presidential election in the Russian Federation, the religious leaders began to call for their flock to come to the voting stations and vote for the right candidate<sup>13</sup>. In this regard we completely agree with the Swiss journalist K. Huber who in his article “Christian Church and Politics” totally rejects “the dilemma of the evangelical preaching of love for one’s neighbour and the political and social activity of the church as such”. He believes that “one does not contradict another”, and then continues: “The need for political activity of the church relies upon the fact that it is also a part of the society, of the world, where justice coexists with injustice, peace with war, wealth with poverty, freedom with slavery” (Mchedlov, 1982: 27).

Taking this fact into consideration, the influence of the religious associations on the political life cannot be completely denied. Calling for people to exercise their right to vote, the church manifests itself as an active subject, concerned about the future of the civil society and wishing to make a positive contribution into its development. This is not clericalization that should be spoken about, but an actual ex-

istence of some common grounds for religion and politics, if the interaction borders determined by the law are not violated.

However, clericalization problem is stated not only in Russia, but also in the post-Soviet countries. Some researchers remark: “An almost unique feature of the societal development of most post-Communist countries is the clericalization that took place after the fall of Communism. Russia and the former states of the USSR are nowadays overly religious, with Orthodoxy as the prime religion, with large parts of Central-Asian countries subscribing to Islam” (Jovanovic). This concerns the former Yugoslavian regions (especially Serbia and Bosnia), Poland and other countries. As a result of the state’s reaching out for religion, Serbian church is coming up with a new ideological base and system of values for the governmental institutions (Vukomanovic, 2008; Aleksov, 2010). Orthodox church made a huge impact on the development and implementation of ideas of the nation and state in Moldova (Zabarah, 2011). In Russia, the role of the church in the society and the state is quite prominent. Emphasizing this, Russian journalists often refer to Russian Orthodox Church as to “the fifth estate”<sup>14</sup>, and in the academic circles it is often said that “Ideology and the Russian Orthodox Church “sanctify” this political system, which closely resembles a corporate state” (Koleznikov, 2015: 15).

The appeal to Orthodox Christianity is greatly conditioned by the refusal from the communistic ideology, which had been one of the most powerful tools of the governmental and social administration in these countries for a long time. In the absence of an official or compulsory ideology and the pluralism of the world outlook, there comes a need for some aspiration that would bring the nation together. Russia is also seeking a common idea for the nation, that would set the right priorities for the successful development of the society and the state, deter-

<sup>12</sup> In this context it would be more proper to use the term of *religious correctness*, popular in English and American literature. However, the author of the article finds it to be bearing a negative connotation, demonstrating more of a condescension than respect towards representatives of different religions.

<sup>13</sup> Such opinions were expressed in the information TV programme “Interview with Maria Bondareva” (Russia-24 channel), 04.03.2018.

<sup>14</sup> This term (German: Die fünfte Gewalt) was introduced by the German historian F. Schneller in 1823 (Schneller, 1823: 587). At the present time it is universally used in the USA (English: Fifth Estate) to refer to an influencing power in the society, a political institution involved in the administration of life of the civil society. The term is widely used in Russian media (Pozdniaev, 2005)

mine the middle-term and long-term political course of the country (Bespalenko, 2012: 169).

For today's Russian mentality it is typical to see religiousness and national identity as synonyms, which is manifested in the formula "Orthodox means Russian". And since Orthodox Christianity does enjoy the leading position among other religious denominations, the idea of symphonic relationship between the state and the Orthodox Church (secular and spiritual estates) is being driven forward with great persistence. In his public speeches, Patriarch Cyril has numerous underlined that the "symphony" will facilitate a harmonic combination of the interests of the state and the church.

As the church is one of the most reliable and authoritative institutions in Russia, the temptation to revive the idea of the "symphony" of the two estates is great. The teachings of the church, promoted throughout centuries, are clear and easy to understand for the majority of people. However, this issue should be treated with caution. First of all, the establishment of symphonic relationships shall not contradict the constitutional provisions. It is unacceptable to replace the term of "common national ideology" with "common compulsory (governmental) ideology", as Article 13 of the Constitution of the Russian Federation forbids obliging the citizens to follow any imposed ideology. Moreover, the "symphony" of the two estates will require the state to take care of the material wealth of the church, of maintaining its canons through the governmental enforcement. The state would be obliged to officialise the privileged position of the Russian Orthodox Church, which is incompatible with the constitution principle of equality of all citizens regardless of religion (Article 19 of the Constitution of the Russian Federation). Secondly, the presence of the Orthodox tradition in the common ideology may cause a negative reaction from the representatives of other religious denominations, complicating their relationships with the state, hindering the interconfessional dialogue. The historical experience of the monarchic Russia proves that in the reign of the Orthodox Christianity, other religions would not put up with such a situation. For example, J.A. Kessler, bishop of the Roman Catholic di-

ocese of Tiraspol in Saratov, strictly criticized the denominational policy run by the monarchy in the first half of the 19<sup>th</sup> century, seeing the Emperor as an enemy of the state, oppressing the freedom of religion (Kessler, 1930).

