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FAITH IN GOD AS CONSTITUTIONAL PRINCIPLE: LEGAL SYSTEM NOVATIONS IN MODERN RUSSIA

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Abstract: This article is devoted to the study of religious issues in the constitutional regulation of modern Russia. The author proves that while there is unquestionable respect for religious systems and unconditional recognition of the important role of religion in human history, including Russian history, every religious system has a mystical element at its core, while mysticism itself is alien to positive jurisprudence. Princes and tsars used religion in Russian state history to ensure obedience of subjects, but these times are in the distant past. Modern Russia, which raised several generations in an atheistic environment, has generally lost its organic connection with religion, and a large-scale revival of this trend could hardly be considered appropriate from a state-legal perspective. Religion in modern Russian society is also unable to fulfil a state and ideological mission. The constitutional amendments of 2020 ended up being more far-reaching than what the President of the Russian Federation had officially proposed when introducing the bill in the State Duma. The President's restraint of initiatives, often not entirely reasonable, could be seen by participants in the rulemaking process as a kind of intransigence of the initiator of the amendments. In this regard, there has been an overly uncritical approach to constitutional law-making, the legal consequences of which are only beginning to emerge today and will continue to arise as legislative and law enforcement practice develops.

Keywords: constitutionalism, human rights, secular state, faith in God, judicial review of constitutionality.

In 2020, our country underwent a major constitutional and legal reform, the significance and legal implications of which have yet to be understood by contemporary constitutional and legal scholarship. Among them, new Article 67.1 has an important

place, with its part two, which literally reads as follows: “The Russian Federation, united by a thousand years of history, preserving the memory of its ancestors, who transmitted to us their ideals and faith in God, as well as the continuity in the development of the Russian State, recognizes the historically established state unity”¹. This legal norm is next to the prescriptions of Articles 14 and 28, which have a higher legal force and oblige society to “The Russian Federation is a secular state; no religion may be established as state or obligatory; religious associations are separate from the state and are equal before the law; everyone is guaranteed freedom of conscience, freedom of religion, including the right to profess individually or together with others any religion or not to profess any, to freely choose, have and disseminate religious and other beliefs and act in accordance with them. According to the Conclusion of the Constitutional Court of the Russian Federation of March 16, 2020, “the inclusion in the text of the Constitution of the Russian Federation of a reference to faith in God, handed down to the people of Russia by their ancestors (Art. 67.1, part 2) does not mean a rejection of the secular nature of the Russian State proclaimed in its Article 14 and of freedom of conscience guaranteed by Article 28, since its wording does not imply *confessional affiliation*, does not declare certain religious beliefs *to be mandatory* in the Russian Federation, does not place Russian citizens in *unequal conditions* depending on *the presence of* such faith and its *specific orientation*”² (italics added).

The author of this article certainly does not pretend to have an exhaustive and competent opinion on complex theological issues, including the problems of God’s existence and deeds. It is a matter of constitutional legal, hence legal questions about the relationship of state and law to religion, which should be based on one rather simple presumption: *some citizens trust God and others do not, along with this the citizens are entitled to both*. On this basis, the positive legal attitude of the constitutional legislator towards religion should be tolerant, non-imposing and neutral, since it is constitutionally established that religion is not a state sphere. It is constitutionally protected from state interference and is the object of inviolability by the public authorities³.

¹ See: Constitution of the Russian Federation (official text as amended on 14.03.2020) // <http://www.pravo.gov.ru>.

² See: Conclusion No. 12 of the Constitutional Court of the Russian Federation of 16.03.2020 On the correspondence to the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation, on the improvement of regulation of certain issues of organization and functioning of public authorities, as well as on the correspondence to the Constitution of the Russian Federation of the procedure of coming into force of Article 1 of this Law in connection with a request of the President of the Russian Federation // Russian Federation Code. 2020. No. 12. Art. 1855.

³ See: Osipyan B.A. [Smysl zhizni, dostoinstvo, prizvanie i svobodnoe samoopredelenie cheloveka v kontekste neprekhyashchey idei prava] The meaning of life, dignity, vocation and free self-determination of man in the context of the enduring idea of law // [Voprosy pravovedeniya] Voprosy jurisprudence. 2012. No. 1.

