

Oleksandr Bilash
Tetyana Karabin
Anatoliy Selivanov

MILITARY AND ALTERNATIVE (NON-MILITARY) SERVICE OF RELIGIOUS CITIZENS IN UKRAINE

INTRODUCTION

Due to the beginning of a new stage in the Russian-Ukrainian war and the Russian Federation's launch of a full-scale invasion, the importance and scientific interest in Ukrainian legislation governing military relations has increased. The Constitution of Ukraine stipulates that the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state and a matter of concern for all the Ukrainian people, and the

ASSOC. PROF. DR. OLEKSANDR BILASH – Department of Administrative, Financial and Information Law, Uzhhorod National University; correspondence address: Kapitulna street 26, 88000 Uzhhorod, Ukraine; e-mail: oleksandr.bilash@uzhnu.edu.ua; <https://orcid.org/0000-0002-1248-7798>

PROF. DR. HABIL. TETYANA KARABIN – Department of Administrative, Financial and Information Law, Uzhhorod National University; correspondence address: Kapitulna street 26, 88000 Uzhhorod, Ukraine; e-mail: tetyana.karabin@uzhnu.edu.ua; <https://orcid.org/0000-0002-6538-5269>

PROF. DR. HABIL. ANATOLIY SELIVANOV – Department of Administrative, Financial and Information Law, Uzhhorod National University; correspondence address: Kapitulna street 26, 88000 Uzhhorod, Ukraine; e-mail: selivanov.law@ukr.net; <https://orcid.org/0000-0002-3806-4304>

defence of Ukraine and protection of its sovereignty, territorial integrity, and inviolability shall be entrusted to the Armed Forces of Ukraine.

In the last eight years, military law has been verified and improved in the conditions of actual hostilities, several waves of mobilisation, and periods of armistice. The practical application of the norms has revealed some of their shortcomings and gaps, and has led to making substitutions and additions to the laws. Ukraine's strategic choice to join NATO has led to the implementation of new standards in the Armed Forces of Ukraine. All this has occurred against the background of the statewide tendency towards humanization, the establishment of priority for human rights, their defence and protection, including the proclaimed right to freedom of conscience and religion.

Under such circumstances, Ukraine's state legal policy is aimed at fulfilling citizens' constitutional obligations, primarily the duty to defend the Motherland, its independence, and territorial integrity, as well as to perform military service in accordance with Article 65 of the Constitution.

Therefore, the issue of proper legal regulation of military and alternative (non-military) services of believers in Ukraine is gaining new urgency today. All of this is accompanied by the necessity of stricter state control over its implementation, ensuring the rights of believers, including the right to alternative service, and avoiding the possibility of misuse of rights in order to harm the realisation of the public interest, as well as a gradual transition to the foundations of a professional army (Decree of the President of Ukraine No. 36/2022).

1. THE RIGHT TO REPLACE MILITARY SERVICE WITH AN ALTERNATIVE SERVICE

Article 35 of the Constitution of Ukraine stipulates that no one shall be exempt from his/her duties to the state or refuse to abide by laws on religious grounds. If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service. It is significant in current circumstances that the Decree of the President of Ukraine "On martial law in Ukraine" No. 64/2022 provisions establish restrictions on a number of constitutional rights and freedoms of man and citizen for the period of martial law in

Ukraine, particularly privacy of mail, freedom of movement, free expression of thought, freedom of meetings, etc. Notwithstanding, the right to substitute military service with alternative (non-military) service provided in Article 35 of the Constitution is not limited and remains during a state of war, although such restrictions may be established during martial law or a state of emergency.

The given constitutional provision provides a subject for contemplation on various issues, including the substance of military service and the conditions for its replacement by an alternative service, the essence of alternative service as a type of public service, the possibility of establishing a legal mechanism for state assurance of religious beliefs, etc. Certain studies of these issues have already been conducted in Ukrainian legal science, however, a comprehensive justification has not been received.

The legal institution of the alternative (non-military) service has been operating for religious citizens in Ukraine for two decades now, since it was introduced in 1992 with the adoption of the Law “On Alternative (Non-Military) Service in Ukraine” on 12.12.1991 No. 1975-XII. The adoption of this law also led to the discharge from punishment of persons who, at the time of the passage of the law, were convicted of evasion from regular conscription for military service on religious grounds, as well as the closure of criminal proceedings.

