

Olena Chaika
Olena Dragan

CHAPLAIN SERVICE PASTOR AS A SPECIAL KIND
OF PUBLIC SERVICE MILITARY OFFICER
IN THE UKRAINIAN ARMY

INTRODUCTION

In the current conditions of the full-scale invasion of the Russian Federation in Ukraine and the waging of an occupation war, the issue of organising and conducting proper chaplaincy service appears with new urgency. On the one hand, the factors of changing the outlook and value paradigm in the state, accompanied by the introduction of real mechanisms for the realisation of the right of servicemen to freedom of religion and performing religious sacraments, as well as the need to establish structural cooperation between the state and religious organisations, alongside between religious organisations themselves in a disparate multi-religious society [Bilash and Karabin 2020].

On the other hand, new facets and challenges of the military chaplaincy service in Ukraine were revealed. First of all, at present, the primary task of the state is the defence against the aggressor, to which all the efforts of the state are directed. And with this very context, the formation of

MGR OLENA CHAIKA – Narodowy Uniwersytet Państwowej Służby Podatkowej Ukrainy; adres do korespondencji: ul. Uniwersytets'ka 31, 08205 Irpień, Ukraina; e-mail: chaikaelena8888@gmail.com; <https://orcid.org/0000-0002-6313-5573>.

PROF. DR HAB. OLENA DRAGAN – Narodowy Uniwersytet Lotniczy; adres do korespondencji: Aleja Lyubomira Huzara 1, 03058 Kijów, Ukraina; e-mail: dragan-ov@ukr.net; <https://orcid.org/0000-0002-5696-6360>

a stable psychological state for military personnel remains an important task. By guiding the chaplains, the senior bishop of the Ukrainian Church of Christians of the Evangelical Faith (Ukrainian Pentecostal Church) emphasised that although God “is a great warrior”, the author of military conflicts is Satan. And it is the soldier who becomes his first target. Both physically and spiritually [Vynohradov 2017, 16]. In this context, the chaplain is someone who helps a soldier in inhuman conditions to keep a human face, will not turn into a murderer, yet will remain a worthy person capable of love [Tomchuk 2018, 172]. Especially due to the current increase in the number of believers among military servicemen (from 4% in 1991 to 75-80% in 2017) [Starodubets and Sokoliuk and Voroshchuk 2022], which proves the truth of the military saying that “there are no atheists in the trenches” [Skurikhin 2021, 33].

Secondly, the “admission” of representatives of religious organisations to the system of the Armed Forces of Ukraine, even more so, their involvement in combat units in the conditions of real hostilities with the enemy, also carries security risks. Therefore, the focus of the state is to establish such a procedure for obtaining the mandate of a military chaplain and regulating his legal status, which would make it possible to avoid or reduce to a minimum possible risks from the point of view of non-disclosure of secret information, avoidance of collaborative activities, treason, etc.

Thirdly, in times of war, clergy, as well as representatives of other professions, try to join the defence of the state, however, “a priest can take up arms for pastoral purposes, but not for the purpose of carrying out a combat mission” [Mytropolyt Ioan (Yaremenko), 2018]. Therefore, the activity of the chaplain service is a separate front of the patriots in the current defence of the state.

Hence the urgency of the issue of studying the institutionalisation of the chaplain service in Ukraine, revealing the legal status of the chaplain in the public service system, identifying the signs and peculiarities of regulatory regulation.

1. THE GENESIS OF LEGAL REGULATION

Despite the existence of prerequisites for the implementation, historical experience and public demand, the legal regulation of the institute of mili-

tary clergy in Ukraine commenced only in 2006. It should be noted that such a settlement is not connected with the adoption of a specific law by the parliament, which could provide grounds and determine the general principles for the approval of by-laws. On the contrary, regulation was carried out “from the bottom up”, and the corresponding law entered into a regulatory force only in 2022. Moreover, the beginning of the settlement was laid by the directive of the Minister of Defence¹ “On streamlining issues of meeting the religious needs of servicemen of the Armed Forces of Ukraine,” which had a recommendatory nature.² In this directive, when addressing heads of military administration bodies, commanders of military units, heads of military educational institutions, etc., the Minister of Defence used the term “suggest” instead of “order”. Despite this, it became the first act aimed at the organisation of military pastoral care, and its adoption testified to the existence of a real public demand for the normative regulation of such relations.