Opponents of this scholarly position often refer to the foreign experience of constitutionalism. Indeed, in many constitutions of foreign countries the attitude towards religion looks quite active and is clearly not limited to the mere thesis of *secularization as an achievement of civilized humanity*. At the same time, it is logical to ask the following question: after *many decades of purposeful "atheization"*, does anything compel Russia to necessarily adopt this experience if the Constitution already states that our Motherland is a secular state? Was it necessary for Russia in 2020 to establish, to a large extent contrary to the prescriptions of Articles 14 and 28 of the Russian Constitution, a provision on "faith in God", which our ancestors passed on to us and which we are therefore legally obliged to keep as a sign of remembrance of them?

The legally obligated entity by virtue of Article 67.1 of the Russian Constitution is "the Russian Federation", that is, all of us, citizens of Russia. Are we now, after 2020, forced to trust God because our ancestors trusted him? Without being concretized and tied to the Christian faith in its Orthodox form, the prescription of Article 67.1 of the Russian Constitution complicates the problem, as it actually pushes society towards "desecularization" in any of its religious forms. This judgment applies, at any rate, to all traditional religions (Judaism, Catholic Christianity, Islam, Buddhism, etc.).

With undoubted respect for religious systems and unconditional recognition of the important role of religion in human history, including Russian history, let us emphasise that every religious system has a *mystical* element at its core, while mysticism *is alien to positive jurisprudence*¹. The accused is not absolved of legal responsibility because he is allegedly "possessed"; the lawbreaker's will and mind are not cleared by the "as God wills" imperative. If a prosecutor or lawyer invokes Divine Revelation or Demoniactal Temptation as evidence in a court case, this is unlikely to encourage a judge to exclude an impartial assessment of legal facts, which are always specific, verifiable and ascertainable. The constitution and the law *do not deal with miracles*. The divine is always mystical, supernatural and unreal. This should not be taken as an argument against religion – it does have a right to exist in society, as does the mystical view of nature in general. The question here is what position the state and the law should take with regard to the inexplicable and the supernatural.

The state and the law are rather rigid regulatory and organisational systems, which apply severe punishments and are generally strict in their essence. Connecting the "double-edged" and "punitive" state-legal machine to issues of faith and

¹ See: Zhirtueva N.S. [Mistichesky fenomen v filosofii, estestvennykh naukakh i bogoslovii XX–XXI vv.] The Mystical Phenomenon in Philosophy, Natural Sciences and Theology in the XX–XXI centuries // [Filosofiya i kul'tura] Philosophy and Culture. 2015. No. 3. P. 364.

conscience is therefore fraught with very adverse societal consequences, since it affects an intrinsically non-state sphere that is quite “delicate” and “vulnerable”.

Certainly, princes and tsars used religion in Russian state history to ensure obedience of subjects, but these times are in the distant past. Modern Russia, which raised several generations in an atheistic environment, has generally lost its organic connection with religion, and a large-scale revival of this tendency could hardly be considered appropriate from a state-legal perspective. Religion in modern Russian society is also unable to fulfil its state ideological mission¹.

In this regard, the emergence of the constitutional provision on “faith in God” is nothing more than a symbol, very dim and, in fact, useless for both constitutional law and traditional religious denominations. According to the accurate establishment of the Constitutional Court of the Russian Federation, this provision is intended “*only to emphasize the need to take into account in the implementation of state policy the historically significant socio-cultural role that the religious component played in the formation and development of Russian statehood*”² (italics added), nothing more.

However, the position of the Constitutional Court of the Russian Federation does not seem to be fully shared by society and even by the legislature. On June 19, 2013, Parliament criminalised “public acts expressing clear disrespect for society and committed with the aim of insulting the religious feelings of believers”, considering this a form of violation of the right to freedom of conscience and religion. This act acquires a particular criminal form when it is committed “in places specially designated for religious services, other religious rites and ceremonies”³. It should be emphasized that we are talking not only about Orthodox, Catholic, Jewish, and Islamic worship, but also about religious rites and ceremonies in general, regardless of the type of confession and the degree of its prevalence in society. In essence, any religiously minded group of citizens is entitled to claim a degree of respect for their

¹ See: Noskova K.A. [Popravka v Konstitutsiyu ob ukazanii o vere v Boga kak kosvenny otkaz ot svetskogo gosudarstva] Constitutional amendment on indication of belief in God as an indirect rejection of secular state // [Nauchnye issledovaniya molodykh uchennykh] Research of young scientists. Penza, 2020.

