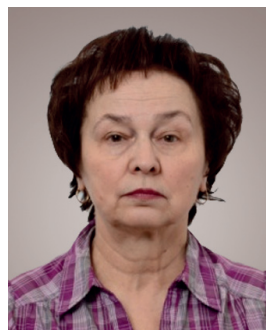


LEGAL MODE OF THE SEAL OF CONFESSION. CORRELATION OF SECULAR AND CANON LAW



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Abstract

The scope of regulation of social relations connected with both secular and canon laws are of great interest for the researchers. In particular, these relations are linked to the constitutional

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presumption of the separation of the church and the state. At the same time, there is a tendency of convergence of the church and the state in matters concerning property, correlation of church and secular education, etc. The clergy by virtue of the nature of their professional duties, mostly deal with private and personal information and it is also a sphere of common interest for both the state and the church. The use of the comparative legal research methods, methods of the analysis and synthesis of the situation have made it possible to match the norms of the canon and secular law and identify some elements of their relations. The main purpose of the article is the comprehensive study of the seal of confession, its conceptual framework, legal regulation, judicial practice, forms and types of responsibility for its violation.

This paper examines historical facets of development of the seal of confession, beginning with the Spiritual Regulations and up to the modern ecclesiastical and secular norms. The Spiritual Regulations were specific since they contained no absolute inviolability of the seal of confession as soon as the information concerned the security of higher officials.

The paper also highlights the legal framework of the secrecy of the confessional, being some professional religious mystery, on the one hand, as well as a legal mode and a form of some sensitive or restricted information, on the other. The Fundamentals of the Social Concept of the Russian Orthodox Church contain the requirements and tell the priest how to classify the information communicated to him by his parishioner.

The article focuses on some features of the seal of confession practice abroad, particularly in Germany and the USA. Eventually, the US laws provide for the circumstances where the communication of the clergy and their parishioners should remain confidential. There are, however, some requirements compelling the priest to report whenever protection of children is involved. The jurisprudence supports the rules regulating the seal of confession. Three relevant cases have been studied by the authors and they involve the separation of secular and religious laws.

Keywords

Sensitive information, restricted information, seal of confession, secular and canon law, legal framework of the seal of confessional,

regulation of the seal of confession abroad, responsibility for violation

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TABLE OF CONTENTS

I. Introduction. The Concept of the Seal of Confession, its Development and Regulation of by Secular Law	446
II. Legal Framework of the Seal of Confession	451
III. The Seal of Confession Regulation Abroad	456
IV. Jurisprudence	459
V. Responsibility of the Clergy for Divulging the Seal of Confession ..	462
VI. Conclusion	464
References	465

I. INTRODUCTION. THE CONCEPT OF THE SEAL OF CONFESSION, ITS DEVELOPMENT AND REGULATION OF BY SECULAR LAW

The Mystery of Confession & Repentance is a sacred rite of the Orthodox Church when people confess their darkest secrets to the priest. Obviously, people need to be careful who they are confessing to because an unscrupulous priest might use this information against his parishioners. Even a well-meaning priest might use this information with seemingly noble intentions if they naively believe that they can help in delicate situations that can arise during confession. However, this is forbidden in the Orthodox Church so that a person may always know that he/she can confess sins freely. This is called the “Seal of Confession”.

In short, confession (sacrament of repentance) is the sacrament of the Orthodox Church where a person, who sincerely confesses his/her sins with the apparent apology from the confessor, is invisibly resolved from the sins by God Himself although it is a priest or a bishop who accepts confession.

Taking a closer insight into the history, one can see that confession has not always been a sacrament. During the period of the birth of Christianity confession had a completely different nature. In those days,

confession was public. It means that a repentant denounced himself before people — members of a particular parish, who all together constituted the one Body of Christ, the Church.³

The ancient canons required that repentance should be obvious, whole and not hypocritical. In the ancient church, a small excommunication was associated with public repentance. In the third century, the Church developed a regular order to return a sinner to church communication, which was similar to the steps of the procedure of taking new believers to the Church through the stage of announcement including public standing on the throne of the church, public announcement of the deeds and renunciation of the past.⁴

Along with the public repentance in the ancient church, there was also a private repentance or confession of sins to a bishop or a presbyter alone. It was performed by the penitent at his will and consisted in the discovery of sins and the resolution from them with a prayer and laying on of hands. Clement of Rome, Origen, Cyprian and others speak of the private repentance. Clement of Rome exhorts not to be ashamed to confess secret sins to one's abbot in order to be healed by the word and instruction of God.⁵

The practice of public repentance continued in the church life till the end of the fourth century. Under the Patriarch of Constantinople Nektarii (398) the post of presbyter-confessor was cancelled, and after that the degrees of repentance and rites for public penitents gradually stopped. By the end of the period of the Ecumenical Councils (8–9th centuries) the public confession by bell, book and candle had disappeared and had been replaced by its seal.

