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LEGAL REGIME OF PROPERTY FOR RELIGIOUS PURPOSES IN INSTITUTIONS EXECUTING CRIMINAL PUNISHMENT IN THE FORM OF IMPRISONMENT

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Introduction: *the issues of church property are under the jurisdiction of several branches of law and not limited to civil regulation. The special status of the subject possessing this property (the Church), the historical experience of regulating the property for religious purposes motivate to search for legal models and general principles to construct the legal regime of the property in question. The complexity of legal regimes of property for religious purposes in places for confinement is explained by the fact that this property functions in the conditions of the restricted access requirements and balancing between the norms of positive law and church canons, which are the original norms regulating property for religious purposes.* ***Purpose:*** *to develop a scientific theoretical model of the legal regime of property for religious purposes in places for confinement, based on the analysis of norms of canon law and Russian legislation, the historical and foreign experience and modern practice of ministration in prisons; to make proposals on the methods for incorporating this model in both civil and criminal legislation.* ***Methods:*** *the research is based on theoretical methods (dialectical, systemic juridical, historical), methods of comparative analysis of statistical and specific sociological researches, empirical methods (interviewing and surveys).* ***Results:*** *the current problems and contradictions in legal regulation of property for religious purposes have been revealed. The historical experience of ministration in prisons and legal regimes of property in pre-revolutionary Russia have been analyzed, as well as the foreign experience of regional cooperation between religious organizations and municipal authorities on the basis of agreements.*

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The necessity is justified of implementing this experience into Russian practice when solving the issues concerning religious property, until the relevant legislative framework is developed. ***Conclusions:*** *the current mechanisms of establishing the legal regime of property for religious purposes cannot be directly used in the penal system. They require some adaptation through additional law-making (in particular, penitentiary rule-making) with the account for the regime and other features characteristic of the activities of correctional institutions.*

Keywords: property for religious purposes; places for confinement; canon law; clergymen; penal system; cooperation agreement; places of worship in prison

Information in Russian

ПРАВОВОЙ РЕЖИМ ИМУЩЕСТВА РЕЛИГИОЗНОГО НАЗНАЧЕНИЯ В УЧРЕЖДЕНИЯХ, ИСПОЛНЯЮЩИХ УГОЛОВНОЕ НАКАЗАНИЕ В ВИДЕ ЛИШЕНИЯ СВОБОДЫ

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Введение: *тема церковной собственности находится в компетенции нескольких отраслей права, не ограничивается только гражданско-правовым регулированием. Особый статус субъекта владения данным имуществом, каким является Церковь, имеющийся исторический опыт правовой регламентации имущества религиозного назначения побуждают к поиску правовых моделей, общих принципов построения правового режима рассматриваемого имущества. Сложность правовых режимов имущества религиозного назначения в местах лишения свободы обусловливается тем, что функционирование этого имущества осуществляется в условиях режимных требований и согласования норм позитивного права с церковными канонами, являющимися исходными нормами регламентации имущества религиозного назначения.* ***Цель:*** *на основе анализа норм церковного права, российского законодательства, исторического и зарубежного опыта, современной практики тюремного служения сформировать научно-теоретическую модель правового режима имущества религиозного назначения в местах лишения свободы, внести предложения о методах ее регламентации в гражданском и уголовно-исполнительном законодательстве.* ***Методы:*** *теоретические (диалектический, системно-юридический, сравнительно-правовой, исторический), методы сравнительного анализа статистических и конкретно-социологических исследований, эмпирические – интервьюирование и анкетирование.* ***Результаты:*** *выявлены современные проблемы и проти-*

воречия правовой регламентации имущества религиозного назначения в местах лишения свободы. Проанализированы историческая практика тюремного служения, правовые режимы имущества в дореволюционной России, а также зарубежный опыт регионального взаимодействия религиозных организаций и муниципалитетов на основе договоров. Обосновывается необходимость имплементации в российскую действительность этой практики при решении вопросов, касающихся религиозного имущества, пока не будет сформирована законодательная база. ***Выводы:*** *существующие в обществе механизмы определения правового режима имущества религиозного назначения не могут напрямую действовать в уголовно-исполнительной системе. Их необходимо адаптировать путем дополнительного законотворчества (ведомственного нормотворчества) с учетом режимных и иных особенностей, характерных для деятельности исправительных учреждений.*

Ключевые слова: имущество религиозного назначения; места лишения свободы; каноническое право; священнослужители; тюремное служение; уголовно-исполнительная система; договор о взаимодействии; тюремный храм

Introduction

Convicts, who have the right to profess or not to profess any religion, to freely choose, hold and disseminate religious views, and to act in accordance with them while enduring their punishment, are guaranteed the freedom of conscience and the freedom of religion. The institutions executing criminal punishment associated with the isolation of convicts from the society, allow convicts to go through religious ceremonies, to use cult objects and religious literature, including in the rooms specially assigned by the administration of the mentioned facilities for these purposes (Article 14 of the Penal Code of the Russian Federation, hereinafter referred to as the RF PC). The right to the freedom of conscience and freedom of religion can be exercised in different forms, which are to be observed by the administration of the institutions and bodies executing criminal punishment. The legal regulation of the interaction between religious organizations and the penal system is of no little importance for practicing this constitutional freedom of an individual.

