

Medved Lyudmyla –
teacher of department of the legal
providing of the National
university of defensive of
Ukraine to the name of Ivan
Chernyakhovskogo, competitor

LEGAL REGULATION RIGHTS AND FREEDOMS OF MILITARY PERSONNEL IN THE INDEPENDENT UKRAINE

Development of rights and freedoms of servicemen, beginning from the moment of proclamation of independence of Ukraine and for today is examined in the article. The analysis of normative documents on the stage of development of Ukraine, as the independent state, that regulate rights and freedoms of servicemen is conducted. Suggestions are given in relation to the improvement of legislation that regulates rights and freedoms of servicemen.

Keywords: rights; freedoms; privileges; legal adjusting; serviceman.

Розглянуто розвиток прав і свобод військовослужбовців починаючи з часу проголошення незалежності України і до сьогодні. Здійснено аналіз нормативних документів періоду становлення України як незалежної держави, що регулюють права й свободи цієї категорії осіб. Надано пропозиції щодо вдосконалення законодавства в зазначеній сфері.

Ключові слова: права; свободи; пільги; правове регулювання; військовослужбовець.

Рассмотрено развитие прав и свобод военнослужащих начиная с момента провозглашения независимости Украины и по сегодняшний день. Проанализированы нормативные документы этапа становления Украины как независимого государства, которые регулируют права и свободы данной категории лиц. Сформулированы предложения относительно усовершенствования законодательства.

Ключевые слова: права; свободы; льготы; правовое регулирование; военнослужащий.

Raising of problem. A problem of rights and freedoms of servicemen and their realization are one of major theoretical and practical questions that stand before the state and society. It is constrained, first of all, with that in Ukraine, beginning from the moment of independence, there are political, social, economic changes that need updating of legislation. It touches all layers of society, including servicemen.

For today, in the conditions of market economy, one of categories of population, that very need support of the state and legal defense, is presented the shortage of budgetary facilities to the serviceman.

Alertness of the Armed Forces of Ukraine of the state in a great deal depends on worked out, maintenance and quality of legal norms that regulate rights and freedoms of servicemen and guarantees of their realization.

After disintegration of Soviet Union the process of creation of the own Armed Forces including legal adjusting of status of servicemen, their rights and freedoms began in Ukraine. To understand problems and tasks of providing of rights, freedoms of man and citizen, and including servicemen on the modern stage more deeper, it is necessary to analyse normative acts that were accepted from the moment of independence of Ukraine and to present time.

Analysis of the last researches and publications. To research of rights, freedoms and duties of man and citizen, and including servicemen in different aspects the devoted works of well-known legists of A. Kolodij, A. Olijnik, P. Rabinovich, J. Todika and soldiery lawyers of W. Pachinskij, W. Kirilenko, I. Kachan, I. Korg et al.

The aim of the article consists in research and analysis of development of the system of normative acts, that fasten rights, freedoms and duties of servicemen, beginning from the moment of independence of Ukraine to present time and finding out of problem questions.

Basic results of research are History of creation and development of statutory provisions, that touch rights, freedoms and duties of servicemen has deep soil. History of origin (creation) and development of army as begins the element of public law and order from times of Ancient Rome. Foundations of military line-up were stopped up yet by reforms of S. Tulij, that understood that with the aim of strengthening of military power of Rome it is necessary to unite two

communities, creating a Roman-plebeian militia [1, p. 208]. Army that during many centuries had character of patrician-plebeian militia, at the end of republic becomes permanent. As a result of necessity of the special regulation of life of army there is the special branch of public law - jus militare (military right). The value of the Roman army stipulated appearance of мілітарного right not only, as totalities of norms that regulate the different aspects of relations into an army, but also it needed clear determination of legal status of warriors : grant to them, from one side, privileges and guarantees, and from other, fixing of requirements to them from the side of power [1, p. 211]. The problem of settlement of activity of the Armed Forces of Ukraine, rights and freedoms of servicemen became actual from the moment of proclamation of independence of Ukraine.

Before the acceptance of own laws in the field of military-social the legal norms of former Union of Soviet Socialistic Republics had an action. But, taking into account them the protracted enough action in the past, and also that exactly these legal norms of soviet legislation became original foundation for creation of own normatively-legal acts in Ukraine. From the beginning of independence the row of normatively-legal acts, that pawned legal basis of the Ukrainian army, fastened rights, freedoms, duties of servicemen, was accepted in our state. Such legislative acts were: Laws of Ukraine «On the Armed Forces of Ukraine», «About the defensive of Ukraine», «About social and legal defence of servicemen and members of their families»; «About the pension system of servicemen and persons of chief and ordinary composition of organs of internal affairs», «About a general military duty and military service» «About status of veterans of war, guarantee of them social defence», charters of the Armed Forces and row of other normatively-legal acts[2]. But from the moment of acceptance of the real normative acts considerable changes took place in society, that is why there was a requirement of bringing them over in the actual state, that the real normatively-legal acts became basis in order to ratify rights and freedoms of servicemen. Therefore will do the analysis of modern normatively-legal acts, that determine rights, freedoms and some limitations of rights for servicemen, and also set privileges and advantages.