The law has not been terminated for twenty years. Despite the fact that the durability of alternative service is one and a half times longer than the term of military service, hundreds of citizens obtain this right every year. Thus, statistics show that in 1992, 255 people benefited from this right, in 2011 – 499; 2012 – 436; 2013 – 215; 2014 – 475.¹ Their numbers are growing every year. However, the approbation of this institution during the wartime has exposed its weaknesses and vulnerabilities, as well as legal contradictions.

A fundamental question that arises and needs to be handled is whether military duty in Ukraine can be replaced by alternatives, and who has the right to do so. The answer to this question should begin with the fact that military service in accordance with the Law “On Military Duty and Military

¹ Eighth National Report of the Government of Ukraine on the implementation of the provisions of the European Social Charter (revised) for the period: 2011-2014 on Articles 1, 9, 10, 15, 18, 20, 24. Official cite of the Ministry of Social Policy, <https://www.msp.gov.ua/content/spivrobotnictvo-z-radoyu-evropi.html> [accessed: 28.02.2022].

Service” can be conscriptional, enlistment during mobilisation and during a special period, under contract, as well as service (training) of cadets in higher military educational institutions. In each of these cases, the person performs military service. However, the entity of duties is not always the same. And this entity affects the possibility of replacing military service with an alternative (non-military) one.

Hence, the constitutional duty of the citizens of Ukraine is to defend the Motherland, independence, and territorial integrity of Ukraine. This includes the preparation of citizens for military service, enlistment in conscription precinct, conscription for military service, military service, performance of military service on standby, on the reserve, and the adherence to the rules of military accounting. These duties are assigned to citizens by the norms of the Constitution and the law.

At the same time, the norms of the same Constitution establish the right of everyone to freedom of personal philosophy and religion, which includes the freedom to profess any religion or profess no religion, to freely practice religious rites and ceremonial rituals, alone or collectively, and to pursue religious activities. Constitutional provisions do not establish exceptions to the content of religions, creeds, and the meaning of religious beliefs: any of them may be professed and observed.

In the case of a conflict between religious beliefs of a person and military activity, the above constitutional provisions prove to be contradictable and cannot be ensured both at the same time. In this regard, the legislator has provided the following provision of the Fundamental Law, which removes the conflict of constitutional norms: “If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service” (Article 35(4) of the Constitution of Ukraine).

The issue of legal responsibilities in the military sphere, which are assumed by a citizen voluntarily by signing a contract or entering a higher military educational institution, is being resolved differently. Such obligations are considered to be not “military duties” within the meaning of the Constitution and the Law “On General Military Duty and Military Service.” These are public-law obligations that are not referred to in Article 35 of the Constitution of Ukraine. By signing a contract for military service or joining the military training units of higher education institutions, a citizen freely assumes the risks that may arise, including the possible

change in his religious views. Instead of this, this citizen acquires a special legal status and additional social security provided by the state.

This is the logic of the lawmaker, as evidenced by the provisions of the Law “On Alternative (Non-Military) Service,” which states that persons whose religious beliefs prevent them from performing *regular* military service are entitled to opt for an alternative service. This is in no way limiting the content of constitutional law, as is sometimes claimed in the legal literature [Hryhorenko 2016, 48]. It is obvious that this is how the legislative disclosure and detailing of the relevant constitutional law are realised.

At the same time, the issue of the conscription of religious citizens, not only for regular military service but also for service during the mobilisation was urgent and outstanding at the same time. The 2014-2020 lawsuits have become an indicator of numerous violations of this right by the executive branch [Tsyhan 2020, 41-43], despite the fact that the political decisions of the AFU leaders confirmed the need to apply the provisions of the Law “On Alternative (Non-Military) Service” during the mobilisation period as well.² In particular, it was stated that “taking into account that the conscription of religious citizens during military mobilisation may lead to legal consequences, such as refusal to carry out commanders’ orders due to religious beliefs, the Command of the Ground Forces of Ukraine supports the proposal to release religious citizens from training meetings and conscription during mobilisation.” The courts were similarly on the side of the plaintiffs whilst resolving disputes, arguing that the lack of a precise legal regulation of this controversial subject cannot serve as a basis for denying religious citizens whose religious beliefs do not permit the use of weapons in alternative (non-military) service instead of conscription during mobilisation.³

At the same time, amendments to the legal act were made only in 2021, in addition to the fact that they are incomplete. Currently, the Law “On Alternative (Non-Military) Service” stipulates that in the case of conscription of citizens who have acquired certain religious beliefs after performing military service and belong to existing religious organisations whose beliefs do not allow the use of weapons, they shall not later than seven

² Letter No. 116/2/2/10056, 15.09.2014 of Lieutenant General Anatoliy Pushnyakova in response to the appeal of the Institute of Religious Freedom to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine.