History of Interaction between Religious Organizations and the Penal System of Russia

The interaction of the Russian Orthodox Church (hereinafter referred to as the ROC) and the penal system of Russia (hereinafter – the PS) was initiated by concluding the Agreement of Cooperation between the Russian Ministry of Justice and the Russian Orthodox Church on December 21, 1999. For the interaction development, all the dioceses established diocesan committees on cooperating with the law-enforcement bodies which coordinate the activities of the clergy in the places for confinement. In addition, the chief dioceses and the heads of the territorial bodies of the Federal Penitentiary Service concluded bilateral agreements on cooperation which allowed for the clergy's access to correctional facilities for the spiritual guidance of convicts and the confined [5, pp. 8–18].

Over the last years, the institution of ministering in prison have been actually established in correctional facilities executing criminal punishment in the form of imprisonment; the property for religious purposes was created (first of all, churches, chapels, mosques, prayer rooms, etc.). With this, there was no legislative basis for this institution's functioning, many problems were solved at the facilities in the way preferred by their managers. There were also no researches conducted on the issues under study in this paper.

After the Synodal Department of the Patriarchate of Moscow on Ministering in Prisons was established on March 5, 2010, the questions concerning the interaction between religious organizations' representatives and employees of the penal system in the law-making regions, issues of training the priests ministering in correctional facilities, improvement of the legislation, changes into the RF PC, development of the relevant legal framework within the penitentiary system turned to be quicker in settling. However, many legal and organizational issues remain unsettled, and there is no sufficient scientific research and grounds for addressing them. One of such problems is the necessity to establish the legal regime of the property for religious purposes and other cult objects used by the ROC for ministering and other ceremonial events in the places for confinement.

As the Federal Penitentiary Service of Russia reports, as of January 1, 2017, there were 642 cult objects functioning at correctional facilities:

485 churches, 77 chapels, 6 bell-towers of the ROC, 61 Islamic mosques, 10 Buddhist churches, 3 Roman catholic churches of the ROC, more than 700 prayer rooms[1].

Resulting from the cooperation agreement between the Russian Federal Penal Service and the ROC, with blessing of Patriarch Kirill of Moscow and All Russia, emergency funds at orthodox livings were created for the convicts being released from prison [5, pp. 8–19].

The buildings of prison churches are mainly erected on the restricted access territories of correctional facilities and are under their operative administration; within the penitentiary system, there are no legal acts for passing them over to be supervised by the corresponding religious organizations. Correspondingly, the position of the penal system representatives is not defined concerning the future of the property for religious purposes and the legal forms of settling the issues associated with its use. Against this background, the ROC representatives voice reasonable fears concerning the possible situations when the churches will not be used for their direct purpose and exceptionally by the religious organization that had built them. Moreover, every piece of property should be legally confirmed, particularly the church property, which can be involved into civil and other relations only after it passes through the legal regulation procedures.

Problems of the Religious Property Legal Regime

The legal issues of possessing and using religious property are one of the most important and complicated problems for the society. In the literature, a reasonable attention is given to the fact that the active disputes on the church property are connected with numerous problems that had not been solved before 1917 [4, p. 15]. Historically formed principal approaches to the legal regulation of church property are now being restored, whereas in the PS this process is only expected to start. For this reason, one of the questions for overcoming disagreements in the relations of the ROC / other confessions and the Federal Penitentiary Service is the legal regime of the religious purpose property located in the places for confinement. The complicated character of this question results from the fact that, together with the theoretical justification of the civil legal issues concerning religious property and aspects of property relations involving it, of great importance is legal definition of the procedures of its usage, taking into account the fact it is located at the objects with special administrative legal requirements.

The general principles of such regimes originate from the civil law sector as they use the legal norms defining the basis of any property existence and functioning. In this case, the basis is the model of legal regulation of the religious purpose property which is now being developed in Russia, while the mechanism of such property legal regulation in the conditions of confinement, the criteria of its classification inside positive law and legislation, setting the order of its functioning, its development and improvement need scientific research.

Originally, the institute of regulation of property for religious purposes developed in canon law. It made its way from enjoying the full autonomy in the form of church property (15–16th centuries) to being limited by legal state acts (17–19th centuries). Starting from the second half of the 19th century, the legal regime of property for religious purposes turns to be additionally regulated by the state; the norms of positive law prevail in the legal regulation mechanism, as compared to those of canon law. However, this period was not long: after the revolution of 1917, a cut version of the institution of property was introduced into the civil legislation, which did not provide for such a form of property as property of religious organizations. Moreover, according to the Decree of the RSFSR Council of People's Commissars of January 23, 1918 "On the Separation of Church from State and School from Church"[2], the ROC and other religious communities lost their rights as legal persons and, correspondingly, any opportunity to use and manage the property for religious purposes. However, these are the things of the past. Today religious organizations are subjects of civil law and are granted with all the necessary means for participating in social relations preserving their internal administrating.

