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The Legal Status of Religious Ministers: Foreign and Russian Experience of Normative Legal Regulation

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Abstract: Religious ministers are among the subjects implementing the constitutional right to freedom of religion. Their status is regulated both by the "internal law" of religious associations and by the norms of the constitutional law of a particular state, which determines the complexity of the study. The aim of this paper is to make a comparative study of the most significant legislative bases of the legal status of religious ministers in fifty-seven countries. The research will allow us to verify the hypothesis about the validity of singling out the sub-institution of religious ministers within the framework of the complex constitutional legal institution of freedom of religion. For the comparative analysis, the author uses five criteria that make it possible to consider the limits of the autonomy of religious organizations with regard to the appointment of their ministers and the guarantees of securing their status: the requirement of citizenship, the binding obligation to notify the authorities of their appointment, the maintenance of registers of ministers, the peculiarities of instituting criminal proceedings with regard to the interaction with religious associations and the restrictions on their activities. The author uses formal-dogmatic and functional methods together with the comparative legal method. Conclusions are drawn on the ways of consolidating certain aspects of the status of religious ministers in regulatory legal acts and, taking into account certain comparative criteria, the options of state regulation with the most restrictive effect are determined.

Keywords: ministers of religion; clergy; status; autonomy; religious organizations; law; freedom of conscience

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I. Introduction

There are many religions in the world with their own doctrines, rites and ceremonies, as well as, with some exceptions, individuals authorized to practice them. The religious picture of the world that emerged in the course of the 20th century is undergoing serious changes: on the one hand, secularization processes are intensifying; on the other hand, in a number of regions, the religious factor is amplifying its influence turning into a dominant one. It is frequently used by extremist organizations to recruit new members and to incite and exacerbate inter-ethnic and inter-confessional conflicts. This is largely facilitated by geopolitical conflicts that generate migration processes.[1] In this context, many problems arise in ensuring the balance of interests between different groups of believers.

The right to freedom of religion is considered in constitutional legal science as a complex legal institution (Pchelintsev, 2012, pp. 28–29). The subjects of implementation of this right include religious ministers, whose legal status is only beginning to attract the attention of individual researchers (Andreev, 2014; Pavlyuk, 2022). The complexity of this study lies in the ambivalence (duality) of their position, which is regulated both by the "internal law" of religious associations and by the norms of constitutional law of a particular state. At first sight, the grounds and procedure for granting, changing or terminating the status of a religious minister should be regulated only by the internal regulations of religious associations. Thus, in drafting the text of the First Amendment to the United States Constitution, the Founding Fathers of the United States (the Fore-Framers) had to listen to the voices of Baptists who were dissatisfied with the restriction on religious freedom imposed by state laws. Among other things, the Framers of the Constitution emphasized that the meaning of the First Amendment presupposed the right of religious associations to freely choose their ministers without any hindrance or supervision by the state (McLoughlin, 1971, p. 363). The

[1] For example, on 28 October 2023, in connection with the conflict between Israel and the Gaza Strip in London, thousands of Muslims demonstrated their support of Palestine. Available at: https://rg.ru/2023/10/28/den-protesta-v-londone-policejskij-v-bolnice-sidiachaia-zabastovka-v-vaterloo.html [Accessed 08.01.2024].

European Court of Human Rights (hereinafter referred to as ECtHR) in its judgment dated 22 January 2009 in the case "Holy Synod of the Bulgarian Orthodox Church (of Metropolitan Inokentiy) and Others v. Bulgaria" concluded that the question of which church leadership is canonical and, therefore, legitimate, should be officially resolved within the religious community itself.[2] Such an approach is possible in states that affirm the principle of separation of religious associations from the State.

But even among the existing models (types) of secular states (Ponkin, 2004), there is a different "degree of decisiveness" in asserting the principle of "neutrality" of the State in relation to religion (Ovsepjan, 2017, pp. 34–37), and as a consequence, among the countries of North and South America, Europe, Asia and Africa there are quite a few of those that have included certain aspects of the legal status of religious ministers in the subject of constitutional regulation.

In one of the previous works, the author analyzed the approaches of some countries, including the Russian Federation, in terms of legislative innovations aimed at countering the spread of religious extremist ideology by religious ministers (Pibaev, 2022). At the same time, the range of possible state actions on legal regulation of activities of religious personnel is much broader than reduction of the level of religious extremism. The State may take measures to restrict collective freedom of religion (the freedom of activity of ministers of religion is considered precisely in this respect, especially in the practice of the European Court of Human Rights), on the basis of national interests, for example, to protect health and morality, the rights and freedoms of other individuals.

Thus, the present work is aimed at the comparative study of the most significant legislative bases of the legal status of religious ministers. The study will make it possible to verify the hypothesis about the validity of singling out the subinstitute of religious ministers within the framework of the complex constitutional legal institute of freedom of religion, including both essential and necessary guarantees of the

[2] European Court of Human Rights. [Fifth Section]. Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria. Application No. 412/03, 35677/04. Judgment of 16 September 2010. § 20.

independence of religious associations in determination of the status of religious ministers, conditioned by the nature of religious freedom, as well as models of constitutional design, assuming state intervention.

