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Religious holidays in the legislation of Ukraine

Święta religijne w legislacji Ukrainy

Key words: freedom of religion, religious holiday, day off, state, law, labor law

Słowa kluczowe: wolność religijna, święta religijne, dzień wolny, państwo, prawo, prawo pracy

Abstract

The article examines the issues of legal regulation of religious holidays in Ukraine and legal guarantees in connection with the recognition of certain religious holidays by the state as days off. The authors have highlighted the discussion concerning the possibility to celebrate religious holidays for representatives of different religious groups. It is established that the Ukrainian labor legislation allows for representatives of different religions to receive days off on their religious holidays, but with additional conditions: the religious community of non-Orthodox confession must apply to the employer; days off should be no longer than three days per year for the celebration of major religious holidays; employees must work to compensate days off to the employer during other days of the year. We have proposed our own approach for reforming Ukraine's labor legislation, which will

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eliminate inequality and establish a day-off during the celebration of Easter on the Western calendar, as well as improve the legal norms governing the celebration of religious holidays by representatives of other confessions.

Streszczenie

W artykule podjęto problematykę regulacji prawnej świąt religijnych na Ukrainie oraz gwarancji prawnych w związku z uznaniem przez państwo niektórych świąt religijnych za dni wolne od pracy. Autorzy zwrócili uwagę na dyskusję dotyczącą możliwości obchodzenia świąt religijnych przez przedstawicieli różnych grup wyznaniowych. Ustalono, że ukraińskie prawo pracy pozwala przedstawicielom różnych religii na korzystanie z dni wolnych od pracy w święta, ale z dodatkowymi warunkami: do pracodawcy musi wystąpić wspólnota wyznaniowa wyznania nieprawosławnego; dni wolne od pracy nie powinny trwać dłużej niż trzy dni w roku z powodu obchodów głównych świąt religijnych; pracownicy muszą pracować, aby zrekompensować pracodawcy dni wolne w innych dniach roku. Zaproponowaliśmy własne podejście do reformy ukraińskiego prawa pracy, które zlikwiduje nierówności i ustanowi dzień wolny w obchodach Wielkanocy w kalendarzu zachodnim, a także poprawi normy prawne regulujące obchodzenie świąt religijnych przez przedstawicieli innych wyznań.

1. Introduction

The legislation of Ukraine guarantees freedom of conscience and freedom of religion regulates the activities of religious organizations. In particular, the Law of Ukraine “On Freedom of Conscience and Religious Organizations” [Zakon Ukraïny “Pro svobodu sovistì ta religijni organizačii”] established equality of citizens regardless of religion, concept and types of religious organizations, the state’s obligations to religious organizations, the procedure for establishing, registering and terminating of religious organizations. In addition, separate legislation regulates various aspects related to the activities of religious organizations and freedom of religion. Tax legislation contains tax incentives for religious organizations (Bilash, Karabin 2020, 65–81), the Ministry of Defense of Ukraine approved the “Regulations on the service of military clergy

(chaplain service) in the Armed Forces of Ukraine” [“Položennâ pro službu vijskovogo duhovenstva (kapelans´ku službu) u Zbrojnyh Sylah Ukraïny”] (Bilash, Karabin 2020, 97–112.), and at day off is provided for religious holidays by labor legislation.

Restrictions due to the COVID-19 pandemic on human rights and freedoms, including freedom of movement and the right to freedom of religion, have also led to restrictions on the celebration of religious holidays in various countries. This situation brought attention to the issues of state regulation of religious holidays, to the establishment of certain guarantees for representatives of various Churches and religious organizations to celebrate their religious holidays.

At present, the labor legislation of Ukraine establishes days off only on such religious holidays as Christmas (January 7 and December 25), Easter (one day) and Trinity (one day). The question arises as to whether there are sufficient legal guarantees for the celebration of religious holidays by representatives of other Christian confessions and other non-Christian religions.

That is why it is quite necessary to study the legislative regulation of religious holidays in Ukraine, the existing legal guarantees of recognition of religious holidays by the state as days off, as well as the development of proposals to improve the legislation governing religious holidays.