² See: Conclusion No. 1Z of the Constitutional Court of the Russian Federation of 16.03.2020 On the correspondence to the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation, on the improvement of regulation of certain issues of organization and functioning of public authorities, as well as on the correspondence to the Constitution of the Russian Federation of the procedure of coming into force of Article 1 of this Law in connection with a request of the President of the Russian Federation // Russian Federation Code. 2020. No. 12. Art. 1855.

³ See: Federal Law No. 136-FZ of 29.06.2013 On Amendments to Article 148 of the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation to Counter Abuse of Religious Beliefs and Feelings of Citizens // Russian Federation Code. 2013. No. 26. Art. 3209.

rites and ceremonies, which implies criminal consequences. To do so, it is sufficient to prove that their certain “religious feelings” have been “offended”.

Prior to the above amendment, Article 148 of the Criminal Code of the Russian Federation was limited to punishment for “unlawful obstruction of the activities of religious organisations or the performance of religious rites”, i.e. it had a completely different legal meaning. There is no doubt that hooliganism in churches and other similar acts should be punished proportionately, in some cases even with criminal sanctions, but the legal meaning here should be, in our opinion, not “insulting the feelings of believers,” but hooliganism itself. The fact that the act of hooliganism was committed in a church may be taken into account by the court in assessing the motives for the unlawful activity, but no more than that. The differentiation of the punishability of the act depending on the place where the offence was committed, all other things being equal, shows signs of discrimination, i.e. an unjustified departure from the constitutional principle of equality.

The sacred of religious rites and ceremonies is mainly of a moral nature. A well-brought-up person will always try to avoid offending anyone’s feelings. However, state intervention in this process seems rather ill conceived in terms of the likely legal consequences: by punishing some offences, the legislator encourages others. Overall, however, this example shows that the constitutional amendment on “faith in God” is not as insignificant as the Russian Constitutional Court believes in its Opinion of March 16, 2020. It is not just a matter of “emphasising the need to take into account the historically significant socio-cultural role” of religion in the implementation of state policy. The legislator goes further by establishing new types of offences. Courts have followed this up with convictions. Those who have offended the feelings of believers become convicted and, therefore, many their constitutional rights are affected. In a number of cases, this persists even after the removal or expungement of the criminal record. The state compulsory measures, which are designed primarily for entirely different purposes, are used as a *religiously protective tool*. In today’s secularized society, such an approach is rather difficult to explain and justify. Among other things, one should take into account the legal position of the Constitutional Court of the Russian Federation that “religious freedom is one of the most important forms of spiritual and moral self-determination of a person and an *internal matter of everyone*”¹ (italics added).

¹ See: Decision of the Constitutional Court of the Russian Federation of December 5, 2012, No. 30-P On the case of verification of the constitutionality of paragraph 5 of Article 16 of the Federal Law On Freedom of Conscience and Religious Associations, and paragraph 5 of Article 19 of the Law of the Republic of Tatarstan On Freedom of Conscience and Religious Associations in connection with the complaint of the Commissioner for Human Rights in the Russian Federation // Russian Federation Code. 2012. No. 51. Art. 7324.

In this respect, the preamble to the federal law On Freedom of Conscience and Religious Associations is more correct¹. According to it, on the one part, “the special role of Orthodoxy in the history of Russia, in the establishment and development of its spirituality and culture” is recognised and, on the other part, respect for “Christianity, Islam, Buddhism, Judaism and other religions which form an integral part of the historical heritage of the peoples of Russia” is emphasised. The Constitutional Court of the Russian Federation, in its Opinion of March 16, 2020, saw mainly this very meaning in the constitutional amendment on “faith in God”, but the picture is different in a literal sense.

