



Western and post-socialist (eastern christian countries) model of private life rights: Features of formation and development

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Abstract

During the soviet period of Russia's, the influence of various philosophical and religious views on the national legal system was mostly denied, which is due to the ideology of Marxism-Leninism, considered the religious worldview to be perverted and illusory, distorting the scientific understanding of actual relations, and the volume of relevant scientific research was minimized. Despite the fact that in the vast majority of countries in the XX century, the influence of religion gave way to secularism, in modern society, the process of "clericalisation of society" is increasing, and religion is increasingly included in the public sphere. This article examines the influence of Christian theology (Western and Eastern Christianity) on the content of the right for private life in the Western and post-socialist (Eastern Christian countries) legal family. The author concludes that the content of the constitutional right for private life, which, as a rule, in post-socialist countries is an adapted version of the Western model of private life law(the result of the paradigm of catch-up growth). It does not coincide with the mass legal consciousness and the system of values established in post-socialist society(collectivist society), the philosophical and religious principles of Orthodoxy, which leads(as follows from modern practice) to conflicts in the national and individual consciousness, differences between the legal and actual content of the right for private life.

Keywords: private life law, Protestantism, Orthodoxy, Christianity, post-socialist model of private life law

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INTRODUCTION

The basic ideology of the socialist countries in the XX century was Marxism-Leninism(the literature notes that "Marxism-Leninism is a complete and harmonious system of philosophical, economic and socio-political views" (Makarova, Popova, 1968). An integral part of Lenin's version of Marxism (Rybakov, 2913) was the belief in the nonexistence of God, man had replaced God, working in a team to accomplish what was previously considered subject only to God. Atheism, in turn, was seen as a militant religion (Berman, 1993), a Marxist had to deal with religion and idealism. In Lenin's version of Marxism, the religious worldview was perverse and illusory, distorting the scientific understanding of actual relationships, while capitalism and the religious worldview were considered inextricably linked. The influence of the dogmas of Marxism-Leninism led to an artificial decrease in the "status" of the influence of philosophical and religious views on the

system of social regulators. It does not allow Sine ira et studio to identify the features of the formation and development of the legal system in countries where national legal systems belong to the post-socialist legal family, to predict the trends in the evolution of law through the prism of the features of civilizational development (Prodanova et al., 2019, 2020; Ivanova et al., 2020).

"No sustainable socio-cultural education can exist without religious and ethical systems that feed the cultural matrix. Religion as a deep factor, more long-lasting than political and ideological preferences, determines the most stable forms and foundations of the social structure, its civilizational specifics». In most countries (with the possible exception of a number of Islamic countries), the influence of religion gave way to

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secularism in the twentieth century, but this secularism was strongly influenced by various philosophical and religious ideas and ideologies, including Christianity.

In the modern world postulates the growing influence of religion, including in the countries of the Eastern Christian world (a process referred to by us as “clericalisation of society”), which is reflected in the texts of national Constitutions (Bulgaria, Russia (paragraph 2 of article 1 of the Law of the Russian Federation On the amendment to the Constitution of the Russian Federation of 11 March 2020), and other countries). As noted by J. I. Ovsepyan, despite the Declaration in the constitutions of most European countries, the autonomy of Church and state, in fact, including in the United States, the cooperation of Church and state continues (Ovsepyan, 2017).

The influence of various philosophical and religious ideas can be traced in the content of a number of basic (constitutional) rights and freedoms, including the right for private life, the formation of which develops in two main ways: first one is as a result of changes in social, political, economic (Akhmadeev et al., 2019; Lehoux et al., 2019; Tsvetkova et al., 2019; Melnikov et al., 2019; Morozova et al., 2020), and technical conditions of existence (for example, Western law); second one is as a result of external influence (for example, the post-socialist legal family) (their possible articulation in various proportions).

THE WESTERN MODEL OF THE RIGHT FOR PRIVATE LIFE

Western law, which is based on a “common” Western European culture, is a group of legal systems and legal families that have similar elements, united by content and formal criteria and make up a relatively stable organization⁶ (for example, the concept of law as a coherent whole, a single system (with a basis in scholasticism) (Kerimov, 1972); the principle of the continuous nature of law; the rule of law over political power; the combination of three worldviews: Jewish, Greek and Roman, and a number of others⁷) (Western world, Western civilization. The countries of Western Europe and North America (Khabrieva, 2018).

