Vitali Vitaliyovych Novikov

THE ESSENCE OF FREEDOM OF CONSCIENCE AND OF RELIGIOUS BELIEFS

Abstract

The paper examines questions relevant to the issues of freedom, conscience, freedom of conscience, religion, and religious beliefs, in the context of Ukrainian legislation. The author aims to defines these notions and analyzes the existing provisions pertaining to them, underlying the insuffient elaboration of those is legal doctrine.

Keywords

freedom of conscience, religious beliefs, freedom of religious beliefs, religion, free will

Statement of the problem

In modern society, freedom of conscience and freedom of religion are one of the global problems in theoretical and branch law studies and are actively debated in modern science. Urgency of the problem is caused by insufficient and contradictory scientific and theoretical elaboration, dominated by outdated approaches to the problem of freedom of conscience and religious beliefs, as well as the lack of established conceptual apparatus.

Today we can say that in Ukraine there is no doctrine of freedom of conscience and freedom of religious beliefs, on the basis of which the legislation should be formed regulating this legal institution, and contradictory, scientifically undeveloped legislation gives rise to problems in the field of law enforcement. Thus, these factors determine the infringement on freedom of conscience and freedom of religious beliefs, and state and national policy of Ukraine in this field is carried out without due regard to theoretical developments and enforcement experience.

The purpose of the article

The current situation in the field of freedom of conscience in Ukraine, which is considered a multi-religious country, is described as a crisis. It is necessary to resolve this crisis as the right to freedom of conscience and religion is one of the basic human and civil rights, and its providing plays a crucial role in the issue of human rights in general. On the other hand, the neglection of this right turns into fiction such concepts as "constitutional state" and "civil society".

The form of freedom of conscience and freedom of religion, as a legal institution is adequate to its content as a subjective right. Legal institution of freedom of conscience and religion is a set of legal rules governing social relations in connection with the implementation of the relevant subjective law and is characterized by complex multi-level interdisciplinary legal regulations, which include, along with the rules governing the content of this freedom, means of its guarantee, protections and limitations. Complicated and complex nature of freedom of conscience hampers the attempts to give a comprehensive definition of this institution.

The need arises for theoretical and legal research of this problem that defines the purpose of this article.

The degree of elaboration of scientific problems

The reslearched problem is not defined clearly enough, in the theoretical aspect, though in Ukrainian science the researches touching this subject took the form of monographs and dissertations, as well as collections of materials from scientific conferences and other publications.

The yuristic legal scholars who devoted their works to the development of the concept of the institutiou of freedom of conscience and freedom of religion include: SA Avakyan, SS Alexeyev, V. G. Babiya, LL Batueva, GS Galesnika, VK Zabigaylo, VN Kalinin, MG Kirichenko, VV Klochkova, VA

Kuroedova, FK Laurinaitis, FM Rudinsky, A.V.Shuby, PI Yarotsnogo, etc.

However, in the majority of these works the problem of freedom of conscience and confession of faith was treated with some restrictions and infringements of that freedom. Therefore, this problem has yet not lost its importance.

Summary of the main database

Scientific knowledge about the nature of law in the state legal doctrine provides an opportunity to develop the concept and give an idea about the content of state-legal institution of freedom of conscience and freedom of religion, allows us to see its contours, to identify the constituent components, to make recommendations on the quality of existing and missing law.

It should be based on a theoretical construction of the institution and reinforce its legislative practices associated with the assessment of patterns of social relations in the sphere of realization of the right of freedom of conscience and religion.

Legal institution of freedom of conscience and freedom of religion in Ukraine is a set of legal rules governing public relations in regard to achieving the subjective right. However, the complicated and complex nature of freedom of conscience makes it difficult to give a comprehensive definition of this institution. To solve the problem it is necessary to examine in a specific sequence the structural elements of the notion of “freedom of conscience,” and use them to analyze the legal institution.

The key term in consideration of this legal institution is the category of “freedom,” which is one of the basic concepts in modern legal science.

In the Middle Ages freedom was connected to the sinfulness of man, his self-will and disobedience to the divine providence. Systematic basis of the theory of law, which was based on a universal understanding of freedom formed under the influence of Christian traditions, which have been developed during the New Age. The situation of this problem was influenced by the notion of natural law. It promoted the idea of an integral design of

personal freedom. Hobbes, Locke, Spinoza, Montesquieu, Rousseau played an important role in the study of the doctrine of freedom.