2. Religious holidays and freedom of religion

Freedom of religion is a fundamental human right. With this in mind, Article 35 of the Constitution of Ukraine („Konstyuciâ Ukraïny vid 28.06.1996 r.” 1996) guarantees everyone, regardless of citizenship, the right to freedom of thought and religion, and stipulates that this right includes the freedom to profess any religion or not to practice any religion and religious cults and rituals, to conduct religious activities. Although the issue of religious holidays is not regulated in this article, they are an integral part of every religion. It is also worth mentioning

Article 45 of the Constitution of Ukraine, which, guaranteeing the right to rest, establishes that public holidays are determined by law (Konstytuciya Ukraïny 1996, 45).

There is a position among Ukrainian scholars today that the right to freedom of conscience and religion is complex and dynamic, which is constantly evolving (Pajda 2018, 42). There is also an approach that freedom of religion as a general social (natural) human right is an opportunity to take certain actions or refrain from doing so, which objectifies its religion (Lavryk 2011, 69).

According to Dakhova I. the content of the right to freedom of religion includes the observance and celebration of religious holidays, namely:

The right to conduct religious cults and rites without hindrance, the right to conduct religious activities, including the establishment and maintenance of appropriate charitable and humanitarian institutions, to produce and use necessary items related to religious rites or beliefs, to issue and distribute relevant publications, to observe and celebrate holidays, etc. (Dahova 2016, 110).

In the analysis of the right to freedom of thought, conscience and religion has only two forms of externalization: through morality (freedom of conscience) and through religion (freedom of religion) (Domingo 2015, 186). This position is true only for freedom of conscience and freedom of religion.

According to opinion polls, 22% of respondents around the world said they considered themselves “unbelievers” and 11% described themselves as “convinced atheists”. According to the European Values Survey, three out of four Europeans consider themselves religious („Freedom of conscience around the world. European Parliament” 2018). The Council of Europe emphasizes the equality of all churches and confessions, and at the same time leaves the issue of state-church relations, given the cultural, historical, traditional differences, to the jurisdiction of states (Bilaš 2015, 131).

In Ukraine, the guarantee of religious freedom by law has contributed to religious diversity. In general, experts characterize religious organizations with a prevailing dominance of Christian religious centers (97%), among which the most numerous are Orthodox - 53.8% of all religious organizations (Âremčuk 2015, 95). According to the Ministry of Culture of Ukraine, at the beginning of 2020 the number of religious organizations in Ukraine reached 36,796, of which 1,728 were religious communities operating without state registration. Religious organizations in Ukraine officially include religious communities, administrations and centers, monasteries, religious fraternities, missionary societies (missions), theological educational institutions, as well as associations consisting of the above-mentioned religious organizations (Pro svobodu sovisti ta relihiyni orhanizacii, dostup 2021.01.20). Among all religious organizations in Ukraine, 97% belong to Christian confessions, in particular 53.7% – Orthodox, 28.9% – Evangelical (Protestant) churches and 14.3% – Catholic („V Ukraïni zrosła kil'kist' nezarečestrovanyh relihiynyh gromad – statystyka Minkul'tury” 2020).

Confessional diversity in Ukraine is a mirror image of guaranteed religious freedom, and believers have various religious beliefs, which make it relevant to the study of guaranteeing everyone in Ukraine the right to celebrate those religious holidays that are important to them and reflect their religious views.

The results of a sociological survey conducted by the Kyiv International Institute of Sociology in February 2020 in 110 settlements in Ukraine on the attitude of Ukrainians to the holidays are quite significant. The study showed that in general Ukrainians respect holidays (98% of respondents), in particular the most popular holidays in Ukraine are: Christmas – 79%, Easter (Easter) – 77%, New Year – 74%, International Women's Day – 40%, Victory Day – 33%, Trinity – 31%, Independence Day of Ukraine – 19% („Stavlennâ ukraïnciv do deržavnyh svât, lûtij 2020” 2020). It is quite significant that Christmas and Easter are the most important holidays for most Ukrainians.

Vovk D. analyzing religious traditions in the law of different states, notes:

Sometimes in legal systems, religious norms can be sanctioned by the state, but these are mostly symbolic norms (for example, in the form of establishing a day-off on a religious holiday, sometimes taking an oath on a religious text, etc.). (Vovk 2013, 236).