II. Methodology

The regulatory framework of the conducted research is the legislation and law enforcement practice, as well as the experience of the relevant practice of implementation of norms of the following foreign countries: Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Colombia, Croatia, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Great Britain, Greece, Hungary, India, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Nicaragua, North Macedonia, Norway, Paraguay, Peru, Poland, Portugal, Romania, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, the USA, Vietnam, and, together with the above, the Russian Federation. 57 countries represent different legal systems, all continents of the world, which properly ensures the objectivity of the results of the comparative legal analysis of foreign experience.

The author used the formal-dogmatic method to identify the consolidation of certain aspects of the status of religious ministers in the norms of constitutional law. The functional method helped to reveal reasons for the choice of specific legal regulation in particular countries.

On the basis of the stated thematic horizon, we have identified and used the existence of requirements in the legislation as the leading criteria for comparison (*tertium comparationis*):

a) on citizenship for leaders, religious ministers of religious associations (or vice versa, establishing the election (appointment) as the head of a religious association as a ground for acquiring citizenship);

b) on the coordination of candidates with competent authorities;

c) on the control over religious ministers;

d) on the cosolidation of peculiarities of bringing religious ministers into court (to legal responsibility) in the form of the obligation to inform heads of religious associations when initiating criminal proceedings

against religious ministers, or the obligaion to obtain the consent of a religious organization to initiate criminal proceedings against a religious minister;

e) on the existence of provisions limiting the civil rights of religious ministers and determining the legal validity of religious rites and sacraments performed by them.

In this paper we will consider the limits of the autonomy of religious organizations with regard to the appointment of their ministers and guarantees of ensuring their status. Norms of legislation of foreign countries, which are not cited in the paper, are assumed as establishing the autonomy of religious associations in determining the examined aspects of the status of religious ministers.

III. Regulatory Consolidation of Certain Aspects of the Status of Religious Ministers

III.1. Citizenship qualification (citizenship requirement or status)

According to the author's approach, "citizenship qualification" is understood as a statutory requirement that a religious minister must have state citizenship in order to occupy the position of a leader or a responsible person of a religious association. Lack of citizenship can be seen as a spatial condition for invited foreign religious ministers to carry out activities within a religious association.

In accordance with Art. 21 of the Law of the Azerbaijan Republic of 20 August 1992 No. 281 (as amended on 16 May 2017) "On Freedom of Religion"[3] (hereinafter referred to as the Law of the Azerbaijan Republic) conditions of activity for Islamic clergy are introduced: the conduct of rites and ceremonies related to the Islamic religion can be carried out only by citizens of the Republic of Azerbaijan. Also, in general,

[3] Law of the Azerbaijan Republic dated 20 August 1992 No. 281 (as amended on 16 May 2017, current edition — 20 December 2022) "On Freedom of Religion" [Dini etiqad azadlığı haqqında Azərbaycan Respublikasının qanunu] Available at: https://scwra.gov.az/az/view/pages/112/ (The current edition dated 20 December 2022 is in limited access: https://online.zakon.kz/Document/?doc_id=31117455&pos=6;-106#pos=6;-106) [Accessed 08.01.2024].

there is a ban on the dissemination of religious beliefs by all persons (hence, including religious ministers) who have foreign citizenship or are apatrides, with the exception of clergy invited by a religious center in Azerbaijan.

In accordance with Art. 13 of the Law of the Republic of Belarus of 17 December 1992 No. 2054-XII "On Freedom of Conscience and Religious Organizations" (as amended on 22 December 2011 No. 328-Z)[4] only a citizen of the Republic of Belarus may be the head of a religious organization.

In practice, in case of reaching "tacit agreements" with the country's leadership, this provision was ignored. This was the case with the Russian citizen Metropolitan of Minsk and Zaslavl, Patriarchal Exarch of All Belarus Pavel, from 25 December 2013 to 25 August 2020, who did not have Belarusian citizenship.[5] The current Metropolitan Veniamin is a citizen of the Republic of Belarus.

Another case related to the implementation of this norm concerned the head of the Archdiocese of Minsk and Mogilevsk of the Roman Catholic Church, Metropolitan Tadeusz Kondrusiewicz who had Belarusian citizenship. Following a number of critical statements about the results of the presidential elections in the Republic of Belarus, on 31 August 2020, he was banned from entering Belarus from Poland without explanation when he was attempting to enter the country from Poland. On 15 September 2020, the Department of Citizenship and Migration of the Ministry of Internal Affairs of Belarus claimed that his passport had been declared invalid due to the verification for the Belarusian citizenship. On 24 December, he was eventually allowed to enter the country, but on 3 January 2021, having reached the age of 75, he resigned.

In Greece, in order to hold the position of the Mufti of Thrace, in addition to Greek citizenship, one must be a member of the Muslim minority in Thrace and reside permanently in one of the regional units

[4] Available at: https://base.spinform.ru/show_doc.fwx?rgn=1854 [Accessed 08.01.2024].

