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# Formation Of Kazakhstan As A Secular State: Legal Aspects

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## Abstract

The aim of the study is to investigate the legal aspects of the formation of Kazakhstan as a secular state. The structure of the study is expressed in the standard observational descriptive analysis of the mandatory components of secularity. In result, one can recognize a certain kind of sanction against officials of a legally registered religious association to influence the state. In conclusion, by interfering in the livelihoods of religious associations, the state, for its part, does not, in any way, affect the choice in the religion of citizens,

which, indirectly corresponds to the principles of secularism of the state.

**Keywords:** Secular State, Government, Nation, Religion.

# La formación de Kazajstán como estado laico: aspectos legales

## Resumen

El objetivo del estudio es investigar los aspectos legales de la formación de Kazajstán como estado laico. La estructura del estudio se expresa en el análisis descriptivo observacional estándar de los componentes obligatorios de la secularidad. En consecuencia, se puede reconocer un cierto tipo de sanción contra funcionarios de una asociación religiosa legalmente registrada para influir en el estado. En conclusión, al interferir en los medios de vida de las asociaciones religiosas, el estado, por su parte, no afecta, de ninguna manera, a la elección en la religión de los ciudadanos, que, de manera indirecta, corresponde a los principios de laicidad del estado.

**Palabras clave:** Estado secular, gobierno, nación, religión.

## 1. INTRODUCTION

### *1.1. Introduction to the problem*

This study suggests a certain kind of problem-related to the general goal of determining the content of a secular state on the territory of the Republic of Kazakhstan. For this purpose, there are some provisions necessary for identification.

#### *1.1.1. Importance of the problem*

The norms regarding the interpretation and classification of the characteristics of a secular state are not fully defined, which causes numerous discussions in the legal society regarding the elements of its content and reflection in applied production, which is the most

important issue in the religious policy of the state taking into account the increasing role of religious associations in the life of the state.

### *1.1.2. A distinctive feature of this study from previous ones*

This study touches upon the political and legal space of the Republic of Kazakhstan as a multinational and multiconfessional social space of mutual relations between citizens and legal entities.

### *1.1.3. Hypotheses*

Also in this research three hypotheses are used which have a direct impact on the present research.

#### *1.1.3.1. Primary hypothesis*

If recognition of the democratic values of citizens in terms of religious rights takes place, then the present directly contradicts the main components of the secularism of the state.

#### *1.1.3.2. Secondary hypothesis*

As soon as the state allows sanctions for religious offenses, the secularism of the state is lost.

#### *1.1.3.3. Tertiary hypothesis*

State sanction against an official of a religious association does not violate the principle of secularism of the state, expressed in neutrality to religious associations.

#### *1.1.4. The relationship of hypotheses with the design of the study*

The design of the study is assumed to be descriptive. However, these hypotheses are reflected in the results of a dichotomous nature. That is, as an alternative projection, only two options are possible: whether it exists or not. Thus, the primary hypothesis reflects not a reflection of the component of the secular state, while respecting the constitutional democratic values of citizens in terms of religious rights. The secondary hypothesis lies in the sanctions of the state, where as soon as the state allows sanctions for religious offenses, the secularism of the state is lost. The present is in the neutrality of the state in relation to the affairs of religious associations, which implies the main characteristic of secularism for the state. In accordance with the tertiary hypothesis, the sanction of an official of a registered religious association does not contradict the basic principle of the state regarding secularism. All three hypotheses are connected with a certain identification significant, increasing validity and retrospective of the current study.

#### *1.1.5. Theoretical and practical value.*

##### *1.1.5.1. Theoretical value*

Theoretically, this study suggests a more detailed classification and verification of previously unexplored issues in literary,

scientometric and educational data. Literary sources are more committed to theological studies of the authors of religious plurality. The social base is also quite rich in such studies. However, the legal literature is not particularly replete with works on such a component as secularism at the macro state level, which implies a special significance of this issue from the standpoint of theoretical significance. Regarding some studies, it can be assumed that many authors have found solutions to the classification and characteristics of a secular state, which characterize a secular state as an absolutely neutral attitude of the state to the policies of religious organizations. However, manifesting itself in actions or inactions, this policy cannot fail to affect the basic mechanisms of the state's life, whereby its nature it is completely natural for the state to give preference to one or another subject of religious activity. This study just classifies a certain kind of actions and omissions of legally registered religious associations operating in the territory of the Republic of Kazakhstan, as well as the relations of state authorities regarding these actions or omissions, which gives particular theoretical significance to this research in terms of scientific research.

