

PRAWO DO SWOBODY ŚWIATOPOGLĄDU I RELIGII: ASPEKTY FILOZOFICZNE I PRAWNE

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Adnotacja. W artykule badane są filozoficzne i prawne zasady prawa do wolności światopoglądu i religii. Wyświetlanie od charakteru prawnego uregulowania tych stosunków społecznych opartych na tworzeniu prawa i gwarantuje swobodę wyrażania przekonań religijnych, wsparcie religijne i zapewnić prawo do swobodnego wyrażania filozoficznych sotsiofilosofskiyh przekonań religijnych, praw związków wyznaniowych. Zastosowano doktrynalne i porównawcze metody prawne. Koncepcja formułowania prawa do wolności światopoglądu i religii w aspekcie filozoficznym i prawnym. Prawo do wolności przekonań i religii w sensie prawnym i filozoficznym – to zbiór norm prawnych, który ustanawia prawa i obowiązki stworzone dla obiektów religii, aby zapewnić ich zaspokojenia potrzeb duchowych i postawy. Jest udowodnione, że rozwój instytucji prawnej regulacji stosunków społecznych wymaga ujednoczenia ustawodawstwa krajowego z podstawowymi przepisami międzynarodowymi, wdrożenia tych przepisów.

Słowa kluczowe: wolność światopoglądów, wolność wyznania, wolność sumienia, organizacja religijna.

THE RIGHT TO FREEDOM OF CONVICTIONS AND RELIGION: PHILOSOPHICAL AND LEGAL ASPECTS

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Abstract. The article deals with the philosophical and legal bases of the right to freedom of convictions and religion. The legal nature of regulating social relations based on the creation of rights and guarantees to free expression of religious beliefs, satisfaction of religious needs, promotion of the right to free expression of ideological socio-philosophical spiritual views, and protection of the rights of religious organizations is demonstrated. Doctrinal and comparative legal methods are applied. The concept of the right to freedom of convictions and religion in the philosophical and legal aspect is formulated. The right to freedom of convictions and religion in the philosophical and legal sense is a set of legal norms that establish rights and create obligations for subjects of religious movements to ensure their spiritual needs and to satisfy ideological views. It is proved that the development of legal regulation of this institution of public relations requires the unification of the national legislation with major international legal acts, the implementation of these acts.

Keywords: freedom of convictions, freedom of religion, freedom of conscience, religious organization.

Introduction. The crisis of inter-confessional relations in Ukraine has become a consequence of political processes, external armed aggression and inefficiency of

international human rights institutions. Under such conditions, the free expression of convictions and religion run up against the problems of legal nihilism, both on the part of the state and the participants of religious movements – believers. As a result, the issues of the origins of legal ensuring freedom of convictions and religion are actualized, where the philosophical and legal origins of the social precondition of legal provision are of primary importance, which embraces the principles of legal regulation of this social sphere.

Analysis of recent researches and publications. The issues of philosophical and legal principles of the right to freedom of convictions and religion were investigated as a separate block in the context of various problems concerning the peculiarities of the legal provision of religious relations. Such scholars as E. Martyniuk, A. Nikitchenko, D. Kalach, A. Kovban, O. Lavryk, V. Novikov, U. Oliinyk, O. Shchadylo and others considered these questions. At the same time, the issues of interdependence of legal regulation and provision of guaranteeing the requirements for the free expression of freedom of religion, ensuring the harmonization of the national legislation with the international norms of the mentioned sphere of regulation remain insufficiently investigated.

The purpose of this article is to study the philosophical and legal principles of the right to freedom of convictions and religion. **The task** of the article is to formulate the concept of the right to freedom of convictions and religion in the philosophical and legal aspect.

Presentation of the main material. Many religious systems in the world generate religious pluralism. New religious entities compete with traditional religions. Man has an opportunity to choose various religions or reject any religion. This is the meaning of the concept of «freedom of convictions».

Historical and modern experience shows that religion affects the development of spiritual culture, provides traditionalism of its historical existence, but spiritual freedom is of particular importance in the development of culture. The spiritual freedom is universal human value; people with different convictions, which are united by humanistic conceptions of the world, need it.