[5] Social activists spoke out against the Russian at the head of the Belarusian Church. Available at: https://lenta.ru/news/2014/01/31/against/ [Accessed 08.01.2024].

of Evros, Rodopi and Xanthi (Law No. 4964/2022 of 17 November 2022 "On Modernization of Muftiates in Thrace" (Art. 137–162).[6]

The Law "On the Latvian Orthodox Church" of 3 December 2008 (as amended on 10 September 2022)[7] provided for the rule that "Only church clerics and citizens of Latvia whose permanent place of residence has been in Latvia for at least 10 recent years may become the Head of the Church, metropolitans, archbishops, bishops and candidates for these positions."

The Agreement of 19 July 1980 between the Holy See and the Republic of Peru[8] stipulates that the archbishops and bishops of the Roman Catholic Church residing in the country must be citizens of Peru (Art. 7).

Article 19 of the Portuguese Law No. 16/2001 of 22 June 2001 (as amended on 31 December 2012) "On Religious Freedom"[9] established, "A minister of worship must have the Portuguese citizenship or, being a foreigner and not a citizen of a Member-State of the European Union, must have a temporary or permanent residence permit in Portugal."

Maintenance of Religious Harmony Act of Singapore of 1990 (as amended on 7 October 2019; amendments came into effect on 1 November 2022)[10] defined in Art. 16D restrictions on the citizenship of responsible officials of religious groups. Thus, Para. 2 sets out the

[6] Law 4964/2022. Art. 137–162, Part C "Modernization of The Muftiates in Thrace." Official Government Gazette of the Hellenic Republic, Issue A' 150. 30 July 2022. Available at: https://www.minedu.gov.gr/publications/docs2020/Law_4964-2022_on_Muftiates_Art._137-162_ENG.pdf [Accessed 08.01.2024].

[7] Law "On the Latvian Orthodox Church." 3 December 2008 (as amended on September 10, 2022 No. 2022/175A.1). Latvijas Vēstnesis. 188. 3 December 2008. Available at: https://likumi.lv/ta/id/184626-latvijas-pareizticigas-baznicas-likums [Accessed 08.01.2024].

[8] Agreement of 19 July 1980 between the Holy See and the Republic of Peru [Acuerdo entre la Santa Sede y la Republica del Peru]. Decreto Ley No. 23211 de 24 Julio 1980. Available at: http://textos.pucp.edu.pe/pdf/1019.pdf [Accessed 08.01.2024].

[9] Portuguese Law No. 16/2001 of 22 June 2001 (as amended on 31 December 2012) "On Religious Freedom" [Lei No. 16/2001 de 22 Junho 2001 — Lei da Liberdade Religiosa (alterações — Lei No. 66-B/2012, de 31 December 2012)]. Available at: https://dre.pt/dre/legislacao-consolidada/lei/2001-34483475 [Accessed 08.01.2024].

[10] Maintenance of Religious Harmony Act, 30 November 1990. Available at: https://sso.agc.gov.sg/Act/MRHA1990?ProvIds=P11-#pr2- [Accessed 08.01.2024].

duty of a religious group in Singapore not to appoint a person who is neither a Singaporean citizen nor a permanent resident of Singapore as a responsible official of a religious group.

The law of Austria for legally recognized denominations and churches "On the Official Recognition of Religious Societies" of 20 May 1874 (the amended law is still in force — *the author's note*)[11] provides for the possibility to be a pastor of a religious community only for Austrian citizens whose moral and civil conduct is irreproachable and whose general education is confirmed by at least the completion of secondary school (§ 10). Loss of citizenship in accordance with § 12 entails a claim by the Austrian government for removal from office.

In accordance with the Law of Ukraine of 23 April 1991 No. 987-XII "On Freedom of Conscience and Religious Organizations" (as amended on 3 March 2022)[12] (Part 4 Art. 24) (hereinafter referred to as the Law of Ukraine), clergymen, religious preachers, mentors, other representatives of foreign organizations, who are foreign citizens and stay temporarily in Ukraine, may engage in preaching religious doctrines, perform religious rites or other canonical activities only in those religious organizations at the invitation of which they arrived, and with the official approval of the state body that registered the charter (regulations or guidelines) of the relevant religious organization.

In the Russian Federation, in the Federal Law "On Freedom of Conscience and Religious Associations" of 26 September 1997, No. 125-FZ (hereinafter Federal Law No. 125) there are no special rules on citizenship for religious ministers, but under the general requirements for founders (participants) it can be determined that a religious minister who is a foreign citizen or a stateless person in respect

[11] Law on the Official Recognition of Religious Societies of 20 May 1874 No. 68/1874 (text as of 10 February 2023, no changes indicated). [Gesetz vom 20. Mai 1874, betreffend die gesetzliche Anerkennung von Religionsgesellschaften]. Available at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009173 [Accessed 08.01.2024].

