Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
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RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.
http://www.dilemascontemporaneoseducacionpoliticayvalores.com/
Año: VI Número:3 Artículo no.:78 Período: 1ro de mayo al 31 de agosto del 2019.

TÍTULO: El lugar y la importancia del concordato para regular las relaciones entre el estado y las organizaciones religiosas.

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RESUMEN: Este documento está dedicado a la cuestión del lugar de los concordatos en el volumen total de regulación de las relaciones entre el estado y las organizaciones religiosas (religiones tradicionales históricamente representadas en el país). Los autores exploran los textos de los muchos concordatos. El documento explica la importancia y la naturaleza del concordato como una herramienta ontológica para completar el panorama regulatorio.

PALABRAS CLAVES: Religión, relaciones entre el estado y organizaciones religiosas, organización religiosa, concordato.

TITLE: The place and importance of concordat in regulating relations between the state and religious organizations.

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ABSTRACT: This paper is devoted to the question of the place of concordats in the total volume of regulation of relations between the state and religious organizations (traditional religions historically represented in the country). The authors explore the texts of the many concordats. The paper explains the significance and nature of the concordat as an ontological tool for completing the regulatory landscape.

KEY WORDS: religion, relations between the state and religious organizations, religious organization, concordat.

INTRODUCTION.

The solution of both urgent and complex tasks of streamlining social relations focuses on the integration of the regulatory potential of various social norms (Markhgeym, 2017, p. 61).

Philosophers, theologians, and lawyers draw conclusions that are peculiar to their science regarding the influence of "their norms". The norms of morality, religion, customs, traditions, and law in their independent or combined variants with varying degrees of success help carry out harmonization of social relations, public behavior and activities (Markhgeym et al. 2016, p. 2425). At the same time, there are still many unresolved complex and ambiguous issues of constitutional and legal regulation of relations, whose party is the state.

One of the most difficult issues in legal science is the features of ontology and the content of the interrelations of heterogeneous and diverse actors (players, subjects) in the area where they are conditionally equal and "equivalent", each with its own substantive and self-reference regulatory system (Adedeji, 2018; Agboola & Tsai, 2012; Aksu, et al. 2016); for example, the relationship between the church and the secular state regarding the organization of activities and the status of a military chaplain (Chelpanova, 2018; Ponkin, 2006; Hansen, 2012; Ponkin, 2006; Mardzhotta, et al. 2008) - a priest with specific official powers and role delegated to the military hierarchical system and to the system of execution of punishments (penitentiary system) of the state.

The relations between church and state regarding the organization of activities and the status of a teacher of religion (in general, the organization of religious education and religious-culturological information in a public educational institution) at a state school or at a state university are no less complex.

At the same time, the landscape of state interaction with religious organizations is extremely heterogeneous - everything depends on the kind of model of secular state being implemented and the kind of religious organizations being in question. Equalizing is out of the question if we talk about references to real, rather than imaginary, experience.

I.V. Ponkin reasonably considers the constitutional provision on the equality of religious associations before the law taking into account the complex historical and socio-cultural aspects of the object of analysis in this section, namely the activities of religious associations and their relations with the rest of society and the state. Such an approach is necessary because legal science, in general, and constitutional law, in particular, does not consider the concept of legal equality in isolation from the essence and principles of the legal system, the goals of the legislator, without taking into account the specific features of legal entities and social conditions. On the contrary, legal science always calls

upon the legislator and law enforcer to systematically interpret legal norms subject to their socio-legal context, spirit, and letter of the law (Ponkin, 2006, p. 155).

One of the relevant methodological ways to solve the problem of studying the content, structure and nature of regulation in this area is comparative legal research focused on the experience of many different states.

Numerous problems in law enforcement practice predetermine the need to refer to the provisions of foreign regulatory legal acts (first of all, laws) referential to the topic under study. However, much more potentially productive and, at the same time, proper empiricism for studying the designated issue lies (and can be found) in the field of concordats, i.e. texts of targeted agreements between states and large religious organizations.

Some scientific papers interpret the concept of "concordat" somewhat differently than just an agreement (any agreement) between the state and a religious organization (whatever), but this has nothing in common with the subject of this study, and we interpret these concepts here synonymously.

This kind of empiricism is all the more valuable because it is practically unknown to Russian science and is poorly represented in foreign science, in terms of any significant samples in proper translations (Mardzhotta, et al. 2008; Tupikin, 2017).

At the same time, such agreements are of considerable interest to a research jurist, primarily in the research projection, conditioned by the interests of the science of constitutional law.

Examination of foreign experience in regulatory and concordant regulation of property relations of religious organizations can be the initial theoretical and methodological substrate. This substrate allows singling out common fundamental approaches to understanding the nature, structure, and modes of regulation of relations between the state and religious organizations; for example, to isolate the reference conceptual-categorical apparatus, to build a harmonious and complete, thoroughly substantiated (primarily based on empiricism), methodologically and logically verified scientific

doctrine, allowing to increase and generalize scientific knowledge about the stated theoretical, theoretical and practical thematic horizon.