Transformations take place in various spheres of social life: political, social, cultural, religious. Undoubtedly, within the framework of these transformations, the phenomenon of freedom of convictions is of particular importance. It represents a complex system, which contains a large number of interconnected elements that characterize its essence. In the research literature, there are many definitions of the concept of «freedom of convictions», but none of them can claim absolute universality.

The question of the right to freedom of convictions is always one of the most urgent for religious scholars, philosophers, cultural scientists, and lawyers. Complex processes of the formation and development of the institutions of civil society and law-governed state in Ukraine require a critical revision of some doctrines and theories.

Freedom of convictions and religion and freedom of human beliefs as social (natural) phenomena belong to basic human rights, namely, personal. Basic human rights are certain opportunities that are necessary for the existence and development of man in specific historical conditions that are objectively predetermined by the level of the development of humanity and must be universal and equal for all people. The terms of human «rights» and «freedoms» are practically used as synonyms. If the meaning of the concept of «human rights» is revealed through the philosophical category of «opportunity», then such an interpretation embraces human freedoms (Lavryk, 2011, p. 71).

There is no period in the history of philosophical and legal thought when scientists would not try to answer the question about freedom. As a political requirement, the slogan «freedom of convictions» appeared in the era of bourgeois-democratic revolutions, but it was prepared by the whole course of historical development.

The attitude towards freedom, rather, its recognition as a universal human being, evolved over time. As a result of changing centuries, power, economic formations, scientific discoveries, the development of scientific thought and, in particular, humanitarian sciences in modern society, freedom is revealed as absolute good (with the exception of countries with a totalitarian regime). At earlier stages of the development of society and state, freedom was a privilege only for a certain social class; persons close to authority owned it, freedom of the common people was rather limited. In ancient times, the existence of slavery did not contradict the philosophical and legal thought of that time. In this aspect, Aristotle stated, «Obviously, in any case, some people are free by nature, others are slaves, and it is both useful and fair for the latter to be slaves». However, in ancient Greece, the foundations of the future theory of natural law were laid. Such founders were the Sophists, who declared the equality of people as an axiom, because people "relatives, legal relatives and fellow citizens – by nature, and not by law" (Hippias) (Shchadylo, 2016, p. 458).

An ancient author substantiated the idea of freedom of conscience; a person must «act, perform his actions in accordance with his conscience and mind, and create his life according to his own project». A free person, in his opinion, is one who «works, behaves according to the requirements of his conscience and is not afraid of any misfortunes and torments». These ideas were further developed in early Christianity. Analysis and understanding of the history of formation, especially the early stage of the development of Christianity, its institutionalization, legalization and legitimization in the difficult conditions of the socio-economic, political and religious life of the Roman Empire, works of philosophers, Christian apologists, and church fathers testify that early Christian thought included the idea of freedom of religious conscience, and it is caused by a dogmatic claim to the truth, rigid intolerance to the heterodox believers, free-thinkers.

A specific era of forms of manifesting the elements of the formation of freedom of religious conscience, its theoretical justification was the Middle Ages. Freedom of conscience was not considered as a concept. The idea of freedom of conscience was not accepted by the Catholic and Orthodox churches.

In the Middle Ages, the cultural and social environment dominated the personality, whose existence was under the unceasing ecclesiastical supervision. During that period, the idea of human rights, including the right to freedom of conscience, religion, was formed in the doctrine of the Italian political thinker Marsilius of Padua (1275–1324). In his political treatise «The Defender of Peace» (1324), Marsilius of Padua actively defended the principles of absolute freedom (inviolability) of religious beliefs. That is, it was about the principle of freedom of conscience, freedom of religion. Marsilius of Padua affirmed the principle of «independence of the rights of citizens from their religious affiliation». No one, in his opinion, should be punished for religious views, which are a private matter of a person, a matter of his conscience. The philosopher promoted the principle of separation of church and state, the equality of all believers before the law (Oliinyk, 2016, p. 143).

