

СЕКЦІЯ 4.

ПРОБЛЕМИ СУЧАСНОЇ КОНСТИТУЦІОНАЛІСТИКИ

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CONSTITUTIONAL BASIS OF FREEDOM OF CONSCIENCE AND RELIGIOUS VERIFICATION

As a form of social consciousness, religion is closely connected with the law. This relationship exists both at the level of religious-legal regulatory systems, and at the level of the formation of the national will and its consolidation in the system of legislation governing the activities of the church (religious organizations) in society. In modern social sciences, religious studies, and legal literature, the problem of the freedom of conscience has theoretical and practical aspects.

The content of the "freedom of conscience" is the right of citizens to be recognized by any religion or not to be recognized by anyone, to send religious worship or to adhere to an atheistic world view. And freedom of conscience is a concrete manifestation of human freedom in society. Freedom of conscience should be considered as a legal phenomenon in the context of all other rights and freedoms that are part of a person's legal status [1]. The main content of a person's legal status is its rights and legal guarantees, duties and responsibility for their performance. Therefore, freedom of conscience as a social value is complemented by its legal characteristic. One of the important conditions for building a democratic society is the human right to freedom of choice of world view, which is usually interpreted as the right to freedom of conscience.

The main principles of freedom of conscience are:

- 1) human rights to profess any religion or not to profess oneself and to be a non-religious person;
- 2) religious and atheistic organizations should be separated from the state;

3) In a democratic state, a school should not include the courses of God's law and atheism as obligatory disciplines;

4) The state is not obliged to finance the activities of both religious and atheistic structures.

In other countries, freedom of religion is formally declared, but at the same time there are privileged religions and religious movements: in Arab countries it is Islam, Latin American and Western European – Catholicism, in Greece – Orthodoxy, etc. Mechanisms of constitutional consolidation and legal regulation of the principle of freedom of conscience not true in these countries.

In Ukraine, freedom of conscience is a constitutional principle, a rule of state law: every citizen has the right and opportunity to freely determine his attitude to religion, that is, to recognize any religion or to be an atheist. Freedom of conscience is protected by civil, criminal, administrative and family law; the issue of ensuring freedom of conscience is contained in the laws on labor, education of people and other legislative acts.

Religious organizations are free in their canonical and non-religious activities. Since the registration of the charter, a religious organization has acquired the rights of a legal entity.

Article 35 of the Constitution of Ukraine establishes the separation of church and state. The circumstances are as follows: firstly, this is a decisive prerequisite for achieving legal equality in the religious sphere, eliminating discrimination against believers or non-believers; secondly, the removal of religion from the sphere of state and legal life, freed from the performance of extraordinary functions of the church.

No one can be released from their obligations to the state or refuse to obey laws based on religious beliefs. The exercise of this right may be restricted by law only in the interests of protecting public order, public health and morals, or protecting the rights and freedoms of other people [3].

Attached are typical examples of violations of the Law "On Freedom of Conscience and Religious Organizations":

- construction of military units, prisons, hospitals and other state institutions of Orthodox religious buildings in the territory;
- exemption from taxation of religious organizations and their commercial enterprises, which leads to the formation of a shadow criminal business under the auspices of religious communities;
- development by government agencies of measures to implement the Law on God in the education system.

Along with article 35 and the legal institution of the freedom of conscience, constitutional norms are included:

- 1) the use by citizens of their rights and freedoms should not interfere with the interests of society and the state, the rights of other citizens;
- 2) equality of citizens regardless of their attitude to religion, their equal rights in economic, political, social and cultural life;
- 3) inseparable from the performance of duties of a citizen in connection with the exercise of rights and freedoms [2].

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ЗАПРОВАДЖЕННЯ ІНСТИТУТУ КОНСТИТУЦІЙНОЇ СКАРГИ В УКРАЇНІ

До прийняття нової редакції закону України «Про Конституційний Суд України» (далі – КСУ) від 13.07.2017 в Україні існували дві форми звернення до КСУ: конституційне подання та конституційне звернення. Наразі в Україні зафункціонувала нова, довгоочікувана форма звернення – конституційна скарга, яка передбачена ст. 55 та ст. 151¹ Конституції України, вимоги до якої зазначені в ст.ст. 55, 56, 77 Закону «Про КСУ».