

Regional Legal System in the Sphere of Confessional Policy (in the Republic of Dagestan)

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Abstract: There is analyzed the features of the legal system in the sphere of freedom of conscience in the Republic of Dagestan at present. The study defines the relevance of the theme by the growing role of the religious factor among the poly-confessional and multi-ethnic population and there is the lack of common approaches and assessments of relations between the state and religious communities both at the federal and local levels.

Key words: Freedom of conscience, local and national religious organizations, regional model of religious policy, assessments, Dagestan

INTRODUCTION

The state policy in the sphere of religious relations is carried out at two level-federal and regional. The federal government defines the strategy and the format of the legal field. The legal basis of these relations relies on the rules of international law, the Federal Law (the Constitution of the Russian Federation, Federal Law “on freedom of conscience and religious associations” and others) and regional legal system.

Regional policy in the sphere of confessional relations should be logical and diplomatic. It is possible to achieve social agreement and tolerance only if to study the problem in detail and to develop methods of early prevention of inter and intra-tension. In our opinion, referring to the regional aspects of relations between the state and religious organizations it’s necessary to use the experience of the Republic of Dagestan which is a unique example of ethno-confessional relations in the Russian federation. The relevance of the research of the modern religious policy in this region is determined by several factors: Rapid Islamic revival, the presence of multi-confessional religious factor, multi-ethnic composition of the population, conflicts between and within religions, increasing missionary activity of non-traditional and Protestant denominations and destabilizing activities of religious political extremists the Wahhabis. Thus, the presence of regional differentiation in the Russian Federation is a political reality that can not be ignored today.

THE RATIO OF FEDERAL AND REGIONAL PRIORITIES IN RELIGIOUS POLICY

Maintaining the supremacy of Federal Law the regions correct this policy considering regional perspective. Interaction of the state and public institutions at the regional level in the field of state and denominations policy depends on several factors:

- Objective factors: socio-economic, political and legal development of the region, confessional structure of the population
- Subjective factors: psychological characteristics and business qualities of political and religious leaders, the degree of clientelism in administrative structures, stuff experience in this field (Korolev, 2001)

The totality of these factors contributes to the formation of regional models of church-state policy. It is worth mentioning that the regional experience of legal regulation in the sphere of religious relations and freedom of conscience and religion is more diverse than the federal one. Normative legal acts of different levels were adopted in >30 regions of the Russian Federation along with the federal legislation. They concern the freedom of conscience and regulate local religious organizations.

Although, the point «v» in the Article 71 of the Russian Constitution assigns the regulation and protection of the rights and freedoms of man and citizen to the exclusive jurisdiction of the Russian Federation, the

protection of the rights and freedoms of man and citizen is a joint responsibility of the Russian Federation and its subjects (p. «B» of Article 72 of the Constitution of the Russian Federation). It seems that the mere presence of the Federal Law on freedom of conscience and religion does not preclude to adopt regional laws relating to this issue. It is not contrary to Federal Law. I.A. Umnova remarks: "It is difficult to talk about the exclusive jurisdiction of the Federation in the case if the Federation and its subjects have a common object of power" (Umnova, 1998).

M.V. Baglaj has the other position. He considers the principle of priority of human rights as a peculiar super principle of constitutional system. But V.A. V.A. Cherepanov opines that "such architecture of the basic law should not be considered the redundant or internal contradictions of the Russian Constitution" as "all levels of government should protect human and civil rights, the rule of law, law enforcement and public safety".

CONSTITUTIONAL AND LEGAL BASIS OF RELIGIOUS POLICY IN THE REPUBLIC OF DAGESTAN

Modern regional model of religious policy in the Republic of Dagestan is mainly determined by the socio-economic, political and legal development of the region and religious structure of the population as well as the psychological characteristics and business qualities of political and religious leaders. The Republic of Dagestan (the RD) is a subject of the Russian Federation as a federal state so it is impossible not to accept the fact that the principle of federalism influences on the regulation of rights and freedoms including the sphere of freedom of conscience and church-state relations.

