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KAZAKHSTAN LEGISLATION IN THE RELIGIOUS SPHERE: HISTORY AND PROSPECTS FOR DEVELOPMENT

Abstract. Objective: to study Kazakhstani legislation in the religious sphere in the historical aspect of development, as well as to identify and justify ways of further improvement, including through a comparative analysis with foreign legislation.

Method or methodology of work: When writing a scientific article, general scientific (logical, structural and system analysis, synthesis, comparison, abstraction, induction and deduction, modeling), special techniques, methods of researching phenomena and processes (specifically historical, dialectical, formal logical, structural-functional, comparative law method) were used. The analysis of regulatory legal acts was done.

Results of work: Analysis of previous regulatory legal acts, as well as the current Kazakhstan legislation in the religious sphere, the study of international experience, justification for the adoption of the draft Law of the Republic of Kazakhstan “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Religious Activities and Religious Associations”.

Scope of application: legislation and law enforcement.

Conclusions: The result of the research work is an attempt to justify the need for adoption at this stage of development of relevant amendments aimed at improving legislation on religious activities and religious associations.

Key words: legislation in the religious sphere, religion, religious associations, foreign legislation in the religious sphere, secular state, draft law.

Introduction. Religion at all stages of the development of human civilization has been and remains one of the most important factors affecting the worldview and way of life of every believer, as well as relations in society as a whole. Each religion is based on belief in supernatural powers, organized with the worship of God or gods, and on the need to observe a certain set of norms and rules prescribed by believers. Religion in the modern world plays almost the same important role as it did thousands of years ago, since according to surveys conducted by the American Gallup Institute, at the beginning of the 21st century, more than 90 % of people believed in the existence of God or higher powers, and the number of believers is approximately the same in highly developed states, and in the countries of the "third world" [1].

As you know, religion is a spiritual state of each person within himself. If a person is a true believer, then no one forbids him to follow certain rules and laws of his religion. But also, the believer should not forget that, first of all, he is a citizen of a secular state and therefore must respect and observe the rights and freedoms of those around him. Thus, the Republic of Kazakhstan, in accordance with the Constitution, affirms itself as a secular state in which no religion can be established as state or mandatory, and religious associations are separated from the state and are equal before the law [2]. The aforesaid means that the state ensures freedom of lawful activity of religious associations, but does not interfere in the determination by citizens of their attitude to religion and religious affiliation, in the activities of religious associations, does not entrust the latter with the performance of the functions of state bodies and local self-government bodies. In turn, religious associations do not interfere in the activities of the state.

Religion has the different spiritual and moral ideals and cultural traditions in the Republic of Kazakhstan. The power of religious ethics is actively used to form the moral and spiritual world of the young generation [3].

Today, Kazakhstan has developed its own model of relations between the state and religion. As the leader of the nation N.A. Nazarbayev in his speech at the XVII session of the Assembly of the People of Kazakhstan: "Kazakhstan is the only place in the world where Muslims, Orthodox, Catholics, Protestants, Buddhists, Jews live in harmony" [4]. And, undoubtedly, one of the components of the peaceful coexistence of various nations and ethnic groups is a faithful and balanced state policy.

The constituent elements of state policy in the religious sphere is the existence of a solid legislative base, forms and methods of regulating certain relations in society, as well as special state bodies that implement this policy. Currently, in Kazakhstan all this is taken place.

The Kazakhstani experience of religious consent, of course, can be called unique. Confirmation of this is that in the republic at the present stage of development a wide range of religious associations is represented: from traditional dogmas that have an important historical role in the development of culture and spiritual life of the people of Kazakhstan (Islam of the Hanafi trend and Orthodox Christianity) to new, non-traditional, not previously presented in the country of religions. Today in the republic there are 18 denominations and 3754 officially registered religious associations [5].

This study has not only cognitive and scientific value, but, from the point of view of jurisprudence, a certain demand and practical value at the present stage of social development.

Methods. In the research process, both foreign and domestic sources were used, a list of which is indicated in the list of references. In the course of the work, such scientific research methods as scientific research, comparative analysis, and generalization were used.

Results. Religion in modern Kazakhstan is undergoing a stage of rapid development, since in a post-communist society the demand for spiritual and mystical teachings is quite high. In 2017, the Minister of Religious Affairs and Civil Society of the Republic of Kazakhstan N. Yermekbayev stated that "Kazakhstan needs to develop its own model of the relationship between the state and religion, its own school of understanding of Islam, without looking back and without fear of foreign criticism ...". Also in his speech N. Ermekbaev noted that in Kazakhstan about 90 % of believers and only 10% of atheists and agnostics" [6].

