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Administrative responsibility for offenses in the religious sphere

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Abstract: The relevance of the research topic is determined by the influence that religion possesses on the life of modern society. Religious beliefs often serve as the basis for forming moral and ethical norms, providing people with a system of values and rules of behavior oriented towards spiritual growth. However, they can also be the cause of disagreements, disputes, and conflicts among individuals, leading to violations of laws, rights, and freedoms of individuals and citizens. Currently, Kazakhstan has established the necessary legal framework for regulating the relations between the state and religious associations. Norms of administrative and criminal liability for violations of legislation on these matters are provided. However, processes occurring in Kazakhstani society indicate an increase in violations in the religious sphere, caused by the influence of destructive religious movements, as well as the growth of poverty among the population. In this regard, the state must apply necessary legislative and organizational-preventive measures to prevent violations, both from religious associations and individual believers, as well as individuals engaged in missionary activities, and from the state itself in terms of ensuring freedom of religion for individuals. The aim of this article is to analyze the novelties proposed in the Code of the Republic of Kazakhstan "On Administrative Offenses" and provide their legal assessment. During the research, foreign experience in legal regulation of responsibility for committing administrative offenses has been studied, and a comparative analysis has been conducted with Kazakhstan's legislation and existing law enforcement practices. Based on this analysis, recommendations have been developed to improve the administrative offense legislation of the Republic.

Key words: administrative responsibility; administrative offenses; code; confession; religious associations; religious rituals; freedom of religion.

Introduction

The role of religion in modern society is diverse and depends on various factors, including cultural, historical and social characteristics. It can play the role of a social connecting element, promoting communication and understanding within religious communities, providing society with common symbols, traditions and holidays. At the same time, religious beliefs and disagreements can cause manifestations of intolerance, fanaticism, radicalism on this basis and become a source of conflicts in society, violation of the rule of law, rights and freedoms of citizens.

In this regard, timely and adequate legal regulation of relations in the religious sphere is a necessary step on the part of the state to ensure the legitimate activities of religious associations.

Currently, the legal basis for their activities is the norms of the Constitution of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan of October 11, 2011, "On Religious Activities and Religious Associations."

The Constitution proclaims Kazakhstan a secular state (Article 1), which implies the separation of religion and religious associations from the state and from educational organizations, non-interference of the state and religious associations in each other's affairs. Article 22 recognizes the right of everyone to freedom of conscience, meaning freedom of religion and worship, atheism. Its meaning is that a person voluntarily forms his worldview, views, chooses a line of behavior.

Article 5 of the Basic Law prohibits the incitement of religious hatred. These prohibitions and restrictions follow from the secular nature of the state, the inadmissibility of a split in society on a religious basis. At the end of 2023, 3977 religious associations representing 18 faiths, as well as 486 missionaries, were registered in Kazakhstan.

The influence of radical religious movements on the fragile minds of young people is observed. It is worth recalling several hundred Kazakhstanis who went with their families to Syria to participate in the war on the side of the Islamic State. Already in the 90s, radical Islamic groups began to function in the Republic, adhering to ideas that go beyond traditional Islam and promote violence as a means of achieving goals. These groups carry out propaganda work, recruit their supporters and arrange destabilizing actions in society, including terrorist acts. A major terrorist act committed in March 2024 in the Crocus Concert Hall in Moscow, which resulted in huge casualties, once again demonstrated the need for a decisive fight against this phenomenon.

The Kazakh authorities are taking measures to prevent the activities of such religious groups, including legislative ones. The Code of Administrative Offenses establishes administrative liability for violation of legislation on religious activities and religious associations. Currently, the Parliament is considering a bill initiated by the deputies of the Mazhilis, which introduces a number of amendments to the Administrative Code of the Republic of Kazakhstan.

The purpose of this article is to analyze the norms of administrative and tort legislation and, taking into account the experience of foreign countries in this area and Kazakhstan's international obligations, to identify shortcomings in legal regulation and propose measures to eliminate them.