The legislation of the Republic of Dagestan on the religious legal policy are the following: the Constitution of the Russian Federation, the constitution of the RD, the law of the RD "on freedom of conscience, freedom of religion and religious organizations" January 16, 1998, the law of the RD "on the prohibition of Wahhabi and other extremist activity in the Republic of Dagestan September 16, 1999 as well as the regulations of the State Council, the People's Assembly, Government of the RD relating to regulation of activity of religious organizations.

The Constitution of the Republic of Dagestan establishes that the Republic of Dagestan is a secular state; and any religion can't be established as state or obligatory: "Religious associations are separated from the state and equal before the law" Article 17 states. These statements are noted in Chapter I of the Constitution as the foundation of the constitutional order.

Therefore, it is important to pay attention to other constitutional provisions that are relevant to the research of problem and regulate the relations in the sphere of freedom of conscience and religious associations. The Constitution of the Republic of Dagestan, prohibits to use the rights and freedoms for forcible removal or change of the constitutional order of the Republic, propaganda and incitement to national, social and religious enmity and hatred, violence, committing immoral and socially dangerous acts (Article 16). The spread of religious extremist movement Wahhabism in the Republic of Dagestan was the basis of struggle with its followers including through the use of the armed forces.

The rules that guarantee the freedom of thought, speech and expression and opinion are directly linked with the freedom of conscience. Guarantees of freedom of conscience are reflected in Chapter II of the Constitution of the Republic of Dagestan dedicated to the fundamentals of the legal status of man and citizen. Article 29 provides that everyone is guaranteed freedom of conscience that is the right to freely practice any religion or no religion to choose, possess and disseminate religious and other convictions and act in accordance with them when it's subject to the law. Thus, freedom of conscience must be understood as a subjective right of everyone, individually or jointly with others to profess any religion or no religion (Il'in, 2010).

Article 34 of the Constitution of the Republic of Dagestan is very important for the constitutional guarantees of the activity of religious associations. This article provides that everyone has the right to be organized in the manner prescribed by law. "No one may be compelled to join any association and remain in it" this article says.

ANALYSIS OF THE LAW OF THE REPUBLIC OF DAGESTAN "ON FREEDOM OF CONSCIENCE, FREEDOM OF RELIGION AND RELIGIOUS ORGANISATIONS"

Federal Law "on freedom of conscience and religious associations" dated 26 September 1997 defined the main content of the Law of the Republic of Dagestan "on freedom of conscience, freedom of religion and religious organizations", considering the specificity of ethnic and religious characteristics of the Republic of Dagestan.

In general, the legal provisions of the law of the RD "on freedom of conscience, freedom of religion and religious organizations" do not contradict the Federal Law "on freedom of conscience and religious associations", although, there are differences of legal regulation of the activity of religious associations in the Republic of Dagestan.

In this connection, A. Aliev has some interesting arguments about the regarding of distribution of powers in the Russian Federation and its subjects to protect rights and freedoms. In particular he notes that firstly, the definition of the basic (constitutional) rights and freedoms of man and citizen is the prerogative of the Russian Federation. Second, the protection of the rights and freedoms of man and citizen, being in charge of the Russian Federation at the same time has a joint responsibility.

Thus, the Law of the Republic of Dagestan contains a number of reference rules to the Federal Law (p. 3 of Article 1, p. 2, 3 of Article 9 and others) and observes that restricting of human and civil rights to freedom of conscience and freedom of religion may be established by the Federal Law. This statement is fully consistent with p. "v", "m" of Article 71, p. "v" of Article 72 and 55 of the constitution.

The law of the Republic of Dagestan on freedom of conscience includes a special chapter on the status of religious organizations. The law in the unit of regulation of religious organizations and their forms does not correspond to the Constitution and the Federal Law on Freedom of Conscience. So, the Constitution of the Republic of Dagestan mentions the term "religious associations" (Article 17) and Article 34 states the general rule of freedom of association. The Federal Law on Freedom of Conscience also devotes a Chapter II to religious associations. In turn, the law of the Republic of Dagestan defines a religious organization similar to the definition of religious associations as it's in the Federal Law. A religious organization is a voluntary association of citizens of the Republic of Dagestan and other persons permanently and legally residing on the territory of the Republic of Dagestan, organized for joint faith and dissemination and with appropriate attributes: religion; commission of worship and other religious rites and ceremonies; religion teaching and religious education.