[1] Brief description of the penal system. Available at: http://фсин.рф/structure/inspector/iao/statistika/Kratkaya%20har-ka%20UIS (accessed 01.02.2017).

[2] On the Separation of Church from State and School from Church: Decree of the RSFSR Council of People's Commissars of January 23, 1918. *Consolidated Statutes of the RSFSR*. 1988. Vol. 1. P. 861.

In the opinion of N. I. Alekseeva, when developing the legal regime of the property for religious purposes, it is necessary to consider all the components of the Russian society legal system together with the international norms, which are included thereto, and the canon norms, which are the constituents of the religious organizations' Charters [1, pp. 114–121]. Sharing N. I. Alekseeva's views, we should note that there is a need for a unified concept of regulating the property for religious purposes providing unity of the norms of canon law and positive law. There are several reasons why the concept is necessary.

Firstly, the adequate existence of the mechanism of legal regulation of property relations with regard to the religious purpose property, and the use of this mechanism are only possible in case the provisions of canon law covering the ownership of religious property are transformed into the norms of positive (and not exceptionally civil) law. Secondly, the ROC and other religious organizations are getting more and more active in participating in the activities of the state organizations and bodies (military forces, penal system – especially, places for confinement, hospitals and others), where has been accumulated a significant amount of religious property that requires legal regulation by the positive law norms.

Regarding such property, the ROC has formulated principal criteria of its legal regime[1], which unfortunately were not properly supported by the norms of positive law in the relevant branches (civil law, criminal procedural law or others).

With this, it is noteworthy that the development of the religious property legal regimes in correctional facilities cannot be performed with no research on the modern concept of the state concerning property of religious organizations, which actually exists and is legislatively settled. However, this research itself is not enough, because there should be a solid theoretical platform that could be used for the creation of the legal mechanisms of regulating the property for religious purposes in places for confinement.

In general, as of today, the conceptual approaches to defining the legal regime of the religious purpose property have been formulated both theoretically/ legislatively and for practical activities. The legislative basis of the religious property legal regime are the norms of the Russian Federation Constitution, stating that in the Russian Federation, private, state, municipal and other forms of property are acknowledged and equally protected (Article 8 of the RF Constitution). Thus, the constitutionally guaranteed juridical equality of the forms of ownership, their equal acknowledgement and protection mean the equal acknowledgement and equal protection of the various ownership rights by all possible and allowed means [8, pp. 4–5].

The constitutional provisions cover the property for the religious purposes regardless of the social sphere it is used in. The property of such a purpose should obligatorily have legal grounds, including its being assigned to a definite object possessing and using it. The novelties of the Russian Federation Civil Code (hereinafter – the RF CC) regulating the legal status of religious organizations (Articles 123.26, 123.27 of the RF CC), and also of the property for religious purposes (Article 123.8 of the RF CC) are also of no little importance.

As it follows from the implication of part 2 of Article 123.26 of the RF CC, the legal status of religious organizations is regulated by civil legislation, and also by the Law "On the Freedom of Conscience and Religious Associations"[2]. With this, the principal role in regulating issues (including the civil legal issues) associated with religious organizations is delegated to the provisions of the Law "On the Freedom of Conscience and Religious Associations". In particular, such a legal regulation approach is highlighted in part 2 of Article 123.26 of the RF CC, which runs that "the provisions of this Code are applied to religious organizations if not stated otherwise by the Law "On the Freedom of Conscience and Religious Associations" or by other laws". The issues of the religious property are regulated in a similar way (part 1 of Article 123.27 of the RF CC). Therefore, Law

[1] Regulation on the Canonical Subdivisions of the Russian Orthodox Church Functioning on the Premises of the Penal System Facilities (approved on May 29, 2013 at the meeting of the Holy Synod of the Russian Orthodox Church). Moscow, Synodal Department of the Moscow Patriarchate on Ministering in Prisons, 2013. Pp. 4–9.

[2] On the Freedom of Conscience and Religious Associations: Federal Law of September 26, 1997 No. 125-FZ (as revised of July 6, 2016). *Collection of Legislative Acts of the Russian Federation*. 1997. No. 39. Art. 4465.

"On the Freedom of Conscience and Religious Associations" and Law "On the Transfer of the Religious Purpose Property Possessed by the State or Municipal Authorities to Religious Communities"[1] are the central core of regulating the religious associations' activities in general and the religious property in particular. These two laws reflected some of the provisions of canon church law concerning the different types of the property for religious purposes.