DEVELOPMENT.

Methodology.

According to Ernest Satow, an agreement between the Pope and the head of a foreign state was originally called a concordat, which aim was to protect the interests of the Roman Catholic church in this state (Satow, 1932). The very first concordats date back to about the middle of the XI century. Later, the concept of "concordat", the diversity of its nature and the peculiarities of its content were significantly modified.

Almost 120 concordats (agreements between the state and religious organizations) have been investigated, including the historically active ones selected in 31 foreign countries (Austria, Andorra, Argentina, Bolivia, Brazil, Hungary, Venezuela, East Timor, Germany, Georgia, Dominican Republic, Iceland, Spain, Italy, Colombia, Latvia, Lithuania, Malta, the Netherlands, Paraguay, Peru, Poland, Portugal, El Salvador, Slovakia, USA, France, Croatia, Montenegro, Czech Republic, and Ecuador) (Tupikin, 2016).

Such a size of the sample of the states (whose experience was studied) and such a size of the sample of the documents studied ensured the objectivity of the scientific research produced and the relevance of the scientific results obtained from its results.

Results and discussion.

The special status of a religious organization in a state can be achieved by adding to the general regime of legal regulation of the status and activities of religious organizations in a state of an additional regulatory regime determined by the concordat. However, the content (subject matter) of

such contracts cannot be reduced to the expression of common words and intentions for the future, but usually concerns some specific issues.

At the same time the legal nature of the concordat itself is more than complex and often debatable, and brings conflict. That is why such tools become objects of criticism in the first place.

Paul Fauchille wrote that “It would be difficult not to consider concordats as a very special class” - such “are similar to treaties in form, but differ in their subject matter”. “Two authorities - one temporary - the State, and the other spiritual - the Pope - are both independent of each other, are both members of international law, sovereign in the area of interests they have to regulate and protect the conflicting interests at the borders of their respective spheres, enter into an agreement between themselves: this makes the concordat similar to an international treaty. However, they are essentially different. The subject of the concordat is not a matter of international law, but of domestic public law. It is about how to combine the free practice of worship with the maintenance of public order and with the basic principles of a particular constitution and a certain social system” (Fauchille, 1926).

According to the conclusions proposed by one of the authors of this paper (R.V. Tupikina), the legal nature of an agreement between the state and a religious organization aimed at settling the legal status of immovable property objects, property rights and property relations of religious organizations with the state and other persons in respect of religious immovable property, is determined and expressed by complementarity (mutual complementarity, up to ability to use this tool in relation to the regulatory instrument, which is fundamental for the sphere of property relations of religious organizations - normative legal regulation, the imperatives of which derive from special (having a fiduciary nature) obligations of the state for enhanced legal protection of immovable property of religious purpose, and feelings of believers (Ponkin, 2017; Ponkin, 2016).

Unlike full-scale (by subject) concordats (which may include public law treaties, especially in those states where religious organizations may have the legal personality of a legal entity under public law), the agreements between the state and a religious organization are complex in nature, being fully or mainly regulatory (in the second case implicitly possessing some elements of an administrative contract). In addition, if agreements of this kind in the areas of education, chaplaincy activities, etc., can be simply additional; then, for example, in the field of real estate for religious purposes, the adoption of agreements ensures a certain integrity, completeness of regulation of property relations of religious organizations, especially in states where previously the state repressively confiscated such property from religious organizations.

The importance of contractual regulation in the overall volume of civil-law regulation of property relations of religious organizations is determined by objectively limited possibilities of legislative intervention by a secular state in the internal affairs of religious organizations and by the imperatives of state respect for their internal institutions. Such limits determine that certain issues of relations between the state and a religious organization can be settled only at the junction of state law and internal regulatory (extra-legal) institutions of the religious organization itself, and the mechanism of this “connection” is just the agreement between the state and a religious organization. Thus, the agreements under study (concordats) are contractus sui generis (from Latin: sui generis is unique and exclusive) (Tupikin, 2017, p. 17-18).

Indeed, concordats - special agreements between states and religious organizations (as a rule - the largest or one of the largest in the country, represented historically, by the so-called traditional ones) - perform the main function of finishing the regulatory regime.

This additional ordering is such an ontological completion of the normative order of relations between the state and religious organizations, which is aimed at an approximating accommodation (from Latin. accommodatio - an adapting device, adjustment) of the regulatory space (landscape) of these relations in the toughest conditions of the ambivalences (dualities), uncertainties and conflicts of interest.

