



Legal regulation of religion in the context of ecclesiastical law as a model of a single legal space in Europe

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Abstract

The purpose of this article is to identify the key historical aspects of the formation of the teachings of religion within the Christian faith. In the course of the study, it is established that the church did not interfere with the existence of nation states, proclaiming the need for European unity. The conclusion of the manuscript argues for the church's (in its general sense) desire to subordinate political power in European states, which would serve to establish unified methods of government. The theological and canonical principles of Catholic religious doctrine provided the basis for such methods. The church's teachings became the basis for the formation of rules aimed at regulating relations in society in general, interpersonal relations and relations between the individual, the state and the church in particular. The article also examines and reveals the processes of integration of cultural studies in the environment, including science and art. The church actively finances various projects of preservation and restoration of historical art objects and promotes the development of new artistic directions. The church also actively promotes the development of science, primarily in the field of theology and philosophy. Such actions are quite valuable, because the church demonstrates adherence to its principles and values, thereby encouraging people to adhere to them as well. Such influence caused the integration and emergence of ideas of humanistic principles in the European consciousness. Moreover, the established canon law actively contributed to it. It became the basis for many branches of secular law.

Keywords: religion, European integration, church law, integration processes, legal system.



Introduction

For centuries, the Church in the West developed and evolved only as a single monolithic organization ruled from Rome and headed by the only spiritual leader - the Pope. In the era of the late Middle Ages, a church schism occurs, which entailed new interfaith processes, conflicts over the understanding and interpretation of Holy Scripture, as well as the essence and purpose of the Church itself as a social institution. For a long time, such a conflict developed inertly, and the activities of churches, even of different denominations, were regulated according to the old canonical norms, which mainly concerned the performance of sacraments and religious events. Some of these canonical norms concerned exclusively internal church activities, that is, relations in the sphere of the clergy, but some were of a completely utilitarian nature, concerning the regulation of relations of a more socialized nature, albeit with an emphasis on religious dogmas and standards of the Christian faith (Baker, 2007).

The Church, as the only social organization, demanded effective instruments for regulating its own activities, for which internal church norms were introduced. Subsequently, their effectiveness, which was proved by strengthening the power of the church in almost all countries of the early Middle Ages in Europe, brought their utility and the possibility of spreading to the secular sphere. Thus, ecclesiastical law arose, the regulating influence of which the Church tried to constantly extend to new spheres of social relations. But due to the fact that the church leadership did not understand the need to provide individual church norms with at least external signs of secularity, the introduction and spread of church law in the processes of regulating social relations met with opposition from society.

The emergence and strengthening of the role of national states on the European continent was accompanied, first of all, by the opposition of the role of the sovereign to the Pope, which gave rise to contradictions between the Church and secular authorities and society at all levels and in all spheres, including in the sphere of legal regulation of domestic issues. The development of church law took place by restoring the reception of Roman law. And since the church during the Middle Ages, and in particular the Renaissance, was the only cultural centre of transcontinental significance, it is quite logical that church canons and dogmas, as well as individual encyclicals that absorbed the traditions of Roman law, became a model or basis for the legislation of many European countries, for example Italy, Spain, Germany, etc.

In turn, the norms of secular law continued their development, proceeding from the will of the sovereign, trying to make as many social processes as possible dependent on his interests. The preconditions are created for the absolutization of regimes, the nation states are experiencing the oppression of authoritarianism, which is supported by the theocratic regime of the church, which is the same in terms of arbitrariness and usurpation of power. In fact, there are two systems of coercion - state and church (theocratic), each of which competes for access and control over state resources and social processes, and each of which tries to keep its supporters (subjects and flock) around itself. Under such conditions, the development of ecclesiastical law receives a new vector aimed at maintaining the absolute authority of the clergy, even in national states, trying to extend its influence over the monarchs. That is why "the answer to theocratic and absolutist regimes was legal doctrines that affirmed the idea of natural law, separation of powers, and the principles of humanism. The legal systems of European states were enriched by legislative provisions that enshrine the rule of law, the special role of law in regulating the most important issues of state policy, the presumption of innocence. Subsequently, these norms were reflected in the legislation of other countries, as well as in international law" (Caporaso, 1996). But natural law did not develop out of nothing, it also had its origins both Roman law and individual norms of church law, which made it possible, by synthesizing various mechanisms for regulating social relations, to produce the most effective norms and regulators.