The first act, which was not only conceptual or ideological,³ but had regulatory normative essence, was also sub-legal, however a governmental act: the order of the Cabinet of Ministers of Ukraine “On the service of military clergy (chaplain service) in the Armed Forces, the National Guard, the State Special Transport Service and State Border Guard Service.” Its adoption was resulted from the beginning of the aggression of the Russian Federation in 2014 and the need to equip the combat units of the Armed Forces of Ukraine with full-time clergymen, since it has become ineffective and in some cases even impossible to continue inviting the clergy or individual representatives of churches and religious organisations on

¹ Directives are acts adopted by the Minister of Defence on issues of ensuring organisational measures (clause 8 of the Regulation on the Ministry of Defence of Ukraine, Resolution of the Cabinet of Ministers of Ukraine N 671 of 26.11.2014).

² On streamlining issues of meeting the religious needs of servicemen of the Armed Forces of Ukraine, Directive of the Minister of Defense of Ukraine N D-25 of 21.04.2006.

³ During 2008-2013, a number of acts of a declarative, conceptual and methodological nature were adopted: the “Memorandum on Cooperation in Pastoral Care of the Armed Forces of Ukraine Servicemen” was signed between the Ministry of Defence of Ukraine and authorised representatives of churches and religious organisations, the “Concept of Pastoral Care in the Armed Forces of Ukraine” was approved by the Ministry of Defence of Ukraine and “Methodical recommendations to the military administration bodies regarding the involvement of clergy of those churches (religious organisations), whose believers serve in the Armed Forces of Ukraine, to spiritual, moral-ethical and military-patriotic education.”

an ad hoc basis. On the basis of the relevant government order, clergymen could be employed with the conclusion of labour contracts in units of the Armed Forces, the National Guard, the State Special Transport Service and the State Border Guard Service, becoming military priests (chaplains).⁴ At the same time, the Regulation on the service of military clergy (chaplain service) in the Armed Forces of Ukraine was adopted only in 2015 (in 2016, the Regulation was replaced by a new one which operates until the present day⁵), in the National Guard⁶ and the State Border Guard Service⁷ – in 2016, and in the State Special Transport Service – only in 2017.⁸

The law “On Military Chaplaincy Service”⁹ was adopted by the parliament only in 2021. Initially, this law was supposed to enter into force on July 1, 2022, however, the full-scale invasion of the Russian Federation into Ukraine drove the entry into force of the newly adopted law to be accelerated. Therefore, in March 2022, changes were made regarding the date of its entry into force, and currently it is the regulatory act that defines the legal and organisational grounds and principles of the Military Chaplaincy Service in Ukraine. In order to implement the newly adopted law, changes to the list of military accounting specialties of officers,¹⁰ to the Regulations on military service in the Armed Forces of Ukraine¹¹ were

⁴ On the Service of the Military Clergy (Chaplain Service) in the Armed Forces, the National Guard, the State Special Transport Service and the State Border Service, Order of the Cabinet of Ministers of Ukraine N. 677-r of 02.07.2014.

⁵ On the approval of the Regulation on the Service of Military Clergy (Chaplain Service) in the Armed Forces of Ukraine, Order of the Ministry of Defense N 685 of 14.12.2016.

⁶ On the approval of the Regulation on the Service of Military Clergy (Chaplain Service) in the National Guard of Ukraine, Order of the Ministry of Internal Affairs of Ukraine N 205 of 24.03.2016.

⁷ On the approval of the Regulation on the Service of Military Clergy (Chaplain Service) in the State Border Guard Service of Ukraine, Order of the Ministry of Internal Affairs of Ukraine N. 1065 of 10.10.2016.

⁸ On the approval of the Regulation on the Service of Military Clergy (Chaplain Service) in the State Special Service of Transport, Order of the Ministry of Infrastructure N 201 of 06.06.2017.

⁹ About the Military Chaplaincy Service, Law of Ukraine N 1915-IX of 30.11.2021.

¹⁰ On the approval of changes to the list of military accounting specialties of officers, Order of the Ministry of Defense of Ukraine N 103v of 6.04.2022.

¹¹ On the Regulations on Military Service of Ukrainian Citizens in the Armed Forces of Ukraine, Decree of the President of Ukraine N 1153/2008 of 10.12. 2008.

approved, and the procedure for obtaining a mandate for the right to carry out military chaplaincy activities was settled.¹²

Thus, it can be stated that the social institution of military chaplains in Ukraine was revived from volunteer pastoral service [Burakov and Tomchuk 2021; Tomchuk 2017, 127], was formed simultaneously and alongside with the formation of the Armed Forces of Ukraine [Voroshchuk 2021, 197], the normative basis of its organisation and activity was formed “from the bottom up” and serves as a set of special legislation and general norms of military service. At present, organisational activities, sessions, working meetings of the leadership of the Military Chaplaincy Service of the Armed Forces of Ukraine with representatives of the leadership of churches and religious organisations are being held on the implementation of the norms of the law “On Military Chaplaincy Service” into practical activity.¹³ Conversely, for the research environment, such a situation causes and obliges to transfer the research focus from a historical perspective on the formation of military pastoral care (which is mainly carried out in modern studies) to a formal-legal approach and analysis on the matters of the present essence of this institution and what it should become in order to fulfil the tasks set before such care in the future.

