

LEGAL FRAMEWORK FOR INTERACTION BETWEEN PUBLIC AND RELIGIOUS ORGANIZATIONS AND THE STATE

QUADRO LEGAL PARA A INTERAÇÃO ENTRE ORGANIZAÇÕES PÚBLICAS E RELIGIOSAS E O ESTADO

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Abstract: It has been proven that the Law on Freedom of Conscience regulates the establishment of religious educational institutions, allowing only Republican and local religious organizations to do so following their charters and legislation. These requirements aim to enable state authorities to control the activities of religious educational institutions within the limits of the law. While the law affirms the secular nature of the state education system, it permits disciplines related to the study of the history of world religions, religious morality, ethics, and morals to be included in the curricula of state educational institutions. Teachers of these disciplines are responsible for teaching general education courses. The Law on Freedom of Conscience includes several norms that develop the mechanism of religious education. The Law stipulates that control over the activities of religious educational institutions should not only be exercised by public authorities during the licensing process, but also by the republican religious organization of the respective religion, which establishes expert councils. In this context, the author examines the obligations assumed by the state to guarantee freedom of conscience and religion while preserving the state's right to require every citizen to act within the framework of the law. Religious organizations established by citizens must comply with the requirements outlined in the Law on Freedom of Conscience. For an organization to be recognized as a religious organization, its constituent documents must address issues related to religion, worship, religious rites, as well as religious education and upbringing. A religious organization operates on a charter that is approved by its founders or a republican religious organization of the respective religion, and it must comply with the requirements of civil law. Therefore, it can be inferred that the interaction between state institutions and civil society institutions is crucial for the existence of a rule-of-law democratic state. Civil society institutions serve as partners of the state in the implementation of law-making, law enforcement, and

law enforcement functions, and mutual trust is essential for effective cooperation. What is more, public initiative is the key to successful dialogue between the state and civil society institutions.

Keywords: Regulations. Civil society organizations. State. CSIs. Religious institutions.

Resumo: Está provado que a Lei da Liberdade de Consciência regula o estabelecimento de instituições de ensino religioso, permitindo que apenas organizações religiosas republicanas e locais o façam de acordo com os seus estatutos e legislação. Estes requisitos visam permitir que as autoridades estatais controlem as atividades das instituições de ensino religioso dentro dos limites da lei. Embora a lei afirme a natureza secular do sistema educacional estatal, ela permite que disciplinas relacionadas ao estudo da história das religiões mundiais, da moralidade religiosa, da ética e da moral sejam incluídas nos currículos das instituições educacionais estatais. Os professores dessas disciplinas são responsáveis pela ministração dos cursos de educação geral. A Lei da Liberdade de Consciência inclui diversas normas que desenvolvem o mecanismo da educação religiosa. A Lei estipula que o controlo da actividade das instituições de ensino religioso não deve ser exercido apenas pelas autoridades públicas durante o processo de licenciamento, mas também pela organização religiosa republicana da respectiva religião, que estabelece conselhos especializados. Neste contexto, o autor examina as obrigações assumidas pelo Estado para garantir a liberdade de consciência e de religião, preservando ao mesmo tempo o direito do Estado de exigir que cada cidadão aja dentro do quadro da lei. As organizações religiosas estabelecidas pelos cidadãos devem cumprir os requisitos definidos na Lei da Liberdade de Consciência. Para que uma organização seja reconhecida como religiosa, os seus documentos constitutivos devem abordar questões relacionadas com a religião, o culto, os ritos religiosos, bem como a educação e educação religiosa. Uma organização religiosa opera com base em uma carta aprovada pelos seus fundadores ou por uma organização religiosa republicana da respectiva religião, e deve cumprir os requisitos do direito civil. Portanto, pode-se inferir que a interação entre as instituições estatais e as instituições da sociedade civil é crucial para a existência de um Estado democrático de direito. As instituições da sociedade civil funcionam como parceiras do Estado na implementação das funções legislativas, de aplicação da lei e de aplicação da lei, e a confiança mútua é essencial para uma cooperação eficaz. Além disso, a iniciativa pública é a chave para o sucesso do diálogo entre o Estado e as instituições da sociedade civil.