As unifying elements regarding the right for private life in Western law, it is possible to note: ideology (liberalism), the system of worldview (individualism), economic (capitalism) and social structures, legal technology, religion (Western Christianity with the predominance of Protestantism) (Khabrieva, 2018). The foundations of the modern Western model of the right to private life arose in the United States where the majority of the population were Anglo-Saxon Protestants (Khanington, 2008), in a state created by immigrants (meaning English colonization), there was a possibility of “cultural change”, which led in the future not only to the creation of the American doctrine of the right

for private life (privacy), but also to the spread of its influence on most countries (Szydlowski, 2019; Akim et al., 2019; Nureeva et al., 2019).

The creation of the privacy doctrine in the United States is traditionally associated with the publication in 1890 by the Boston lawyer L. Brandeis (Louis Dembitz Brandeis. Later, a member of the Supreme court of the United States, in the work of P. Johnson (Paul Johnson, A History of Jews) named one of the greatest Jews in the United States, included in the hall of fame of great Americans), co-authored with colleague S. D. The article “Right to privacy” in the Harvard Law Review, in which it was stated about the human right of “being left alone (“the right to be left alone”), in other words, to be free from external influence.

Many authors in their works translate privacy directly as the right to privacy, which is not always true. In the English language word “privacy” was formed from the ancient French word (privauté), and meant solitude (celibacy), mystery (at the end of the XIV CC) (Origins, 2006). In turn, in ancient French, privauté originated from the Latin privus (XIII CC. Distinguished, distinctive, peculiar (personalized), independent, self-owned), as an adjective “property of one (individual) person”. In the XVI century, it was understood as a private matter, a secret.

Only in 1814, privacy began to be understood as the freedom of a person from outside intrusion (in the American doctrine of the XIX-XX CC.). So, translating texts from English, one should be careful not to use formulaic concepts, especially if these are texts that are not directly related to the US legal system, this is how this law was defined until the 70s of the XX century, and later in this content was adapted in the national systems of rights of countries of “catch-up” development (catch-up growth) (Izmailova, 2009).

The creation of the privacy doctrine in the United States did not happen spontaneously. The ideas of L. Brandeis and S. D. Warren are based on a special worldview matrix formed under the influence of ideas of liberalism, capitalism, English case law and Protestantism. L. Harrison, having conducted a comparative analysis of various indicators (for example, the number of Protestants: 520 million people, corruption 14.9, trust 42, GDP per capita 29,784\$; Orthodoxy 262 million people, corruption 75.7, trust 25, GDP 7,045\$, Islam in General: 1,122 million man, corruption 78.6, trust 26, GDP 3142 \$), concluded that: “Protestantism has proved to be a better breeding ground for modernization than Catholicism, especially in the Western hemisphere, predominantly Protestant countries have made significantly greater progress than predominantly Catholic” (Harrison, 2008; Afolabi, et al, 2018). Fermentation Conditions and Process Optimization of Citric Acid Production by Yeasts. The International Journal of Biotechnology, 7(1), 51-63.)

According to the UNDP for 2018¹³, the human development index for example, in the US is 0.924 (13th

place), Germany 0.936(5th place Protestantism), Israel 0.903(22nd place, Judaism), Orthodox countries are Bulgaria 0.813(51st place), Russia 0.816(49th place), Georgia 0.780(70th place), in 2010 out of ten least corrupt countries, H. Lawrence notes, nine are predominantly Protestant. He emphasizes that: "Today the Catholic population of the Netherlands and Switzerland may outnumber the Protestant population, but the value system in both countries was mostly formed by Protestantism." (Lawrence, 2014)

The ideology of Protestantism was included in American culture quite aggressively. At the beginning of the XIX century most US States adopted laws that resulted in the establishment of Protestantism as a state religion. The mandatory requirement was to read the Bible in school, say prayers, which bore fruit: most Americans (among whom there were also Catholics and Jews), shared the ideas Of Adams (a lawyer and second President of the United States, a deeply religious Protestant), that the national system of law is based on common religious and moral tradition, natural law was considered to be dictated by God and binding the laws of man contradict him, had no power.

The doctrinal provisions of Lutheranism (the oldest current of Protestantism) became "the key to the renewal of law in the West, since the XVI century." (Berman, 1998)

The concept of Lutheranism emphasizes the ability of the individual (by God's grace) to change nature, create new social relations by the effort of his will.

The concept of individual will, formulated in Lutheranism, became central in the development of property law (with its special role in the American doctrine of the right of private life) and contract law in modern times, the American and French revolutions incorporated the religious ideas of Protestantism into a "secular religion" that is faith in the individual, his mind, nature and rights, secured the "triune deity of democracy: individualism, rationalism, nationalism" (Berman, 1998).

