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### **The Question of the Legal Nature and Status of Real Estate Objects for Religious Purposes<sup>1</sup>**

**SUMMARY: 1. Introduction – 2. Degree of the subject study – 3. - Legal framework, empirical, and other source basis of the research – 4. Conclusions.**

#### **1 – Introduction**

The status of real estate objects for religious purposes and legal nature of such objects, features of legal framework for religious purpose property, the place and value of property relations in the total volume of relations between religious institutions and the state, other third parties, and, also, believers, in the total volume of religious relations, are the questions that considered to be difficult by civil legal science.

In accordance with subparagraph XII of Clause 10 of the Opinion of Parliamentary Assembly of the Council of Europe No. 193 (1996) of January 25, 1996, in response to a request for membership in the Council of Europe, the Russian Federation received the demand “to return without delay the property of religious institutions”. This process was given then a new impulse, but the bulk of the events on the transfer of publicly owned property for religious purposes falls within the period after 2010, when Federal Act of 30.11.2010 No. 327-FZ (ed. from 06.23.2014) «On the transfer of property for religious purposes under state or municipal property to religious organizations» was adopted.

The six-year period of operation of Federal Act of 30.11.2010 No. 327-FZ (ed. from 06.23.2014) «On the transfer of property for religious purposes under state or municipal property to religious organizations» in Russia is a sufficient term and quite an expedient reason to review the current results of application and assessment of quality of the above-noted Federal Law, and to evaluate the quality of the regulatory support in the field of study as well.

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<sup>1</sup> Article peer evaluated.



Also, the current reform of the civil legislation of the Russian Federation is relevant in the context of the matters at issue. Thus, Article 22, edition of 30.03.2016 of the Federal Law of 30.11.1994 No. 52- FL "On introduction of Part One of the Civil Code of the Russian Federation" removed

"the unauthorized constructions included, according to the Federal Law, into the list of property for religious purposes, and also the constructions intended for maintaining the property for religious purposes and (or) forming with it a single monastery, temple, or other cult complex"

from under action of Point 4, Article 222 of the Civil Code of the Russian Federation.

One more factor determining the relevance of the subject is the developing trend of conclusion of agreements between public authorities of the Russian Federation and the Russian Federation subjects with religious institutions. Present-day practice is acquainted with the facts of concluding contracts not only with the Russian Orthodox Church, but, also, with religious institutions of a number of other denominations. Quite often, it is property relations that become to a certain extent the subject of such agreements. While, the legal support of the conclusion of such agreements leaves much to be desired, as well as the texts of such agreements, which are quite imperfect. The practice under consideration needs to be improved.

One of the relevant methodological ways for performing the task of assessment the quality of legal regulation in the considered sphere is comparative legal research focused on the foreign experience and correlated, subsequently, to the Russian experience. Numerous problems in legislative and regulatory compliance practices predetermine the need to appeal to the provisions of foreign regulations (first of all, laws), in reference to the studied subject. The analysis of the foreign experience in legal and concordat regulation of the property relations of religious institutions can be a theoretical and methodological substratum, on the basis of which it is possible to crystallize uniform fundamental approaches to understanding the nature and value of real estate property for religious purposes, to crystallize the reference conceptual and categorial device, to construct harmonious and complete, carefully reasonable (on the basis of empiric, first of all) methodologically and logically verified scientific doctrine allowing to develop and generalize the scientific knowledge of the declared scientific theoretical and scientific practical issue-related horizon.

## **2 - Degree of the subject study**



The Russian experience in the studied sphere has been partially covered in some researches.

Thus, the features of the nature and the legal framework of the property for religious purposes to a certain extent have been touched upon (in addition to the works of the author of the present research) at serious scientific level in the works of N.I. Alekseeva<sup>2</sup>, A.A. Vishnevskiy<sup>3</sup>, M.A. Kulagin<sup>4</sup>, I.A. Kunitsin<sup>5</sup>, Yu.S. Ovchinnikova<sup>6</sup>, M.V. Khlistova<sup>7</sup>, etc.