This can be figuratively compared with the construction and furnishing of a building: the construction of load-bearing structures, walls, floors is the adoption of necessary laws, while glazing, furnishing with utilities, ensuring the possibility of proper operation is the conclusion of concordats; that is, high-quality final refinement, finishing; for example, the institute of military priests, as Stephen Green reasonably notes, is a certain anomaly in jurisprudence concerning religion. This is a practice that casts doubt on its constitutionality in almost any consideration of the constitutional provisions on the conditional religious neutrality of the state; such a system is also probably not prescribed by the clause on the free practice of religion.

Military chaplaincy may be justified as permissible satisfaction of religious needs of military personnel, but, nevertheless, this is a unique advantage that is not granted to other government officials (other than military personnel), except for the chaplains in penitentiary and medical institutions (although the beneficiaries in these institutions are usually not civil servants) (Green, 2007, p. 167).

CONCLUSIONS.

The landscape of state interaction with religious organizations has multiple caverns of such kind of uncertainties and apparent irreconcilable conflicts, as mentioned above, and that is why concordats as ways of a completing (complementary) regulation of relations between states and religious organizations are of such high importance.

BIBLIOGRAPHIC REFERENCES.

1. Adedeji, T. (2018). Revitalizing Mathematics Education Preparation in Nigeria for National Development: An Innovative View. International Electronic Journal of Mathematics Education, Volume 13, Issue 3, pp. 315-320.
2. Agboola, A., & Tsai, K. C. (2012). Bring Character Education into Classroom, European Journal of Educational Research, 1(2), 163-170.
3. Aksu, Z. Ozkaya, M. Damla Gedik, S. Cihan Konyahoglu, A. (2016). Mathematics self-efficacy and mistake-handling learning as predictors of mathematics anxiety. Journal of Education and Training Studies, 4(8), 65-71.
4. Chelpanova T.M. (2018). Zarubezhnyj opyt regulirovaniya pravovogo statusa i deyatel'nosti voennyh kapellanov / Institut gosudarstvenno-konfessional'nyh otnoshenij i prava. M.: Buki Vedi, 2018. 165 s. (In Russian)
5. Fauchille P. (1926). Traité de droit international public: du manuel de droit international public. T. I. Troisième partie. Paris: Librairie Arthur Rousseau.
6. Green S.K. (2007). Reconciling the irreconcilable: Military Chaplains and the First Amendment. West Virginia Law Review. Vol. 110. P. 167-186.
7. Hansen K.P. (2012). Military chaplains and religious diversity. New York: Palgrave Macmillan. xvi; 236 p.
8. Mardzhotta Brol'o F., Mirabelli CH., Onida F. (2008). Religii i yuridicheskie sistemy. Vvedenie v sravnitel'noe cerkovnoe pravo: Per. s ital. M., 437 s. (In Russian)
9. Markhgeym M.V. (2017). Konstitucionnaya prisyaga: shtrihi k vostochno-evropejskomu portretu. Nauka i obrazovanie: hozyajstvo i ehkonomika; predprinimatel'stvo; pravo i upravlenie. # 1 (80). S. 61-64 (In Russian).

10. Markhgeym M.V., Novikova A.E., Tonkov E.E., Butko L.V. (2016). Moral support of the Constitution: Modern approaches and regularities. The Social Sciences (Pakistan). T. 11. # 10. Pp. 2425-2428.
11. Ponkin I.V. (2006). Sovremennoe svetskoe gosudarstvo: Konstruktivnaya svetskost'. Konstitucionno-pravovoe issledovanie. M.: Institut gosudarstvenno-konfessional'nyh otnoshenij i prava, 390 s. (In Russian).
12. Ponkin I.V. (2016). In merito alla tutela dei sentimenti religiosi e della dignità individuale dei credenti. Diritto Penale Contemporaneo. 26 Febbraio.
13. Ponkin I.V. (2017). Direct Objects of Offence at Committing of the Acts Oriented to an Insult of Religious Feelings of Believers and to Humiliation of their Human Dignity. Forensic Research & Criminology International Journal. Vol. 5. # 5.
14. Satow E.M. (1932). A guide to diplomatic practice: Third edition. London, Longmans,
15. Tupikin R.V. (2016). Grazhdansko-pravovoe i dogovornoe regulirovanie imushchestvennyh otnoshenij religioznyh organizacij v zarubezhnyh gosudarstvah / Institut gosudarstvenno-konfessional'nyh otnoshenij i prava. M.: Buki Vedi, 179 s. (In Russian).
16. Tupikin R.V. (2017). Pravovoe regulirovanie otnoshenij po povodu nedvizhimyh imushchestvennyh ob"ektov religioznogo naznacheniya v zarubezhnyh stranah (na primere gosudarstv Evropy i YUzhnoj Ameriki): Dis. kand. yuridich. nauk. M., 225 s. (In Russian).

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RECIBIDO: 17 de marzo del 2019. **APROBADO:** 2 de abril del 2019.