Palavras-chave: Regulamentos. Organizações da sociedade civil. Estado. CSIs. Instituições religiosas.

1. Introduction

An advanced civil society is an essential component of all democratic states that are governed by the rule of law.

In a pluralistic democracy, the state relinquishes some of its authority in the public and administrative spheres of social life to self-organizing and self-managing structures that are part of civil society.

A robust state cannot exist without a well-established civil society, which serves as an effective factor in the process of state-building, provided that there is a constructive and socially responsible dialogue with the state within the legal framework.

In November 2007, the government approved the Concept of assistance to civil society development by executive authorities through government order No. 1035-r, to foster effective cooperation between executive authorities and civic institutions.

Civil society actively contributes to the processes of political democratization and the establishment of the rule of law by safeguarding the material and spiritual independence of individuals from the state, advocating for legal guarantees of such independence, and protecting the private and public interests of people. Simultaneously, state institutions must provide feedback to the public, as the rule of law must be responsive to the requests and needs of the associated citizenship, enact relevant legislation, and monitor its implementation. In other words, it must create a situation of legal protection for citizens and establish a favorable legal framework for the activities of public institutions created by them. Therefore, the issue of interaction between civil society institutions and the state authorities of Ukraine is of particular importance. Currently, this interaction takes place in the following legal forms:

- Participation of the civil society institutions in the activities of the state through their involvement in the legislative process and development, and discussion of draft legal acts.
- Participation in lawmaking is a widely-used form of involvement of non-governmental organizations in public administration.

The purpose of this article is to investigate the legal framework governing the interaction between public and religious organizations and the State.

2. Literature review

The theoretical background of the study includes the provisions of the works of the following authors: Stadnichenko (2004), Serhiienko (2004), Selezhan (2005), Kolodii (2003), Vashchenko (2011), Minnerat (2004), (Lazor, 2012), Koval, (2005), Zaichuk (2006), Yelenskyi (2003), Vovk (2008), Shaihorodskyi (2011), Buriak (2011), and others.

The right to freedom of conscience and religion is a fundamental human right that recognizes the individual's autonomy to form, adopt, and express their beliefs and practices. The essence of this right lies in the recognition that everyone has the freedom to hold and manifest their religious or non-religious beliefs. This encompasses the freedom to choose and change one's religion, to worship alone or in a community, and to practice religion in both public and private settings. The state may only restrict the exercise of this right in cases where it is necessary to protect public order, health, and morals or the rights and freedoms of others, and such restrictions must be proportionate and non-discriminatory.

According to the Constitution of Ukraine, the freedom of worldview and religion implies that it is prohibited to establish mandatory beliefs or impose any kind of coercion on citizens in matters related to their religion or worldview. This includes determining their attitudes towards religion, their decision to profess or not profess any religion, and participation or non-participation in worship, religious rites, ceremonies, or religious education. Thus, freedom of worldview and religion means:

- freedom to choose a religion or to refuse any religion;
- freedom to conduct religious rites;
- freedom to establish new religious organizations.

The legislation provides for criminal liability for impeding religious activities that do not infringe upon the rights and freedoms of citizens, as well as for organizing a religious group that poses a threat to the life and health of citizens.

The religious organizations in Ukraine are established to fulfill the religious needs of citizens, enabling them to practice and propagate their faith. These organizations operate under their hierarchical and institutional structures, which include the right to elect, appoint, and dismiss staff members based on their charters or regulations. The religious organizations in Ukraine can take the form of religious communities, departments, and centers, monasteries, religious brotherhoods, missionary societies or missions, religious educational institutions, as well as associations consisting of the aforementioned religious organizations. Religious associations

typically have both a governing body and an executive body, which operate within a clear and structured hierarchy. This structure is defined and maintained by the doctrine of a particular religious organization. The relationship between these subsystems is typically formalized through hierarchical and normative means, which enable the effective management and organization of religious activities. Within each religious system, there is typically a range of specialized organizations that perform specific functions:

- development of a systematized doctrine;
- development of systems for its ideological protection;
- management and implementation of religious activities;
- control over the activities (and thinking) of members, imposing sanctions for non-compliance with religious norms;
- maintaining relations with secular organizations and the state apparatus.