The abolition of the public confession, which was so beneficial in ancient times with their rigorous morals and zealous piety, and its replacement with a secret confession was motivated by the fact that public confession seemed to be painful for the Christians of later times. Many began to avoid it because of shame or just hid their sins. Also,

³ Smirnov S.I. *Drevnerusskij Dukhovnik [Old Russian Confessor]*. Directmedia Publ., 2013.

⁴ Tsylin V.A. *Tserkovnoe pravo. [Canon law]*. Kiev, 2012.

⁵ *O tainstvakh. Tainstvo pokayaniya. [Chirch Misteries. Mystery of Repentance]*. URL: <http://www.pravoslavie.ru/2121.html> (accessed 21 August 2018).

the sins that were revealed publicly could turn into a trial for some feeble Christians. Henceforth, to prevent the transformation of healing for some into a pernicious poison for others, the Church replaced the public confession with a secret one.

The situation is different with the New Testament, the Commandments of Christ, as a direct expression of his divine will, which are generally binding on the Church. They form a cornerstone of its teaching and life. The Sacrament of Penance is also established by the Savior. The Lord gave to his apostles and, in their person, to the priesthood the authority to absolve sins: “Whatsoever you bind on earth, it will be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven. (Matthew 18:18).”⁶

With the time, confession has become a mystery. It means sins revealed in confession are subject only to the secret inner court of the confessor — a priest, to whom a believer trusts the guidance of his spiritual life. A confessor under a fear of losing his status is forbidden to divulge the sins of a penitent. After confession, in they must be forgotten.⁷

By its nature the entire area of ecclesiastical penitential discipline associated with the seal of confession has always been exclusively and primarily the subject of competence of spiritual authorities: bishops and presbyters authorized by the former to priesthood.

The canonical answers of Bishop Nifont of Novgorod (the first half of the 12th century) to the questions of the local priests Kirik, Sawa and Elijah have survived to our times. Those questions and answers are concerned with the sacraments of Baptism, Repentance and Eucharist, burial, fasting, and obeisances during worship services. In particular, Answer 61 forbids changing one confessor for another without the blessing of the first confessor. Spiritual writings and canonical letters of Metropolitan Maxim, Saints Petr, Alexiy, Cyprian and Photius have

⁶ Tsypin V.A. *Tserkovnoe pravo* [Canon law]. Kiev, 2012.

⁷ Smykalin A.S. *Kanonicheskoe pravo* (na primere Russkoj pravoslavnoj tserkvi XI–XXI vv. [Canon law. On the example of the Russian Orthodox Church 11th–21st centuries]. *Uchebnoe posobie* [A Study-Guide], M., Prospekt Publ., 2015. 400 p. URL: <https://books.google.ru/books?id=BAJcGAAQBAJ&pg> (accessed 21 August 2018).

been preserved. Metropolitans Cyprian and Photius in their messages forbid a person to be baptized by two priests.⁸

Given the traditionalism of Canon Law, at present the provisions of the Holy Scriptures operate, which determine the exclusive mystery of confession (repentance).

With regard to the history of Russia, before Peter I, no one of the Russian rulers had ever dared to break the seal of confession. Rule 9 of the Spiritual Regulations⁹ contains sanctions for divulging the secrets of confession, which determine the general rule of the prohibition on the disclosure of the seal of confession. Also, those rules say a priest was obliged not to disclose both the information that became known to him during the confession and the information that he heard beyond the confession. This confirms the thesis that religious secrets encompass information that lies beyond the scope of confession. However, the same document reflects a tendency to subordinate the church to the state apparatus. Clerics pledged to report certain information they came to know during the confession. On the other hand, having learned about the illicit plans of a parishioner, a priest had to report that a person had some evil intents against the sovereign. By doing so, the confessor does not divulge confession and does not violate the rules.¹⁰ Thus, the obligation to disclose the secret of confession was in force with due regard to some sensitive information concerning crimes against the state.

The Spiritual Regulations were in effect up to 1917, and they were terminated by the local council of the Russian Orthodox Church. In the Soviet period of Russian history, the seal of confession was not protected by the state.¹¹ A clergyman who did not report a crime that he learned of by professing a parishioner could be held liable for “failing to report a crime being prepared or committed.”

⁸ Tsypin V.A. *Tserkovnoe pravo* [Canon law]. Kiev, 2012.

⁹ *Dukhovnyj reglament* [Spiritual Regulations]. URL: <http://orthodox.ru/olb/303.php> (accessed 21 August 2018).

¹⁰ *Dukhovnyj reglament. Pravilo 11* [Spiritual regulations. Rule 11]. URL: <http://orthodox.ru/olb/303.php> (accessed 21 August 2018).

¹¹ *Reglament i Ustav Dukhovnoj kollegii, izdannij 25 yanvarya 1721 g. Polnoe sobranie zakonov Rossijskoj imperii*. SPb., 1899. T. VI. No. 3718.