A prerequisite for the effective operation of the model of inter-religious harmony is the willingness of representatives of various faiths to dialogue on the basis of mutual understanding and tolerance. But the recognized model is not static and stable, its strengthening is a difficult task. So, according to the First President of the Republic of Kazakhstan N.A. Nazarbayev, to maintain interfaith harmony in the country, it is necessary to form a system of dialogue between various faiths ... [7, p. 163]. In addition, religion "should not become the object of a local or global political game" [7, p. 215].

Before considering the main changes in the legal regulation of relations in the religious sphere, we believe that it is appropriate to discuss some features of the interaction of the state and religion in the historical aspect in order to understand their evolution, as well as the development of Kazakhstani legislation in the religious sphere.

According to G. Berman, being two dimensions of life, religion and law cannot exist without each other, the law gives religion its social dimension, and religion to the law – its spirit. A person will always need law as a support for social conflicts and religion as a support for the unknown [8].

Speaking generally about the history of the interaction of the state and religion, it can be noted that the state since its inception regulated the religious activity of various groups to one degree or another. World history knows many examples of religious reforms carried out by the state. The institutions of legalization, registration and licensing familiar to modern legal systems, granting special statuses to specific associations and prohibitions of others, restrictions on various types of religious or related activities, criminal prosecutions have also been known since ancient times. As rightly noted by R.A. Podoprigora: "It is difficult to find states in which such a regulatory function would not be detected. Laws, edicts, decrees and other acts provided its regulatory justification, although often government influence was exercised at the discretion of not bound by any laws or other acts" [9].

E.K. Kubeev, considering the current stage of development of Kazakhstan in the context of this problem, noted that it is accompanied by complex processes in the spiritual life of society, the growth of

religious associations of both traditionally practiced religions and non-traditional as well. In this regard, the state should, first of all, ensure the implementation of religious legislation. At the same time, a study of the development trend of religious trends and comprehensive work to neutralize negative manifestations in the religious environment are required [10].

Conclusion and discussion. State-legal regulation of relations in the religious sphere of modern Kazakhstan has its own developmental features, which can conditionally be divided into several stages.

So, the first stage is characterized by the adoption of a law regulating relations in the religious sphere, which became the Law of the Republic of Kazakhstan “On Freedom of Religion and Religious Associations” dated January 15, 1992 [11]. The main provisions of this Law were the policy of religious tolerance and respect for the religious beliefs of citizens by the state.

The 1992 law enshrined the principles of relations between the state and religious associations, established a new position for religious associations and believers in society, and promoted the realization of the right to freedom of religion.

The foundations of a multiconfessional state were laid down by law from the first years of the existence of an independent republic.

In the early years of independence, state policy, legislation focused on the development of national culture, the spirituality of the people, the preservation of social stability and interfaith harmony gave a new impetus to the development of religion and the religious sphere. So, in the Law of the Republic of Kazakhstan “On Freedom of Religion and Religious Associations” and in the Law of the Republic of Kazakhstan “On Public Associations” dated May 31, 1996, it was written about the inadmissibility of the formation and activities of the party on a religious basis, the principles of the activities of religious organizations and the right of each were determined on freedom of religion [12].

In general, the political guidelines and legislation of this period, estimated by many experts as the most liberal in the post-Soviet space, contributed to the further growth of the process of religious revival.

However, by the mid-90s of the last century, the political situation in the post-Soviet space was becoming more complicated. In the conditions of liberal state control over religious organizations, the activities of destructive religious movements intensified, which sought to establish their influence in Kazakhstan, where many religious movements appeared, which due to their “novelty”, as well as spiritual crisis, and lack of population experience in religion and social guarantees from the state, were interesting and attractive for a certain part of the population. These facts testified to the need to review state policy and tighten control over the activities of religious organizations.

All of the above testified to the need to improve the legislation of the Republic of Kazakhstan in the sphere of relations between the state and religious associations. So, in the Law of 1992 there was no clear regulation of the activities of religious associations; unambiguous criteria were not spelled out for legal entities entitled to engage in religious practice. Also, the imperfection of the legislation was manifested in relation to organizations engaged in missionary activity, which allowed local executive bodies, through their own interpretation of what they mean by missionary activity, to work with them at their own discretion.

A drawback of the Law of 1992 was the lack of a regulation on the control of the import and distribution of religious literature (often imported religious literature has no output – author’s approx.).

The legal science of the beginning of the 90s has not studied the legal status of religious associations. In particular, according to R.A. Podoprighora, this was due to the fact that social sciences, until that time, religious associations were considered as temporary entities that would cease to exist due to the disappearance of religion. Therefore, there was practically no analysis of their various positions in society [13].