2. TO PROVIDE A MILITARY CHAPLAIN WITH THE STATUS OF A MILITARY SERVICEMAN

Prior to the entry into force of the law “On Military Chaplaincy Service,” military chaplains belonged to the personnel of the Armed Forces, the National Guard, the State Special Service of Transport and the State Border Guard Service, but they were employed with the conclusion of labour contracts. This means that they were employed for civil service. By the end of 2020, the Armed Forces of Ukraine had about 130 positions of such civil servants-chaplains in its staff, and more than 90 were filled

¹² On the approval of the Regulation on the Procedure for Issuing a Mandate for the Right to Carry out Military Chaplaincy Activities. Resolution of the Cabinet of Ministers of Ukraine N 859 of 2.08.2022.

¹³ Mytropolyt Epifaniy zustrivsyia z nachal'nykom Sluzhby viys'kovoho kapelanstva ZSU. RISU, https://risu.ua/mitropolit-epifanij-zustrivsyia-z-nachalnikom-sluzhbi-vijskovogo-kapelanstva-zsu_n132435 [accessed: 25.09.2022].

(namely: the Orthodox Church of Ukraine – 59, the Ukrainian Greek-Catholic Church – 20, the Ukrainian Evangelical Church – 6, the Church “Skinia” – 4, Ukrainian Orthodox Church (Moscow Patriarchate) – 1) [Kravchenko 2021, 21]. According to information agencies, by the end of 2021 there were already 102 of servants-chaplains [Bekker 2021].

The newly adopted law changed the situation by defining that a military chaplain is a person who has entered into a contract for military service as an officer (exclusively for the positions of the Military Chaplaincy Service). In this way, the legal status of the chaplain was equated to the status of a military serviceman. What does this mean, and what has it changed in terms of the content and form of the service?

1. First of all, classifying the positions of military priests as military servicemen means that their status is regulated by the law “On General Military Duty and Military Service.” The military service is a state service of a special nature, which lies in professional activities related to the defence of Ukraine, its independence and territorial integrity. Military chaplaincy activities take place in staff positions in military administration bodies and in the positions of military chaplains in military units, entities, military institutions of higher education. The military chaplaincy service is formed as a separate structure within the Armed Forces of Ukraine, the National Guard of Ukraine, and other military formations that report directly to the Commander-in-Chief of the Armed Forces of Ukraine, the Commander of the National Guard of Ukraine, and the leaders of other military formations.

An affiliation of chaplains with the officer military ranks provides additional requirements regarding citizenship (only a person with Ukrainian citizenship can be a chaplain) and establishes age restrictions (in particular, for military personnel of the junior officer ranks, the age-limit of service is 45 years).

The provisions of the Statute of the Internal Service of the Armed Forces of Ukraine¹⁴ stipulate that a military chaplain is obliged to: 1) to provide with the organisation and conduct of prayers, services, blessings, solemn and memorial events and other religious rites and cults; 2) promote the development of personal and collective moral qualities of personnel; 3)

¹⁴ On the Statute of the Internal Service of the Armed Forces of Ukraine, Law of Ukraine N 548-XIV of 24.03.1999.

popularise a healthy lifestyle among military personnel, employees and their family members; 4) to acquaint servicemen, employees and their family members with the basics of religious doctrine; 5) to educate military personnel, employees and members of their families in a tolerant attitude towards people with a different worldview and religious beliefs; 6) establish cooperation with representatives of religious organisations that carry out activities in the places of deployment of military units towards the spiritual and religious needs of military personnel, employees and members of their families; 7) to participate in the rehabilitation of personnel in need of psychological assistance; 8) advise the command on religious issues.

2. Secondly, the fact of obtaining by chaplains the status of military personnel means that their activity is covered by the Disciplinary Statute of the Armed Forces of Ukraine.¹⁵ Therefore, for committing administrative misdemeanours, they bear (with certain exceptions) not administrative responsibility on general grounds in accordance with the provisions of the Code of Ukraine on administrative misdemeanours, but disciplinary responsibility in accordance with the provisions of the Disciplinary Statute of the Armed Forces of Ukraine. Community service, correctional labour, and administrative arrest cannot be applied to military chaplains.