A similar thing is happening in Ukraine. While guaranteeing freedom of religion, creating conditions for religious diversity, the state is separated from religious organizations, while certain religious holidays are recognized as days-off and certain legal guarantees are established for the possibility of celebrating such holidays.

3. Legal regulation of religious holidays in Ukraine

In Ukraine, labor legislation regulates the religious holidays of some but not all churches and religious organizations. The Labor Code („Kodeks zakoniv pro pracu Ukraïny...” 1971) was adopted on December 10, 1971 in the Ukrainian Soviet Socialist Republic, and is still in force in independent Ukraine.

Article 73 of the Labor Code of Ukraine establishes a list of holidays and non-working days, among which are religious holidays („Kodeks zakoniv pro pracu Ukraïny...” 1971). This article was amended by ten laws in 1981, 1991, 1992, 1996, 2000, 2003, 2015 and 2017 during the entire period of the Labor Code.

Only in 1991 was the list of holidays and non-working days in Article 73 of the Labor Code of Ukraine supplemented by religious holidays. Thus, Article 73 was supplemented by parts two and three and established that: “work is also not performed on religious holidays: January 7 – Christmas, one day (Sunday) – Easter (Easter), one day (Sunday) – Trinity” . In addition, it was envisaged that at the request of religious communities of other (non-Orthodox) confessions registered in the Ukrainian SSR, the management of enterprises, institutions, organizations provides persons professing the relevant religions up to three days

of rest during the year to celebrate their major holidays with compulsory later on work to compensate to the employer these days off” („Pro vnesennâ zmîn ì dopovnen' do Kodeksu zakoniv pro pracû Ukraïns'koï RSR pry perehodi do rynkovoï ekonomiky” 1991; „Pro vnesennâ zmîn do statti 73 Kodeksu zakoniv pro pracû Ukraïns'koï RSR” 1991).

Subsequent amendments to Article 73 of the Labor Code of Ukraine concerned mainly the abolition of holidays related to the USSR and the emergence of new public holidays in independent Ukraine.

In 2015, Article 73 of the Labor Code of Ukraine was amended again and the holiday “October 14 – Defender of Ukraine Day” was introduced. („Pro vnesennâ zmîny do statti 73 Kodeksu zakoniv pro pracû Ukraïny” 2015). At the same time, this holiday coincides with the religious holiday of the Protection of the Holy Virgin and is also a day-off.

In 2017, to ensure equality, guaranteeing freedom of religion, amendments were again introduced and the list of religious holidays, which are recognized as days off at the state level, was supplemented with the date of December 25 (Christmas). („Pro vnesennâ zmîn do statti 73 Kodeksu zakoniv pro pracû Ukraïny šodo svâtkovyh ì nerobočyh dniv” 2017). At the same time, the celebration of Easter according to Western Catholic calendar is not considered a holiday, and not recognize as day off.

The current legislation provides for the possibility for representatives of different religions to get days-off on their religious holidays, but additional conditions are set for this:

1. there must be a preliminary request of religious communities of other Christian confessions or other non-Christian confession registered in Ukraine to the management of enterprises, institutions and organizations;
2. days off are provided no longer than three days per year to celebrate major holidays;
3. employees of other Christian confessions and other non-Christian confession must work during other days to compensate to employer these days off during the year.

In addition, even on religious holidays that are considered as non-working for all, as well as on additional days off that may be provided by the employer to employees of a particular religion, work is allowed, the termination of which is impossible due to specific nature of work or production processes (continuously working enterprises, institutions, organizations), work caused by the need to ensure the safety and security of population.

In 2020, the issue of the need to guarantee the right to celebrate religious holidays to representatives of different religions, and not only to Christians, was raised again at the state level. On July 30, 2020, a decree was issued by the President of Ukraine instructing the Cabinet of Ministers of Ukraine in cooperation with the All-Ukrainian Council of Churches, religious organizations, the Ukrainian Institute of National Remembrance to work on granting state status to certain religious holidays, including Ramadan Bayram, Kurban Bayram, Pesach, Rosh Hashanah, Hanukkah, Easter of Western Christians and others, as well as to submit to the Verkhovna Rada of Ukraine a bill („Pytannâ vyznačennâ statusu okremykh religijnykh svât” 2020).