[12] Law of Ukraine of 23 April 1991 No. 987-XII "On Freedom of Conscience and Religious Organizations" [Закон України від 23 Квітня 1991 року № 987-XII "Про свободу совісті та релігійні організації"]. Ведомости Верховной Рады УССР, 1991 г., № 25, ст. 283. Available at: https://zakon.rada.gov.ua/laws/show/987-12#Text [Accessed 08.01.2024].

of whom a decision has been made that his (her) stay (residence)[13] in the Russian Federation is undesirable, in accordance with Part 3 Art. 9 of Federal Law No. 125, may not be a founder (establisher) of a local religious organization.

The opposite approach (establishing election (appointment) of the head of a religious association as grounds for acquiring citizenship) is enshrined in the legislation of the Republic of Armenia with regard to the head of the Armenian Apostolic Church. The provision of Art. 22 of the Law of the Republic of Armenia "On Freedom of Conscience and Religious Organizations" of 17 June 1991 (as amended on 14 April 2011)[14] states, "A person elected as the Catholicos of All Armenians shall acquire citizenship of the Republic of Armenia." There is a historical example of the implementation of this norm. On 4 April 1995, Karekin II, Catholicos of the Great House of Cilicia, a native of Syria, was elected as Supreme Patriarch and 131st Catholicos of All Armenians at the Armenian Church Representative Assembly, taking the name of Karekin I (he exercised his authorities until his death in 1999).

The analysis of the approaches given above allows us to highlight the reasons for consolidating the stated norms. In our opinion, they can be grouped as follows:

a) the intention to avoid negative foreign influence, first of all, to protect citizens from the influence of extremist ideology carriers, extreme forms of religious views (Azerbaijan, Russia);

b) political tension between countries, disagreements on international issues, and as a consequence, the desire of the heads of the states to have their own "national" and autocephalous churches (Latvia, Ukraine);

[13] A pastor is expelled from Russia because of his sermons. Available at: https://www.pravmir.ru/smi-iz-Rossii-vyidvoryayut-pastora-iz-za-ego-propovedey/ [Accessed 08.01.2024].

[14] The Law of The Republic of Armenia on Freedom of Conscience and Religious Organizations of 17 June 1991. Հայաստանի Հանրապետության Օրենքը Խղճի Ազատության Եվ Կրոնական Կազմակերպությունների Մասին, 17.06.1991]. Available at: http://www.parliament.am/legislation.php?sel=show&ID=2041&lang=arm$$ http://www.parliament.am/legislation.php?sel=show&ID=4132&lang=arm [Accessed 08.01.2024].

c) historical reasons related to previous conflicts between representatives of different religions — Christians and Muslims (Greece);

d) the need to increase the level of trust of "the flock" (people of the congregation) to religious ministers (the desire to have clergymen of one nationality or exclusively citizens of the country (Armenia, Belarus (Ovsepjan, 2017, p. 39),[15] Peru, Portugal, Singapore).

Peculiarities of the historical development of the State, the nature of relations between the State and religious organizations, the degree of guaranteeing religious freedom determines the approaches of states in establishing the "citizenship qualification" for religious ministers.

III.2. The Binding Obligation to Notify Competent State Authorities when Appointing, Transferring and Dismissing Religious Ministers (until the Decision is Cancelled)

Another significant mechanism of influence on the activity of religious ministers is mandatory notification of authorized state bodies by religious organizations in case of a change in their position and obtaining consent for their appointment. In this case, as well as with the establishment of the "citizenship qualification," one of the goals is to prevent the spread of views aimed at undermining the constitutionally established order of the country, and to increase the level of loyalty of religious ministers.

However, it is also possible that such an obligation exists solely for the official reflection of authorized representatives of religious organizations by state bodies in their registers.

According to the above-mentioned law of the Republic of Azerbaijan, citizens of the Republic of Azerbaijan who have received religious education abroad may be allowed by the Caucasus Muslim Board with the consent of the relevant executive authority to conduct rites and ceremonies related to the Islamic religion (Art. 21).[16]

[15] Zh. I. Ovsepjan pointed out to another reason, "The Constitution of Belarus emphasizes increased attention to ensuring state sovereignty."

[16] Law of the Azerbaijan Republic dated 20 August 1992 No. 281.

In Bulgaria, foreign clergymen may participate in religious services after notifying the Department of Religious Affairs of the Council of Ministers (Art. 29, Para. 6).[17]

The Law of Vietnam "On Freedom of Conscience and Religion" No. 02/2016/QH14[18] in Art. 33, Para. 1 stipulates, "A religious organization shall notify in writing the Government Committee for Religious Affairs at the central level of persons ordained or appointed as monks, abbots, abbesses, nuns of the Vietnamese Buddhist community; pastors of Protestant organizations; senior coordinators of CaoDai churches; senior teachers (mentors) of the Vietnamese Buddhist community, other equivalent positions of other religious organizations no later than 20 days from the date of ordination or appointment." Under Part 2 it continues, "In cases of the assumption of an office or appointment of high-ranking persons not specified in Para. 1 of this Article, religious organizations shall, not later than 20 days from the date of entering the office or nomination of candidates, notify in writing the specialized agencies for religious affairs of the provinces in which they reside and carry out religious activities." Part 4 contains indications on the possibility of refusal to approve candidates of religious ministers.[19]

[17] Law of Bulgaria dated 20 December 2002 (as amended on 1 August 2023 No. 66) "On Religions" [Закон за вероизповеданията]. Available at: http://lex.bg/laws/ldoc/2135462355 [Accessed 08.01.2024].

