

Freedom of Conscience and Religion as an Object of Criminal Law Protection: The Problems of Theory, Legislation and Law Enforcement Practice

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ABSTRACT

The relevance of the paper is associated with a poor theoretical framework and insufficient elaboration of many methodological and procedural questions of the freedom of conscience and religion under the contemporary conditions of Russia. With regard to this, the paper presents a number of general and particular problems of theory, legislation and practice of enforcement thereof pertaining to the criminal liability for crimes against the freedom of conscience, religion and interfaith consent. In Russia which is a multi-religious and multi-national country just like in the entire world, the current situation in freedom of conscience and freedom of religion is characterized as a crisis one, needing a way out as the right for the freedom of conscience and freedom of religion is one of the basic human and civil rights, the enforcement of which playing the pivotal part in the question of human rights as a whole. Disregarding the said right turns such notions as the "state of law" and "civic society" fictitious. The paper views questions associated with the freedom of conscience and religion as an object of criminal law protection: the problems of theory, legislation and law enforcement practice. The aspects of deliberately provocative actions against not only the religious feelings of believers but also the moral principles of the society as a whole have been revealed and analyzed in the work. The materials of the paper are of practical value for specialists in criminal law, social work, for higher education institution students, as well as to everyone interested in the problems of youth.

Keywords: religions, interfaith consent, crime, criminal liability, public order, freedom of conscience, extremism

INTRODUCTION

The Constitution of the Russian Federation guarantees the citizens the right for the freedom of conscience and religion, including the right to individually or jointly with others practise any religion or to practise none, to freely choose, have and disseminate religious and other beliefs and act in line with those. Meanwhile, a complicated, at times hurtful, character of development of the Russian society during the post-Soviet period, global transformations in the state structure system, change of stereotypes of the public consciousness, and collapse of ideals have extremely aggravated the problem of the freedom of conscience and rendered the question of protection thereof especially relevant [1].

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Under the escalating social tension both in the state and in the society, the use of new information technologies, the population's spiritual immunity – the ability to distinguish between dangerous and safe religious views and to accordingly determine one's own life strategy. With regard to this, the state has to ensure the religious security of the society by the appropriate mechanisms, including the criminal law means.

Of the examples of interfaith strife on the ground of disrespect for religious feelings, the most headline-making ones are the acts of public outrage in a number of Muslim communities of the Netherlands, Denmark, France, and Germany as well as in other countries of the Western Europe at the cynical ridiculing of religious sanctities. The authors of the caricatures are so-called "free artists" asserting the right for the freedom of expression [2]. However, it should also be borne in mind that most cases of mockery at religious symbols ended up in the escalation of social tension. This is confirmed by the increasingly frequent cases of religious extremism.

So, on January 7, 2015, in a district of Paris, staff of the Charlie Hebdo satirical weekly were gun shot at the headquarters due to their having repeatedly published religious topic caricatures – as a revenge for such an activity.

The Russian researchers are especially alarmed by the fact that just like the mentioned European Council countries, today's Russia is seeing increasingly frequent cases of desecration of religious sanctities and symbols or, conversely, religious extremism acts that often are a response to the former [3]. Among the most illustrative examples of "sacrilege" that were causes for initiating criminal proceedings, there were actions of female members of the Pussy Riot punk-rock group who staged so-called punk services in Orthodox churches on February 19 and 21, 2012. September 2014 saw a 24-year-old citizen of Izhevsk sentenced to penalty of compulsory community service for having placed a picture with images offending the religious feelings of Muslims in a social network. In April 2015, a criminal case was started against a citizen of Stavropol, Victor Krasnov, who had posted information in an Internet blog which in the opinion of investigation insults religious feelings of the followers of a religious denomination.

Transformations in the sphere of state management have highlighted the disadvantages existing between the legal framework designed to control the state and religion relationships and the realia of the contemporary spiritual situation in Russia. The limited nature of the legal control of the said relationships manifests itself in the legislation lagging behind the processes being in progress in the today's society.

The shared world trend which is characteristic for Russia as well is religious extremism being aggravated on the part of individual ethnic and religious lines and the organizations emerging in the activity of which aggression, intolerance and ambition to manipulate the people's consciousness can be clearly seen, which is quite often accompanied by various crimes, murders included [4].

LITERATURE REVIEW

Integrated studies of theoretical and practical aspects of the institution of the freedom of conscience and the freedom of religion are rather rare in Russia at the contemporary stage of development of legal science. However, the works available have played quite a part in creation of this paper.