3. Thirdly, classifying the positions of military chaplains as military personnel also means that they are subject to the regulatory effect of anti-corruption legislation.¹⁶ In accordance to that, they will be subject to legislative requirements on: 1) restrictions on part-time activities (chaplains will not be able to engage in other paid activities, except for teaching, scientific and creative activities); 2) restrictions on receiving gifts (legislative restrictions on receiving gifts are set at an amount not exceeding one subsistence minimum, 2,600 hryvnias as of July 1, 2022); 3) the need to take measures to prevent and resolve conflicts of interest (hypothetically, military chaplains may have private interests as representatives of a separately defined religious unity (community, church), which may affect the equity of exercising his powers as a chaplain to meet the spiritual and religious needs of military personnel and their family members); 4) for servicemen of the senior officer ranks, with the rank of major and above,

¹⁵ On the Disciplinary Statute of the Armed Forces of Ukraine, Law of Ukraine N 551-XIV of 24.03.1999.

¹⁶ On Prevention of Corruption, Law of Ukraine N 1700-VII of 14.10.2014.

there is an established obligation to annually submit a declaration on their and their family members financial and property status (taking into account that newly recruited chaplains are assigned the first officer rank of junior lieutenant, currently there are no chaplains with a major rank yet, however, in the future, this provision of the anti-corruption legislation may also become relevant for application).

4. Fourth, military chaplains take advantage of social protection in accordance with the law “On social and legal protection of military personnel and members of their families”¹⁷ on the same level as other military personnel.

Nevertheless, chaplain service is a separate type of public service. This is due to a number of factors: 1) the appointment and promotion to the positions of chaplains is carried out exclusively within the limits of the positions of the Military Chaplaincy Service, and not in general for all positions of military personnel; 2) the order of appointment and termination of service has procedural differences, which will be described below; 3) the requirements for persons who can hold the positions of military chaplains are defined in a separate law “On Military Chaplaincy Service,” and they are different from those established by the law “On General Military Duty and Military Service” for other military personnel; 4) a clear distinction between the authorities: military chaplains cannot be involved in shifts, orders, conducting official investigations and other actions incompatible with the status of a clergyman, issuing weapons and ammunition to military chaplains is also prohibited.

3. PROCEDURES

The procedure for appointment and termination to positions of chaplain service is characterised by certain peculiarities and provides for a number of special (relative to the general rules of military service) legal requirements and procedures.

Thus, the law “On Military Chaplaincy Service” establishes that a citizen of Ukraine who is a clergyman of a religious organisation registered in

¹⁷ On Social and Legal Protection of Military Personnel and Members of Their Families, Law of Ukraine N 2011-XII of 20.12.1991.

Ukraine, has a higher theological education and received a mandate from the guiding centre (directorate) of the relevant religious organisation to carry out military chaplaincy activities can be a military chaplain. This legal norm establishes several simultaneous requirements for the pastor himself and for the religious organisation which he represents. However, these requirements are precise and sufficiently clear in their content.

At the same time, the norms of another law determine that “It is not allowed to give advantages or impose restrictions on the activities of a religious organisation (association), which belongs to the structure (is a part) of religious organisation (association) the guiding centre (directorate) of which is located outside Ukraine, in the state recognised by law as having committed military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine, except for limiting the access of clergymen, religious preachers, mentors of such a religious organisation to units, compounds of the Armed Forces of Ukraine and others military formations of Ukraine in the places of their deployment or other restrictions provided for by law” (paragraph 5 of the Transitional Provisions of the Law “On Freedom of Conscience and Religious Organisations”).

In due course, these norms gave rise to loud discussions in both religious and legal circles. Their proponents argued that it was a matter of state security to prevent priests of the Ukrainian Orthodox Church from joining the army, while opponents appealed to the discriminatory nature of the provisions. However, the mentioned provisions were not further implemented in the legislation, the potential *possibility* to establish restrictions on the access of clerics of certain religious organisations to units of the military formations in the legislation remained only a possibility.

According to the results of the religious examination carried out by the Ministry of Culture of Ukraine, a list of five churches is included in the list of relevant religious organisations, the management centre of which is located outside Ukraine in the aggressor state (Russian True Orthodox Church, Russian Old-Rite Church, Ukrainian Orthodox Church (in unity with the Russian Orthodox Church), the Russian Orthodox Old-Ritualist Church, the Russian Orthodox Old-Rite Church.¹⁸ However, at the mo-

¹⁸ Official website of the Ministry of Culture of Ukraine, https://ukurier.gov.ua/uk/articles/perelik-religijnih-organizacij-yakim-potribno-vnes/?fbclid=IwAR1HTtLz1N1uIjDJpcDbkGJHi1O7T1AlG1hIIAMo7_85i9MuoUhcMrsItpE [accessed: 25.09.2022].

ment, the initial list does not affect the potential opportunity for their representatives to occupy the positions of military chaplains.

