

**CHERVIENKOVA M. H.,**  
Postgraduate Student  
(Educational and Scientific Law Institute of  
National Aviation University)

UDC 342.9

## STATE AND RELIGIOUS ORGANIZATIONS AS MEMBERS OF THE LEGAL RELATIONSHIP AND THEIR LEGAL NATURE

The article reveals the legal nature of such institutions as "the state" and "religious organization" as the participants of legal relations, analyzes the conceptual apparatus of state-religious relations, investigates the features, types, legal status of religious organizations in accordance with the current legislation of Ukraine.

**Key words:** *relations between the state and religious organizations, administrative and legal regulation, legal status of religious organizations, freedom of conscience and religious organizations, state.*

У статті розкривається юридична природа таких інститутів як «держава» і «релігійна організація» як учасників правовідносин. Проведено аналіз понятійного апарату державно-релігійних відносин, досліджено ознаки, види, правовий статус релігійних організацій згідно з чинним законодавством України.

**Ключові слова:** *відносини між державою та релігійними організаціями, адміністративно-правове регулювання, правовий статус релігійних організацій, свобода совісті та релігійні організації, держава.*

В статье раскрывается юридическая природа таких институтов как «государство» и «религиозная организация» как участников правоотношений. Проведен анализ определения государственно-религиозных отношений, исследованы признаки, виды, правовой статус религиозных организаций согласно действующему законодательству Украины.

**Ключевые слова:** *отношения между государством и религиозными организациями, административно-правовое регулирование, правовой статус религиозных организаций, свобода совести и религиозных организаций, государство.*

**Introduction.** State-religious relations are an important component of the domestic and foreign policy of each state. The nature of these relationships depends largely on its state, as well as on the development of the entire society. Research of the legal nature of the state and religious organizations as participants in state-religious relations is a necessary condition for the protection of rights and interests of religious groups as well as those of a society that does not attribute itself to any of them. So far, the Ukrainian theory of state regulation has not created a proper doctrinal basis for the study of the role of state-religious relations in the state-building process, which is one of the negative factors.

**Setting objectives.** Definition of such concepts as "religious organization", "state-religious relations", "administrative regulation of relations between the state and religious organizations", lack of their classification, well-defined features, characteristics of their legal personality can lead to significant gaps in legislation, which as a result will result in inter-confessional conflicts, the lack of appropriate boundaries in the powers of state bodies, intolerance, community distrust of representatives of religious organizations and the lack of their clearly defined datas and places in



society. In this regard, the concept of "state-religious relations" becomes of particular importance, therefore, it is necessary to provide a clear definition and to disclose its content. The state and religious organizations are different in nature, purpose, structure, but they are closely interconnected and have their own special social value and significance.

**Research results.** Horizontal and vertical relations between state and religious institutions and separate official representatives of power and religion produce and reveal the freedom and equality of participants in the process. The state and religious organizations act as subjects of law, which acquire the corresponding social quality and are guided by the principle of reciprocity as one of the guiding principles of social exchange [1].

In science and in normative acts, the concept of state is defined differently.

The most successful, in our opinion, are the following definitions.

O.F. Skakun believes that the state is a sovereign political and territorial organization of a society that has the power exercised by the state apparatus on the basis of legal norms that provide protection and harmonization of social, group, individual interests with the support, if necessary, of legal coercion [2, 145].

I. Kotyuk defines the state as – carried out with the help of official bodies political and territorial way of organizing public power, designed to govern social processes by giving by their instructions a compulsory nature and the opportunity to implement these commands through coercion [3, c. 172].

The Constitution defines Ukraine as a sovereign, independent, democratic, social and legal state. The assertion and provision of human rights and freedoms is the main responsibility of the state. It promotes the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine [4].

Taking into account the dualistic status of the state as a subject of law, in relations, it can act as a subject of both public and private law, property and certain non-property rights. In public relations, the state realizes its power, administrative powers, and in private acts as a participant in legal relations at the level with other participants, not endowed with authority.

To ensure public interests, the state can create enterprises, institutions, organizations. Legal entities that are not economic entities have the primary purpose of exercising power and regulatory functions. These include central and local government bodies and other government agencies. The legal status, the procedure for the establishment and termination, the scope and exercise of competence are determined by the Constitution of Ukraine, laws and other normative-legal acts.