Despite the fact that the state is taking measures to resolve problem areas, for example, it has intensified educational activities, attracting scholars, religious scholars, representatives of the clergy, practicing field work in the regions of working groups, etc., nevertheless, the need to adopt a new law in the realm of religion is becoming apparent.

The Law of the Republic of Kazakhstan “On Freedom of Religion and Religious Associations” has been in effect for almost twenty years. During this period, great changes have taken place in the religious sphere of Kazakhstan. The religious situation throughout the world has undergone a serious transformation.

Thus, in connection with a change in the religious situation in the country, there was a need to rethink Kazakhstan's achievements in creating a state of interfaith harmony and miscalculations made when underestimating problems in a religious situation [14].

In the history of independent Kazakhstan, the current Law of the Republic of Kazakhstan “On Religious Activities and Religious Associations” dated October 11, 2011 [15] is the second and currently existing normative legal act on issues of religion and religious associations at the level of the law.

In the short historical period, Russia also experienced a series of religious reforms, during which a revision of the model of state-church relations was carried out. According to the current legislation, the Russian Federation is a secular state, ensuring the implementation of freedom of conscience. The new principles of church-state relations were enshrined in the Constitution of the Russian Federation of 1993, as well as in two federal laws - “On Freedom of Religion” in 1990 and “On Freedom of Conscience and Religious Associations” in 1997 [16].

If we compare the development of the laws of the Republic of Kazakhstan and the Russian Federation regulating issues of state-religious relations, then in general they were largely identical. But after the adoption of a new law in Kazakhstan in 2011, the system of relations between the state and religious associations in the Republic of Kazakhstan was reformed and began to significantly differ from the relations established in Russia, as this law became in some of its provisions significantly different from the previous one. So, the new law was designed to provide an appropriate legal framework for the fight against religious extremism, as well as to prevent the penetration of religious organizations in state institutions of Kazakhstan [17].

A feature of our law was also the exclusion of the concept of “freedom of religion” from the name of a regulatory legal act. Given the content of the law, the existing name seems justified, since it practically does not speak about freedom of religion. The law is devoted to consolidating the principles of the relationship between the state and religious associations, a new typology of religious associations, and fixing various administrative measures to influence religious institutions. In this regard, the name as a whole corresponds to its content, although in particular the law regulates not only issues of religious activity, but also other types of activities (charitable, educational) [18].

Basic principles, such as the equality of all religions before the law, the right of every citizen to freedom of religion, are fully preserved in the current law.

The Law of the Republic of Kazakhstan “On Religious Activities and Religious Associations” is an improved legal document designed to ensure stability in the religious sphere, preservation of inter-confessional consent and the right of everyone to freedom of conscience.

The key provisions of the Law are based on the experience of European countries, in particular, on the following Council of Europe Recommendations: “Excess of powers by sects and violation of human rights” of January 27, 2012, “On the illegal activities of sects” (No. 1412 of 1999) and “About sects and new religious movements” (No. 1178 of 1992). Moreover, the Recommendations are aimed at "protecting against attacks by sects and non-traditional religious groups on the fundamental freedoms of citizens, especially in the areas of healthcare, education, as well as respect for personal and family life" [19].

Today in Kazakhstan, as in other post-Soviet states, there are problems in the religious sphere, such as the spread of pseudo-religious ideologies and movements; radicalization of a part of the believing population, mainly adherents of the non-traditional religious movement “pseudo-Salafism”; Attempts to leave and participate supporters of destructive religious movements in armed conflicts abroad; strengthening the religiosity of a certain part of citizens, expressed in the manifestation of a refusal to comply with secular norms and rules, etc.

So, for modern Kazakhstan, the issues of combating religious extremism aimed at inciting religious enmity or hatred, including those related to violence or calls for violence, as well as the use of any religious practice that poses a threat to security, life, health, morality, or rights and the freedoms of citizens [20].

In March 2017, the President of the Republic of Kazakhstan N.A. Nazarbayev, during a meeting in Akorda with the Minister for Religious Affairs and Civil Society N. Yermekbaev (N. Yermekbaev at that time was the head of the now abolished Ministry for Religious and Civil Society of the Republic of Kazakhstan - author's note), instructed to review the legislation in the field of religion. “In our country, all conditions have been created for the work of all religious associations, and freedom of religion is

guaranteed. We need to remain calm in this area. At the same time, the issue of religious extremism should be dealt with, and legislation should be reviewed. The Ministry has a lot of work to do.” then noted N.A. Nazarbayev [21].

