

ISSN 2518-1467 (Online),  
ISSN 1991-3494 (Print)

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ  
ҰЛТТЫҚ ҒЫЛЫМ АКАДЕМИЯСЫНЫҢ

# Х А Б А Р Ш Ы С Ы

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**ВЕСТНИК**

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК  
РЕСПУБЛИКИ КАЗАХСТАН

**THE BULLETIN**

THE NATIONAL ACADEMY OF SCIENCES  
OF THE REPUBLIC OF KAZAKHSTAN

PUBLISHED SINCE 1944

**3**

MAY – JUNE 2021

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ALMATY, NAS RK

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**«Қазақстан Республикасы Ұлттық ғылым академиясының Хабаршысы».**

ISSN 2518-1467 (Online),

ISSN 1991-3494 (Print).

Меншіктенуші: «Қазақстан Республикасының Ұлттық ғылым академиясы» РҚБ (Алматы қ.).

Қазақстан Республикасының Ақпарат және коммуникациялар министрлігінің Ақпарат комитетінде 12.02.2018 ж. берілген № 16895-Ж мерзімдік басылым тіркеуіне қойылу туралы куәлік.

Тақырыптық бағыты: *іргелі ғылымдар саласындағы жаңа жетістіктер нәтижелерін жария ету.*

Мерзімділігі: жылына 6 рет.

Тиражы: 300 дана.

Редакцияның мекен-жайы: 050010, Алматы қ., Шевченко көш., 28, 219 бөл., тел.: 272-13-19, 272-13-18

<http://www.bulletin-science.kz/index.php/en/>

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Типографияның мекен-жайы: «Аруна» ЖК, Алматы қ., Муратбаева көш., 75.

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ISSN 2518-1467 (Online),

ISSN 1991-3494 (Print).

Собственник: РОО «Национальная академия наук Республики Казахстан» (г. Алматы).

Свидетельство о постановке на учет периодического печатного издания в Комитете информации Министерства информации и коммуникаций и Республики Казахстан № 16895-Ж, выданное 12.02.2018 г.

Тематическая направленность: *публикация результатов новых достижений в области фундаментальных наук.*

Периодичность: 6 раз в год.

Тираж: 300 экземпляров.

Адрес редакции: 050010, г. Алматы, ул. Шевченко, 28, ком. 219, тел. 272-13-19, 272-13-18

<http://www.bulletin-science.kz/index.php/en/>

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Адрес типографии: ИП «Аруна», г. Алматы, ул. Муратбаева, 75.

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### Bulletin of the National Academy of Sciences of the Republic of Kazakhstan.

ISSN 2518-1467 (Online),

ISSN 1991-3494 (Print).

Owner: RPA «National Academy of Sciences of the Republic of Kazakhstan» (Almaty).

The certificate of registration of a periodical printed publication in the Committee of information of the Ministry of Information and Communications of the Republic of Kazakhstan No. 16895-Ж, issued on 12.02.2018.

Thematic focus: *publication of the results of new achievements in the field of basic sciences.*

Periodicity: 6 times a year.

Circulation: 300 copies.

Editorial address: 28, Shevchenko str., of. 220, Almaty, 050010, tel. 272-13-19, 272-13-18

<http://www.bulletin-science.kz/index.php/en/>

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Address of printing house: ST «Aruna», 75, Muratbayev str, Almaty.



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### **RELATIONS BETWEEN THE STATE AND RELIGIOUS ASSOCIATIONS IN THE REPUBLIC OF KAZAKHSTAN: CONSTITUTIONAL AND LEGAL ASPECTS**

**Abstract.** This article attempts to comprehensively consider the social and legal nature of the relationship between the state and religious associations in the state, to determine their main constitutional ties, and to reveal the concept and content of the legal status of the religious associations. In this article, based on historical analysis, generalization, modeling, the study of the normative documents, regulating the public relations in this area, the development of the current state of the relations between the state and religious associations. Social science research in the religious studies area could be described as lacking many serious studies, regarding religious issues and relations between the state and religion. One explanation is inattention to the religious factors in public life for a long period of time. This inattention was displayed in political, social and judicial areas. Most studies twenty years ago were devoted to the explanations of the negative features of the religion or the disappearance of religion and state's help. Today the spectrum of opinion on church-state relations is wider. The most popular point of view advocates the separation of state and church. The general opinion is that the state must be secular. The clericalization of the state and social life is considered as danger to the existing political and legal system. At the same time, some believe that religion must be under strict state control (so called, state-controlled religion). In this approach, state interests such as national security always dominate over the interests of religious organizations and believers.