[18] Law on Freedom of Conscience and Religion No. 02/2016/QH14 [Luật Tín ngưỡng, tôn giáo 2016, số 02/2016/QH14]. Available at: https://luatvietnam.vn/chinh-sach/luat-tin-nguong-ton-giao-2016-111021-d1.html [Accessed 08.01.2024].

[19] In the event that a person ordained or appointed as a high ranking minister does not comply with the provisions of Art. 32, Para. 2 of this Law (Persons to be ordained, appointed, elected shall have full civil capacity; they shall not be subject to administrative measures in the field of belief or religion; they shall not have a criminal record and shall not be a person charged with a criminal offence in accordance with the provisions of the Law on Criminal Procedure), the competent state authority shall be obliged to demand in writing to nullify the results of the ordination or appointment of high ranking persons.

Religious organisations shall, within 20 days from the date of receipt of the written application, cancel the results of the investiture or appointment of high-ranking persons and notify in writing the competent State authorities specified in Para. 1 and 2 of this Article about the cancellation of the results of the ordination or appointment.

Article 51 lays down the specifics of the appointment of religious ministers associated with foreign states, "The investiture, appointment, elections involving foreign elements specified in Para. 1 of this Article shall be approved in advance by the state administration body of the central level that is in charge of faith or religion."

According to Art. 5 of the Singapore Government Ordinance dated 3 November 1911 (as amended on 12 July 1997) "On the Bishop of Singapore" "a notification in the Gazette of the appointment of any person to exercise the office of Bishop of Singapore shall be conclusive evidence that such a person was duly authorized to exercise the said office."[20]

In accordance with Art. 30 of the Law of Ukraine, the Central Executive Body, which implements the state policy in the sphere of religion, ensures realization of the state policy regarding religions and the church by officially approving the possibility of engaging in preaching and other canonical activities, performance of religious rites by clergymen, religious preachers, mentors, other representatives of foreign religious organizations, who are foreign citizens and temporarily stay in Ukraine.

The Agreement of 28 July 1976 between the Holy See and the Government of Spain (on the ratification by Spain of the Agreement between the Holy See and the Spanish State, signed at the Vatican on 28 July 1976) on the Renunciation of Privileges and on the Appointment of Bishops[21] (hereinafter referred to as the Spanish Agreement) provides that by a general rule (Art. 1) the appointment of archbishops and bishops is the exclusive competence of the Holy See, however, under Part 2 "before proceeding to the appointment of archbishops-residents, bishops and coadjutors with the right of succession, the Holy See shall

[20] Bishop of Singapore Ordinance. Available at: https://sso.agc.gov.sg/Act/BSO1911 [Accessed 08.01.2024].

[21] Agreement of 28 July 1976 between the Holy See and the Government of Spain on the Renunciation of Privileges and on the Appointment of Bishops [Acuerdo entre la Santa Sede y el Estado Español, hecho en la Ciudad del Vaticano el 28 de julio de 1976]. Instrumento de Ratificación de España al Acuerdo entre la Santa Sede y el Estado Español, hecho en la Ciudad del Vaticano el 28 de julio de 1976. Boletín Oficial del Estado. 24 Septiembre 1976, No. 230, pp. 18664–18665. Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-1976-18294 [Accessed 08.01.2024].

notify the Spanish Government of the appointment if there are specific objections of a general political nature, the assessment of which would be consistent with the prudent consideration of the Holy See."

The Federal Law of Austria dated 6 July 1961 "On External Legal Relations with the Evangelical Church" (as amended on 31 December 2020)[22] (hereinafter referred to as the Law of Austria) notes that the leadership of the Protestant Church must immediately inform the Federal Ministry of Education of the appointment of its members (§ 8).

The Russian legislation contains the necessity for a religious organization to notify the Ministry of Justice of the Russian Federation (territorial bodies) only when it comes to the appointment, change, termination of the powers of a religious minister as the head of a local or centralized religious organization (Art. 8, Clause 9, Para. 1 of the Federal Law No. 125). In this case, it must be done within seven days,[23] in case of failure to fulfill the obligation, administrative responsibility is imposed (Art. 14.25 of the Code on Administrative Offenses of the Russian Federation).

It should be noted that the enshrinement of the powers of public authorities in the legislation concerning the disapproval of the appointment of religious ministers, as in Vietnam, can be seen as an interference in the autonomy of religious associations, in particular, in their right to determine independently the order of the appointment of their religious personnel. For this reason, countries with such restrictions in their legislation are identified as states having problems in ensuring constitutional freedom of religion. The exception to this is the existence of coordination arrangements in concordat law between the Roman Catholic Church and individual states, reflecting the historical particularities of the conclusion of the agreement.

[22] Federal Law of Austria dated 6 July 1961 "On External Legal Relations with the Evangelical Church" (as amended on 31 December 2020). [Bundesgesetz vom 6. Juli 1961 über äußere Rechtsverhältnisse der Evangelischen Kirche StF: BGBl. Nr. 182/1961]. Available at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009255 [Accessed 08.01.2024].