³ Case No. 817/818/15; Case No. 820/5487/15.

calendar days from the date of receiving the subpoena for military service submit in person an application for exemption from conscription for these military camps to the relevant structural unit of the local state administration.

However, the procedure for assignment to the alternative (non-military) service during the mobilisation period is still not regulated by the legislation of Ukraine. Nevertheless, the expert community is consensual in the fact that this does not deprive the religious citizens of Ukraine of this constitutional right [Vasin 2022], and the relevant constitutional norm should be applied as a norm of direct action.

Within this context, it is also interesting to consider the possibility of replacing the alternative service with the military one for individuals based on pacifist ethical or philosophical beliefs. The need for its regulation is discussed in some works [Idem 2020, 17; Yarmol and Vando 2020, 43], but it has not received a regulatory settlement yet.

The legal justification and solution of this issue in Ukraine is carried out not through Article 35 of the Constitution (on the right to freedom of personal philosophy and religion), but through the content of Article 34 – the right to freedom of thought and speech, and free expression of views and beliefs. The right to freedom of personal philosophy and religion under the constitution applies only to religious beliefs. And the right to freedom of thought and speech, to the free expression of their views and beliefs in this case, is not violated.

2. PERSONS WHO ARE ENTITLED TO CHANGE MILITARY SERVICE

Article 2 of the Law “On Alternative (Non-Military) Service in Ukraine” stipulates that citizens of Ukraine have the right to alternative service if their religious beliefs contradict the duty to perform military service and these citizens belong to existing religious organisations whose beliefs do not allow the use of weapons. The list of religious organisations whose beliefs do not allow the use of weapons is officially established and approved by the Resolution of the Cabinet of Ministers of Ukraine dated November 10, 1999 No. 2066. This exceptional list includes Adventist-Reformists, Seventh-day Adventists, Evangelicals, Evangelical Baptists, Pokutnyky,

Jehovah's Witnesses, Charismatic Christian Churches (and churches equated to them by registered statutes), Ukrainian Pentecostal Church (and churches equated to them by registered statutes), Christians of the Evangelical Faith, and the Society for Krishna Consciousness.

Accordingly, in the context of the above, it should be noted that the number of religious organisations in Ukraine changes every year in the direction of their increase. As of 2021, statistics indicate that there are more than 37 thousand religious organisations.⁴ In this regard, the relevance of the list of churches whose doctrines prohibit the use of weapons, which was approved in 1992 and has not been a subject of reconsideration, is somewhat questionable in the literature. It also becomes a reason for proposals on the ability of structural units of the state administration to independently determine which religious organisations do not allow the use of weapons [Bratkovs'kyi 2020, 161].

The following considerations should be made in this regard.

To begin with, according to the Law "On Freedom of Conscience and Religious Organisations in Ukraine," religious organisations in Ukraine include religious communities, administrations and centres, monasteries, religious brotherhoods, missionary societies (missions), theological schools, as well as associations consisting of the above-mentioned religious organisations. Under this law, Adventist-Reformists, Seventh-day Adventists, Evangelicals, Evangelical Baptists, Pokutnyky, Jehovah's Witnesses, Charismatic Christian Churches, and others as defined by the Resolution of the Cabinet of Ministers of Ukraine No. 2066 cannot be considered to be religious organisations. They are most likely to be religious movements or groups that embrace and involve individual religious organisations (communities, churches, missions, etc.). In addition, these movements are quite broadly defined in the resolution as there is also an indication of "other churches equated to them." Cumulatively, all this gives grounds to be convinced that this Resolution of the Cabinet of Ministers of Ukraine adequately reflects the group of citizens for whom military service interferes with their religious beliefs. However, the wording of the resolution should be changed and instead of the term "religious organisations," the terms "religious movements" or "religious groups" should be defined.

⁴ Report on the network of religious organisations in Ukraine as of January 1, 2021, <https://dess.gov.ua/statistics-2020/> [accessed: 15.03.2022].

