

Original article

UDC 343.8

doi: 10.46741/2686-9764.2022.59.3.006



Organizational and Legal Aspects of Ensuring Cooperation between Penal Institutions and Religious Organizations

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Abstract

Introduction: the article analyzes domestic normative legal acts regulating interaction between the penal system and religious organizations in terms of realizing the right to freedom of conscience and religion and organizing spiritual and moral education of convicts and persons in custody. The constitutional right to freedom of conscience and freedom of religion is guaranteed to everyone and should also be ensured in the event of a person's conviction or detention. To date, there is a certain regulatory framework. The reform of the Russian penal system is to a certain extent aimed at strengthening and expanding cooperation with religious organizations, requiring adjustment of the existing system of normative legal acts. *Purpose:* to characterize the system of existing domestic regulatory legal acts regulating and protecting this area, identify the shortcomings of legal regulation hindering full-fledged cooperation of the Federal Penitentiary Service of Russia with religious associations, and suggest ways to solve problematic issues. *Methods:* dialectical method of scientific cognition, methods of logical analysis and synthesis, comparative-legal, system-structural, statistical, formal-legal. *Results:* the authors have substantiated the necessity to use capacities of religious organizations belonging to various faiths when implementing educational work with persons in isolation as part of the correction process. The problems of legal regulation of the considered public relations are revealed. *Conclusions:* in order to ensure full cooperation between the penitentiary system and religious organizations in terms of realizing the right to freedom of conscience and religion, it is necessary to improve the regulatory framework, taking into account religious canons and the specifics of activities of penitentiary institutions.

Key words: penal system; correctional institution; religious organization; cooperation; convicts; persons in custody; legal regulation; punishment; correction; spiritual and moral education.

12.00.11 – Judicial activities, prosecutor's activities, human rights and law enforcement activities.

5.1.2. Public legal (state legal) sciences.

For citation: Kuznetsova N. V., Makarova T. V. Organizational and legal aspects of ensuring cooperation between penal institutions and religious organizations. *Penitentiary Science*, 2022, vol. 16, no. 3 (59), pp. 285–292. doi: 10.46741/2686-9764.2022.59.3.006

Humanization of the criminal policy, expressed in the priority assignment of criminal penalties not related to isolation from society, is one of the areas of reforming the penal system. The implementation of this approach, on the one hand, led to reduction in persons sentenced to imprisonment, but on the other hand, deterioration of qualitative characteristics of the personality of criminals serving sentences in penitentiary institutions, since persons with low moral values get there. Unfortunately, most of them are repeat offenders. The statistics of the Federal Penitentiary Service of Russia for 2021 reflect quantitative indicators of the occupancy of institutions. 423,822 convicts served their sentences in correctional facilities, of them, 228,015 people had more than two convictions [3]. The presence of repeated crimes indicates a person's persistent criminal orientation and desire to lead an illegal lifestyle.

At the same time, the basic ideas of the modern penitentiary system are to correct convicts and prevent recidivism [11]. Correction, according to the legislator, should be achieved by forming a respectful attitude towards a person, society, work, norms and rules accepted in society, and promoting a law-abiding lifestyle.

Besides regime requirements as a means of correcting convicts, we should mention socially useful and educational work, opportunities for education and profession, and public influence. The stated goal is successfully achieved, when a former convict denies an antisocial lifestyle and illegal behavior. A special place in the formation of value orientations of persons who have violated the law is occupied by spiritual and moral education, implemented, including through religious influence.

Religion, as a certain system of views, is a type of socio-historical worldview, a form of spiritual culture of the mankind, which includes a set of moral norms and rules of life that unite a huge number of people. To date, religion has penetrated into almost all spheres

of life and has an impact on a large range of social relations [14]. The penal system is no exception. Its modern development is impossible without effective interaction with civil society institutions. Therefore, strengthening cooperation with traditional religious organizations, as well as expanding their participation in the spiritual and moral education and upbringing of convicts, persons in custody, employees and members of their families is indicated as the most important direction of the ongoing reform of the penitentiary system.

Nowadays the prison clergy institute is actively functioning in the penal system. Representatives of various religious confessions carry out educational and preventive work in places of deprivation of liberty, thereby participating in correction and re-socialization of convicts. So, to date, 1,477 buildings, structures and premises used for religious rites function in 935 institutions of the penitentiary system. Most premises are used by persons (1,025) professing Orthodoxy. The interests of convicts adhering to Islam (389), Judaism (14), Buddhism (27), as well as other religious movements (22) are taken into account [3].

