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THEORETICAL AND LEGAL ASPECTS OF THE DEFINITION OF FREEDOM OF RELIGION

Abstract. The prohibition of religion is a central aspect of human rights, and because it is too often violated, there are significant differences and even conflicts between concepts and approaches to religious freedom. The article analyzes the definitions, etymology and main features of such related concepts as "freedom of religion", "freedom of conscience" and "freedom of worldview". The right to religious beliefs is enshrined in the constitution of many countries of the world in different wording and scope. The article outlines the key positions of scholars on understanding "freedom of worldview", "freedom of conscience" and "freedom of religion" and discusses some of the challenges related to religious human rights.

The excessive scope of concepts close to religious freedom, the inconsistency of constitutional law with national legislation, and the inconsistency with certain provisions of international human rights documents lead to differences in the interpretation of the concept of "freedom of religion". As an example, the Constitution of Ukraine guarantees everyone the right to freedom of worldview and religion (Article 35), the Law of Ukraine "On Freedom of Conscience and Religious Organizations" guarantees the right of citizens to freedom of conscience.

In this context, in order to eliminate terminological uncertainty, the author points out the expediency of distinguishing between these concepts and the need to establish a unified terminology in the field of religious freedom at the constitutional level with simultaneous amendments to national legislation, namely, it is important to amend the Constitution of Ukraine (Article 35), to formulate the title of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" as the Law of Ukraine "On Freedom of Religion and Religious Organizations" guarantees the right of citizens to freedom of religion.

Keywords: freedom of conscience, freedom of religion, freedom of worldview, human rights, religious freedom.
ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ ВИЗНАЧЕННЯ СВОБОДИ ВІРОСПОВІДАННЯ

Анотація. Заборона віросповідання є центральним аспектом прав людини, і через те, що воно надто часто порушується, існують значні відмінності та навіть конфлікти між концепціями та підходами до свободи віросповідання.

У статті аналізуються етимологія та визначення таких споріднених понять, як «свобода віросповідання», «свобода совісті» та «свобода світогляду». Визначено, що право на релігійні переконання на конституційному рівні багатьох держав світу закріплено в різних формулюваннях та обсягах. Викладено ключові позиції науковців до розуміння «свободи світогляду», «свободи совісті» та «свободи віросповідання» та обговорення деяких викликів, пов’язаних з точки зору релігійних прав людини.

Надмірний обсяг понять, близьких до релігійної свободи, неузгодженость норм конституційного права з нормами національного законодавства та невідповідність окремим положенням міжнародних документів із прав людини призводять до розбіжностей у тлумаченні поняття «свобода віросповідання». Як приклад, Конституція України гарантує кожному право на свободу світогляду та віросповідання (ст. 35), а Закон України «Про свободу совісті та релігійні організації» – право громадян на свободу совісті.

На цьому тлі з метою усунення термінологічної невизначеності вказано на доцільність розмежування цих понять та необхідність встановлення на конституційному рівні єдиної термінології у галузі релігійної свободи (ст.35) з одночасним внесенням відповідних змін до національного законодавства. Назву діючого Закону України «Про свободу совісті та релігійні організації» викласти в такій редакції: Закон України «Про свободу віросповідання та релігійні організації». Такий підхід дозволить дотримуватися принципу прямої дії норм Конституції України у процесі реалізації та захисту свободи віросповідання людини.

Ключові слова: свобода совісті, свобода віросповідання, свобода світогляду, права людини, релігійна свобода.

Formulation of the problem. Freedom of religion as a legally guaranteed right of an individual to choose freely, without external coercion, to practice any religion or not to practice any religion is a necessary guarantee for building a democratic society in an independent state.
It should be mentioned from the very beginning the fact that the right to freedom of worldview and religion is a constitutional human right, provided for in Article 35 of the Constitution of Ukraine [1]. The fixed concepts of "freedom of worldview" and "freedom of religion", which are in one connection in the Constitution of Ukraine, are not mentioned and not explained in the provisions of the Law of Ukraine "On Freedom of Conscience and Religious Organizations"[2], which indicates an internal inconsistency and the inconsistency of the conceptual apparatus in the field of religious human rights. The uncertainty of the current terminological construction in the religious sphere can negatively affect law-making activity and law enforcement practice. Therefore, doubts remain as to whether this is a coherent concept and whether domestic constitutional science can offer a new perspective on the modern definition of "freely practicing religion". In this regard, there is a need to theoretically clarify the semantic load of the concept of "freedom of religion" as a basic system-forming right, as well as other concepts that are in this orderly series, but not identical to it in terms of content, in terms of their interpretation, disclosure of content, clarification and, in fact, further inclusion of the relevant concept in the laws and by-laws of Ukraine.