The constitution of Ukraine determines constitutionally-legal basis of rights and freedoms of man and citizen, including serviceman. Rights, freedoms, duties of man and citizen and guarantee of their realization, are envisaged in the second division to Constitution of Ukraine. According to a century 24 Constitutions of Ukraine [3] citizens have equal constitutional rights and freedoms and are equal before a law. Constitutional rights and freedoms occupy the special place in the system of rights and freedoms of servicemen. They are basis all other their rights. It is conditioned by that constitutional rights and freedoms regulate vitally the important copulas of servicemen with the state. Servicemen use all to the rights and by freedoms of man and citizen, guarantees of these rights and freedoms, envisaged in Constitution of Ukraine and laws of Ukraine, taking into account the features set by a legislation.

In Basic Law of the state there is not the special division of citizens after their professional belonging or after other categories. As practice shows, that not all can use constitutional rights and freedoms identically. At legislative level the set limitations to some categories of population, that touch servicemen. In Law of Ukraine «On the Armed Forces of Ukraine» and other normative acts it is talked about limitation of some rights for servicemen. Namely: right to be the members of political parties and trade unions on the period of military service, to organize strikes and participate in their realization, in freedom of movement, free choice of residence and right freely to abandon territory of Ukraine [3]. To our opinion, some positions of these documents would be defined more detailed for the sake of the unambiguous understanding and application of their norms.

Positions, that envisage limitation of the right to vote of citizens, works(services) related to character, operate in many countries, that they execute. In most cases limitations touch servicemen. It is related to that in force of implementation by them the special type of government service - military service, the action of the special disciplinary rules spreads to them, and limitations in the right to vote must shut out such state, when official discipline could put freedom of choice under a threat, to influence on a decision-making by an elector, weaken military discipline. Persons, that are in military service in the armed forces of Argentina, Turkey, Mexico and other, have no authority voice held [4, p. 66].

At the same time Constitution of Ukraine creates legal frameworks for adjusting of social defence of servicemen. Yes, the article of a 17 Constitution determines the guarantees of social defence of servicemen : the «State provides social defence of citizens of Ukraine, that are in service in the Armed Forces of Ukraine and in other soldiery forming, and also members of their families» [3]. Exactly these constitutional positions are legal framework for other legislative acts in relation to fixing of rights and freedoms of servicemen. Therefore envisaged by Constitution of Ukraine of norm need the specification and development laws, decrees of President of Ukraine and in other normatively-legal acts. In the last few years more than thousand laws, that touch the various aspects of legal status of man and citizen, including servicemen, are accepted in Ukraine [5, p. 193].

«On the Armed Forces of Ukraine» it is determined the law of Ukraine, that the state provides social and legal defence of servicemen, members of their families, workers of the Armed Forces of Ukraine, and also members of families of servicemen, that perished(died), disappeared without a new, became invalids during passing of military service or suffered in a captivity during battle actions(wars), at emergency position or during passing of military service outside Ukraine in order of military collaboration or in composition Peacemaking Forces of the UNO during participating in international operations from maintenance of the world and safety [6, ст. 16]. This law is guarantee a right to hear the confession any religion or not to hear the confession no.

More in detail rights and freedoms are determined by Law of Ukraine «On social and legal defence of servicemen and members of their families». The article 5 determines basic of right for servicemen, such as: participating in allukrainian and local referendums, to elect and be select to corresponding local advices and other elected state bodies, right to create the public associations in accordance with a legislation Ukraine [7].

Other rights for servicemen are also certain this law. To them belong: right on sufficient material, money and other types of providing; right on the food and material providing, right to rest; right on free of charge skilled medicare in military medical establishments of health protection, right to education, right on the pension system et al.

This law also determines the order of providing of servicemen housing apartments : to the receipt of permanent housing apartment to the servicemen official housing apartments must be given; servicemen that does not have the inhabited apartment, at qualifying anymore

20 years, have a right on the receipt of credits for acquisition or building of accommodation, with redemption due to the state; dollar adjustment is envisaged servicemen for temporal піднайом(renting) of accommodation.

