



REVISTA INCLUSIONES

HOMENAJE A ROSA MARÍA VALLES RUIZ

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Abril / Junio

2020

ISSN 0719-4706

CUERPO DIRECTIVO

Directores

Dr. Juan Guillermo Mansilla Sepúlveda

Universidad Católica de Temuco, Chile

Dr. Francisco Ganga Contreras

Universidad de Tarapacá, Chile

Subdirectores

Mg © Carolina Cabezas Cáceres

Universidad de Las Américas, Chile

Dr. Andrea Mutolo

Universidad Autónoma de la Ciudad de México, México

Editor

Drdo. Juan Guillermo Estay Sepúlveda

Editorial Cuadernos de Sofía, Chile

Editor Científico

Dr. Luiz Alberto David Araujo

Pontificia Universidade Católica de Sao Paulo, Brasil

Editor Brasil

Drdo. Maicon Herverton Lino Ferreira da Silva

Universidade da Pernambuco, Brasil

Editor Europa del Este

Dr. Aleksandar Ivanov Katrandzhiev

Universidad Suroeste "Neofit Rilski", Bulgaria

Cuerpo Asistente

Traductora: Inglés

Lic. Pauline Corthorn Escudero

Editorial Cuadernos de Sofía, Chile

Traductora: Portugués

Lic. Elaine Cristina Pereira Menegón

Editorial Cuadernos de Sofía, Chile

Portada

Lic. Graciela Pantigoso de Los Santos

Editorial Cuadernos de Sofía, Chile

COMITÉ EDITORIAL

Dra. Carolina Aroca Toloza

Universidad de Chile, Chile

Dr. Jaime Bassa Mercado

Universidad de Valparaíso, Chile

Dra. Heloísa Bellotto

Universidad de Sao Paulo, Brasil

Dra. Nidia Burgos

Universidad Nacional del Sur, Argentina

Mg. María Eugenia Campos

Universidad Nacional Autónoma de México, México

Dr. Francisco José Francisco Carrera

Universidad de Valladolid, España

Mg. Keri González

Universidad Autónoma de la Ciudad de México, México

Dr. Pablo Guadarrama González

Universidad Central de Las Villas, Cuba

Mg. Amelia Herrera Lavanchy

Universidad de La Serena, Chile

Mg. Cecilia Jofré Muñoz

Universidad San Sebastián, Chile

Mg. Mario Lagomarsino Montoya

Universidad Adventista de Chile, Chile

Dr. Claudio Llanos Reyes

Pontificia Universidad Católica de Valparaíso, Chile

Dr. Werner Mackenbach

Universidad de Potsdam, Alemania

Universidad de Costa Rica, Costa Rica

Mg. Rocío del Pilar Martínez Marín

Universidad de Santander, Colombia

Ph. D. Natalia Milanesio

Universidad de Houston, Estados Unidos

Dra. Patricia Virginia Moggia Münchmeyer

Pontificia Universidad Católica de Valparaíso, Chile

Ph. D. Maritza Montero

Universidad Central de Venezuela, Venezuela

Dra. Eleonora Pencheva

Universidad Suroeste Neofit Rilski, Bulgaria

Dra. Rosa María Regueiro Ferreira

Universidad de La Coruña, España

Mg. David Ruete Zúñiga

Universidad Nacional Andrés Bello, Chile

Dr. Andrés Saavedra Barahona

Universidad San Clemente de Ojrid de Sofía, Bulgaria

Dr. Efraín Sánchez Cabra
Academia Colombiana de Historia, Colombia

Dra. Mirka Seitz
Universidad del Salvador, Argentina

Ph. D. Stefan Todorov Kapralov
South West University, Bulgaria

COMITÉ CIENTÍFICO INTERNACIONAL

Comité Científico Internacional de Honor

Dr. Adolfo A. Abadía
Universidad ICESI, Colombia

Dr. Carlos Antonio Aguirre Rojas
Universidad Nacional Autónoma de México, México

Dr. Martino Contu
Universidad de Sassari, Italia

Dr. Luiz Alberto David Araujo
Pontificia Universidad Católica de Sao Paulo, Brasil

Dra. Patricia Brogna
Universidad Nacional Autónoma de México, México

Dr. Horacio Capel Sáez
Universidad de Barcelona, España

Dr. Javier Carreón Guillén
Universidad Nacional Autónoma de México, México

Dr. Lancelot Cowie
Universidad West Indies, Trinidad y Tobago

Dra. Isabel Cruz Ovalle de Amenabar
Universidad de Los Andes, Chile

Dr. Rodolfo Cruz Vadillo
Universidad Popular Autónoma del Estado de Puebla, México

Dr. Adolfo Omar Cueto
Universidad Nacional de Cuyo, Argentina

Dr. Miguel Ángel de Marco
Universidad de Buenos Aires, Argentina

Dra. Emma de Ramón Acevedo
Universidad de Chile, Chile

Dr. Gerardo Echeita Sarrionandia
Universidad Autónoma de Madrid, España

Dr. Antonio Hermosa Andújar
Universidad de Sevilla, España

Dra. Patricia Galeana
Universidad Nacional Autónoma de México, México

Dra. Manuela Garau
Centro Studi Sea, Italia

Dr. Carlo Ginzburg Ginzburg
Scuola Normale Superiore de Pisa, Italia
Universidad de California Los Ángeles, Estados Unidos

Dr. Francisco Luis Girardo Gutiérrez
Instituto Tecnológico Metropolitano, Colombia