Another issue in the procedure for acquiring the status of a military chaplain is obtaining a mandate for the right to carry out military chaplaincy activities. The mandate is a legally regulated way to preserve for the chaplain his confessional and church affiliation [Spivak 2022, 82], and connection with the governing bodies of the religious organisation. It is nominal, issued by the State Service of Ukraine for Ethnopolitics and Freedom of Conscience to a person submitted by a religious organisation, but the procedure for issuing and receiving such is complex, involves several bodies and includes a number of stages.

Thus, the State Service of Ukraine for Ethnopolitics and Freedom of Conscience receives requests about the number of candidates for the positions of military chaplains from the Ministry of Defence of Ukraine, the Ministry of Internal Affairs (to occupy 90 percent of the positions of military chaplains, the allocation of quotas is carried out taking into account the religious affiliation of the personnel, 10 percent – without such consideration). Considered requests are sent to those religious organisations from which chaplains are needed and mandates are issued in case of receiving relevant applications from the religious centre and applications from the specific candidates for the positions of military chaplains together with other documents provided by law.

The grounds for issuing an order on refusal to produce a mandate by the State Service of Ukraine for Ethnopolitics and Freedom of Conscience can be: 1) submission of incomplete list of documents, 2) submission of documents containing mistakes, 3) the application is signed by a person who does not have the authority to do so, 4) the absence of information about a religious organisation in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations or the presence of a state registration record of its termination, 5) the charter of a religious organisation does not meet the requirements of the law.

We support the concern of some authors that in the conditions of the Russian-Ukrainian war it is crucial which religious organisations will be represented in the Military Chaplaincy Service [Bilash and Karabin and Selivanov 2022]. The issue of the involvement of the Ukrainian Orthodox Church (in cooperation with the Moscow Patriarchate) priests in such activities is urgent. Such a practice is not developed yet, however, it is ex-

pected that military personnel will not identify themselves with the Ukrainian Orthodox Church. That means that requests for military chaplain positions, which are formed 90 percent in accordance with the religious composition of employees, will not include representatives of this particular religious organisation.

The dismissal of military chaplains from military service is carried out in the manner and conditions provided for contract servicemen. Thus, according to the general rules, the contract is terminated in connection with the expiration of the contract term; according to the state of health; by age – in case of reaching the age-limit for military service; due to downsizing; due to family circumstances or other valid reasons; due to official inadequacy; in connection with the entry into legal force of a court conviction, which imposed punishment in the form of deprivation of liberty, restriction of liberty, deprivation of a military rank or deprivation of the right to occupy certain positions; in connection with the deprivation of a military rank in a disciplinary order; in connection with the termination of Ukrainian citizenship and other general grounds (paragraph 5 of Article 26 of the Law “On General Military Duty and Military Service”).

A special ground for dismissal, which applies only to military chaplains, is the revocation of the mandate for the right to carry out military chaplaincy activities. The grounds for revocation of the mandate by the State Service of Ukraine for Ethnopolitics and Freedom of Conscience are: 1) termination of Ukrainian citizenship of a military chaplain; 2) the loss by a military chaplain of a clergyman status of the religious organisation that submitted the candidacy; 3) termination of the religious centre (office) that submitted the candidacy of a military chaplain; 4) the appeal of the religious centre (office) that submitted the candidacy of a clergyman to the State Service of Ukraine for Ethnopolitics and Freedom of Conscience with a request to revoke the mandate; 5) invalidation of a document on higher theological education; 6) the fact of document forgery submitted by the religious centre (office) for the production of the mandate established by the court; 7) dismissal of a military chaplain from the position of the Military Chaplaincy Service.

In case of revocation of the mandate, the Armed Forces, National Guard, and other military formations notify the State Service of Ukraine for Ethnopolitics and Freedom of Conscience about the dismissal of the military chaplain.

4. PROBLEMS OF THE DUALISTIC STATUS OF MILITARY CHAPLAINS

The allegiance of military chaplains to the positions of military personnel, as well as granting them a special status, is not denied, but on the contrary, it assumes their affiliation to one of the registered religious organisations (church, community, religious direction). Entering the chaplain service, the priest does not cease to be an ordained religious servant.

On the one hand, such organisational duality, when a military chaplain is an employee of two institutions, in some countries demonstrates effective cooperation between the state and the church [Vashchuk 2018, 15-18]. According to Ukrainian legislation, in matters of organisation and provision of pastoral activities among military personnel, each chaplain must coordinate his activities with the governing bodies of the Military Chaplaincy Service, as well as with the command of the unit where the chaplain service takes place.¹⁹ At the same time, in matters related to religious life, spiritual and worship practices, preaching, church law, religious tradition and calendar, relations with other religious organisations, each chaplain is subject to the leadership of his religious organisation [Vasin 2018, 23].