The preamble to the Federal Law On Freedom of Conscience and Religious Associations does not mention “faith in God” in the same way that the current version of Part 2, Article 67.1 of the Constitution of the Russian Federation does not say about “the special role of Orthodoxy in Russian history, in the establishment and development of its spirituality and culture” or about “respect for Christianity, Islam, Buddhism, Judaism and other religions which form an integral part of the historical heritage of the peoples of Russia”. The intention of the constitutional legislator was clearly different from the way the Constitutional Court of the Russian Federation interprets it. If the constitutional lawmaker had supplemented Article 67.1 with an abridged version of a number of preamble provisions of the Federal Law On Freedom of Conscience and Religious Associations, one could have agreed with the Court’s position under analysis. On the surface, it would appear that the Court was wishful thinking, in some respects even exceeding its constitutional powers.

Constitutional jurisprudence, however, permits this in the form of a restrictive official interpretation of the country’s constitution. It must, however, be remembered that the constitutional legislator was quite clear and unambiguous about “faith in God” – he did not simply emphasise the special role of orthodoxy or limit himself to calling for respect in relation to differentiated religious systems. It is precisely about *faith*, that is, about an inner moral sense, which has been transferred by the legislator to the legal, constitutional and regulatory ground. In this connection, it should be emphasised that the constitution of a democratic state should, whenever possible, avoid interfering with the inner world of a person’s experiences, feelings and beliefs, confining itself essentially to the legal component of social relations.

The positioning of the “faith in God” provision in Chapter Three of the Constitution of the Russian Federation, the subject of which is the federal structure, further convinces us that this kind of amendment was, in a manner of speaking, rather artificial and even partly far-fetched. It is difficult to agree with A.I. Ovchinnikov and G.V. Nefedovsky that the “timeliness” of constitutional recognition of

¹ See: Federal Law No. 125-FZ of 26.09.1997 (ed. from 02.12.2019) On Freedom of Conscience and on Religious Associations // Russian Federation Code. 1997. No. 39. Art. 4465. 2019. No. 49. Art. 6966.

such a value as “faith in God” is due to the need for a “common unifying idea in the conditions of Russian federalism”¹. Our opinion concerns the entire normative content of Article 67.1 of the Constitution of the Russian Federation, but this is the subject of a separate constitutional study. In relation to the analyzed topic, it should be noted that the nation-wide vote on the 2020 constitutional amendments resulted in the completion of an important stage of constitutional reforms, the meaning of which, among other things, consisted in changing the procedure of limiting and calculating the terms of office of the Russian head of state². In terms of political procedure, this looked like an “amendment by V. Tereshkova” – as a State Duma deputy, she officially announced the idea of “zeroing out terms limits”, while the original text of the draft law being limited to a ban on holding the President office of the Russian Federation for “more than two terms”, that is, a more stringent restriction than in the previous version (“no more than two *consecutive* terms”)³.

Before V. Tereshkova’s amendment, the earlier proposal to put the constitutional draft law to a national vote seemed difficult to explain, since its content did not demonstrate any constitutional changes adequate to a plebiscite. After the amendment, however, it was made clear that this purpose was implicit or at least not excluded in the initiation of the bill. The public had to accept or reject the principle of the legal possibility for an incumbent to run for two more terms of six years, with the previous four terms (two terms of four years and two terms of six years) not to be counted. This was accompanied by the constitutional possibility for future heads of state to serve a maximum of two terms in general, even excluding the more concessional “no more than two consecutive terms” limitation as in previous cases.

The importance of such a constitutional transformation undoubtedly required an additional procedure of public support, which could not be limited to the popular representatives’ vote in the federal parliament and in the legislative (representative) bodies of the constituent entities of the Russian Federation⁴. The choice was

¹ See: *Ovchinnikov A.I., Nefedovsky G.V.* [Vzaimootnosheniya Tserkvi i gosudarstva v svete konstitutsionnoy popravki s upominaniem o “vere v Boga”] Relationship between Church and State in the light of the constitutional amendment mentioning “faith in God” // [Administrativnoe i munitsipal’noe pravo] Administrative and Municipal Law. 2020. No. 5.