Also the article 14 of this law envisages privileges for servicemen, namely: on passage, on near-term establishment of housing telephone and housing signaling and other. It would be desirable to mark that norms of these laws, that touch rights and freedoms of servicemen, them social defence duplicated partly.

The law of Ukraine «On a military duty and military service» determines rights, duties of citizens in connection with implementation by them constitutional duty in relation to defence of Fatherland [8].

An important place among normatively-legal acts occupies Law of Ukraine «On the pension system of persons, exempt from military service, and some other persons» [9]. This law determines terms, norms and order of the pension system of servicemen, namely: features of setting of pensions to the servicemen: right for servicemen choose the type of pension, if they have a right on different state pensions; there is tax exemption of pensions of servicemen; sizes of pensions depending on a time-in-service and minimum pensions; raises are to the pensions; increase sizes of pensions are on disability; pensions in case of loss of bread-winner and other.

In the legislation of Ukraine there is a row of laws that determine plenary powers of public organs in relation to providing of rights and freedoms of servicemen. To them such laws behave: «About the authorized Agent of Supreme soviet of Ukraine on human rights» [10], «About democratic civil control above Military organization and law enforcement authorities of the state» [11], «About military service of law and order in the Armed Forces of Ukraine» [12] but other.

To the legislative acts, that regulate rights, freedoms and duties of servicemen Charters of the Armed Forces of Ukraine belong [2], what determine military-special right and duties servicemen, directly tying up with military service. Namely:

determine common laws and duties of servicemen, duties of public servants, regulate everyday life and official activity of servicemen; an order and features of bringing in of servicemen determine disciplinary responsibility, rights for commanders in relation to imposition of disciplinary penalties and order of handling statements, suggestions and complaints.

Rights, freedoms and duties, are certain in the laws of Ukraine go into detail and specified in by-law acts. To them belong: decrees of President of Ukraine, acts of Cabinet of Ministers of Ukraine, normative acts of ministries and other central executive bodies, normative acts of local executive and organs of local self-government bodies. By-law acts do not have such generality and supremacy, as it can to the law. However they occupy an important place in the system of the legal adjusting, as they provide implementation of laws by the gone into detail normative adjusting of rights, freedoms and duties of servicemen specified.

An important place among by-law acts is occupied by the normative acts of President. Yes, by Decree of President of Ukraine «About Statute about passing of Ukraine of military service citizens in the Armed Forces of Ukraine» [13], the order of passing of military service in the Armed Forces of Ukraine and well-regulated questions related to passing of such service during implementation the citizens of military duty in a supply are certain. The right and duties, related to passing of military service and procedure of their realization citizens of Ukraine are written in this Statute. Thus, the acts of President determine basic directions of public policy in relation to providing of rights, freedoms and duties of servicemen and their realization.

The by-law acts of Cabinet of Ministers of Ukraine to swingeing majority specify position of normatively-legal acts that have higher legal force. Regulated resolutions of Cabinet of Ministers of Ukraine order of cash cover of servicemen; order of providing material property; order of calculation of time-in-service, setting and payment of pensions and manual; order of determining size and grant to the servicemen and members of their families of dollar adjustment for a due to them for a receipt the inhabited apartment et al, that is fastened in the laws of Ukraine. As an example, it is possible to point next resolutions of Cabinet of Ministers of Ukraine «About claim of Order of providing of

servicemen and members of their families housing apartments» [14], «About a size and order of payment of money compensation to the servicemen of the Armed Forces for піднайом(renting) by them the inhabited apartments» [15] and other.

To the acts of central executive bodies that regulate the question of realization of rights and freedoms of servicemen, the orders of Secretary of defence of Ukraine, Minister for internal affairs of Ukraine, Chairman of Government Frontier Service of Ukraine, Chairman of security of Ukraine, Chairman of Service of external secret service of Ukraine and other Service belong. But they are given out in the cases, envisaged by laws, decrees of President or resolutions of Cabinet of Ministers of Ukraine and specify their norms, and they can not remove defects in relation to the normative providing of rights and freedoms of servicemen.

Yes, orders of Secretary of defence of Ukraine «About claim of Instruction about organization of implementation of Statute about passing of Ukraine of military service citizens in the Armed Forces of Ukraine» [16], «About claim of Instruction about organization of providing of servicemen of the Armed Forces of Ukraine and members of their families by the inhabited apartments» [17], «About claim of Instruction about the order of payment of cash cover to the servicemen of the Armed Forces of Ukraine and some other persons» [18] but other expose and specify position of normative acts of higher legal force, accepted on their basis, sent to their implementation and spread to the servicemen.