The modern Russian state has refused to interfere into church affairs. However, the seal of confession is protected by the state and this rule applies to all religions and cults. Consequently, a priest has no right to report crimes, which he has learned through his service. Part 7 of Article 3 of the Federal Law of September 26, 1997 No. 125-FZ “On Freedom of Conscience and on Religious Associations” reads: “the secret of confession is protected by law, and the priest cannot be held accountable for refusing to testify on the circumstances that became known to him from confession.”¹² The criminal and civil procedural laws specify this requirement. In accordance with Clause 4, Part 3 of Article 56 of the Criminal Procedural Code of the Russian Federation a clergyman may not be questioned as a witness about the circumstances that have become known to him in confession. Paragraph 3 of Article 69 of the Civil Procedure Code of the Russian Federation contains a similar norm.

Under Part 7 of Article 3 of the Federal Law “On Freedom of Conscience and on Religious Associations”, “the seal of confession is protected by law. A priest may not be held liable for refusing to testify on the circumstances that became known to him in confession.” In compliance with paragraph 4 of Part 3 of Article 56 of the Criminal Procedural Code of the Russian Federation, “a priest is not subject to questioning as a witness about the circumstances that have become known to him in confession.”¹³ Clause 3 of Part 3 of Article 69 of the Civil Procedural Code of the Russian Federation is similar, but it is applicable to the clergymen of the religious organisations that have state registration.¹⁴

Yet, this is not as unambiguous as it may seem following the provisions of Clause 4, Part 3 of Article 56 of the Criminal Procedure Code of the Russian Federation. Part 2 of Article 11 of the Code of Criminal Procedure envisages that “in case of consent of persons, having

¹² Federal’nyj zakon ot 26.09.1997 No. 125-FZ (red. ot 22.10.2014) “O svobode sovesti i o religioznykh ob”edineniyakh”. *Sobranie zakonodatel’sтва RF*, 29.09.1997, No. 39, P. 4465.

¹³ Ugolovno-protsesual’nyj kodeks RF. Moscow, EHLit publ., 2014. 224 p.

¹⁴ Grazhdanskij protsessual’nyj kodeks RF. Moscow, Rossijskaya gazeta publ., 2014. 256 p.

witness immunity, to testify an investigator, inquirer, or a prosecutor and a court are obliged to warn these persons that evidence given may be used as an evidence in the course of further criminal proceedings.” No exceptions have been provided for priests in this part. Thus, in fact, the lawmaker has provided for the opportunity of questioning a person who has a witness immunity.

With this regard, Yu. K. Orlov’s opinion seems to be relevant:

The seal of confession is established by the religious canons and not by the legislation of the country. The state is not responsible for the violation of the secrecy of confession, no matter who does it, and no sanctions are imposed on perpetrators. The state has only the opportunity to make sure that the representatives of any religion perform their rites, including the observance of the seal of confession, but the government is not entitled to dictate and prohibit anything. Therefore, a flat ban to the clergy to make statements on this issue may be considered as the interference of the state in the church affairs.¹⁵

II. LEGAL FRAMEWORK OF THE SEAL OF CONFESSION

A.V. Pchelintsev defines the concept of the seal of confession as a professional religious secret: “the seal of confession means information that becomes known to a priest during the sacrament of repentance which is protected from disclosure by law and internal regulations of the religious associations.”¹⁶ A similar opinion is supported by Precht Pizarro J., who believes that “religious secrets have been gradually transformed into professional secrets (with regard to priests) and along with the obligation to keep secrets they also have the right to keep any

¹⁵ Ugolovno-protsessual’noe pravo Rossijskoj Federatsii [Criminal Procedural Law of the Russian Federation]. Ed. by P.A. Lupinskaya. 2nd ed. Moscow, 2009. 212 p.

¹⁶ Pchelintsev A.V. Svoboda veroispovedaniya i religioznye ob”edineniya v Rossijskoj Federatsii (konstitutsionno-pravovoe issledovanie). Avtoreferat na soiskanie uchyonoj stepeni d.yu.n. [Freedom of Religion and Religious Organisations in the Russian Federation (Constitutional Law Research). PhD in Law Abstract on Subject]. 46 p.

sensitive data confidential from the third party. The seal of confession or religious secret is likened to professional secret.”¹⁷

We would like to emphasise that in our view, the seal of confession can be examined from three angles: as information, as a normative regime and as a form of a secret.

The seal of confession (as information) means information and data on the religion a person (or a group of persons) practice, and this part of their private life associated with the religion and determined by the internal rules of their religious association as information should be legally protected (depending on the kind of a secret) from distribution (from unauthorised distribution) and from unauthorized access (unlawful interception included). It is recognised by the state as a subject for legal protection, the disclosure of which may humiliate human dignity and offend religious feelings of believers who confidentially entrust their information to some religious minister in the process of religious confession or similar rite or just in some personal conversation. The disclosure of the information in question may cause other harm to the congregation or religious association and its religious order. In this form, the seal of confession appears to be the information about the private life of a person, his experiences, feelings, thoughts which a person is able under certain circumstances (life setbacks, certain church dates, etc.) to tell a priest in order to find his or her peace of mind. The Constitution of the Russian Federation in Part 1 and 4 of Article 29 endows the human right to produce and transfer information by any lawful means and the human right to freedom of thought and speech. These rights design a legal *modus operandi* by which any person who creates information in the process of his life activities is entitled to transfer it to another person for confidential safekeeping