Consequently, the state as a subject of legal relationships is empowered and capable. However, the legal personality of the state still has its own distinctive features, since it can only be considered as a special legal personality that is different from the universal one, where subjects can perform any actions other than those expressly prohibited by law.

In relations with religious organizations, the state may act as a subject:

- international and domestic legal relations;
- public and private legal relations;
- property rights and certain non-property rights, etc.

Regarding religious organizations, one should refer to the Law of Ukraine "On Freedom of Conscience and Religious Organizations" of April 23, 1991 (hereinafter – the Law), which regulates state-religious relations. The Law applies the terms "religious organization" and in art. 5, 6 refers to "churches (religious organizations)", and also the term "church" is used in article 30 on the implementation of state policy of the central executive authority, which implements state policy in the field of religions and churches [5]. Consequently, there is the problem of the uncertainty of the conceptual apparatus, since the legislator uses both the concept of church and religious organizations and applies them in fact identically, which is incorrect since the range of meanings of the term "religious organization" is wider than the concept of "church", which is essentially only a kind a religious organization with its own specific organizational structure. Religious organizations are more widely spoken, but there is no clear delineation of these concepts; there is no definition of a religious organization either.



Article 7 of the Law establishes only a list of religious organizations to which the Law applies. In practice, even cases of refusal to register the constituent documents of a religious organization occur due to the lack of its form in the list of the article. For example, the Ministry of Culture of Ukraine sent for revision the statutory documents "Office of the Sumy Eparchy of the Ukrainian Orthodox Church" "Office of the Konotop Episcopate of the Ukrainian Orthodox Church" because of the fact that in the list of Part 2 of Art. 7 of the Law "eparchy" as a separate form of a religious organization is not defined, therefore its registration as a separate legal entity is not provided [6]. Conceptual uncertainty offset all attempts by the legislator and the scientific community to improve the legal regulation of religious legal relations and to carry out an analysis of the legal nature of religious organizations. K. Deurre notes that the development of precise terms, precise formulations for a well-considered policy is important. The author emphasizes that inaccurate definitions in the laws regulating the activities of religious associations may lead to "the threat of discrimination of religious groups that appear on the verge of determination" [7, c. 160].

Regarding the legislative uncertainty of the terms "church" and "religious organizations", there is a ruling of the Constitutional Court of Ukraine dated June 5, 2002 "On refusal to open constitutional proceedings in a case under the constitutional petition of 51 people's deputies of Ukraine, where the Constitution of Ukraine noted that the differences regarding the substance of the said terms used primarily in the legislation exist. Their removal is the authority of a legislative body – the Verkhovna Rada of Ukraine, and not the Constitutional Court of Ukraine [8].

We consider it necessary in the Law "On Freedom of Conscience and Religious Organizations" to define and use the concept of "religious organizations" and to separate it separately from the types of religious organizations (church, sect, cult, denomination, etc.).

As to the definition of a religious organization, Y. Krivenko defines it as a system of varieties of organizationally formed religious associations with administrative and executive bodies, a clear structure that is provided by the content of the religious paradigm and worship [9, c. 131]. The State Committee on National Recreations developed a bill defining religious organizations as associations of individuals without legal personality and legal entities of private law, formed by believers for the purpose of jointly meeting religious needs or religious activities [10].

Religious organizations can act as participants in legal relations in two ways: to register in accordance with the procedure established by the law and obtain the status of a legal entity, or to carry on its activities without state registration as a religious community.

By choosing the second option, according to the current legislation, the scope of rights of a non-registered religious organization will be limited. For example, without registration, religious organizations are not entitled to receive religious property, issue religious literature, will not be entered into the state register of non-profit organizations, etc. In general, the legal status of such unregistered communities and their rights are not defined by law.

Also, we can not agree with the position of the scholars who believe that the legalization of religious organizations is carried out only under the procedure of state registration, since, as it was indicated during registration, a religious organization receives a wider scope of legal capacity, however, the registration procedure is voluntary and its absence can not be grounds the automatic recognition of a religious organization by illegitimate civic entities [11], and according to Art. 8 of the Law of the state bodies on the formation of a religious community is not obligatory. Since according to Art. 8 the religious community is a local religious organization of the believers of the same cult, religion, direction, currents or thoughts that voluntarily unite in order to jointly meet religious needs, one can conclude that a religious organization can act without registration and notification of state bodies by creating a religious community. However, we strike as necessary, part 3 of Art. 8 to exclude and consolidate the concept of a "religious organization without a legal entity", usually restricting their capacity to level off the possibility of abuse of their position, for example, to directly prohibit such organizations from receiving any donations, public cult activities, etc.