Secondly, it is also worth supporting the opinion that the condition of belonging to religious organisations with a certain specific creed, and an exceptional list of such movements serves as unconstitutional [Vasin 2020, 17]. After all, the law connects the emergence of the right to replace military service with belonging to “religious organisations operating in accordance with the legislation of Ukraine, whose beliefs do not allow the use of weapons” and not belonging to organisations established by the government. In this case, the provisions of the resolution narrow the content and scope of existing constitutional law. Moreover, despite the fact that the list of names of organisations is exceptional, the right to alternative service arises for citizens who belong to organisations that operate both with a registered statute and without it. Therefore, the list of religious denominations established in the resolution, the creed of which does not allow the use of weapons, should serve as a guide for the executive branch in deciding in a particular case under consideration.

The condition for being assigned to the alternative non-military service is also that citizens fall within *conscription*⁵ for regular military service. Citizens who are *exempt from conscription* or who have been granted a *deferment from conscription* are not eligible for alternative service. In this case, the lawmaker has been consistent and has provided the same grounds for exemption from alternative service as for exemption from military service, particularly, the recognition of a citizen unfit on health-related grounds for further military service; sentencing a citizen to imprisonment; and, in addition, as a result of conscription of his own decision. The right to defer non-military service arises due to a change in family circumstances as provided by the law on military duty and military service.

The question of the legality of conscripts in employment and the correlation between the alternative service and forced labour is solved in the context of Article 4(3)(b) of the European Convention on Human Rights. It entails that the meaning of the term “forced or compulsory labour” does not apply to the service of a military character or, in the case of conscientious objectors in countries where they are recognised, service exacted

⁵ Male citizens of Ukraine who are fit for the purpose of military service due to their state of health, who have reached the age of 18 by the date of conscription, and senior persons who have not reached the age of 27 and are not entitled to exemption or deferment of conscription are called up for military service (Article 15 of the Law “On Military Duty and Military Service”).

instead of compulsory military service. Accordingly, national law contains similar provisions in Article 43(2) of the Constitution of Ukraine, which establish the prohibition of forced labour, yet exclude military or alternative (non-military) service from the list of forced labour.

In the current conditions of Ukraine's state of war, the issue of the effective involvement of citizens serving in alternative service in principal humanitarian spheres of public life is relevant. According to the legal provisions, citizens perform alternative service at enterprises or organisations of state or communal ownership, whose activities are primarily related to social protection, healthcare, environmental protection, construction activity, the housing sector and agriculture, and also in the patronage service in the Red Cross Society of Ukraine organisations. The government has also approved a list of activities that can be carried out by citizens serving in the alternative (non-military) service. This list involves the following activities: health care and social assistance, collective, public and personal services, construction activity, electricity, gas and water production, agriculture, hunting and forestry, fisheries, mining, manufacturing, transport (Resolution of the Cabinet of Ministers of Ukraine of December 31, 2004, No. 1795).

In the pre-war period, the employment of "alternatives" in the fields related to environmental protection (35.3%), social protection (27.4%), and agriculture (15.3%) became the most widespread.

3. THE VALIDITY OF RELIGIOUS BELIEFS AS A CONDITION FOR THE REPLACEMENT OF MILITARY SERVICE

When assigning to an alternative service, the executive bodies are authorised to verify the "validity of the believer's views," and the absence of such confirmation can be a ground for refusing a referral to an alternative service. The provisions of the law do not contain any cautions as to how an applicant should convince the commission of the validity of his or her religious beliefs. The law only requires that the truth of beliefs be verified through documentary or other means.

Practice shows that religious beliefs are most often confirmed by a certificate from the religious organisation to which the conscript belongs,

concerning membership or regular attendance at services, baptisms, church weddings, religious education, participation in church services, or other evidence that characterises a particular believer [Vasin 2020, 18]. However, despite the current practice, the principle of legal certainty violations in the legislative formulation and excessive discretion of the authorities lead to illegal and arbitrary decisions. In particular, the analysis of numerous lawsuits shows that the commissions see the lack of confirmation of the religious beliefs validity in the fact that “the applicant could not confidently answer the questions of group members and convince them of the truth of their religious beliefs,” “the applicant’s mentor did not appear” (decision of the Mykolayiv District Administrative Court of 04.01.2022 in case No. 400/9245/21); “the applicant is an unbaptized member of a religious organisation” (decision of the Mykolayiv District Administrative Court of 25.09.2017 in case No. 814/1767/17) and other questionable grounds.