José Manuel González Freire
Universidad de Colima, México

Dra. Antonia Heredia Herrera
Universidad Internacional de Andalucía, España

Dr. Eduardo Gomes Onofre
Universidade Estadual da Paraíba, Brasil

Dr. Miguel León-Portilla
Universidad Nacional Autónoma de México, México

Dr. Miguel Ángel Mateo Saura
Instituto de Estudios Albacetenses "Don Juan Manuel", España

Dr. Carlos Tulio da Silva Medeiros
Diálogos em MERCOSUR, Brasil

+ Dr. Álvaro Márquez-Fernández
Universidad del Zulia, Venezuela

Dr. Oscar Ortega Arango
Universidad Autónoma de Yucatán, México

Dr. Antonio-Carlos Pereira Menaut
Universidad Santiago de Compostela, España

Dr. José Sergio Puig Espinosa
Dilemas Contemporáneos, México

Dra. Francesca Randazzo
Universidad Nacional Autónoma de Honduras, Honduras

REVISTA INCLUSIONES

REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

Dra. Yolando Ricardo

Universidad de La Habana, Cuba

Dr. Manuel Alves da Rocha

Universidade Católica de Angola Angola

Mg. Arnaldo Rodríguez Espinoza

Universidad Estatal a Distancia, Costa Rica

Dr. Miguel Rojas Mix

*Coordinador la Cumbre de Rectores Universidades
Estatales América Latina y el Caribe*

Dr. Luis Alberto Romero

CONICET / Universidad de Buenos Aires, Argentina

Dra. Maura de la Caridad Salabarría Roig

Dilemas Contemporáneos, México

Dr. Adalberto Santana Hernández

Universidad Nacional Autónoma de México, México

Dr. Juan Antonio Seda

Universidad de Buenos Aires, Argentina

Dr. Saulo Cesar Paulino e Silva

Universidad de Sao Paulo, Brasil

Dr. Miguel Ángel Verdugo Alonso

Universidad de Salamanca, España

Dr. Josep Vives Rego

Universidad de Barcelona, España

Dr. Eugenio Raúl Zaffaroni

Universidad de Buenos Aires, Argentina

Dra. Blanca Estela Zardel Jacobo

Universidad Nacional Autónoma de México, México

Comité Científico Internacional

Mg. Paola Aceituno

Universidad Tecnológica Metropolitana, Chile

Ph. D. María José Aguilar Idañez

Universidad Castilla-La Mancha, España

Dra. Elian Araujo

Universidad de Mackenzie, Brasil

Mg. Rumyana Atanasova Popova

Universidad Suroeste Neofit Rilski, Bulgaria

CUADERNOS DE SOFÍA EDITORIAL

Dra. Ana Bénard da Costa

*Instituto Universitario de Lisboa, Portugal
Centro de Estudios Africanos, Portugal*

Dra. Alina Bestard Revilla

*Universidad de Ciencias de la Cultura Física y el
Deporte, Cuba*

Dra. Noemí Brenta

Universidad de Buenos Aires, Argentina

Ph. D. Juan R. Coca

Universidad de Valladolid, España

Dr. Antonio Colomer Vialdel

Universidad Politécnica de Valencia, España

Dr. Christian Daniel Cwik

Universidad de Colonia, Alemania

Dr. Eric de Léséulec

INS HEA, Francia

Dr. Andrés Di Masso Tarditti

Universidad de Barcelona, España

Ph. D. Mauricio Dimant

Universidad Hebrea de Jerusalén, Israel

Dr. Jorge Enrique Elías Caro

Universidad de Magdalena, Colombia

Dra. Claudia Lorena Fonseca

Universidad Federal de Pelotas, Brasil

Dra. Ada Gallegos Ruiz Conejo

Universidad Nacional Mayor de San Marcos, Perú

Dra. Carmen González y González de Mesa

Universidad de Oviedo, España

Ph. D. Valentin Kitanov

Universidad Suroeste Neofit Rilski, Bulgaria

Mg. Luis Oporto Ordóñez

Universidad Mayor San Andrés, Bolivia

Dr. Patricio Quiroga

Universidad de Valparaíso, Chile

Dr. Gino Ríos Patio

Universidad de San Martín de Porres, Perú

**REVISTA
INCLUSIONES**
REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

Dr. Carlos Manuel Rodríguez Arrechavaleta
Universidad Iberoamericana Ciudad de México, México

Dra. Vivian Romeu
Universidad Iberoamericana Ciudad de México, México

Dra. María Laura Salinas
Universidad Nacional del Nordeste, Argentina

Dr. Stefano Santasilia
Universidad della Calabria, Italia

Mg. Silvia Laura Vargas López
Universidad Autónoma del Estado de Morelos, México

**CUADERNOS DE SOFÍA
EDITORIAL**

Dra. Jaqueline Vassallo
Universidad Nacional de Córdoba, Argentina

Dr. Evandro Viera Ouriques
Universidad Federal de Río de Janeiro, Brasil

Dra. María Luisa Zagalaz Sánchez
Universidad de Jaén, España

Dra. Maja Zawierzeniec
Universidad Wszechnica Polska, Polonia

Editorial Cuadernos de Sofía
Santiago – Chile
Representante Legal
Juan Guillermo Estay Sepúlveda Editorial

Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:





REX



UNIVERSITY OF
SASKATCHEWAN



Universidad
de Concepción

BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN

Hellenic Academic Libraries Link

HEAL LINK

Σύνδεσμος Ελληνικών Ακαδημαϊκών Βιβλιοθηκών

LEGAL STATUS OF RELIGIOUS ORGANIZATIONS

Dr. (C) Alexander Nikolaevich Kokorev

Russian State Social University (RSSU), Russian Federation
ORCID ID: 0000-0002-8166-4663
KokorevAN@rgsu.net