At the same time, the existence of military chaplains has been challenged in countries that have a separation of Church and State [Knodel 2017, 141]. For the sake of “purity of relationship separation,” the legislation may provide for the creation of chaplain associations that interact with the state on a partnership basis and enter into agreements to provide pastoral care for military personnel. In such cases, the post of military chaplain is removed from the staff of military units, associations, etc [Chornopys'ka 2020, 78].

The provisions of international acts testify to the possibility and acceptability of various settlement options. In particular, Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 determines that “Religious personnel” means military or civilian persons,

¹⁹ The opportunity to participate in religious services and religious rites during the performance of military service duties is given to military personnel with the permission of the commander (head) of a military unit or compound (Article 6 of the Law “On Social and Legal Protection of Military Personnel and Members of Their Families”).

such as chaplains, who are exclusively engaged in the work of their clergy and attached: i) to the armed forces of a Party to the conflict; ii) to medical units or medical transports of a Party to the conflict; iii) to medical units or medical transports) to civil defence organisations of a Party to the conflict. More than that, the attachment of religious personnel may be either permanent or temporary (Article 8d). Article 43.2 of the same Protocol also establishes that clerical personnel may not be recognised as combatants in any case.

The issue of the legal status of military chaplains in the armed forces of modern states is one of the most difficult in research on the issues of relationship regulation between the state and religious organisations [Vashchuk 2020], and is resolved differently in each country.

Despite the fact that the practice of military chaplaincy under the new rules in Ukraine has not been developed yet, the established dualism of the legal status of military chaplains is expected to emerge in some practical and theoretical problems.

The general one is the fear of the transformation of pastors into ordinary employees of the Armed Forces of Ukraine, because there are still memories of *zampolites* (deputy commander for the political part) acting by the units of the Soviet armed forces. Dual subordination can lead to competing subordinate influences on chaplains, detachment priests from the church, and cause a loss of connection with the bishop and the relevant synodal administration (church leadership).²⁰ However, it is only the matter of time whether the instrument of revocation of the mandate for the right to carry out military chaplaincy activities will become a real safeguard and an effective tool of influence on the chaplain.

Another problem arising from the dual status of the chaplain is the problem of implementing the principle of representative equality of all faiths who serve to meet the religious needs of the army. This principle is defined among the main ones in the activity of the Military Chaplaincy Service (Clause 2, Part 1 of the Law “On Military Chaplaincy Service”). Albeit, a given chaplain’s faith cannot always satisfy the needs of all the military because of the difference in faith between the chaplain and individual soldiers [Synchak and Livak and Fedorenko 2022, 89]. Also, cases

²⁰ Eksperty znayshly nedoliky u novomu zakonoproekti pro viys'kove kapelanstvo. RISU, https://risu.ua/eksperti-znajshli-nedoliki-u-novomu-zakonoproektii-pro-vijskove-kapelanstvo_n112158 [accessed: 26.09.2022].

of appealing against the actions of chaplains or proselytism were recorded, as not every chaplain has access to the fighters of the units of their confessional affiliation, some officers even mentioned being forced to participate in religious activities by the command [Kalenychenko 2015].

In our opinion, the solution to this problem lies in the sphere of the subjective factor and will depend on who exactly the religious organisations will offer to serve as chaplains to the army. After all, the main authorities of chaplains lie in the sphere of moral and ethical education, enlightenment, psychological and moral support of military personnel, and not in conducting religious ceremonies. Even with regard to the latter, the law empowers the chaplain “to ensure the organisation and conduct of prayers, divine services, blessings, solemn and memorial events and other religious rites and cults.” This means that the chaplain may not conduct the service himself, but he is obliged to provide it to all servicemen equally. That is why it is obvious that it will depend on the individual pastor and how he will be able to exercise his authority to acquaint servicemen, employees and members of their families with the basics of religious teaching in each situation and under each specific circumstances (paragraph 100² of the Regulations of the Internal Service of the Armed Forces of Ukraine) and at the same time not to violate the principle of inadmissibility of imposing religious or other beliefs (paragraph 5 part 1 of Article 5 of the law “On Military Chaplaincy service”).

A hypothetical problem, according to experts, could also occur as some religions might require clergy to do things that military personnel are prohibited from doing [Zakirova 2020, 14], or prohibiting things that military personnel should do. As for wearing a beard, it is allowed in the Armed Forces of Ukraine, the issue of wearing a weapon has been resolved: chaplains will not receive it and, accordingly, would not use it. Other issues may arise, such as the presence of armed military personnel in churches or places of worship, etc. However, these and other issues will be resolved during the implementation and practical application of the norms of the new law “On Military Chaplaincy Service.”

CONCLUSIONS

Consequently, the legal regulation of the institute of military chaplains in Ukraine was carried out “from the bottom up.” Currently, with the adoption of the law “On Military Chaplaincy Service” in 2021 and its amendments in 2022, the formation of the regulatory framework is complete, but it has not yet been implemented in practice.