That is, the starting point for the development of law on the European continent, one way or another, should be considered the norms of Roman law, transformed into church law. This is explained by the fact that, considering any state as an organizational entity, it should be noted that none of the modern states of Europe has the same long path of historical development as the Christian Church. And since it was the Christian church that began its existence during the classical Roman Empire and did not stop its activities, constantly expanding its influence and organizational structure, it was she who became the first social institution that required proper improvement (Boomgaarden, 2009). For this ordering, the norms of church law were introduced. Thus, the logic of the primacy of church law over secular law is quite understandable and demonstrates the all-encompassing church influence on social processes in Europe.

Material and Methods

The church clergy understood that, thanks to purely religious dogmas and norms, it was rather difficult to streamline the ramified structure of Christian churches separated from the Vatican. In addition, local churches in nation states began to quite objectively experience the regulatory influence of the sovereign in these countries. Given the desire to maintain the unity of Europe through the unity of the church, the Vatican made an extremely far-sighted decision - to start looking for effective, but more or less neutral mechanisms for regulating its own activities, and then the activities of the entire clergy. Such attempts were made by the philosophers of the church through the recession of Roman law, which met the requirements of nominal secularism and the spread of the opinion that the church perceives the needs of secular states to assert their own power through a system of generally obligatory norms.

Zadorozhny (cited in Jenkin, 2007: 155), points out that “the recession of Roman law became possible due to the rapid development of socio-economic relations. Thus, the intensification of trade and economic relations during the Renaissance in the Italian city-states necessitated the emergence of new mechanisms for regulating social relations. Since the evolution of the economic sector was extremely rapid, the development of new rules and social regulators was ineffective from the point of view of the risk of losing control over such economic development processes”.

All of this has constantly raised the issue of creating appropriate regulators of socio-economic processes to streamline the social system. The solution to this problem is of a slightly dualistic nature:

- firstly, it was necessary to create their own system of social norms (legal norms), with the help of which the monarchs could effectively influence the processes taking place in the state, while maintaining power;
- secondly, such regulators had to have a certain level of efficiency, and therefore, they had to be borrowed from the system in which they justified themselves. Roman law became such a system. At the same time, it was not the only source of norms, it was supplemented by social norms that were derived from customary law, developed taking into account national characteristics in various countries.

As Pidoprigora (cited in Brechon, 2012: 73) states, “the ambitious claims of the monarchs to unlimited power in the state, the strengthening of the economic and social development of medieval European states and the revitalization of foreign trade relations required the adoption of a perfect legislative framework. At the same time, the presence of the latter would undoubtedly have a positive effect on the internal consolidation and development of these states. The creation of a legislative framework of such a model is impossible without the use of practical experience acquired over centuries, despite the source of its origin - one's own or borrowed. At the same time, the skillful use of such experience was within the power of only highly qualified lawyers who would perfectly know Roman law”. Knowledge of this level was available only to the Church and the clergy, and therefore the Vatican, realizing its monopoly



on access to the sources of Roman law, received an uncontrolled opportunity to influence European states and their national legal systems through its own understanding of the rule of law, synthesized by a combination of religious dogmas, church traditions and the norms of Roman law. This synthesis proceeded as follows:

- theorists and philosophers of the Church of the early Middle Ages developed the concept of faith and religious dogmas that were acceptable in terms of the goal of spreading and strengthening Christianity even in pagan societies;
- religious teaching was popularized as a general civil benefit, which was achieved by following the basic postulates of the Church;
- to strengthen such a good in society, more effective and socially acceptable social regulators were required. They were synthetically developed legal norms, which were based on the norms of Roman law, the norms of customary law, and religious norms;
- to protect the public good, the dominant role of the church was consolidated by subordinating the power of the monarch to the power of the Pope as the only representative of God on Earth. At the same time, the concept was spread that the monarch is the "anointed of God", that is, he is endowed with power from God.

Such a mechanism for the implementation of the norms of canon law into the norms of national law led to the fact that the Church for a long period asserted its dominant position in relation to the European monarchies, and spread its own system of ordering social processes almost throughout the European continent, thereby creating the preconditions for the unification of European nations. around common religious ideas through a corresponding system of identical social norms. Traditionally, ecclesiastical law appears to be a certain monolith, but in reality it is not homogeneous and consists of the norms of canonical and ecclesiastical law proper.