Among the authors who revealed the problem of transfer of publicly owned property for religious purposes to religious institutions in Russia the following names should be mentioned: V.V. Bagan<sup>8</sup>, A.A. Dorskaya<sup>9</sup>, I.A. Kunitsin<sup>10</sup>, A.V. Stadnikov<sup>11</sup>.

Foreign experience in the studied sphere is hardly presented in the field of the Russian science. In particular, the subject of foreign concordats (agreements between the state and religious institutions) is scarcely detailed by domestic researchers. As an exception, we can specify works by K.M. Andreyev<sup>12</sup> where several agreements regarding regulation of the issues,

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<sup>2</sup> **N.I. ALEKSEEVA**, *Legal Framework of Property for Religious Purposes: Initial Aspect*, Messenger of the Baltic Federal University n.a. I. Kant, 2014, No. 9, pp. 114-121.

<sup>3</sup> **A.A. VISHNEVSKIY**, *A Legal Framework of Church Property by the Christian Law of the Roman Catholic Church*, News of Higher Educational Institutions. Jurisprudence, 2000, No. 1.

<sup>4</sup> **M.A. KULAGIN**, *Changes in the Legislation on Transfer of Property to Religious Institutions*, Actual Problems of Russian Law, 2011, No. 3, pp. 91-99.

<sup>5</sup> **I.A. KUNITSYN**, *Legal Status of Religious Associations in Russia: Historical Experience, Features, and Actual Problems*, M.: Orthodox Matters, 2000, 464 pages.

<sup>6</sup> **Yu. S. OVCHINNIKOVA.**, *Proprietary Rights of Religious Institutions of the Russian Orthodox Church in the Russian Federation*, extended abstract of Cand. Sc. (Law) Dissertation: 12.00.03, Institute of the State and Law of the Russian Academy of Sciences, M, 2002, 35 pages.

<sup>7</sup> **M.V. KHLISTOV**, *Legal Entities of Property of Religious Institutions of the Russian Orthodox Church*, Notary, 2010, No. 6.

<sup>8</sup> **V.V. BAGAN**, *Problems of Implementation of the Legislation Concerning the Transfer of Publicly Owned Property for Religious Purposes to Religious Institutions*, The Law and the State: Theory and Practice, 2016, No. 11.

<sup>9</sup> **A.A. DORSKAYA**, *Transfer of Property for Religious Purposes to Religious Institutions: Problem of Legal Qualification*, Society. Environment. Development (Terra Humana), 2012, No. 2, pp. 107-111.

<sup>10</sup> **I.A. KUNITSYN**, *Legal Status of Religious Associations in Russia: Historical Experience, Features, and Actual Problems*, M., Orthodox Matters, 2000, 464 pages.

<sup>11</sup> **A.V. STADNIKOV**, *Topical Issues of Transfer of the Federal Property to Religious Institutions*, Law and Economy, 2002, No. 3.

<sup>12</sup> **K.M. ANDREYEV**, *Concept and Features of Religious Secret within the Framework of Realization of Constitutional Freedom of Conscience*, M.: Law, 2015, 232 pages.



identified by the author as a certain type of religious secret, were studied. And, also, research works by I.V. Ponkin<sup>13</sup> can be pointed out as they specify the corresponding agreements in France.

Moreover, the works of foreign authors touched upon this subject just slightly. The exceptions are translated works by Francesco Margiotta Broglio, Cesare Mirabelli, Francesco Onida «Religions and Legal Systems. Introduction to Comparative Ecclesiastical Law»<sup>14</sup> and the work by Ernest Satow<sup>15</sup>.