Dr. (C) Maria Alexandrovna Volkova

Russian State Social University (RSSU), Russian Federation
ORCID ID: 0000-0001-5928-6929
mvolkova2013@bk.ru

Dr. (C) Alla Andreevna Neznamova

Russian State Social University (RSSU), Russian Federation
ORCID ID: 0000-0002-7534-6327
NeznamovaAA@rgsu.net

Lic. Alena Nikolaevna Vakulenko

Russian State Social University (RSSU), Russian Federation
ORCID ID: 0000-0002-2700-6694
alena.vakulenko.vn@yandex.ru

Fecha de Recepción: 23 de diciembre de 2019 – **Fecha Revisión:** 27 de enero de 2020

Fecha de Aceptación: 16 de marzo de 2020 – **Fecha de Publicación:** 01 de abril de 2020

Abstract

Within the context of reforming civil legislation and legislation on freedom of religion and the development of pluralism of opinions regarding the role of subjects of religious worship in a secular state, the issues of the content and structure of the legal status of religious organizations and their relationships with other participants in civil relations are of particular relevance. However, these issues cannot be resolved without a clear understanding of the status of religious organizations in the Russian Federation.

Keywords

Religious organizations – Types of religious organizations – Legal status

Para Citar este Artículo:

Kokorev, Alexander Nikolaevich; Volkova, Maria Alexandrovna; Neznamova, Alla Andreevna y Vakulenko, Alena Nikolaevna. Legal status of religious organizations. Revista Inclusiones Vol: 7 num Especial (2020): 424-435.

Licencia Creative Commons Attribution Non-Comercial 3.0 Unported
(CC BY-NC 3.0)

Licencia Internacional



DR. (C) ALEXANDER NIKOLAEVICH KOKOREV / DR. (C) MARIA ALEXANDROVNA VOLKOVA
DR. (C) ALLA ANDREEVNA NEZNAKOVA / LIC. ALENA NIKOLAEVNA VAKULENKO

Introduction

The Constitution of the Russian Federation includes a number of important provisions related to ensuring freedom of conscience, religion and the activities of religious associations. According to Article 14 of the Constitution of Russia: "1. The Russian Federation is a secular state. No religion can be established as a state or compulsory religion. 2. Religious associations are separated from the state and are equal before the law".

In constitutional and legal studies, despite the active development of the problem of the legal status of the individual, the issues of the definition of the concept and elements of the legal status of public legal entities, including religious associations, are studied very poorly.

The term "legal status" is analyzed in the fundamental works of Komarov¹, Dobrynin², Bezuglov and Soldatov³, Kozlova and Kutafin⁴, who interpreted the content of this definition in different ways. Now, this definition is ambiguous, complex and controversial. Thus, Terekhov⁵ considers the structure of legal status as a set of elements – legal personality, legal principles, rights, freedoms and obligations, legal guarantees of their implementation and legal responsibility. Voevodin⁶ also identifies the following components of the analyzed concept: citizenship; legal personality, principles, constitutional (basic) rights and freedoms of man and citizen, duties, guarantees. Isaeva⁷ considers this interpretation of the list of elements of the legal status of the individual to be too extended. At the same time, the majority of Russian legal scholars agree that the constituent elements of this category are rights, freedoms, and obligations. Vitruk⁸ proves that "the core, the basis of the legal status of the individual is a system of legal rights, freedoms, duties and legitimate interests of the individual in their unity".

It is important for the practice of constitutional regulation to analyze the elements of the status of such public legal entities as religious associations, in particular, their rights, the scope of which allows speaking about the limits of the implementation of freedom of conscience in its collective forms.

The characteristic of the rights of collective forms of worship correlates with the relations of the state and church and allows concluding about the vector of development of the state itself because religious associations are a way of organizing civil society. Thus, if religious associations have the right to maintain international relations, the opportunity to own property, perform business activities, organize institutions, mass media, and create political parties, this will be one of the evidences of the democratic direction of public

¹ S. A. Komarov, *Obshchaya teoriya gosudarstva i prava: uchebnik* (Moscow: Yurait, 1997).

² N. M. Dobrynin, *Konstitutsionnoe (gosudarstvennoe) pravo Rossiiskoi Federatsii* (Novosibirsk: 2007).

³ A. A. Bezuglov & S. A. Soldatov, *Konstitutsionnoe pravo Rossii Vol: 1* (Moscow: 2001).

⁴ E. I. Kozlova & O. E. Kutafin, *Osnovy pravovogo statusa lichnosti*. In *Konstitutsionnoe pravo Rossii: uchebnik* (Moscow: 2006).

⁵ O. N. Terekhov, *Problemy razvitiya konstitutsionno-pravovogo statusa religioznykh obedinenii: dis. kand. jurid. nauk* (Moscow: 2004).

⁶ L. D. Voevodin, *Yuridicheskii status lichnosti v Rossii: ucheb. posobie* (Moscow: 1997).

⁷ A. A. Isaeva, "Sravnitel'no-pravovoi analiz konstitutsionnykh prav religioznykh obedinenii", *Vestnik Tomskogo gosudarstvennogo universiteta*, num 437 (2018): 210-217.

⁸ N. V. Vitruk, *Obshchaya teoriya pravovogo polozheniya lichnosti* (Moscow: 2018).

policy, as well as the great involvement of the religious population in solving socially important issues. If only permitted religions are active in the country, the acts of worship are performed only in places previously agreed with the authorities, the texts of sermons are subject to preliminary approval, etc., this indicates a high degree of state control over religious associations and church visitors, undemocratic tendencies in state development.