**Analysis of recent research and publications.** The thematic range of publications at different times can be found in the works of such Ukrainian scientists as I.I. Dakhova, D.O. Vovk, O.V. Zayets, V.V. Novikov, Yu.Yu. Paida, M.Yu. Babii, M.M. Palinchak, L.V. Yarmol, V.V. Bed, as well as in analytical materials where important attention is paid to the theoretical understanding of the problems of religious freedom and components of its paradigm.

Based on the latest achievements of the science of constitutional law and the analysis of constitutional legislation, in this work we set a goal to conduct an analysis taking into account a number of concepts used in the religious sphere ("freedom of religion", "freedom of conscience", "freedom of worldview") with the designation of systemic connections between them and the semantic accuracy of the corresponding conceptual apparatus in the field of religious law and national legislation.

**Presenting the main material.** The constitutional right to freedom of worldview and religion is a component of the system of constitutional human rights and freedoms and to a certain extent is being formed as a constitutional-legal institution, which in a broad sense can be considered as a component of the legal system of Ukraine as a whole [3]. The analyzed right at the constitutional level of many countries of the world is fixed in different wordings and scope. Thus, in international legal documents, freedom of religion as a personal right is invariably used in the same context as freedom of conscience and thought. In particular, in Art. 18 of the Universal Declaration of Human Rights, Art. 18 of the International Covenant on Civil and Political Rights, Article 4. 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, these three freedoms
are essentially united in the status of the "triune freedoms" of a person. In addition, the UN Human Rights Committee draws the attention of participating states to the fact that freedom of thought and freedom of conscience are protected to the same extent as freedom of religion and belief [4]. Instead, in the American legal framework, the right to freedom of conscience and religion is protected by a separate article 12 of the American Convention on Human Rights, and the provision on freedom of thought is reproduced separately in article 13 of this Convention [5].

A peculiar approach to establishing freedom of religion is observed in the legislation of European states. For example, at the constitutional level of a number of European countries, the following formulations are becoming increasingly relevant: "freedom of religion and conscience" in Switzerland (Article 15), "freedom of conscience and religion" in Poland (Article 53), "freedom of thought, conscience, religion and faith" in Slovakia (Article 24), "freedom of conscience, religion and worship" in Portugal (Article 41), "freedom of thought, consciousness and religious beliefs" in Latvia (Article 99).

Summing up this short excursion to the provisions of foreign legislation, it should be noted that the right to freedom of thought, conscience and religion, which is enshrined in international acts, is a complex right that contains three interdependent but distinct components.

Thus, the Spanish professor R. Domingo writes in his work that freedom of thought is necessary for the human person as a rational being (homo rationalis), freedom of conscience is necessary for the human person as a moral being (homo moralis), and freedom of religion is necessary for the human person as a religious being (homo religiosus). They are interdependent because without freedom of thought there is no freedom of conscience, and without freedom of conscience there is no religious freedom. In some cases, the legal means used to preserve and protect them should be specific to each freedom [6]. Thus, the described triad of freedoms functions in one system, while allowing each freedom to influence another freedom.

As for the concept of "freedom of conscience", it seems clear that it is a comprehensive concept and is included in the conceptual apparatus of a number of social and humanitarian sciences (philosophy, sociology, ethics, social psychology, cultural studies, etc.). It is very noticeable that the concept of "freedom of conscience" does not have only one unambiguous meaning: it can be used as a synonym for many others (for example, the concepts of "freedom of thought", "freedom of speech", "freedom of belief", "freedom of religion"). This situation is related to the wide application of the concept of "freedom of conscience" in international legal and political documents. At different times, due to certain socio-historical conditions, axiological traditions, target attitudes of the state and cultural differences of society, the widest possible range of possible options for understanding the concept of "freedom of conscience" is formed, which at the same time defines a different philosophical, national, ethnic, social subtext, which is a natural process.
The Ukrainian academic community recognizes the problem of the relationship between the constitutional concepts of "freedom of conscience" and "freedom of religion". Many works have been published in which different conceptual approaches are interpreted: the categories "freedom of conscience" and "freedom of religion" are not identical, they are either completely independent concepts, or they are related as a whole and a part.