The need for religious education is emphasized at the legislative level. Thus, the Constitution of the Russian Federation contains guarantees of freedom of conscience and religion for every person (Article 28), and also reserves the right to profess any religion or renounce religious affiliation altogether. It is important that a person's choice is not limited by the legal framework, which makes it possible to interact with religious organizations in various fields of activity, including in the penal system. Today, the church is a popular tool for influencing convicts, which required not only the creation, but also the reform of legal foundations of its activities.

Any legal system will be finally formed and effective only if there is a balanced legislation that performs both regulatory and protective functions. In this regard, the regulatory framework on the basis of which the interac-

tion of the penitentiary system with religious organizations is carried out will be considered through these aspects. The first group includes normative legal acts regulating this activity.

Constitutional provisions on freedom of conscience and religion are reflected in the federal legislation. Thus, the federal law "On freedom of conscience and religious associations" was adopted in September 1997. This normative legal act became the regulator of relations in the field of human and civil rights to freedom of conscience and freedom of religion and determined the legal and civil status of religious associations. This law stipulated the conduct of religious rites in penitentiary institutions and guaranteed the secrecy of confession. Adoption of the document and subsequent amendments to it (2021) adjusted activities of religious organizations and served as a barrier to penetration of destructive sects, pseudo-religious organizations, and foreign missionaries into places of detention [10].

It is important that in order to ensure strict compliance of the current legislation by religious organizations and prevent them from committing illegal actions, the judicial authorities, the prosecutor's office, and other authorized bodies monitor their activities within their competence.

In addition to convicts, persons in custody have the right to freedom of religion. Their interests are protected by the Federal law No. 103 of July 15, 1995 "On the detention of suspects and accused of committing crimes". It explicitly states the prohibition of discrimination on religious grounds and guarantees the possibility of religious ceremonies.

The Russian Orthodox Church has normative documents justifying the need for interaction with the penal system to work with persons who have violated the law, such as the Fundamentals of social concept of the Russian Orthodox church of August 13, 2000, as well as the Mission of the prison service of the Russian Orthodox Church and penitentiary institutions of March 12, 2013 [9]. They emphasize the importance of pastoral and missionary work in places of detention.

The agreement between the Ministry of Justice of the Russian Federation and the Russian Orthodox Church is a significant ad-

ministrative document in terms of achieving socially significant benefits [2]. It determines the need for the staff of penal institutions to cooperate with representatives of the Russian Orthodox Church in the field of spiritual care, religious and moral education of convicts. The parties pledged to provide all possible support to each other, in particular, create favorable conditions in correctional institutions for church representatives to visit believers, perform prayers and divine services, carry out religious education and upbringing, assist in the construction of temples, chapels, prayer rooms, and provide them with cult items and special literature. It seems that the signing of this document is justified, since it is aimed at creating conditions for productive religious service in institutions of the penitentiary system. In 2017, the cooperation agreement was signed directly with the Federal Penitentiary Service of Russia (hereinafter referred to as the FSIN of Russia).

Similar agreements were also concluded in 2010 with the Russian Council of Muftis, the Federation of Jewish Communities of Russia, and the Buddhist Traditional Sangha of Russia [8]. In the same year, the program for cooperation between the Federal Penitentiary Service of Russia and the Russian Union of Evangelical Christians-Baptists (RUECB) was signed.

Conditions for visiting certain penitentiary institutions and conducting religious activities with convicts are specified in agreements [5] on cooperation with territorial bodies of the Federal Penitentiary Service of Russia and the religious organizations registered in accordance with the established procedure. They determine key issues related to the list of buildings and structures that are planned to be used for religious rites. To date, rites of baptism, penance, anointing, confession, communion, and unction are held in penitentiary institutions, religious literature is distributed, etc. Time limits of rituals, personal data of the clergy who will carry out activities on the territory of a correctional facility, and items used in conducting religious rites are also agreed upon, and a list of relevant literature is discussed. Interaction of the parties to the agreement is carried out free of charge to ensure the right to freedom of conscience and freedom of religion of convicted persons

and persons in custody. Similar agreements have been concluded in all territorial bodies of the Federal Penitentiary Service of Russia.

For example, back in 2018, representatives of the Vologda Diocese of the Russian Orthodox Church and the Territorial Body of the Federal Penitentiary Service of Russia signed the agreement aimed at ensuring freedom of conscience and freedom of religion of convicts who are isolated from society [12]. Priests participate in pedagogical influence, spiritual and moral upbringing and education, restoration of socially useful ties, preparation for release and subsequent re-socialization after serving a sentence.

Effective interaction between the penitentiary system and religious organizations requires revival of the practice of constant cooperation between clergy representatives and correctional institutions that perform the functions of assistant chiefs for organizing work with believers in territorial bodies of the Federal Penitentiary Service of Russia [4].

Unfortunately, despite the work done, there is currently no single normative act that would regulate the legal status of assistants in organizing work with convicts and certain areas of their activities,.