The above explains the importance of addressing the problem of the scope and characteristics of the legal status of religious associations. Sergeev⁹ mentioned that due to the clear development of the structure of the legal status of the individual, many authors, when defining the elements of the legal status of collective subjects (religious associations), as a rule, the structure of the legal status of a man and citizen, mainly used a set of rights, freedoms, and responsibilities that were inherent to a person as a subject of legal relations arising in the process of implementation of rules of all branches of law. According to Bespalov¹⁰, the civil status of legal entities, as well as individuals, is a set of legal elements that determine the scope of rights and obligations: legal capacity, capacity, responsibility, rights and obligations, etc.

A legal entity, unlike an individual, is subject to state registration not only for the purpose of its identification but also for the establishment of the fact of its formation (incorporation). Thus, the Civil Code of the Russian Federation defines a civil legal status of religious organizations through general requirements to the charter and its contents, the competence of the management bodies of a religious organization and the legal regime of its property. Other issues affecting the legal status of religious organizations and the specifics of their activities are determined by the Federal Law "On Freedom of Conscience and Religious Associations" and the internal regulations (internal documents) of a religious organization. Some issues of the content of such elements of the civil status of religious organizations, as legal personality and termination of the activities of subjects of religious worship, were considered by Ananeva and Khlystov¹¹ and Kirsanova¹², and the analysis of individual rights and obligations of religious structures was performed by Zaitsev¹³ and Isaeva¹⁴.

Methods

The methodological basis of the study was made up of general scientific and specific legal methods of cognition, providing the comprehensiveness and interconnectedness of the studied phenomena: historical-legal, formal-legal, comparative-

⁹ P. V. Sergeev, "Osobennosti grazhdansko-pravovogo statusa religioznoi organizatsii kak subekta kommercheskoi deyatel'nosti", *Politika, gosudarstvo i pravo*, num 8 (2012). Retrieved February 7, 2019, from <http://politika.snauka.ru/2012/08/506>

¹⁰ A. Yu. Bespalov; Yu. F. Bespalov; D. V. Gordeyuk; E. V. Gordeyuk; Z. V. Kamenev; A. Yu. Kasatkina; N. V. Letova; S. G. Lidzhieva; K. N. Saprykin; A. A. Sevalkin & A. A. Fedotova, *Chastnoe pravo: problemy teorii i praktiki* (Moscow: Prospect, 2016).

¹¹ K. Ya. Ananeva & M. V. Khlystov, "Religioznaya organizatsiya kak forma yuridicheskogo litsa", *Yuridicheskaya nauka*, num 4 (2016): 31-38.

¹² A. V. Kirsanova, "Ponyatiya "pravosubektnost", "pravosposobnost", "deesposobnost yuridicheskikh lits", *Yuridicheskii vestnik Samarskogo universiteta*, Vol: 1 num 2 (2015): 134-141.

¹³ I. A. Zaitsev, "Prava i obyazannosti religioznykh obedinenii v zakonodatel'stve Rossiiskoi Federatsii", *Vestnik Moskovskogo universiteta MVD Rossii*, num 5 (2017): 108-115.

¹⁴ A. A. Isaeva, "Srovnitel'no-pravovoi analiz konstitutsionnykh prav religioznykh obedinenii", *Vestnik Tomskogo gosudarstvennogo universiteta*, num 437 (2018): 210-217.

legal, etc. The principal method used was the system-structural method, which allowed revealing the legal nature of the status of religious organizations.

The combination of historical-legal and comparative-legal methods helped to identify the specifics of the impact of historical conditions and the diversity of legal systems on the formation of models of the legal status of subjects of religious worship, to identify their impact on the development of religious organizations in the Russian Federation and determine the legal status of the latter.

The study and comparison of works of domestic and foreign lawyers in the considered area with the use of the secularistic approach to the analysis and development of the civil legislation on freedom of conscience and on religious associations allowed formulating and substantiating the main directions of development of rulemaking for the formation and structural maintenance of the definition of the legal status of religious organizations and legal improvement of their regulation.

The formal legal method provided an opportunity to analyze the law governing the legal nature of the origin (creation), functioning and termination of religious organizations as subjects of civil law relations.

Results

1. On the basis of a comparative legal analysis of the opinions of domestic and foreign legal scholars, as well as the rules formalized in the Constitution of the Russian Federation, federal laws of Russia and foreign states on determining the legal status of religious associations, it can be concluded that there are legal contradictions in Russia that require legislative improvement.

2. The recognition of religious organizations as an independent organizational and legal form of noncommercial legal entities in the current legislation is quite justified since they have significant legal features of civil status, characterized by the following:

- the purpose expressed in the joint worship; performing divine service, other religious rites, and ceremonies; teaching religion and religious education of the followers;

- the presence of a special title document (the charter of a religious organization) and the founder(s) of the subject of religious worship;

- organizational unity (being collective entities, religious entities act as a whole, with their own goals and objectives, with different organizational structure and management bodies);

- the presence of separate property;

- legal capacity, competency, and independent property liability;

- special procedures for creation and reorganization (liquidation).

3. Religious associations should get a status that would guarantee all the necessary powers to perform the full range of their activities, which religious groups and local religious organizations that are not part of the structure of a centralized religious

organization of the same faith within ten years from the date of their state registration when they were created do not have today. With regard to religious organizations, the solution to this problem is possible by reducing the period during which they have a limited status or its implementation only for really new creeds.

Discussion

Classification of religious organizations: international practice

In recent years, religion has taken an increasingly important place in public life, which draws the attention of each state to the need to determine its attitude toward it. As a rule, the established principles of interaction of public authorities and religion and its organized structures do not remain static and are constantly adjusted at the level of constitutional provisions, sectoral legislation, and judicial practice.