The legislator defines and interprets the essence and meaning of the concept of "right to freedom of conscience" in Article 3 of the Law. Thus, according to this norm, every citizen in Ukraine is guaranteed the right to freedom of conscience. This right includes the freedom to have, adopt and change the religion or belief of one's choice and the freedom, individually or in association with others, to practice any religion or no religion, to practice religious worship, to openly express and freely propagate one's religious or atheistic beliefs.

Freedom of conscience is a unique pan-European phenomenon, the formation of which is connected with religion and has its roots in ancient culture, where freedom of conscience acquired a meaning that should not contradict the policy of the ruler of the state, the correct idea of Gods, the interpretation of their essence, the introduction of new, own etc. Thus, history cautiously testifies that a person's change of religious orientation or refusal to practice religion in general is often accompanied by severe terror, control of religious beliefs, persecution, prosecution and the death penalty.

Already during the Renaissance and the New Age, the phenomenon of political and cultural diversity began to spread, the ideals of a secular state were approved, the power of the church was limited, and the concept of personal religious freedom was introduced, thereby giving the right not only to believers to defend their beliefs, but also to atheists to conduct atheistic propaganda. This becomes decisive in order to liberate a person's conscience first of all from religious oppression.

A rather successful explanation of freedom of conscience is the thesis given by Vincent A. De Gaetano: "Conscience is not a category that must necessarily be tied to some particular religion or denomination. Instead, it is something that at the right moment inclines a person to do good and avoid evil, which can be supported by religious beliefs, but not necessarily, since even people without particular religious beliefs constantly reason in this way in their everyday life" [7, p. 92]. In continuation of this reasoning, we will cite the opinion of Z. Shved, who believes that "such freedom is realized as the ability to independently choose and defend the right of the chosen path" [8, p. 37].

In our opinion, the concept of "freedom of conscience" should not be reduced to a narrow understanding, which is limited to only two aspects - freedom of religion and freedom of atheism. By the concept of "freedom of conscience" we mean a natural right in the system of human rights, the fundamental right of everyone to a free worldview position, which includes the right individually and/or together with
others on the principles of equality to freely form, choose, change, spread beliefs and act accordingly to them, without limiting the rights and freedoms of other persons. Therefore, it seems reasonable to use "freedom of conscience" in the scientific vocabulary as an extended concept that includes not only the freedom to believe or not to believe, but also the freedom to express any personal beliefs and opinions in general.

The discourse within which the concept of "freedom of conscience" is formulated is primarily related to the spectrum of spiritual and worldview orientation (knowledge, desires, views, beliefs, values, morals, guidelines, life orientations). Therefore, providing terminological clarity to the concept of "freedom of conscience", it is worth pointing out that it is a broader concept than "freedom of religion". Obviously, the latter refers to religious views derived from established religious institutions, while the former is intended to defend views based on strong moral convictions about right and wrong, which are not necessarily based on any organized religious principles, thus do not adhere to the legally undefined concept of "religion".

The key concept in the area of the problem we are investigating is the concept of "religion". Note that the controversy about the introduction of the stable concept of "religion" into scientific circulation is so complex that it cannot be reduced to one-dimensionality and fixed by an unambiguous definition. In the modern sociocultural world, religion is one of the most controversial and undefined concepts, which is always filled with new meaning and expands its synonymous range, therefore it should be subjected to careful study and scientific understanding in the modern globalized society.

In V. Sorokun's correct opinion, it is not appropriate to provide a legal definition of the concepts of "religion", "opinion" or "belief", since any definition will not be able to reflect the various attitudes towards these terms in different cultures of the world, will significantly narrow their meaning and play in favor of those who will discriminate against the feelings of believers [9, p.14]. It seems that the concept of "religion" cannot be filled with a concrete meaning, since the human attitude and perception of God is carried out by representatives of different social statuses.

As V. Yavorsky rightly points out, a common mistake in defining religion is the requirement for the presence of faith in God in order to define it as a religion. The most obvious counterargument may be traditional Buddhism, which is not theistic, and Hinduism, which is polytheistic [10, p.38-39].