In relation to other types of religious organizations as defined by the Law (Governments and centers, monasteries, religious fraternities, missionary societies (missions), religious educational establishments, as well as associations made up of the aforementioned religious organizations),



they act on the basis of their statutes (regulations), which are registered in accordance with the procedure established by the legislation.

As for religious organizations with the status of a legal entity, they have a special (target) legal personality, which provides for the implementation of only those activities that are necessary to achieve the goal of the organization. According to Art. 13 of the Law, a religious organization as a legal entity enjoys rights and carries responsibilities in accordance with applicable law and its statute (regulation).

Taking into account the above-mentioned, we consider it necessary to define at the legislative level two basic forms of religious associations: a religious organization without a legal entity status – a voluntary association of citizens formed for the purpose of the common confession and spread of faith, which carries out activities without state registration and acquisition of legal capacity legal entity; a religious organization with the status of a legal entity – a voluntary association of citizens, formed for the purpose of common confession and spread of faith and established in the manner prescribed by law as a legal entity.

In fact, religious organizations are institutions with a corporate system, since they are corporations in form, but in essence they are institutions [12, p. 257].

Based on these concepts one can identify the following features of religious organizations: their activities are based on the religious ideology of their participants, have their own internal organized structure, is a voluntary association of citizens, the main purpose is to meet the religious needs of society as a whole and every believer, in particular.

Regarding types of religious organizations, defined in Part 2 of Art. 7 of the Law, have long been obsolete and do not meet modern social requirements. According to the Department of Religious Affairs and Nationalities of the Ministry of Culture of Ukraine [13], almost thirty-five thousand religious organizations are registered in Ukraine. Often, religious organizations identify themselves as churches, spiritual centers (eg Muslims, Buddhists), monasteries, associations, unions, and others.

I.V. Ryabko in his dissertation "The mechanism of interaction of the state and the church in Ukraine" [14, p. 27-39] offers all religious organizations to be divided into several types: universal, ecclesia, stable sect, sect, cult. E. Trelch and M. Weber distinguish the following types of religious formations: a church, a sect, a cult, a denomination [15].

In our opinion, the Law should consolidate and define a very wide range of religious organizations: the church, centers, administrations, associations, movements, denominations, fraternities, religious schools, etc. As, according to the explanation of the Ministry of Justice, information about the type of religious organization (in particular, the religious community, center, administration, brotherhood, mission, monastery, spiritual educational institution) should be contained in the statute of a religious organization, not in its name.

The name of a legal entity consists of its organizational and legal form "religious organization" and its own name, which is provided for in Article 16.1 of the Law of Ukraine "On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Formations". Legislation of Ukraine does not contain requirements for changing the denomination of those religious organizations that are registered before the entry into force of these legislative provisions. That is, religious organizations, registered with the name, without mentioning their organizational and legal form, have the right to retain their current title without any changes during the re-registration of their statute. In our opinion, such a provision is unacceptable, since registered religious organizations are legal entities, they are obliged to bring their constituent documents in line with the current legislation of Ukraine on an equal basis with others.

The legal capacity of a religious organization is functional and depends on its type. In our opinion, the following should be distinguished: the non-property sphere of the manifestation of the legal capacity of a religious organization (legally secured opportunities for worship, various religious ceremonies and ceremonies, participation in public life, restrictions on pursuing political activities, etc.); the organizational sphere of manifestation of legal capacity (legally secured opportunities for participation in the creation of other legal entities) and the sphere of property



manifestation capacity (legally secured opportunities for participation in property relations as a subject of law, the acquisition of subjective rights and responsibilities).

In general, one cannot but notice that the state and religious organization are not regarded as equal subjects of relations, and the state has a more dominant (regulatory) role: it at the legislative level establishes the legal status of a religious organization and defines the limits of its activities. In our opinion, such a provision is acceptable, since the state must protect the rights and interests of not only religious organizations and their representatives, but also those who do not belong to any of them.

The state and society are interested in the fact that the activities of religious organizations are carried out on the basis of self-financing, but it is also necessary to ensure that the religious status of the organization does not become a cover for illegal business activities.