Materials and methods

In the studies of lawyers of Kazakhstan, the issues of the concept of a secular state, the classification of religious movements were raised, the composition of individual offenses in the field of religious activity, the causes and factors causing and contributing to them were considered [1; 2]. A major contribution to the development of these problems was made by R.A. Podoprigora, whose works gave a detailed historical and legal review of relations between the state and religious associations in the Republic and abroad, analyzed the powers of state bodies to register religious associations, regulate religious, missionary and their educational activities, the status of clergy, proposed measures to improve national legislation in this area [1].

In the works of Russian scientists, the issues of interaction between the state and religious associations, the ratio of the right to freedom of conscience and the right to education, the jurisdiction and cognizance of cases of administrative offenses in the implementation of missionary activities, the formation of uniform practice in such cases, the circulation of religious literature and the role of the religious factor in ensuring the security of the state [3-5].

Researchers of non-CIS countries focus on the problems of ensuring freedom of religion, the role of religion in the life of modern society, violations of human rights in the religious sphere, including in relation to the legislation of specific countries [6-9].

At the same time, there are practically no scientific studies in the public segment devoted to administrative responsibility for violation of legislation in the religious sphere on the issues raised in the article. This is largely due to other, different from Kazakhstan, approaches of the state to solving these problems, the absence of separate codes on administrative offenses in non-CIS countries and classifying these issues as criminal offenses. Liability issues, if considered, are mainly in the context of violation of freedom of religion or prosecution for religious beliefs without reference to the compositions mentioned in this article.

The study used various scientific methods to understand this problem. They include: legal analysis of regulatory legal acts, comparative jurisprudence to study the administrative practice of various countries in this area, empirical methods to study statistics on cases of offenses in the religious sphere, interpretation of legal texts and legal doctrine. In addition, expert assessments of the effectiveness of the measures taken to prevent offenses in this area were given.

Results and Discussion

Administrative liability for violation of legislation on religious activities and religious associations is established by article 490 of the Administrative Code of the Republic of Kazakhstan, which includes 7 elements of administrative offenses. Article 489 introduced responsibility for the leadership, participation in the activities of unregistered religious associations and their financing.

According to "Forum18" in 2021, 130 administrative cases in this category were initiated in Kazakhstan. They were expressed in attending liturgical meetings not agreed with the authorities, importing or selling religious literature and images; posting religious materials on the Internet; violation of the procedure for prayer in mosques [10].

According to R.A. Podoprigora, the norms of the Administrative Code on participation in the activities of unregistered religious associations and their leadership contradict the Constitution and international obligations of the Republic of Kazakhstan [1].

In our opinion, there are no contradictions, since the "restriction" of the human right to freedom of conscience is carried out by registering religious associations. State registration is provided for all non-profit organizations. With regard to religious associations, it is necessary to take them into account and prevent the penetration of destructive religious movements into the country, aimed at ensuring public safety and protecting the rights and freedoms of citizens. The same goes for the activities of unregistered missionaries. In modern geopolitical conditions, state control in this area is needed. However, the control powers of the state, including those related to state registration, should not infringe on the constitutional right of citizens to freedom of religion and free worship. A balance between the constitutional freedom of the person and the interests of the state in ensuring public safety and law and order must be ensured when the relevant norms are enshrined in legislation.

The compositions of administrative offenses enshrined in the Administrative Code do not cover the entire range of violations of legislation in the field of religious relations and do not stop their growth. Cases of violation of the law related to restrictions on wearing elements of religious clothing in secondary education institutions, items of clothing in public places that impede face recognition, with a religious marriage ceremony "neke kiyu" outside religious buildings (structures), which entails the spread of cases of unilateral divorce by members of certain religious groups and their evasion of responsibility for the upbringing and maintenance of children. There are facts of cohabitation with two or more women, propaganda and promotion of relevant views. Minors under the age of 12 are allowed to participate in worship services, religious rites without accompanying parents or other legal representatives of the minor, etc.