The state does not interfere with the activities of religious organizations carried out within the bounds of the law, nor does it provide funding for any organizations established based on their religious beliefs. All religions, beliefs, and religious organizations are treated equally before the law. No religion, belief, or religious organization is allowed to have any advantage or restrictions over others.

The implementation and observance of legislation on freedom of conscience, worldview, religion, and religious organizations are carried out by central executive bodies responsible for forming and implementing state policy in the field of religion, as well as other central executive bodies, prosecutor's offices, local executive bodies, and local self-government bodies. The central executive body responsible for implementing state policy in the sphere of religion performs the following functions:

- Registers statutes (regulations) of religious organizations;
- Officially approves the possibility of engaging in preaching or other canonical activities, performing religious rites by clergymen, religious preachers, mentors, and other representatives of foreign religious organizations who are foreign citizens and temporarily reside in Ukraine;
- Maintains contacts and coordinates relations with the relevant authorities of other states;
- Provides religious expertise with the participation of representatives of religious organizations and relevant specialists;
- Promotes mutual understanding and tolerance between religious organizations of different faiths;

– Facilitates the participation of religious organizations in international religious movements, forums, and business contacts with international religious centers, and foreign religious organizations.

These functions are based on available and known knowledge (facts) of the subject of cognition and are aimed at ensuring the protection of the rights and freedoms of citizens related to their freedom of religion and worldview.

3. Methods

The methodology of scientific knowledge of religious organizations is a necessary achievement of science, therefore the correct evaluation of scientific tools for research in the field of religion is a need of science. Modern scientists who study the problems of religion in society are interested not only in the ways and means of achieving true knowledge but also in the optimal norms of practical implementation of what is known. The practical importance of theoretical research in the field of religious organizations is also confirmed by applied sciences, in which empirical methods of research (observation, experiments, measurements) play an important role. The research was carried out using a set of complementary methods that ensured the effectiveness and scientific reliability of the research results: theoretical – analysis, systematization and comparison of the provisions of scientific and pedagogical literature to reveal the state of the researched problem, clarify the essence of the reflection and implementation of modern technologies in social processes; generalization and systematization – to substantiate the theoretical basis of the research; pedagogical observation – to diagnose the level of training of religious organizations in public life.

4. Results

Public discussion of draft regulatory acts is an obligatory stage of the rule-making process within the executive branch system. The purpose of consultations with the public during the rule-making process is to involve citizens in the management of public affairs, provide them with free access to information about the activities of executive bodies, and ensure transparency and openness in their activities. Public consultations should also facilitate a systematic dialogue between executive authorities and the public, enhance the quality of decision-making on significant issues of state and public life, consider public opinion, and create opportunities for citizen

participation in the development of draft decisions. Consultations with the public are conducted on matters related to the social and economic development of the state and the fundamental interests of the general population.

The participation of CSIs in the law enforcement activities of the state is ensured by:

- transfer of full powers of state bodies;
- transfer of partial powers to state bodies;
- public control.

To involve civic organizations in law enforcement activities, the law allows for two forms of transfer of powers from state bodies to civic organizations: full transfer and partial transfer. The full transfer involves the complete transfer of the powers (functions) of the relevant state body to a civic organization. In partial transfer, certain functions of the state body are transferred to civic organizations, which then act in parallel or jointly with the relevant state bodies. Additionally, civic organizations participate in providing administrative services based on powers granted to them by law or regulatory legal acts of executive bodies.

This pertains to the engagement of civil society institutions in providing social services. Additionally, civil society institutions conduct public oversight of the activities of public authorities via monitoring of decision preparation and implementation and the evaluation of their effectiveness. Civil society institutions submit expert proposals to public authorities and collaborate on joint advisory and expert bodies, councils, commissions, and groups to ensure that public opinion is considered in the creation and execution of public policy. Moreover, public authorities monitor and analyze public opinion and provide timely feedback to public proposals and comments. Lastly, civil society institutions facilitate public familiarity with the forms of participation in the formulation and execution of state policy and participate in joint projects of information, analytical and research, charitable, and social orientation.

