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History of protection of the rights of believers in Russian legislation

The relationship between church and state is relevant since the emergence of these institutions. There are no prerequisites for the loss of relevance of this issue because the role of religion in modern society remains significant. The balance of powers of the state and the church has changed over many centuries and the relationship between law and the church has changed accordingly.

Over the past century, Russia has undergone major changes. In different periods of this seemingly small period, the country had a different territory, a different political regime and form of government and, accordingly, different ideologies and values. In the face of such serious changes, the change in the position of the church also turned out to be significant.

It is important to trace the changes that have occurred in the legal status of the church and religion since the time of the Russian Empire. In Russian Empire religion was one of the fundamental values and the period of the USSR can be called the most difficult period of religion in Russia. And the next period is period of modern post-Soviet Russia, in which, after the collapse of the Soviet Union, religion again took its important role in society. This observation will help to understand how religion took its current position and why in a secular state such as Russian Federation, insulting the feelings of believers was criminalized and how legislation of protection of rights of believers changes over time.

Since freedom of religion is a basic right, and the spread of religions is not limited by the borders of states, the protection of religious rights is carried out at

the international level. Freedom of religion is enshrined in Article 18 of the Universal Declaration of Human Rights¹; the same right is detailed in the International Covenant on Civil and Political Rights².

At the same time because of secularization of states and decrease in the number of believers in both religious and secular states while realizing the importance of religion in society, states began to take additional measures to protect religion as a common value and protect the rights of believers on a national legislation level. Some countries that have stopped protecting religion at the state level for some reasons have started doing it again creating a legal institution to protect the rights of believers virtually from scratch.

Throughout the existence of the Russian Empire, religion was one of the main social values, a force rallying the people, although the position of religion in society had been transformed over time. Obviously, religion has been an important social institution throughout the history of Russia, but we will consider the change in the position and legal regulation of church and religion from the beginning of the 20th century to the present day. Firstly we should briefly review the history of religion prior to the 20th century to find out how and why the legal status of the church and religion turned out to be like that by the beginning of the twentieth century.

Orthodoxy is the main religion of Russia for many centuries, Russia has been inseparable from Orthodoxy since the time of the baptism of Russia in the 10th century AD, when baptism played a unifying role and became an instrument for the formation of statehood. Despite several church reforms that took place over the centuries of Russian history, the church remained inseparable from the state: Russian monarchs were crowned by means of an Orthodox ceremony, for them the

¹ "Universal Declaration of Human Rights" (adopted by the UN General Assembly on December 10, 1948)

² "International Covenant on Civil and Political Rights" (Adopted 12/16/1966 by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly)

Orthodox confession was obligatory. The Russian Empire was proclaimed by Peter I, and the head of state began to bear the title of “defender of the Church”. It should be noted that the monarch controlled the Russian Orthodox Church, which had the status of a state one. There were certain religious restrictions, for example, until 1721 Orthodox people were forbidden to marry any non-Orthodox people, permission to enter such marriages was given subject to the conditions for observing certain Orthodox values and raising children from such a marriage in the Orthodox faith. At the same time, in general, freedom of religion was declared (although there were confessions that were not protected by this rule), although this freedom was very conditional. First, the State used religion to solve national and political problems. This is evidenced by several stories about the forcible conversion of certain groups of people to Orthodoxy, for example, the forced conversion to Christianity of the Tatars (a Turkic ethnic group, mainly professing Islam) in order to strengthen statehood. At the same time, some of the people converted to Orthodoxy, in fact, continued to adhere to other religions, and the law forbade them to practice their religions. Some of them existed outside the legal field, they could not legally register families, the civil status of representatives of these religious movements was not entered in the registration books, which made them less protected group. Secondly until 1905, leaving Orthodoxy was a crime that entailed rather severe punishment (up to 10 years in hard labor). Based on these facts, it is difficult to talk about the actual existence of the principle of freedom of religion.

