

# КРУГЛЫЙ СТОЛ «ГОСУДАРСТВЕННО-КОНФЕССИОНАЛЬНЫЕ ОТНОШЕНИЯ В СОВРЕМЕННОМ МИРЕ»

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## CONSCIENCE FREEDOM CONCEPT AS CONSTITUTIONAL AND LEGAL CATEGORY

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Being a social consciousness form and widely extensive social organization, religion is closely related with law. This relationship exists both at the religious and legal regulatory systems and at the national will formation level and its consolidation in the church activities legislation regulating system (religious organizations) in society. This theme is not only the religion subject but also the legal analysis. It'll be further updating under the political process democratization conditions in the world and Ukraine, related to inter-religious harmony practical issues establishing, tolerance relationship between sacred and secular spiritual culture and parity views between religious and liberal ideas.

In today's social science, religious and legal literature one of the most topical issues is the conscience freedom, which has theoretical and practical aspects. The «conscience freedom» content category is the citizens' right to profess any religion or profess none of them, to worship religious or follow humanistic worldview. The conscience freedom is one of the concrete freedom manifestations in society. It is an important philosophical, ethical and legal principle. In this sense, the conscience freedom is one of the universal social and spiritual values. As E. Trubetskyi says, it is «the most precious of all freedoms».

Its core must be the conscience. Conscience is the person moral consciousness expression of moral self-esteem. According to these values, conscience is characterized by intellectual, emotional and psychological aspects. Individualized conscience nature is that it covers individualized, subjected, included in the person's motivational and emotional-volitional facial structure requirements for their behavior on the society part, class, a social community.

Our conscience is educated and formed by society, primarily through the direct social environment influence in which the individual is. Society factors form the man as a moral being. So the individual's

primary socialization is taking place, that person perceives and learns social norms, conduct rules, necessary information to all their needs implementation.

Every person, who have legal characteristics and capacity, is the law subject, with his actions may acquire the natural or legal person status. Therefore, the individual is always in some relationship with other society members (individuals and legal entities). Between a state and a citizen content relationships are generated, which legal side is legal relationship between them. In the democratic society, the state is the official civil society interests representative, protects and ensures the citizens rights. This is its direct constitutional duty. The state through coercive actions mechanism, the law activity system, organizational measures gives a person a certain legal status that is expressed in the laws which social position a person holds in civil society and the state, establishes a legal means set to ensure that citizens exercise their rights and freedoms.

The person legal status main content is its laws and legal guarantees, its duties and their implementation responsibilities. Therefore, the conscience freedom as a social value is complemented by its legal characteristics. The conscience freedom should be seen as a legal phenomenon in the all other rights and freedoms context within the legal person status.

Here takes beginning the conscience freedom definition in a wider sense it's opinion freedom, that the human right to choose, to defend their convictions and implement them. However, in certain historical times the conscience freedom principle had different expression forms.

In primitive society the conscience freedom has actually already existed, as a society without a state regulated the community members' attitude to primitive religion only by moral norms that were recognized by all members voluntarily. In slave society, especially with the despotism existence, religion became a social consciousness form and had social legal burden. The conscience freedom principle gets some limitations and therefore begins to assert itself dissent traditions (Democritus, Epicurus, Lucretius).

In the middle Ages dominated religious worldview; a particular religion profession actually was considered mandatory. Under these conditions, the conscience freedom principle did not speak as the right to freely determine their attitude towards religion. In this sense it was proclaimed by bourgeois ideologists who fought against feudal

absolutism and the official ecclesiastical authority. Some of the first conscience freedom defenders were well-known philosophers and scientists M. Montaigne, P. Bayle, Spinoza, F. Voltaire. Such French enlightenment as J.Melle, P. Holbach, D. Diderot, K.-A. Helvetius, J.-O. La Mettrie formed atheistic direction – a radical conscience freedom version.

In Western society, the conscience freedom is treated as a free religion choice and a humanistic worldview.

In former post-soviet countries, the conscience freedom was distorted. The religion and religious organizations role in public life was extremely humiliated, while atheistic education activities in fact became the state totalitarian control means on the citizens' consciousness. «Atheism» led towards the numerous human rights violations, especially in the conscience freedom principle field.

In the transition to the law rule unfolds quite full conscience freedom principle effect. It is given a clear legal status, protecting the inalienable person rights both as excessive clericalization and single-atheism from.

Thus, the conscience freedom is closely connected with the society church and religion situation, the state ratio religious factors and its political institutions. Therefore, it is interesting how the strategic and practical plans solve this issue in different policy areas.

Some close official religion and state apparatus combination generates different religious (clerical) state variations. In some countries (Saudi Arabia, Pakistan) clerical influence extends to various public life areas. For example, in Saudi Arabia, Muslims are required to comply with all Quran requirements, judicial power is exercised by the Sharia courts. In this region, Islamic law is spread, which subordinates secular power to the religious authorities.

Another confessional (clerical) state option was established in the Islamic Republic of Iran, where over secular authorities (parliament, president, government) existed lifetime Muslim state head, which officially is the country major spiritual and political leader.

In other countries, mostly formally is declared religion freedom, but also are favored religions and religious movements: in the Arab world it is Islam; in Latin American and Western European it is Catholicism; in Eastern Europe it is Orthodoxy. The special church recognition situation is recorded in the 42 states constitutions; the 32 countries legislation causes higher state positions occupation by the religious

oath adoption; in 22 countries, according to the Constitution, the presidency can take only persons belonging to the official church.

There are countries where the official state religion doesn't exist. For example, the USA didn't have the dominant religion, but in France and Turkey the church was separated from the state. Some relevant organizations are given the opportunity to participate in political life. So, essentially it means that conscience freedom here is a human right to choose any religion or the right not to profess any religion. Such rights are considered inalienable personal civil liberties in these countries constitutions.

Even during the bourgeois revolutions in Europe there was a broad ideological movement –the thought freedom, which set out to fight against the spiritual church dictates for the conscience freedom. Nowadays, in Western countries there are freethinkers associations which unite atheistic and anticlerical oriented people. These partnerships are the World Union freethinkers' part. In 2011 in Oslo (Norway) was held the World Founding of Free Thought Congress, which was attended by Austria, Belgium, India, Italy, USA, Switzerland, Sweden, Finland, Germany freethinkers national organizations representatives. This congress took Manifesto with the World Union freethinkers' revival purpose. In their speeches, delegates called to protect and restore the conscience freedom, to distribute materialistic ideas, fight for a man's comprehensive spiritual development.

In this regard, it is necessary to consider two opposing trends in which contexts the conscience freedom is taking on the certain ideological orientations characteristics – clericalism and atheism.

Our consideration subject is one conscience freedom aspect – its constitutional and legal content. In this sense, the conscience freedom is studied as a law body and real guarantees that regulate and determine the development associated with the religion social relations, so that the conscience freedom is a legal category.

Therefore, according to the Ukraine Constitution, the conscience freedom is the right to have religion freedom, freedom to practice any religion or profess no. This constitutional definition is this Institute conscience freedom essential element, acts its supreme legal force. It provides equal opportunities for their own spiritual needs implementation both of believers and unbelievers.