**Key words:** religion, state, law, religious association, religious activity, religious denominations, beliefs, rites, beliefs, sects.

**The relevance of the topic.** Public relations arising between the state and religious associations require constant monitoring. Constitutional and legal norms, regulating the creation, activity and dissemination of the religious associations in the Republic of Kazakhstan are also important from the point of view of constant analysis of the practice of their application by the legislative, executive and judicial authorities, and prevention of the most frequently arising issues. It is also relevant to work on developing proposals for improving legislation in the field of relations between the state and religious associations, taking into account the current religious situation in Kazakhstan.

Russian research scholars, studying the interaction of the state and religious associations within the framework of the constitutional law, such as A. Avakian, S.S. Alekseev, M.V. Baglay, H.A. Bogdanova, V.Ya. Boytsov, M.V. Braginsky, T.A. Vasilieva, V.A. Vinogradova, N.V. Vitruk, V.V. Vitryansky, L. D. Voevodin, G.A. Gadzhiev, V.E. Guliyev, V.V. Zalessky, O.S. Ioffe, V.T. Kabyshev, K.G. Kanevsky, D.A. Kerimov, E.I. Kozlova, A.P. Kokotov, O.E. Kutafin, V.V. Laptev, N.I. Matuzov, I.V. Mersyanova, V.V. Nevinsky, V.S. Nersesyants, F.M. Rudinsky, Yu.A. Tikhomirov, Yu.K. Tolstoy, T.I. Khabrieva, A. Chebotarev, V.E. Chirkin, and others ex-soviet and modern legal scholars.

However, the historiography, published on the topic, does not sufficiently analyze the constitutional principles of the secular state, as well as their practical application at the present stage. Among the Russian legal experts, there is still need for research, the analysis of the interaction of the state with the "traditional" religious associations, consolidation of their legal status, the need to restrict the activities of other religious associations, legal relations between the state and religious associations.

As stated in the Constitution, the Republic of Kazakhstan asserts itself as the democratic, secular, legal and social state, the highest values of which are the person, his life, rights and freedoms, and the content of the fundamental principles of the republic: social harmony and political stability, which pursue the welfare of the entire people. In other words, the Constitution fully describes the characteristics of the secular state. In accordance with this, interreligious relations between the state and religious associations are created in accordance with the concept of the secular state. The state has created legal conditions for the full functioning of the religious associations on the territory of the state. However, the creation of the religious associations in state authorities, other state bodies, state institutions and local self-government bodies, military units, state and

municipal organizations is not allowed [1, P.11].

The establishment of the religious associations is an obvious manifestation of freedom of religion, and in order to adhere to the particular religion, to be able to perform religious rites, in accordance with the chosen beliefs, to spread their religious beliefs, religious education and upbringing, to carry out charitable, missionary, or other activities, determined by the creed. Religious associations are created in the form of religious groups and religious organizations. In other words, each secular state provides an opportunity for the representatives of the indigenous population to openly and legally implement their beliefs in the variety of ways.

Taking into account the gaining of independence and the radical change in the religious situation during the period of the legally defined status of the secular state, the generalization of experience between the state and religious associations can be theoretically and practically interesting. After determining the population, Kazakhstan is multi-faith and multi-faith society. Today in Kazakhstan, there are 18 denominations and 3715 religious associations represent their interests.

Today, there are 3,464 religious buildings in the Republic, including 2,550 mosques, 294 Orthodox and 109 Catholic churches, 495 Protestant temples and houses for the establishment of religious rites, 7 Jewish synagogues, 2 Buddhist temples, 7 “societies for the recognition of Krishna” and houses for the performance of religious rites of Baha’i [3]. In addition, in Kazakhstan there are 400 primary departments at 15 religious educational organizations, mosques and Sunday schools, 383 premises for holding religious events outside of religious buildings, including namazkhana, 257 permanent places for distributing religious literature and other information materials of religious content, items of religious purpose.

There is information that all the subjects of religious relations carry out their activities in accordance with the current legislation of the Republic of Kazakhstan. In other words, the quantitative data indicated above indicate the manifestation of the religious freedom. Nevertheless, the number of pseudo-religious extremist and destructive religious associations that destroy society is growing in the state. Their activities are aimed at inciting religious discord, propaganda of the religious affiliation or preference in relation to religion, violation of the rights, freedoms and legitimate interests of the person and the citizen or attitude to religion, propaganda of inconsistencies in a person’s religious affiliation to the religion, etc. [2].