Traditionally, the property of religious purpose (the church property) is divided into the ceremony tools intended for the acts of worship, and the other church property used for specific purposes – real estate, movable property, money for maintaining churches, priests and satisfying the general church needs – for example, maintaining church schools. The ceremony tools are divided into the items which are sacred by origin and items which are sanctified. An item becomes sacred through its sanctifying or through the very character of its use. An item can be a real estate item or a movable property item. Besides churches, the sacred items are vessels (chalices, discos, lances, pyxes and others) and all the items appertaining to the altar (the Christian volume, altar crosses, coverings for the sacred vessels, coverings for altar and for the credence table).

The sanctified items are the real estate items (church houses, chapels), and movable items (laver, scoops, aspergilla, censers, chandeliers, icon lamps, candle sticks and candles fitted in them, liturgy books, bells and others). The most important church property is the building of the church where the Divine Liturgy and other servicing are held. From the moment of sanctification, the church becomes a sacred place. Some of its parts and items become untouchable for laity. For example, the Holy Doors can be entered by no one except for priests [7, pp. 420–422].

Law "On the Transfer of the Religious Purpose Property Possessed by the State or Municipal Authorities to Religious Communities" also contains the definition of the property for religious purposes and the criteria of its classification. Part 1 of Article 2 states that the "property of religious purpose is the real estate (rooms, buildings, erections, constructions, including the cultural heritage sites of the Russian Federation peoples (historical and cultural monuments); monastery, church and/or other cult complexes built for performing and/or providing such activities as ministering, other religious rituals and ceremonies, organizing prayer and religious meetings, religious training, professional religious education, monastic activities, religious devotion (pilgrimage), including buildings for temporary location of the pilgrims; and the movable property of religious purpose (items of the interior decoration of the cult buildings and erections, items intended for ministering and other religious applications)".

The principal criteria for defining the religious property, just like in the church law canons, is its purpose expressed either originally at the beginning of the construction (creation), or later by the process of its use resulting from its historical purpose.

Thus, considering the classification of the property of religious purpose adopted in the church law canon norms and the Russian legislation, this property located at correctional facilities should be recorded in groups and legitimized in documents for the possible inventory.

1. Real property of religious purpose: church and other cult complexes built for ministering, prayer and religious meetings, other religious rituals and ceremonies, for religious training, professional religious education and etc.;

2. Items of the internal decoration of the cult buildings and erections, and the things used for religious purposes (items of the church space): sacred items, items of religious worships, including belongings and components making up a unity with these items (robes, coverings, wooden panels, curtains, icon frames), items of the church decorations and architectural elements of the church, and belongings/ components making up a unity with these items, including coverings for the analogion and floats for icon lamps.

3. Auxiliary items of religious property:

[1] On the Transfer of the Religious Purpose Property Possessed by the State or Municipal Authorities to Religious Communities: Federal Law of the Russian Federation of November 30, 2010 No. 327-FZ (as revised of 23.06.2014). *Collection of Legislative Acts of the Russian Federation*. 2010. No. 49. Art. 6423.

a) items necessary for ministering, for rituals and ceremonies; b) special auxiliary items necessary for storing, adjustment, functioning and relocation of the religious property items; c) printed materials of religious purpose.

The above categories of the religious purpose property have different functions in accordance with the church law canon norms, which should be considered by the civil and penal legislation in regulating the legal regime of this property.

The norms of church law define that the churches' arrangement, their internal and external appearance should comply with the purpose. There is a special order for starting the construction works. Building and rebuilding of a church is performed with the consent of the leading bishop of the eparchy. During dismantling of a church, the material used for constructing it is considered to be sacred, and so should not be recycled in a usual way, but should be re-used for building another church. The area adjoining a church is also considered to be sacred. A special attention is given to the significance of a church as a place expressing the essence of the Church of Christ, which means the consistence of the principles of its arrangement, their canonicity on the basis of the church Tradition containing the general rules and principles of its construction [6, pp. 312–328].

Moreover, the norms of church law include definite limitations concerning management of all the types of the church property, with the strictest rules affecting the sacred items. For example, according to the canon norms, they are not subject to any type of alienation (Apostolic Rule 73), can be used only for ministering purposes in a specific church. Transfer (but not selling) of this property to another canonical subdivision of the Russian Orthodox Church is only possible with the permission of the hierarchy. The property transfer to any state organization (including a penal system establishment) is out of question. The legal clarification is required for the questions of the ownership of churches located in the premises of correctional facilities as well as of any other property used by clergymen in rituals and ceremonies.