In our opinion, a common national ideology may exist as a consolidating idea, as a spiritual support for the civil society, but it has to establish in the conscience of the people on its own; it cannot be imposed from outside. As fairly remarked by Henri Peña-Ruiz, secularity does impose some restrictions on the ideology, as there is no idea that could pick up the torch of the religion which used to occupy a privileged position not so long ago (Pena-Ruiz, 2003). If the state selects to restrict itself in the propaganda of some ideology, proclaiming ideological and religious pluralism in its Constitution, the civil society is capable of developing a common national ideology on its own. It shall set the ideals, clear and relatable to any citizen regardless of their attitude to religion: patriotism, rich historical and cultural heritage, commitment to resolve the social and economic problems, free civil society and democratic values.

**Freedom of conscience in a civil society and a secular state:  
legal and moral dimensions**

A special place in this system of values is occupied by freedom of conscience as a material feature of a secular state (Article 28 of the Constitution of the Russian Federation). In a civil society, the relation between the citizens and associations of citizens shall be based on freedom and equality. The state shall respect this postulate and develop it in its legal regulations. Thus, the freedom of conscience is recognized by many countries of the world, international organizations and law enforcers as the underlying element in the structure of human rights. The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4, 1950) that was also signed by Russia, states: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or

in private, to manifest his religion or belief, in worship, teaching, practice and observance” (Gomien, 1995: 68).

There is number of authoritative international organizations that pay a special attention to this requirement. For example, the documents of the Organization for Security and Cooperation in Europe state that the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience (OSCE Human Dimension Commitments..., 2001: 39-41). And though the OSCE documents do not bear the status of legally binding treaties or international legal regulations, they present the political commitments, approved with a consensus, binding all the participating states, that also include Russia.

The Russian legislators have reproduced the formulations of the international treaties in the constitutional provisions and the Federal law “On Freedom of Conscience and Religious Associations” almost word by word (Federal Law, 1997). In the most general sense, freedom of conscience should be understood as a legal dimension for freedom of choosing a world outlook. This is a natural right of man to make up his world outlook independently, on the basis of religious, atheistic and other convictions, to express it openly in social and other contacts, without impeding the rights and freedoms of other people and the society as a whole. It is also known as the human right to the autonomy of spiritual life. At that, the moral component of spirituality is emphasized.

In this context, it would be wrong to regard the freedom of conscience separately from honour and dignity of an individual. The problem of correlation between the human rights and personal dignity was raised in the year 2007 by Patriarch Alexy II of Moscow in his speech at the session of the Parliamentary Assembly of the Council of Europe, and in the year 2008 Russian Orthodox Church enacted the Fundamentals of Dignity, Freedom and Human Rights, which state: “The human right institution is weak for, defending the freedom of choice, it takes the moral dimension of life into

consideration less and less” (Osnovy ucheniia Russkoj..., 2008). Unfortunately, the freedom of conscience today is interpreted in quite an arbitrary way, separately from the norms of morality and righteousness. The moral depravity of some acts is excused with the freedom to act, as we can see in the situations of violation of religious articles and items, or places of religious rituals and ceremonies; in the persistent suggestions to run a gay parade in the capital of the country, to legalize same-sex marriages etc.

To a certain extent, it is explained by the essence of the conscience category as such, which is one of the manifestations of the moral self-consciousness of a person. Someone has the desire and capacity to formulate his moral obligations, abide to them and adequately assess his deeds; someone, for some reasons (for example, due to ill-breeding) has no wish or capacity to do so. The idea of freedom of conscience develops inside an individual, in his consciousness. As figuratively formulated by D. Gomien, “the rights to freedom of thought, conscience and religion are largely exercised inside an individual’s heart and mind” (Gomien, 1995: 69).

The character of the person is revealed and the question of restricting one’s freedom of conscience may be raised only when the person manifests his convictions and commits some related acts. The restriction may be imposed, inter alia, through the morals, as, according to the Latin proverb, “Laws without morals are useless” (“quid leges sine moribus vanae proficunt”). The Convention for the Protection of Human Rights and Fundamental Freedoms contains a provision on the limitation of freedom to manifest a religion or convictions for the protection of moral (Art. 9): “2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations ... are necessary ... for the protection of ... moral ...” (Gomien, 1995: 68). Similar provisions have also been introduced in the legislation of Russia: “The right of a human and citizen to the freedom of conscience and religion may be limited ... for the protection ... of moral, ...” (part 2 Art. 3 of the Federal law “On freedom of conscience and religious associations” (The Federal law, 1997)).

In this context, the efforts of the religious associations to revive the morality and ensure dignity of personality should be highly appreciated. This was, same-sex marriages and organization of gay parade were harshly condemned by the Head of the Presidium of the Muslim Spiritual Board of the European part of Russia, Grand Mufti of Russia R. Gaynetdin in his interview to Russia-24 TV channel<sup>15</sup>.