Harmonization of relations in society is achieved not so much with a specific form of the model as with the ability of the authorities to find political strategies that neutralize the threat of conflict, potentially generated by models or traditions. Considering that one of the main objective risk factors in the modern world is ubiquitous multiconfessionalism, the tools of interfaith dialogue, tolerance, the rule of law, mutual respect and upholding of universal human rights and freedoms come to the forefront of religious policy. In this sense, the tasks of building state-confessional relations go far beyond the formal institutional interaction of authorities and faiths, including the need to flexibly use advanced managerial practices and strategies [22].

Thus, today in Kazakhstan, the third stage of the development of legislation in the religious sphere has begun - the modernization of state policy in the religious sphere in order to form a Kazakhstani model of interaction between the state and religion, based on the priorities of secular values and zero tolerance for destructive religious manifestations. So, by the Decree of the President of the Republic of Kazakhstan dated June 20, 2017 No. 500, the Concept of state policy in the religious sphere for 2017-2020 was approved, one of the priorities of which is to improve domestic legislation in the religious sphere [23].

In turn, the Ministry of Religious Affairs and Civil Society of the Republic of Kazakhstan in the framework of the implementation of this Concept, as well as the instructions of N.A. Nazarbayev, a draft law of the Republic of Kazakhstan “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Religious Activities and Religious Associations” was developed (hereinafter - the draft law).

The purpose of the draft law was to improve measures to ensure state-confessional relations, to specify the rights and obligations of subjects of religious activity, and to regulate the religious sphere.

The draft law approved by the Majilis of the Parliament of the Republic of Kazakhstan on May 23, 2018 and submitted to the Senate of the Parliament of the Republic of Kazakhstan (the draft law was withdrawn by the Government of the Republic of Kazakhstan on January 29, 2019 – author's note) proposed the following main changes and additions, namely, a legislative ban on the use, wearing and distribution in public places of external attributes, articles of clothing, demonstrating belonging to destructive religious movements; legislative prohibition of wearing in public places articles of clothing that interfere with face recognition; regulation of the procedure for obtaining spiritual (religious) education abroad; the establishment of restrictions on public servants associated with their stay in public service; legislative prohibition for minors under the age of sixteen to participate in divine services, religious rites, ceremonies and (or) meetings of a religious association with the objection of one of the minor's parents or other legal representatives thereof; empowering internal affairs bodies to issue official warnings to adherents of destructive religious movements; ensuring financial transparency of religious associations; bringing legislation in line with international legal obligations regarding observance of the rights of unbelievers; definition of a number of concepts used by religious experts.

We believe in detail to dwell on some of the norms of the draft law, which were widely discussed in society, conditionally dividing them into three blocks. We will also try to justify the need for the adoption of these standards at the present stage of development.

The first block included amendments designed to prevent the use of religion for destructive purposes. In particular, it was proposed for the first time to introduce such new concepts as “destructive religious movement” and “religious radicalism”.

So, according to the draft law, a destructive religious movement is a combination of religious views, ideas, as well as teachings that pose a threat to protected human rights and freedoms, which can disrupt public order, and damage the spiritual, cultural values and traditions of society. Also, the following definition of religious radicalism was proposed, according to which religious radicalism is calls and (or) actions to impose on others unquestioning observance of religious precepts and dogmas, based on the extreme, uncompromising adherence of an individual to religious views and beliefs.

Moreover, the draft law provided for a ban on wearing items of clothing in public places that impede the recognition of a person for whose violation administrative liability has been established.

The introduction of such measures is required for the safety of citizens and will make it possible to counteract the penetration into society of ideologies alien to our country.

International practice has positive experience with such norms. So, similar norms are found in the laws of Austria, Belgium, Bulgaria, Denmark, France, and a number of other states.

For example, in Belgium it is forbidden by law to wear clothes that hide the face and interfere with the identification of its owner. It is unacceptable to wear such clothes on the streets, in parks and official institutions. Violating the law, appearing in public with a closed face, faces a fine of 15 to 25 euros or an arrest for up to seven days. An exception can be made only during holidays, carnivals and other cultural events, if local authorities give consent to this [24].

Bulgaria has passed a law banning masks, shawls and the like (including just dense or translucent fabric) that can “cover or hide” a person. Exceptions for wearing them in this case are only religious institutions, as well as places of residence. A penalty is provided for violation of the law: for an initial violation of 200 leva (100 euros), for repeated violation - 1.5 thousand leva (750 euros). For officials, increased fines are envisaged – 250 and 1000 euros, respectively [24].

In 2016, a law was passed in the Netherlands prohibiting the wearing of religious clothing in public places. Niqab burqas were included in the ban along with face covers, such as ski masks and helmets. For violation of the law, a fine of 410 euros is provided [24]. According to article 14 of the Law “On Freedom of Conscience and Religious Organizations” of 1998, “The appearance of citizens of the Republic of Uzbekistan (with the exception of servants of religious organizations) in public places in religious robes is not allowed” [24].