According to the new legislation order, the legal status of military chaplains has become equal to that of military personnel. However, the peculiarities of the chaplains appointment and the termination of chaplain service, the requirements for candidates applying for the positions and their authorities, as well as the organisational separation of the Military Chaplaincy Service itself within the structure of the Armed Forces of Ukraine and the National Guard give reasons to assert the existence of a separate type of public service – chaplain service.

The main challenge that stands in the way on the implementation of the new law is the duality of the legal status of military chaplains: on the one hand, they become military personnel, and on the other hand, they do not cease to be ordained religious servant, and submit to the leadership of their religious organisation.

REFERENCES

- Bekker, Oleksandr. 2021. “102 kapelany ofitsiyno pratsyuyut' u Zbroynykh Sylakh Ukrainy.” *Armiya Inform*, December 3, <https://armyinform.com.ua/2021/12/03/102-kapelany-oficijno-praczyuyut-u-zbrojnyh-sylahukrayiny/> [accessed: 25.09.2022].
- Bilash, Oleksandr, and Tetyana Karabin. 2020. “Legal Regulation of the Military Chaplaincy in Modern Ukraine.” *Kościół i Prawo* 9 (22), no. 2:97-112. <https://doi.org/10.18290/kip2092-7>
- Bilash, Oleksandr, Tetyana Karabin, and Anatoliy Selivanov. 2022. “Military and Alternative (Non-Military) Service of Religious Citizens in Ukraine.” *Kościół i Prawo* 11 (24), no. 1:9-26. <https://doi.org/10.18290/kip22111-1>
- Burakov, Yuriy V., and Oleksandr A. Tomchuk, 2021. “Vidrodzhennya kapelanstva v suchasnomu ukrayins'komu viys'ku.” *Viys'kovo-naukovyy visnyk* 36:27-44.
- Chornopys'ka, Victoriya Z. 2020. “Administratyvno-pravovi harantiyi diyal'nosti instytutu kapelanstva: stan ta perspektyvy.” *Naukovyy visnyk Mizhnarodnoho humanitarnoho universytetu. Ser.: Yurysprudentsiya* 46:74-78.
- Kalenychenko, Tetyana. 2015. “Formuvannya obrazu viys'kovoho kapelana v Ukraini cherez pryzmu kontent-analizu drukovanykh ZMI.” *Ukrayins'ke relihiyeznavstvo: Khrystyyanstvo v bachenni yoho sutnosti i funktsional'noyi pryrody* 76:172-83.