The situation was largely changed by the decree issued in 1905 by Emperor Nicholas II "On strengthening the principles of religious tolerance." This decree allowed people to accept a different faith, leaving Orthodoxy, and people who profess other religions, but ranked among the Orthodox, to be excluded from the number of Orthodox Christians and profess the religion that they professed before being included in the list of Orthodox Christians or the one that their ancestors

professed³. This decree did not equalize all confessions and their adherents but made serious changes in the legal status of persons of all confessions. According to the Decree, the legal status of people of different religions from Orthodoxy changed significantly: the previously existing restrictions were eliminated, a common terminology was established in relation to all religious groups that broke away from the Orthodox Church. Criminal and administrative responsibility for choosing a religion was abolished. Prohibited persecution of people, discrimination and restrictions on civil rights on religious grounds. Nevertheless, restrictions on changing confessions were abolished only in relation to other Christian confessions, and it was also impossible not to belong to any confession. In addition, the Russian Orthodox Church retained its exclusive dominant status, expressed, in particular, in the right to spiritual censorship. Thus, the legislation of that period defended Orthodoxy as a spiritual bond and social value.

In 1906, the Criminal Code of Religious Crimes appeared, which referred to religious crimes as "blasphemy and insult of a shrine," which was defined as "uttering swear words at God (Holy Trinity), the Virgin Mary, the Ethereal Forces and Holy Pleasure; the subject of insult to the shrine is the Holy Sacraments, Holy Scripture, icons, relics, ... the Christian faith". Also, the Criminal Code described such less serious crimes as blasphemy, that is, disrespect for Christianity and its sacred objects, "obscene mockery" of faith and sacred objects. It is important in this situation that the attitude towards the violation in relation to different religions was different: the blasphemy of the Christian faith was punished more severely than the same actions in relation to Islam, Buddhism or Judaism. This once again confirms the special status of the Christian faith in Russia.

At the same time, during that period, there was a fall in religiosity, about which, for example, L.A. Andreeva in the article *The Phenomenon of Religious Indifferentism in the Russian Empire*. Andreeva believes that it is wrong to ignore

³ Nicholas II Decree on Strengthening the Principles of Tolerance. Source: Complete collection of laws of the Russian Empire: Sobr. 3rd. T.XXV: 1905. SPb., 1908.S. 237-238

this trend, since it largely explains the turning point in the history of Russia and calls religious indifference one of the most important driving forces of revolutionary events⁴. In the article «The process of de-Christianization in Russia and the emergence of quasi-religiosity in the XX century» L.A. Andreeva points to such confirmation of the decline in the role of religion in society as Act No. 676 of the Synod, published in 1916. In this act, the Synod indicates a "mass falling away" from the faith⁵.

These events, as well as the confrontation that arose between the church and the monarch, associated with the church's attempts to free itself from the power of the monarch and revive the patriarchate are rarely considered, but they are very important for understanding why in 1917, after the revolution, the absolute majority of the population quite easily abandoned religion.

The new government sought to replace religion as a universal ideology with the ideology of communism. At the same time, people had to continue to believe in something, so communism became a quasi-religion. And if at first the renunciation of religion took place voluntarily with the support of propaganda, then since the 1920s, state bodies have carried out mass arrests and persecution of clergy and religious preachers. Until 1939, the policy of eliminating organized religious life was carried out in an administrative manner by state authorities.

Several legislative acts were adopted immediately after the October Revolution. Thus, the "Declaration of the Rights of the Peoples of Russia" provided for the abolition of "all and any national and national-religious privileges and restrictions." Later, this norm was enshrined in the first Soviet Constitution of 1918. The institution of non-church marriage was also legalized, the church was separated from the school. It is also important to consider that the 1918 Constitution proclaimed freedom of conscience and separated church from state

⁴ Andreeva L.A. The phenomenon of religious indifference in the Russian Empire // ONS. No. 4. 2008

⁵ Andreeva L.A. The process of de-Christianization in Russia and the emergence of quasi-religiosity in the XX century// SOCIAL SCIENCES AND MODERNITY No. 1.2003.

and school from church, and freedom of religious and anti-religious propaganda was recognized for all citizens. At the same time, the 1918 Constitution deprived monks and clergy of churches and religious cults of electoral rights (both passive and active), obviously limiting the rights of this group of people⁶.