Particular attention should be paid to Marxism. The Marxist concept of freedom in its dialectical interaction with needs as opposed to voluntarism, preaches arbitrariness of human acts and fatalism, to regard them as predestined. Marxists defined freedom as an activity, based on the appreciation of necessity, according to which the freedom of an individual, group, class, and society as a whole is not the dream of independence from objective laws, and the ability to choose, to make decisions with knowledge of the case. It confers on the moral and social responsibility for their actions.[1]

The Dictionary by Dahl defines "freedom" as "the will, the scope, the ability to act in one's own way, a lack of restraint, bondage, slavery, subordination to the will of another." Similarly determined is "will": "This arbitrariness of action, freedom, space in the actions, the absence of slavery, violence coercion."[2] This suggests that to some extent will acts as freedom without responsibility, without the ban on violating the freedom of others.

Gaining freedom, including that of religion or belief on a scale that are qualitatively different from the previous ones, has led to the fact that it has been regarded as a matter of course, and partly as of little value, more „ fashionable" than necessary.

On the other hand, faced with the "space of freedom," drawing from their own experience people began to feel the weight of responsibility for the decisions they made, the difficulties one faced, without the intervention of the state, the devices of one's own life, the formation of worldview.

According to the IB St. Michael, mass consciousness is one of the most conservative elements of society and thus is especially difficult to change, but at the crucial moments of

[1] JG Klimenko, *The main periods of formation of the concept of „ freedom" as a legal category*, [in:] *Modern problems of the state, law and legal education.* Proceedings of the scientific-practical, Internet conference, VM Puchnin (ed.), Tambov 2005, p. 70.
[2] V. Dahl, *Dictionary of the Russian language*, V.4, Russian language, Moscow 1982, p. 151, 238.

history, in the face of radical changes in social life, the evolution in consciousness is very fast. Above all, the elements of a new world view appear, because of those aspects of life that affect the everyday interests of people, which cannot be satisfied by the present state of things.

One example of this is the increase in the number of those who recognize the importance of private property as a right, and at the same time the smaller percentage of people who rate fundamental rights (in particular, the freedom of conscience and religion) as "important" or "very important." [3]

Let us dwell on the notion of "conscience," which reveals the content of the institution. Its connection to the concept of religion, the social purpose of the church and other organizations provided the substitution of religious organization from a moral category in to law.

AA Milts argues that, despite the fact that conscience is the subject of ongoing debate, "our knowledge of it is limited. On many things related to this questions we can only give approximate answers, and sometimes intuitive guesses." [4]

By definition found in Dahl's dictionary, "conscience is a sense of moral rights, the inner consciousness of good and evil, the cache of the soul, which responds to the approval or disapproval of each act." Contemporary philosophers define conscience as "a person's ability to exercise moral self-control, self-formulate moral obligations for themselves, to require such to act and produce self-perpetrated acts" [5].

Thus, based on the definitions above, it can be concluded that conscience is a moral assessment of the content of the human mind and the consequences of their own and others' actions.

As for the concept of "freedom of conscience", despite the fact that the components of the categories of "freedom" and "conscience" have independent meaning, this notion is not

[3] IB St. Michael, *Human rights and social nolitichеskie nrotsessy in post-communist Russia* , M. Knowledge, 1996, p. 65.
[4] AA Milts, *Conscience*, [in:] idem, *Ethical Thought. Scientific and journalistic readings*, Book, Moscow 1990, p. 275.
[5] *Encyclopedic Dictionary of Philosophy* , LF Ilicheva (ed.), Knowledge, 1983, p. 620.

a mechanically combined sum of these concepts, and has its own ideological and legal significance. Theoretical and legal model of freedom of conscience includes the concept of freedom of conscience in the objective and subjective meanings. Freedom of conscience in the objective sense can be defined as a system of legal norms that make up the law on freedom of conscience, of a certain historical period in a specific country. Freedom of conscience in the subjective sense are specific opportunities, rights, claims arising out of and within the law on freedom of conscience, that is, the specific competences of people.

Analyzing the various aspects of freedom of conscience, FM Rudinskiy noted the presence in it of moral, philosophical, social, political and legal aspects.[6]

As a social phenomenon of the intangible (spiritual) order, freedom of religion has a high degree of abstraction, which inevitably affects it and is largely due to the different spheres of social life. It is customary to distinguish the most important aspects of freedom of conscience: economic, political, moral and legal. Other relevant facets include ontological, epistemological, philosophical, religious, social, psychological, social and psychological aspects.

Professor SA Avakyan believes that freedom of conscience has two aspects: the freedom of moral and ethical beliefs of man; and an individual's innate (spiritual) ability to choose a similar ethos and embrace it.[7] Freedom of conscience and religion means, on the one hand, the right to believe, and on the other, the right not to believe.

Article 35 of the Constitution guarantees freedom of conscience and freedom of religion to everyone. Article 35 of the Constitution is guarded by the Act of 21 April 1991 "On freedom of conscience and religious organizations."