Participation of CSIs in the law enforcement activities of the state is ensured by:

- realization of the right to draw up protocols on administrative offenses;
- participation of CSOs in the activities of the internal affairs bodies aimed at ensuring public order;
- realization of the right to take measures together with police officers to stop administrative offenses and crimes;
- participation of CSOs with the State Border Guard Service of Ukraine in the protection of the state border.

In recent years, the Ukrainian parliament, known as the Verkhovna Rada, has enacted significant legislation aimed at broadening the scope, content, and boundaries of civic control over the state. For instance, civil society organizations are actively involved in the implementation of civilian control over the Military Organization of the State and law enforcement agencies. Additionally, these organizations exercise public control over compliance with laws aimed at preventing and combating corruption, utilizing control mechanisms that are following existing legislation.

In the context of law enforcement activities of executive authorities, civil society organizations can participate in certain functions of the state. The Code of Ukraine on Administrative Offenses (Article 255) provides for the participation of authorized officials from civic organizations or public bodies in drawing up reports on administrative offenses considered by the bodies referred to in Articles 218-221. Members of civic organizations for the protection of public order and state borders and public inspectors of the Ukrainian Society for the Protection of Historical and Cultural Monuments are also authorized to draw up reports on offenses.

The introduction of the above forms of participation of civil society institutions in public administration is currently defined by certain legal acts. In particular:

– The Laws of Ukraine "On the Principles of State Regulatory Policy in the Sphere of Economic Activity", "On Trade Unions, Their Rights and Guarantees of Activity", "On Employers' Organizations", "On Physical Culture and Sports", "On Consumer Protection", and "On Associations of Local Self-Government Bodies" provide the legal basis for the participation of civil society institutions in relevant areas.

– Acts of the Cabinet of Ministers of Ukraine further define the procedures and mechanisms for involving civil society institutions in the activities of executive authorities. These include the Concept of Promotion of Civil Society Development by Executive Authorities (Order of 21.11.2007 No. 1035), Regulations of the Cabinet of Ministers of Ukraine (Resolution of 8 July 2009 No. 712), Procedure for Promoting Public Expertise of Executive Authorities (Resolution of the Cabinet of Ministers of Ukraine No. 976 of 5 November 2008), Resolution of the Cabinet of Ministers of Ukraine No. 1302 of 26 November 2009 "On Additional Measures to Ensure Public Participation in the Formation and Implementation of State Policy", and Resolution of the Cabinet of Ministers of Ukraine of January 6, 2010, No. 10 "On Approval of the Procedure for Involvement of Citizens in the Formation and Implementation of State Policy". These acts provide guidelines for the involvement of civil society institutions in decision-making processes and the promotion of public expertise of executive authorities.

The legal acts mentioned above demonstrate that modern Ukrainian law-making and law enforcement practice is in line with the standards of modern democratic states. They provide a solid legal foundation for the public to independently participate in the decision-making processes of public authorities and local self-government bodies.

This raises important questions about the readiness of civil society institutions to effectively interact with the state, as well as the effectiveness of the mechanisms that are meant to build trust between CSIs and public authorities. It is crucial to ensure that public authorities are open and transparent, that they are subject to regular inspections, and that they are accountable through the provision of regular reports. Only by establishing and maintaining such mechanisms can CSIs trust that their participation in the decision-making processes of public authorities will be productive and meaningful. Public authorities need to create an environment where CSIs can exercise their powers and responsibilities without fear of reprisals or discrimination, and where their feedback and opinions are considered and acted upon.

The executive authorities should pay attention to legal education and work with civil society institutions to teach them how to use the mechanisms created by the state to engage them in lawmaking, law administration, and law enforcement activities.

Clarifying the provisions of the above-mentioned legal acts is important for civil society institutions to effectively engage in lawmaking, law enforcement, and law enforcement activities. The Concept of Promotion of Civil Society Development by Executive Authorities, approved by the Cabinet of Ministers of Ukraine on November 21, 2007, No. 1035-р, outlines the basic principles and mechanisms of interaction between the state and civil society institutions. The Procedure for Promoting Public Expertise of the Activities of Executive Authorities, approved by the Cabinet of Ministers of Ukraine on November 5, 2008, No. 976, regulates the procedure for involving civil society institutions in the examination of draft regulations and decisions of public authorities. The Procedure for Holding Consultations with the Public on the Formation and Implementation of State Policy, approved by the Cabinet of Ministers of Ukraine on October 15, 2004, No. 1378, establishes a mechanism for public consultations in the process of formulating and implementing state policy.