As the legal regime of the religious purpose property at correctional facilities of the Russian Federal Penitentiary Service is not clear, it has a negative impact onto the development of relations between religious organizations and the Penitentiary Service, which does not facilitate the accomplishment of the tasks of prison ministering specified in the Regulations of the Bishop's Council of the Russian Orthodox Church of 2011 and 2013[1]. With this, the current interaction between the Federal Penitentiary Service of Russia and religious organizations is characterized by an active participation of churchmen in correcting the behavior of convicts and in preventing the post-penitentiary recidivism. In the republics and regions, the territorial bodies of the Service concluded agreements on cooperation with the local diocesan authorities, assigning churchmen to every place for confinement. In a number of correctional facilities, churchmen are engaged in the focused individual work with intractable convicts. In some of the prisons, there are permanent Sunday schools attended by the interested convicts.

There are many religious organizations cooperating with the penal system. They have their own parishioners, religious property, their peculiar traditions, but they do not have a serious normative basis. For this reason, they are forced to develop internal organizational norms regulating ministering in prison, which are not capable of providing the proper level of cooperation between religious organizations and the PS establishments, as they are mandatory only for the members of the religious organization and are often even not known to the PS officials. For example, the "Regulation on the Canonical Subdivisions of the Russian Orthodox Church Functioning on the Premises of the Penal System Institutions" (hereinafter referred to as the Regulation), which was introduced to improve Item 42 of the Decision of the Sacred Bishop's Council of February 4, 2011 "About the Issues of the Internal Life and External Activities of the Russian Orthodox Church" and Item 39 of the Decision of the Sacred Bishop's Council of February 5, 2013, is an internal church document defining the mechanisms of the administrative church management and the status of the canonical subdivisions of the Russian Orthodox Church created and functioning at the restricted access territory of correctional facilities. This document does not settle the issues of the legal regime of the churches

[1] Regulations of the Sacred Bishop's Council of the Russian Orthodox Church. Official web-site of the Moscow Patriarchate. Available at: http://www.patriarchia.ru/db/document (accessed 01.02.2017).

functioning at correctional facilities of the PS, although it proposes some of the variants of establishing the church legal regime in positive legislation.

In accordance with Item 1.1 of the Regulation[1], the canonical subdivisions of the Russian Orthodox Church (hereinafter – prison chapels) can be created and can function at the restricted access territory of the penal system facilities; with this, prison chapels can be registered as legal persons (religious organizations) or can function with no registration of the kind (Item 1.2).

A prison chapel can be registered as a legal person (religious organization) in the form of the diocesan metochion at the address of the PS institution location; its Charter should comply with the typical form adopted by the Holy Synod of the Russian Orthodox Church, should be approved by the Eparchial Bishop and comes into effect from the moment of the state registration of the Metochion (Item 2.1, 2.2 of the Regulation).

A diocesan metochion can own or have at its disposal property necessary for organizing and maintaining the metochion's activities. In case the state property of religious purpose operatively controlled by the PS facility is granted for free use to the diocesan metochion, the PS facility's right to the operative control should be terminated in accordance with the legislation in force (Item 2.7 of the Regulation). Besides, on the basis of the Cooperation Agreement, a diocesan metochion can be located in the buildings (rooms) under the operative control of the PS facility, with no registration of the ownership rights of the diocesan metochion for these buildings (rooms) and correspondingly with no termination of the PS facility's right to the operative control of the buildings (rooms) (Item 2.8 of the Regulation).

A prison chapel can also function with no state registration as a legal person in the form of an attached prison chapel and be controlled by the canonical subdivision of the diocese of the Russian Orthodox Church (a living, a metochion, or a monastery) located as a rule in the same town or rural settlement with the PS facility (Item 3.1, 3.2 of the Regulation). This canonical subdivision performs all juridically meaningful actions (including making agreements) for the convenience of the attached prison chapel and provides the attached prison chapel with the necessary ministering items and other things of daily use necessary for the pastoral care of the convicts (Item 3.2 of the Regulation).

As far as an attached prison chapel does not possess the rights of a legal person, it cannot own property or have it through other property rights (Item 3.4 of the Regulation). In case the property of the religious purpose operatively controlled by the PS establishment is transferred to the attached prison chapel to be used for its needs, the property is registered as that owned or used by the diocese or the canonical subdivision of the diocese which supervises the attached prison chapel; in this case, the PS institution's right to operative control should be terminated in accordance with the legislation in force (Item 3.5 of the Regulation).

Besides, an attached prison chapel can be located in the buildings (rooms) under the operative control of the PS establishment with no registration of the ownership rights of the diocese (or other canonical subdivision) for these buildings (rooms) and correspondingly with no termination of the PS establishment's right to operative control of the buildings (rooms); in this case, the diocese/another canonical subdivision and the PS establishment conclude an Agreement of Cooperation (Item 3.6 of the Regulation).

