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**TO THE QUESTION OF ELABORATION THE CONCEPT OF STATE-
CONFESSONAL RELATIONS IN RUSSIA: ADMINISTRATIVE-LAW
ANALYSIS**

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This article analyzes the drafts of the concepts of state-confessional relations. The author proves the need for the introduction of such a document in the legal environment of Russia.

Keywords: concept, state-confessional relations, legislation on freedom of conscience and on religious associations, state and religious organizations, religious policy.

The scientific and public debate around the issue of formation the conceptual foundations of state-confessional relations, identifying models and types of relations between the state and religious associations, criteria for their interaction, has not been subsiding for the last twenty years.

Resolving of this issue has being highlighted in recent years, accompanied by a dual process, which is expressed, on the one hand, in the becoming common practice of conclusion agreements on cooperation between public authorities, the authorities of the Russian Federation subject, local self-government and etc. and religious organizations, [1; 2, 3], on the other hand, in the development by Russian religious organization documents, which reflect the most pressing issues of their relations with the state and society as a whole ("Foundations of the social concept of the Russian Orthodox Church" and «Foundations of the social program of the Russian Muslims" adopted by the Council of Muftis of Russia).

Moreover, if the second point which is highlighted above is purely intra-confessional, then conclusion of cooperation agreements should be based on strong theoretical and legal basis. This is due to the fact that the participation of religion in the development of the socio-cultural foundations of society is implemented as

through religious institutions objectively included in the social system, and through the formation of a certain way of thinking and behavioral norms of the wide sections of the population united by a religious identity. In this respect, the State must comply with a very fine line. First, be selective in selection of partnership in social programs in order to exclude the possibility of concluding agreements on cooperation with religious organizations of destructive nature, as it was at the dawn of such relations. Second, not to give reason for emerging oppositional position of some non-traditional religions, which is often conditioned either by religious policy of the Russian state that encroaches the right to freedom of conscience (when religious associations are forced to choose the oppositional position in relation to the state and society) or artificially created confrontation of the very religious associations with the surrounding society to achieve certain goals.

As for the practice of concluding agreements between the state and confessions, the idea itself is not new. The most widespread in Russia should be recognized the so called Concordats of 1818 and 1847 – agreements between the Holy See and the Russian Government, which regulated the legal status of the Catholic Church in the Russian Empire.

Thus, the awareness of the need to develop the mentioned social relations caused scientific interest in the making several projects of the concept of church-state relations, two of which were created in 2001. They are:

1. Draft from 10.06.2001, the “Conceptual foundations for church-state relations in the Russian Federation”, developed by the Department of Religious Studies of the Russian Academy of Public Service under the President of the Russian Federation (authors: N. A. Trofimchuk, R. A. Lopatkin, Yu. P. Zuev and etc.). – Project 1.

2. Draft from 27.07.2001, the “Concept of state policy in the sphere of relations with religious associations in the Russian Federation”, developed jointly by the employees of the General Directorate of the RF Ministry of Justice for the city of Moscow and the Institute of Church-state Relations and Law (authors: V. N. Zhbankov, I. V. Ponkin, A. V. Sitnikov, V. G. Elizarov). – Project 2.

It should be noted that the attitude towards the both projects on the part of social and religious organizations, as well as public authorities was ambiguous. Project #1 was positively accepted mainly by foreign human rights organizations and public associations of atheistic orientation. Project #2 met more wide support both from the public authorities, and in the ranks of the Russian Orthodox Church and the Muslims Religious Boards. Altogether, the projects have remained on the level of scientific research, not having received any formal enshrining. Most likely

it was caused by the fact that the strong public debate on this issue, which has shown a wide range of opinions from very positive to very negative, seriously threatened to aggravate the very church-state relations, which had to be settled, and to create more negative consequences than positive ones after adoption the concept in whatever its form. There were a variety of arguments.

For example, well-known researchers of the problem S. Bur'yanov and S. Mozgovoy in October 2001 expressed doubts about the need for such a concept: "First of all, gives rise to doubt the correctness of the very problem statement of formation the concept of state-confessional relations with regard to the tasks of implementing the constitutional principles in the sphere of freedom of conscience. The fact is that neither the Constitution of the RF nor norms of international law, which is a priority for the Russian legal system, mention anything about state-confessional relations and state religious policy as a self-sufficient phenomenon" [4].

According to these authors, "the relations of a democratic legal state, which has set as a goal the construction of an open civil society, with religious associations should be built on the legal basis common to other public non-profit organizations... Analysis of the actual situation shows that the "official" science and the law-making process, with the interested consent of "traditional" confessions and silent one of others, are under government control, bringing some scientific basis to its anti-constitutional policy in the field of freedom of conscience" [4].

