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WAYS OF IMPROVEMENT OF THE RELIGIOUS ORGANIZATIONS' CONSTITUTIONAL STATUS IN UKRAINE

Formulation of the problem. Nowadays the religious organizations are at the top of the news agencies' publications. The most productive thing they compliment the Ukrainian society is that they give the huge moral support to the Ukrainians (both at the territory of the country and abroad) and also the essential material support as well. The legislation on the religious organizations, though, is very old. That is why it is the essential task for the constitutional scientists to create the relevant proposals, and for the law-makers – to amend the relevant legislation in this field.

Analysis of recent research and publications. The issue of the religious organizations' constitutional status isn't researched in the Ukrainian legal literature at the monographic level. There are some monographies, that deal with the NGOs in general, that are relevant to the religious organizations (see, for example, [1–6]). But in the Ukrainian science of constitutional law, it is still a big gap in this field, that is covered mostly by the works of this article's author. As for the other branches of the Ukrainian law, the authors usually pay more attention to the status of the religious organizations. For example, in the Ukrainian administrative law there are a lot of monographical works on this subject, the most recent one is dated 2021 [8]; there are also the articles in the legal journals, that cover the

various problems of the religious organizations' administrative status.

The aim of the article is analysis of the influence of the main actor (state regulator) in the religious field on the further development of the legislation, that regulates the religious organizations' constitutional status.

Main text. The State Service of Ukraine for Ethnopolitics and Freedom of Conscience was created relatively recently, and it is a body of public power that is still at the stage of formation of its activities, active searches. This is the first initial thesis of the article.

The second initial thesis of the article is that in the conditions of the coronavirus disease pandemic, an extremely large number of problems arise in the field of public health, the health of every person. And these problems are often not only physical, but also psychological in nature. In such conditions, a person, if it is impossible to receive qualified medical care, resorts to the search for improvement of his psychological state on his own, including through active participation in the functioning of religious organizations.

The third starting thesis of the article is that the constitutional legislation of Ukraine on religious organizations is almost undeveloped. And that is why the State Service of Ukraine for Ethnopolitics and Freedom of Conscience is quite capable of intensifying its norm-making, and





especially norm-projecting activities in part of the laws of Ukraine.

Constitutional law is a profiling branch of the law of Ukraine, and therefore it is unlikely that any sectoral research – both constitutional and legal, and that conducted within the boundaries of another field – is possible without reference to the provisions of constitutional legislation, without the development of specialists in constitutional law. The study of the legal status of religious organizations is no exception.

And in connection with this, the fact that the issues of the constitutional (constitutional-legal) status of religious organizations in Ukraine at the time of independence was almost not analyzed is quite surprising. Also, it is impossible to find the concept of the term “constitutional status of religious organizations” in Ukrainian legal literature. Developments in this direction are an important scientific task given the fact that further improvement of constitutional legislation in this area is an important practical task.

Changes and additions that liberalized freedom of conscience and had a positive impact on the possibilities of development, improvement and diversification of the status of religious organizations began to be made to the 1978 Constitution of the Ukrainian SSR in 1990–1991, and in independent Ukraine, even before the adoption of the 1996 Constitution, there was a proper basis for development analyzed status. Also, attention should be paid to the Law of Ukraine dated April 23, 1991 “On Freedom of Conscience and Religious Organizations”.

Researchers say that one of the main shortcomings of this Law is that it contains almost no normative definitions.

In the context of this study, it is important that this Law:

- does not provide a definition of the concept of “religious organizations”, but only provides an exhaustive list of

those types of religious organizations to which it applies (in particular, the list indicates the possibility of forming a religious community with the rights of a legal entity or without such rights, the possibility of these communities to unite under the direction of departments and centers, etc.);

- does not provide a list of elements of the legal status of religious organizations in general and the constitutional status of these organizations in particular.