Analyzing the development of the right to freedom of convictions in the era of the Reformation, one should pay attention that this is one of the key stages of its formation. The Reformation changed the spiritual atmosphere of Europe. The reformational algorithm of «cultural evolution from dogmatism to freedom», from external religiosity to the inner world of man, was initiated and acted. The Reformation opened the fact of internal freedom of man, the path to freedom of religion, and proclaimed the principle of freedom of convictions. M. Luther substantiated it in the theological sense. He revealed the essence of the principles of freedom of religion, freedom of beliefs, freedom of convictions, and freedom of serving God (Kozlenko, 2014, p. 20).

In the age of Enlightenment, a prominent figure of that era, Charles Montesquieu, stated in his work «The Spirit of the Laws», «There is no word that would receive so many diverse meanings and would have such a different influence on people as the word «freedom». Indeed, the concept of «freedom» is extremely multifaceted. It includes personal, political, social, economic, and legal aspects. Thus, in the interpretative dictionary of the contemporary Ukrainian language, freedom is defined as: 1) lack of political oppression, harassment and constraints; will; 2) stay not under arrest, not in custody, not in captivity; 3) life, existence without dependence on anyone, ability to behave at own discretion; 4) ability to operate without barriers and prohibitions in any industry; 5) possibility of manifestation of the subject's will under conditions of awareness of the laws of the development of nature and society; 6) facility, no difficulty in anything; 7) simplicity, unconstraint in behavior; 8) free from labor time (Shchadylo 2016, p. 455).

In accordance with the above concepts, man is an integral part of society, and therefore it is impossible to speak about his personal freedom outside of connection with society. After all, as you know, the personal freedom of a particular individual is limited by the rights of another. The regulator of social relations, in particular the regulator of the limits of social freedom, is law. Freedom cannot be real if it has no legal form and is not implemented through the mechanisms of legal regulation (subjective rights and legal obligations, permissions, prohibitions, duties, legal incentives, legal restrictions). In other words, law is known through freedom, becomes its measure because of a combination of legal restrictions and legal incentives.

Freedom of convictions is one of the most important social phenomena that is inextricably linked with ideological issues; however, it does not completely coincide with the concept of freedom of convictions. In the conceptual framework, freedom of convictions is one of the most valuable freedoms of man. Other human rights and freedoms, honor and dignity, and ideological foundations are associated with it and sometimes based on it (Malyshko, 2005, p. 5).

In the most general philosophical sense, the interpretation of freedom of convictions manifests itself as human internal ability to evaluate, comprehend different world-view paradigms, freely, without any external forceful stimulation, only by call of own convictions, to constitute oneself and act, exercise deeds, creatively self-actualizing in the system of coordinates of own ideological choices. In philosophical interpretation, freedom of convictions is a specific selective and coordinated activity of consciousness, world outlook and the will of the individual, directed toward self-determination in the spiritual reality regarding limit vital-life principles of being (Kryvych, 2007, p. 31).

Some researchers consider freedom as a certain structure, an integral system consisting of certain elements. Among such components of freedom, A. Kazamirov

emphasizes the internal and external aspects of freedom. The internal aspect (internal sphere of the individual's consciousness) includes freedom of conscience as the freedom of personal conviction; freedom of thought and feeling; freedom of thought on practical, speculative or religious matters; freedom of expression and dissemination of thoughts. The external aspect (the sphere of external relations with other people) includes a way of life, a choice of profession; freedom of actions (Kazamirov, 2003, p. 20).

According to M. Babii, freedom of convictions is a qualitative definition of human being, which reflects the individual's ability to self-determination in the spiritual sphere, which is not conditioned by external forces. This is a kind of opportunity for creative self-actualization of a person based on a value-oriented choice. That is freedom of convictions acts as one of the attributes of individuality and characterizes its ability to evaluate, analyze various worldview systems, including religious ones, freely, without any external coercion, to make choices, to constitute oneself, to coordinate valuable and meaningful parameters with life principles (Babii, 2013, p. 122).