According to Isaeva, the type of secular model implemented in the state has significant impact on the organizational and legal forms of religious associations formalized in national legislation, as well as on the prospects for the peaceful coexistence of followers of various faiths in a particular society¹⁵.

Religious associations are one of the oldest types of collective formations known to mankind. In their diversity, they are compatible with the diversity of religious beliefs professed in the territory of the Russian Federation. In this regard, in order to form effective legislation, it is necessary to determine the legal status of religious associations and their interaction with representative authorities. The features of relations between the state and religious structures directly affect the manner of creation and the conditions of activity of the latter. Organizational and legal forms can be very different: they are either nonprofit organizations (associations, trusts, foundations, charitable organizations) or specially provided organizational forms (confessional communities, religious organizations, religious associations). In foreign practice, general trends have been formed on this issue, based on the research of such foreign legal scholars as the Hungarian researcher Schanda¹⁶ and the American scientist Durham¹⁷. They proposed a number of state models in relation to the legal status of religious societies and the requirements for their registration. Thus, based on these criteria, the Hungarian researcher identifies four types of countries.

The first type of the states (Albania, Georgia, Turkey) does not provide any special organizational and legal form of a religious community, which is registered as one of the types of noncommercial legal entities (for example, trust, foundation, association). The second type includes states, in which the "open registration system" is implemented. These are states (Armenia, Belarus), where religious associations are defined as an independent type of nonprofit organizations, with special requirements for their registration and activities.

¹⁵ A. A. Isaeva, "Vnedrenie "dvukhurovnevoi sistemy" religioznykh obedinenii v Rossii: analiz i otsenka", *Sravnitelnoe konstitutsionnoe obozrenie*, num 6 (2015): 106-124.

¹⁶ B. Schanda, *Status of Religious or Belief Communities*. In *Supplementary Human Dimension Meeting on Freedom of Religion or Belief (9-10 July 2009, Hofburg, Vienna)* (Warsaw: OSCE, 2009).

¹⁷ W. C. Durham, "Legal Status of Religious Organization: A Comparative Overview", *The Review of Faith & International Affairs*, Vol: 8 num 2 (2010): 3-14.

The third type represents the states (Austria, Hungary, Spain, Lithuania) with a "two-level system" of religious communities, which, due to historical prerequisites, cooperate more closely with the state and receive additional support from it (preferences). However, in practice, in the process of registration of relevant associations at each level, it is not always possible to implement the nondiscriminatory nature of these procedures.

The fourth type of the states (Great Britain, Greece, Denmark, Monaco) usually defines the "state" religion (church, religious community) in the Basic Law, legislation or through bilateral agreements. In contrast to the open registration system, here only one religious organization is "recognized" by the state with additional privileges assigned to it. The rest can be registered in other organizational and legal forms, for example, as a nonprofit organization or a special type of religious associations.

A slightly different model of the relationship between the state and the religious organization was proposed by Durham. It is based on two levels: a "base level" that offers organizational forms that can be used by any religious community (for example, a nonprofit organization in the form of an association) and an "upper level" that can only be reached under certain conditions. This usually follows either from an agreement concluded by a religious structure with a state (Spain, Italy, Poland), or from the status of a "recognized", "state" Church (Austria), or from the status of a state corporation (Germany). It should also be mentioned that regardless of the level at which the registration of a religious association takes place, its result would be the acquisition of the status of a legal entity sufficient for the implementation of its legal activities.

As mentioned by Isaeva, this grouping of organizational and legal forms of objects of worship is very interesting and needed from the practical point of view of determining the status of religious organizations in the Russian Federation¹⁸. However, this statement is quite controversial. Based on Russian legislation (Part 2 of Article 6 of the Federal Law "On Freedom of Conscience and Religious Associations"), religious associations can be created in the form of religious groups and religious organizations. A religious group is considered a voluntary association of citizens, formed for the purpose of joint confession and dissemination of faith, functioning without state registration and acquisition of legal personality. Thus, the authors agree with Shakhov's opinion that the current legislation does not give a religious group the legal personality of a legal entity, which means that it, not being a sound legal entity, does not have a legal opportunity to possess property¹⁹. However, religious groups, according to Part 1 of Article 7 of the Federal Law "On Freedom of Conscience and Religious Associations", have the right to use premises and other property necessary for their activities provided by members of a religious group. Therefore, the legal subjects to this property are individuals – members of a religious group. The single-subject mode of possession of property rights and obligations means that they belong to one person, but not to the whole group. Moreover, as mentioned by Dozortsev, "the absence of the status of a legal entity does not even allow religious groups to defend their rights in courts since they do not have the right to act as a plaintiff in a lawsuit. This can only be done by individual parishioners on their own behalf"²⁰.

¹⁸ A. A. Isaeva, "Vnedrenie "dvukhurovnevoi sistemy" religioznykh obedinenii v Rossii: analiz i otsenka", *Sravnitelnoe konstitutsionnoe obozrenie*, num 6 (2015) 106-124.

¹⁹ M. O. Shakhov, *Pravovye osnovy deyatelnosti religioznykh obedinenii v Rossiiskoi Federatsii* (Moscow: Publishing House of the Sretensky Monastery, 2013).

²⁰ P. N. Dozortsev, "Konstitutsionno-pravovye osnovy svobody sovesti v Rossii", *Rossiiskaya yustitsiya*, num 2 (1999).