### Conclusion

Therefore, the conclusions made in the present research may be formulated as follows:

1. A secular state creates proper conditions for the successful development of the civil society and its institutions. The state of this type does not oppose itself to the civil society; on the opposite, it remains neutral, granting the church the right of independent institutional activity within the reasonable limitations set by the legislation. It satisfies the needs of its citizens for religion, provides a true freedom of conscience to facilitate the full-scale spiritual and moral development of individuals.

2. The secular state and civil society ideals have not yet established in the individual and public opinion. At the present moment, there is a tendency for two extremes. On one hand, considering the huge historical contribution it made into the development of our country, the church in the conscience of Russians is perceived as an integral element of the state and civil society. On the other hand, there is an effect of the atheistic past, which enhances the anti-clerical sentiments.

3. Secularity does not contradict, but assumes the existence of certain forms of cooperation between the state, religious associations and other civil society, such as the institutions of education, culture, and healthcare, in order to solve a wide range of various problems. The church has always been defending morals and righteousness, enforcing the institution of the family, helping those in need, safeguarding of peace and tranquillity in the world. Its mission is concordant with the main idea of the civil society, which is to develop integrity and stability of the social system.

4. The citizens' attitude to religion, the degree of trust to religious associations as the most stable and reliable institutions of the society, determines the level of integration of the religious factor into all spheres of social life. And if in some of them the presence of religion is acceptable and even reasonable, there are some areas where it should be minimized, such as politics, administrative activity and ideology. As the religious factor cannot be completely excluded, the state shall establish some limitations for cooperation with religious associations. However, the legislation regulating the state-church interaction has not been developed yet. There are some terminology issues as well as problems with the specification of the legal regulation of such relationships, which creates new prerequisites to the clericalization of the governmental structures and the society as a whole.

5. In the secularity system, religious associations cooperate both with the government machine and other institutions of the civil society (educational institutions, political parties etc.). It expands the borders for the exercise of the freedom of conscience. It is proven by the introduction of such discipline as Fundamentals of Spiritual and Moral Culture of the Peoples of Russia into public school curricula. If several years ago (before 2013) religious subjects could be only taught selectively, today the state provides a new opportunity for the citizens interested in religion to develop their world outlook.

6. The borders of the secular and religious influence are quite flexible now. The state is currently refraining from fixing them, leaving this issue to the discretion of the civil society, which inclines to cooperate with it through their institutions. Acting as such institution, religious associations are in charge of making up the bridges, connecting the state, the society and individuals, which they have been successfully doing lately. Quite often the state and religious associations attempt to solve some vibrant issues with joint efforts. It increases the presence of the religious factor in the activity of the civil society institutions (such as state educational institutions). It may be suggested that the religious associations have not yet

<sup>15</sup> See: Information programme "Interview with Maria Bondareva" (Russia-24 TV channel), 04.03.2018.

exhausted their potential. On the opposite, the tendency for strengthening and expanding the existing connections will remain in the future.

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Considering the complexity and versatility of the studied problems, the author is aware of the disputable nature of some judgements expressed in the article, and does not claim a monopoly of absolute truth. She also takes the versatility of the research object into consideration and does not aspire to settle all the range of the related questions. The present article is an attempt to review only the issues that appear

to the author to be the most significant issues of secularity development in today's state of Russia.

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## Светское государство и гражданское общество: поиск точек соприкосновения

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**Аннотация.** Статья посвящена изучению таких сложных феноменов, как гражданское общество и светское государство, их влиянию друг на друга. Важное место отводится религиозным объединениям, которые являются структурным элементом гражданского общества. Свобода действий, предоставленная государством в рамках светскости, позволяет им играть роль связующего звена между личностью, государством и обществом, а также согласовывать общие и частные интересы, а значит, способствовать укреплению связей между названными субъектами. Таким образом, светскость выступает в качестве одной из фундаментальных правовых ценностей. На основе анализа существенных признаков светского государства прослежены особенности взаимоотношений религиозных объединений с властью на современном этапе. Доказывается, что их активная гражданская позиция помогает государству решать многие вопросы, касающиеся удовлетворения разнообразных потребностей личности. Вместе с тем сделан акцент на несовершенство российского законодательства, регламентирующего различные аспекты светскости, на размытость и неточность некоторых формулировок, что приводит к столкновению мнений и интересов людей, имеющих разные мировоззренческие установки, к беспочвенным обвинениям власти в наличии клерикальных тенденций. При этом клерикализация рассматривается как негативный фактор, дестабилизирующий гражданское общество, мешающий его нормальному развитию. Обосновываются допустимости и даже целесообразности государственно-церковного взаимодействия, которое при строгой законодательной регламентации нельзя отождествлять с попытками клерикализации власти и общества. Выявлены пределы свободы религии (свободы совести) в условиях формирования светского государства и гражданского общества.

**Ключевые слова:** светскость, гражданское общество, светское государство, религия, религиозные объединения, свобода совести, государственно-церковное взаимодействие, законодательство.

Научная специальность: 12.00.02 – конституционное право; конституционный судебный процесс; муниципальное право.