In philosophy, conscience means an internal criterion of morality for assessing one's own actions which regulates actions and thoughts pronounced as well as limits the human freedom by certain moral framework [5]. The modern researchers define conscience as the capacity of an individual to exercise moral self-control in their actions [6], to word for oneself moral liabilities and values independently, to demand of oneself the fulfillment of these as well as to assess any acts that were done. With regard to this, personal, individual principles of each certain person are emphasized [7]. Considering the notion of "freedom" which is of interest for the authors, various approaches to comprehending it can be outlined. In particular, Renes Descartes believed that this was autonomous and spontaneous nature of will. Freedom can also be viewed in the ideal and the material meaning. Its material side means the freedom of actions and is limited by physical opportunities of people and by the influence of the natural laws on each individual. Its ideal side largely depends on the freedom of conscience of an individual [8]. It is limited by the individual's moral stance. Thus, by freedom, an opportunity to act up to one's objectives, one's will and not out of an external limitation or coercion is meant.

If the notion is to be considered from the viewpoint of sociology, then it composes a certain spiritual value of the society, an important good of it which was created as a result of the historical social development [9]. However, it is the legal aspect of the freedom of conscience that is of interest for the authors. In 1993, the RF Constitution was adopted. The question is touched on in Article 28 of the document. In it, the freedom of conscience is frequently equivalent to religion, it is also identified with atheism or with a choice between them. Nevertheless, conscience and the freedom of conscience, although being the core of religious morality, do not determine the choice between denying the existence of God and believing in God which is not limited by anything [10]. Conscience is a mental property which is inherent in every human regardless of their accepting or denying it [11]. It consists in an inborn distinguishing and knowing the good from the evil [12]. It is so early as in infancy that conscience is formed – when parents explain their children what is good and what is bad.

Legal relationships in the area of exercising the religious rights and liberties are regulated by the enactments belonging to various branches of law. Among regulations on the freedom of conscience and religious associations, there are the Constitution of the Russian Federation, international acts and international treaties of the Russian Federation, federal laws, decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, resolutions of chambers of the Federal Assembly of the Russian Federation, and regulatory acts of ministries and government agencies. The legal acts and norms making up this area of legislation are interrelated; they have their hierarchy and regulation limits. In the hierarchy, a special role belongs to the Constitution of the Russian Federation which possesses the supreme legal force, has a direct action and is applied throughout Russia. The Constitution regulates the most fundamental questions of fulfillment of the freedom of conscience.

RESEARCH METHODS

The paper relies on the theoretical study of concepts of the freedom of conscience and religion within the criminal law context, with theoretical comprehending the notions on the basis of texts of the Constitution of the Russian Federation and the RF Criminal Code.

The scientific novelty consists in the integrated criminal law study and social and cultural analysis of development and content of the freedom of conscience institution in the historical retrospective. Moreover, the authors have attempted to word suggestions in the sphere of religious security taking into account the nature of today's situation having formed in the area of interfaith relationships in Russia.

The following research methods were used in the work: dialectical cognition method, special philosophical, theological, sociological, psychological and criminal law literature. The paper also uses the historical and comparative law approaches, general scientific methods of induction and deduction, analogy, and certain sociological techniques of questionnaire survey, interviewing, observation, and content analysis.

RESULTS AND DISCUSSION

The freedom of conscience and religion are complex legal institutions that are understood through the lens of philosophy and are embodied in legal norms.

If problems of law enforcement practice are in question, concerning the consideration of cases in a judicial proceeding, it should be mentioned that in most cases courts do not pay attention to certain norms of law regulating the procedure of consideration for such disputes or cases. This is also confirmed by the judicial practice.

One of the recent examples of defiant disregard of behavior rules in places of religious worship which was the cause of mass outrage was the case occurring in Ekaterinburg on September 2, 2016. In an Orthodox sacred place, the temple complex erected in the memory of the shooting of the last Russian Emperor's family, a 22-year-old citizen of Ekaterinburg, Ruslan Sokolovskiy, hunted so-called pokemons – characters of a popular computer game, with obscenities accompanying his actions. Everything happening was filmed using a mobile video camera, and the recorded clip was later posted in the Internet.

Various hypotheses about the motives of such conduct can be put forward, however, this has sparked a broad public uproar and righteous indignation. As a result of which, Sokolovskiy was detained by the police on suspicion of committing crimes stipulated by articles 148 of the Criminal Code of the Russian Federation [13] – “Violation of the right for the freedom of conscience and religion” – and 282 of the Criminal Code of the Russian Federation “Incitement of hatred or enmity, equally as humiliation of human dignity” [14].