In our opinion, state-religious relations are relations formed between two leading social institutions – a state and a religious organization in various spheres of social life, the nature of which depends not only on the course of spiritual and religious life of one or another people, but also most social processes and even the integrity of the nation and its achievements, both internally and internationally, are governed by international and national legislation and are an important element of domestic and foreign policy. State-religious relations are formed on the basis of secular and religious law and represent the interaction of institutes of the state – legislative and executive power, and religious organizations.

**Conclusions.** Therefore, it can be noted that the religious issue is an important link in society. Not enough attention to this social phenomenon on the part of jurisprudence leads to legal uncertainty and the lack of proper legislative regulation. That negatively affects the proper functioning of the state, the possibility of protecting the rights of citizens to freedom of conscience and religion, the impossibility of proper regulation and control of relations between the state and the church, etc. The relationship between such complex social institutions as the state and the religious organization are intended to regulate certain institutions. Under the conditions of a properly organized institutional component of state-religious relations, each type of function can be directed towards the harmonization of society. In spite of a number of scientific proposals, the conceptual issue is also acute.

#### References:

1. Palinchak M. Contents and theoretical and methodological functions of the notion "state-church relations". Ukrainian Scientific Journal "Education of the Region". Politics, Psychology, Communication. 2013. Issue №1. P. 50-58.
2. Skakun O. F. Theory of State and Law: Textbook / Per. from Russian. Kharkiv: Consum, 2001. 656 pp.
3. Kotyuk V. O. Fundamentals of state and law. Tutorial. 3rd type., Additional. and processing. K.: Atika, 2001. 432 pp.
4. The Constitution of Ukraine. Bulletin of the Verkhovna Rada of Ukraine (BPD), 1996, No. 30, Art. 141.
5. Law of Ukraine On Freedom of Conscience and Religious Organizations: Law of Ukraine dated April 23, 1991 No. 987-XII. Information from the Verkhovna Rada of Ukraine. 1991. No. 25. Art. 284.
6. Letter of the Ministry of Culture dated October 27, 2016 No. 1710/18/10-16 to the request dated 06.10.2016 № 16010061.
7. Durham K. Archeology of International Norms of Religious Freedom. Religious Freedom. Scientific Yearbook. No. 15. K., 2010. P. 154-161.
8. The decision of the Constitutional Court of Ukraine to refuse to open the constitutional proceeding in the case of [...] the Constitutional Court; The decision of 05.06.2002 № 32-u; 2002 Case number 2-36; 2002. URL: <http://zakon4.rada.gov.ua/laws/show/v032u710-02>.
9. Krivenko Yu. V. Concerning the correlation between the concepts "church" and "religious organization". 2006. №2 (18). P. 130-135. URL: [http://№buv.gov.ua/j-pdf/UNzap\\_2006\\_2\\_20.pdf](http://№buv.gov.ua/j-pdf/UNzap_2006_2_20.pdf).





10. On Amendments to the Law of Ukraine "On Freedom of Conscience and Religious Organizations": Draft Law of Ukraine. URL: <http://www.irs.i№.ua>.
11. Novikov V. V. To the issue of the concept and features of religious organizations in Ukraine. URL: [http://irbis-nbuv.gov.ua/cgi-bin/irbis64r\\_81/cgiirbis\\_64.exe?C21COM=2&I21D-BN=UJRN&P21DBN=UJRN&Z21ID=&IMAGE\\_FILE\\_DOWNLOAD=1&Image\\_file\\_name=PDF/Nzlubp\\_2012\\_8\\_51.pdf](http://irbis-nbuv.gov.ua/cgi-bin/irbis64r_81/cgiirbis_64.exe?C21COM=2&I21D-BN=UJRN&P21DBN=UJRN&Z21ID=&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Nzlubp_2012_8_51.pdf).
12. Kozlova N. V. The concept and essence of a legal entity: an outline of history and theory: [study. allowance]. M.: Statute, 2003. 318 pp.
13. Order of the Ministry of Culture of Ukraine dated 29.03.2017 № 260 "On Annual Statistical Reporting on State-Confessional Relations in Ukraine for 2016 (Religious Organizations)".
14. Ryabko I. V. Mechanisms of interaction of state and church in Ukraine: author's abstract. dis ... Candidate state sciences management: 25.00.02. Zaporozhye, 2009. 20 p.
15. Weber M. Favorites: The image of society. M.: Lawyer, 1994. 702 pp.