The scientific dispute concerning the expert establishment of the “validity of religious beliefs” even gave rise to the idea that there was a need for the introduction of religious expertise [Fokin 2017, 272]. Its main task should be to establish the accuracy of information about the creeds of conscripts of religion, which contradicts military service.

However, it is considered that the revision or verification by public authorities of the validity of the person’s religious beliefs, the requirement to submit evidence to confirm them, is an unlawful interference with a person’s right to freedom of conscience itself.

In addition, the Law “On Administrative Procedure,” which was adopted on February 17, 2022 and will come into force next year, provides for the presumption of legality of the applicant’s claims during the communication of a private individual with a subject of public administration. This principle means that the actions and claims of a person are considered to be legal until proven otherwise during the consideration and resolution of the case. Furthermore, the decision in the case should not be based on assumptions, and all doubts about the legitimacy of an individual should be interpreted in his favour [Boyko 2017, 27].

So, in this case, the question should not be about establishing the truth of religious beliefs, yet about the possible refutation of the conscript statements by a state body. For all this, all doubts must be interpreted in favour of the applicant. However, the question is whether the subject of

power can prove the probable falsity of religious beliefs? And are there even such tools and opportunities to do this?

Within this context, it should be borne in mind that the truth of religious beliefs as a subject of proof has certain peculiarities. Its proof and refutation cannot take place according to some general rules. Religious faith is the belief in the justice of a particular religion, based on the authority of sacred texts and the teachings of the priests. Faith always has a subjective basis, so the validity of a person's beliefs can not be proved by anything other than the person's own statements.

Accordingly, we consider fair and justified those decisions of the courts in similar cases, which justify that "a person's statement that he has certain religious beliefs is the only possible, sufficient, and necessary evidence to prove the truth of religious beliefs, because no means and methods of the material world, which are currently possessed by human civilization, are possible to refute the validity, to prove the falsity of these religious beliefs" (judgement of the Sloviansk City District Court of 07.11.2017 in case 2-a/243/559/2017).

What legal solution is proposed in this case? We believe that the indication in the law of the need to confirm, documentary or by other means, the truth of religious beliefs is unconstitutional. The provisions of Article 4 of the Law "On Alternative (Non-Military) Service" should be worded as follows: "Citizens, who are conscripted for military service and who have personally stated that it is impossible to pass such as contradictory to their religious beliefs, shall be sent to alternative service by the decision of local state administrations."

At the same time, we are aware that the formulation of the articles may give rise to misgivings concerning the possibility of misuse of the right to replace the military service with an alternative one. Consequently, is it risky indeed, and what are the possible means of preventing it?

First of all, it should be emphasised that the replacement of military service is not a benefit, additional betterment, or a way to evade military service. No person may be excused from his or her duties to the State and may relinquish his or her duties under the constitutional provisions. Respectively, alternative service is a way of fulfilling such a duty to society, when the duty can not be fulfilled in any other way. Alternative non-military service is considered to be a type of public service in Ukraine, along with civil service, service in local self-government bodies, police,

courts, prosecutor's offices, etc. (Article 4 of the Code of Administrative Procedure).

Secondly, there are a number of restrictions on alternative (non-military) service. In particular, when the performance of this duty is entrusted to a person for a term of one and a half times longer than the term of military service, it is impossible to refuse the place of its passage determined by the local state administration. The period of military service passage is credited to the citizens of Ukraine for their length of professional experience in their area of specialisation as well as for the length of public service. In the case of the alternative service, this period is included only in the insurance period, but in order to count this period towards their length of professional experience in the area of specialisation, the citizen has to start work no later than three months after dismissal from the alternative service. Also, citizens who undergo alternative service are prohibited from participating in strikes, entrepreneurship, studying in educational institutions, etc.

Thirdly, it is crucial in this case to define the scope and place of employment of the person serving in the alternative service correctly. Such activities must be thought of as equivalent to military service, tantamount to society and the state, and must fully reflect the public interest. Since citizens can only perform alternative service at enterprises or organisations of state or communal ownership (the exception is the Red Cross Society of Ukraine organisations), the control over such services and the ability to determine such certainly socially useful tasks and activities is actually very high. Accordingly, if this is provided in each case, the issue of misuse of the right to alternative (non-military) service will not arise.