The examples cited give evidence that the “out of touch” with moral traditions polymorphism and uncontrolled nature of modern manners lead to incremental degradation of traditional moral mechanisms of protection against similar deeds [15]. So today acts of mass, defiant nakedness in public or sexual acts in public places, as well as many other things which used to be not only unacceptable but also impossible look fairly commonplace already [16]. One gets an impression that it is even not the administrative liability, due to its frequent inefficiency in solving the prevention tasks, but criminal liability as the most repressive one that remains the only measure in the like cases (well, in other too). And it is quite clear why it is the criminal legislation, contrary to its traditional stability, that shows such a high dynamics of updates.

However, it should also be borne in mind the fact that tightening as well as proliferation of criminal liability gradually narrows down the range of opportunities for governmental and state coercion in ensuring the public order.

With regard to this, the problems of criminal liability for offences against the freedom of conscience, religion and interfaith consent are becoming increasingly relevant in Russia.

When characterizing the criminal law means of protection of the freedom of conscience and religion which in the Russian Federation determine much the interfaith consent as one of the mainstays of its social pattern too [17],

it should be pointed out that both the administrative and criminal legislation contains quite a broad complex of legal liability measures for the like offences.

It is also notable that when applying the appropriate provisions of the Criminal Code of the Russian Federation, namely, while qualifying the deeds against the area of public relationships under study, there arise legal conflict problems [18]. Alongside with this, it has to be mentioned that the vector of development of legal liability institutions for the like deeds clearly tends to aggravation of criminal law restrictions.

The Russian criminal legislation contains similar *corpora delicti* aggravated by a number of objective or subjective essential elements (place or method, goals and motives inciting to committing of the like deeds). Moreover, in some *corpora delicti*, the motivation of ideological, denominational and religious hatred or enmity is stipulated as a circumstance aggravating the liability and confirming the presence of additional objects of criminal law protection, alongside with the main ones.

Together with this, given all the diversity of criminal law prohibitions providing for liability for the like deeds, in legal sciences, ensuring of the freedom of conscience and religion as the bases for denominational plurality in the Russian Federation is frequently viewed as individual objects of legal protection. So, the relationships, interests and goods are singled out among them which in their total make up the phenomenon of "religious security of Russia".

The study of the legal concept of "religious security" and, first of all, of its institutional attributes, has enabled the authors to conclude that this is one of the fundamental bases of polydenominational structure of the Russian society. It is this circumstance that allows maintaining that legal coverage and, therefore, the protection of ideological and denominational plurality in the modern Russia too is one of the paramount tasks of the Russian legal system [19]. As for denominational plurality, just like the freedom of conscience and religion as the guarantees of such plurality, this can be viewed as an object of the criminal law protection.

In today's Russia, the criminal law means of ensuring the freedom of conscience, religion and denominational plurality are known to not feature legal self-sufficiency.

Currently, the violation of legislation brings about liability stipulated by over twenty norms of the Russian criminal legislation. It is they that in their total form the conventionally determined system of criminal law means ensuring the freedom of conscience and religion, which in its turn is an important condition for interfaith consent in the Russian society.

Realization of the entire importance of criminal law protection of the like public domain has conditioned a number of the recent changes to the Russian criminal legislation. In particular, the Federal law of September 29, 2013 No. 136-FZ "On modifications to article 148 of the Criminal Code of the Russian Federation and individual legislative acts of the Russian Federation for the purposes of countering the disrespect of religious beliefs and feelings of citizens" introduces essential modifications to the norm of article 148 of the Criminal Code of the Russian Federation. This confirms the questions of upgrading the criminal law protection mechanism for the appropriate sphere of public relationships becoming relevant [13].

Article 148 of the Criminal Code of the Russian Federation is known to have been called "Interfering with exercise of the right for freedom of conscience and religion" [13] before the relevant modifications. This criminal law norm provided for the liability for illegal interfering with the activity of religious organizations or religious worship and contained only one part describing one *corpus delicti*. Today, the said article consists of four parts, with the first and third parts containing the description of essential elements of two main *corpora delicti*, and the second and fourth parts listing the aggravating the liability circumstances, respectively, thus becoming so-called qualified *corpora delicti*.

Therefore, using a special practice of legislative technology, the competence of provisions of article 148 of the Criminal Code of the Russian Federation has been expanded considerably, encompassing two independent *corpora delicti* having essential distinctions although inflicting harm to one and the same criminal law protected objects. Notably, this legislative practice is quite frequently employed when forming the articles of the special part [13].

It can be supposed that the like is due to expediency of a more rational use of the conventional legislative space - when new norms containing the independent (main) *corpora delicti* are placed within the existing boundaries, the quantity of articles of the special part remaining yet the same. Examples of this are articles 185.2, 195, 204, 228.1, 234, 239, 242, 249, 291.1, 292.1, 322, 332 of the Criminal Code of the Russian Federation and others [13].