² See: *Manzhosov S.A.* [Teoriya i praktika smenyaemosti vlasti: ch’im traditsiyam sleduet Rossiya?] Theory and Practice of Turnover of Power: Whose Traditions Does Russia Follow? // [Sravnitel’noe konstitutsionnoe obozrenie] Comparative Constitutional Review. 2020. No. 3. P. 63–81.

³ See: *Ilyin V.A., Morev M.V.* [Effektivnost’ “ruchnogo” upravleniya gosudarstvom. Proverka na prochnost’ – 2020] Efficiency of “manual” state management. Strength Testing – 2020 // [Ekonomicheskie i sotsial’nye: fakty, tendentsii, prognozy] Economic and Social Changes: Facts, Trends, Forecast. 2020. T. 13. No. 2. P. 9–24.

⁴ See: *Marxheim M.V.* [Obnovlenie Konstitutsii Rossii: institutsional’ny eskiz] Renewal of Russia’s Constitution: Institutional Sketch // [Nauka i obrazovanie: khozyaystvo i ekonomika;

made in the non-referendum popular vote¹, which was postponed due to the threat of a covid-19 pandemic, but was eventually carried out, with rather convincing success for the initiators of the constitutional reforms. The procedure for accepting and approving the amendments has now been fully completed and the public can legally consider the incumbent president's right to run for re-election legally resolved, and he can exercise this constitutional option twice more after the end of the current legislature's term.

Under such circumstances, can we consider that the appearance of the “faith in God” provision in Article 67.1 of the Russian Constitution was the result of chaotic and accelerated participation in lawmaking by a number of political figures and public representatives, who created a kind of *accompaniment for V. Tereshkova's amendment*? It is important to remember that the text of the bill, as amended by the Russian president, did not contain any “faith in God” provision. If it did, then parliament was taking a significant risk. Samplings of public opinion polls showed very mixed feelings about this amendment. Many citizens were likely to reject V. Tereshkova's initiative on the grounds of disagreement with other amendments, including the “faith in God” amendment, while generally approving of the main goal of this political action.

Risks of this kind receive little attention in the scientific and journalistic literature, but they were undoubtedly presented, and they concerned not only the “faith in God” amendment, but also several other constitutional novations (the supposed abolition of constitutional courts of the Russian Federation subjects by listing an exhaustive list of court types, establishing a unified system of public authority and the right of the state to participate in the formation of local self- government, obligatory support of “historical truth”, etc.). In any case, the constitutional amendments of 2020 ultimately proved to be more far-reaching than what the president had officially proposed when introducing the bill in the State Duma. The President's restraint of the initiatives, *often not quite reasonable*, could be regarded by the participants of the rule-making process as a kind of *intransigence* of the initiator of the amendments. In this regard, there has been *an overly uncritical approach to constitutional law making*, the legal consequences of which are only beginning to emerge today and will continue to arise as legislative and law enforcement practice develops.

In such circumstances, in our view, the legislator and the enforcer should be guided by the constitutional principles of restraint, proportionality, reasonableness

predprinimatel'stvo; pravo i upravlenie] Science and Education: Economy and Economics; Entrepreneurship; Law and Management. 2020. No. 7.

¹ See: Zhuravlev V.P. [Obshcherossiyskoe golosovanie po izmeneniyam v Konstitutsiyu: sotsial'nye zamysly i protsedury] All-Russian Voting on Amendments to the Constitution: Social Intentions and Procedures // [Izbratel'noe zakonadel'stvo i praktika] Electoral Legislation and Practice. 2020. No. 2. P. 3–7.

and balance. The interpretation of Article 67.1 (2) of the Constitution of the Russian Federation shall be restrictive and strictly adhere to the “fairway” of the official interpretation of the Constitutional Court of the Russian Federation, as formulated by it in its Opinion of March 16, 2020. *Enthusiasts of state expansion of religion and mysticism* should realise that there are *clear constitutional limits* to this in a democratic society. Freedom of conscience and religion involve equally the right to religion and the right to atheism. Each individual makes the choice between these competing values independently, due to the characteristics of their worldview and beliefs, based on free will and without state interference. The Constitution of the Russian Federation *does not legally oblige us to trust God, but a free belief in Him deserves due respect and requires adequate protection* by the state and the law.

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