The variety of legal formulations of the concept of religious organization does not help to clarify the civil-law status. This problem was considered by Vorobeva²¹ and Grishaev²². Both researchers mentioned that the concept of religious organizations, provided by Part 1 of Article 123.26 of the Civil Code of the Russian Federation, defining it as "a voluntary association permanently and legally residing in the territory of the Russian Federation, consisting of citizens of the Russian Federation or other persons, formed by them for the purpose of joint confession and dissemination of faith and registered in the manner prescribed by law as a legal entity (religious organization), a union of these organizations (centralized religious organization), as well as an organization created by the specified association in accordance with the law on freedom of conscience and religious associations for the purpose of joint confession and dissemination of faith and (or) coordinating authority created by the specified association", is wider in its scope than the terms of Part 1 of Article 8 of the Federal law "On Freedom of Conscience and Religious Associations". According to this article, a religious association is recognized as "a voluntary association of citizens of the Russian Federation and other persons permanently and legally residing in the territory of the Russian Federation, formed for the purpose of joint confession and dissemination of faith and registered as a legal entity in accordance with the procedure established by law". At the same time, civil legislation (Part 2 of Article 123.26 of the Civil Code of the Russian Federation) gives priority to the development of the legal status of religious organizations to the Federal Law "On Freedom of Conscience and Religious Associations", according to which the status of subjects of a religious cult is heterogeneous depending on the rights assigned to them. Thus, the narrowest legal status is provided for religious groups, the widest – for some local religious organizations, and the most complete range of rights is guaranteed to centralized religious organizations. In accordance with the law "On Freedom of Conscience and Religious Associations" (Part 3 of Article 7), religious groups are entitled to perform divine service, other religious rites and ceremonies, as well as to perform religious education of the followers. Their rights are much narrower than those of religious organizations, and they cannot produce, acquire, export, import, or distribute religious literature, printed materials, audio and video materials, or other religious items, etc.

Element composition of the legal status of religious organizations

Given this circumstance, Isaeva suggests within the framework of such an element of the legal status of a religious organization as its rights to distinguish two groups of rights – "general" and "preferential" ²³(Isaeva, 2018). "General" rights are provided to all religious organizations of the country that have the status of a legal entity, and "preferential" rights are granted only to organizations of individual faiths due to law and (or) an agreement concluded with the state. In this case, the legal personality of a legal entity arises at the moment of its creation. The legislator only notes that a local religious organization is created in accordance with the Federal Law "On Freedom of Conscience and Religious Associations" by at least ten founders, a centralized religious organization – by at least three local religious organizations or another centralized religious organization (Part 1 of Article 123.27 of the Civil Code of the Russian Federation).

²¹ Yu. Yu. Vorobeva, "Religioznye organizatsii kak institut grazhdanskogo obshchestva: osobennosti pravovogo statusa", *Administrativnoe i munitsipalnoe pravo*, num 8 (2015): 865-871.

²² S. P. Grishaev, "Religioznye organizatsii kak yuridicheskie litsa: izmeneniya v zakonodatelstve", *Grazhdanin i pravo*, num 9 (2015).

²³ A. A. Isaeva, "Srovnitelno-pravovoi analiz konstitutsionnykh prav religioznykh obedinenii", *Vestnik Tomskogo gosudarstvennogo universiteta*, num 437 (2018): 210-217

Part 2 of Article 51 of the Civil Code of the Russian Federation specifies that a legal entity is considered to be created from the moment of its state registration. Thus, for religious associations wishing to have the rights of a legal entity, state registration is a necessary condition for getting this status.

In order to perform the registration, the founder of a local religious organization or a representative of centralized religious organizations, as well as religious organizations formed by centralized religious organizations, shall submit to the Ministry of Justice of the Russian Federation or its territorial body the relevant documents specified in Article 11 of the Federal Law "On Freedom of Conscience and Religious Associations". The most important document is the Charter approved by its founders (or a founder), which is included (along with the founders) by the Civil Code of the Russian Federation in the elements of the civil-legal status of religious organizations. The content of the Charter of subjects of religious worship is determined by the provisions of civil legislation (Article 123.27 of the Civil Code of the Russian Federation) and the Federal law "On Freedom of Conscience and Religious Associations" (Article 10).

The emergence of a religious organization can occur as a result of both establishment and reorganization. Its creation is initiated by the founders. Making a decision about the establishment is the initial stage of the creation of any organization. However, the characteristic of creating a local religious organization is that its emergence is always preceded by a religious group consisting of religious citizens who have reached the age of 18 years in the number of at least ten people. They are the founders.

In civil legislation, there is no clear understanding of the role of the founder as a key element of the legal status of a legal entity in the form of a nonprofit unitary organization. When analyzing the features of the legal status of this organization, Vorobeva pays attention to the fact that this definition is synonymous with the concept of "unitary legal entity", the founders of which do not become its members and do not acquire membership rights in it (paragraph 2 of Part 1 of Article 65.1 of the Civil Code). This contradicts Part 3 of Article 123.27 of the Civil Code of the Russian Federation, according to which "the founder(s) of a religious organization may perform the functions of the governing body or members of the collegial governing body of this religious organization in accordance with the law on freedom of conscience and religious associations, the charter of a religious organization and internal regulations". At the same time, Article 53.1 of the Civil Code on the responsibility of the person authorized to act on behalf of a legal entity, members of the collegial bodies of legal entities and individuals that determine the actions of the legal entity shall not be applied in respect of such persons²⁴. Thus, there is an ambiguity of the legal position of the founders of a religious organization, their rights and, accordingly, their duties. In relation to religious organizations, there is such a feature as the presence of separate property, since the property of a religious organization is separated from the property of other persons on the basis of property rights. This, in particular, is established by Part 1 of Article 123.28 of the Civil Code of the Russian Federation, according to which religious organizations are the owners of their property, including property acquired or created by them at their own expense, as well as donated to religious organizations or acquired by them on other grounds provided by law.