The efforts of the judiciary are geared towards achieving long-term goals, including the alignment of civil society institutions' activities with the legislation of Ukraine, enhancement of the quality of statutory documents submitted to legal bodies, and optimization of legal expertise. The processes of formation and activity of these institutions should be improved, as well as their

interaction with state authorities, particularly in terms of their participation in law-making, law enforcement, and law enforcement activities of the state.

The issue of regulating the relationship between the state and religious associations is subject to legal regulation at both the state and local levels. In this regard, the law provides for two options for the existence of a religious organization within the same organizational and legal framework. In one scenario, the organization is granted all the legal rights of a legal entity upon registration, with no requirement for annual re-registration in the future. In the other scenario, annual re-registration is necessary for up to 15 years.

The Law on Freedom of Conscience regulates the establishment of religious educational institutions, specifying that only republican and local (district and city) religious organizations have the right, following their charters and legislation, to establish such institutions. This provision is intended to ensure state oversight over the activities of religious educational institutions, within the limits permitted by law.

The law also emphasizes the secular nature of the state education system, while allowing for the inclusion of courses on the history of world religions, religious morality, ethics, and morals in the curricula of state educational institutions. Such courses are to be taught by teachers of general education subjects.

Some additions were made to the article on the right of citizens to receive religious education: parents or persons in loco parentis, regardless of the right of children to receive religious education, are obliged to ensure that they receive basic general education.

The Law on Freedom of Conscience provides for several norms that develop the mechanism of religious education. According to the law, the activities of religious educational institutions should be controlled not only by state authorities in the process of licensing but also by the republican religious organization of the respective religion, which forms expert councils.

The state is responsible for ensuring that freedom of conscience and freedom of religion is protected, but it also reserves the right to require that citizens abide by the law. Any religious organization established by citizens must adhere to the regulations specified in the Law on Freedom of Conscience. An organization cannot be recognized as a religious organization unless its founding documents address issues related to religion, worship, religious rituals, as well as religious education and upbringing.

Religious organizations must operate under a charter that has been approved by its founders or by a republican religious organization of the relevant religion. Additionally, these organizations must adhere to the requirements of civil law.

5. Discussion

The issue of regulating the relationship between the state and religious associations is subject to legal regulation at both the state and local levels. In this regard, the law provides for two options for the existence of a religious organization within the same organizational and legal framework. In one scenario, the organization is granted all the legal rights of a legal entity upon registration, with no requirement for annual re-registration in the future. In the other scenario, annual re-registration is necessary for up to 15 years.

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Thus, the main trends in the development of public religious organizations in Ukraine today include:

- growth in the number of registered public religious organizations;
- an increase in the number of non-governmental organizations that are focused on solving the problems of servicemen from the ATO zone, internally displaced persons and citizens affected by the conflict in eastern Ukraine;
- increasing the amount of financing of public organizations mainly due to the income from international charitable organizations and donors;
- the spread of volunteering practices among the population of Ukraine, which even prefers participation in volunteering to membership in public organizations;
- growing trust of the population of Ukraine in the activities of volunteers and public organizations.

The conducted analysis is only one attempt to generalize the main trends in the development of public religious organizations in modern Ukraine and, of course, cannot be exhaustive. Further research should be directed, in our opinion, to an in-depth study of trends and factors in the development of public organizations. In addition, we consider the study of the level of social responsibility of public religious organizations in modern Ukraine to be an important area of analysis.

6. Conclusions

In summary, the interaction between state institutions and civil society institutions is a crucial aspect of the existence of a democratic state governed by the rule of law. Civil society institutions play a pivotal role as partners of the state in carrying out lawmaking, law application, and law enforcement functions. Effective cooperation between these institutions can be achieved through mutual trust and active participation from both sides. The public initiative also plays a significant role in promoting successful dialogue and strengthening the relationship between the state and civil society institutions.

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