At first glance, such a division can be identified with the division that took place in the system of Roman law, into "public (*jus publicum*) and private (*jus privatum*). Public law, which deals with issues of the Roman state, and private, which relates to the benefit of individuals. The Church was in close alliance with the state, secular and ecclesiastical issues were closely intertwined, and it is not possible to distinguish between them, insofar as traditionally ecclesiastical law is attributed to the public " (Etzioni, 1965). "Canon law is based on a theological foundation: on the exegetical traditions of Holy Scripture, on the doctrine of the Church, on the tradition of worship. It grows out of church practice itself, with its moral and pastoral problems and solutions.

The key word in church law is the word "canon". In the New Testament, it is used to mean the "rule" of Christian life. In the field of jurisprudence, canons are understood as disciplinary decrees - apostolic rules, council rules and the feast of the fathers " (Casanova, 2006). That is, we can conclude that canon law directly proceeds from the Holy Scripture itself, the norms of canon law are contained in it in the form of religious dogmas, commandments and measures of virtue and morality of behavior. And in order to obtain more regulatory utility, the canons were transformed into the corresponding norms, having received a greater structure and unambiguity of interpretation. Thus, the norms of canon law received their distribution not only as norms of written law, but also as separate elements of religious educational activities, which made it possible to gain recognition and dissemination within society with a very limited range of knowledge.

As for its regulatory functions and the system of hierarchy, it can be argued that canon law as a law that comes from the most sacred texts required a certain modernization and adaptation to socio-political and social realities. "In terms of meaning, the power of the canons is higher than the power of the bishop, but lower than the power of the Council. Ecumenical and local councils can change and supplement the canonical rules, but the bishop has only the power to apply and be guided by the canons. In the application of the canons, two practices are possible: strict, or *acrivia*, and "at the discretion", condescending, or "economy." Basically,



oikonomia extends to measures and degrees of penance (church punishments), the practice of receiving rites in the Church from heresy or schism, and specifying the “canonical age” for ordination or tonsure ” (Boomgaarden, 2009). “In terms of content, the canons relate to the organization of the life of the Church (regularity of councils, the authority of bishops, etc.); to the preservation of the Church from heresies and schisms (questions of rite acceptance, joint prayers, etc.); to the issues of regulating the composition of the clergy (the rules of ordination to spiritual degrees, the rules of prohibition and expulsion from the dignity), to the rules of regulating the life of Christians in general (prayer, baptism, marriage, death, etc.) and to church punishments (penitentiaries) ” (Hilberg, 2003: 144).

The recognition of the unity and inviolability of the rules of canon law is an important unifying element for the Catholic hierarchy, along with the recognition of papal authority. However, the very content of canon law was formed historically and far from simultaneously with the emergence of the early church organization and hierarchy. The initial sources of the canon law of the Western Church were the same as for the Eastern Greek Church. They were the same for all meaningful canons of Christianity. The Holy Scripture was considered the starting point, and later - the works of the Church Fathers (Basil the Great, Gregory the Theologian, St. Augustine), who were granted the status of an Equal-to-the-Apostolic interpretation of the Gospel and the theological doctrine of Scripture (Byrnes, 2006). In their content, the works of the church fathers resembled not independent works, but the interpretation and explanation of Scripture. In fact, it was in these works that the basic rules for the conduct of church sacraments and rituals were determined, for the clergy to exercise their own powers in the sphere of serving and spreading the faith, and also established the grounds for responsibility for violating church rules. It was in the works of the Church Fathers that the basic principles of anti-religious behavior were contained, which later became the basis of the idea of the Inquisition.

Results

Similar to the texts of the Church Fathers were the decisions of church councils, which determined the basic principles and foundations of doctrine, as well as criteria for assessing the activities of the clergy and criteria for deviation from the church canon. It was at such church councils that more monolithic codified acts were adopted, which were based on the results of the recession of Roman law. “The codes created on the basis of late Roman law were directly borrowed from the practice of church courts. The division of churches in general raised the historical question of the existence of Catholic canon law. The numerous and elaborate church-state codes and laws of the Eastern Church could not be officially applied by Catholics. An important place in the Western Church began to have decrees issued by popes - decretals.