We would like to emphasize that if the category «freedom» is fixed in legal literature, then the term «conscience» has no single legal interpretation among lawyers or philosophers, it is not an element of the system of legal regulation. Freedom and conscience have a lot in common and at the same time, they are different. Conscience is often defined as the ability of a person to exercise moral self-control, to formulate independently moral obligations for himself, to demand of their fulfillment from himself and at the same time to give a critical self-assessment of his actions and actions. It is also the ability of a person to «self-determination» in actions and deeds. The latter lies at the heart of the concept of «freedom». However, each of these concepts, having a common nature and a common subject field, has its specific content, the form of manifestation, its own evaluation criteria and functions, its foundations.

In general, the category of "freedom of convictions" covers its content of the spiritual and ideological life of a person, in which the person can freely constitute and actualize oneself. Briefly, freedom of convictions is a condition and an opportunity for free spiritual self-determination of a person, a way of self-actualization.

In the philosophical and ethical context, this category reflects the inner ability of the individual to comprehend, evaluate various moral, ideological paradigms, including religious, to make a choice based on own conscience, freely, without any external coercion, to transfer valuable and meaningful parameters into beliefs, life guides, ensuring their unimpeded self-actualization on the basis of self-determination.

The philosophical category «freedom of convictions» reveals its essence and specificity through the unity of the internal and external aspects. That is why the manifestation of the internal aspect of freedom of convictions through the process of self-determination makes it possible to understand the mechanism and content of «gaining internal spiritual experience». A well-known Russian philosopher I. Ilyin stated, «Man needs external liberty in order to become a spiritual center, to gain internal freedom. Internal freedom is nothing more than the living spirituality of man» (Ilyin, 1993, p. 176).

The content of the internal aspect of freedom of convictions (internal freedom of convictions) integrates two important points: first, autonomy, independence, sovereignty of a free subject, who is spiritually and ideologically self-identified, acquires «internal spiritual experience»; and secondly, direction of these actions (choice) towards the person himself, that is, through self-determination of spiritual, vital orientations and values.

Autonomy of the subject of freedom, plurality of values constitute an important condition for free choice. At the same time, freedom of convictions appears to be a condition and a means, an opportunity for self-affirmation, self-development, and self-improvement of the individual. In this context, self-actualization is a way of forming a vital goal, and a means of achieving it, and a result. Self-actualization requires appropriate conditions, legal protection, certain limitations prescribed by law and self-restraint at the personal level.

The internal and external aspects of freedom of convictions in their inseparable unity give an opportunity to comprehend the essential meaning of this phenomenon. It should be noted that self-knowledge of a person or freedom to choose one's or another religion is also subject to the proposed definition of freedom of convictions. However, in this case, the latter appears as a freedom of religious beliefs and relates only to the religious sphere of an extremely wide subject field, the spiritual, moral and cultural worldview of human being.

As for the right to freedom of conscience, as a philosophical and legal concept, it includes the opportunity to make a choice of the content and direction of actions, and in the presence of two conditions, the opportunity to change the existing necessity to another, which opens up the prospects of increasing freedom of conscience. The right to freedom of conscience gives the opportunity to choose an independent ideological position based on his own conscience, freely, without any external force, to make his own choices, and to be responsible for his actions and thoughts.

The right to freedom of conscience is a system-forming right in the system of human rights, which is an inalienable right of every person to satisfy ideological needs. With regard to the need for the philosophical and legal understanding of the right to freedom of conscience in modern conditions, there is acute theoretical and empirical need for it. First, the philosophical and legal reflection of the right to freedom of conscience extends the boundaries of understanding its nature, essence, conceptual foundations. Secondly, it gives an opportunity to specify the meaning of the right to freedom of conscience, its gnoseological and ontological basis. Thirdly, the need arises from the fact that the political and legal aspect of the right to freedom of conscience does not, in the theoretical and in the practical sense, exhaust the reality of the worldview with which we meet in everyday life (Oliinyk, 2016, p. 145).