Freedom of conscience and freedom of religion are considered a single concept, which includes "the right to profess,

[6] FM Rudinskiy, *Freedom of conscience in the Soviet Union: structural and legal aspects*, [in:] idem, *Questions of scientific atheism*, 1981, p. 26.
[7] SA Avakyan, *Freedom of religion is a constitutional and legal institution*, "Bulletin of Moscow State University", series 11. The right, 1999, no. 21, p. 9.

individually or jointly with others, any religion or no religion, to freely choose, possess and disseminate religious and other beliefs and to act in accordance with them." Freedom of religion is a human right to choose and practice any religion. Consequently, "freedom of religion" – just one component of the concept of "freedom of conscience," is dialectically interconnected with it, and is not likely to share in the legislative process. In addition, the reduction of the constitutional rights of citizens in nation – church relations exclusively to religious freedom, that is, the substitution of a broad notion by a narrower one, invariably leads to a denial or infringement of the rights of citizens to freedom of thought.

So it makes sense to replace the term "freedom of conscience and religion" in legislation by a more neutral term "freedom of thought." The main advantage would be the shift from a dualistic worldview to a pluralistic understanding of freedom.[8]

In our opinion, freedom of conscience is a system of interconnected, albeit independent elements.

There is a point of view that defines freedom of conscience as an expression of man's relationship to religion, which is realized in three forms:

- The right to believe in God in accordance with any religion;
- The right to be treated with indifference as to one's religion or atheism;
- The right to be an atheist, that is not to profess any religion, and actively deny the existence of God.

A wide range of researchers define the concept of freedom of conscience guaranteed by compliance with the law.

Freedom of conscience is a complex institution, combining elements of private and public freedom, that is, to practice or not to practice a religion or not to engage in religious worship, conduct religious or atheistic teaching.[9]

[8] GP Luparev, *Freedom of conscience, "holy cow" or the constitutional and legal anachronism*, "Religion and Law", 2002, no. 22, p. 6.
[9] GG Cheremnyh, *Freedom of conscience in Russia*, Manuscript, 1996, p. 94.

In legal literature freedom of conscience is characterized as a purely secular establishment, generated by religious pluralism and the reluctance of the state to interfere in the religious affairs of the citizens.

The interpretation of freedom of conscience by advocates of traditional legal approaches is understood as the right of a person to take or not to take religious beliefs, profess, individually or jointly with others, any religion or no religion, to freely choose, possess and disseminate religious and other beliefs and to act in accordance with them, free from harassment and discrimination on the part of the sovereign and society.

To ensure a proper understanding of freedom of conscience it is essential to conduct not only a thorough scientific analysis of individual provisions of the Constitution, but also of their corespondence with each other, as well as to consider the practical implications.

Conclusions

In defining the essential content of the right to freedom of conscience and freedom of religion all theological writers use the term „religion", however, its legal meaning is still underdeveloped.

In our opinion, the term "religion" is not acceptable in the formulation of the concept of "the institution of freedom of conscience and freedom of religion" as it is out of context. This term should be replaced by the term "world", the value of which is more succinct, informative and reflect current trends in the law. This would lead to defining the institution of freedom of conscience and freedom of religion as a set of legal rules governing social relations in the field of human rights to accept or not accept, choose, change, distribute or express any philosophical system of discrimination and harassment by the state and society.

References:

1. Avakyan SA, *Freedom of religion is a constitutional and legal institution*, "Bulletin of Moscow State University" , series 11. The right, 1999, no. 21.
2. Cheremnyh GG, *Freedom of conscience in Russia*, Manuscript, 1996.
3. Dahl V., *Dictionary of the Russian language*, V. 4, Russian language, Moscow 1982.
4. *Encyclopedic Dictionary of Philosophy*, LF Ilicheva (ed.), Knowledge, 1983.
5. Klimenko, JG, *The main periods of formation of the concept of "freedom" as a legal category*, [in:] *Modern problems of the state, law and legal education*: Proceedings of the scientific-practical, Internet conference, VM Puchnin (ed.), Tambov 2005.
6. Luparev GP, *Freedom of conscience, "holy cow" or the constitutional and legal anachronism*, "Religion and Law" , 2002, no. 22.
7. Milts AA, *Ethical Thought. Scientific and journalistic readings*, Book, Moscow 1990.
8. Rudinskiy FM, F*reedom of conscience in the Soviet Union: structural and legal aspects*, [in:] idem, *Questions of scientific atheism*, 1981.
9. St. Michael IB, *Human rights and social nolitic*h*eskie nrotsessy in post-communist Russia*, Knowledge, 199