An important condition for the formation of religious thought, optimization of state confessional relations, prevention of offenses and ensuring freedom of conscience is to increase the level of legal literacy, legal culture, and religious psychological literacy in society. In other words, the regulation of public relations in the religious sphere is not limited only

to internal legal documents. Freedom of religious independence without the restrictions, unfortunately, negatively affects the stability of the society. Over time, some religious associations have realized real goals. These truths contribute to the review of the legislation of the state, and researchers are analysts fundamental analysis of the problem. About 20-30 years ago we analyzed the relationship between the government and religious associations during the Soviet period, and its consequences, and then the completely different vision is defined.

At the same time, we see that inter-religious relations developed only on the basis of the policy set by the state. In Soviet times, close relations between the state and religious associations were achieved in the 70-80 years of the last century. The participation of the religious representatives in public life continued at certain times with the Soviet government, striving to maintain the positive image in the international arena. Religious associations under the mass control of the Soviet state were used for its entry into the international arena. Religious and other international activities of religious communities have helped the government to overcome the crisis and maintain its position in the changing world [3].

For example, at the initiative of the Muslim religion in 1970 in Tashkent, in 1977 in Dushanbe, in 1986 in Baku, the number of the conferences will be organized on various Muslim topics: the world representative conference of followers of all religions, held in July 1977; May 1982 in Moscow was held under the slogan of the struggle for peace and disarmament. During the period under review, foreign delegations of Muslim, Protestant, Orthodox and other organizations actively participated in the republic [4].

After the end of the Khrushchev’s N.S. period, strict methods were significantly simplified in the religious policy of the Soviet state. During this period, the government began to actively encourage religious participation in the country’s public life, as well as in international peacekeeping activities. Also, Muslim clergy, as adherents of other religions, were actively engaged in raising funds for the peace foundation, the society for the protection of monuments and other purposes.

An important factor contributed to the participation of the religious organizations in international events for the Soviet Union was important to maintain the positive image of the socialist state in the international arena, including through religious groups, and the active participation of believers in foreign peacekeeping activities. In addition, monitor the overall functioning of the soviet religions abroad was strictly controlled by the government. In this regard, the soviet department for religious affairs, as the main supervisory body, focused on the activities of the religious organizations abroad.

With the support of the authorities and on the initiative of the Muslim religion, the number of

conferences will be organized on various Muslim topics. In 1979, the religious authorities of the Muslims of the USSR held two events of an international nature. In July, the conference dedicated to the 10th anniversary of the magazine "Muslims in the Soviet East" was held in Tashkent. Religious figures, editors and journalists from Lebanon, Jordan, Iraq, Iran, India, Turkey, Tunisia, Pakistan, Ethiopia, Kuwait, Japan, and Bulgaria took part in its work. The conference participants highly appreciated the activities of this magazine to spread information about the life of Muslims in the USSR and strengthen friendship with foreign followers-thinkers, supporting the foreign policy of the USSR, and called on Muslims to unite in the struggle for peace. In September 1979, an international Symposium was held in Dushanbe on the contribution of the Muslims of Central Asia, the Volga region and the Caucasus to the development of Islamic thought, the cause of peace and the social process. As A.M. Yunusbaeva wrote: "It was attended by prominent Muslim figures from 25 countries, representatives of the World Islamic League and the World Islamic Congress" [5].

It is interesting that the forum adopted final documents consonant with the foreign policy of the USSR. The purpose of the adopted documents: to call for support for the USSR's initiative to reduce and eliminate nuclear weapons; to support anti-social movements and resolve disputed international issues in negotiations.

Since the mid-70s, soviet religious organizations have become regular participants and organizers of world religious events. If we consider the religious activities of religious organizations outside of religion, then not only believers, but also various organizations play the large role in the implementation of the government's foreign policy goals. Thus, we can say that the 1970-80 years was the time of bold turn of the religious organizations into public life. Religious associations, controlled by the Soviet state, were used as supplier of their influence on international associations. They became part of the Soviet foreign policy propaganda apparatus in the context of an ideological confrontation between the two systems. In general, the activities of the religious associations to the certain extent helped the state to overcome the crisis and maintain its direction in the changing world.

As you know, in soviet times, religious associations were directly influenced by state policy and did not create favorable conditions for establishing law and interreligious relations. However, if relying on micro-maps, it would be possible to determine whether there were actions on the part of any associations against the government, or unfulfilled goals, the interests did not withstand the force of the government's policy.