The seal of confession (as a normative regime) means security and protection of the above mentioned information (religious secrets) that determines the procedure for handling such information and monitoring compliance with the requirements applied to handle it including the limits of security and protection of religious secrets as well as personal

¹⁷ Precht Pizarro J. Ministros de culto, secreto religioso y libertad religiosa. *Revista Chilena de Derecho*. 2004. Vol. 31. No. 2. P. 337–349.

obligations of those who became aware of religious secrets due to their religious and official activities and referential professional religious and priest duties. Under the Federal Law “On Freedom of Conscience and Religious Associations” protection of the secrecy of confession by law is presumed and it refers to the provisions of the Criminal Procedure Code, Civil Procedure Code and the Code of Administrative Offenses of the Russian Federation that define procedures to act for the subjects of such information while transferring and receiving such information as well as safeguarding it with regard to the third parties.

The seal of confession (as sensitive information) is a separate form of a secret protected by law as the right to freedom of religion by recognizing and legitimizing internal provisions and rules of the religious associations to maintain, protect and safeguard within the scope of this specified type of secrecy. The Federal Law “On Freedom of Conscience and Religious Associations” proclaims the right of a religious association to form its own structure, normative regulation and requirements to its participants. The Criminal Procedure Code and the Civil Procedure Code of the Russian Federation prohibit to request from a priest information that he received in confession. As shown above, the Spiritual Regulations, as one of the basic documents that determine activities of the clergy, emphasize their obligation not to disclose the seal of confession.

The complexity of the regime in question creates a special order of regulation — both in the sphere of canon law and at the secular level.

Guarantees of the secrecy of confession have been established in the internal regulations of religious organisations themselves and in the canonical norms of law.¹⁸ These prescriptions tell clergymen to avoid actions abusing trust, because this is contrary to their spiritual status.

Thus, the question arises: is a church minister obliged in today’s society against the will of the person, who has repented, to use the

¹⁸ See *Ustav Russkoj Pravoslavnoj Tserkvi* [Charter of the Russian Orthodox Church]. URL: <http://www.patriarchia.ru/db/document/133114/> (accessed 21 August 2018); *Polozhenie o tserkovnom sude Russkoj Pravoslavnoj Tserkvi (Moskovskogo Patriarkhata)* [Rules of the Ecclesiastic Court of the Russian Orthodox Church (Patriarchate of Moscow)]. URL: <http://www.patriarchia.ru/db/text/428440.html> (accessed 21 August 2018).

information received in order to prevent the upcoming crime, or should he keep the seal of confession. If he is not obliged, is not there a conflict between the clergyman's right to the seal of confession and his civic duty? What is the moral choice of a clergyman in such a tough life situation where the conflict of interests between his religious, professional and civic duties take place?

This problem is critical in modern society, where, unfortunately, the level of major and capital crimes is still high. One can say that, if a clergyman had a chance to prevent a crime that might result in the death of people or other grave consequences, but he did not do it referring to the seal of confession, it is highly likely that conscience of religious citizens would oppose absolutisation of the seal of confession.¹⁹

The conclusion follows that in modern life in specific situations a clergyman's waiver to keep the seal of confession is permissible and justified. However, cases when a priest comes to know that a person who has repented, is preparing a serious or a capital crime against a person or public safety are exceptional. In such cases, there is a problem as to whether it is necessary for a clergyman to write a denunciation on a repentant and persons associated with him. Consequently, this problem should be resolved only in the context of recognition of the priest's right to divulge the secret of confession. The moral and civic duties of a clergyman to prevent a future crime must not be converted into his legal duty. Hence, such a rule should not be fixed in the norms issued by state, but in the internal (religious) norms of ethics of the religious associations themselves. It was this path that the Russian Orthodox Church has taken. The Fundamentals of the Social Concept of the Russian Orthodox Church²⁰ (Section IX) contain detailed instructions for the churchmen in the event of a situation like that. "Even in order to assist the state bodies, a priest may not violate the seal of confession, and should show pastoral sensitivity in cases where he learns about the forthcoming crime in confession."

¹⁹ Pchelintsev A.V. Absolyutna li tajna ispovedi [Is the mystery of the confession absolutely true]. *Zakonodatel'stvo i ehkonomika*, 2011, No. 5.

²⁰ Osnovy sotsial'noj kontseptsii Russkoj Pravoslavnoj Tserkvi [Fundamentals of the social concept of the Russian Orthodox Church]. URL: <http://www.patriarchia.ru/db/text/141422.html> (accessed 21 August 2018).

In any circumstances sacredly preserving the secret of confession, a clergyman must immediately undertake every possible and necessary effort to stop the criminal intent of his parishioner. First, it is concerned with homicide, mass casualties possible in a terrorist act or execution of a criminal military order during military operations. Knowing of equal value of souls of an alleged criminal and his victim a priest must invoke the professed criminal to true divine repentance, *i.e.* to give up his evil intention to commit a crime. If such a call does not have an effect, the pastor may, keeping in secret the name of the wrongdoer and other circumstances that reveal his personality, warn all those whose lives are in danger. In difficult cases the pastor should apply to the diocesan bishop.”