The first decretals appeared in the IV century. Later, they began to acquire an increasingly legal character, establishing the rules of internal church life, the duties of the laity and clergymen ” (Byrnes & Katzenstein, 2006). By its nature and content, the decretals can be compared with the traditional acts of the monarch, but the effect of such decrees extended to the whole of Europe, more precisely, to that territory in which the church had a dominant position. The existence of canon law and the content of its norms became a definite reference point for the secular authorities in the process of rule-making and the formation of national systems of law. That is why we should talk about the integrating role of ecclesiastical law in the context of the political processes that took place on the European continent in the era of the unification of nation states, first into the Holy Roman Empire, and then into the European Union. Moreover, the spread of canonical law was accompanied by the expansion and spread of the church organization, the emergence of new churches and the formation of even local churches, which required maximum efficiency from the church law, that is, the law with which the church life was improved.

On this occasion, Balzhik, points out that it is hardly necessary to distinguish between the



norms of canonical law and the norms of church law, although such a division is quite possible. Thus, the researcher focuses on the fact that “ecclesiastical law regulates relations within the ecclesiastical hierarchy and the organization of ecclesiastical authority, while the norms of canon law relate specifically to relations of faith. That is, canon law concerns mainly the relationship between believers and clergy, between believers among themselves regarding the spread of religious teachings and the perception of religious dogmas by society. But ecclesiastical law regulates the relations between the clergy and the relations of subordination in the ecclesiastical hierarchy. However, both sets of norms of law - canonical and ecclesiastical - should be considered as appropriate institutions of law, by analogy with secular law ” (Kaufmann, 2010).

Collections of law, which contained the norms of canonical and ecclesiastical law, became a reflection of the interaction between canonical and ecclesiastical law. The canonical and ecclesiastical law of the Middle Ages constituted a complex - the ecclesiastical system of law, the ratio of elements, which was associated with specific historical conditions and is a question of interaction between secular and spiritual power. Since the adoption of Christianity, the European church system of law has developed as a legal complex, consisting of legal norms contained in church canons, and legal norms that were the result of princely legislative activity (which determined the status and material content of the church, its jurisdiction), norms of non-canonical origin and norms of the introduced legislation (Brechon, 2012). The combination of canonical and ecclesiastical law into a single system of normative regulators demonstrated the process of systemic interaction of two systems of regulation of social relations in the era of the formation of national states - the system of law and the system of religious norms. Thus, the church received the opportunity to strengthen its own dogmas and ideas at the level of mental self-identification of European nations and the formation of a system of their worldview. Law was identified with the systemic confrontation between good and evil and was considered a means of protecting each individual from manifestations of antisocial behavior, which was equated with behavior displeasing to God. Violation of the commandments, dogmas of Scripture and papal decrees was considered unacceptable and was enshrined not only in ecclesiastical, but also in secular law (Kaufmann, 2010).

Although, for example, according to Zdioruk and Tokman, church law is not a complete system, but at the same time it is always included in a more universal system. Within the framework of this more universal system, it does not need the consistency that is required from “ordinary”, secular, law in order to be considered complete. Scholars also note that canon law is a right, but not a "right of lawyers." And consistency is not a consistency of "legal law", but consistency within the framework of religious (Christian) cosmology. Law takes its place in this systemic cosmological picture, therefore, it does not in itself require a system, it is enough for it to be included in a more systemic education. To illustrate this, one should refer to **two peaks in the development of canon law** (Byrnes, 2006) namely:

- medieval canon law *Corpus juris canonici* in the XII century. Influenced by the revived tradition of Roman law, the Italian monk Gratian made an innovative codification of canon law. His collection (more precisely, a compilation) consisted mainly of the rules given by the church fathers and papal decrees. The Code (or Gratian's Decree, circa 1140) consisted of 3 parts: the historical rights of the church; bishops' rights and rules of jurisdiction; norms on freedom of the church, marriage, liturgical rites. All further additions, together with the Gratian's Decree, received official recognition as the only code of ecclesiastical, canonical law (Boomgaarden, 2009);
- the codification period in the development of canon law, represented by two codes: the Code of Canon Law of 1917 and the Code of Canon Law of 1983. In 1983, Pope John Paul II approved a new Code of Canon Law for the Latin Catholic Church, marking yet another legal reform. The 1983 Code includes 7 books: general rules applicable to all areas of canon law; a set of canonical norms regarding the constitutional structure of the Catholic Church of the Latin rite; norms containing legal regulation of the two main



functions of the church: the prediction of the Word of God and the administration of the sacraments; rules governing the administration of church property; norms of canonical sanctions; norms of canonical procedures (Casanova, 2006).