#### *1.1.5.2. Practical meaning*

From the standpoint of applied production, this study is formulated as a visual demonstration tool when analyzing the components of the secularity of a state when classifying certain actions or inactions of subjects of religious, political and social activity of the state. With a strictly subjective analysis of the components, it can be

understood that the activities of religious organizations are a unique universal complex of actions and omissions of legally registered religious associations operating in the Republic of Kazakhstan, which leads to specific, specific results. For public policy, this may have different objectives. As one of the goals we can single out the national policy on the security of the state, as well as countering terrorism and extremism. Considering this, from a practical point of view, it is possible in principle to consider an alternative to the existence of a certain classifier of activity of legally registered religious associations operating in the territory of the Republic of Kazakhstan, expressed in a specific scale that will allow monitoring at the macro and micro levels. As another goal, it is possible to consider economic mechanisms that are reflected in the sociopolitical values of society. Today, Islamic micro-credit organizations are widely known. All this is governed by the state policy regarding religious issues arising from legally registered religious associations operating in the territory of the Republic of Kazakhstan. Thus, from the point of view of practical production of a certain kind, alternative systems of classifiers, scales and analyzers are quite relevant for the analysis of the components of the secularity of the state in applied production.

### *1.2. Importance of the problem*

#### *1.2.1. Why the problem affects this particular study*

Being a legal, democratic and secular state, the Republic of Kazakhstan adheres to a policy of neutrality regarding religious associations, which implies a certain response to the national religious policy of the Republic of Kazakhstan, which was not previously

studied with Islam as the dominant religious belief in the territory of the Republic of Kazakhstan.

### *1.2.2. Was there a theoretical solution in previous studies?*

In the global scientific and legal space, the famous scholar Jean Bober rightly mentioned that a secular state is an absolutely neutral attitude of the state towards all religious associations, which allowed many countries of Eastern and Western Europe to identify the legal norms of freedom of religious associations from state policy. Another researcher in the post-Soviet space, P. Bomkin, distinguished the secularity of the state as the ability to distinguish more of the religion from one dominant - Orthodox Christianity, which politically gave greater legal force to the actions of Christian religious associations in many countries of the former Soviet Union. Kazakh studies conducted by Professor D. Kenzhetay, identified another component of secularity, which was expressed more in Islamic secularism.

### *1.3. Literature review*

A modern characteristic of a secular state, classified by researchers of the Republic of Kazakhstan, suggests that the state does not interfere in its own organizational activities of a religious association that is legally registered with the state bodies of the Republic of Kazakhstan, and they in turn show neutrality in the affairs of the state, which gives rise to a certain kind of social democratic resonance, as religion assumes a certain status, which does not allow

deducing the boundaries of religion from social and political boundaries (Kosichenko, 2014). This is actually a certain kind of problem, since the boundaries of religion almost always come into contact with the public life of citizens. It is this information age that does not allow secularism to be perceived as a rejection of religion from public life, in particular, on the contrary, the relationship between the state and religion should primarily pursue the goal of the harmonious development of an individual in the society based on the principles of respect and protection of human rights, which is an integral part of the rights to freedom of conscience and religion. This is actually an important issue, despite the fact that in a multi-ethnic and multi-religious state, preserving the basic principles of a state regarding its secular status is one of the most pressing and priority issues of state policy.