Thus, in accordance with the current legislation, the following variants are possible for legitimizing the relations concerning the use by a religious organization of the buildings (rooms) located at the territory of the PS establishments:

1) assigning the religious purpose buildings (rooms), including newly built ones, located at the territory of the PS establishment for a free use;

2) obtaining ownership of the religious purpose building (room), including newly-build ones, located at the territory of the PS establishment;

3) concluding a Cooperation Agreement with the Administration of the Federal Penitentiary Service, which allows the PS establishment to retain the operative control right regarding the building (room). In this case, the religious organization does not obtain property rights for the

[1] Regulation on the Canonical Subdivisions of the Russian Orthodox Church Functioning on the Premises of the Penal System Facilities. Moscow, Synodal Department of the Moscow Patriarchate on Ministering in Prisons, 2014. 27 p.

building but can use it for performing the types of activities as per the Charter listed in the Cooperation Agreement.

Item 4.2 of Chapter 4 the mentioned Regulation runs that diocesan bishops at their own discretion choose the most acceptable variant from the four variants of using the buildings of churches located at correctional facilities. However, the above ways of defining the status of churches located in places for confinement are proposed by the Russian Orthodox Church but are not settled in the official state legislation and are not legitimate.

Before these variants are settled in the legislation, they are to be approved by the Ministry of Justice of the Russian Federation, which is the federal body of executive power having the functions of development and implementation of the state policy and normative legal regulation in the sphere of executing criminal punishment, and by the Federal Penitentiary Service, acting as the subject of contractual relations on cooperation with the ROC.

At present, chapels and prayer rooms are under the operative control of the administration of correctional facilities, and the representatives of the diocesan clergy are allowed to hold services therein. This regime has been practiced for more than twenty years, and this state of things has not provoked objections neither from the administration of the divisions of the Russian Federal Penitentiary Service nor from the diocesan bishops. With this, in the opinion of the chairman of the Synod Department of the Patriarchate of Moscow, bishop Irinarch of Krasnogorsk, there is a need for decisions at the government level for the legitimization of these relations [5, pp. 57–83]. Law-making activities are required, including these within the penitentiary system, aimed at creating the legal basis for the institute of religious property in the places for confinement.

Over recent years, all the joint efforts of the Synod Department for Ministering in Prisons and the Russian Federal Penitentiary Service were aimed at forming the institution of prison clergymen and creating the legislative basis for this purpose. As a result, Federal Law of April 20, 2015 No. 103-FZ was adopted, which introduced changes and amendments to Article 14 of the RF Penal Code regulating the procedure for conducting religious rituals in different types of correctional facilities in the conditions of confinement. This law also introduced into the RF Penal Code the following innovation: "For the purpose of assuring freedom of consciousness and religion for the convicts in establishments executing punishment, the federal body of the penal system concludes cooperation agreements with the centralized religious organizations registered in compliance with the established procedure. In accordance with the mentioned agreements, the territorial bodies of the penal system are entitled to conclude cooperation agreements with the centralized religious organizations registered in compliance with the established procedure, with the approval of the federal body of the penal system" (Part 4.1 of Article 14 of the RF Penal Code).

The analysis of the work of territorial bodies of the penal system on cooperating with religious organizations shows that they actively use these legislative changes. Practically in all the constituent units of the Russian Federation agreements were concluded for the cooperation of the territorial bodies of the penal system with the officially registered centralized religious organizations. Moreover, such agreements are concluded directly between correctional institutions and religious organizations, what is obviously important in the absence of the legislative basis.

This innovation of the penal legislation creates the opportunities for establishing contractual relations concerning the use of the property of religious purpose, implementation of measures on the appropriate decoration of churches, construction of new churches etc. With this, texts of the contracts do not practically include the provisions about the legal regime of a church on the premises of correctional facilities, about the legal forms of its link with the specific religious organization, about the period of its use and its future in case the correctional facilities are closed or reorganized (for the period from 2011 to 2016, 87 correctional facilities were liquidated for different reasons).

Agreements of cooperation with the ROC concluded by territorial regulatory bodies of the penal system mainly contain general provisions with no specification of the issues which have not yet been settled by the legislation. It is noteworthy that clergymen themselves do not show interest in

the issues of the prison church legal regime and its future. Interviews with clergymen (priests and archpriests) who have been serving for more than 20 years in the places for confinement and in pretrial detention centers shows that 75 % of the respondents deem it not practical to change anything in the legal status of churches (satisfied with everything); 18 % of the respondents think that some legal reforms are needed for the clearness of the church legal status (to regularize it); 7 % of the respondents were uncertain about their position on the issue in question.

Those who were against changing the church legal regime explain their position by being worried about the possible situation when the churches are transferred to the formal ownership of the ROC with no real right to ownership as the church is located at the territory of a restricted access facility and so the penal system officials would interfere in the church activities; it would also be difficult to bring other persons (for example, choir men) to the church, to supply the church with the items necessary for worships and so on. There were some other arguments given, in particular the necessity to pay for the communal services rendered to the church whereas there is no benefaction in the prison church. Thus, even a small survey on the question in study speaks for different problems requiring solutions. One of the ways to solve them, even in case when the basic principles of the prison church regime are defined, is to have these questions covered by the agreements of cooperation between the dioceses and the regulatory bodies of the penal system in the Russian Federation constituent entities.