4. THE IMPLEMENTATION OF THE RIGHT TO FREEDOM OF CONSCIENCE IN THE CONDITIONS OF MILITARY SERVICE

At the same time, the conscription of citizens for regular military service during the period of mobilisation or concluding a contract for military service does not deprive them of their religious rights. In accordance with Article 21 of the Law "On Freedom of Conscience and Religious Organisations" and Article 17 of the Law "On the Armed Forces of Ukraine," the command of military units shall allow military personnel and reservists to practice,

individually or collectively, religious cults and rites, to participate in worship services and religious activities under the requirements of the Constitution and laws of Ukraine.

Nevertheless, the right to freedom of conscience provides not only the opportunity to profess any religion but also the right not to profess any, not only the right to openly manifest their religious but also atheistic beliefs. This means that Ukraine is implementing a constitutional approach to the separation of churches and religious organisations from the state in general, as well as the settlement of religious neutrality of military service in particular. This is confirmed by the provisions of Article 2 of the Law “On Military Duty and Military Service.”

However, amongst the components of freedom of conscience and religion there are two aspects: internal and external [Fedchyshyn 2020, 69]. The right to adopt a religion and a creed, to change them, to relinquish them, makes up an internal aspect of freedom of thought, conscience, and religion. The other components of this freedom, related to the expression of one’s religion or belief, comprise the external aspect. Accordingly, the external aspect of the right to freedom of religion, unlike its internal aspect, is not absolute and can be limited for legitimate purposes (rights of others, public order, public interest, etc.) [Serdyuk and Yakovyuk 2017, 206].

This is exactly the restriction of the external aspect of the right referred to in the law “On Social and Legal Protection of Military Men and Members of Their Families.” Its provisions state that military men may take part in religious services and religious rites during their free time. In addition, military men have no right to refuse or evade military service on the grounds of religious belief or to use their official authority for religious or atheistic propaganda. Hence, military service takes precedence over a soldier’s religious requirements.

The right to freedom of conscience includes freedom from coercion to participate in religious rites, worship, or preaching. The legislation encompasses the duty of the military command (brigade, battalion, company, platoon, department) to be aware of the religion of its subordinates (Law “On the Regulations of the Internal Service of the Armed Forces of Ukraine” of 24.03.1999 No. 548-XIV). However, the position of the HUDOC states that the military command has no right, using their rank, to impose on soldiers of a lower rank any religious or non-religious beliefs,

has no right to encourage them to participate in religious ceremonies, or refuse if they have such a desire.⁶

In this context, the establishment and activity of the institute of chaplaincy in the Armed Forces of Ukraine is vital [Bilash and Karabin 2020, 97]. The law establishes the right of the military command to foster cooperation with military chaplains (priests) of various denominations, who may provide pastoral care to military personnel and members of their families. Until recently, the general provisions of the procedure for posting military priests (chaplains) were regulated by the Regulations on the Service of the Military Clergy (Chaplaincy) in the Armed Forces of Ukraine. However, last year a new law “On the Military Chaplaincy Service” of 30.11.2021 No. 1915-IX was adopted and was expected to come into force on July 1, 2022. But due to modern military realities, the Ukrainian parliament amended this law and accelerated its implementation. Currently, it already operates and provides for the creation of a distinct entity of the Military Chaplaincy Service not only within the Armed Forces of Ukraine but also the National Guard of Ukraine, the State Border Guard Service of Ukraine. The mission of this service is to satisfy the religious needs of military personnel, workers, and members of their families in times of peace and war.

At the same time, in the conditions of the Russian-Ukrainian war, the question arises as to which religious organisations and denominations will be represented in the Military Chaplaincy Service. Currently, the issue of involving priests of the Ukrainian Orthodox Church (in cooperation with the Moscow Patriarchate) in such activities is acute. Until the secondary legislation has not been adopted and the practice on this issue has not been developed yet, let us allow ourselves to predict its further establishment.

According to the legal requirements for the occupation of 90 percent of the full-time positions of military chaplains, the distribution of quotas of confessional representation is carried out, taking into account the confessional affiliation of personnel. And only 10% of all military chaplain positions are appointed independently by the head of the Military Chaplaincy Service. Therefore, the majority of positions will be filled based on the results of a survey of military personnel regarding the determination of

⁶ Case *Larissis and Others v. Greece* (140/1996/759/958 960) ECHR (24 February 1998), [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58139#{"itemid":\["001-58139"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58139#{) [accessed: 20.02.2022].

religious affiliation. Respectively, the military themselves will determine which denominations will receive mandates to carry out their activities.

