

Current trends in state and legal regulation of the religious component in education

Tendencias actuales en la regulación estatal y legal del componente religioso en educación

Tendências atuais no estado e regulação legal do componente religioso na educação

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Abstract

The article presents the results of modern model comparative legal analysis concerning state and legal regulation of the religious component in education within the context of state and municipal educational organization profile activity. The conceptual features of such regulation optimal model are determined, claiming the status of universal ones; their uniform consolidation in the special educational legislation of modern secular states is justified.

Key words: freedom of conscience and religion, education, religious component, state and legal regulation, model, universal attributes.

Resumen

El artículo presenta los resultados del análisis jurídico comparativo del modelo moderno sobre la regulación estatal y legal del componente religioso en la educación dentro del contexto de la actividad de perfil de la organización educativa estatal y municipal. Se determinan las características conceptuales de dicho modelo de regulación óptima, reclamando el estado de los universales; su consolidación uniforme en la legislación educativa especial de los estados seculares modernos está justificada.

Palabras clave: libertad de conciencia y religión, educación, componente religioso, estado y regulación legal, modelo, atributos universales.

Resumo

O artigo apresenta os resultados do modelo moderno de análise comparativa da legislação estadual e jurídica sobre o componente religioso na educação no contexto da atividade de perfil das organizações educacionais estaduais e municipais. As características conceituais desse modelo ótimo de regulação são determinadas, reivindicando o status das universais; sua consolidação uniforme na legislação educacional especial dos estados seculares modernos é justificada.

Palavras-chave: liberdade de consciência e religião, educação, componente religioso, regulação estatal e legal, modelo, atributos universais.

Introduction

Nowadays the state-legal regulation of the religious component in education takes place in

the context of modern cultural and civilizational challenge overcoming, expressed in the complexity of a person's self-determination in the modern world, the uncertainty of his place in

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society, the search for the ways of self-knowledge and self-realization, the displacement and sometimes even the destruction of traditional spiritual and moral values, the contradiction of publicly declared and actually supported values (Chelovenko, T.G.,2012 p. 465). Regulating this aspect of public life, the state tries to act towards the fullest realization of the respective rights and freedoms of an individual, securing the secular nature of education, on the one hand, and giving traditional (recognized) religions the opportunity to carry out religious education and teach religion, on the other hand. Thus, the state supports the general democratic values and the attitudes of society associated with the harmonization of interfaith relations and counteracts the spread of extremist ideology, the ideology of the so-called totalitarian sects, the activities of other actors aimed at anti-state and illegal goal achievement.

Modern secular states apply various models of public relation regulation in the sphere of religious education and training, which does not exclude the possibility of a system-wide approach to the implementation of this process. So, the majority of states formulate the conceptually normative bases of such models on the highest - constitutional level directly (part 10 Article 14 of the Austrian Constitution (<http://worldconstitutions.ru> (in Russian)), etc.) or indirectly, in the context of freedom of conscience and religion and associated human rights (art. 28 of Russian Federation Constitution (The Constitution of Russian Federation, adopted by popular vote on December 12, 1993), etc.). The specified scope of relations receives a detailed regulation in specialized normative legal acts - the sources of the educational law that secures the right to receive education irrespective of the confessional membership, the secular nature of education in state and municipal educational institutions, as well as the guarantees related to the possibility of the right exercise to receive religious education and upbringing. For example, the norms ensuring the acquisition of both non-confessional and confessional education are contained in the profile legislation of Austria, Germany, the USA, France (L141-1, L141-6 Code de l'éducation (Code de l'éducation.https://www.legifrance.gouv.fr/affichCode.do?sessionId=95F9179D257106A9AB15F9ECE0AB7DF7.tplgfr35s_3?cidTexte=LEGITEXT000006071191&dateTexte=20180115)) and other countries. The foregoing actualizes the consideration of state-legal regulation models of

the religious component in education within a relatively legal aspect.

Methodology.

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, formal-logical method. The disclosure of the topic was facilitated by the use of formal legal, comparative legal method and content analysis.

Discussion and results.

In the context of the stated subject, the regulation of religious education and upbringing in state and municipal educational institutions is one of the problem areas. Here, the tendency to the securing of secular state education principle and, at the same time, the need to eliminate unjustified restrictions in the realization of freedom of conscience and religion, both by students and teachers, is manifested most of all. At that, this aspect of regulation is characterized by the greatest variability - the principle of secular education is manifested in various forms.

Thus, the special legislation of most modern secular states emphasize the secular nature of the educational process in state and municipal educational organizations. For example, according to the par. 6, part 1, Art. 3 of the Federal Law "On Education in Russian Federation" (Federal Law of Russian Federation issued on December 29th, 2012) the education is secular one in such organizations, and Part 3 of the Art. 48 of the said law establishes the prohibition on the use of educational opportunities by educational staff to coerce students to accept religious or other beliefs or reject them, forming their attitude to religion, including the provision of false information about historical, national, religious and cultural traditions of people.