According to the law the members of religious organization may be citizens of the Republic of Dagestan (Russian Federation) and foreign citizens and stateless persons if the conditions of their residence in the Republic of Dagestan meet requirements of the law.

Thus, the law does not define the RD religious associations and religious groups. Unlike the Federal Law which classifies religious organizations depending on the territorial scope of activities into local and centralized, the law of the Republic of Dagestan divides them into local and republic (national) (p. 4 of Article 10).

Such classification of religious organizations suggests that there are not always a relationship of

subordination between local and national religious organizations as the local religious organization may not be a member of the national organizations.

Unlike the Federal Law, the law of the Republic of Dagestan clarifies the status of a local religious organization, fixing such a feature as the need to carry out activities in the municipal territory. Thus, the local religious organization can not realize its statutory purpose in the territory of other municipality.

However, if the definition of a local religious organization has not any objections, the definition of national religious organizations contains some provisions that could negatively affect to the practice of formation of national religious organizations in the Republic of Dagestan (Magomedov, 2002).

We can clarify the definition of centralized organization given in the Federal Law as "centralized religious organization is religious organization consisting of at least three local religious organizations according to its charter".

The only required condition to consider the religious organization as centralized is when at least three local religious organizations enter it. The relationship between the central organization and local organizations is defined by the charter of the organization.

The Law of the Republic of Dagestan states that Republican religious organization should be "more than half but no less than three local religious organizations of appropriate religion. " As it's forbidden to register more than one national organization of the same confession we have the question if there is enough to create a republican religious organization, the presence of three local religious organizations established in one locality (village, hamlet, town, village). Especially if we can assume that there aren't many religious organizations of the same confession in cities and regions.

It is necessary to change the statement of the law which concerns the interpretation of the features of the republican religious organization. In particular, according to the religious practice and administrative and territory structure of the Republic of Dagestan it should to connect the creation of national religious organizations with entering in to its structure at least 1/3 of the registered local organizations working within more than half (or 1/3) municipalities (or administrative-territorial units) in the Republic. These attributes clarify the status of republican organization.

The creation of the Islamic Republic religious organization is impossible because of the specificity of ethnic and religious situation in the republic (p. 6 of Article 10). The establishment of this prohibition is associated with restriction of freedom of conscience and freedom to form religious associations.

The Law of the RD “on freedom of conscience, freedom of religion and religious organizations” includes an stuey that is absent in the Federal Law: On a state institution on religious affairs RD (v.6). According to the law, this state institution has coordination, organizational, advisory and information functions. This institution in Dagestan was the Committee of Government of the RD on Religious Affairs, converted from the office in October 1998. Nowdays this state institution is the committee on freedom of conscience, cooperation with Religious Organizations of the Republic of Dagestan under the Government of the RD.

As previously stated, the Law of the Republic of Dagestan on freedom of conscience does not provide for such a legal form of religious association as a religious group. However, the Law of the Republic of Dagestan provides that the Republican religious organization which has been legally operating in the Republic of Dagestan for at least 15 years at the moment of state registration can use in their names the word “Dagestan” “the Republic of Dagestan” and their derivatives (Article 10).

And the Article 33 states that religious organizations which do not have the document confirming their existence in the relevant territory for at least 15 years, can enjoy the rights of a legal entity subject to annual re-registration until a specified period of 15 years.

Thus, the Law of the Republic of Dagestan provides two options for the existence of a religious organization in one of the legal form. In one case, the organization of the date of registration shall enjoy all the rights of a legal entity and the subsequent annual re-registration is not required and in the second case, you need an annual re-registration of up to 15 years.

The basis for state registration of national religious organizations and religious organizations formed by the republican religious organizations are: the application for registration; the list of founders of the religious organization; the charter of the religious organization approved by its founder; a document confirming the location (legal address) of the governing body of the religious organization; notarized copies of the charter and a certificate of state registration of the founder(s); the corresponding decision of the authorized body of the founder.