Consequently, the state should more actively participate in matters of regulating the processes of religious activity from the standpoint of strengthening the status of religions in the territorial space of the state and support religious associations in their integration to strengthen stability and interfaith harmony. However, a certain kind of independence of religious organizations is also an illogical factor, since confessional-cultural identification of a state is just as important for citizens as the factor of ethnocultural self-identification. This question is the most controversial in the study of the legal content of a secular state. Some studies characterize the secular state as a constitutional legal property with ambiguous norms, which in turn are expressed in changes in the concept of secularity in time and space. Studies in other countries of the former Soviet Union suggest a certain kind of political institutional landscape of a secular state design, which

takes into account two types of structures: an extensive structure characterizing a specific model of a secular state and an intensive structure based on ideological, chronological bases. Similar results were achieved in Tajikistan, where researchers suggested that the expansion of the scope of actions of secular states in the global political space is an indicator of international authority and progress of these states in a diplomatic context. Russian researchers from Penza agreed with the results of the Tajik studies and confirmed that the secular state must remain neutral, impartial and independent to religious organizations operating in the country, which is the result of balancing the interests of the state and religious associations. Other studies in Tajikistan also confirmed the results of studies from Penza, arguing about the concept of a social state in shaping the characteristics of secularity (Tejeda & Dominguez, 2019; Somasundram et al., 2019).

It will also be relevant to consider the positions and results of studies of countries outside the post-Soviet space regarding the identification characteristics of the secular state. Such Turkish studies have shown that a secular state can, in principle, be called a state that has a positive impact on some spheres of life of religious associations, excluding sanctions as a negative influence. This, in principle, is quite natural, since the predominant religion in the Turkish Republic is Islam, which in turn receives a certain kind of support from the countries of the Arab world (Ponkin, 2004). Consequently, as the studies from Dushanbe mentioned, this characterizes the Republic of Turkey as a developed country in terms of implementing the policy of signs of secularism of the state as a tool for the development of

diplomacy. Indian studies also succeeded in developing the characteristics of a secular state as a social factor, in which the state fully trusts communities of religious policy issues, which implies non-interference of state bodies in the general religious policy of the state (Mark, 2008; DahirRezagholiGheshlaghi et al., 2014). The present is in principle natural, since trusting communities in matters of regulating religious activities, the state shifts responsibility and imposes obligations on such communities (Renata, 2011). At the same time, such communities not only increase their role in society, but also increase their responsibility, opening the way for the state to impose sanctions not on religious associations, but on the societies controlling them (Radzhabov, 1999). In essence, this is the state's application of sanctions against a religious association, and its official. At the same time, the state regulates the religious activities of a religious organization, without interfering in the affairs of this organization - while maintaining neutrality. This in principle can be explained by the example of the UK, Italy, Spain, France and Germany (Ahmadi et al, 2014).

As one of the vivid examples, one can emphasize the experience of the United Kingdom, where the relevant legislation involves religious leaders in a religious organization (Shalkharov et al., 2016). This is also similar in Italy, where the state clearly separates the principles of tolerance from the principles of secularism (Abdullahi, 2009). It is precisely this position that Spanish scholars adhere to the characteristics of the secular state, which suggest that tolerance does not imply interference in the affairs of religious associations, but non-interference in the affairs of religious organizations also does not imply tolerance (Mesheriakova, 2009). These principles were also

dismantled by French scholars who classified some of the norms of the state regarding the policy of non-interference in the affairs of religious organizations from the standpoint of tolerance towards all existing religions. However, the Germans were able to separate non-interference from indifference, putting emphasis on active and passive intervention, in which only with certain kinds of interventions the state positions itself as secular (Odinaev, 2010). Certainly, the success of all these studies lies in a more detailed, detailed analysis of the components of legal relations of state bodies and religious organizations as the main subjects of the comparative legal relations space (Shmakova, 2008).

#### *1.4. Hypotheses*

##### *1.4.1. Primary hypothesis*

If recognition of the democratic values of citizens in terms of religious rights takes place, then the present directly contradicts the main components of the secularism of the state.

##### *1.4.2. Secondary hypothesis*

As soon as the state allows sanctions for religious offenses, the secularism of the state is lost.

##### *1.4.3. Tertiary hypothesis*

State sanction against an official of a religious association does not violate the principle of secularism of the state, expressed in neutrality to religious associations (Lin & Chen, 2018).