In this regard, the deputies of the Mazhilis initiated a bill aimed at solving these problems and strengthening the secular foundations of the state. The development of this draft law and its further adoption are justified and timely steps in strengthening the rule of law and course of law, observing human rights, ensuring a constructive dialogue and interaction between the state and religious associations.

It is characteristic of a secular state that it does not take a direct part in religious affairs, recognizes the principle of equality before the law, regardless of religious affiliation.

The norm on responsibility for wearing religious clothing or its elements in secondary education organizations can outwardly be considered as a violation of these principles, discrimination against citizens on religious grounds. In fact, we are talking about the specific clothes of women professing Islam, which covers the body. Representatives of the Christian denomination can put on crosses, also denoting their religious affiliation. But since they are worn on the body and are usually hidden from prying eyes, there is no ban on wearing them. In this case, some kind of religious discrimination arises.

The proposed rule does not provide a clear definition of what elements of clothing can be recognized as an expression of religious affiliation. The lack of clear criteria can lead to arbitrary interpretation and application of the law. A detailed justification is needed for how restricting the wearing of religious attributes in secondary educational institutions is in the public interest

and law and order. In this regard, it is advisable to consolidate clear criteria defining elements of clothing expressing religious affiliation, taking into account the protection of constitutional rights and freedoms of citizens.

R.A.Podoprighora believes that the very fact of wearing religious objects is not a violation, but their use should not threaten the safety of students and teachers. He believes that in private schools these issues should be discussed in charters and agreements on education, and in public schools such manifestations should be treated differently in each case [1].

Taking into account the international obligations of Kazakhstan and the secular nature of the state, it is important to conduct a wide public dialogue before adopting such norms. The participation of citizens, religious leaders and representatives of the educational community will take into account different points of view and provide a more balanced approach to the regulation of these issues.

In most countries of Europe, in Canada, in the USA, where the principle of a secular state operates, educational institutions are obliged to ensure freedom of religious expression, including the right to wear religious clothing. Restrictions in this regard are an exception, not a rule, and are justified by the principle of security or prevention of discrimination. At the same time, restrictions, if allowed, then their introduction is given at the discretion of the school itself.

The exception is France, where the wearing of religious clothing is prohibited in all schools except universities [3].

As M.L.Voronkova notices, in the USA, France and a number of other Western countries has been created a "separation model of a secular state, in which the interaction of the state and religious associations is minimized," the latter presents broad autonomy [4]. This approach predetermines the maximum distance between the state and the regulation of various manifestations of religious freedom.

In countries with a Muslim legal system (especially in the Middle East), there are usually certain rules and regulations governing the wearing of religious clothing in secondary schools. Wearing traditional Muslim attire such as hijab or niqab may be mandatory or highly recommended for girls and women in educational settings, including secondary schools. In other countries, the approach to this issue may be more diverse depending on the level of secularization of society and political characteristics.

In the initiated norm, the subject of an administrative offense is only the students themselves, although the elements of religious clothing can be worn by a teacher or other school employee. It turns out that schoolchildren cannot wear such clothes, and adults working in this organization can. There is discrimination by status.

The German Federal Constitutional Court ruled on the complaint of a teacher who was not accepted to work in a public school due to wearing a headscarf based on decisions of the Baden-Württemberg administrative courts. The court recognized that wearing a headscarf is protected by the right to freedom of religion. At the same time, the need for state neutrality to ensure freedom of denominations was emphasized. In the field of school education, such neutrality should also be expressed by the appearance of teachers to prevent possible conflicts. However, these issues, according to the Constitutional Court, are not within the competence of the executive or judicial authorities, but should be resolved in law [11].

In this regard, the legislator must very clearly formulate certain restrictions in order to prevent arbitrary violation of the freedom of religion of certain categories of persons.

It is desirable to make the proposed sanction alternative. Since this offense does not pose a great danger, it is advisable to limit the warning for the first time, and impose a fine only in case of repeated violation.

Thus, this norm is subject to adaptation in terms of secular foundations of the state, freedom of religion and the prevention of discrimination based on religion. When finalizing it, it is recommended to take into account foreign experience and the norms of international law in terms of balancing the freedom of religious expression and security interests in educational institutions.