The provisions corresponding to the basic law of the country regarding the rights of persons in isolation to freedom of conscience and religion are contained in the Penal Code of the Russian Federation.

The amendments to Article 14 of the Penal Code of the Russian Federation made in 2015, of course, contribute to realization of this constitutional right, since convicts have the opportunity to freely perform religious rites and listen to sermons. Religious convicts serving sentences in isolation are entitled, without quantitative restrictions, to meet in person with clergymen out of earshot of third parties. Objects of worship and religious literature can be used. There are special premises at correctional institutions. At the same time, it is worth mentioning that the right to freedom of conscience and religion is voluntary. Satisfaction of religious needs should not violate internal regulations of institutions and infringe on the rights of others.

At the same time, it should be noted that the effectiveness of the influence of religion on convicts, the degree of its penetration be-

hind bars depends on the state authorities [11]. While the state guarantees convicts freedom of conscience and religion, there are also certain prohibitions and restrictions related to the type of institution, conditions of serving a sentence and the regime of detention. Thus, the Order of the Ministry of Justice of the Russian Federation No. 110 of July 4, 2022 "On approving the Internal regulations of pre-trial detention facilities of the penal system, the Internal regulations of correctional facilities and the Internal regulations of correctional centers of the penal system" fixes certain conditions for the exercise of convicts' rights. A brief analysis of the Regulations shows that there is an appropriate mechanism for the realization of convicts' rights to freedom of conscience and religion, taking into account the specifics of places of detention of convicts. First, the conditions for conducting religious rites are defined in agreements on cooperation with territorial bodies of the Federal Penitentiary Service of Russia. Second, only priests belonging to the religious associations registered in the Russian Federation are allowed to enter the territory of a penitentiary institution. Third, religious rites are performed only in places determined by the administration of an institution. Depending on the place and conditions of serving a sentence, these may be residential premises, lockable premises, cells, or corresponding buildings and structures located on the territory of a correctional institution. Fourth, it is forbidden to use piercing and cutting objects of religious worship, including those made of precious metals or having cultural or historical value, during church rites. Fifth, personal meetings with the priest cannot exceed two hours and are held in the presence of an administration employee. If necessary, with the written consent of the priest, a personal meeting (in private) can be held out of earshot for third parties, but using video surveillance. Sixth, the storage of certain substances, for example, intended for communion, is prohibited on the territory of a correctional facility. Their use is possible only during the service.

At the same time, it should be borne in mind that religious influence on convicts differs from other areas of educational work, it is implemented taking into account persons' individual needs. In order for this activity to be as

orderly and effective as possible, the Regulations contain not only prohibitions. Convicts, wishing to receive spiritual help, can submit a written request for this. Besides, they are allowed to use religious literature located in the institution and have religious items. Convicted persons suffering from serious illnesses are also provided, at their request, with the opportunity to perform necessary religious rites with the invitation of church representatives. On the eve of church holidays, the clergy, with the permission of the institution administration, can transfer to convicts ready-to-eat food (cakes, dyed boiled eggs, dry confectionery) made on the territory of a correctional institution.

The state grants the right to every person to profess any religion or to be an atheist, as well as act in accordance with their beliefs. Religious relations in the system of execution of punishments are also protected under certain provisions of the Code of Administrative Offences of the Russian Federation and the Criminal Code of the Russian Federation. So, administrative liability is provided for obstructing the exercise of the right of persons in isolation to freedom of conscience and freedom of religion in accordance with Article 5.26 of the Code of Administrative Offences of the Russian Federation [1]. This activity entails the imposition of a fine on an individual in the amount of 50–100 thousand rubles. If the offense is committed by a legal entity, the amount of a fine increases to 1 million rubles. It is punishable to publicly desecrate religious literature, objects of religious veneration, signs or emblems of ideological symbols and attributes, as well as their damage or destruction.

Religious activity of an organization without specifying its official full name is qualified as an administrative offense. Issuing and distributing literature and other materials of religious content that have no, insufficient or deliberately false labeling entails the imposition of an administrative fine and confiscation of these items. Religious organizations, foreign citizens and stateless persons engaged in missionary activities in violation of the Russian legislation on freedom of conscience, freedom of religion and religious associations are brought to liability in the form of a fine and administrative expulsion.

Criminal liability is provided for the commission of public actions expressing obvious disrespect for society and insulting believers' religious feelings (Article 148 of the Criminal Code of the Russian Federation). The criminal legal influence measures are differentiated depending on the place of commission of these actions, for example, a place of a religious rite or ceremony. The acts to hinder religious activity, committed with the use of official position or violence are classified by the legislator as particularly qualified, for the commission of which a penalty of imprisonment is provided.