The fact that in the Law of Ukraine of April 23, 1991 “On Freedom of Conscience and Religious Organizations” there is no definition of the concept of “right status of religious organizations”, branch statuses, in our opinion, is quite logical and provides grounds to suggest developing these concepts in legal literature. The formulation of the definition of the concept of “constitutional status of religious organizations” is especially important, considering what was stated at the beginning of the article.

However, as of January 1, 2023, there are only such definitions in Ukrainian legal literature that can be applied by analogy.

First, this is the work of A.Yu. Radchenko. The author rightly states that “the analysis of the relationship between the state and religious associations within the framework of the concept of a secular state or consideration of issues related to freedom of conscience, if at the same time the problem of determining the legal status of religious associations, outside of which it is impossible to ensure the full implementation of freedom of religion, as well as ensuring the legal equality of religious associations, makes it impossible to form a clear strategy for the development of religious legislation of Ukraine, its adaptation to world, primarily European, legal standards” [7, p. 169–170].

In accordance with this thesis, the author proposed to consider that “The





legal status of religious associations, the structure of which consists of subjective rights, legal interests, legal duties and legal responsibility of religious associations, is based on the need for the simultaneous implementation of requirements, arising from two fundamental values of democracy – freedom of religion and freedom of association” [7, p. 172]. It is worth noting that the author has chosen a rather classic approach to the structure of legal status, with which one should generally agree - with a few caveats.

First, it is hardly worth talking about “subjective rights” when it comes to religious organizations. Traditionally, at least in constitutional law, subjective rights are discussed when it comes to a natural person or a group of them that is not organized.

It would be more accurate to talk simply about the “rights of religious organizations” in general.

Secondly, it should be noted that religious organizations in Ukraine, in accordance with the constitutional legislation, have relatively few rights and even fewer legitimate interests. And therefore, when defining the content of the concept of “constitutional status of religious organizations”, it is advisable to combine rights and legitimate interests into one group.

Again, taking this into account, it would be more accurate to talk simply about the “rights of religious organizations.”

Thirdly, some specific features should be included in the definition, which will demonstrate its descriptiveness specifically in relation to religious organizations.

As such signs, we should mention those that will not be overlooked by any of the modern Ukrainian researchers. And this is possible only in the case when these signs are fixed at the regulatory level. In our opinion, there are no such signs in the Constitution of Ukraine of 1996. And that is why we should turn to the most important

law for religious organizations – the Law of Ukraine of April 23, 1991 “On Freedom of Conscience and Religious Organizations”.

Brief generalizations regarding which provisions of this Law cause researchers’ comments have already been given above. Of course, it would be best to borrow the definition of “religious organization” in whole or in part from this regulatory act. But, due to its absence, it should be suggested to borrow the comprehensive list of religious organizations, which is provided in one of the first articles of this Law. After all, as the researchers rightly note, “the specificity of the legal status of informal religious associations is related to the right of such associations to form and practice their religion in any way not prohibited by law, in particular through interaction with other participants of religious life. To enter into other relations (economic, labor, economic, financial, administrative, etc.), the state has the right to demand their formalization (registration of statutory documents)” [8, p. 172]. This list, with the corresponding amendment to the given quotation, can be useful in doctrinal developments.

So, the analyzed definition can be taken as a basis and in general, but it is worth to continue the scientific search, to get acquainted with other available proposals.

Returning to the analysis of the works of Ukrainian authors regarding concepts similar to the concept of “constitutional status of religious organizations”, one cannot ignore the definition of the concept of “administrative status of religious organizations”. It is interesting that a number of authors, characterizing this status, do not provide either its definition or a list of its elements - and therefore, these works are rather difficult to read (see the work of V. S. Bilyk [9]).

However, the existing proposed O.P. Melnychuk’s definition of the





concept of “administrative status of religious organizations” – “these are the rights, duties and measures of responsibility enshrined in national legislation that determine the role and specifics of the participation of religious organizations in administrative legal relations” [8, p. 5]. It should be emphasized how succinctly the author formulated this concept, emphasize that this definition also contains a list of elements of the analyzed status and suggest to be guided by it when determining what constitutes the constitutional and legal status of religious organizations.