The policy of those times was very contradictory, therefore, despite the aforementioned activities and restrictions, instructions on the inadmissibility of offending the feelings of believers were included in the draft program of the ruling party. In addition, Lenin personally pointed out this inadmissibility. In addition, the story is known that in 1919 the believers of one of the regions of Russia turned to Lenin with a request to allow the completion of the construction of the temple, which had been started several years before the Revolution⁷.

However, the period of courteous treatment of the church and the use of propaganda as a weapon of struggle has passed. An open struggle against religious organizations and repressions against believers began; the period from 1932 to 1937 was called the "godless five-year plan". In such circumstances, it is difficult to talk about any protection of the rights of believers and, in general, about the rights of believers, but it is necessary to consider this period for a more complete understanding of the historical path.

From a legal point of view, there was a decree regulating in detail the permissible activities of religious associations, in particular, religious societies were required to register, and to hold a general meeting of a religious association, permission had to be obtained. It was forbidden to create mutual aid funds, cooperatives, production associations, organize prayer and other meetings, as well as biblical, literary, handicraft, labor, religious education, etc. meetings, groups, circles, departments, as well as arrange excursions, open libraries and reading rooms, organize

⁶ Constitution (Basic Law) of RSFSR Adopted by the V All-Russian Congress of Soviets at a meeting on July 10, 1918.

⁷ Smirnov M.Y. Religion and the Bible in the works of V. I. Lenin: a new look at the old topic // State, religion, church in Russia and abroad. 2011. No. 2. URL: <https://cyberleninka.ru/article/n/religiya-i-bibliya-v-trudah-v-i-lenina-novyy-vzglyad-na-staruyu-temu> (date accessed: 12.03.2021).

sanatoriums and medical care.⁸ According to another legal act, social insurance and pension benefits did not apply to religious workers⁹.

The next period, which turned out to be one of the most difficult periods in history, was the period of repression, in which one cannot speak of either the rights of people or the law. People who for one reason or another were declared "anti-Soviet elements" were subjected to repression; they included church leaders, religious activists, and clergymen.

"Sectarian activists and churchmen" who had already been subjected to repressions, continued "anti-Soviet activities", according to the operational order of the NKVD of the USSR dated July 30, 1937 No. 00447 "on the operation to repress former kulaks, criminals and other anti-Soviet elements", along as criminals and members of anti-Soviet parties were "contingent subject to repression".

The machine of repression gradually slowed down, relations between church and state normalized, during the Great Patriotic War, a course was taken for a state-controlled revival of the church: the Council for the Russian Orthodox Church and Councils for Religious Affairs were created, many churches that were closed during periods of church persecution were reopened.

However, a few years later, the authorities returned to tightening policy towards the church, and during the period referred to in the history of Russia as the "thaw" a new anti-church campaign unfolded. Pressure was exerted on religious leaders, propaganda carried out through the media, religious associations were massively removed from registration, religious buildings were closed, some of them were demolished. Pressure was exerted on religious leaders, propaganda carried out through the media, religious associations were massively removed from

⁸ Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR All-Russian Central Executive Committee of the RSFSR and the Council of People's Commissars of the RSFSR dated April 8, 1929 "On Religious Associations".

⁹ Decree of the People's Commissariat of the USSR of June 8, 1929, No. 188 "On the Non-Proliferation of Labor Legislation to Persons Serving Religious Cults" // Izvestia of the People's Commissariat of Labor of the USSR. - 1929, No. 27. - P.418-419.

registration, religious buildings were closed, some of them were demolished. In addition, the practice of criminal prosecution of religious activists and clerics. In many cases believers were prosecuted under Article 142 of the Criminal Code of the RSFSR "Violation of the laws on the separation of church from state and school from church" and Article 227 "Creation of a group that is harmful to the health of citizens"¹⁰, applying too broad interpretation or even condemning people on the basis of knowingly false evidence, but also were cases of prosecution under other articles too.