Notwithstanding, how can a priest determine the seriousness and the onset of unlawful consequences of a plotted crime if he does not know law? Today the level of religious education allows the churchmen to understand the current legislation well enough. The fundamentals of law are taught in many religious educational institutions, and there are departments of law and departments of church and state relations in some institutions.²¹

The legal design of the seal of confession in secular law is determined by the allocation of a special subject authorized for the seal of confession — a clergyman, *i.e.* a person authorized by the relevant religious organization (association) to spiritual, preaching ministry.²² Part 1 of Article 3 of the Federal Law No. 125-FZ “On Freedom of Conscience and Religious Associations” defines any Russian citizen, and a foreign citizen or a stateless person legally residing on the territory of the Russian Federation as a subject of the right to freedom of conscience and freedom of religion, including the right to confession. In order to implement this norm relevant mandatory requirements have

²¹ Kosyachkin N.S. Garantii realizatsii konstitutsionnogo prava cheloveka na svobodu sovesti i veroispovedaniya v RF [Guarantees of the realization of the constitutional human right to freedom of conscience and religion in the Russian Federation]. *EhZh-Yurist publ.*, 2013, No. 2

²² Model’nyj zakon o svobode sovesti, veroispovedaniya i religioznykh organizatsiyakh (ob’edineniyakh) (Prinyat v g. Sankt-Peterburge 28.11.2014 Postanovleniem 41–22 na 41-m plenarnom zasedanii Mezhparlamentskoj Assamblei gosudarstv-uchastnikov SNG). SPS “KonsultantPlus”.

been included in the Code of Civil Procedure and the Code of Criminal Procedure of the Russian Federation. Part 3 of Article 69 of the Civil Procedure Code of the Russian Federation. Paragraph 4 of Part 3 of Article 56 of the Code of Criminal Procedure states that priests may not be questioned as witnesses about the circumstances that become known to them from confession.

In order to keep the secrecy of confession the law prohibits: a. to include churchmen into the lists of potential jurors (clause “zh”, Article 7 of the Federal Law No. 113-FZ “On the jurors of Federal Courts of General Jurisdiction in the Russian Federation”), b. to engage clergymen to secretly assist and cooperate with the Russian intelligence agencies (Article 19 of the Federal Law No. 5-FZ “On the Foreign Intelligence Service”), the Federal Security Service agencies (Article 19 of the Federal Law No. 40-FZ “On the Federal Security Service”) and the agencies that carry out the operative-search activities (Article 17 of the Federal Law No. 144-FZ of 12.08.1995 “On the Operative-Search Activities”).

At the same time, the requirement for sinners to confess as well as the duty of the priest to observe the seal of confession have been consolidated only in the norms of canon law. Secular law regulates protection of the secrecy of confession which is expressed in the prohibition for the state bodies to demand disclosure of the seal of confession and to interfere in the administration of religious sacrament. Thus, the state creates the proper conditions for the inviolability of confession without interfering into the religious procedure.

III. THE SEAL OF CONFESSION REGULATION ABROAD

Considering a large number of religions in the world (according to available data there are more than 5,000 religions with 100 of these accounting for the vast majority of believers),²³ it is crucial to examine the legislation of the countries where, first, the population is close to mono-religion, the majority is professing a particular religion.

²³ Skol'ko v mire religij [How many religions does exist?]. *Obozrenie. Russkij tolstyj zhurnal*. URL: <http://sibcontek.ru/journal/world-religions/skolko-v-mire-religiy> (accessed 21 August 2018).

Secondly, there are countries with a large number of religions including the most exotic ones. The former includes the Federal Republic of Germany (Christianity, Catholicism and Protestantism) and the United States (Christians including Catholics, Protestants, Mormons, Baptists, Lutherans, etc.) belongs to the latter.

The Federal Republic of Germany

The Basic Law of Germany²⁴ in Article 4, Paragraphs 1 and 2 guarantees that freedom of religion, freedom of conscience and freedom to practice religious and philosophical beliefs are inviolable, and unobstructed worship of religion is guaranteed by the state.

The relations between the state and religious organizations are regulated by Article 140 of the Constitutional Law; Articles 136, 137, 138, 139 establishing institutional guarantees for protection of freedom of religion imply protection of religious secrecy and internal institutions of religious organizations. Paragraph 3 of Article 136 of the Basic Law enshrines that no one is required to disclose his or her religious beliefs. However, the authorities have the right to ask about the membership of a person in a religious society provided his duties and powers are somehow connected with it, or if statistical research on this issue is being carried out under the law. Under Paragraph 3 of Article 137 of the Basic Law, the religious associations must regulate and administer their affairs independently within the limits of law.