[23] The period was three days until 24 July 2023. Federal Law of 24 July 2023 No. 360-FZ "On Amendments to Certain Legislative Acts of the Russian Federation."

III.3. Maintenance of Registers of Religious Ministers

Such registers may be one of the options to monitor activities of religious ministers if the laws of the state give them the opportunity to perform legally significant actions, for example, the conclusion of marriages.

Thus, Art. 14, Para. 1, of the Greek Law of 2014, No. 4301/2014 (as amended on 21 July 2022) "On the legal status of religious communities and their organizations in Greece and other provisions on the competence of the General Secretariat for Religious Affairs" defines the competence of the Ministry of Education and Religion, which is charged with the obligation to maintain the electronic register of religious ministers who perform religious rites with civil consequences, regardless of the fact whether they belong to a religious community organized according to some legal form, or belong to a community without a status of a legal entity. Registration of each religious minister with indication of his identification data and of the religious community to which he belongs shall be carried out by the latter on the basis of an appropriate application, to which the biographical data (CV) of the minister and the names of religious disciplines (theological sciences) he may have shall be attached. <…> Part 2 provides: "The Register of Ministers of Religion is the official source of information on the status of the Minister of Religion for the local competent registers and on the acts they register in their books, and It is freely accessible to them through the website of the Ministry of Education and Religious Affairs, in order to enable direct control over the granting of this status to the persons who have drawn up the relevant act in accordance with Art. 1367 of the Civil Code."[24]

Thus, the main purpose of this register is the need for state authorities to have information about religious ministers who may

[24] Greek Law No. 4301/2014 of 2014 (as amended on 21 July 2022) "On the legal status of religious communities and their organizations in Greece and other provisions on the competence of the General Secretariat for Religious Affairs" [Νόμος Νο. 4301/2014 "Οργάνωση της νομικής μορφής των θρησκευτικών κοινοτήτων και των ενώσεών τους στην Ελλάδα και άλλες διατάξεις αρμοδιότητας Γενικής Γραμματείας Θρησκευμάτων και λοιπές διατάξεις"]. ΦΕΚ. 7 October 2014. Available at: https://www.kodiko.gr/nomothesia/document/99058/nomos-4301-2014 [Accessed 08.01.2024].

solemnize marriages with legal consequences. For the same purpose, the Law of Latvia obliges the Latvian Orthodox Church (Art. 18) to submit in writing to the Ministry of Justice a list of those persons who meet the status of church clergy. In addition, religious ministers included in the list under Art. 12 may exercise their ministry in the National Armed Forces, airports, ports, road (above-ground) transport stations, medical, health, social institutions, prisons and other places where regular church assistance is not available.

In Bulgaria, following the 2019 innovations, the Central Directorate of the Religious Organization must keep registers of clergy and employees of religious institutions and provide access to this information to the staff of the Directorate of "Religions" (for Religious Affairs) of the Council of Ministers (Art. 29 Part 4).[25]

Religious organizations and their representatives do not always approve of the state's desire to carry out official registration of clergy. In particular, Bulgarian activists of the Human Rights Protection Group sent a critical response to the draft law of 2019. Their position was based on the Guidelines for Review of Legislation Pertaining to Religion or Belief of the Organization for Security and Cooperation in Europe (2004).[26] Section 2(F)1 of the OSCE Guidelines states that "Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed."[27] In their view, the rule contradicts Art. 38 of the Constitution of the Republic of Bulgaria and reminds of the communist Law on Confessions, which required maintenance of such registers in order to control and put pressure on clergy because of their beliefs and sermons (Pibaev, 2022, p. 118).

[25] Directorate "Religions" of the Council of Ministers. Available at: http://veroizpovedania.government.bg/functions [Accessed 08.01.2024].

[26] Opinion of the Advocacy and Human Rights Protection Group; Freedom for everyone on the Bill to amend the Religions Act, No. 853-14-10. Available at: https://www.parliament.bg/bg/parliamentarycommittees/2593/standpoint/9756 [Accessed 08.01.2024].

[27] Guidelines for Review of Legislation Pertaining to Religion or Belief (2004). Available at: https://www.osce.org/ru/odihr/13994 [Accessed 08.01.2024].

III.4. The Binding Obligation to Inform Heads of Religious Associations when Initiating Criminal Proceedings against Religious Ministers (Austria, Montenegro, Spain) and to Obtain the Consent of a Religious Organization to Bring a Criminal Case against a Religious Minister

Article 8 of the Agreement between the Serbian Orthodox Church and Montenegro dated 3 August 2022[28] establishes the obligation, in case of initiation of criminal proceedings or proceedings on an offense (tort) against clergymen or religious figures of the Church, when the body of public authority conducting the proceedings shall notify the competent archbishop thereof.