The draft of the Law of Ukraine “On state and other holidays, anniversaries and days of mourning” is posted on the website of the Ukrainian Institute of National Memory („Proekt Zakonu Ukraïny...” n.d.). This bill proposes to refer religious holidays to traditional holidays. At the same time, it was prepared before the President of Ukraine instructions in 2020, moreover, it reduced the list of religious holidays that were already recognized by the state as holidays. The meeting of the Council of Churches with the People’s Deputies took place in December 2020 and concerned the dialogue on the draft law („Rada Cerkov obhovoryla z parlamentarâmy vzaêmodyû u rozrobci zakoniv” 2020). That is why a new bill is just being developed.

Work on the new bill has provoked lively discussions in Ukrainian society. Arguments against were: there are many state non-working days

off in Ukraine associated with both religious (January 7 and December 25 – Christmas; one day (Sunday) – Easter (Easter); one day (Sunday) – Trinity), and other holidays (January 1 – New Year; March 8 – International Women’s Day; May 1 – Labor Day; May 9 – Victory Day over Nazism in World War II; June 28 – Constitution Day of Ukraine; August 24 – Independence Day of Ukraine; 14 October – Defender of Ukraine Day). Therefore, additional state holidays will not contribute to the economic situation in the state. Arguments in favour: each and every employee irrespective of religion must enjoy equal guarantees to celebrate their religious holidays during recognised days off (Černous 2016, 78). In our opinion, such a right should be guaranteed not at the request of the religious community, but at the personal request of the employee.

In addition, in Ukraine, when a public holiday falls on a weekend (Saturday and Sunday), the next working day (Monday) is also a day off under Article 67 of the Labor Code of Ukraine. The proposal to abolish this norm and not to provide an additional day-off on Monday if the holiday falls on a Saturday or Sunday is currently being actively discussed. (Hozhainova 2020). In our opinion, this proposal is valid, especially in the case of establishing additional days-off for religious holidays of other religions.

When amending Article 73 of the Labor Code of Ukraine from the standpoint of equality, it will be appropriate to provide days off for religious holidays to representatives of different religions, in particular, part 2 and part 3 of Art. 73 to amend as following edition: “Work is also not performed on religious holidays: January 7 and December 25 – Christmas; Sunday – Easter, one day for the celebration of Orthodox confessions, one day for the celebration of Christians of the Western rite; one day (Sunday) – Trinity”.

At the request of an employee who professes the religious views of Churches or religious organizations registered in Ukraine, the employer

is obliged to provide up to three days off during the year to celebrate major religious holidays with work on these days or with unpaid leave on these days.

The proposed edition of Art. 73 of the Labor Code of Ukraine will, on the one hand, eliminate inequality. Such an amendment will provide a day off for the celebration of Easter according to Western rite. On the other hand, the right of representatives of other confessions to three days off to celebrate major religious holidays will be established as the duty of the employer exercised solely on the basis of the employee's request. In addition, the employee will have the choice of whether to take unpaid leave on this day, which falls on his religious holiday or to work it on another day during the year to compensate such days-off to the employer.

4. Additional legal guarantees when setting a day off for religious holidays

If a religious holiday is recognised as a holiday according to Article 73 of the Labor Code of Ukraine, it is officially a day off. That is why it is forbidden to involve employees in work on this day. However, this prohibition does not apply to the following cases:

1. termination of work is impossible due to specific nature of production and technical conditions (continuously operating enterprises, institutions, organizations, such as hospitals, police, etc.);
2. in connection with the need to ensure safety and/or security of the population;
3. involvement of employees after receiving of the consent of the trade union and on the basis of a written order in the following exceptional cases: a) to prevent or eliminate the consequences of natural disasters, epidemics, epizootics, industrial accidents and immediate elimination of their consequences; b) to prevent accidents that endanger or may endanger the life or normal living conditions of people, death or damage to property; c) for the performance of urgent, unforeseen work, the immediate

performance of which further determines the normal operation of the enterprise as a whole or their individual units; d) to perform urgent loading and unloading operations in order to prevent or eliminate downtime of rolling stock or accumulation of goods at points of departure and destination.