According to the French law “LOIn°2010-1192: Loi interdisant la dissimulation du visage dans l'espace public”, it is forbidden to wear hats, masks, helmets, balaclava, nikabet and other coatings covering the face in public places. The ban also applies to the veil covering the entire body if it covers the face. The law imposes a fine of up to 150 euros and also provides a fine of 30,000 euros and imprisonment for one year for coercion to wear prohibited clothing [24].

During the period of validity of these norms in European countries, some judicial practice has developed. So, having studied the practice of the European Court of Human Rights, we present one of the most resonant court cases.

S.A.S. against France (2014). Regarding the lawsuit filed by a French citizen of France, who is a practicing Muslim, that she is no longer allowed to wear a burqa and niqab in public after the entry into force of the Law of April 11, 2011 prohibiting the concealment of her face in public places, the court ruled that there was no violation of Article 8 (right to respect for private and family life) and there was no violation of Article 9 (right to respect for freedom of thought, conscience and religion) of the Convention. In particular, he emphasized that compliance with the terms of “coexistence” is the legitimate aim of the measure in question and that, since the state has a wide range of discretion regarding this general political issue, regarding which there were significant disagreements, the ban introduced by the Law of October 11, 2010, does not violate the Convention [24].

The second block is the norms containing provisions on the concretization of the rights and obligations of subjects of religious activity.

First, basic regulation of the behavior of public servants was proposed, namely: not to use one's official position in the interests of religious associations; not to force subordinates to religious activity; not to act as an initiator or participant (member) of a religious association.

In general, it is worth noting that the proposed norms do not affect the basic rights of this category of citizens in the field of religion, i.e. for example, committing or participating in religious events and rituals after hours, etc.

The purpose of these changes is to strengthen the secularism of the state and society, by introducing restrictions on the dissemination by civil servants of their religious views in working (office) time and in the performance of official duties.

We conducted an analysis of these standards, the results of which are presented below. So, according to paragraph 1 of Article 1 of the Constitution of the Republic of Kazakhstan, the Republic of Kazakhstan affirms itself as a democratic, secular, legal and social state, the highest values of which are a person, his life, rights and freedoms [2]. Paragraph 1 of Article 39 of the Constitution of the Republic of Kazakhstan

states that “the rights and freedoms of man and citizen may be limited only by laws and only to the extent necessary to protect the constitutional order, protect public order, human rights and freedoms, health and morality population” [2]. In accordance with paragraph 4 of Article 33 of the Constitution of the Republic of Kazakhstan, citizens of the Republic have an equal right to access public service. The requirements for a candidate for the position of civil servant are determined only by the nature of the duties and are established by law [2].

Based on these constitutional norms, a number of restrictions related to being in the public service are enshrined in the current legislation.

In accordance with article 8 of the Law of the Republic of Kazakhstan dated November 23, 2015 “On the civil service of the Republic of Kazakhstan [25], the status of a civil servant includes the general rights, freedoms and duties of a civil servant as a citizen of the Republic of Kazakhstan with the restrictions established by the laws of the Republic of Kazakhstan related to staying on public service, as well as the rights, duties and responsibilities arising from the specifics of public service.

Civil servants, in accordance with the Law of the Republic of Kazakhstan “On the Civil Service of the Republic of Kazakhstan”, are required to comply with the Constitution and legislation of the Republic of Kazakhstan (paragraph 1) of Art. 10); carry out functions in accordance with their official powers (paragraph 4) of Art. 10); in the exercise of official powers, to be impartial and independent of the activities of political parties, public and religious associations (paragraph 5) of Art. 10).

In addition, according to paragraph 6 of the Code of Ethics for Civil Servants of the Republic of Kazakhstan, approved by Decree of the President of the Republic of Kazakhstan dated December 29, 2015 No. 153, civil servants should not use their official position and related opportunities in the interests of public and religious associations, other non-profit organizations, in including to promote their attitude towards them. Civil servants, including those in senior positions, cannot openly demonstrate their religious convictions in a collective, force subordinate servants to participate in the activities of public and religious associations, and other non-profit organizations [26].

Thus, the additional restrictions proposed in the draft law were aimed at bringing the current legislation in line with the norms, as well as preventing decisions and actions using religion and religious beliefs, which are known to be able to disorganize the activities of state bodies and disrupt their smooth functioning.

Judging from the context of the proposed, they will not apply to public servants outside working hours, when a public servant can freely exercise his constitutional right to freedom of conscience. Moreover, according to paragraph 2 of Article 22 of the Constitution of the Republic of Kazakhstan, the exercise of the right to freedom of conscience should not stipulate or limit universal and civil rights and obligations to the state [2].