Considering the latter, it should be noted the spread of matrimonial norms of canon law in many modern countries. Moreover, in most of them, mainly in the Nordic countries, these norms have become the norms of national law. We are talking about church rituals and sacraments, which means about norms that have a procedural nature (Burinska et al., 2006).

Codification activity in the twentieth century had a decisive influence on the integrative processes in Europe, in particular regarding its axiological dimension and influence on the creation of a unified moral concept of the perception of social order. As for medieval canon law, we carried out its analysis in a fragmentary manner, but it requires a greater consistency, therefore it should be noted that the conciliar activity of the Church as a whole is characterized by fragmentation, and councils were held at the request of the clergy in order to strengthen their own positions and universalize the power of the Catholic Church.

The decrees of the Western, so-called Ecumenical Councils, like the 7 real Ecumenical Councils, are considered by Roman Catholics as one of the most solemn forms of papal legislation. In Western collections, the legislative acts of the Councils are placed under the names of those popes under whom these Councils took place. In addition to the so-called VIII Ecumenical Council, convened in Constantinople in 869, the Roman Church has several more Ecumenical Councils: four Lateran Councils (1123, 1139, 1179, 1215); two Lyons (1245 and 1274) - at the second Council of Lyons, an unsuccessful union with the Eastern Church took place, it was rejected by the Orthodox clergy; Reformed Councils of the 15th century: Pisa (1409), Constance (1414 - 1418), Basel (1431), which most Western canonists do not recognize as "Ecumenical", Florentine (1439), V Lateran (1516 - 1517), not all Catholics are counted among the "Ecumenical"; Trent (1545 - 1563), Vatican I (1869 - 1870) and Vatican Council II (1959 - 1965) (Hehir, 2006).

The problem of rule-making in the system of the church hierarchy was constantly aggravated by the confrontation between the institution of the papacy and Councils. The Pope, although he headed the entire Catholic Church, was nominally considered only a *caput ministeriale*, that is, the head of the Church, similar to the head of the executive branch of government in a secular state. On the other hand, the Councils were considered the rule-making organ of the church hierarchy, and the decisions adopted at them were of decisive importance for the entire Church. Although the popes did not always even agree, not that they followed the provisions and decisions of the Councils. Illustrative in this context should be considered the Councils that took place in the 15th and 16th centuries, which were convened after the Western - the Roman Catholic Church - underwent a serious schism, which led to the emergence of several popes at once. Popes and antipopes were recognized by different countries of Europe, and then, according to the logic of administrative science, the Church should have been governed differently - parallel systems of church power had to be created. The very model of the church's existence has changed little, but the canonical norms have undergone changes that dealt with the improvement of the sacred sacraments and regulated relations in the sphere of church property. This proves the existence of real differences between church law proper and canon law.

For example, the holding of the Basel Council (1431 CE) as marked by the deprivation of power by Pope Eugene IV. The decision of the Council had the highest legal force, but Pope Eugene IV, through his actions and decrees, achieved the holding of a new Council of Ferrara, with which he canceled all decisions of the Basel Council. Pope Martin V acted in a similar way, who, after being limited in his powers by the decisions of the Council of Constance, was able to invent a mechanism by which the Church carried out only those decisions of this Council that did not concern the restriction of the Papal power. Such actions and the struggle for power



demonstrate that church law does not have such features as universality and legality (in the sense of consistency with the main church canons, since the power of the Pope and, in fact, the Pope himself is the deputy of God on Earth and quite objectively cannot be limited in any power because his power is from God) (Burinska et al., 2006).

At the same time, it was canon law that retained both universality and universality until the reformation movements of the 16th century, when some of the churches demonstrated a real separation from Rome in order to weaken the influence of the papacy on internal church affairs in individual national states. This is how local churches were created with features of national identity inherent in the states, on the territory or citizens (subjects) of which they extended their influence (Byrnes, 2006).