The religious administration of the Ukrainian Orthodox Church is located outside Ukraine in a state that is an aggressor and occupier. And in the conditions of real hostilities and a clear understanding of the enemy in Ukrainian society, the risks that the military will identify with the Ukrainian Orthodox Church (Moscow Patriarchate) are very low. Furthermore, the defined 10% of positions cannot in any case be used to adjust the ratio and quota.

CONCLUSIONS

The development and reform of the legal regulation of military and alternative (non-military) service of religious citizens in Ukraine is influenced by two crucial factors:

- 1) the eight-year Russian-Ukrainian war, which saw phases of aggression, armistice, and the entry into a new stage of a full-scale invasion;
- 2) the changes on Ukraine's religious map, including taking into account current societal demands for changes in religious organisations themselves (specifically, the granting of the Tomos on Autocephaly to the Orthodox Church of Ukraine, the movement for autocephaly of the Ukrainian Orthodox Church – in unity with the Moscow Patriarchate – and radical changes in the believers' and leadership's worldview), diplomatic and humanitarian efforts of the Roman Catholic and Ukrainian Greek Catholic Churches, active work of Protestant religious organisations.

The first of these factors exacerbated the issue of performing alternative (non-military) service by citizens of Ukraine, the issue of avoiding the possibility of misuse of this right, as well as the effective involvement of such people in socially useful tasks. Replacing military service with an alternative is not a benefit or an additional betterment, but a way of fulfilling a duty to society. Therefore, discussions on the necessity and expediency of such a legal institution should be transferred to the sphere of defining activities tantamount to society and state, which would fully ensure the public interest during the state of war. Since citizens can perform alternative service only at enterprises or organisations of state or communal ownership, the control over the passage of such service and the

ability to determine such certainly socially useful tasks and activities is actually very high.

The second factor is related to the fact that during the process of military service, the right to freedom of conscience is associated with the introduction of the institution of military chaplaincy. However, two issues have arisen: 1) the introduction of a mechanism to ensure this right for everyone (despite the fact that Ukrainian society is multi-religious) and considering the prohibition on imposing any religious beliefs and encouraging participation in religious ceremonies; 2) the possibility and level of involvement of priests of the Ukrainian Orthodox Church (in unity with the Moscow Patriarchate) in the chaplaincy in the armed forces. It is believed that the answers to these questions should be contained in future secondary legislation of the Government and the Ministry of Defence of Ukraine, adopted to implement the laws.

REFERENCES

- Bilash, Oleksandr, and Tetyana Karabin. 2020. "Legal Regulation of the Military Chaplaincy in Modern Ukraine." *Kościół i Prawo* 9 (22), no. 2:97-112.
- Boyko, Iryna, ed. 2017. *Administratyvna protsedura*. Kharkiv: «Pravo».
- Bratkovskyy, Volodymyr M. 2020. *Administratyvna vidpovidal'nist' za porushennya zakonodavstva pro mobilizatsiynu pidhotovku ta mobilizatsiyu*. L'viv: Halyts'ka vydavnycha spilka.
- Fedchyshyn, Serhiy. 2020. "Relihiyna neytral'nist' yak pryntsyp derzhavnoyi sluzhby v Ukrayini." *Jurnalul juridic national: teorie și practică* 41, no. 1:66-71.
- Fokin, Yaroslav F. 2017. "Sudovi ekspertyzy pry rozsliduvanni ukhylen' vid prokhozhen'nyya viys'kovoyi strokovoyi sluzhby ta mobilizatsiyi." *Mizhnarodnyy yurydychnyy visnyk: aktual'ni problemy suchasnosti (teoriya ta praktyka)* (8-9), no. 4-5:269-75.
- Hryhorenko, Yevhen I. 2016. "Problemy yurydychnoyi vidpovidal'nosti hromadyan, shcho prokhodyat' al'ternatyvnu (neviys'kovu) sluzhbu ta yikhniy vplyv na yurydychnu vidpovidal'nist' viys'kovosluzhbovtziv v Ukrayini." *Visnyk natsional'noho universytetu imeni V. N. Karazina. Seriya «PRAVO»* 22:47-49.
- Serdyuk, Oleksandr, and Ivan Yakovyuk, ed. 2017. *Teoriya ta praktyka zastosuvannya Konventsii pro zakhyst prav lyudyny i osnovopolozhnykh svobod*. Kharkiv: Pravo.
- Tsyhan, Petro. 2020. "Aktual'ni problemy realizatsiyi v Ukrayini chlenamy protestants'kykh tserkov prava na al'ternatyvnu (neviys'kovu) sluzhbu v period mobilizatsiyi ta shlyakhy yikh vyrishennya." *Visnyk L'vivs'koho universytetu. Seriya yurydychna* 70:39-48.