²⁴ L. Sitdikova; S. Starodumova & M. Volkova, Corporate Legal Entities in the Civil Law of the Russian Federation. In A. Maloletko, N. Rupcic, & Z. Baracskaï (Eds.), *Economic and Social Development, Book of Proceedings* (2018): 715-721.

Religious organizations can use the property they have acquired only for the achievement of the goals provided by their charter. The law establishes the purpose of forming a religious association – joint worship; performing divine service, other religious rites, and ceremonies; teaching religion and religious education of the followers.

While providing religious organizations with a wide range of rights and advantages, the Federal Law "On Freedom of Conscience and Religious Associations" contains a corresponding list of obligations and a significant number of direct administrative prohibitions that emphasize the specificity of the legal status of these organizations. Sergeev specifies the obligation to identify products produced by a religious organization (Part 8 of Article 8; Part 3 of Article 17)²⁵, Zaitsev – the requirement to notify of data on the head (representative) and the citizens entering the religious group at its creation (cl. 2 of Part 2 of Article 7), and also inform registration bodies about the activity and provide them with assistance at implementation of control from their part (Part 8 of Article 8)²⁶.

The legal status of a legal entity along with capacity is also characterized by its legal capacity, i.e. the ability to independently exercise their rights. It should be mentioned that a legal entity, being a legal fiction, cannot exercise its rights and perform its duties without the help of certain legal structures. Such legal structures are its bodies created and operating in accordance with the law, other legal acts and the charter of a religious organization. Bodies can be individual (i.e. rector of a prayer congregation) and collegial (i.e., a parish meeting, parish council) (Article 53 of the Civil Code). In accordance with the model Charter, the bodies of the local Orthodox religious organization include the Diocesan Bishop, the Father Superior, the Parish Assembly, the Parish Council, the Chairman of the Parish Council, and the Audit Committee. In local religious organizations of other faiths, bodies may be called differently, in accordance with the confessional specifics.

A religious organization is also characterized by independent property responsibility. Moreover, the responsibility of a religious organization is separated from the responsibility of its founders. Thus, according to Part 4 of Article 123.28 of the Civil Code, the founders of religious organizations are not liable for the obligations of these organizations, and these organizations are not liable for the obligations of their founders.

For a religious organization, it is impossible to convert to another legal form as the performance of religious activities is only possible for religious associations (Part 3 of Article 123.26 of the Civil Code of the Russian Federation).

In accordance with Article 56 of the Civil Code of the Russian Federation, legal entities, except for institutions financed by the owner, are liable for their obligations with all their property. However, the legislator deviated from the strict application of the principle of equality before the law and considered the fact that liturgical items should not be sold for debts of a religious organization in order to avoid offending religious feelings. In

²⁵ P. V. Sergeev. Osobennosti grazhdansko-pravovogo statusa religioznoi organizatsii kak subekta kommercheskoi deyatel'nosti [Features of the Civil Status of a Religious Organization as a Subject of Commercial Activity]. *Politika, gosudarstvo i pravo*, num 8 (2012). Retrieved February 7, 2019, from <http://politika.snauka.ru/2012/08/506>

²⁶ I. A. Zaitsev. Prava i obyazannosti religioznykh obedinenii v zakonodatel'stve Rossiiskoi Federatsii [Rights and Obligations of Religious Associations in the Legislation of the Russian Federation]. *Vestnik Moskovskogo universiteta MVD Rossii*, num 5 (2017): 108-115.

accordance with Part 5 of Article 21 of the Federal law "On Freedom of Conscience and Religious Associations", movable and immovable property of liturgical purpose can not be foreclosed on claims of creditors. The list of types of property for liturgical purposes, which can not be foreclosed on the claims of creditors, should be established by the Government of the Russian Federation on the proposals of religious organizations (Article 21 of the Federal Law "On Freedom of Conscience and Religious Associations"). As of today, such a list has not been established, including due to the rarity of the occurrence of relevant situations in law enforcement practice.

An important aspect of the legal status of religious organizations is the circumstances of the termination of their activities. The grounds for suspension of activities and liquidation of subjects of religious worship are provided under Article 14 of the Federal Law "On Freedom of Conscience and Religious Associations", according to which religious organizations can be liquidated voluntarily or by court decision in the case of repeated or gross violations of the provisions of the Constitution of the Russian Federation, Federal Law "On Freedom of Conscience and Religious Associations" and other federal laws, or in the case of systematic implementation by the religious organization of activities contrary to the purposes of its creation (statutory goals). The grounds for the liquidation of a religious organization and the prohibition of its activities or the activities of a religious group in court are, in particular:

- violation of public safety and public order;
- actions aimed at extremist activities;
- coercion to destroy the family;
- encroachment on the person, rights and freedoms of citizens;
- inducement to suicide or to refuse on religious grounds to provide medical care to persons who are in danger;
- obstruction to compulsory education;
- forcing members and followers of a religious association and other persons to alienate their property in favor of a religious association;
- inducing citizens to refuse to perform civil duties established by law and commit other illegal actions.

Thus, religious organizations are not only public entities that preach a certain creed but also are participants in civil turnover, participants in property relations regulated by civil law. Such participation is necessary for the material support of the main activities of religious organizations and ensuring the achievement of their main goals. Accordingly, the basis of participation in civil turnover is the property rights of these organizations.

Conclusion

The analysis has revealed the relevance of the problem of harmonization of legislation on nonprofit organizations, including the legislation on freedom of conscience and religious associations, with the Civil Code of the Russian Federation.