In the 1990s, the opening of borders and liberal legislation on religion created favorable conditions for the representatives of religious and pseudo-religious communities. Many religious associations

continued to work illegally on the territory of the state, and some legally propagated their faith. As the result, illegal and legally employed people considered the same danger. At the same time as last year, this year's decision was made to create new mosque, which was based on the fact that another mosque was commissioned last year, which was built in 1950. This influence was extremely dangerous for the indigenous Kazakhs. A.A. Mustafayeva noted: "For example, if in 1989 there were 20 confessions and 671 religious associations in the country, in 1995 they had about 30 confessions and 1180 religious associations, that is, in 6 years the total number of associations increased 2 times (in Almaty-3 times) [6].

The legislation of many modern states enshrines the right of the citizens to freedom of conscience or freedom of religion, as well as their freedom to perform religious rites in accordance with the religious tolerance.

Such rights are also secured for the first time by the legislation of the Republic of Kazakhstan. Article 12 of the Constitution of the Republic of Kazakhstan states, that the citizen of the republic is guaranteed freedom of conscience. The right to freedom of religion is specified in the Law of the Republic of Kazakhstan, dated January 15, 1992 "On Freedom of Religion and Religious Associations" [2].

Citizens can exercise the right to freedom of religion and satisfy their religious interests and needs in various religious forms, i.e. they legally exercise this right by creating religious associations and as the result of their activities.

In the legal sense, the Charter of "religious association" consists of one religious association, registered in the state organization, established for the purpose of jointly satisfying religious interests and needs or for other religious activities. Depending on their official purposes, there are following religious associations: religious communities, religious administrations, religious educational institutions, monasteries, etc. There may be other types of religious associations. Signs of religious association: presences of goals, common religious position of the members of the association, voluntary members of the association, the presence of the Charter and registration in the state of the organization, ensure self-sufficiency. The internal management structure of religious associations has been preserved in the official form, i.e. among the managers and employees. In addition, the branches of the association are subordinate to the central building. Religious associations between other centers of collective law are closest to public associations. Various legal statuses of religious associations have been established [7].

**Materials and methods of research.** The research methodology is based on the dialectical method, freed from materialistic or idealistic monism and based on the pluralistic, multilinear



interdependence of all social phenomena. We also used the method of dialectical interdependence and interaction of methods: theoretical and empirical, historical and logical, induction and deduction in the study of the formation and development of ethnic identity in our country. The theoretical basis is based on existing theoretical and empirical publications on religious associations. In this article were used abstract-logical, analytical, monographic, economic-statistical, sociological, expert methods, as well as the methods of economic-mathematical analysis, modeling and forecasting.

**Research results.** Religious associations receive assistance from the state; in relation to public associations, the possibility of receiving such assistance is provided by law; religious associations must not pursue political goals and objectives (public associations can set these goals and objectives) [8, P.81]. Taking into account the tax benefits, granted to the religious associations, organizations that are not related to religion seek to obtain the status of religious entity, which may pursue other goals. Religious associations, which characterize the social structure of many modern societies (countries), also operate in the Republic of Kazakhstan. There is an opinion that the democratization of public life in the Republic contributes to the adoption of legislative acts, establishing new status of religious associations [9, P.91]. In this regard, the question of the content and relationship of the concepts “freedom of conscience” and “freedom of religion”, as already mentioned above, is very important from the point of view of our research. At the same time, as well as religious freedom, religious voluntariness, the right to choose, not counting violators of religion in society, have such form as the weakening of the indigenous people,

silk “religious consciousness”, suspicion from the child’s grandfather of trust (religion), which was achieved in the inheritance, as the factor of influence [10, P.5].

**Conclusion.** In the conclusion it should be noted, that now religious associations are actively involved into the public life. The scope of their activities has expanded significantly, in addition to religious orientation; they cover charitable, peacekeeping, cultural and educational, production and economic, etc. In accordance with this, the relations between the state and religious associations changed and became more complicated. These and many other issues related to the activities of religious associations, require appropriate study, including the legal nature. The legal status of the religious associations with legal science has not been sufficiently studied. This is due to the fact that the religious associations eventually cease to exist at certain period along with the disappearance of the religion. Therefore, the analysis of their different state in the society was ignored. This fully applies to the legal status of the religious associations. In most of the works that deal with the legal issues of religious associations, the situation was arisen about the religious associations, based on previously existing legislation and have not studied the problematic issues in this area. In addition, our article examines the legal issues of the religious associations. However, this work has not the comprehensive nature, which considers certain aspects of the legal status of the religious associations. In addition, they are largely outdated, since they are based on previously existing legislation on religion or legislative acts that currently have no legal force on the territory of the Republic of Kazakhstan.