- Vasin, Maksym S. 2020. *Tvoje pravo na svobodu virospovidannya*. Posibnyk dlya viruyuchykh, relihiynykh hromad ta posadovykh osib orhaniv vlady. Kyiv: Media svit.
- Vasin, Maksym. 2022. "Mobilizatsiya viruyuchykh i al'ternatyvna sluzhba pid chas viyny: pytannya ta vidpovidi." *Ofitsiynyy sayt Instytutu relihiynoyi svobody*. <https://irs.in.ua/p/103> [accessed: 20.03.2022].
- Yarmol, Liliya V., and Solomiya R Vand'o. 2020. "Pravo hromadyan na zaminu vykonannya viys'kovoho obov'yazku al'ternatyvnoyu sluzhboyu: yurydychne zabezpechennya v Ukraini." *Yurydychnyy naukovyy elektronnyy zhurnal* 7:40-44.

Military and Alternative (Non-Military) Service of Religious Citizens in Ukraine

Abstract

The article considers the essence of the proper legal regulation of the military and alternative (non-military) services of religious citizens in Ukraine, which has gained a new relevance in the background of the another stage of the Russian-Ukrainian war. The right to replace the military service with an alternative one, its legal regulation, and the possible enhancement of such regulation are the subject of a full-scaled analysis. The article identifies the issues of the implementation of the right to freedom of conscience in military service in the modern state of war conditions and changes in the religious map of Ukraine. Conclusions were made on the need to preserve the institution of alternative service and the establishment of a full-fledged institution of military chaplaincy.

Keywords: freedom of conscience; military service; alternative (non-military) service; institution of military chaplaincy

Służba wojskowa i zastępcza (pozawojskowa) wierzących obywateli w Ukrainie

Streszczenie

W artykule rozpatrywana jest problematyka właściwego uregulowania prawnego służby wojskowej i zastępczej (pozawojskowej) obywateli wierzących w Ukrainie, co stało się jeszcze bardziej aktualne w związku z kolejnym etapem wojny rosyjsko-ukraińskiej. Dokładnie przeanalizowano prawo do zastąpienia służby wojskowej służbą zastępczą, jej regulacje prawne oraz możliwe sposoby udoskonalenia tej regulacji. W artykule sformułowano problemy związane z realizacją prawa do wolności sumienia w służbie wojskowej w istniejących warunkach stanu wojennego oraz ze zmianami na mapie religijnej Ukrainy. Wyciągnięto wnioski o konieczności zachowania instytucji służby zastępczej i powołania pełnoprawnej instytucji duszpasterstwa wojskowego.

Słowa kluczowe: wolność sumienia; służba wojskowa; służba zastępcza (niemilitarna); instytucja duszpasterstwa wojskowego

Informacje o Autorze: PROF. DR OLEKSANDR BILASH – Katedra Prawa Administracyjnego, Finansowego i Informatycznego, Użhorodzki Uniwersytet Narodowy; adres do korespondencji: Kapitulna street 26, 88000 Uzhhorod, Ukraina; e-mail: oleksandr.bilash@uzhnu.edu.ua; <https://orcid.org/0000-0002-1248-7798>

Informacje o Autorze: PROF. DR HAB. TETYANA KARABIN – Katedra Prawa Administracyjnego, Finansowego i Informatycznego, Użhorodzki Uniwersytet Narodowy; adres do korespondencji: Kapitulna street 26, 88000 Uzhhorod, Ukraina; e-mail: tetyana.karabin@uzhnu.edu.ua; <https://orcid.org/0000-0002-6538-5269>

Informacje o Autorze: PROF. DR HAB. ANATOLIY SELIVANOV – Katedra Prawa Administracyjnego, Finansowego i Informatycznego, Użhorodzki Uniwersytet Narodowy; adres do korespondencji: Kapitulna street 26, 88000 Uzhhorod, Ukraina; e-mail: selivanov.law@ukr.net; <https://orcid.org/0000-0002-3806-4304>