The Reformation in the north of Europe brought about the Counter-Reformation in the south. The Council of Trent became the pinnacle of the counter-reformation movement. He excommunicated Protestants from the Church, reiterated the dogmatic foundations of the church system - Roman Catholic ecclesiology - and formulated disciplinary norms. The presentation of Catholic doctrine made at this Council was called "*Doctrina*". On the basis of this "doctrine" in 1566 was compiled "Catechism" - a symbolic book of the Roman Catholic Church. Short formulations of certain provisions of the doctrine with the threat of excommunication for heresy, which consisted in deviating from these provisions, were called "*canones*" (canons) (Caporaso, 1996). The "*Decreta de reformatione*" (Decree on the Reformation), adopted at the Council of Trent, became a kind of organizational and legal basis for the functioning of the Roman Catholic Church, toughened the conditions under which the Church and its individual local representative offices worked, and were also devoted to the struggle against the reform movement, which weakened the idea of a united Europe due to the delimitation of the spheres of influence of Protestant movements and the Catholic Church.

In addition to the decisions of the Ecumenical Councils, the norms of ecclesiastical law were supplemented by the decisions of the so-called local councils. Almost every national country had its own local churches with a bishop at the head, and the supreme clergy of such a church had the opportunity to hold their own councils in order to solve the most pressing issues of church ministry. All decisions of such councils were checked by the Roman *curia* for compliance with canon law, and only then received the status of separate independent norms, moreover, those that related to church affairs in general.

We can summarize: canon law is systemic insofar as it is a legal subsystem of a wider, more precisely, the widest possible system accessible to human reason - a universal and even cosmological religious system. It cannot be judged based on the criteria inherent in secular law. Evaluated in a broader theological context, canon law acts as one that cannot be a complete system, since there is no question to which (with an adequate appeal to the logic of faith) canon law could not give an answer. That is, canon law is assessed not from its external side, from the point of view of its place in the modern legal picture of the world, but from a purely "internal", from the point of view of how canonical lawyers look at it "from the inside" (Welsby, 2006). Such an understanding of canon law, quite logically, should have been based on the fact that all its norms come from theological texts. At least, such an understanding of the legal content would mean the impossibility of a real assessment of the effectiveness of the enforcement of canon law by lawyers of positivist law.

However, the jurisdiction of the church in relation to its members and even more so in relation to the laity did not follow from Scripture and theological dogmas at all. Its emergence was historical and associated with the desire of state power to rely on the church in public affairs, as well as with the struggle of the church for its own privileges in the states. With the establishment of feudal relations, churches, monasteries, bishops received the powers of a senior court in relation to vassals, subject population, dependent clans. From this source began the growing power of ecclesiastical courts in various matters and various strata of



unspiritual people. Canon law courts were based on a more complex judicial procedure than ordinary feudal courts (Kaufmann, 2010). This is due to the significant influence of the reception of Roman law on the processes of church rule-making, and especially on the rules of a procedural nature. Thus, the judicial system of most feudal countries of that time was based on the principles of the judicial process, revived from Roman law and supplemented by the principles and dogmas of the Christian faith. The latter (through the institution of commandments) was reflected in intolerance towards grave crimes, which were identified with sins and the introduction of severe types of punishment for their commission.

An interesting hypothesis is the doctrinal nature of religious doctrine and church canon law. In this context, its consideration should be subject to the general methods of legal science, however, given the subject of this dissertation research, it will be difficult to determine the degree of influence of the legal doctrine on the European integration processes. The origins of this problem is that the doctrine is derivative in relation to legal traditions and legal consciousness. And the doctrine itself is a certain quintessence of the determinant development of legal thought and personification, the formalization of the latter in the system of legal norms. From these positions, canon law can be considered as a kind of personification of the doctrine of Catholicism, taking into account the religious and philosophical searches aimed at glorifying the Divine power and its refraction on society through the clerical power. Thus, it is quite logical to determine the connection between religion and legal doctrine, in which, it seems to us, the mechanism of the influence of the religious factor on the formation of the modern concept of a united Europe can be revealed to the greatest extent. Analyzing the legal doctrine in terms of its formal legal properties, scientists give such a definition of the doctrine: it is a document containing conceptually formulated ideas, principles developed by scientists with the aim of improving legislation and recognized by society and recognized by the state as mandatory (Risso, 2009).

Discussion

In fact, the law is not the only source of law, along with it there are other sources that complement it, contributing to a more effective regulation of social relations. In this context, Semenikhin substantiates the importance and necessity of paying attention to "sources of law of non-state (human) origin, such as a contract, custom, judicial practice, legal doctrine. Sources of this kind are more democratic in their origin and content, have a great regulatory potential, because they are created by the participants of social relations themselves, formed, developed on the basis of the real practice of human relations" (Jenkin, 2007: 161). Many scientists, both domestic and foreign, analyzing the current state and the main directions of development of systems of sources of law, note that a global trend is the increasing role of sources of law of specifically non-state origin (in particular, custom, legal doctrine) in the regulation of human relations and, vice versa, reducing the corresponding role of the law (normative legal act). We are talking about the so-called general tendency of "anti-formalism" in law.