Article 138 of the Criminal Code of the Federal Republic of Germany²⁵ provides criminal liability for failure to report planned or perpetrated crimes. Nonetheless, according to Para. 2 of Article 139 “The exemption from punishment for not providing a report on planned crimes,” a clergyman is not obliged to report what he as a cleric was entrusted as part of the confession. According to subparagraph 1 of paragraph 1 of Article 53 of the German Criminal Procedure Code²⁶ “The

²⁴ The Basic Law of Germany. URL: https://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/grundgesetz/gg_11/245152 (accessed 21 August 2018).

²⁵ Criminal Code of the Federal Republic of Germany. URL: <http://www.gesetze-im-internet.de/stgb/BJNR001270871.html> (accessed 21 August 2018).

²⁶ German Criminal Procedure Code. URL: <http://www.gesetze-im-internet.de/stpo/BJNR006290950.html> (accessed 21 August 2018).

right to refuse to testify on professional grounds,” clergymen may refuse to give testimony concerning information that was entrusted or became known to them as spiritual advisers. This right, according to Article 53a “The right of professional assistants to refuse testimony,” applies not only to professional clergymen, but also to their assistants and persons studying the profession of a clergyman (for example, seminarians) who participate in relevant professional activities. Under Para. 4 Article 383 of the German Civil Procedure Code “The refusal to give evidence at personal request,” churchmen may refuse to testify if this information relates to what was entrusted to them during the administration of their pastoral duties.

The German law has special rules to protect personal data. Yet, the constitutionally established principle of separation of the church and the state stipulates that religious organizations should have the right to develop their own rules, including the scope of confidentiality of personal data.

The United States of America

The laws of a number of US states provide for the circumstances in which communication of the clergy representatives with their parishioners should remain confidential.

In accordance with subparagraph (b) of Paragraph 505 of Article 5 “The Rules of Evidence”²⁷ of the State of Alabama in case a person has privately communicated with a clergyman who has acted as a professional priest, then the person or the clergyman are entitled to refuse to testify and disclose confidential information of their communication.

According to subparagraph (b) of Paragraph 506 of Article 5 “The Rules of Evidence”²⁸ of the State of Alaska, a person has the right to refuse to disclose confidential information given to a clergyman as a spiritual mentor by virtue of his professional status, and has the right to prevent the disclosure of such information by another person.

²⁷ “Rules of Evidence” of the State of Alabama. URL: <http://www.txcourts.gov/media/921665/tx-rules-of-evidence.pdf> (accessed 21 August 2018).

²⁸ The State of Judicial Gatekeeping in Alaska. URL: <http://cyber.law.harvard.edu/daubert/ak.htm> (accessed 21 August 2018).

Thus, in the United States, at present, there are normative and legal acts aimed at limiting or contributing to the confidentiality of communication between the representatives of the church and the people applying to them, which can be provisionally divided into two big categories. First, all US states have adopted legislation aimed at ensuring reporting the cases of child abuse. The legislation in question contains withdrawals from the right of a clergyman not to reveal information given to him by the penitent to anyone, including public authorities. The second category can include normative legal acts containing provisions that correspond to the alleged duties of priests to protect the persons who appeal to them, as well as to protect the interests of third parties that may suffer from the actions of these persons.

The most efficient tool to protect the church documents from disclosure is the legislation that contains provisions with regard to the right to refuse to testify or provide evidence under specific circumstances. In the United States, the laws of every state contain provisions regulating the issues in question, but far from everywhere there are provisions concerning protection of the church documents.

IV. JURISPRUDENCE

Actually, there have been no trials so far on the integrity of the secrecy of confession in the Russian jurisprudence and the mere fact of the absence of such trials does not underpin, but still implies the respect for the provisions of the Federal Law No. 125-FZ “On the Freedom of Conscience and Religious Associations” and the norms of the church laws by the government authorities.

Some instances of judicial practice can be taken from the United States jurisprudence.

The Catholic Church defines the seal of confession as a special, centuries-old tradition of sacrament, the disclosure of which is not allowed, but recently (1990 to 2014), in connection with the scandals in the Vatican about the sexual abuse of the clergy against children the situation has been changing. Given the general tendency of protecting minors against sexual abuse and other criminal acts, the Anglican Church does not oblige church ministers to keep the information from

confession on serious crimes secret, in particular, concerning cases of sexual abuse of children²⁹ and it criticizes the dogmas of the Roman Catholic Church, which compel to keep the seal of confession no matter how grave a crime is.³⁰

Alison Cotes, a well-known pastor, points out that (his interview to the ABC "Religion and Ethics" was in August of 2014) presently, the reform of the church and, to be precise, its traditional charters to change the requirements for the confessional secrecy³¹ is urgent. Alison Cat cites the words from the Scriptures: "punishment is to comprehend those who will offend younger than themselves..." In his words, no church should be a shelter for outlaws.