At the same time, legislation preserves the possibility for religious organizations to teach children religion and to carry out religious education in state or municipal educational organizations within certain forms. This is the teaching of religion outside the educational (school) program (Russia, France), and even the inclusion of religious disciplines in the list of compulsory ones in state educational organizations (Germany, Great Britain, Austria). In the latter case, the secular nature of public education is ensured by legislating the possibility

of student refusal from religious disciplines and choosing an alternative non-confessional educational course, as well as the ability of teachers to refuse to work in confessional schools and to conduct religious teaching classes; generally students and teachers are free to determine their position regarding the participation in religious ceremonies held in educational institutions (Section 2a of the Religionsunterrichtsgesetz issued on July 13, 1949 (Religionsunterrichtsgesetz issued on 13th of July 1949) (Austria), clause 3, Article 7 of the FRG Basic Law). In addition, a number of countries admit the activity of non-confessional schools: religious education may be non-confessional there, may be provided taking into account the confessional membership of a large group of students.

For example, in FRG, if there is a certain number of students OF a certain confession (usually from 6 to 8 people), the school must provide an appropriate religious education (Robbers, G.,2009. p. 136). In the UK, the main educational program in public schools includes religious education for all pupils (Education Act 2002 issued on 24th of July 2002), but since 1870 it is non-confessional one: in addition to local authorities, the representatives of the Church of England and other recognized religious organizations that reflect the religious traditions of the area (article 390 of Education Act 1996 issued on July 24, 1996) take part in the development of a religious education program at the local level. Thus, religious education in the UK state school is carried out on the basis of the so-called "coordinated program", which should reflect the Christian religious tradition - the main one in the state, but the teachings and the practices of other faiths should be taken into account (Article 375 Education Act 1996 issued on July 24, 1996) In addition, some of the public schools in the UK are classified as "voluntarily supported." This means that the church participates in school life actively, it provides 15% of the cost of any construction work of an educational organization, occupies a significant position in a school board. In such schools, students are also required to participate daily in collective worship services, which, as a rule, are of a general Christian character. At the same time, it is not necessary that every divine service is a Christian one: its type and content is determined by the confessional belonging of the local population (Brunner and Ganga-Contreras, 2017).

In Russia, religious education is allowed outside a compulsory educational program at the written request of parents or the persons who replace them with the consent of the students and according to the agreement with the founders of the educational organization (Part 4, Article 5 of the Federal Law "On Freedom of Conscience and Religious Associations" Federal Law of Russian Federation issued on September 26, 1997)). At the same time, other educational organizations should not be allowed to violate the freedom of religion, so many educational organizations use the statutory possibility of implementation within the framework of the basic educational program of confessional-neutral academic disciplines aimed at general knowledge development concerning the main provisions of the most widespread (recognized) confessions, the history of religion, such qualities of personality, as tolerance and patience. The choice of these disciplines in the framework of basic general education programs is carried out by parents or legal representatives of students (part 1, 2 of Article 87 of the Federal Law "On Education in Russian Federation) (Aleksandrovna Maximova and Aleksandrovich Belyaev, 2017).

In France, primary schools should be left free one day a week so that parents can organize a study of religion outside a school and outside a school curriculum at their own discretion; at that religious education is not allowed at schools (L141-3 Code de l'éducation).

In the US, the curricula in public schools can include the Bible, the Torah and other religious texts study, their influence on an individual, since the importance of religion in human life is recognized; At the same time, the teaching aimed to form the preferences of one religion in relation to another one among the students or to interpret a sacred text as the only true one is not allowed: teachers or other officials can not represent a particular religion or religion as a whole as a preferred teaching (<http://www.centerforpubliceducation.org/Main-Menu/Public-education/The-law-and-its-influence-on-public-school-districts-An-overview/Religion-and-Public-Schools.html>).

The judicial practice of the US also formed several principles used in the admissibility of the religious component evaluation in education: a secular purpose; the inadmissibility of prohibition or the promotion of religion; the inadmissibility of communication between the state and





religious associations (Johnston, C. W. (1999), pp. 414-431).