The procedure for conducting state religious expertise is set by the governmental order of the Republic of Dagestan April 19, 1999 No 104 “On the Expert Council for Conducting State Religious Expertise of the Ministry of Justice of the Republic of Dagestan” the need for religious expertise can be caused in case of criminal proceedings Art 239 of Criminal Code of the Russian Federation (“the creation of association encroaching on the person and rights of citizens”).

The Law of the Republic of Dagestan regulates the foundation of religious education institutions, establishing the rule that only national and local (regional and urban) religious organizations have the right in accordance with their charters and legislation to establish religious educational institutions. The requirements of the law are also aimed at monitoring the activities of religious educational institutions by public authorities of course, within the limits permitted by the law.

The analyzed law, stating the secular nature of the state education system however, allows the possibility of including subjects related to the study of the history of world religions, religious morality, ethics in the curricula of educational institutions of the state (Article 8). These disciplines are taught by teachers of general education.

Some additions were made to the stuey on the right of citizens to receive religious education: parents or persons substituting them regardless of the rights of children to receive religious education are obliged to ensure that they receive basic general education (p. 4 Article 7).

Law of the Republic of Dagestan on freedom of conscience provides a number of rules to develop methods of religious education. It should be noted that these rules are absent in the corresponding Federal Law and therefore they are interesting not only because of the religious characteristics of the region but also because the law of the Republic of Dagestan is relevant to the rules of general Federal Law.

So, according to Article 9 of the RD all religious educational institutions, both registered in the Republic of Dagestan or not but with the intention to conduct religious education of citizens of the Republic of Dagestan, first have to align their curricula and programs with expert councils, working under national religious organizations of corresponding religion. This religious educational institution can not begin religious education if there is no state license for the right to carry out religious educational activities.

According to the law the consist of expert council must be approved by the relevant national religious organizations. This councils may include representatives of state and local government

Thus, the activities of religious educational institutions should be controlled not only by public authorities during the registration but also by the Republican religious organizations of corresponding religion with an expert council.

With the aim of ensuring the transparency in the educational activities of religious institutions it’s necessary to provide in the Federal Law a method of harmonization of curricula and programs with an expert

councils that would not be created in the religious organizations but in bodies that give the license to conduct religious educational activities.

The religious situation in the country is rather complication and it's introduced the registration of the RD of contracts (agreements) for organization of religious education of citizens of the RD in foreign countries at the state body on religious affairs (Clause 5 of Article 9). The problem to ensure state control over the education of persons who travel to foreign countries is very important. As it's mentioned above, religious education in foreign countries actually is connected with preparing religious extremists and this is reported in mass media.

Thus, the Republic of Dagestan, one of the first subjects of the Russian Federation has adopted a regional law that regulates and provides guarantees of freedom of conscience. This legislative act considers the originality of confessional relations, it contains legal provisions to ensure the inter and intra religious peace and stability. However, the Act has some imperfections and contradictions. It's necessary to clarify some law provisions which also have to comply with the Federal Laws.

A regional legal policy in the sphere of religious relations is a peculiar system of goals and tasks of the regional authorities, considering the relationship of national customs, traditions and rituals of the religion as well as national and cultural features of the peoples of the Russian Federation in relations between the state and religious associations, providing conditions of the complete realization of citizens freedom of conscience and religion.

The study and considering the regional peculiarity, the development of more realistic models of regional religious policy are able to provide more stable and prosperous future for regions and the whole country. This policy should be determined by the historical specificity of a particular region referring to religious affiliation.

CONCLUSION

The research of regional experience in legal regulation of relations in the sphere of cooperation between the state and religion allow to draw the following conclusions.

The specifics of religious situation determined the particular laws of the RD regulating relations between the state and religion. These features include: the lack of definition of a religious association or religious group in contradistinction to the Federal Law "on freedom of conscience and religious associations" the division of religious organizations depending on the territory field activities into local and republican; the recognition of the republican organization as religious one if it consists of more than one-half but no less than three local religious organizations of the relevant religion; the prohibition to create Islamic religious organization as national.

Religious organizations working in Dagestan must act according to the federal and regional legislation. In turn, the legislation in the sphere of freedom of conscience in the RD must comply with the Federal Law.

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