Among the foreign authors researching the studied subject, we would name the following: Klara Nedvedova and Renata Shneiderova Heralova<sup>16</sup>, Herbert Tharston<sup>17</sup>, LuísJ. Siriko<sup>18</sup>, Edward Hull<sup>19</sup>, Fiona McCarthy<sup>20</sup>, Lloyd Lunceford<sup>21</sup>, Rene Metz<sup>22</sup>, John Jay Hughes<sup>23</sup>, Peter Petkoff<sup>24</sup>, Paul Fauchille<sup>25</sup>, etc. From the editions in foreign languages we would focus

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<sup>13</sup> I.V. PONKIN, *Modern Secular State: Constructive Secularism. Constitutional and Legal Research*, M., 2006, 390 pages. I.V. PONKIN, *Secularism of the State and Education in France: Focus on 2002-2003*, M., 2004, 148 pages. I.V. PONKIN, *Islam in France*, M.: Academic Center of Pre-Higher Education, 2005, 196 pages.

<sup>14</sup> F. MARGIOTTA BROGLIO F., C. MIRABELLI, F. ONIDA, *Religions and Legal Systems. Introduction to Comparative Ecclesiastical Law*, Translation from Italian, M., 2008, 437 pages.

<sup>15</sup> E. SATOW, *A Guide to Diplomatic Practice*: Translation from English, Under the general editorship of F.F. Molochkov, M., Publishing House of the Institute of International Relationship, 1961, 495 pages.

<sup>16</sup> K. NEDVEDOVA, R. SCHNEIDEROVA HERALOVA, *Sustainable management of church property* ([http://www.cesb.cz/cesb13/proceedings/5\\_tools/CESB13\\_1148.pdf](http://www.cesb.cz/cesb13/proceedings/5_tools/CESB13_1148.pdf)).

<sup>17</sup> H. THURSTON, *Ecclesiastical Property*, The Catholic Encyclopedia, New York: Robert Appleton Company, 1911.

<sup>18</sup> L.J. SIRICO, *Church Property Disputes: Churches as Secular and Alien Institutions*, Fordham Law Review, 1986, Vol. 55, № 3, pp. 335–362.

<sup>19</sup> E. HULL, *The institution and abuse of ecclesiastical property*, London, 1831, xii; 214 pages.

<sup>20</sup> F. MCCARTHY, *Church property and institutional free exercise: the constitutionality of Virginia Code section 57-9*, Virginia Law Review, 2009, Vol. 95, pp. 1841–1891.

<sup>21</sup> *A Guide to Church Property Law*, L. Lunceford (General Editor). Second edition. – Lenoir (North Carolina): Reformation Press, 2010, 496 pages.

<sup>22</sup> R. METZ, *What is Canon Law?*, New York: Hawthorn Books, 1960, 157 pages.

<sup>23</sup> J.J. HUGHES, *The Reich Concordat 1933: Capitulation or Compromise?*, Australian Journal of Politics & History, 1974, № 20 (2), pp. 164–175.

<sup>24</sup> P. PETKOFF, *Legal perspectives and religious perspectives of religious rights under international law in the Vatican Concordats (1963–2004)*, Law and Justice: the Christian law review, 2007, № 158, pp. 30–53.

<sup>25</sup> P. FAUCHILLE, *Traité de droit international public: du manuel de droit international public*, T. I. Troisième partie, Paris, Librairie Arthur Rousseau, 1926.



upon some collections of normative and other documents within the framework of the topic<sup>26</sup>.

With this consideration in mind, nevertheless, we have to conclude that within foreign and, especially, domestic civil scientific field, an appropriate research has not been devoted to this complex of questions, the subject is still open, demanding further scientific insight.

### 3 - Legal framework, empirical, and other source basis of the research

The legal framework, empirical, and other source basis of the research are as follows:

1) the array of agreements between the state and religious institutions selected from the databases of 21 foreign countries (Austria, Andorra, Brazil, Hungary, Venezuela, Germany, Dominican Republic, Spain, Italy, Colombia, Latvia, Lithuania, Peru, Poland, Portugal, Slovakia, the USA, France, Croatia, Montenegro, the Czech Republic); in total, several hundred of documents were researched, 101 of which, agreements (concordats) and supplementary agreements or protocols to them, were analyzed in detail.