A new constitution was adopted in 1977¹¹. On the one hand, in Article 34 it declared the equality of citizens regardless of, inter alia, attitude to religion, Article 52 enshrined freedom of conscience, allowed both to profess religion and conduct anti-religious propaganda, while on the other hand "scientific atheism" was necessarily taught in educational institutions.

Even though over time the pressure on the church weakened, only in 1990 was the USSR adopted the law "On freedom of conscience and religious organizations", Article 5 of which ended state support for atheism¹². The law also granted religious organizations the rights of a legal entity and allowed them international contacts without state mediation. In 1990, the RSFSR Law "On Freedom of Religion" was passed, which allowed the optional study of religion in general educational institutions. In October 1990, this law abolished the decree on the separation of church from state and school from church.

Among the reasons for how the attitude of the state towards the church has changed is the resistance of religious people during the anti-religious campaigns of previous years, in particular, the emergence of different confessions of associations. In addition, the persecution of certain previously little-known religious groups attracted more attention to them and their faith.

¹⁰ "The Criminal Code of the RSFSR" (approved by the Supreme Council of the RSFSR 10/27/1960)

¹¹ Constitution (Basic Law) of the Union of Soviet Socialist Republics (adopted at the extraordinary seventh session of the Supreme Soviet of the USSR of the ninth convocation on October 7, 1977)

¹² Law of the USSR of 01.10.1990 N 1689-1 "On freedom of conscience and religious organizations"

Then, in 1991, another change of power took place, the USSR collapsed. Politics began to change again. In 1997, the Federal Law No. 125-FZ "On Freedom of Conscience and on Religious Associations" appeared, replacing the 1990 Law of the RSFSR "On Freedom of Religion". The new law in the preamble contains recognition of the "special role of Orthodoxy in the history of Russia"¹³. In addition to the already mentioned reasons for the change in the legal position of religion and the church, after the collapse of the USSR, it became obvious that it was necessary to find a force that would help unite the people and religion, which for many centuries served as a unifying force perfectly suited for this role, especially given that it passed through the history of the USSR hard way and took a "martyr" role while remaining supported by the people.

In 1996, a new Criminal Code of the Russian Federation was adopted. The previous code has been in effect since 1960. The latest version of the code enshrined responsibility for violation of freedom of religion in article 143. It was prohibited to obstruct the exercise of the right to freedom of conscience and religion, including the performance of religious rites with the use (or threat of use) of violence and damage to property, and also insulting the feelings and beliefs of citizens in connection with their attitude to religion using the media for these purposes or in any other public form, and destruction or damage to religious buildings, structures, etc.¹⁴ A similar article 148 in the new code was more laconic and contained the wording "Illegal obstruction of the activities of religious organizations or the performance of religious rites." In addition, the new code introduced article 282 "Incitement of national, racial or religious hatred", which corresponds to article 74, which existed in the 1960 code, "Violation of the equality of citizens based on race, nationality or attitude to religion".

Global changes and legislation in the aspect of protecting the rights of believers and related law enforcement practice took place in 2013: amendments

¹³ Federal Law "On Freedom of Conscience and on Religious Associations" of September 26, 1997 N 125-FZ

¹⁴ "The Criminal Code of the RSFSR" (approved by the Supreme Council of the RSFSR on 10/27/1960) (as amended on 07/30/1996)

were adopted in both 148 and 282 articles. Firstly, from an administrative offense, insulting religious feelings became an offense, article 148 of the Criminal Code began to consist of 4 parts (previously fixed composition 148 became part 3 of the article), part 1 fixed as a crime "public actions expressing clear disrespect for society and committed in order to offend the religious feelings of believers. " Article 282 has also undergone changes: it changed its name, began to include a broader list of grounds for the incitement of hatred on which the article prohibits.

It should be noted the historical context in which these changes took place: in 2012, the Russian protest group Pussy Riot held a political performance, dancing in one of the country's main temples. They condemned the fusion of the church with the state (with the secular state of the state enshrined in the constitution). The case attracted wide attention of the world community, because contrary to legal practice and the principle of compliance of punishment with the social danger of a crime, three participants in the performance were charged with hooliganism based on religious hatred and sentenced to two years in prison.