It is worth noting that the restrictions and prohibitions associated with public service are provided for in the laws of many countries. Thus, the Federal Law of the Russian Federation of July 27, 2004. No. 79-FZ “On the State Civil Service of the Russian Federation” [27] stipulates that in connection with civil service, a civil servant is prohibited from: accepting, without written permission from the representative of the employer, awards, honorary and special ranks (with the exception of scientific) foreign states, international organizations, as well as political parties, other public associations and religious associations, if his official duties include interaction with the indicated organizations and associations, to use official powers in the interests of political parties, other public associations, religious associations and other organizations, as well as publicly express their attitude to these associations and organizations as a civil servant, if this is not part of his official duties create structures of political parties, other public associations (with the exception of trade unions, veteran and other bodies of public initiative) and religious associations in state bodies or promote the creation of these structures [27].

In some European countries (for example, France, Germany), civil servants, including teachers in public schools, are prohibited by law from openly bearing religious symbols and demonstrating their religious affiliation. Thus, the restrictions imposed on civil servants do not contradict constitutional norms, are justified and necessary at the present stage of development.

Secondly, the draft law proposed to expand the functions of the Ministry of Internal Affairs of the Republic of Kazakhstan in the prevention of crimes related to religious activities, as well as extremism and terrorism.

Police officers could conduct individual preventive work with suspicious persons, officially warn them about the inadmissibility of actions that create the conditions for committing extremist and terrorist crimes, and administrative offenses in the religious sphere.

If the suspect commits actions that create the conditions for committing terrorist crimes, the police would be able to put such persons on forensic records and take other necessary measures. Such preventive accounting will be introduced in order to protect these individuals from committing offenses.

A similar practice is used in foreign countries. For example, the British “Counter-Terrorism and Security Act 2015” gives the right to register persons who are at risk of involvement in terrorist activities (Risk of being drawn into terrorism). In order to help these individuals (Chapter 2. Support etc. for people vulnerable to being drawn into terrorism), the Act provides that a special body (panel of persons is in place for its area) is created at the local level that evaluates the constable’s report about the risk of involving individuals in terrorism and prepares an individual plan for such persons, indicating the nature of the support that is provided to the person (how and when such support is to be provided). Such an accounting can be called preventive [28].

The third block is amendments aimed at making the work of religious associations easier and more understandable.

So, for example, it was proposed to introduce basic changes and additions aimed at bringing legislation into line with international legal obligations, for example, in terms of observing the rights of non-believers, Kazakhstani legislation was brought into line with paragraph 2 of the General Comments of the UN Human Rights Committee No. 22 (48) of September 27, 1993 under article 18 of the International Covenant on Civil and Political Rights of December 16, 1966, according to which “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief”. [19]

This supplement is consistent with the experience of most Western countries, where freedom of religion is guaranteed, including the freedom not to classify one religion. In world practice, freedom of religion by default includes freedom to choose one’s religion and belief, as well as follow an atheistic worldview.

The protection of minors from illegal involvement in religious activities is also increased. It was proposed to normatively fix so that minors under the age of sixteen could not participate in divine services, religious rites, ceremonies and (or) meetings of a religious association when one of the parents of the minor or his other legal representatives objected. This is due to the fact that today it is becoming an established practice to involve children in religious activities, which does not meet the interests of the development of secular society. The experience of some CIS countries in regulating this issue is interesting. So, according to paragraph 5 of Article 3 of the Federal Law of the Russian Federation “On Freedom of Conscience and on Religious Associations” it is forbidden to involve minors in religious associations, as well as educate minors of religion against their will and without the consent of their parents or persons replacing them [29]. According to Art. 145 of the Criminal Code of the Republic of Uzbekistan, involving minors in religious organizations, as well as teaching their religion against their will, the will of their parents or persons replacing them, is punishable by a fine of 50 to 75 minimum wages or correctional labor from 2 to 3 years or by deprivation freedom up to 3 years [30]. According to the Law of the Republic of Belarus “On Freedom of Conscience and Religious Organizations,” involving minors in religious organizations, teaching religion to minors contrary to their will and without the consent of their parents or their substitutes, entails liability established by law [31].

Thus, taking into account that in Kazakhstan the education and upbringing of children is secular, the introduction of this amendment seems to be very timely. According to the draft law, it was proposed to streamline the process of obtaining spiritual (religious) education abroad.

So, the draft law provided for norms that allowed receiving religious education abroad only for those citizens who had already received higher spiritual education in the country.

However, the exception is cases when training is carried out under an international agreement, or if the religious association does not have educational organizations in our country.