2) legislation of 34 foreign countries (Australia, Austria, Azerbaijan, Armenia, Bulgaria, Bosnia and Herzegovina, Great Britain, Hungary, Vietnam, Greece, Denmark, Israel, Spain, Canada, Latvia, Lithuania, Macedonia, Mexico, Peru, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, USA, Finland, France, Croatia, Czech Republic, Chile, Switzerland, Estonia, Japan); several hundred of foreign legal acts were researched, 47 of them were analyzed (and listed in the extracts ) in detail; the choice of the countries was based on the criteria of selecting reference examples from various legal systems, from various continents of the world that allowed to provide appropriate objectivity of the conducted scientific

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<sup>26</sup> *Droit des religions en France et en Europe: Recueil de textes*, Edité par Françoise Curtit et Francis Messner, Bruxelles, Bruylant, 2008, xix; 1194 pages. **J.-M. WOEHLING, F. MESSNER, P.-H. PRELOT, I. RIASSETTO**, *Traité de droit français des religions*, Edition 2<sup>e</sup>, Paris, LexisNexis, 2013, 2000 pages; *Liberté religieuse et régimes des cultes en droit français: Textes, pratique administrative, jurisprudence*, Préface par Jean-Pierre Ricard, Paris, Les éditions du CERF, 2005, xviii, 1856 pages; *Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską 1993/1998*, Józef Kowalczyk, Przasnysz, Płocki Instytut Wydawniczy Płock, 2013, p. 278 s.; *Spanish legislation on religious affairs*, Edited by Alberto de la Hera and Rosa María Martínez de Codes, Madrid, Ministerio de justicia, Centro de publicaciones, 1998, 168 pages; *Religionsrechtliche Bestimmungen in der Bundesrepublik Deutschland*, Gerhard Robbers in Zusammenarbeit mit Angelika Günzel, Trier, 2014, 1759 pages.



research regarding the comparative and legal analysis of the foreign experience;

3) archival materials of a number of the religious organizations in Russia and abroad;

4) correspondence (survey) with the embassies of a number of foreign states in the Russian Federation (November, 2016 – January, 2017);

5) the legislation of the Russian Federation, including Federal Act of 30.11.2010 No. 327-FZ (ed. from 06.23.2014) «On the transfer of property for religious purposes under state or municipal property to religious organizations».

Research of a considerable number of foreign and domestic scientific and monographic works, scientific articles, and scientific and dissertation works on the subject of the thesis and relating questions was made.

#### 4 - Conclusions

By the results of the research the following key scientific provisions were formulated:

**1. The nature of specific characteristics of real estate objects for religious purposes** (buildings, constructions, land plots) is determined by embarrassment of these objects with the value, unique for legal frameworks, as centers of attraction, places of reunion for collective realization of the freedom of conscience, as unique material areas which are attributed by believers with special (in perception of believers – spiritual) characteristics, which turn these areas (in and/or in close proximity to the object, on the surface of the land plot or over it) into the objects of special sensitivity for religious feelings of believers and, owing to this fact, into the objects of special (with fiduciary<sup>27</sup> nature) obligations of the state on the advanced legal protection and legal safeguard.

**2. According to our concept, the legal nature of the agreement between the state and the religious institution (concordat)** serving for regulation of property relations between the state and religious institutions, property rights of religious institutions and property relations in religious institutions – regarding real estate objects for religious purposes, and, also, the status of some religious purpose property objects, is defined and termed by the specificity of a complementarity (mutual complementability) of this

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<sup>27</sup> The concept "fiduciary" hereinafter means the obligation to act in the best interests of believers (represented by a religious institution), even if the formal interests of the state are not served.



tool in relation to the basic, within the field of property relations of religious institutions, regulating tool – legal framework, the imperatives of which result from special (with fiduciary nature) obligations of the state on the advanced legal protection and legal safeguard of real estate objects for religious purposes. Unlike full-scale (in the subject) concordats (among which there can be also public contracts, especially in those countries where religious institutions can have legal capacity of an entity subject to public law), such agreements are (either completely or mainly) of civil nature. While such agreements on education, chaplain activity, etc. can have the features of simple additionality, in the sphere under consideration, it is only through adoption of agreements, a certain integrity, completeness of regulation of property relations of religious institutions is reached, especially in those countries where earlier such property was taken away from religious institutions by repressions.