From the point of view of philosophy, worldview is a set of generalized conceptions of man about himself, about the world around him, his relationship with the world, his place in the world and his life purpose. Worldview synthesizes a whole range of intellectual entities, such as knowledge, desire, intuition, faith, hope, life motives, goals, and so on. Because of this, the components of the worldview are views, convictions, principles, ideals, values, beliefs, life standards and stereotypes. According to another source, the elements of the worldview are value orientation, faith, ideals, beliefs, way of life of man and society (as a form of realization of the spiritual essence of the worldview) (Kovban, 2009, p. 278).

If the problem of freedom of the world is solved in such a wide range, then the only criterion for its implementation is conscience. That is why you can show anxiety when a large amount of materials dealing with it disappear this term. On the other hand, it is very important that the term «conscience» exists outside the legal constituent of the concept of «freedom of conscience», because it is a moral, ethical category, and denotes only the ability of a person to evaluate his actions from the point of view of morality as

good or bad. Of course, the rules of morality and law can coincide. However, if not, is it possible to restrict «freedom of conscience»?

The Ukrainian Constitution states that the exercise of the right to freedom of convictions and religion «... may be restricted by the law only in the interests of protecting civil order, health and morality of the population, or protecting the rights and freedoms of other people», Article 35 (Tancher 1968, pp. 81–82]. In democratic countries, we have examples where an official religion supports freedom of conscience for all other religious organizations and even renounces its privileges (England). In the United States, there is no legislation on freedom of conscience at all, but all researchers recognize the existence of religious freedom in this country. Modern European understanding of this problem denies any state interference in this area of human consciousness. The state, on the contrary, is obliged to give all citizens equal rights and freedoms (Martyniuk, 2009, pp. 303–304).

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Under the current legislation the content of freedom of conscience can be defined as a complex legal category regulated by norms of law and consists of interconnected structural elements: the right to profess any religion; the right to practice religious rites; the right to change religion; the right not to profess any religion; the right to propagate religion; the right to conduct atheistic propaganda; the right to charities; the right to religious education; cultural and educational religious activities; equality of all citizens before the law, regardless of their attitude to religion.

The right of every person to freedom of conscience is system-forming in the system of human rights. Without its implementation, other human rights lose much of the real content, remaining a declaration. Implementing this right, a person realizes himself, finds meaning (sense) and determines his place in life. Human contemporaneity and future depend on the way a person determines his meaning. Freedom of conscience covers the diversity of forms of orientation systems (in particular, religious), implemented on the principles of equality individually or collectively.

Freedom of conscience – the right to meet ideological needs, makes sense of existence. Freedom of conscience as the subjective right of every person is a measure of freedom of ideological choice, it embraces the right to form, choose, hold, modify, defend and disseminate beliefs, the right to hold opinions and the right to refuse them, and the right to act (not act) in accordance with convictions subject to lawful conduct. Consideration of the problem of the relationship of freedom of conscience and freedom of religion seems very important, because in scientific works and in the system of legislation we can trace their identification and substitution. In general, these concepts are close, although not identical (Novikov, 2013, p. 18).

Therefore, in an effort to avoid the centuries-old practice of dividing religious organizations into privileged and deprived privileges, the Ukrainian state proclaimed the principles of freedom of conscience and freedom of religion, separation of religious associations from the state and their equality before the law. Preconditions for introducing ideological competition between religions and confessions within the law were created. The Constitution of Ukraine guarantees equal rights to profess any religion individually or in conjunction with others or not to profess any. Watching the modern religious panorama of Ukraine, we understand that religious contradictions and conflicts are activated (Kalach, 2015, p. 82).

Conclusions and perspectives of further research. Thus, the philosophical and legal aspect of the right to freedom of convictions and religion reflects the social precondition of the legal nature of regulating such social relations as creation of rights and guarantees to free expression of religious views, satisfaction of religious needs, and promotion of the right to free will of world-view socio-philosophical spiritual views, and the protection of the rights of religious organizations. The right to freedom of convictions and religion in the philosophical and legal sense is a set of legal norms that establish rights and create obligations for subjects of religious movements to ensure their spiritual needs and to satisfy ideological views. At the same time, it should be noted that the development of legal regulation of this institution of public relations requires the unification of the national legislation with major international legal acts, the implementation of these acts, which is the prospect of further research.

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