The draft law proposes to supplement the Code of Administrative Offenses of the Republic of Kazakhstan, Article 434-3, which introduces administrative responsibility for wearing items of clothing in public places that impede face recognition. The proposed norm may face the problem of restricting the right of citizens to freely choose clothes. The lack of a clear definition of what constitutes anti-facial recognition clothing can lead to interpretive difficulties and arbitrary application of the law.

For example, a person is sick and put on a medical mask so as not to infect others. In summer, protective headgear and sunglasses, which also interfere with face recognition, can become additional items of clothing. A mask, glasses, headgear can also be worn due to cosmetic defects in a person, and in cold weather it can be a hood from a jacket or other outerwear. It turns out that such a person must constantly carry a medical certificate with him so as not to be at risk of detention, stopping and checking documents by law enforcement agencies, to prove the need to carry them.

Obviously, the developers of the bill by such items meant the niqab - the traditional female headdress of Arab women, covering the face, with a slot for the eyes, or other types of Muslim women's clothing of this type.

In foreign countries, this issue is usually resolved by establishing prohibitions on wearing items of clothing that hide the face, taking into account the safety of society and the fight against terrorism, as well as other criminal activities. Such restrictions take place not only in countries with authoritarian regimes, but also in democratic states, and they are introduced not for religious reasons, but in order to ensure security and fight crime. But at the same time, it is important to observe the principle of proportionality in order to avoid arbitrary application and respect human rights.

When introducing such a norm, clear wording and justification for introducing administrative responsibility in this area are needed, a clear definition of what is considered clothing items that impede face recognition in order to exclude legal uncertainty.

In part 2 and 4 of Article 489 of the Administrative Code of the Republic of Kazakhstan, additions are proposed that establish the administrative responsibility of the leaders and members of the religious association or the religious association itself for committing actions that violate the legislation of the Republic. This is due to the fact that in the title of article 489, in addition to public associations, religious associations are mentioned, but as subjects of offenses they are mentioned only in parts 9, 10, 11 (leadership, participation and financing of the

activities of unregistered religious associations, as well as the activities of which are suspended or prohibited).

Most of the provisions of Article 489 refer to a violation of the legislation on public associations. Article 490 provides for liability for violation of legislation on religious activities.

This leads to the logical conclusion that the corpus delicti established by parts 9-11 of article 489 in relation to religious associations should be transferred to article 490, respectively, removing the mention of religious associations from the name and content of article 489.

In addition, article 490 with the proposed novels specifies the composition of violations of the legislation on religious activities and religious associations, while the amendments to article 489 are not specific. Therefore, we consider it unnecessary to transfer such violations to Article 490.

Part 7 of Article 490 is proposed to be amended by the draft, indicating the head of a religious association appointed by a foreign religious center as a subject of administrative responsibility in the absence of agreement with the authorized body.

The need for coordination with a state body is due to the interests of the state in ensuring public order and security, but constitutional guarantees of freedom of religion and religious activity should be taken into account. It is important to identify the procedures and criteria that will be used for this negotiation in order to avoid arbitrariness and ensure transparency of the process.

In many countries, the key principle is transparency of the activities of religious associations and respect for the rights of citizens, which prevents administrative responsibility for the simple appointment of a leader. Foreign experience emphasizes the importance of observing the fundamental principles of religious freedom and preventing unnecessary interference in religious affairs. Administrative responsibility in democratic countries is introduced not for the appointment of a head of a foreign center without coordination with the state, but only for violation by a religious association of legislation, for example, in the field of finance, public security, etc.

Therefore, it is recommended to assign responsibility to the foreign religious association itself, and not to its leader. It is also necessary to introduce mechanisms to protect the rights of religious associations and their leaders from possible arbitrariness in the exercise of state control. The key aspects should be compliance with constitutional principles, clarity of the norm and compliance with the international obligations of the Republic.