At the same time, one can agree with Yu. Varyas, that in legal science has not yet paid close attention to the essence and significance of doctrinal, scientific ideas about law in the framework of the spiritual life of the state and the legal consciousness of society. At the same time, the legal doctrine as a system of ideas about law prevailing in society is capable of not only reflecting legal reality, but also creatively transforming all parts of the legal system of society - legal consciousness, lawmaking, law implementation and positive law (Weigel, 2014). As S.V. Vasiliev, in Ukraine the legal doctrine is not enshrined as a source of law. At the same time, it can have the status of an informal (non-traditional) source of law. Thus, references to the works of outstanding lawyers are found in law enforcement practice, but as additional argumentation. In addition, the role of legal doctrine is manifesting in the creation of constructions, concepts, definitions used by the judicial authorities. Legal scholars may be invited to the hearing to present their findings (Etzioni, 1965). In this regard, we can fully agree



that, given certain conditions, the legal doctrine can act as an independent source of law in general, and therefore it is advisable to make an appropriate state decision on the fate of normative legal acts that have a doctrinal nature.

The development and formation of legal doctrine as a source of law is significantly influenced in religious and legal systems by religious and philosophical factors (religious factor), which were adhered to by the founders of legal schools and under the influence of which the dogmas of Islam and, accordingly, norms, in particular Islamic law, were formed. Scientists note that the analysis of the place and role of the religious factor, its influence on the social, political and spiritual life of society remains one of the important areas of modern science. Without taking it into account, it is often impossible to deeply understand and foresee many complex socio-political processes. There is no doubt also that the religious dominant will play an important role in the choice of the future social and state structure, as well as the real ways of its construction (Hilberg, 2003). At the same time, in the modern global reality there are possibilities for interpreting religion: both as a factor contributing to fragmentation and as a unifying factor in the political development of society. However, today, in the context of trends towards the universalization of political positions, the integrative function of religion should be used more fully, and the ideology of multiculturalism can play a leading role in this process (Wolf & Kronenberg, 2010).

In turn, the place and role of the religious factor in the consciousness of people is determined by the objective state of society, the type of personality and the nature of interpersonal relations, which are generated by real social conditions (Jiang et al., 2019). At the same time, the social role of religion and religious institutions becomes many times more complicated in the conditions of multinational statehood. Difficult to combine ethnic socio-cultural diversity and pluralism pose difficult tasks for religious and legal institutions to create such social conditions that would make it possible to extinguish conflict situations at the stage of their inception or sublimate the energy of subjects belonging to different confessions. This requires a thoughtful, balanced, comprehensively worked out strategy of interfaith tolerance, interreligious dialogue, cooperation based on respect for identity and intrinsic value. It should be noted that the category "religious factor" in the modern scientific community is not doctrinally defined. Now the term "religious factor" is using in at least three contexts.

First, in the socio-political dimension, when it comes to social events or trends, the reasons for which are seen in the influence of religion. Secondly, the "religious factor" can figure in the context of the general social influence of religion. In this case, we are talking about the influence of religion on civilizational characteristics, culture, social structures, processes and the like. Thirdly, in the psychological context, the "religious factor" can denote the influence of religion on the socio-psychological parameters of both the individual and the group (Byrnes, 2006).

Thus, an analysis of the theoretical foundations of the development of the concept of the origin of the canonical and ecclesiastical under the influence of the evolution of religious doctrine and the embodiment of basic religious dogmas, norms, values in the nature of the state gives every reason to assert that the religious factor is the axiological component without which the development of state and legal institutions is impossible.

The religious system of values inherent in the Christian Church, and in particular in Catholicism, has become one of the guidelines on the way to the integration of European countries (Etzioni, 1965). The spread of ecclesiastical law in the Middle Ages made it possible to form a single space of legal thinking by all countries professing Christianity. The Church laid the foundations for the processes of world perception and world outlook guidelines among the population of the European continent. The generality of such principles was diluted by the peculiarities of national legal systems and the mental determinants of individual nations. Thus, the spread of religious teachings, the spread and consolidation of the Church in all European



countries made it possible to develop common, largely similar, but at the same time unique special mechanisms of legal regulation of social processes. A single monolithic system of interstate relations emerged, created on the basis of common legal and common system of values, which became the basis for the development and implementation of a pan-European system of interstate treaties. Subsequently, the traditions of interstate relations influenced the historicism of the development of Europe and became one of the integration factors.