Today, young people in the absence of the basic foundations of an appropriate religious education fall under the influence of foreign educational institutions of a radical nature. This norm will allow streamlining the procedure for citizens of the Republic of Kazakhstan to receive spiritual (religious) education in foreign countries.

In international law enforcement practice, much attention is paid to obtaining spiritual (religious) education in foreign countries. On the example of those citizens who illegally studied in the countries of the Arab world (for example, the Kingdom of Saudi Arabia, Syria), it can be noted that the vast majority of them did not have basic religious literacy. In this connection, many of them fell under the influence of radical religious groups. According to the experience of Turkey and Malaysia, citizens of these countries can continue their religious education in universities of the Arab countries after receiving a basic level of knowledge at home. Also, thanks to memorandums of the official clergy of Turkey and Malaysia with leading universities of the Arab countries, citizens can freely go to undergraduate studies, while our citizens, due to the fact that foreign educational institutions do not recognize diplomas of domestic educational institutions, have to undergo pre-undergraduate studies for several years. This situation, in turn, leaves our citizens vulnerable to charitable organizations of radical movements [32].

Thus, the adoption of this rule is a necessity at the present time. According to statistics, the vast majority of the population supports the positions and religious views of registered religious associations.

A ban on studying in spiritual (religious) educational institutions of foreign countries without sending a religious association registered in the Republic of Kazakhstan is a necessary and important measure to stop cases of citizens joining the ranks of radical religious groups in the process of studying abroad. This is the main content of the draft law, the adoption of which, in our opinion, would increase the responsibility of subjects of religious relations in realizing their rights to religion, and minimize the conditions for using religion for destructive purposes. Also, the norms of the draft law will contribute to the effective implementation of state policy in the religious sphere, ensuring the protection of public safety and order, including on issues of combating religious extremism and terrorism. Thus, in our opinion, we should return to consideration of the indicated norms of the draft law for their subsequent adoption.

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ДІН САЛАСЫ БОЙЫНША ҚАЗАҚСТАН ЗАҢНАМАСЫ: ТАРИХЫ МЕН ДАМУ ПЕРСПЕКТИВАСЫ

Аннотация. Бүгінгі таңда заманауи Қазақстанның жалпыға танылған жетістігі – бүкіл халық үшін экономикалық, әлеуметтік, мәдени, рухани даму мүмкіндіктерінің теңдігі қамтамасыз етілетін демократиялық және зайырлы мемлекет құру. Этникааралық және конфессияаралық келісім қағидаттары республикалық деңгейде де, өңірлік деңгейде де іске асырылады.

Қазіргі кезеңде Қазақстанда дін саласы маңызды рөл атқарады және оның рөлі тек оң деп айтуға болмайды: әртүрлі деструктивті ағымдарды тарату, мектептегі оқу процесіне қандай да бір діни дәстүрді сіңіру әрекеттері және діни негіздерде туындайтын қоғамдық қақтығыстар теріс салдарды, діндарлар санының тез өсуін білдіреді

Қазақстан әлемдік қоғамдастықтың бір бөлігі бола отырып, соңғы жылдары дін саласындағы әртүрлі қақтығыстамен және радикалды исламның пайда болуымен күресіп келеді. Елдегі діни жағдайдың өзгеруіне байланысты мемлекетте конфессияаралық келісім құру жолындағы Қазақстанның жетістіктерін қайта қарастыру қажеттілігі туындайды.

Қазақстанда этносаралық және конфессияаралық келісімнің тұрақты моделі қалыптасқанына қарамастан, оны қолдау мемлекет тарапынан да, азаматтық қоғам тарапынан да тұрақты күш-жігерді талап етеді. Осыған байланысты діни ахуалға тұрақты мониторинг жүргізу – барлық мүдделі тараптардың өзара іс-қимылы, сондай-ақ діни саладағы заңнаманы жетілдіру қажет.

Зерттеу тақырыбының өзектілігі діни нормалардың қоғамға деген әсерін зерттеуге, сондай-ақ олардың құқықтық талдауына ықпал ететін қоғамда болып жатқан өзгерістерге байланысты. Бірінші кезекте, бұл, қазіргі қоғамда бар неғұрлым маңызды әлеуметтік байланыстарды көрсететін құқық нормаларын қалыптастыруға қатысты.

Жұмыстың мақсаты: діни саласындағы Қазақстан заңнамасының даму тарихының кейбір аспектілерін зерттеу, сондай-ақ одан ары жетілдіру жолдарын айқындау және негіздеу, оның ішінде шетелдік заңнамаларға салыстырмалы талдау жүргізу.