1. The Times-Picayune of Greater New Orleans published an article about the lawsuit brought against priest Fr. Bayhi and the Catholic Church of the Diocese of Baton Rouge.³² The lawsuit was filed by the family of the girl, who from the age of 12 had been in sexual relations with a man older than the priest, whom she had confessed about it. The pastor had advised her to keep the story in secret and not to tell anyone so as not to create problems for that male and his relatives. Later, the girl's family found out that fact. At the Supreme Court of Louisiana during the civil trial, the family required the pastor to confirm the girl's words communicated to him in the confession. The specifics of the case is that the girl herself and her family agreed to the disclosure of the seal of the confession in question by the pastor. The appeal court where the diocese Baton Rouge applied dismissed the Supreme Court's ruling of the girl's parents claim being legitimate. The author of the article argues

²⁹ "Rules of Evidence" of the State of Alaska. URL: <http://atheistfoundation.org.au/2014/07/04/anglican-church-removes-seal-of-confidentiality/> (accessed 21 August 2018).

³⁰ Top Anglican calls for lifting seal of confessional in child abuse cases // The Washington Post. URL: https://www.washingtonpost.com/national/religion/top-anglican-calls-for-lifting-seal-of-confessional-in-child-abuse-cases/2014/10/23/aeb3fbce-5aee-11e4-9d6c-756a229d8b18_story.html (accessed 21 August 2018).

³¹ Father Richard Umbers. The Seal Cannot Be Broken: Priestly Identity and the Sacrament of Confession. URL: <http://www.abc.net.au/religion/articles/2014/08/27/4075554.htm> (accessed 21 August 2018).

³² Simcha Fisher. Some Questions about the Seal of Confession. URL: <http://www.ncregister.com/blog/simcha-fisher/some-questions-about-the-seal-of-confession> (accessed 21 August 2018).

whether it is permissible for a civil (secular) court to handle a case involving a priest in matters concerning religious norms. He believes that the secular court (The Supreme court of Louisiana) violated the provisions of the Constitution of the United States, and even the consent of a person, confessing a crime to a pastor, is not enough for the latter to reveal the secrecy in question.

2. The New York State Court of Appeal in its judgment of 8 May, 1979, in case of *John F. Keenan v. Luis R. Jigante*³³ rules that unlike statutory law the common law of the United States provides no right for a clergyman to discover in court a penitent's information. The statutes in force establish that the secrecy of confession or some confidential message to a clergyman by virtue of the nature of his professional activity, as a spiritual mentor, shall not be violated unless a person making the said confession or message renounces judicial immunity for the sake of his/her communication with a cleric.

On the basis of the provisions of the First Amendment to the US Constitution the precedent practice of the American courts of law has been laid down, according to which in certain cases it is impossible to disclose information contained in the church records.

3. The decision of the Court of Appeal of the Fifth Circuit of Texas in the case of 1992 *The Center for Assistance to the Church "The Word of Faith" vs. Morales*³⁴ states that the Attorney General had no right to investigate the case and seize the church records since in that case his actions were supposed to be unconstitutional. One of the arguments of the Court of Appeal of the Fifth Circuit of Texas in favor of such a conclusion is the assumption that any such investigation could eventually result in the permanent government control and regulation of religious organizations' activities. Another assumption is that such actions of the Attorney General could lead to an assessment of the legitimacy of the religious activity itself and it is, in the opinion of the court, inadmissible.

³³ Matter of John F. Keenan, Deputy Attorney-General, as Special State Prosecutor, Respondent, v. Louis R. Gigante, Appellant. Decision of Court of Appeals of the State of New York of 08.05.1979.

³⁴ Anglim C.T. *Encyclopedia of religion and the Law in America*. Second Edition. Amenia (NY, USA): Grey House Publishing, Inc., 2009. 880 p. P. 114.

The study of the given judicial practice shows that in the United States respect for the religious feelings of citizens and the norms of the church law is big enough. The government does not seek to control and regulate the activities of the religious organizations leaving them the right to interact with the government bodies on an exclusively voluntary basis. These facts prove a high level of significance the canon law rules enjoy in a secular country.

V. RESPONSIBILITY OF THE CLERGY FOR DIVULGING THE SEAL OF CONFESSION

According to O.V. Starkov, violations of the canons of a particular church are signs of a church crime.³⁵

Not every minister has the right to take a confession but only a priest who has been approved by a bishop (the highest ranks of the clergy like a bishop, archbishop, metropolitan) and from that moment on he is called a confessor.

In particular, the requirements for a priest being dignified (including a confessor) are as follows:

- a priest needs a much greater purity than the rest, and who needs greater purity, then there are more cases to be blackened if he does not make his soul unapproachable for this by constant wakefulness and great effort of his forces;³⁶
- the greater the dignity of the priesthood is the more dangers he faces, because one good passage of the epic congregation can ascend to heaven, and one malfunction in this matter can plunge to hell;³⁷
- not the same... we will bear punishment if we sin, and before the priesthood was honored, and having been honored by it; in the latter case the punishment will be much graver. For those who, having been given such a rank, have not become the best, they will rightly be

³⁵ Kriminoteologiya: religioznaya prestupnost' [Criminology; Religious crime]. Ed. by O.V. Starkov. St. Petersburg, R. Aslanov YUridicheskij tsentr Press publ., 2004. P. 386.

³⁶ Svt. Ioann Zlatoust, 44, 469. URL: http://azbyka.ru/otechnik/Ioann_Zlatoust (accessed 21 August 2018).

