

ISCKMC 2020**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****INFLUENCE OF ORTHODOXY PHILOSOPHICAL AND
RELIGIOUS IDEAS ON RIGHT OF PRIVACY FORMATION**

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Abstract

Despite the fact that in the overwhelming majority of countries religion is nowadays less relevant than secularism, the process of “clericalization of society” is intensifying in modern society, and religion is increasingly included in public spaces. Modern legal institutions and legal values, culture, art and literature are based on various philosophical and religious ideas of Judaism, Islam, Christianity, Buddhism, and other religions. The legal system of the post-socialist countries of the Eastern Christian world did not escape such an influence, despite the ideology of Marxism-Leninism that dominated the territory of the socialist countries in the 20th century, an integral part of which was the belief in the non-existence of God. Man in Lenin's version of Marxism was supposed to replace God, acting in a team to accomplish what was previously considered subject only to God; atheism was considered a militant religion, the religious worldview was perverted and illusory, distorting the scientific understanding of real connections; capitalism and religious worldviews were considered inextricably linked. Today it is possible to state that there is a process of active inclusion of Orthodox theology in the legal system of post-socialist countries of the Eastern Christian world. The present article is devoted to the post-socialist law of the countries of the Eastern Christian world.

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Keywords: Byzantine Orthodoxy, Christianity, privacy law

1. Introduction

The disappearance of most socialist countries and countries with a “socialist orientation” from the historical arena (the USSR, the Polish People's Republic (where socialism of the Soviet model existed in the period 1944–1989), the People's Republic of Bulgaria (1946–1991) and others) did not lead to the automatic disappearance of socialist law, despite a significant decrease in the “halo” of its spread (in comparison, for example, with Western law) (a halo is understood as a collective concept: tradition, authority, universality), its basis, to varying degrees, still continues to provide influence on the national systems of law of post-socialist states, including those belonging to the Eastern Christian world, where the internal systems of law have their own special content.

Russia, Greece, Bulgaria, Ukraine and a number of other countries (attributed to the countries of the Eastern Christian world), in connection with the schism between the Eastern and Western churches in 1054, remained in the bosom of the Eastern Orthodox Church. For this reason their process was excluded the formation of the “western tradition of law” (Davis, 1996), “Byzantine Orthodoxy” (Orthodoxy, which acquired its “historical canon” in Byzantium) was approved in these countries, the Orthodox Church, as noted in the scientific literature, was able to reject and condemn Protestantism how she was able to protect herself from the Catholic attack (Shmeman, 1993), which largely predetermined the further development of the internal legal systems of these countries, including Russia. It also determined the peculiarities of the legal regulation of private life.

It worth noting that Russia is the largest Orthodox country in the world. According to statistical data (population survey) for 2017, Russia is considered a global defender of Orthodoxy and the ethnically Russian population. This opinion prevails outside of Russia, including three Orthodox EU member states: Bulgaria, Greece and Romania. A similar point of view dominates in Armenia, Belarus, Moldova, and Serbia. A strong Russia is accordingly obliged to protect Orthodox countries from the influence of the Western Church (Western Christianity).

In Russia, 57 % of the population believe that only Orthodox Christians can be truly Russian (data as of January 14, 2019). Back at the beginning of the 20th century Berman (1993) noted: Although some ethnic Russians turned to Roman Catholicism and foreign Protestant sects such as the Baptists, although Jews and members of other ethnic minorities converted to Orthodoxy, the empire's religious map still matched its ethnic card. Indeed, Orthodox theology, like the theology of Eastern Christianity in general, has traditionally associated religious affiliation with nationality.