At the junction of religions, an essential circumstance is clearly manifesting: socially effective activity, that is, ensuring the continuity and continuity of human history, is possible only if its motives go out of the common worldview of specific individuals. Since the worldview is also formed under the influence of religion, no matter how democratic it may be, joint development under conditions of poly-religiosity is impossible; even in a multi-confessional environment, the perception of reality and the vision of the future in different societies will differ significantly. The proof of this thesis can be found in the former Yugoslavia, when in the conditions of the federation there were different, almost identical in the distribution and significance of religions: Christianity and Islam. During the 1990s, not only did Yugoslavia disintegrate, but also in some newly created republics there were severe conflicts on religious grounds (Hehir, 2006).

Conclusion

To strengthen its own positions and ensure political ambitions, the papacy for a long time tried to institutionalize its own influence on the European monarchs in the most effective way, which led to the spread of ideas of European integration. In general, it should be noted that the religious factor is only one of the many factors of European integration that have historically developed during almost the last fifteenth centuries. Note that such factors are (Weigel, 2014):

- **Safety factor.** European countries united to confront an external enemy. Of course, alliances or alliances were concluded in the process of struggle for political hegemony within Europe, but more often such integration processes took place under the influence of the church to protect the Christian faith;
- **Economic growth factor.** The development of European countries, especially in the days preceding the industrial revolutions, took place with the need to overcome various socio-economic problems. Most often, this required significant resources that most states did not have, and therefore it became necessary to unite several of them either on the basis of a suzerain-vassal relationship (France during feudalism), or on the basis of equal alliances (the Hanseatic Trade Union).
- **Public and political factor.** The spread of the monarchical form of government, starting from the early Middle Ages, provided opportunities for political integration, which was ensured by the dominance of one dynasty in different countries. Thus, there was, so to speak, a peaceful expansion and powerful dynastic alliances were created;
- **Socio-cultural factor.** Quite often, interstate integration took place on the basis of cultural, ethnic and social community. Various ethnic groups, close in origin, tried to unite on equal terms in order to preserve their own identity, but most often this led to the creation of shaky associations, which can be considered a transitional stage, or to federalization, or to complete disintegration (the North German Union).
- **Religious factor.** It should be considered one of the most important, since the identity of religious views and the commonality of models of state-church relations were decisive in many cases of interstate integration. The so-called religious unions were a powerful tool for protecting not only states as separate public-political organizations, but also for protecting the church itself from external antagonistic religious movements. Moreover, the commonality of religion was a defining criterion both in the context of integration on economic grounds, and in the context of integration, which had a public-political character.

Speaking about the main approaches to the relationship between theological and legal elements in canon law, it can be stated that an attempt to resolve the issue in terms of the



prevalence of one of these elements would be futile. A more constructive approach aims to find the right balance between the two, without denying the importance and value of both. So, in Korekko's theory, the theological and legal elements do not deny each other, but are in harmony, and the nature of canon law is manifesting in the correct ratio of these two elements. The methodological aspects of the harmonization of the approach mean that not only the system of constructing canon law, but also the understanding of specific norms should be based on the recognition and preservation of this theological origin, the nature of canon law (Byrnes & Katzenstein, 2006). This interpretation of the nature of the essence and content of church law reveals the mechanism of its functioning. Canon law is based on the theological method, in other words, the regulation and implementation of the norms of canon law are based on the understanding of the church canons. Such an understanding is not unambiguous, as, say, the rule of law in positivist theory, therefore, the legal method should come to the aid of the theological, as well as the formal-logical method.

An understanding of the norms of canon law can be characterized by a free interpretation of church texts in the context of their procedural execution, but quite unambiguous regarding their material content. On the other hand, endowing church law with methods of constructive logic makes it possible to build a more or less stable system of processes and procedures applied within the framework of canon law. This leads to the conclusion that only ecclesiastical material law influenced the development of national legal systems and became the basis for the unification of Europe. Integration processes were not based on procedural norms inherent in canon law, but the integration itself became possible through the joint influence of the religious factor on the formation of legal systems in all European countries.

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