Conclusion. During the coronavirus disease pandemic, and even more during the war the Ukrainian society needs physical, but also psychological support. In such conditions, a person, if it is impossible to receive qualified medical care, resorts to the search for improvement of his psychological state on his own, including through active participation in the functioning of religious organizations. The state regulator in this field – State Service of Ukraine for Ethnopolitics and Freedom of Conscience – so far isn’t very active, when it comes about the modernizing constitutional legislation on the religious organizations. This drawback is very essential, because constitutional law is a profiling branch of the law of Ukraine – and it gives the direction for the development of the other branches of the national legal system.

The author generalizes the relevant provisions of the constitutional legislation on religious organizations. On the basis of the generalizations, a definition of the concept of “constitutional status of religious organizations in Ukraine” is proposed – it is the rights, duties and legal responsibility of religious communities established by the provisions of the constitutional legislation, regardless of the presence or absence of state registration, administrations and centers,

monasteries, religious brotherhoods, missionary societies (missions), spiritual educational institutions, as well as associations consisting of the above-mentioned religious organizations.

This definition should be used as a basis for further improvement of the legislation on freedom of conscience and religious organizations. In our opinion, the State Service of Ukraine for Ethnopolitics and Freedom of Conscience and the Verkhovna Rada of Ukraine should play the biggest role in this. Therefore, on the basis of scientific developments, the State Service of Ukraine for Ethnopolitics and Freedom of Conscience may well activate its norm-making, and especially norm-projecting activities in the part of the laws of Ukraine. This is extremely important in modern conditions.

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Key words: religious organizations, freedom of conscience, freedom of religion, Constitution of Ukraine, constitutional bases of creation and activity of religious organizations, constitutional status of religious organizations.

Волкова Д. Шляхи удосконалення конституційного статусу релігійних організацій в Україні

Під час пандемії коронавірусної хвороби, а тим більше під час війни українське суспільство потребує як фізичної, так і психологічної підтримки. У таких умовах особа, за неможливості отримати кваліфіковану медичну допомогу, вдається до самостійного пошуку покращення свого психологічного стану,

у тому числі шляхом активної участі у функціонуванні релігійних організацій. Державний регулятор у цій сфері – Державна служба України з питань етнополітики та свободи совісті – поки що не надто активна, коли йдеться про модернізацію конституційного законодавства про релігійні організації. Цей недолік є дуже суттєвим, оскільки конституційне право є профільною галуззю права України – і воно дає напрямок розвитку інших галузей національної правової системи.

Автором узагальнено відповідні положення конституційного законодавства про релігійні організації. На основі проведених узагальнень запропоновано визначення поняття «конституційний статус релігійних організацій в Україні» – це встановлені положеннями конституційного законодавства права, обов’язки та юридична відповідальність релігійних громад незалежно від наявності або відсутності державної реєстрації, управлінь і центрів, монастирів, релігійних братств, місіонерських товариств (місій), духовних навчальних закладів, а також об’єднань, що складаються із зазначених релігійних організацій.

Це визначення має бути покладено в основу подальшого вдосконалення законодавства про свободу совісті та релігійні організації. Найбільшу роль у цьому, на наш погляд, мають відіграти Державна служба України з питань етнополітики та свободи совісті та Верховна Рада України. Тому на основі наукових розробок Державна служба України з етнополітики та свободи совісті цілком може активізувати свою нормотворчу, а особливо нормопроектну діяльність у частині законів України. Це надзвичайно важливо в сучасних умовах.

Ключові слова: релігійні організації, свобода совісті, свобода





віросповідання, Конституція України, конституційні основи створення та діяльності релігійних організацій, конституційний статус релігійних організацій.

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