## **2. METHODOLOGY**

### *2.1. The structure of the study*

The structure of the study is expressed in the standard observational descriptive analysis of the mandatory components of secularity for the state, as well as the results of research by leading scientists in this field.

#### *2.1.1. Participants, subject and procedure of the study*

Since the state is the very person who has declared its status as a secular state, it will primarily be the main participant in this study. Legally registered religious organizations operating on the territory of the state territorial unit can be recognized as the second main participant in the study.

#### *2.2. Participants and their characteristics*

##### *2.2.1. State*

The state as a main participant is a subject adhering to the status of a secular state, which has certain characteristics that allow it to comply with this status, despite certain norms that are contrary to the principles of a secular state.

### *2.2.2. Religious organization*

The voluntary formation of citizens and legal entities after a certain type of state registration as a legal entity, more often non-commercial than commercial, which sets religious activity as its main goal, taking into account all actions and inactions inherent in their chosen type of religion.

### *2.2.3. Other subject*

Other citizens and legal entities that are not related to state bodies and religious associations directly, indirectly interacting with them can also be recognized as the third type of participants in relations between state bodies and religious organizations in controversial moments of the status of secularism of the state.

## *2.3. Selection procedures*

Not foreseen, since the studies are neither qualitative nor quantitative, and the article pursues the purpose of a review character as an introductory article for subsequent studies.

### *2.3.4. Experiments, manipulations and interventions*

Since the studies are neither qualitative nor quantitative, but the article pursues the purpose of a review character, as an introductory article for subsequent research, the present study does not involve

experiments, manipulations, or interventions by researchers, based largely on data provided in previous similar and related research.

### **3. RESULTS**

#### *3.1. Division into groups of studies*

The present studies were divided into several categories. Among the categories of participants, previous studies have divided groups of states of the continents, taking into account the prevalence of religious trends. There have also been studies dividing by types of religions. There were also divisions of religious associations according to organizational legal forms. However, these studies involve only two groups: the state and religious association.

#### *3.2. Statistics and data analysis*

In these studies, statistical data are not implied, since it is this study that is intended as an input. However, the remaining subsequent studies based on this study suggest a certain type of sample, a cross-sectional study design and a detailed statistical analysis at one time through such computational tools like SPSS and In STAT.

#### *3.3. Auxiliary analysis*

As an auxiliary analysis, such legal analysis techniques as deduction, induction, abstraction, and synthesis were used. The present is caused by a large number of literary data separated from different areas of science. However, taking into account the legal nature of these

studies, it is these four methods that are the most acceptable in these studies.

### *3.4. The participants*

Two types of subjects were considered as participants. These are state entities as one participant in legal relations and legally registered religious associations operating in the territory of the Republic of Kazakhstan.

#### *3.4.1. State*

The state as one of the participants of relations on the territory of a secular state is a key subject of research, since it is his attitude towards religious associations, as well as the policy of such associations, that maintains the status of the secular state. Nevertheless, through its mechanisms, the state is still able to influence the policy of religious associations without losing the status of secularism. As one of the ways to influence the state, one can recognize a certain kind of sanction against officials of a legally registered religious association. As such, it can be recognized that most of the criminal law norms are focused on individuals, which implies the use of certain sanctions on an official of a religious organization, causing actions that are not contrary to the general principle of secularism (Ghazanfarpour et al, 2013).

### *3.4.2. Religious organization*

Religious organization as the other side of relations in the territorial space of a secular state is also an active participant in relations. It is well known that religion is one of the constituent values of society. A rather elastic maneuvering in the minds of groups of individuals determines the vastness of the activity of religious associations. At the same time, the goals of a religious association are not always sufficiently adequate and legitimate. This explains the policy of the state regarding parallel non-interference and at the same time control over religious organizations in its territorial unit (Phillips, 2006).

### *3.5. Credentials*

Since these studies are introductory, they do not imply accounting values. With further simultaneous transverse analysis, statistical characteristics of both the state and religious associations are implied as accounting values. However, it is these descriptive studies of those that are not intended because they are only introductory (Hardi, 2018).