Foreign and Russian Historical Experience of Cooperation between Religious Organizations and Correctional Institutions

The practice of the contractual regulation of relations between the Church and the government authorities, municipal authorities and the penal system institutions is well-developed in foreign states, which does not exclude the legislative regulation of the most important issues. However, as legislation is not able to cover all the factors, the contractual regulation of relations, especially those associated with property, is given a principal meaning. The legislation settles only the main principles of regulating the religious organizations' property rights. All other issues are regulated by special contracts (concordats) aimed at harmonizing canonical norms with public law [14]. This is a uniform practice of the European Union, being developed in the states on the basis of the international legal property regulation documents [11]. Such contracts are not necessarily concluded at the country level, vice versa – it is preferred that they have a regional status at the place of the religious organization's registration and activities. For example, in Germany, the authority to conclude contracts with religious organizations is delegated to the federated states [12]. In Poland [15] and other countries, the questions covering the relations of the governmental agencies and religious organization are treated in a similar way.

The national practice of the contractual regulation of relations with religious organizations, including relations concerning their estate property of religious purpose, extends to include prison establishments as well [13]. Although there are some specific features, because in the majority of the European countries priests are on the staff of prison establishments and provide the realization of the freedom of conscience for convicts exercising different religions, and in some of the states churches are jointly used by the convicted Catholics and orthodox Christians. For example, in prisons of the federal state of Bavaria, members of the Evangelic-Lutheran Church and of the Catholic living work together. In large prisons, priests are included into the staff, in smaller prisons they visit the convicts as part-time employees, organize worships and individual talks. They keep in touch with the relatives of the convicts, help and support the convicts in searching for new life opportunities after their release. In Austria, relations between the state and the Roman Catholic Church are also regulated not by the law but by the Contract (Concordat) of 1933. Along with staff chaplains, voluntary priests are involved in worship activities in prisons, who, in spite of their theological education, should be legally and psychologically prepared. Irrespective of what religion is practiced by the prison chaplains or voluntary priests, in accordance with the international standards on human rights they are to provide the freedom of conscience of the convicts and an opportunity to use the prison church or prayer room [15].

It is necessary to clarify that the European practice of the contractual relations between the penal system institutions and religious organizations can be borrowed to be introduced into the Russian practice, but there should be a critical

attitude, the Russian specific realities and the differences in the types of penal establishments should be taken into account [16]. The correctional facilities where the convicts live collectively in usual rooms and can walk around the territory with the permission of the administration significantly differ from the European prisons where the convicts are kept in wards. The Russian multi-religious nature should also be taken into account, as well as the historical status of the ROC and the presence of regions where convicts exercising another religion prevail. Seemingly, the mentality of a Russian believer can hardly accept the universalism of the church used for worships by the orthodox Christians and Catholics in turn. The rules of the church autonomy and the rules of its belonging to a definite religious community have been developing for centuries. For historical reasons, worships of the Russian orthodox church are performed in churches, chapels, family chapels or other specially equipped rooms, and no other religious organizations are allowed to hold service there. For the Christians, a church is a supreme canonical establishment having specific features and characteristics described in the Christian canonic sources (the Bible, the Gospel and others). That is why the European experience of having one (common) church or prayer room for the related religions is hardly acceptable, and in correctional facilities it can be a potential reason for conflicts between the convicts.

The penal legislation states that the administration of correctional facilities, when allowing for the religious ceremonies and rituals of the convicts, allocates the corresponding building (erection, room) at the territory of the penal facilities and provides the corresponding conditions defined in the cooperation agreements with the religious organizations registered as appropriate (Part 3 of Article 14 of the RF PC). Such legislative provisions result from the principle of the equality of all the religions (those not prohibited by the legislation) and the equality of all the convicts before the law (Article 8 of the RF PC).

The same principles should be the basement for the property relations or relations concerning the use of the religious purpose property, both types of the relations being included into the sphere of the civil regulation in spite of the specific character of this property and of the subject that owns it (the Church as a special subject of the civil society and of the state political relations) in the places for confinement. For this reason, the interbranch cooperation is needed, as well as the creation of the civil law norms in this sphere, with the account for the penal legal relations during the confinement, for the special features of their subjects and for the process of the penal regulation.

These are not absolutely new aspects of the civil regulation of property relations in the conditions of confinement, because all the issues relating to the property of the convicts were researched in the scientific literature [9]. But the special character of the religious purpose property, the use of this property by the ROC and the convicts in the places for confinement, the primary regulation by the church law norms and partial regulation by the state law (by the laws discussed above) inspires to search for new approaches of civil law-making focused on the penal system, and for the examples of such law-making in the legislative history and practice of other countries.