It seems that the above sayings at that time, that is, 12 years ago, certainly contained a rather good sense. So, the relations between the state and religious organizations were quite underdeveloped, lacked the experience and professionals in this matter. A serious shortcoming of the proposed projects was some not taking into account the increased pseudo-religiosity of the population, largely due to a period of "religious hunger", its carelessness in selecting the ideological path (including following of frankly criminal sects), as well as lobbying by politicians, researchers, government officials their own or corporate religious interests. The concepts really were theoretical models and poorly suited to their practical implementation. In particular, draft #1, even in the style of its presentation loosely reminded a legal instrument to regulate the legal relations in so "delicate" sphere. Many provisions of the draft #1 did not comply with either existing legislation on freedom of conscience and religious associations, or the Constitution of the Russian Federation (in particular it contradicted part 2 of article 6; parts 1, 2, 5 of article 13; article 14; article 17; article 18; parts 1, 2 of article 19; part 1 of article 21; article 29; parts 2, 3 of article 44 of the Constitution of the Russian Federation).

However, since that time, much has changed. Currently develops spontaneous, regulated by nothing practice of participation of religious associations in socio-political life, state social projects, dealing with state authorities, including law enforcement ones, in various issues ranging from health to law enforcement, which is in need of legal regulation. Now religious organizations are actively involved in specific areas of the state activity as a counteraction religious extremism and terrorism, especially in the Russian regions, and since the practice of this activity is not regulated, in many cases, such activity does not fully consistent with the current legislation. In fact, a situation occurs, when in the constituent entities of the Russian Federation a religious resource is widely used to address political and law enforcement tasks. And this, in our view, is a very unpredictable form of political technologies that may have hidden negative result, because a kind of “tool” is used without any methodological framework. In various subjects of the Russian Federation it is based on different principles, to a greater extent on the political will of individual leaders.

As for the opinion supported by some researchers that relations of the state “with religious associations should be built on the legal basis common to other public non-profit organizations”, then let ourselves to disagree. This is due to the fact that being aware of the scale, status, and most important the influence of religious associations on the world outlook of the great number of people, the state, in our opinion, must be aware that in any statute, in any legal document is not possible to register all the specific aspects of religious identity and its manifestations. In this case, agree with the opinion of the Doctor of Philosophy A. N. Krylov, who points out that the religious identity “is a enshrining of the identity of a subject in the sense of acquiring through religion its own existential experience with a subjective awareness of belonging to a particular religious community” [6, 223-224]. It is one of the first forms of human self-consciousness, and therefore is at the origins of the other types of identity, that is why its value is not comparable to any other person’s awareness of belonging to a particular community. The State should be able to use this moment in achieving its important social objectives, by acting, of course, within the framework of the rule of law. Uniform and consistent development of public relations in this direction, in our view, could be promoted by the concept of Church-State relations.

In November 2003, in the Internet was informally posted the Draft #3, created in November 2003 – “The concept of state religious policy of the Russian Federation”, redeveloped by the Department of Religious Studies of the Russian Academy of Public Service under the President of the Russian Federation (authors:

A. Vasil'eva, A. Zhuravskii, A. Kyrlezhev). The project suffered the same fate as the previous two, i.e. it did not receive formalization, but led to subsequent public and intra confessional disputes.

In general, it should be noted that a comparative analysis of the projects under consideration has revealed that none of the concepts is able to fully articulate the general conception of development state-confessional relations in the Russian Federation in the light of the implementation of constitutional principles and other legislative enactments on freedom of conscience and freedom of religion. The most important issue of both theoretical and practical importance about what legal relations should be governed by the concept is still unresolved, because all the proposed drafts have different names, reflecting the different fundamental orientation of a document.

So, in the name of the Project #1 was included the notion of "state-church relations" that had fundamental importance to the definition of a concept's object. The phrase is often used in everyday life, to refer relations between the State and religious organizations, as well as in some scientific-theoretical works [7]. However, the use of such wording in a legal document is not entirely correct; since it is linked to the notion of Church, which is from the Greek – Κυριακή (κυρικόν, ἐκκλησία, οικία) – the House of the Lord. Later, after the emergence and spread of the Christian faith, the words κυρικόν and ἐκκλησία became used to denote the concepts of the founded by J. Christ for the sake of saving people institution and community of believers in him. Thus, in the truest sense the phrase "state-church relations" denotes the relations of the State with the association (s) of people who believe in Christ, and that is with Christians. Thus, it does not cover the associations of Muslims, Buddhists, Jews, followers of other religions that do not have a concept of "Church".