3. According to our concept, it is reasonable to list the following among the types of religious purpose real estate objects:

- ordinary property objects (buildings and constructions) for religious purposes (cult buildings –temple, mosque, etc.; cult constructions –chapel, memorial cross on a land plot, etc.) with the related (located under them) land plots (for example, in the city –separate temple buildings surrounded with residential, commercial, or production constructions), including ruined and/or temporarily not used for the initial purposes;

- ordinary buildings which do not have direct cult religious purpose, but used in ensuring religious and related activity of religious institutions (according to the contents of articles 6, 8, 5, 16, 18, 19, 21, 21.1 of Federal law "Concerning Freedom of Conscience and Concerning Religious Associations") – "objects for production, social, charitable, cultural, educational, and other purpose";

- complex property objects for religious purposes including not only buildings for religious purposes (cult buildings – temples, mosques, etc.) with the related land plots, but also the buildings supporting the operation (broader, than only cult activity) of religious organizations, maintenance building, buildings of educational organizations (buildings intended or/and used for educational and both religious and educational activities of the religious institution or the related organizations) and buildings used for social work with the land plots which they are located on, and also the adjacent land plots (monasteries, temple complexes);

- the land plots on which there used to be the buildings for religious purposes, later destroyed, but the sites continue being of big value to believers;



– confessional (religious) cemeteries, confessional sites of public cemeteries;

– religiously worshiped, separately located places of burials or places of burial religiously worshiped persons or the persons who are held in special high respect of believers, other places of religious pilgrimage, land areas, historically directly connected with religious practices;

– other material objects for religious purpose, religiously worshiped by believers or integrally connected with religious practices of believers.

4. By the results of the scientific and comparative civil legal research of the array of the agreements concluded between the states (including their administrative and territorial units) and religious institutions (using as examples **21 foreign countries**: Austria, Andorra, Brazil, Hungary, Venezuela, Germany, Dominican Republic, Spain, Italy, Colombia, Latvia, Lithuania, Peru, Poland, Portugal, Slovakia, the USA, France, Croatia, Montenegro, the Czech Republic), regarding existence in such agreements of the provisions concerning property relations between the state and religious institutions, property rights of religious institutions and property relations in religious institutions – regarding property objects for religious purposes, and, also, the status of some property objects for religious purposes, and, equally, – the extent to which such provisions are detailed and qualitative, the following conclusions were drawn.

1) foreign experience convincingly shows that such agreements concluded in the states under study are rather often effectively used as an instrument for regulation of the considered scope of relations. Provisions concerning property relations between the state and religious institutions, property rights of religious institutions and property relations in religious institutions – regarding property objects for religious purposes, and also the status of some property objects for religious purposes, are included in such agreements rather often, however, the specified questions are revealed there, as a rule, very superficially;

2) agreements between the state and religious institutions regarding settling by these documents the issues on the status of property objects for religious purposes and on property relations of religious institutions often contain guidance that the state, first of all, should consider requirements and interests of the relevant religious institutions while applying measures to real estate objects for religious purposes (for example, while making decisions on nationalization or expropriation of such property, and, also, applying the legislation on protection of cultural or historical monuments);

3) reference provisions of foreign concordats in the considered sphere can be classified as follows:





– provisions which contain guarantees of property rights of religious institutions on their property (including references to the relevant articles of the Constitution and laws);

– provisions concerning the transfer of property objects for religious purposes from the state to the property of religious institutions (owing to a number of factors, including possession (or, at least, using) of those objects by religious institutions earlier for a long period of time);

– provisions concerning establishment of a certain mode of use of the objects for religious purposes which are in state property and are only available for use by religious institutions;

– provisions providing certain obligations of religious institutions concerning the real estate objects for religious purposes belonging to them (in particular, for example, concerning a possibility to use church cemeteries for the whole city purposes, and, also, ensuring protection and proper safety of historical and cultural monuments, and providing public access to them).