In our opinion, today there are grounds for affirming the influence of church law on the secular in the post-socialist countries of the Eastern Christian world (Evans & Northmore-Ball, 2016). Back in the 19th century, characterizing the relationship between church and state in Russia, Berdnikov (1903) wrote that the church is a powerful accomplice of the state in achieving cultural goals. The state finds benefits in alliance with the church, putting up its position into the institution of public law. On the one hand, this allows giving church norms the force of state laws. On the other hand, the state acquires the right to control the actions of church authority and church events (norms of a mixed church-state nature). The main Russian laws of the tsarist period highlighted that “The prevailing and dominant faith in the Russian Empire is the Christian Orthodox cephalic of the eastern confession ... religion in Tsarist Russia was not only the right, but also the obligation of the subjects ... The legislation of Tsarist Russia did not allow the

extra-confessional state of citizens ... Every subject of the Russian Empire from the moment of establishment belonged to one of the existing religions and until the end of his days, regardless of his actual attitude to religion, was officially considered a follower of this religion, with the exception of cases of conversion to other faith provided for by law. Thus, all Russians, in accordance with the law, were considered followers of Orthodoxy. The words “Russian” and “Orthodox” (or “born and raised in the Orthodox faith”) were synonyms in the legal language” (Ovsepyan, 2017). His Holiness Patriarch Kirill of Moscow and All Russia notes that “The special value of Russia, its special vocation is to be a stronghold of Orthodox Christianity; to keep the Orthodox faith, Orthodox tradition and culture, Christian moral principles in their intact form” (Kirill, 2019). The State Duma of the Russian Federation has an Interfactional Deputy Group for the Protection of Christian Values, the purpose of which is protection of Christian values and preservation of tradition, based on the gospel truths and commandments.

In our opinion, the specificity of the legal regulation of private life lies in the fact that the meaning of the law of private life, to a greater extent in comparison with other fundamental rights, is determined in the context of various ideological foundations (several models of the law of private life are distinguished. The model of legal regulation of private life is essential qualities of the right to private life, which arose at a certain stage of civilizational development, and expressing special social, legal, cultural, religious and political characteristics of the right to private life), and the formation of which develops in two main ways. Firstly, as a result of changes in social, political, economic, technical conditions of being (for example, the continental system of law). Secondly, as a result of outside influence (for example, a post-socialist legal family) (their articulation is possible in various proportions).

2. Problem Statement

Despite the declaration of the active participation of former countries of the socialist camp at the state level in the world processes of general globalization, adherence to values based on the recognition of the concept of natural human rights, an orientation towards a human-centered approach in law, the disconnection between Western and post-socialist law of the countries of the Eastern Christian world for the most part steadily increasing. The article proposes to study the influence of the philosophical and religious ideas of Orthodoxy on the peculiarities of the development of the legal system, in order to determine the factors influencing the formation of differences between Western and post-socialist law (the countries of the Eastern Christian world), using the example of the content of private life.

3. Research Questions

1. What and how the philosophical and religious ideas of Orthodoxy influenced the content and development of the right of private life?
2. What are the features of the law of private life in the legal system of the post-socialist countries of the Eastern Christian world?

4. Purpose of the Study

The purpose of the study is to show that the philosophical and religious ideas of Orthodoxy influence the formation and development of the law of private life in the legal systems of the post-socialist countries of the Eastern Christian world.

5. Research Methods

The article uses the following methods: analysis, which made it possible to study the ideas of Orthodox theology related to the stated research topic; comparative legal analysis, used to study the features of legal regulation of private life in various systems of law; and a statistical method.

6. Findings

Representatives of Alexandrian Christology (Athanasius the Great, Gregory the Theologian, Cyril of Alexandria) believed that God the Word Himself was incarnate and suffered in Christ. They asserted the existence of the unity of Christ as a Divine person and about the union of the Divine and humanity in Him (Athanasius the Great believed that: “it is impossible to consider The Father is separate from the Son, because the Son is not a creation created by an act of will; by nature He is the true Son of essence” (Berdnikov, 1903). It was this worldview that began to prevail in Byzantine Orthodoxy.