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### **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ МЕМЛЕКЕТ ПЕН ДІНИ БІРЛЕСТІКТЕРДІҢ ӨЗАРА ҚАРЫМ-ҚАТЫНАСЫ: КОНСТИТУЦИЯЛЫҚ-ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ**

**Андатпа:** Мақалада мемлекет пен діни бірлестіктер арасындағы қатынастардың әлеуметтік-құқықтық табиғатын, олардың негізгі конституциялық байланыстарын анықтауға, діни бірлестіктердің құқықтық мәртебесінің түсінігі мен мазмұнын жан-жақты қарастыруға тырысқан. Сондай-ақ мақалада тарихи талдау, жинақтау, модельдеу, осы саладағы қоғамдық қатынастарды реттейтін нормативтік құжаттарды зерделеу негізінде мемлекет пен діни бірлестіктер арасындағы қатынастардың қазіргі жағдайының дамуы қарастырылады. Дінтану саласындағы әлеуметтік зерттеулерде мемлекет пен дін арасындағы қатынастарға қатысты көптеген маңызды зерттеулердің жоқтығы туралы айтылады. Оның себебі, қоғамдық өмірде діни факторларға ұзақ уақыт бойы назар аударылмауы. Назардың жеткіліксіздігі саяси, әлеуметтік және сот саласында көрінді. Осыдан отыз жыл бұрынғы зерттеулердің көп бөлігі діннің теріс қасиеттерін түсіндіруге немесе діннің жоғалып кетуіне арналған болатын. Бүгінгі күні шіркеу мен мемлекет қатынастары туралы ойлар мен пікірлер әлдеқайда көп. Ең танымал көзқарас - мемлекеттің шіркеуден бөлінуі. Мемлекеттік және қоғамдық өмірді клерикализациялау қазіргі саяси және құқықтық жүйеге қауіп ретінде қарастырылады. Сонымен бірге, кейбір зерттеушілер дін қатаң мемлекеттік бақылауда болуы керек деп санайды. Мұндай тәсілмен ұлттық қауіпсіздік сияқты мемлекеттік мүдделер әрқашан діни ұйымдар мен сенушілердің мүдделерінде басым болады.

**Түйін сөздер:** дін, мемлекет, заң, діни бірлестік, діни қызмет, діни деноминациялар, сенімдер, салттар, нанымдар, секталар.

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## **ВЗАИМООТНОШЕНИЯ ГОСУДАРСТВА И РЕЛИГИОЗНЫХ ОБЪЕДИНЕНИЙ В РЕСПУБЛИКЕ КАЗАХСТАН: КОНСТИТУЦИОННО-ПРАВОВЫЕ АСПЕКТЫ**

**Аннотация:** В данной статье предпринята попытка определить социально-правовую природу отношений между государством и религиозными объединениями, их основные конституционные связи, всесторонне рассмотреть понятие и содержание правового статуса религиозных объединений. Также в статье рассматривается современное состояние отношений между государством и религиозными объединениями на основе исторического анализа, обобщения, моделирования, изучения нормативных документов, регулирующих общественные отношения в данной сфере. Социологические разработки в области религиоведения свидетельствуют об отсутствии фундаментальных исследований, касающихся отношений между государством и конфессиями. Причина в том, что в обществе на протяжении долгого времени не обращали внимания на духовные процессы и религиозные факторы. Недостаточное внимание уделялось также политической, социальной и судебной сферам. Большая часть исследований тридцатилетней давности была посвящена объяснению негативных качеств религии, вытекающего атеистического мировоззрения. Сегодня гораздо больше публикаций о взаимоотношениях церкви и государства и межконфессионального согласия. Наиболее известная точка зрения заключается в анализе процесса секуляризации. Клерикализация государственной и общественной жизни рассматривается как угроза современной политической и правовой системе. При этом некоторые исследователи считают, что религия должна находиться под строгим государственным контролем. При таком подходе государственные интересы, такие как национальная безопасность, всегда преобладают в интересах религиозных организаций и верующих.

Ключевые слова: религия, государство, закон, религиозное объединение, религиозная деятельность, религиозные деноминации, верования, обряды, убеждения, секты.

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**МАЗМҰНЫ**
**Экономика – Экономика - Economics**

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**[www:nauka-nanrk.kz](http://www.nauka-nanrk.kz)**

**ISSN 2518-1467 (Online), ISSN 1991-3494 (Print)**

**<http://www.bulletin-science.kz/index.php/en/>**

Редакторы *М.С. Ахметова, Д.С. Аленов, Р.Ж. Мрзабаева*  
Верстка на компьютере *В.С. Зикирбаева*

Подписано в печать 12.06.2021.

Формат 60x881/8. Бумага офсетная. Печать – ризограф.

22, 25 п.л. Тираж 300. Заказ 3.