These found their legal expression in the modification of the system of law, being fixed in the text of the Constitution the principle of freeing the actions of the individual from the control of society (primarily state-organized), especially in the economic sphere (which is reflected in the American doctrine of the right of private life privacy. There initially the right for private life was considered to be derived from the right of property); such legal principles were considered not only necessary, useful, but also fair (which is confirmed by retrospective data), their historical origins were deep in the theological doctrines of the Western Christian Church, from which they drew their foundations.

Based on Protestant theology, Anglo-Saxon Protestantism developed in the United States, as noted in the scientific literature, "all assimilated Americans- regardless of origin and affiliation to Protestants,

Catholics, Jews, Muslims or atheists- are Anglo-Saxon Protestants" (The White Anglo Saxon Protestants, 2020), characterized by the ideas: "the rule of law; individual rights; restriction of state power; a combination of individualism with a sense of community; freedom, including religious freedom; an ethical code that fosters trust; work ethics; the commitment to human progress, especially that achieved through education", the attitudes of Protestantism, as H. Lawrence notes (Lawrence, 2014) are shared in most developed countries of the world.

It was Protestant principle, wrote M. Verber, and later became the cause of the birth of capitalism (the spirit of capitalism) (the Western Church, as opposed to the Eastern, in the majority welcomed the desire for money and wealth (provided that it would pursue a specific goal and comply with established principles). (Verber, 1990)

Pre-revolutionary Russian scientist I. S. Berdnikov wrote that in accordance with the concept of Protestantism, the religious society itself is considered to be deprived of the right to interfere in the internal life of the community, and the issues of confession of faith, preaching, and others belong to the conscience of everyone, and are considered a private, personal (Autonomous) matter. (Berdnikov, 1993)

In the Western model of private life rights, a person is a being personalized (has a set of characteristics, peculiar features that distinguish a person from another, inherent only to this individual) and Autonomous (acting independently, independently (Antiochian direction of Christology, Christological dualism (humanity as autonomy).

In the fifth century, representatives of Antiochian Christology (the doctrine of the person and nature of Jesus Christ, which is based on the mass orientation to the ideas of Aristotle), insisted on the full humanity of the historical Jesus (Theodore of Mopsuestia, Nestorius, Theodoret of Cyrus, and others), this Humanity they understood as not only different from Divinity, but also Autonomous, as well as personalized Christological dualism. The Antiochians emphasized the human side of Christ. In the question of the relationship of the divine and human nature in Jesus Christ, we focused on the disclosure of the separately human and separately divine nature of Christ). Over time, the understanding of humanity as autonomy, representatives of the Antiochian direction of Christology, attracted the attention of Western theologians, becoming in many ways the basis of Western Christianity, and had a significant impact on the Western model of the right to private life.

POST-SOCIALIST MODEL OF THE RIGHT FOR PRIVATE LIFE (EASTERN CHRISTIAN WORLD)

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

Russia, Greece, Bulgaria, Ukraine and a number of other countries (referred to as the countries of Eastern Christendom), due to the split between the Eastern and Western churches that occurred in 1054, remained in the bosom of the Eastern Orthodox Church, and were for this reason excluded from the process of forming the “Western tradition of law”, in these countries “Byzantine Orthodoxy” was approved (Orthodoxy that acquired its “historical Canon” in Byzantium), the Orthodox Church, as noted in scientific literature, “was able to reject and condemn Protestantism, how it was able to protect itself from the Catholic attack”²², which largely predetermined the further development of the internal legal systems of these countries, including Russia, and determined the specifics of legal regulation of private life.

It is noted that Russia is the largest Orthodox country in the world. According to statistics (population survey) for 2017, (Orthodox Christians in Central and Eastern Europe favor strong role for Russia in geopolitics, religion MAY 11, 2017) Russia is considered as a global defender of Orthodoxy and the ethnically Russian population, and even outside of Russia, this opinion prevails, including in three Orthodox countries-members of the European Union: Bulgaria, Greece and Romania. A similar view prevails in Armenia, Belarus, Moldova, and Serbia. A strong Russia is therefore obliged to protect Orthodox countries from the influence of the Western Church (Western Christianity).

In Russia, 57 % of the population believe that only an Orthodox person can be truly Russian (data for 14.01.2019) (Split between Ukrainian, Russian churches shows political importance of Orthodox Christianity January 14, 2019).

Back in the early XX century, G. J. Berman noted “Although some ethnic Russians converted to Roman Catholicism and foreign Protestant sects such as the Baptists, even though Jews and other ethnic minorities embraced Orthodoxy, the religious map of the Empire coincided mainly with its ethnic map. Indeed, Orthodox

theology, like the theology of Eastern Christianity in General, traditionally linked religious affiliation with national identity” (Berman, 1993).