In the concept of Byzantine theology, a person is not an autonomous being, his essence is realized only when he lives “in God” or “grace” (uncreated divine power, uncreated divine action. This is a gift to man from God, intended for the salvation and sanctification of man), and has divine qualities; “grace” bestows on man his “natural” development. Since man was created free, there can be no confrontation between “grace” and freedom (in contrast to Western theology, which believes that man is always sinful, even if he is redeemed by the sacrifice on the Cross. All people are sinners, since they were present in the bosom of Adam at the time of his fall, in the Western concept of Christianity “nature” and “grace” are opposite), he “gains genuine freedom only” in God “when through the Holy Spirit, he frees himself from the causal relationships of created and fallen existence and receives the power to share with God the dominion over creation, corresponding indeed, nowhere, except in the sacred society of the Church, is it possible to achieve truly liberating divine life” (Berman, 1993). Maximus the Confessor, who was a theologian of the 6th-7th centuries (his works were demanded by John Damascus in the Exact Exposition of the Orthodox Faith), noted that the “image of the re-creation of the leadership in relation to the incarnated Logos”. He noted that human freedom actually self-destructive, and outside of God a person ceases to be genuinely and completely human. Through death he becomes a slave to the devil” (Berman, 1993). The opposition between the Western and Byzantine concepts of theology derives from this worldview (which is an interpretation of the relationship between God and man).

Modern researchers of the problem of personality in Orthodoxy note that in Orthodoxy, a person needs to be considered only in relation and communication with other personalities; with the world and with God (N. Berdyaev's ideas), a person is affirmed only through relations with another person, expressed in love and communication (analogy of the existence of God-Toritsa). Fominskaya (2020) writes that the traditions of the Orthodox faith encourage the predominance of the collective over the

individual. In the system of values of Orthodoxy there is no supremacy of man in relation to society, hence the complete opposite and Eastern Christianity (Bublik, 2013). Considering the peculiarities of the regulation of private life in Byzantine law (the main sources of which are the “Nomokanon” in the form of the “Helmsman of the Book”, the decisions of the Councils, the canonical answers and messages of the hierarchs, the “Statutes” of St. Vladimir and Prince Yaroslav the Wise (Antonov, 2007), as well as parts of the Tanakh, the code of law of Tsar Constantine), we also note a small degree of detalization (in comparison, for example, with Islam) of the behavior of a believer in private life.

7. Conclusion

Exploring the peculiarities of the formation and development of the law of private life in the systems of law related to the post-socialist legal family (countries of the Eastern Christian world), one should pay attention to the absence of a natural-historical process that led to the creation of private law in the Western world (Western world, Western civilization). The right to private life, introduced into the system of constitutional law at the end of the 20th century, provided the people with what in Western countries became the result of a difficult historical life (Davis, 2008). In many aspects it did not solve the problem of legal regulation of private life in new social economic conditions (Djankov & Nikolova, 2018). Two obligatory stages in the formation of the right of private life were excluded: a) the discovery of a legal motive caused by the urgent natural, socio-economic and other needs (factors) in the legal regulation of certain types of social relations (such needs could not arise in a socialist society, even if it has undergone a certain reform of the economy, rejecting the idea of personalization and autonomy of man); b) the formation on the basis of a legal motive by various public institutions of civil society of a coordinated will, which requires elevation to a normative, universal rank (in the 6-year period of the restructuring of Soviet society (1985-1991). For objective reasons (economic, political, spiritual crisis) it could not be a kind of strong-willed substance, suggesting its further legal registration in the constitutional law of private life. This ultimately led to a discrepancy between the legal and actual constitution, the corresponding constitutional powers were “left as unnecessary” in real life, while remaining valid in reality. The concept of the Western model of the law of private life in post-socialist states (countries of the Eastern Christian world) was adopted as a kind of reference point. This happened not because of the presence of public needs in the legal regulation of private life, but for populist purposes, as a kind of emotional element that convinces people to change the state course, to strengthen and emphasize the pro-Western orientation of the politicians of post-socialist countries at the end of the 20th century, through the use of the method of submission to the arbitrary, ad hoc-formed will of those who govern the apparatus of the State (Rabel, 2000). The declarative nature of the right to private life is also associated with the existing reference in most constitutions of the post-socialist countries of the Eastern Christian world to the spirit of the constitution, a special historical path of development of the state and nation, Eastern Christian theology, and the historically established dissonance between Eastern and Western Christianity.

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