So, the first part of article 148 of the Criminal Code of the Russian Federation is directly similar to provisions of part 1 article 213 of the Criminal Code of the Russian Federation setting the criminal liability for violence committed for motives stipulated in item "b" of the said part of the article.

Let it be assumed that provisions of part 1 article 148 of the Criminal Code of the Russian Federation involve a special kind of hooliganism being in a legal conflict with this *corpus delicti* [13].

It is also known that given a conflict of the general and special norm, the priority when qualifying the crimes has to be that of the special norm [14]. In this case, however, there are doubts about the validity of some qualifying essential elements of this crime; for instance, the use of a criminal law notion "actions in public" when applied to the norm under consideration. With regard to this, the question if the content of this criminal law definition encompasses actions expressed in a rude violation of the public order (which are known to constitute the objective side of criminally liable hooliganism) is quite relevant. The similar terminology is also known to have been used when building the above provisions of the RF Code of Administrative Offences which conflict in qualification of the relevant offences with the known corpora delicti.

The authors believe that an important question arising during the legal analysis of the updated version of part 1 article 148 of the Criminal Code of the Russian Federation concerns the interpretation of the "goal" of the crime which is worded by the legislator as a compulsory essential element of its subjective side [13].

Motivation and goal setting are known to be mutually conditioned manifestations of the state of mind.

Criminal behavior is no exception too, because establishing the said dependence not only has an important evidential significance [20] but also such unity in a number of cases is a compulsory condition for the guilt available concerning quite a broad range of crimes.

This judgment allows supposing that "public actions performed for the purposes of offending the religious feelings of believers" may have among others the extremist motives, which also brings the corpus delicti under consideration close to the legal provision of item "b" part 1 article 213 of the Criminal Code of the Russian Federation [13].

In its turn, the legislative distinction of the objective essential elements of main corpora delicti provided for by articles 148 and 213 of the Criminal Code of the Russian Federation seems quite conventional and not fundamental, except the strictly formal distinction in the criminal offence objects [13].

The said circumstance does not only aggravate conflict between these legal norms but also essentially complicates their use in practice [21].

Due to the corpora delicti being structured as formal and having quite similar subjective essential elements, it is logical to assume that their main distinctions lie in the nature of the very criminal offences. However, there arises a fair question of how the criminal law definitions correlate forming the charges of analyzed norm dispositions, namely "actions in public expressing a clear disrespect for the society" and "gross violation of the public order" expressed, just like in the former case, in "a clear disrespect for the society". Another question why the legislator actually does not consider "gross violation of the public order" as "actions in public" - and if he does, then why the deed described in item "b" part 1 article 213 of the Criminal Code of the Russian Federation is not a special kind of crime stipulated by part 1 article 148 of the Criminal Code of the Russian Federation.

As it has already been mentioned, the legal meaning and structure of the provisions compared confirm the legal conflict between motivated hooliganism (item "b" p. 1 art. 213 of the Criminal Code of the Russian Federation) and purposeful disregard of religious feelings of believers in a method which is very similar to hooliganism (p. 1 art. 148 of the Criminal Code of the Russian Federation) [13].

That being said, the main distinction of these corpora delicti consists in the objects of criminal offences. It is also evident that such delimitation from the standpoint of systematizing the norms of the Special part of the Criminal Code of the Russian Federation does not reflect the legislator's merely formal approach but is quite grounded from the viewpoint of separation of the relationships protected by law. The point is that "public order" as the main object of crime stipulated by article 213 of the Criminal Code of the Russian Federation is particularly different from the "rights and liberties in the religious sphere" protected by the legal provisions of article 148 of the Criminal Code of the Russian Federation.

CONCLUSION

With the above problems of correlations and conflicts of the relevant criminal law norms borne in mind, it is easy to assume that similar questions may also arise when delimiting crimes provided for by article 148 of the Criminal Code of the Russian Federation from other corpora delicti being highly similar to them in their legal essence.

It can be stated with great probability that defiant disregard of feelings of believers may well be expressed in desecration of religious cult objects (buildings, facilities etc.).

Nevertheless, this circumstance generates a new legal conflict of legal provisions of the same article 148 of the Criminal Code of the Russian Federation and ones stipulating the liability for "vandalism" (article 214 of the Criminal Code of the Russian Federation) [13] which in its turn has shared legal traits with criminally liable "hooliganism", just like the former.

This paper describes the most noticeable general and particular problems of theory and legislation concerning the criminal liability for criminal offences against the freedom of conscience, religion and interfaith consent in the contemporary Russia. A more profound study of the problems through the lens of criminal law and criminal science seems fairly promising both from the viewpoint of improvement of the relevant provisions of the Russian criminal legislation and from that of law enforcement practice.

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