Despite the change in the provisions on religious organizations (Federal Law No. 80-FZ dd. April 6, 2015 "On Amendments to the Federal Law "On Freedom of Conscience and Religious Associations" and Certain Legislative Acts of the Russian Federation", Official Internet Portal of Legal Information <http://www.pravo.gov.ru>, April 7, 2015), there are still contradictions in determining their legal status, features of concepts, types, and the way of creation. The question of unambiguous attribution of a religious organization to legal entities of a unitary type is controversial, since some types of religious associations known to sociology may exist in the form of a corporate organization.

It seems unfair to refer all organizations created by the most centralized religious organization to the organizational and legal form of a religious organization. At the same time, these subjects may be granted the rights of a religious organization, but not be recognized the one.

This indicates the need for further improvement of the provisions of the Civil Code of the Russian Federation and legislation on freedom of conscience and religious associations.

References

Ananeva, K. Ya. y & Khlystov, M. V. "Religioznaya organizatsiya kak forma yuridicheskogo litsa". *Yuridicheskaya nauka*, num 4 (2016): 31-38.

Bezuglov, A. A., & Soldatov, S. A. *Konstitutsionnoe pravo Rossii* (Vol. 1). Moscow. 2001.

Bespalov, A. Yu.; Bespalov, Yu. F.; Gordeyuk, D. V.; Gordeyuk, E. V.; Kamenev, Z. V.; Kasatkina, A. Yu.; Letova, N. V.; Lidzhieva, S. G.; Saprykin, K. N.; Sevalkin, A. A. & Fedotova, A. A. *Chastnoe pravo: problemy teorii i praktiki*. Moscow: Prospect. 2016.

Dobrynin, N. M. *Konstitutsionnoe (gosudarstvennoe) pravo Rossiiskoi Federatsii*. Novosibirsk. 2007.

Dozortsev, P. N. "Konstitutsionno-pravovye osnovy svobody sovesti v Rossii". *Rossiiskaya yustitsiya*, num 2 (1999).

Durham, W. C. "Legal Status of Religious Organization: A Comparative Overview". *The Review of Faith & International Affairs*, Vol: 8 num 2 (2010): 3-14.

Grishaev, S. P. "Religioznye organizatsii kak yuridicheskie litsa: izmeneniya v zakonodatelstve". *Grazhdanin i pravo*, num 9 (2015).

Isaeva, A. A. "Vnedrenie "dvukhurovnevoi sistemy" religioznykh obedinenii v Rossii: analiz i otsenka". *Sravnitelnoe konstitutsionnoe obozrenie*, num 6 (2015) 106-124.

Isaeva, A. A. "Sravnitelno-pravovoi analiz konstitutsionnykh prav religioznykh obedinenii". *Vestnik Tomskogo gosudarstvennogo universiteta*, num 437 (2018): 210-217.

Kirsanova, A. V. "Ponyatiya "pravosubektnost", "pravosposobnost", "deesposobnost yuridicheskikh lits". *Yuridicheskii vestnik Samarskogo universiteta*, Vol: 1 num 2 (2015): 134-141.

Kozlova, E. I. & Kutafin, O. E. Osnovy pravovogo statusa lichnosti. In Konstitutsionnoe pravo Rossii: uchebnik. Moscow. 2006.

Komarov, S. A. Obshchaya teoriya gosudarstva i prava: uchebnik. Moscow, 1997.

Schanda, B. Status of Religious or Belief Communities. In Supplementary Human Dimension Meeting on Freedom of Religion or Belief (9-10 July 2009, Hofburg, Vienna). Warsaw: OSCE. 2009.

Sergeev, P. V. "Osobennosti grazhdansko-pravovogo statusa religioznoi organizatsii kak subekta kommercheskoi deyatelnosti". Politika, gosudarstvo i pravo, num 8 (2012). Retrieved February 7, 2019, from <http://politika.snauka.ru/2012/08/506>

Sitdikova, L., Starodumova, S., & Volkova, M. Corporate Legal Entities in the Civil Law of the Russian Federation. In A. Maloletko, N. Rupcic, & Z. Baracsikai (Eds.), Economic and Social Development, Book of Proceedings (2018): 715-721.

Shakhov, M. O. Pravovye osnovy deyatelnosti religioznykh obedinenii v Rossiiskoi Federatsii. (2nd ed., enlarged). Moscow: Publishing House of the Sretensky Monastery. 2013.

Terekhov, O. N. Problemy razvitiya konstitutsionno-pravovogo statusa religioznykh obedinenii: dis. kand. jurid. nauk. Moscow. 2004.

Vitruk, N. V. Obshchaya teoriya pravovogo polozheniya lichnosti. Moscow. 2008.

Voevodin, L. D. Yuridicheskii status lichnosti v Rossii: ucheb. posobie. Moscow. 1997.

Vorobeva, Yu. Yu. "Religioznye organizatsii kak institut grazhdanskogo obshchestva: osobennosti pravovogo statusa". Administrativnoe i munitsipalnoe pravo, num 8 (2015): 865-871.

Zaitsev, I. A. "Prava i obyazannosti religioznykh obedinenii v zakonodatelstve Rossiiskoi Federatsii". Vestnik Moskovskogo universiteta MVD Rossii, num 5 (2017): 108-115.

CUADERNOS DE SOFÍA EDITORIAL

Las opiniones, análisis y conclusiones del autor son de su responsabilidad y no necesariamente reflejan el pensamiento de **Revista Inclusiones**.

La reproducción parcial y/o total de este artículo debe hacerse con permiso de **Revista Inclusiones**.