- Knodel, Lyudmyla. 2017. "Chaplaincy: notion, types, activities all over the world." *Bulletin of the penitentiary association of Ukraine* 2:136-46.
- Kravchenko, Lyudmyla O. (ed.). 2021. *Vzayemodiya Zbroynykh syl Ukrayiny z hromadyans'kym suspil'stvom*. Kyiv.
- Mytropolyt Ioan (Yaremenko). 2018. "Viys'kovyy svyashchennyk mozhe vzyaty v ruky zbroyu lyshe z dushpastyrs'koyu metoyu." *Dzerkalo tyzhnya* 8-9. https://zn.ua/ukr/personalities/mitropolit-ioan-yaremenko-viyskoviy-svyaschenik-mozhe-vzyati-v-ruki-zbroyu-lishe-z-dushpastyrs-koyu-metoyu-27-0995_.html [accessed: 03.11.20 22].
- Skurikhin, Serhiy M. 2021. "Pravovi osnovy tserkovnoho sluzhinnya v Zbroynykh Sylakh Ukrayiny." *Yurydychnyy naukovyy elektronnyy zhurnal* 1:33-37.
- Spivak, Vlada O. 2022. "Okremi pytannya funktsionuvannya zakonodavstva Ukrayiny pro sotsial'ne zabezpechennya viys'kovykh kapelaniv." *Visnyk LDUVS im. E.O. Didorenka* 2 (98):78-89.
- Starodubets, Galyna, , Serhii Sokoliuk, and Oleksii Voroshchuk. 2022. "The Religious situation in Ukraine and its influence on the establishment and development of military-religious relations in the Armed Forces of Ukraine (1991–2017)." *The Person and the Challenges* 12, no 2:141-62.
- Synchak, Bogdan, Petro Livak, and Mykhailo Fedorenko. 2022. "Training of Military Chaplains for the Armed Forces of Ukraine in Conditions of the Invasion by the Russian Federation." *Occasional papers on religion in eastern Europe* XLII, 3:81-93.
- Tomchuk, Oleksandr. 2017. "Volonters'ka dushpastyrs'ka sluzhba v zoni ATO." *Viys'kovo-istorychnyy merydian. Elektronnyy naukovyy fakhovyy zhurnal* 18:121-30.
- Tomchuk, Oleksandr. 2018. "Dushpastyrs'ka opika u volonters'komu rusi na dopomohu zbroynym sylam Ukrayiny pid chas rosiys'koyi ahresiyi (2014-2017)." *Naukovi zapysky Natsional'noho universytetu «Ostroz'ka akademiya». Seriya «Istorychni nauky»* 27:169-72.
- Vashchuk, Mykola M. 2018. "Teoretyko-pravovi aspekty instytualizatsiyi viys'kovoho kapelanstva: dosvid Ukrayiny ta SSHA." In *Modernizatsiya zakonodavstva ta pravozastosuvannya: vymohy chasu*, 5-18. Kyiv: Vydavnychyy dim «ArtEk».
- Vashchuk, Mykola M. 2020. "Zakordonnyy dosvid u zdiysnenni dushpastyrs'koyi opiky viys'kovosluzhbovtziv ta mozhlyvosti yoho vykorystannya dlya Ukrayiny." *Pravnychyy visnyk Universytetu «KROK»* 38:56-65.
- Vasin, Maksym S. 2018. "Aktual'nist' zakonodavchoho vprovadzhennya medychnoho kapelanstva v Ukrayini." *Sotsiologiya prava* 3-4 (26-27):18-24.
- Voroshchuk, Oleksiy. 2021. *Stanovlennya instytutu viys'kovoho dukhovenstva (kapelans'koyi sluzhby) Zbroynykh Syl Ukrayiny (1991-2017 rr.)*. Dysertatsiya na zdotbuttya stupenya doktora filosofiyi. Natsional'nyy universytet oborony Ukrayiny imeni Ivana Chernyakhovs'koho, Kyiv.
- Vynohradov, Vitaliy V. 2017. "Ukrayins'ke yevanhel's'ke kapelanstvo." *Protestanty – nadbannya Ukrayiny (korotkyy ohlyad)*. Kyiv: Poklyk.
- Zakirova, Svitlana. 2020. "Zakonoprojekt «Pro viys'kove kapelanstvo u Zbroynykh sylakh Ukrayiny»: krok do pravovoho vrehulyuvannya instytutu." *Hromads'ka dumka pro pravotvorennya* 17 (202):9-18.

Chaplain Service Pastor as a Special Kind of Public Service Military Officer in the Ukrainian Army

Summary

The article is devoted to the study of the chaplain's legal status as a serviceman of the Ukrainian army, and the service of military chaplains as a component of the public service system in Ukraine, to the identification of signs and peculiarities of their legal regulation. The authors suggest considering a military chaplain as an employee of a separate type of public service, which has a dualistic status: on the one hand, he is a military serviceman, and on the other, a religious servant of a certain church. Despite the fact that the practice of military chaplaincy under the new legislation in Ukraine has not been developed yet, the duality of status will emerge in some practical and theoretical problems, which are also described and analysed in the article.

Keywords: chaplain service; military service; public service; freedom of conscience; Armed Forces of Ukraine

Kapelan jako żołnierz specjalnego rodzaju służby publicznej w armii ukraińskiej

Streszczenie

Artykuł poświęcony jest badaniu statusu prawnego kapelana jako żołnierza armii ukraińskiej oraz służby kapelanów wojskowych jako elementu systemu służby publicznej na Ukrainie, identyfikacji oznak i właściwości ich regulacji prawnej. Autorzy proponują uznać kapelana wojskowego za pracownika osobnego rodzaju służby publicznej, który ma status dualistyczny: z jednej strony jest wojskowym, a z drugiej – duchownym określonego Kościoła. Pomimo tego, że praktyka kapelaństwa wojskowego pod rządami nowego ustawodawstwa na Ukrainie nie została jeszcze rozwinięta, to dwojaki status przejawia się w pewnych problemach praktycznych i teoretycznych, które również zostały opisane i przeanalizowane w artykule.

Słowa kluczowe: instytucja duszpasterstwa wojskowego; służba wojskowa; służba publiczna; wolność sumienia; Siły Zbrojne Ukrainy

Informacje o Autorze: MGR OLENA CHAIKA – Narodowy Uniwersytet Państwowej Służby Podatkowej Ukrainy; adres do korespondencji: ul. Uniwersytets'ka 31, 08205 Irpień, Ukraina; e-mail: chaikaelena8888@gmail.com; <https://orcid.org/0000-0002-6313-5573>

Informacje o Autorze: PROF. DR HAB. OLENA DRAGAN – Narodowy Uniwersytet Lotniczy; adres do korespondencji: Aleja Lyubomira Huzara 1, 03058 Kijów, Ukraina; e-mail: dragan-ov@ukr.net; <https://orcid.org/0000-0002-5696-6360>