It should be noted that, the religious component in education is the most pronounced one in the Austrian legislation as compared with other secular states. The purpose of school education is defined as the development of the young generation attitudes in accordance with moral and religious values (section 2 (1) Bundesgesetz vom 25. Juli 1962 über die Schulorganisation (Schulorganisationsgesetz)). In accordance with the special law on the teaching of religion for all students who are the members of officially recognized religious communities or churches, the religious studies on the profile of their faith are compulsory in primary, secondary, and higher vocational schools (section 1 (1) Religionsunterrichtsgesetz issued on July 13, 1949). These provisions are developed in the Austrian law on education, according to which the discipline "Religion" is subject to mandatory inclusion in the curricula of the relevant state educational institutions (the section 10, 16, 21, 29 (a), 39, 47.1 (a), 68 (a) SchOG issued on July 25, 1962 (SchOG issued on 25th of July 1962.)). However, the students under the age of 14 can be exempted from compulsory religious studies at school upon written application of parents, and the students over 14 years of age - on the basis of their own written application, choosing the course "Ethics" (section 1 (2) Religionsunterrichtsgesetz issued on July 13, 1949 (6)) instead of religious discipline. In professional colleges, religious educational literature is included in a relevant program, and its publication is funded by the state. The organization, the implementation and direct control of religious education at schools and colleges are transferred to religious organizations (churches) and communities recognized by state; they also develop curricula for religious education. Only the persons who have received the appropriate qualifications and the permission from a specialized church or a religious community can be appointed as the teachers for religious education. At the same time, the state retains control over the conduct of religious studies, the content of religious instruction, but only in respect of compliance with national legislation (sections 2, 3, 4, 7b of the Religionsunterrichtsgesetz issued on July 13, 1949).

A religious component is also presented in the field of state higher professional education. Thus, in Austria, the United Kingdom, Russia and other countries, theological departments

(institutes) are present in the structure of state universities (for example, the faculties of the Catholic Church, Protestant theology in Austria, Oxford and Durham in the UK). They can implement both universal religious and theological basic educational programs (Russia), and theological education for a particular confession (Austria, Great Britain). In the latter case, the legal status and the activity of specialized faculties (institutes) and departments are also governed by concords - special state treaties and a corresponding church that fall into the category of international treaties (for example, with the Catholic Church) along with the general national legislation on education. In this case, religious organizations can influence the pedagogical and managerial composition of these faculties (institutes) and departments. Thus, in Austria the appointment of professors and associate professors of such structures is coordinated with the competent church authorities. Also, the state can support professional religious education on an ongoing basis or situationally to solve certain socio-political tasks. For example, since 2017 3-year state program for domestic Islamic education support has been implemented in Russian Federation. In its framework (including on the basis of state organizations of higher education) they plan to carry out an advanced training and the retraining of religious organization workers, the workers of educational and methodological support of relevant disciplines and scientific events (Ministry of Education and Science of Russian Federation: official website. <https://минобрнауки.рф> (in Russian)).

Conclusions.

The analysis of legislative regulation practice concerning the religious component in the development of modern secular states allows us to conclude that it is not aimed at the development and the support of certain recognized religious communities (confessions), as was the case during the early stages of church and state interaction, and equal opportunities in the sphere of education and self-development of students in the context of freedom of conscience and religion regardless of their confessional affiliation. It should be noted that the state cooperates closely with religious organizations (among those recognized by the state) on this issue, but it is associated with the desire of modern states to preserve the confessional neutrality and the ability to control the religious education and upbringing process in terms of

compliance with national legislation, including the sphere of state security, counteraction to extremism and other socially dangerous phenomena. This ensures a delicate balance between freedom of conscience, including the freedom from undesirable influence and faith promotion, on the one hand, and the freedom of religion, which presumes the possibility of professing certain religious beliefs, and the observation of religious rites and ceremonies, on the other hand.

The practice of legal regulation variability and flexibility in this area of relations should be recognized as the most appropriate one to the needs of a modern multi-denominational society. And it hardly makes sense to strive for complete unification in this rather problematic and multidimensional field without taking into account the experience of historical development, national and cultural characteristics, civilizational values of a particular society and state.

Meanwhile, the conducted research makes it possible to identify a number of conceptual features of the optimal (general) model of legal regulation concerning the religious component in the educational activities of state and municipal organizations that claim to be universal ones and are called upon to guarantee the implementation and the protection of focal rights and freedoms for everyone. These include: a general recognition of the importance and the necessity of a religious component by modern secular states in the educational process carried out at the level of state and municipal educational organizations; the establishment of the right of recognized religious organizations to participate in organizational, methodological and personnel support of the educational disciplines with religious or religious components, or intended for religious education; normative fixation of such a mandatory condition for the realization of a religious component in education, as the consent of students and (or) their parents (legal representatives).

It seems that such complex issues should obtain, if possible, a clear and a uniform legislative regulation in order to avoid unnecessary interpretations and arbitrariness in the process of law enforcement at the level of specific states. At the same time, a law enforcer must retain the possibility of an independent evaluation of all actual circumstances, taking into account various aspects of a legal situation. Such

regulation will serve as a guarantee for the realization of the relevant rights of citizens, a certain protection provision against the abuse of law, will ensure a harmonious development, including confessional relations.

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