In a number of the considered agreements the specified questions are touched only as establishing opportunities of rendering financial aid by the state to the religious organization for achieving various purposes, including: support of school and higher religious education (in particular, not only in the form of compensation of costs for teaching, but also as provision with accommodation); ensuring preservation of national and cultural heritage; assistance in preservation of some church infrastructure (buildings, etc.).

5. By the results of the scientific and comparative civil legal research of the legislation of **34 foreign states** (Australia, Austria, Azerbaijan, Armenia, Bulgaria, Bosnia and Herzegovina, Great Britain, Hungary, Vietnam, Greece, Denmark, Israel, Spain, Canada, Latvia, Lithuania, Macedonia, Mexico, Peru, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, the USA, Finland, France, Croatia, the Czech Republic, Chile, Switzerland, Estonia, Japan) the following conclusions were drawn:

1) in the countries the experience of which was investigated, at the level of the law, a lot of emphasis is placed on the guarantees of granting, preservation, and protection of the status of property objects for religious purposes and guarantees providing the due mode of the property relations of religious institutions, which is connected with providing the freedom of consciousness, cult activity of religious institutions (as one of the key forms of their activity), on guarantees of appropriate consideration of requirements and interests of the relevant religious institutions while applying certain measures to real estate objects for religious purposes (for example, at making decisions on nationalization or expropriation of such



property, and, also, applying the legislation on protection of cultural or historical monuments, cemeteries); also, the right of religious institutions to create new venues of church services and real estate objects for religious purposes is guaranteed;

2) in foreign legislation, a specific (immanent precisely for this area of the relationship) conflict is laid down between the norms establishing a particular (restrictive) legal framework of using the property for religious purposes referred to archaeological, art, and historical monuments, and the norms reflecting the value of legitimate interests of religious institutions in realization and implementation of fiduciary obligations to believers. The solution of this conflict is always casual (proceeding from the situation, actual circumstances of the case) and is carried out by means of finding an optimum combination, on the one hand, thus, giving high value to the guarantees of appropriate (as full as possible) consideration of the requirements and interests of the relevant religious institutions while applying certain measures to real estate objects for religious purposes (for example, at making decisions on nationalization or expropriation of such property, and also while applying the legislation on protection of cultural or historical monuments, cemeteries), and, on the other hand – imposing security obligations and the corresponding restrictions on the users of such real estate objects;

3) the conditions for property rights of the religious organization is its official registration (in accordance with the established procedure) by the state and affiliation (direct or mediated) of the property for religious purposes with the authorized activity of the religious organization within its framework (not only cult, but also other religious and related to it); meanwhile, in a number of countries, the state registration provides only a certain minimum level of legal capacity of the religious organization; essential expansion (of the legal capacity) for this religious organization (as a rule – the religion (faith) which is historically presented in this country) including, and above all just in the sphere of the property relations, is realized on the basis of the conclusion of special agreement between the state and this religious institution.

**ABSTRACT:** The article is devoted to research of the texts of foreign laws, regulations, and concordats on property relations between the state and religious institutions, on property rights of religious institutions and property relations in religious institutions (regarding property objects for religious purposes), on the status of some property objects for religious purposes. The author of the research analyzed the features of legal and contractual regulation of property relations of religious institutions and the status of property objects for religious purposes. The



**methodological foundation of the research presented has comparative and legal research method as the basis.**

Keywords: civil law, real estate objects for religious purposes, religious organization, concordat, law, comparative law.