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*Restrictions on the right of civil servants to freedom of outlook and  
religion in Ukraine: EU experience and ECtHR practice*

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# Secção I

## Investigação Científica\*

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## Restrictions on the right of civil servants to freedom of outlook and religion in Ukraine: EU experience and ECtHR practice

## Restrições ao direito dos funcionários públicos à liberdade de opinião e de religião na Ucrânia: experiência da UE e prática do Tribunal Europeu de Direitos Humanos

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**ABSTRACT:** The article is devoted to the study of the legal problems of limiting the right of civil servants to freedom of outlook and religion in Ukraine, taking into account the experience of the EU and the practice of the ECtHR. During the preparation of the study and its conclusions, such methods of scientific research as dialectical, formal-legal, systemic, hermeneutic, comparative-legal, empirical, etc. were applied. These methods allowed the authors to determine the importance and complexity of limiting the right of civil servants to freedom of opinion and religion, and its place in ECtHR decisions. The article analyzes international legal norms and standards, theoretical and legal approaches to understanding the religious neutrality of civil servants, analyzes the types of its requirements and their legislative regulation, and models of state-church relations in a certain EU state. It has been established that in relation to the researched law, it is necessary to proceed from international obligations in the field of ensuring the right to freedom of thought, speech and religion, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms from 1950, and the relevant case law of the ECtHR. The directions for improving the legislation in the context of the European integration of Ukraine, as well as taking into account the application of ECtHR decisions in limiting the right of civil servants to freedom of outlook and religion, are defined.

**KEYWORDS:** religious neutrality, freedom of conscience and religion, practice of the European Court of Human Rights, public service, Ukraine, European Union.

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**RESUMO:** O artigo é dedicado ao estudo dos problemas jurídicos de limitação do direito dos funcionários públicos à liberdade de opinião e de religião na Ucrânia, tendo em conta a experiência da UE e a prática do Tribunal Europeu de Direitos Humanos. Durante a preparação do estudo e suas conclusões, foram aplicados métodos de pesquisa científica como dialético, formal-jurídico, sistêmico, hermenêutico, comparativo-jurídico, empírico, etc. Estes métodos permitiram aos autores determinar a importância e a complexidade de limitar o direito dos funcionários públicos à liberdade de opinião e de religião, e o seu lugar nas decisões do Tribunal Europeu de Direitos Humanos. O artigo analisa normas e padrões jurídicos internacionais, abordagens teóricas e jurídicas para a compreensão da neutralidade religiosa dos funcionários públicos, analisa os tipos de seus requisitos e sua regulamentação legislativa e modelos de relações entre Estado e Igreja em um determinado estado da UE. Ficou estabelecido que em relação à lei pesquisada é necessário partir das obrigações internacionais no domínio da garantia do direito à liberdade de pensamento, expressão e religião, em particular a Convenção para a Proteção dos Direitos Humanos e das Liberdades Fundamentais de 1950, e a jurisprudência relevante do Tribunal Europeu de Direitos Humanos. São definidas as orientações para melhorar a legislação no contexto da integração europeia da Ucrânia, bem como ter em conta a aplicação das decisões do Tribunal Europeu de Direitos Humanos na limitação do direito dos funcionários públicos à liberdade de opinião e de religião.

**PALAVRAS-CHAVE:** neutralidade religiosa, liberdade de consciência e religião, prática do Tribunal Europeu dos Direitos Humanos, serviço público, Ucrânia, União Europeia.

## 1. Introduction

Human rights, their implementation, protection and protection constantly intersect with the problem of limiting such rights, and determining the criterion limits in which such a limitation is permissible. If we talk about restrictions on the right to freedom of religion, then Article 29 of the Universal Declaration of Human Rights specifies that in the exercise of their rights and freedoms, every person should be subject to only such restrictions as are established by law solely for the purpose of ensuring proper recognition and respect for the rights and freedoms of others and ensuring fair requirements of morality, public order and general welfare in a democratic society<sup>6</sup>. Currently, Ukraine has approved an action plan for the implementation of the National Strategy in the field of human rights for 2021-2023 which includes areas in particular of observance, implementation and protection of human rights and freedoms<sup>7</sup>. In the conditions of reforming the civil

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<sup>6</sup> Universal Declaration of Human Rights: adopted by Resolution 217 A (III) of the UN General Assembly dated December 10, 1948. Available from: [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text)

<sup>7</sup> On the approval of the action plan for the implementation of the National Strategy in the field of human rights for 2021-2023. Available from: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-dij-z-realizaciyi-nacionalnoyi-strategiyi-u-sferi-prav-lyudini-na-20212023-roki-i230621-756>

service in Ukraine, the study of the principle of religious neutrality in the performance of official duties in the activities of civil servants is of great importance. This principle should be one of the fundamental foundations of its organization and functioning, therefore there is a need to study its implementation within the framework of regulatory and legal consolidation and its implementation in Ukraine and European countries.

According to Article 35 of the Constitution of Ukraine, the church and religious organizations in Ukraine are separated from the state. Yes, in Art. 35 of the Constitution of Ukraine enshrines one of the basic personal rights - the right to freedom of worldview and religion, which, according to some scientists, is not only conceptually, but also historically the first human right<sup>8</sup>. This constitutional right includes the freedom to practice any religion or not to practice any religion, to conduct individual or collective religious cults and rituals, and to conduct religious activities. It is established that the exercise of this right can be limited by law only in the interests of protecting public order, health and morals of the population or protecting the rights and freedoms of other people. The church and religious organizations in Ukraine are separated from the state, and the school is separated from the church. No religion can be recognized as obligatory<sup>9</sup>.