Russian researchers made a proposal to establish administrative responsibility for offenses in the field of Internet missionary. There is a need to introduce certain requirements, restrictions and prohibitions when carrying out missionary activities using the Internet [5].

This proposal requires careful consideration. After all, ISIS ideologists have widely and successfully used modern communication technologies, including the Internet, to attract new adherents to their ranks. As noted in the Information of the Russian Federation at the request of the special rapporteur of the UN Human Rights Council, illegal content is often posted on law-abiding sites without the knowledge of the administration (on message boards, social networks, forums, media portals, etc.) [12].

Taking into account the secular nature of the state and the increasing Islamization of the population, the dissemination of ideas contrary to traditional family values and violating

national legislation, in order to protect the rights of women and children, we consider it reasonable to introduce administrative responsibility for conducting religious marriage rites outside religious buildings, for promoting polygamy.

Thus, the introduction of new compositions of administrative offenses is aimed at protecting the freedom of religion of citizens, their other rights, to ensure public safety and law and order.

It is proposed to make the following changes and additions to the Code of Administrative Offenses.

1. Article 409 should establish clear criteria defining elements of clothing or other items expressing religious affiliation, taking into account the protection of constitutional rights and freedoms of citizens. For example, to amend part 3-1 as follows: "Wearing in secondary education organizations, with the exception of spiritual (religious) educational organizations, elements of outerwear or other objects of religious affiliation that demonstrate a person's belonging to the corresponding denomination that clearly do not correspond to the established patterns of school dress, entails a warning."

2. Supplement Article 409 with Part 3-2 as follows: "3-2. Actions (inaction) provided for in Part 3-1 of this Article, committed repeatedly within a year after the imposition of an administrative penalty, entail a fine in the amount of ten monthly calculation indicators. "

3. Article 434-3 requires a clear definition of what is considered to be clothing items that impede face recognition in order to exclude legal uncertainty, indicate clothing items not covered by this composition (medical masks, sunglasses, etc.)

4. In the title and parts 9, 10, 11 of article 489, delete the word "religious."

Conclusion

The study allows us to draw the following conclusions.

In the light of modern challenges and demands for harmony between religious freedom and public safety, the issue of administrative responsibility for violation of legislation in the field of religious activities is becoming increasingly important for our society.

The administrative and tort legislation of the Republic of Kazakhstan in the field of religious activities already contains some provisions on violations and their administrative consequences. However, in the context of a dynamic environment and constantly emerging new challenges, existing norms may need to be improved and evolving.

Taking into account the proposed short stories, it is necessary to clearly define the typical violations of legislation in the field of religious activities and their administrative consequences. This will help to eliminate ambiguities and ensure more effective application of the law. Administrative penalties for violations in this area should be commensurate with the degree of violation and not lead to unnecessary restrictions on the rights of believers, in compliance with international guarantees.

It is important to ensure transparency and fairness in the application of administrative responsibility in the field of religious activities. This includes guarantees of judicial independence, the right to adequate protection and appeal against decisions.

Training and awareness-raising needs to be provided to various structures, including law enforcement agencies, courts, and religious communities, to ensure that legislation is properly understood and applied in practice.

Dialogue and consultation with religious communities in developing and amending legislation on religious activities should continue. This will help to accommodate diverse interests and ensure more balanced and effective norms.

Thus, further improvement of administrative and tort legislation in the field of religious activities will contribute to a more harmonious and stable functioning of society in the Republic of Kazakhstan.

The contribution of the authors

The authors, **Zhanuzakova L.T., Beibitov M.S. and Alimbetova A.R.**, contributed equally to the writing of the article and the conduct of the study. Each author provided important information that played a significant role in shaping the study.