When defining the general framework of the legal regime of the religious property, the principles of its status in the system of positive state law and its participation in the civil turnover, questions arise about some specific spheres of the ROC activities and their legal regulation correspondingly. In particular, we mean the penal system, which, besides civil legal regimes of the property functioning, faces some other issues outside the civil law regulation.

A vivid example of this is the property for religious purposes at correctional facilities executing criminal punishment in the form of confinement, as well as the entire religious policy being followed during recent years. The peculiar feature of the religious ministering in the places for confinement, as opposed to, for example, the Military Forces or hospitals, is determined by the specificity of the administrative legal regimes of the correctional facilities' functioning, by the requirements of the regime and by the rules of internal regulation that are set by penal law. When creating the institution of prison ministering, a special attention is given to numerous problems which seem relatively new for the penal system

but are not new in fact. There is a vast Russian historical experience of prison ministering and legal regulation of the associated issues, including those concerning the property for religious purposes. Some of the legal regulation elements, the legal forms of regulating the religious property in the places for confinement can be borrowed from the European legislation and practice of cooperation between prisons and religious organizations working with convicts in prisons.

Russia's historical experience of regulating the legal status of the religious property when executing criminal punishment in the form of imprisonment needs critical research considering the current status of the Church in the society's political system, which differs a lot from the pre-revolutionary period. The major difference is in the fact that in the Tzarist Russia the Church together with all its attributes was a serious institution of the state administration, including the penal system. On the other hand, the positive examples of ministering in prisons should be reproduced from our history to the maximum possible extent. This is because for centuries the ROC has been paying much attention to the places for confinement and satisfying the religious needs of convicts, supporting them spiritually and financially, helping them to meet the demand in food, clothes etc.

The ROC representatives actually "came to prisons" with establishing of the Prison Guarding Society in 1819. The first Prison Guarding Society was created on July 19, 1819 in St. Petersburg with the permission of Emperor Alexander I. Each province had a local committee of the society, and each district had its division. This organization was set a task of the moral correction of criminals and improving the conditions of their maintenance. With the help of the society's committees, church servicing was started in prisons, prison libraries were organized, priests and other members of the committees got an unrestricted access to prisons and could communicate with the convicts at any time [3, p. 112].

Under the guidance of the Society's committees, a significant amount of churches and prayer rooms were opened in prisons, religious training was included into the timetable of the arrestees who were to attend such classes. It is noteworthy that such ROC activities in jails and prisons, including among convicts sentenced to penal servitude, was regulated in detail by the legislation of that period. The principal legislative act regulating the issues under research was the Charter "On the Detention of Persons" (issued in 1890) containing chapters and sections about ministering in prisons.

It was defined that building of churches in prisons and proper maintenance of all the prison churches was the subject of guidance and activities of the Prison Guarding Society (Article 68 of Section 8 of the Charter) [10, pp. 385–394]. With this, the decisions on the particular prisons for ministering, the number of churchmen and the size of their salary were taken by the Ministry of Justice upon the recommendation of the Central Prison Administration (CPA).

The church maintenance expenses were calculated based on the general budget for churchmen, doctors and the clerical office in prisons (Article 38 of the Charter). As churches in prisons were organized specially for the convicts, and unauthorized persons were not admitted, there were no traditional sources of the church fund replenishment. The source for maintaining the prison churches were the money of the local divisions of the Prison Guarding Society and donations of private individuals. For these reasons, prison churches, having no parish, were not subject to paying taxes for the diocese needs.

The issues of the legal status of the priests and churches, the duties and rights of the priests in the places for confinement were in detail settled in the Instruction of the prison warden. This document also regulated some issues of administration, it was stated that administrating of particular places of confinement was performed by priests, deacons, psalmists assigned to these places (§24 of Article 25 of the Instruction).

It is notable that the Instruction of the prison warden also regulated civil legal relations associated with the use of prison churches, building of new churches and filling them with church tools and all the necessary equipment.

Thus, many of the forms and methods of the Society committees' activities and organization of religious ministering in places for confinement can be used today. In the legislative acts of the past we can find not only examples of religious education

of the convicts but also examples of the religious property accounting methods and the methods to construct new churches which are still functioning today. The experience of the church charities and rendering assistance to the convicts, including that involving money and goods, is also not of little importance.

Conclusions

The research conducted shows that in the process of the ROC and the penal system cooperation, the conditions have been created for the establishment of the institution of prison ministering and for enshrining its fundamentals in the legislation. With this, there is a number of problems (discussed and researched in the article) which have not been settled for a long period of time. One of them is the clear legal status of the property for religious purposes in the places for confinement and the codification of the forms of this property ownership, as well as of the guarantees for the owners. Another one is inventorying and accounting of such property in accordance with the legally established procedure.

The number of churches, other buildings and other places of religious cult is increasing in the penal system, so it is necessary to solve the issues of developing the legal basis of cult objects in the penal system. A joint program (by the ROC and the penal system) is necessary.

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