This event sparked several protests, as well as widespread criticism, as the restriction on the right to expression was disproportionately strong (this violation will later be established by the ECHR¹⁵). However, the authorities did not heed the protests and worldwide support of activists and made the aforementioned changes in the legislation. The amendments to Article 148 caused several public discontents. First, the composition set forth in part 1 of the article does not contain specific features, the very concept of "insulting the feelings of believers" has repeatedly caused discussions: what does it mean and how to establish whether feelings are offended. Secondly, the question arose why the protection of the feelings of believers was legislatively enshrined in a secular state and why, in this case, there was no similar protection for unbelievers. It should be noted that representatives of the church themselves, whose feelings should be protected by

¹⁵ CASE OF MARIYA ALEKHINA AND OTHERS v. RUSSIA (Application no. 38004/12).//URL: <http://hudoc.echr.coe.int/fre?i=001-184666>

the article, also expressed dissatisfaction with the changes to the article. In particular, the clergy came out at the picket for the cancellation of this article, they declared that it is impossible to offend the feelings of a believer, "God cannot be mocked," and also that the Lord protects the feelings of believers¹⁶.

The existing few practice does not solve the issues related to the article. For example, the resonant case of Maria Motuznaya, who was charged under Articles 148 and 282 of the Criminal Code of the Russian Federation, was initiated at the request of students of the law faculty, who were previously applicants in the case of a young man from the same city who was accused of inciting religious hatred also because of the memes he saved in an album on his VKontakte page, due to the discovery by them of memes recognized as offensive and inciting hatred in the saved photos of Maria Motuznaya on VKontakte, and memes were added three years earlier and to the girl's fake page. Fortunately, the girl was not convicted, the criminal prosecution was terminated, and the resonance caused by the case led to the partial decriminalization of Article 282 of the Criminal Code.

In conclusion, I would like to say that the disputes around the current legislation and law enforcement practice of protecting the rights of believers do not stop, and this is quite justified. The protected object has not yet been established, as well as the concept of a "believer", there is still no sufficient justification for protecting the feelings of a certain indefinite group of "believers" under the conditions of the existence of the principle of the secular state of the state, as well as the equality of people regardless of their attitude to religion (enshrined in Art. 3 of the Constitution of the Russian Federation). In addition, such "protection" is often criticized by people who, by all indications, should relate to the protected group. For example, regarding the current case of a young man convicted under Article 148, Metropolitan Dimitri of Chita and Petrovsk-Zabaikalsky said that he

¹⁶ <https://meduza.io/news/2016/11/18/v-peterburge-svyaschenniki-vystupili-protiv-stati-ob-oskorblenii-chuvstv-veruyuschih>

was preparing a petition to pardon the convicted person¹⁷. In the course of the well-publicized criminal case of Sokolovsky, who was sentenced to 3.5 years probation for publishing a video in which he plays the game Pokemon Go in the temple, Metropolitan Kirill of Yekaterinburg and Verkhoturys announced that he was ready to petition for Sokolovsky to be released¹⁸.

From my point of view, the current legal situation is unacceptable, since it contradicts the Constitution of the Russian Federation, the rules of legal technique and common sense. It is noteworthy that the clergy oppose such "protection", pointing out, in particular, the violation of the principles of Christianity by such an approach. For example, the Russian historian and religious scholar, former professor A. Zubov, compared the case against Sokolovsky with the persecution of believers in the USSR. He called on the Russian Orthodox Church to come out with a condemnation of the verdict, calling the position of the court "wrong, spiritually harmful and contrary to the spirit of Christianity"¹⁹.

From the experience of the historical path traversed by Russia in relations with the church and religion, it seems to me that one can make an obvious conclusion that freedom of conscience and religion should be respected, and no one should be subject to reprisals and persecuted for their beliefs.

