

LEGAL PERSONS OF CHURCHES IN THE LIGHT OF A NATURE OF CHURCH REGULATIONS

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My entry deals with the question: “Do the spiritual corporations come into being on the church regulations background?” This is an old question. However, I am trying to look at it from another point of view.

First of all we have to clarify the nature of church, the nature of church regulations and the concept of spiritual corporations.

Church

Church becomes a legal person by the act of registration. We can divide corporations into Public Law Corporations and Civil Law Corporations. In my opinion, churches are the public law corporations because the state grants them execution of so called special rights.

Furthermore, we should mention the concept of self-government. Self-government could be statutory or private. Religion self-government is the statutory one, because it does not deal only with its internal problems and aims.

To conclude, if the church is autonomous self-governing corporation, it is enabled to issue statutory regulations.

Statutory regulations

We can see two issues in the field of concept of statutory regulations. The first deals with the nature of statutory regulations as legal enactments. The prevailing opinion says that statutory regulations can not be legal enactments as they do not have a form of legal enactment. Statutory regulations are not generally binding and they are not enforceable by state power. Minority opinion, however, considers statutory regulation as a legal enactment. We agree with the prevailing opinion.

The second issue solves classification of statutory regulations. One group of theoreticians claims statutory regulations are, together with internal normative instructions, the part of internal norms. Another group argues that statutory regulation is independent group of norms which has nothing to do with internal normative instructions. They are reasoning by the nature of internal normative instructions which are applied in the field of relations of subordination. Compared to that, statutory regulations are not applied in such a field. They are issued in connection with the self-governing bodies. We also talk about autonomous legislation. "The right to autonomous legislation consist in the fact that law expressly admits that certain subject has right to issue regulations and by them to regulate public matters in its independent authority." Thus, we should ask "Is the creation of Spiritual Corporation, which executes public tasks, the same as regulation of public matters?" We came to conclusion: "Yes, it is."

Spiritual Corporations

There were several discussions about the nature of spiritual corporations. However, many authors were replacing concept of spiritual corporations by concept of legal persons of church (as a bodies of churches). Definitely, bodies are not entitled to have a legal personality. We should talk about spiritual corporations which churches form as their institutions, instead.

Shall other corporations create their own institutions? For example, civil corporations are entitled to create so called secondary legal persons.

What competencies do the churches have? Before registration they are able to create monastic and other spiritual institutions. It is connected with the right to issue own regulations, because when church wants to create something it needs to adjust it by regulations, norms.

To conclude we should ask: “Has the nature of church regulations any impact on opportunity of Spiritual Corporation to gain legal personality on the basis of church regulations?” If statutory regulations arrange public affairs and we say that creation of Spiritual Corporation with mission to execute public tasks is an arrangement of public affairs, then spiritual corporations are created on the basis of church regulations. Furthermore, the Spiritual Corporations have certain rights and the effects of their acting come into being after they are recorded by the Ministry of Culture.

The autonomy of churches, their independency from state offices and under certain conditions their provision of public affairs makes special statutory corporations of churches.

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