Large value the acts of judicial bodies acquire for practice of realization of rights and freedoms of servicemen, proceeding in the broken rights. Among them the special place belongs the decision of Constitutional Court of Ukraine, that, being not an organ, to create the norms of right the authorized agents, can abolish or change them, acknowledging a corresponding legal act unconstitutional fully or in his separate part.

Thus, for today created system of normatively-legal acts that have different legal force for adjusting of rights and freedoms of servicemen and guarantee of their realization. But at the same time, the marked system of the normatively-legal adjusting of rights and freedoms of servicemen has a row of defects. Namely: duplication over of norms, absence of only terminology, that brings to different interpretation and application of legal norms, halt of norms that

touch rights and freedoms of servicemen other laws and limitation of rights, that conflicts with Constitution of Ukraine. Some positions of normatively-legal acts do not answer the modern state of public relations, carry declarative character, that is why does not have mechanisms of realization, possibilities of the state budget do not take into account and that is why remain unrealized.

To our opinion, would be a necessity to conduct a complex analysis systems of normative acts, that regulate rights and freedoms of servicemen, to make alteration in operating normatively-legal acts and accept new that would provide realization of rights and freedoms of servicemen.

REFERENCES

1. Підпригора О. А. Римське право : [підруч.] / О. А. Підпригора, Є. О. Харитонов. – К. : Юрінком Інтер, 2003. – 512 с.
2. Законодавство України з питань військової сфери: збірник законів та інших нормативно-правових актів. – К. : Азимут-Україна. – 2003. – 1008 с.
3. Конституція України : чинне законодавство : за станом на 21 трав. 2013 р. – К. : Алерта, 2013. – 108 с.
4. Пашинський В. Конституційні права військовослужбовців: класифікація та обмеження / В. Пашинський // Право України. – 2006. – № 1. – С. 65–69.
5. Тодыка Ю. Н. Конституционно-правовой статус человека и гражданина в Украине / Ю. Н. Тодыка, О. Ю. Тодыка. – К. : Ін Юре, 2004. – 368 с.
6. Про Збройні Сили України : Закон України від 6 груд. 1991 р. // Відомості Верховної Ради України. – 1992. – № 9. – Ст. 108.
7. Про соціальний та правовий захист військовослужбовців та членів їх сімей : Закон України : за станом на 13 жовт. 2012 р. // Відомості Верховної Ради України. – 1992. – № 15. – С. 190.
8. Про військовий обов'язок і військову службу : Закон України : за станом на 1 лип. 2013 р. // Відомості Верховної Ради України. – 1992. – № 27. – Ст. 385.
9. Про пенсійне забезпечення осіб, звільнених з військової служби, та деяких інших осіб : Закон України : за

станом на 9 груд. 2012 р. // Відомості Верховної Ради України. – 1992. – № 29. – С. 399.

10. Про військову службу правопорядку у Збройних Силах України : Закон України : за станом на 1 груд. 2012 р. // Відомості Верховної Ради України. – 2002. – № 32. – С. 225.

11. Про Уповноваженого Верховної Ради України з прав людини : Закон України : за станом на 19 листоп. 2012 р. // Відомості Верховної Ради України. – 1998. – № 20. – С. 99.

12. Про демократичний цивільний контроль над Воєнною організацією та правоохоронними органами держави : Закон України : за станом на 19 листоп. 2012 р. // Відомості Верховної Ради України. – 2003. – № 46. – Ст. 366.

13. Про Положення про проходження громадянами України військової служби у Збройних Силах України : Указ Президента України від 10 груд. 2008 р. № 1153/2008.

14. Про затвердження Порядку забезпечення військовослужбовців та членів їх сімей житловими приміщеннями : Постанова Кабінету Міністрів України від 3 серп. 2006 р. № 1081.

15. Про розмір і порядок виплати грошової компенсації військовослужбовцям Збройних Сил за піднайом (найом) ними жилих приміщень : Постанова Кабінету Міністрів України від 26 черв. 2013 р. № 450.

16. Про затвердження Інструкції про організацію виконання Положення про проходження громадянами України військової служби у Збройних Силах України : наказ Міністра оборони України від 10 квіт. 2009 р. № 170.

17. Про затвердження Інструкції про організацію забезпечення військовослужбовців Збройних Сил України та членів їх сімей жилими приміщеннями : наказ Міністра оборони України від 30 листоп. 2011 р. № 737.

18. Про затвердження Інструкції про порядок виплати грошового забезпечення військовослужбовцям Збройних Сил України та деяким іншим особам : наказ Міністра оборони України від 11 черв. 2008 р. № 260.