Part 2 of Para. 12 of the Austrian Law specifies that prosecutors must notify the leadership of the Evangelical Church of the commencement of preliminary investigation (court procedure) and the consideration of criminal proceedings against officials of the Evangelical Church without unreasonable delay. A noteworthy feature is the provision of Part 5 of the said paragraph, "In every criminal case brought by state authorities against officials of the Evangelical Church, respect appropriate to the prestige of the church and cult shall be shown."

Article II, Para. 2 of the Spanish Agreement also states, "If a clergyman or religious official is brought to criminal responsibility, the competent authority shall notify the ordinary (the church officer — *note of the author*) concerned. If the defendant is a bishop or a person equivalent to him in canon law, the notification shall be made to the Holy See."[29]

In some countries, in particular in Israel, special legal protection is accorded to religious judges — Dayans, who are often at the same time religious ministers — rabbis. According to Judges Act of Israel of 1955 "criminal investigation against a Dayan will not be initiated unless with

[28] Agreement between the Serbian Orthodox Church and Montenegro dated 3 August 2022 [Темељни уговор између Црне Горе и Српске Православне Цркве] Available at: http://www.nspm.rs/crkva-i-politika/radna-verzija-temeljnog-ugovora-izmedju-vlade-crne-gore-i-spc.html [Accessed 08.01.2024].

[29] Agreement of 28 July 1976 between the Holy See and the Government of Spain on the renunciation of privileges and on the appointment of bishops.

the consent of the Attorney General, and no charges will be filed against a Dayan but by the Attorney General" (Art. 25(a)).[30]

The stated norms are intended to protect the interests of a religious organization and provide its leadership with the possibility of immediate response and application of measures prohibiting temporarily the ministry of clergy until the end of investigative actions or court proceedings.

III.5. The Opportunity to Perform Certain Religious Rites Only after Prior Notification, Imposition of Liability for Performing Religious Rites without Authorization

Currently, 11 of 28 states in India (Neha, 2017, p. 136)[31] have enacted laws criminalizing forced conversion to another religion, restricting the ability of religious ministers to carry out their activities. Article 10(2) of Madhya Pradesh Law on Freedom of Religion No. 5 dated 27 March 2021 states, "Any religious priest and/or any person who intends to organize conversion shall give 60 days prior notice to the District Magistrate of the district where such conversion is proposed to be organized in such form as may be prescribed."[32] The penalty for this violation is imprisonment for a term of three to five years and, in addition, a fine of not less than fifty thousand rupees may be imposed. There is no point in quoting extracts from all the laws because they are virtually identical, with a few peculiarities. For example, in the state of Uttarakhand, the period of notification has been reduced to 30 days.[33] In practice, the stated provisions are used to prevent the exercise of the Christian faith and the arrest of Christian clergymen.

[30] Judges Act of 16 May 1955 (as of 18 September 2023) [סיניידה קוח, טשת"ו-1955] Available at: https://www.nevo.co.il/law_html/law00/71521.htm [Accessed 08.01.2024].

[31] The Indian Constitution in Art. 25 guarantees the right to freedom of religion, but it does not explicitly mention the right to convert to another religion.

[32] Madhya Pradesh Law on Freedom of Religion No. 5 dated 27 March 2021 Available at: https://www.indiacode.nic.in/bitstream/123456789/16921/1/mpfreedomofreligionact2021.pdf [Accessed 08.01.2024].

[33] An Indian priest jailed under "anti-conversion" laws has been released. Available at: https://gnc.news/2023/12/27/464901 [Accessed 08.01.2024].

Under Civil Union Act 2006 of the Republic of South Africa (as amended on 31 October 2022) [34] any religious organization may notify (apply in writing to) the Minister to designate a religious minister as a marriage officer, i.e., a person authorized to solemnize marriages (civil units) in accordance with religious belief and with legal recognition (in terms of the given Act). Accordingly, in order to protect the interests of a religious organization, Art. 14 of the law provides for the liability for solemnization of a civil union by a person who is not an authorized religious minister in the form of a fine or, in default of payment, imprisonment for a period not exceeding 12 months.

According to the Marriage Act 1961 No. 12 of Australia (as amended on 1 September 2021), disciplinary measures may be taken against a religious minister who no longer meets the requirements for Registrars (marriage officers), up to and including removal from the Register (Art. 33 and 39(1)). [35]

Special legal protection is provided for in Art. 23(4) of the Law of Romania dated 28 December 2006 No. 489/2006 (as amended in 2014) "On Freedom of Religion and the General Regime for Regulating Religious Associations": "In the exercise of the duties or any other function that requires the exercise of the duties of a priest (clergyman), without the permission (authorization), or the express consent given by the religious organizations, the priest shall be punished according to the penal law." [36] Its purpose is to protect religious associations from possible abuses, illegal actions committed by ministers on its behalf. The blanket rule redirects to Art. 348 of the Criminal Code of Romania,

[34] Available at: https://www.saflii.org/za/legis/consol_act/cua2006139/ [Accessed 08.01.2024].

[35] Available at: https://www.legislation.gov.au/Details/C2021C00449 [Accessed 08.01.2024].