It is significant that the concept of "religion" is not defined by the text of Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the judicial practice of the European Court. This shortcoming is quite logical, since such a definition should be flexible enough to cover the whole range of religious systems around the world (old and new, theistic
and non-theistic, traditional and non-traditional) and specific enough to be applied to individual cases. In this regard, we note that religion is multifaceted and internally complex, is in constant dynamics, and its full understanding requires a large-scale comprehensive analysis of all areas of religious knowledge.

Let us also note the terminological ambiguity of the concepts "freedom of worldview" and "freedom of religion" in the form of a mismatch between the title of the Law "On Freedom of Conscience and Religious Organizations" and the content of Art. 35 of the Constitution of Ukraine. Thus, the Ukrainian legislator does not define the boundaries between related concepts used in the Constitution and the special law. Concepts used by the legislator must be unambiguous, clearly defined, understandable and compatible with the entire set of terms used in legal science. In particular, O. Bykov in his work suggests that Ukrainian legislation in the sphere of guaranteeing freedom of religion should be brought into line with Art. 35 of the Constitution of Ukraine as a legislative act having the highest legal force [11, p. 12].

According to V. Novikov, when revealing the content of the institute "freedom of conscience and religion", the use of the term "religion" is not appropriate. It should be replaced by the concept of "worldview", which is more comprehensive, meaningful and takes into account modern trends in law [12, p. 73].

At the same time, it should be emphasized that such a vision is not indisputably correct, since, as L. Yarmol rightly points out, Art. 35 of the Constitution of Ukraine should refer specifically to the freedom of religion of a person, and not in the broad sense of freedom of worldview [13, p. 41]. In the end, one can agree with E. Danylichenko that the combination of freedom of worldview and freedom of religion in one construction is not correct. After all, the freedom of worldview presupposes the existence of certain rights related to obtaining information, therefore freedom of worldview can exist as an independent freedom, or as a component of freedom of information, or as a component of freedom of thought and speech. Thus, the formation of a worldview is an information process that is not controlled by consciousness, while the confession or change of religion is manifested in conscious actions [14, p. 219-220]. Thus, the opinion is formed that the definition of freedom of religion through the concept of worldview is inadmissible, since they lie in different planes and have different functional purposes.

Freedom of religion, freedom of thought and speech, freedom of conscience are the basic concepts for the development of special legislation on human worldviews. Based on such considerations, it is proposed to use the concept of "freedom of religion" without replacing it with the concepts of "freedom of worldview" and "freedom of conscience", as specified in the Constitution of Ukraine and a special law.

**Conclusions.** The right to free choice of a person's religious views in the system of constitutional rights is a priority trend of scientific research among
Ukrainian constitutionalists and is becoming more and more popular in discussions about personal boundaries in the worldview and one's own beliefs, and also attracts the attention of scholars from the point of view of international law. In the international legal field and the legislation of foreign countries, the wording "freedom of thought, conscience and religion" is mainly used. Despite the unconditional organic relationship between these concepts due to their internal proximity, they should not be recognized as equivalent. They are independent values that affect the secular legal system in different ways. In order to regulate the use of the concept of "freedom of conscience" in scientific and practical circulation, in our opinion, we propose to expand its scope by expanding the scope of its action beyond the framework of attitudes to religion, that is, without narrowing the boundaries of its existence to freedom of religion.

Freedom of conscience manifests itself through morality, and religion through freedom of belief. These two forms have different degrees of importance and should be protected by different remedies and appropriate legal procedures. Undoubtedly, the basis of religion is, first of all, the freedom of a person to openly follow the chosen religion, which is expressed in the external manifestation of religious prescriptions.

In view of the above, it would be expedient to replace the concept of "freedom of worldview and freedom of religion" in the Constitution of Ukraine with the concept of "freedom of religion", which should be developed and clarified in laws and by-laws. It's also important to give a new title of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" as the Law of Ukraine "On Freedom of Religion and Religious Organizations".

This approach will make it possible to adhere to the principle of direct effect of the norms of the Constitution of Ukraine in the process of implementing and protecting the freedom of religion of a person. Prospects for further investigations should be aimed at additional theoretical and legal understanding of the conceptual apparatus in the religious sphere, ensuring its further extensive systematization, in accordance with the requirements of international standards.

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