Жұмыс жүргізу әдісі немесе әдіснамасы келесі жалпы ғылыми әдістерді қолданумен ерекшеленеді: логикалық, құрылымдық, жүйелік талдау және салыстыру, индукция және дедукция әдістері, сонымен қатар

құбылыстар мен процестерді зерттеудің арнайы тәсілдері, әдістері (нақты-тарихи, диалектикалық, формальды-логикалық) қолданылды. Дін саласын реттейтін нормативтік құқықтық актілерге жан-жақты талдау жүргізілді.

Жұмыс нәтижелері: бұдан бұрын қабылданған нормативтік құқықтық актілерді, сондай-ақ дін саласы бойынша қолданыстағы Қазақстан заңнамасын талдау, халықаралық тәжірибені зерттеу, «Қазақстан Республикасының кейбір заңнамалық актілеріне діни қызмет және діни бірлестіктер мәселелері бойынша өзгерістер мен толықтырулар енгізу туралы» Қазақстан Республикасы Заңының жобасын қабылдау, негіздемесін анықтау.

Нәтижелерді қолдану саласы: заңнамалық және құқық қолдану қызметі.

Қорытынды: зерттеу жұмысының қорытындысы діни қызмет және діни бірлестіктер мәселелері бойынша заңнаманы жетілдіруге бағытталған тиісті түзетулерді қабылдау қажеттілігін негіздеумен байланысты.

Түйін сөздер: дін саласындағы заңнама, дін, діни бірлестіктер, дін саласындағы шетелдік заңнама, зайырлы мемлекет, заң жобасы.

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КАЗАХСТАНСКОЕ ЗАКОНОДАТЕЛЬСТВО В РЕЛИГИОЗНОЙ СФЕРЕ: ИСТОРИЯ И ПЕРСПЕКТИВЫ РАЗВИТИЯ

Аннотация. На сегодняшний день общепризнанным достижением современного Казахстана является построение демократического и светского государства, в котором обеспечивается равенство возможностей экономического, социального, культурного, духовного развития для всего населения. Принципы межэтнического и межконфессионального согласия реализуются как на республиканском, так и на региональном уровнях.

Религия в современном Казахстане играет все большую роль, и нельзя сказать, что эта роль однозначно положительная: распространение различных деструктивных течений, попытки привнести в школьный учебный процесс ту или иную религиозную традицию и возникающие на религиозной почве конфликты в обществе – это отрицательные последствия, причиной которых является быстрый прирост числа верующих.

Казахстан, будучи частью мирового сообщества, за последние годы столкнулся с различными вызовами в религиозной сфере и с наступлением радикального ислама. В связи с изменением религиозной ситуации в стране возникла необходимость переосмысления достижений Казахстана на пути создания межконфессионального согласия в государстве.

Несмотря на то, что в Казахстане сложилась устойчивая модель межэтнического и межконфессионального согласия, ее поддержание требует постоянных усилий как со стороны государства, так и со стороны гражданского общества. В связи с чем, необходим постоянный мониторинг религиозной ситуации, взаимодействие всех заинтересованных сторон, а также совершенствование законодательства в религиозной сфере.

Актуальность темы исследования обусловлена также происходящими изменениями в обществе, которые привели к необходимости обратиться к исследованию влияния религиозных норм, а также к их правовому анализу. В первую очередь, это касается проблемы повышения эффективности правотворческой деятельности и ее результатов в виде формирования норм права, отражающих наиболее значимые социальные связи, существующие в современном социуме.

Цель работы: исследовать казахстанское законодательство в религиозной сфере в историческом аспекте развития, а также определить и обосновать пути его дальнейшего совершенствования, в том числе посредством сравнительного анализа с зарубежным законодательством.

Метод или методология проведения работы характеризуется применением таких общенаучных методов познания, как логический, структурный, метод системного анализа и сравнения, индукции и дедукции, а также специальных приемов, методов исследования явлений и процессов (конкретно-исторический, диалектический, формально-логический). Вместе с тем, в представленном исследовании проведен всесторонний анализ нормативных правовых актов, регулирующих религиозную сферу.

Результаты работы. Анализ предыдущих нормативных правовых актов, а также действующего казахстанского законодательства в религиозной сфере, исследование международного опыта, обоснование принятия проекта Закона Республики Казахстан «О внесении изменений и дополнений в некоторые

законодательные акты Республики Казахстан по вопросам религиозной деятельности и религиозных объединений».

Область применения результатов: законодательная и правоприменительная деятельность.

Выводы: Итогом исследовательской работы является попытка обосновать необходимость принятия на данном этапе развития соответствующих поправок, направленных на совершенствование законодательства по вопросам религиозной деятельности и религиозных объединений.

Ключевые слова: законодательство в религиозной сфере, религия, религиозные объединения, зарубежное законодательство в религиозной сфере, светское государство, законопроект.

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