[36] Law of Romania dated 28 December 2006 No. 489/2006 (as amended in 2014) "On freedom of religion and the general regime for regulating religious associations" [Legea No. 489/2006 privind libertatea religioasa si regimul general al cultelor]. Monitorul Oficial. Partea I. 8 January 2007. No. 11. Available at: https://www.dreptonline.ro/legislatie/lege_libertate_religioasa_regimul_cultelor.php [Accessed 08.01.2024].

which provides for such acts with imprisonment for a term from three months to one year or a fine. [37]

The constitutionality of Clause 4 Art. 23 was questioned in 2020. Gheorghik Vătre and Nicolaeu Golaşteanu, who were prosecuted under this article, believed that there was a legal ambiguity in the concepts of "a priest" and "the exercise of the duties of a priest without the permission." The Constitutional Court of Romania concluded that, regardless of the title given to its employees by each denomination, the social value protected by means of criminalizing the act of exercising a profession or activity without the permission (authorization) is the same (Para. 27 of the judgment[38]).

Furthermore, the Court noted that in the given case the applicants had been prosecuted for carrying out their duties unlawfully as priests of the Romanian Orthodox Church. But the title "priest" was specific to that religious denomination, so the applicants had been able to foresee the consequences arising from the failure to comply with the criticized norm and adapt their conduct accordingly (Para. 28 of the judgment). As a result, the Romanian Constitutional Court recognized the contested provision as being in conformity with the Constitution.[39]

The imposition of strict conditions for the activities of religious ministers, such as in India, can only be seen as an unconstitutional variant of legal regulation that disproportionately restricts freedom of religion. The provisions of the laws of the Republic of South Africa, Australia and Romania, as stated, pursue the opposite objective of protecting the interests of religious associations.

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[37] Available at: https://lege5.ro/Gratuit/gezdmnrzgi/codul-penal-din-2009?pid=41993049#p-41993049 [Accessed 08.01.2024].

[38] Decision of the Constitutional Court of Romania of 16 July 2020 No. 607 "On the unconstitutionality of the provisions of Para. 4 Art. 23 of Law No. 489/2006 "On Freedom of Religion and the General Regime of Religious Associations" [Decizia No. 607 din 16 iulie 2020 referitoare la excepţia de neconstituţionalitate a dispoziţiilor Art. 23 alin. (4) din Legea nr. 489/2006 privind libertatea religioasă şi regimul general al cultelor]. Available at: https://legislatie.just.ro/Public/DetaliiDocument/236129 [Accessed 08.01.2024].

[39] Decision of the Constitutional Court of Romania of 16 July 2020 No. 607 "On the unconstitutionality of the provisions of Para. 4 Art. 23 of Law No. 489/2006 "On Freedom of Religion and the General Regime of Religious Associations".

IV. Conclusion

Summarizing the outlined approaches of foreign and domestic legislators and the practice of implementing norms, we can come to some conclusions.

First of all, it should be recognized that all the regulatory legal acts studied in 57 countries contain provisions on religious ministers — legal regulation of the status of religious ministers has become widespread. The normative regulation of the status of ministers of religion is set out either in special normative (regulatory) legal acts dedicated to the implementation of the right to freedom of religion, or in normative legal acts regulating social relations arising in connection with the determination of the legal status of a particular confession (Finland, Latvia), or in the absence of reference norms in special laws — in agreements (conventions, concordats) (Montenegro, Spain, Peru).

The conducted analysis, in our opinion, allows us to affirm the validity of the hypothesis on the justification of singling out the sub-institute of ministers of religion within the framework of the complex constitutional legal institute of freedom of religion. Taking into account the existing classifications, it can be attributed to the permanently operating mixed sub-institutions containing both regulatory and protective norms (Orehov, 2016, p. 43).

Further, it should be taken into account that the ways of the regulatory consolidation vary. They can be classified into three groups. Firstly, there is a wide range of norms dedicated to the legal status of religious ministers (Art. 32–36 of the Law of Vietnam). Secondly, there are separate articles dealing with their legal status (§ 9 of the Law of Austria "Protection of Church Officials," Art. 18 of the Law of Latvia "List of Church Clergy"). Thirdly, there are no special structural elements devoted entirely to their status (the Act of Australia, the Act of the Republic of South Africa), there are only separate norms. In addition, both religious ministers of all registered denominations (Russia, Romania) and certain religious associations (for example, Azerbaijan, Latvia, Spain) can be the subject of regulation.

On the basis of certain comparative criteria, we believe that the most restrictive effects are the following: the establishment of the

"citizenship qualification (requirement)," the opportunities provided for public authorities not to approve the appointment accepted (filled) by an authorized person of a religious association, and the complicated procedure of the performance of rites and ceremonies by religious ministers. Finally, it should be noted that in a constitutional democratic state, the recognition of freedom of religion as a fundamental human right makes it possible to ensure freedom of activity for religious ministers, restricting it only by means of laws and for constitutionally significant purposes. At the same time, historical and national peculiarities of the development of the State, doctrinal aspects of religion can have such a strong influence that it becomes impossible to give universal models for the legal regulation of the status of ministers of religion and solutions to potential conflicts, leaving a wide scope for activity of constitutional review bodies and other courts.

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