Certain provisions of the criminal law establish liability for committing murder motivated by religious hatred or enmity (paragraph "l" of Part 2 of Article 105 of the Criminal Code), intentional infliction of serious or moderate harm to health for the same reasons (paragraph "e" of Part 2 of Article 111 of the Criminal Code, paragraph "e" of Part 2 of Article 112 of the Criminal Code of the Russian Federation), discrimination of a person because of his/her attitude to religion (Article 138 of the Criminal Code of the Russian Federation), inciting hatred or enmity, humiliation of the dignity of a person or group of persons because of religious beliefs (Article 282 of the Criminal Code of the Russian Federation), etc.

At the same time, the current legislation has certain shortcomings, which in practice cause disputes and may lead to the violation of the right to freedom of conscience and religion of persons in custody and places of deprivation of liberty. For example, the preamble of the law "On freedom of conscience and religious associations" indicates the importance of the Orthodox religion itself, and its special role in the development of the spiritual and cultural heritage of Russia. It is separately noted that other religions are also respected in the country: Christianity, Islam, Buddhism, Judaism, as well as those that are an integral part of the historical heritage of Russia. Pointing out the privileged position of some religions in relation to others that are historically not traditional for Russia can become a prerequisite for discrimination of convicts who identify themselves with non-widespread confessions in the country.

Clergymen actively participate in the process of education, have a positive impact

on convicts, thus affecting not only the operational situation in the institution and moral and psychological climate, but also helping to achieve the stated goals of criminal punishment, that is to correct convicts and prevent them from committing new crimes. A clergyman does not act on behalf of the state and has a neutral status. A benevolent manner of communicating with others can change a criminal's attitude to the committed act, become a powerful incentive for repentance and encourage renunciation of violence and other types of illegal activities. According to some researchers, the appearance of a priest in places of deprivation of liberty causes positive feelings in convicts [13].

The penal legislation contains a list of forms and methods of educational work as a means of correction. These include moral, physical, labor, legal and other effects. In essence, religious influence on convicts differs from other areas of education. It has specific forms and methods and is mainly associated with the performance of religious rites, reading religious literature, prayers, sermons, etc. In this regard, the absence of an indication of religious influence as the main means of correction in Part 2 of Article 9 of the Criminal Code of the Russian Federation does not seem correct.

The activity of religious organizations in penitentiary institutions, according to researchers, has its own characteristics that need to be taken into account. These include isolation conditions, a specific object of influence, and a legal framework [6]. A special role is played by internal regulations that should not be violated when performing religious ceremonies. Unfortunately, there is currently no regulatory act that would specify the issues related to the conduct of appropriate rituals with the participation of persons held in correctional and other penal institutions. Thus, the current legislation does not contain a direct prohibition on the implementation of certain religious rites in isolation, which means that any rite can be held at the request of convicts. At the same time, if it does not meet the regime requirements, there appears a for violating the right to freedom of religion and freedom of speech. For example, when a cleric performs a Judeo-Islamic circumcision

rite (an analogue of baptism in Orthodoxy), cutting objects, prohibited by internal regulations, are used. During some liturgies, church sacraments of Communion, Unction of the sick and weddings, red church wine is used, which is classified as prohibited items on the territory of a correctional facility. Also, internal regulations do not allow the use of prayer mats (namazliks), since they do not belong to wearable or pocket objects of a religious cult. For Muslim believers, the problem of studying the Koran in Arabic is critical. Current nutrition norms do not provide for the preparation of individual dishes, consuming or refusal of which is required by one or another religion [7]. Hence, difficulties arise with fasting, cooking halal food, etc. All this may lead to the fact that the observance of church customs will become impossible, and therefore convicts and persons in custody will not be able to exercise their right to freedom of conscience and religion. Another pressing issue that needs to be addressed is the implementation of regime measures: inspections of priests, objects of spiritual purpose, and examination of premises for rituals for finding prohibited items, including with the use of service dogs. According to church canons, a dog is considered an "impure" animal (Canon 88 of the Sixth Ecumenical Council (VII)). Its presence in the room where the divine service is taking place is a serious violation of the canon. Implementation of regime measures may offend religious feelings of believers and desecrate religious shrines, this discouraging convicts to repent and correct.

Thus, the cooperation between the penal system and representatives of various religious denominations contributes to the process of correction of convicts and their subsequent re-socialization. At the same time, the provision of this right has a number of legislative restrictions due to the specifics of the functioning of penitentiary institutions. The absence of normative legal acts regulating activities of representatives of religious organizations in a penitentiary institution decreases the effectiveness of interaction. The solution to the problem is seen in the creation of a single normative act, the provisions of which would be mandatory for both penitentiary institutions employees and clergymen.

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Received July 4, 2022