However, even in the presence of these exceptional circumstances, it is not possible to make the following categories of employees to perform their work duties in religious holidays, which are recognized by the state as holidays and days-off: pregnant women and women with children under 3 years of age (Article 176 of the Labor Code of Ukraine); parents raising children without a mother, including in the case of a long stay of the mother in a medical institution (Article 186-1 of the Labor Code of Ukraine); guardians (trustees), foster parents (Article 186-1 of the Labor Code of Ukraine); employees under the age of 18 (Article 192 of the Labor Code of Ukraine).

An additional guarantee is also the establishment of higher wages for work on religious holidays, which the state recognizes as a day off. In particular, according to Article 107 of the Labor Code of Ukraine, work on holidays and non-working days is paid double. Double pay is granted for the hours actually worked on holidays and non-working days. This guarantee applies only to the salary and does not apply to surcharges or bonuses.

At the request of an employee who worked on holidays and non-working days, he may be given another day off.

These guarantees for remuneration on the work performed during the religious holidays, which are recognized by the state as days off, are only minimum standards. Any religious holidays approved by the employer and the labor collective may be established as a day off in the collective agreement. The employer may set a higher amount of payment on days off and the established amount of remuneration of employees on these days.

An additional guarantee for employees is provided in Article 24 of the Law of Ukraine “On Remuneration of Labor”. If the day of payment of wages falls on the holiday, wages are paid the day before („Pro oplatu praci” 1995).

In addition, in Ukraine there is already a practice at state level to postpone certain working days to days off, if they precede religious holidays for the convenience of celebration. For example, by order of the Cabinet of Ministers of Ukraine of October 23, 2019 № 995-r to ensure the rational use of working time and create favorable conditions for the celebration in 2020 of Christmas (January 7) it was recommended to heads of enterprises, institutions and organizations (except for the Pension Fund Ukraine, the Ukrainian State Enterprise of Postal Services “Ukrposhta”, the State Treasury Service and banking institutions) for employees who have a five-day working week with two days-off on Saturday and Sunday, to postpone the working day from Monday, January 6, to Saturday, January 11 in 2020 („Rozporâdžennâ Kâbînetu Mînîstrîv Ukraîny vîd 23 žovtnâ 2019 r. № 995-r...” 2019). The government made similar decisions in 2019, 2018 and previous years.

If the government’s recommendations are followed, the employer issues an order to transfer working days, and since this is a change in significant working conditions, employees must be duly informed of the order with two months’ notice.

5. Conclusions

Freedom of religion is a natural human right based on human dignity and includes both the right to profess and the right not to profess certain religious views. At the same time, the exercise of the right to freedom of religion by a person with certain religious beliefs is inextricably linked to certain religious rites and the celebration of religious holidays.

In Ukraine, since 1991, labor legislation stipulates that no work is performed on certain religious holidays (January 7 – Christmas, one

day – Easter, one day – Trinity). Since 2017, the list of these holidays was supplemented by December 25 (Christmas). At the moment, there is a lively discussion and drafting of a bill to supplement the list of non-working days with religious holidays of other Churches and religious organizations. We propose that parts 2 and 3 of Article 73 of the Labor Code of Ukraine be amended as follows: “Work is also not performed on religious holidays: January 7 and December 25 – Christmas; Sunday – Easter, one day for the celebration of Orthodox confessions, one day for the celebration of Christians of the Western rite; one day (Sunday) – Trinity. At the request of an employee who professes the religious views of Churches or religious organizations registered in Ukraine, the employer is obliged to provide up to three days of days off during the year to celebrate major religious holidays with work on these days or with unpaid leave on these days”.

This edition of the article 73 of the law will eliminate inequality and establish a day off during the celebration of Easter under the Western rite. In addition, the right to three days off to celebrate religious holidays for representatives of other confessions will be prescribed as a duty of the employer exercised solely on the basis of the employee’s request. The employee will have the option either to take unpaid leave on this day or to work later on to compensate the employer his/her absence determined by the celebration of the religious holiday. Thus, amendments to the legislation of Ukraine will create conditions for the exercise of the right to freedom of religion without restrictions in terms of celebrating religious holidays.

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