³⁷ Svt. Ioann Zlatoust, 54, 842. URL: http://azbyka.ru/otechnik/Ioann_Zlatoust (accessed 21 August 2018).

subjected to the strictest punishment ever. The greatness of the dignity is naturally made messed up to a greater punishment.³⁸

One can safely say, the requirements and warnings for entering the rank are strict enough, but a priest, like any person, can make a mistake, willingly or unwillingly, and reveal the information of repentance known only to him.

The reasons for violating the seal of confession may be different: prevention of the upcoming crime known from confession, mercenary purposes (often inheritance-related), loquacity in the presence of other people, negligence, etc.

Under the church or, in other words, canon law, no priest can break the seal of confession under any circumstances. This is strictly prohibited by the 120th rule of Nomocanon of the Grand Book: for the revelation of the sin of the confessed a spiritual father is forbidden for three years in service, and every day must bow one hundred times.³⁹

In addition, at present, by a decision of the church court of the Russian Orthodox Church,⁴⁰ a priest may be subjected for violation of the secrecy of confession to excommunication depending on the severity of the damage done to the confessed and the number of people to whom this secret was released. Excommunication means a priest loses his rank of a confessor and becomes a deacon, i.e. a low rank in the church hierarchy which is forbidden to carry out any church services except in the presence of another priest or bishop.

In the Orthodox Church, there are penalties for priests who break this “seal” — with the most severe of them being *defrockment* (which is the most severe punishment a priest can face apart from excommunication). These penalties stand as a reminder of the seriousness with which a priest ought to treat the Seal of Confession. This acts as a deterrent against breaking the seal of Confession for any reason.

³⁸ Prp. Isidor Pelusiot, 62, 343. URL: http://azbyka.ru/otechnik/Isidor_Pelusiot (accessed 21 August 2018).

³⁹ Dolzhna li byt' tajnoj tajna ispovedi [Should there be a secret of confession?]. URL: <http://www.nnews.nnov.ru/news/2014/12/10/24239> (accessed 21 August 2018).

⁴⁰ Polozhenie o cerkovnom sude Russkoj Pravoslavnoj Cerkvi [Regulations on the Church court of the Russian Orthodox Church]. URL: <http://www.patriarchia.ru/db/text/428440.html> (accessed 21 August 2018).

Considering liability of priests, it should be noted that the prohibition to reveal someone else's secrets for the clerics is established only by the norms of canon law. Consequently, it follows that a priest must be held liable for the dissemination of information known to him solely according to the canonical norms.

Thus, a priest, who, in the process of confession, becomes aware of a committed, being committed or plotted crime, faces a two-fold problem. On the one hand, before the people and society, as a citizen, he must take measures to help solve a crime. On the other hand, violation of the secrecy of confession makes him a person who commits a church crime.

This is where the ambiguity of the legal status of a clergyman lies. It also explains the term "to bear the cross,"⁴¹ which priests are warned about while taking the dignity.

VI. CONCLUSION

This study shows that the content of the legal regulation of the seal of the confessional in different countries and during different historical periods is basically similar — the confidentiality has never been absolute. At one time, the interests of the state prevailed over church canons, which was explained by unsteadiness of the state power at that time. Presently, the limitation of the absolute secrecy of confession is determined primarily by the interests of the individual. In particular, the society has witnessed numerous scandals caused by sexual freedom and crimes, and there is obviously no other way to stop them but through interaction between the church and state institutions.

This issue is under debate among Church of England bishops who are considering abolishing the seal of the confessional, which guarantees confidentiality to those who seek absolution for their sins from a priest. The role of confession has come under scrutiny as part of an inquiry into sex abuse within the Anglican Church⁴² that asked whether priests who

⁴¹ This term is usually understood as consent to the difficulties of the life and ministry of the priest.

⁴² Church of England bishops rethink secrecy of the confession. The Times. 21 September 2018. URL: <https://www.thetimes.co.uk/article/church-of-england-may-abolish-secrecy-of-confession-zwr6zw8jp> (accessed 21 September 2018).

learnt of abuse in the confessional communication were allowed to report it to the police. No agreement has been reached so far. Anglican bishops are divided over whether the guarantee of absolute confidentiality should remain today. One group admits the need to transfer the seal of the confessional from the exclusive domain of spiritual law to its joint management with secular law to create an opportunity, first off, to prevent crimes and decriminalize society. Meanwhile, others consider divulging of information received by the priest at confession inadmissible. Thus, it is the church itself that undermines its authority as an object for spiritual, secret, mystical worship and rules out the universal principle of separation of the church and state.

In this discussion, the representatives of the Anglican Church, like representatives of many other churches and religions, are split equally. One group stands for the absolute secrecy of the confessional and another — for the possible state intervention in church affairs, in particular, the seal of confession. It is this equal division of opinions that confirms the significance of the research in question. However, it is impossible to analyse the proposals of secular lawyers to amend the relevant legislation. The authors can safely say, to accomplish it total consent of all representatives of the church is necessary, otherwise changes of secular law do not make any sense.

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