¹⁷ A teenager from Chita who lit a candle in a church was found guilty of offending the feelings of believers. URL: <https://meduza.io/news/2021/03/09/podrostka-iz-chity-prikurivshego-ot-svechi-v-hrame-priznali-vinovnym-v-oskorblenii-chuvstv-veruyuschih>

¹⁸ Metropolitan of Yekaterinburg stood up for the blogger who caught Pokémon
<https://www.kommersant.ru/doc/3081167>

¹⁹ Adamova S. Historian Andrei Zubov: It is necessary to fight not for religion or against it, but for the sense of human dignity. The Insider. May 11, 2017. URL: <https://theins.ru/opinions/sofya-adamova/55669>

List of references

1. Constitution (Basic Law) of RSFSR Adopted by the V All-Russian Congress of Soviets at a meeting on July 10, 1918
2. "The Constitution of the Russian Federation" (adopted by popular vote 12.12.1993 with amendments from 01.07.2020)
3. Constitution (Basic Law) of the Union of Soviet Socialist Republics (adopted at the extraordinary seventh session of the Supreme Soviet of the USSR of the ninth convocation on October 7, 1977)
4. "The Criminal Code of the Russian Federation" dated 13.06.1996 N 63-FZ (as amended on 24.02.2021)
5. "The Criminal Code of the RSFSR" (approved by the Supreme Council of the RSFSR 10/27/1960)
6. "The Criminal Code of the RSFSR" (approved by the Supreme Council of the RSFSR on 10/27/1960) (as amended on 07/30/1996)
7. Federal Law "On Amendments to Article 148 of the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation in order to counteract insult to the religious beliefs and feelings of citizens" of June 29, 2013 N 136-FZ
8. Law of the USSR of 01.10.1990 N 1689-1 "On freedom of conscience and religious organizations"
9. "Universal Declaration of Human Rights" (adopted by the UN General Assembly on December 10, 1948)
10. "International Covenant on Civil and Political Rights" (Adopted 12/16/1966 by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly)
11. Nicholas II Decree on Strengthening the Principles of Tolerance. Source: Complete collection of laws of the Russian Empire: Sobr. 3rd. T.XXV: 1905. SPb., 1908.S. 237-238
12. Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR All-Russian Central Executive

- Committee of the RSFSR and the Council of People's Commissars of the RSFSR dated April 8, 1929 "On Religious Associations".
13. Decree of the People's Commissariat of the USSR of June 8, 1929, No. 188 "On the Non-Proliferation of Labor Legislation to Persons Serving Religious Cults" // Izvestia of the People's Commissariat of Labor of the USSR. - 1929, No. 27.
 14. CASE OF MARIYA ALEKHINA AND OTHERS v. RUSSIA (Application no. 38004/12). //URL: <http://hudoc.echr.coe.int/fre?i=001-184666>
 15. Andreeva L.A. The phenomenon of religious indifference in the Russian Empire // ONS. No. 4. 2008
 16. Andreeva L.A. The process of de-Christianization in Russia and the emergence of quasi-religiosity in the XX century// SOCIAL SCIENCES AND MODERNITY No. 1.2003
 17. Smirnov M.Y. Religion and the Bible in the works of V. I. Lenin: a new look at the old topic // State, religion, church in Russia and abroad. 2011. No. 2. URL: <https://cyberleninka.ru/article/n/religiya-i-bibliya-v-trudah-v-i-lenina-novyy-vzglyad-na-staruyu-temu> (date accessed: 12.03.2021)
 18. In St. Petersburg, priests went to a picket against an article about the feelings of believers. 18.11.2016 URL: <https://meduza.io/news/2016/11/18/v-peterburge-svyaschenniki-vystupili-protiv-stati-ob-oskorblenii-chuvstv-veruyuschih>
 19. A teenager from Chita who lit a candle in a church was found guilty of offending the feelings of believers. URL: <https://meduza.io/news/2021/03/09/podrostka-iz-chity-prikurivshego-ot-svechi-v-hrame-priznali-vinovnym-v-oskorblenii-chuvstv-veruyuschih>
 20. Metropolitan of Yekaterinburg stood up for the blogger who caught Pokémon. URL: <https://www.kommersant.ru/doc/3081167>

21. Adamova S. Historian Andrei Zubov: It is necessary to fight not for religion or against it, but for the sense of human dignity. The Insider. May 11, 2017.
URL: <https://theins.ru/opinions/sofya-adamova/55669>