The names of Projects #2 and #3, which use the concepts of "State policy in the sphere of relations with religious associations" and "State religious policy" respectively, raise even more difficult theoretical problem. And if the first variant is acceptable in principle, although the mixing of categories of "policy-religion" is not the best option in a secular State, the second phrase should be elaborated.

Outstanding Russian philosopher I. A. Ilyin defined relations between the state and the church as follows: "The church and the state are mutually alien matters – by establishment, by spirit, dignity, the purpose and way of action. State seeking to arrogate to itself the power and dignity of the Church does blasphemy, sin and vulgarity. Church trying to usurp the power and sword of State loses its dignity and changes its destination... Church should not take the sword – either to

impose its faith or punish a heretic or villain, or for war... In this sense, Church is “not political”, policy task is not its task, the means of policy are not the essence of its means; policy rank is not its rank” [5, 169].

However, ensuring freedom of conscience and freedom of religion is an important aspect of the internal policy of the Russian state, which is in line with its secular nature, including the ideological and religious diversity of society, the real degree of secularization. Herewith the mentioned aspect of internal policy has nothing to do with religious policy that would have the right to exist in the State, where the Church is an integral part of it, i.e. there is a state religion in the State. Using the Project #3 as an example of inappropriate use of this term, it should be noted that authors try to include to “religious policy” even the proclaimed by the Constitution of the Russian Federation freedom of conscience, as a category of lower degree. This is illustrated by the following extract: “religious policy is a system of secular State actions in the area of the state-confessional relations, freedom of conscience and religion with taking into account the diversity of forms of religion in society”. At this, if you trace the constitutional approach to this problem, it becomes obvious that the right to freedom of conscience directly acting on the territory of the Russian Federation, which is one of the highest democratic achievements of mankind, cannot depend on a “religious policy” in a State of law. Moreover, in the implementation of religious policy, it is not possible to implement either freedom of conscience, or the freedom of religion of a separate individual in the State, as the society and the State is unable to adjust to all the diversity of its manifestations and “make everybody happy”. The main danger of this approach is that “religious policy” implies the use of religion for political purposes, which is inevitably accompanied by increasing of the social status (and sometimes an administrative and legal status if, for example, to consolidate a normative list of “traditional” religions) of specific religious associations. Thus, the “religious policy” clearly does not promote to the realization of inalienable rights and freedoms of man and citizen, and its use in the titles of legal documents, in our view, is not permissible.

In this case, let’s agree with the opinion of the E. N. Pluzhnikov that “for building effective policy, the exact explication of concepts, not allowing different interpretations and the possibility of variable implementation, would seem appropriate as a starting point” [8, 12]. Noting the need to streamline the regulatory framework in the field of policy to counter manifestations of religious extremism, E. N. Pluzhnikov justified the necessity of preparing and adopting the Concept of state-confessional relations.

Recognizing that the term of “state-confessional relations” has problems in the context of determining its essence, let’s briefly explain its interpretation. The first problem is that words like “confession”, “confessional” often have different meanings. Under “confession” may be understood both a feature of religion within a certain religious teaching and association of believers adhering to a certain religion that has its own dogma, a certain organizational structure and distinctiveness in worship, as well as all enumerated. The second problem is, who the subject of state-confessional relations is? The most common is recognizing of only two subjects: state bodies and religious association. However, in recent time, scientists have greatly expanded the range of subjects of such legal relations, in our view, this allows efficient use of this definition, both in theoretical studies and in normative legal documents.

Thus, the study of a large amount of scientific materials on this subject has allowed us to conclude that at the present time, the development and adoption of the Concept of state-confessional relations would be a timely and necessary measure to settle this aspect of social life, to transfer certain elements of the interaction into legal sphere. At this by *state-confessional relations* in a secular state of law should be understood objectively existing legal relations between different levels of public authorities, local self-government bodies and religious associations of citizens, which occur on the basis of mutual agreements, as well as in the process and on the occasion of implementation the constitutional right to freedom of religion, exercised on the basis of the standards of international law, domestic legislation and canonical norms.

Ideological paradigm of state-confessional relations in Russia today, in our view, should be the realization by parties the fact that state and religious associations are products of society development, they cannot exclude or replace each other, as they are different social institutions and conflicts in relations only prevent them from realizing their goals and objectives. Loyal relations are beneficial to both parties, the striving of the State and religious associations for respect each other requires not the abandoning their philosophical and ideological positions, but only respect for the principles of relations between the State and religious confessions in a secular State. The loyalty of religious associations and their members lies in the recognition of State sovereignty, faithful observance of existing laws, moderation and balance of positions, constructive dialogue with public authorities. In turn, the State creates the necessary legal conditions for satisfaction of religious needs, protects the freedom of religious belief of citizens, and ensures law and order.

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