Representatives of Alexandrian Christology (Athanasius the Great, Gregory the Theologian, Cyril of Alexandria) believed that God the Word himself was incarnated and suffered in Christ, that is, they asserted the existence of the unity of Christ as a divine person and the Union of deity and humanity in Him. Athanasius the Great believed that: “it is impossible to consider the Father separately from the Son because the Son is not a creation created by the act of will; by nature He is the true Son of the essence”, this view became prevalent in Byzantine Orthodoxy. (Berdnikov, 1903)

In the concept of Byzantine theology, man is not an Autonomous being, his essence is realized only when he lives “in God” or “grace” that is uncreated divine power, uncreated divine action.

This is a gift to man from God, intended for the salvation and sanctification of man), and has divine qualities, “grace” grants man his “natural,” natural “development, since man was created free, there can be no conflict between “grace” and freedom (unlike Western theology, which believes that man is always sinful, even if he is redeemed by sacrifice on the Cross. All people are sinners, because they were present in the womb of Adam at the time of his fall, in the Western concept of Christianity “nature” and “grace” are opposite. He “finds true freedom only “in God”, when through the Holy spirit he is freed from the causal ties of created and fallen existence and receives the power to share with God the dominion over creation, respectively, nowhere except in the sacred society of the Church, it is impossible to achieve a truly liberating divine life” (Berman, 1993)

Maximos, the Confessor (theologian VI-VII centuries, his works were claimed by John Damascene in the Exact exposition of the Orthodox faith), noted rising to the Apostle Paul, “the image of recreation leadership, regarding the incarnated Logos, regarded It as a victory over the destructive divisions in humanity, rejecting God, human freedom actually destroys itself, outside of God, man ceases to be truly and fully human. Through death, he becomes a slave of the devil” (Berman, 1993), hence, in particular, the contrast between the Western and Byzantine concepts of theology (interpretation of the relationship of God with man).

Modern researchers of the problem of personality in Orthodoxy note that in Orthodoxy, the individual must be thought only in relation to and communication with other individuals, with the world and with God (ideas of N. Berdyaev), the personality is confirmed only through relations with another person, expressed in love and communication (Analogy of the existence of God-Troitsya). M. D. Fominskaya writes that the traditions of the Orthodox faith encourage the predominance of the collective over the individual, and the value system of

Orthodoxy lacks the supremacy of man in relation to society (Fominskaya, 2020). Hence the complete contrast between the concept of the individual in Western and Eastern Christianity.

Features of post-socialist models of the right for private life (Eastern Christian world) associated with a particular culture of a socialist society (the subordination of the personal being of the individual the principles of public morality, party debt, the censure of individualism), and the specifics of Eastern Christian theology, the focus of historical dissonance between Eastern and Western Christianity (Bublik, 2013).

The Western model of the right to private life, which is based on Western culture (with religious and philosophical principles of Protestantism), was incorporated at the turn of the XXI century into the consciousness of Soviet society, while the new worldview (Pro-Western) was not developed, the society was not "reformatted" on the Western model (Western Europe and North America), the special culture of Soviet society (where, despite the active support of party and state bodies of atheism, anti-religious propaganda, the influence of Byzantine Orthodoxy has always been present) it limited the influence of the Western model of private life law, minimized the effect of institutional changes in the Soviet legal system (in terms of regulating private life), and political transformations (perestroika) did not entail a radical transformation of the principles of Soviet culture and law.

CONCLUSION

This explains the low effectiveness of private property law life (which, as a rule, in post-socialist countries was adapted from the Western doctrine (the result of the paradigm of "catching up" development (catch-up growth), the content of which does not coincide with the mass consciousness and the prevailing social value system (collectivist society), philosophical-religious basis of Orthodoxy, and almost never finds its development in the sectorial legislation (in comparison with Western law), leads (according to contemporary practice) to conflicts at the national and individual consciousness.

At the beginning of the nineteenth century, Wilhelm von Humboldt (Humboldt 2009) noted that a necessary condition for human development is "diversity of positions", which is always a consequence of freedom, even free and independent people, put in a monotonous situation will not progress in full. According to the data of the analytical report "European social research": study of basic social, political and cultural changes in the comparative context of Russia and 25 European countries³² conducted with the participation of RAS specialists the most dissatisfied people are from Bulgaria and Russia (Eastern Christian countries), also in these countries, residents give of the lowest estimate of the state of democracy in the country.

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