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Діни саладағы құқықбұзушылықтар үшін әкімшілік жауаптылық

Аңдатпа: Зерттеу тақырыбының өзектілігі діннің қазіргі қоғам өміріне тигізетін ықпалымен байланысты. Діни нанымдар көбінесе адамгершілік-этикалық стандарттарды қалыптастырудың негізі болып табылады, адамдарды рухани жетілдіруге бағытталған құндылықтар жүйесі мен мінез-құлық ережелерімен қамтамасыз етеді. Бірақ олар заңның, адамның және азаматтың құқықтары мен бостандықтарының бұзылуына әкеп соғатын адамдар арасындағы келіспеушіліктерге, дауларға және жанжалдарға да себеп болуы мүмкін. Қазіргі уақытта Қазақстанда мемлекет пен діни бірлестіктер арасындағы қарым-қатынастарды реттеу үшін қажетті құқықтық база жасалған. Осы мәселелер бойынша заңнаманы бұзғаны үшін әкімшілік және қылмыстық жауапкершілік туралы нормалар қарастырылған. Сонымен қатар, қазақ қоғамында болып жатқан процестер деструктивті діни ағымдардың ықпалынан туындаған діни саладағы құқық бұзушылықтардың көбейгенін, сондай-ақ халықтың кедейшілігінің өсуін көрсетеді. Осыған байланысты мемлекет діни бірлестіктер тарапынан да, жекелеген діндар азаматтар тарапынан да, сондай-ақ миссионерлік қызметпен айналысатын адамдар тарапынан да құқық бұзушылықтардың алдын алу үшін қажетті заңнамалық, ұйымдастырушылық және алдын алу шараларын қолдануға міндетті. Бұл мақаланың мақсаты – Қазақстан Республикасының «Әкімшілік құқық бұзушылық туралы» Кодексінде ұсынылған жаңалықтарды талдау және оларға құқықтық баға беру. Зерттеу барысында әкімшілік құқық бұзушылық жасағаны үшін жауапкершілік мәселелерін құқықтық реттеудің шетелдік тәжірибесі зерделеніп, оның Қазақстан заңнамасымен, сондай-ақ қолданыстағы құқық қолдану тәжірибесімен салыстырмалы талдауы жүргізілді. Осының негізінде республиканың әкімшілік және деликттік заңнамасын жетілдіру бойынша ұсыныстар әзірленді.

Түйін сөздер: әкімшілік жауапкершілік; әкімшілік құқықбұзушылық; кодекс; мойындау; діни бірлестіктер; діни рәсімдер; дін бостандығы.

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Административная ответственность за правонарушения в религиозной сфере

Аннотация: Актуальность темы исследования обусловлена тем влиянием на жизнь современного общества, которым обладает сегодня религия. Религиозные убеждения часто служат основой для формирования моральных и этических норм, предоставляя людям систему ценностей и правил поведения, ориентированных на духовное совершенствование. Однако они могут стать и причиной разногласий, споров и конфликтов между людьми, что влечет за собой нарушения закона, прав и свобод человека и гражданина. В настоящее время в Казахстане создана необходимая правовая база по регулированию отношений государства и религиозных объединений. Предусмотрены нормы административной и уголовной ответственности за нарушение законодательства по этим вопросам. Вместе с тем, процессы, происходящие в казахстанском обществе, показывают увеличение правонарушений в религиозной сфере, вызванных влиянием деструктивных религиозных течений, а также ростом бедности населения. В этой связи государство должно применять необходимые законодательные и организационно-профилактические меры для недопущения совершения правонарушений, как со стороны религиозных объединений и отдельных верующих граждан, а также лиц, занимающихся миссионерской деятельностью, так и со стороны самого государства в части обеспечения свободы вероисповедания личности. Цель данной статьи – проанализировать новеллы, предлагаемые в Кодексе Республики Казахстан «Об административных правонарушениях», дать их юридическую оценку. В процессе исследования изучен зарубежный опыт правового регулирования вопросов ответственности за совершение административных правонарушений и проведен его сравнительный анализ с законодательством Казахстана, а также существующей правоприменительной практикой. На данной основе разработаны рекомендации по совершенствованию административно-деликтного законодательства Республики.

Ключевые слова: административная ответственность; административные правонарушения; кодекс; конфессия; религиозные объединения; религиозные обряды; свобода вероисповедания.

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