### *3.6. Initial data*

As initial data in applied production, one can find related norms that do not have legal force, and nevertheless are reflected in various areas of the state's vital activity. Similarly, unsatisfied statements regarding secular characteristics of the state can also serve as the initial data of the present studies. However, the most basic data are

discrepancies in the legal norms regarding secularity and their practical reflection in the territorial and legal space of the state territorial unit.

### *3.6.1. Justification of the selection of participants*

As the main participants in the system of a state that recognizes itself to be secular, it is possible to recognize the state itself, acting through its government bodies and religious organizations that have obligatory state registration in the same state.

### *3.6.2. Unfavorable circumstances*

When researching this question, certain results were achieved. However, there were also unfavorable factors. As one of the unfavorable factors, a certain kind of resonance can be identified in religious and non-religious activities and inaction.

## **4. CONCLUSION**

The results of these studies suggest quite loud hypotheses that affect some actions and the level of legitimacy of state inaction in a particular policy of religious organizations to maintain the status of a secular state. Speaking of such actions and relying on the primary hypothesis, we can safely assume that the recognition of the democratic values of citizens in terms of religious rights directly contradicts the main characteristic of a secular state. The concept of a

secular state itself implies the absence of a state in the affairs of religious associations. However, in the light of recent events, some religious organizations may hypothetically engage in deliberately illegal activities. Sometimes such crimes reach crimes against peace and security and crimes against the constitutional system. In such situations, the state simply cannot remain indifferent logically, since the principle of democracy and the well-being of the population is of higher priority than compliance with the status of a secular state. In this scenario, there are two potential scenarios. In the first scenario, the state is fully empowered to introduce special regimes to counter some types of crimes by analogy with the military regime in the United States, where the state may well change its secular status for a while until the problem is resolved. This scenario requires more time and resources.

Therefore, in many situations, the second scenario is relevant: a sanction against officials of a religious organization. In this scenario, it can be understood that the criminal legislation of the Republic of Kazakhstan is more designed to punish individuals who tend to be officials. This solves the problem without affecting the status of the secularism of the state, which helps resolve conflicts by eliminating the elements of a major problem. The present corresponds to the tertiary hypothesis, where the sanction of the state against the official of the religious association does not violate the principle of secularism of the state, expressed in neutrality to religious associations. The present is a logical and adequate decision to determine the legal content of a secular state, which is the main goal of this study. In this case, the goal of the research is achieved more by hypotheses and not by results, since the hypothesis can in principle be recognized as a

derivative of the result. On the other hand, the freedom of religious associations also remains unprotected. The above-mentioned actions of the state show the direct influence of state authorities on the policies of religious organizations, which in principle violates a certain kind of balance in the religious and legal policy of the state. Nevertheless, the freedom of activity of legally registered religious associations and the freedom of religion of citizens are two different categories in which preference is given to more than the religion of the citizens, rather than their activities in a religious association. Consequently, by interfering in the livelihoods of religious associations, the state, for its part, does not in any way affect the choice in the religion of citizens, which, in principle, indirectly corresponds to the principles of secularism of the state. Nevertheless, the risk is present in the context of the regulatory framework of the Republic, according to which the secular state is recognized only in one case - non-interference in the affairs of religious associations, which is based in principle on a secondary hypothesis. In accordance with the secondary hypothesis, as soon as the state allows sanctions for religious offenses, the secularity of the state is lost. Accordingly, the following conclusions can be drawn.

The state loses its secular status by recognizing the citizens' democratic constitutional rights to religious values in religious organizations. The state loses its secular status in the development, implementation and application of any sanctions against a religious organization. The state does not lose its status of secularism in the development, implementation and application of any sanctions against an official of a religious organization. These conclusions are well-founded and fixed specific hypotheses. However, in the course of the

study, there were also certain restrictions, both ethical, affecting the religions of citizens and political, which could potentially give rise to a certain level of legal nihilism in society. Both obstacles are quite dangerous, because the research was limited to survey provisions. Theoretical and practical significance of the results has a high value, since in principle they interpret and reveal the main characteristics of the secularity of the state for more ambitious goals in the state's internal religious policy. Nevertheless, as unresolved problems, one can cite the statistical results of a population study on the subject of public trust in its secularity.

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