According to official data, as of January 1, 2019, there were 36,739 religious organizations of various denominations (Christianity, Judaism, Islam, Buddhism, etc.) in Ukraine<sup>10</sup>. Ukraine, as a democratic and multi-confessional state, in which the church is separated from the state, must definitely take care of guaranteeing ideological pluralism, tolerance, preventing and countering manifestations of discrimination on the basis of religion. Thus, according to statistical data, as of January 1, 2021, there were already 37,049 religious organizations in Ukraine, of which 35,453 are communities, and the rest are spiritual administrations, monasteries and other types of organizations<sup>11</sup>. According to the latest

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<sup>8</sup> Boychuk D. S., Vovk D. O. (2018) The rule of law and tolerance: teaching. manual Kyiv: FOP Lysenko I.B., 2018. P. 71.

<sup>9</sup> Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

<sup>10</sup> Report of the Department of Religions and Nationalities of the Ministry of Culture of Ukraine on the network of churches and religious organizations in Ukraine as of January 1, 2019. Available from: [https://risu.org.ua/ua/index/resourses/statistics/ukr\\_2019/75410/](https://risu.org.ua/ua/index/resourses/statistics/ukr_2019/75410/)

<sup>11</sup> Religion on fire: documenting Russia's war crimes against religious communities in Ukraine. 2023. Available from: <https://www.mar.in.ua/wp-content/uploads/2023/04/Religion-on-Fire-report-2023-UKR.pdf>

sociological surveys, about 10% of Ukrainian citizens are atheists and about 5 % are representatives of non-Christian religions. Therefore, public promotion of a certain religion by public officials offends the feelings and discriminates against non-believers and representatives of other religions and denominations<sup>12</sup>. In addition, we note that any modern democratic society is a society of diversity, tolerant attitude and the rule of law, and any state that implements the rule of law is a secular state. The establishment and development of a democratic state in Ukraine, which respects the principles of equality, diversity and non-discrimination, require a clear regulation of the religious neutrality of civil servants, which is considered an integral component of the "infrastructure" of democracy. The actual problem remains that the scientific concept of state-religious relations and restrictions on the right to freedom of religion of civil servants, which meets international and European standards, has not yet been created in Ukraine. In this regard, it is relevant to analyze the system of principles of religious neutrality in the performance of the official powers of civil servants, their role in the development of state-church relations, to reveal international legal standards of human rights, as well as ECtHR case law in this area.

## **2. Materials and Methods**

This study was conducted on the basis of the analysis of European international legal treaties, legislative acts of Ukraine and EU member states (Bulgaria, Greece, the Czech Republic, Romania, Hungary, Croatia, etc.) in the field of state-church relations, as well as scientific works on public administration and administration, constitutional, administrative and international law. The empirical basis of the study was ECtHR decisions, which related to the application and interpretation of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 regarding freedom of thought, conscience and religion (Article 9), expression of views (Article 10), etc. During the preparation of the study and its conclusions, such methods of scientific research as dialectical, formal-legal, systemic, hermeneutic, comparative-legal, empirical, etc. were applied. The formal-legal method was used in the analysis of

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<sup>12</sup>Prohibit civil servants and educators from promoting religion during working hours. Official online representation of the President of Ukraine. Available from: <https://petition.president.gov.ua/petition/70746>



normative prescriptions of international treaties, legislative acts of Ukraine and European states in the sphere of state-church relations. The hermeneutic method came in handy when interpreting the content of legal norms of international treaties, legislative acts of Ukraine and European states in the context of religious neutrality of the civil service, as well as ECtHR case law in the context of the subject of the study. Dialectical and systemic methods contributed to the establishment of relationships between the normative provisions of European international treaties in the field of human rights, the practice of the ECtHR and the national legislation of Ukraine and EU member states in the field of state-church relations. Formal-legal, hermeneutic and empirical methods were used in the analysis of the practice of the European Court of Human Rights, establishing the content of the legal positions of the ECtHR and the connections between them.

### **3. Literature review**

The question of the activities of civil servants in Ukraine and their ethical norms were the subject of research by domestic administrative scientists such as V. B. Averyanova, Y. P. Bytyaka, S. V. Kivalova, T. O. Kolomoets, and others. Among the scientists of the EU member states, the problems of the principles (fundamentals) of civil service were developed by M. Bileišis, F. Cardona, G. Gajduschek, J. Itrich-Drabarek, V. Mehde, J.-H. Meyer-Sahling, J. Pierre, G. Peters, I. Popescu, M. Tofan and others. In the context of the principles of public service, scientists also addressed individual problems of religious neutrality. The researches of European scientists were devoted either to the general principles of state (public, civil) service of European states or to certain aspects of religious neutrality as a component of the concept of neutrality of state (public, civil) service.

The subject of scientific analysis was mainly the problems of preventing discrimination in the state (public, civil) service with regard to religious beliefs, the problems of permission (prohibitions, restrictions) of wearing religious clothes by state (public, civil) employees, their demonstration of religious beliefs, etc. Separate issues in scientific papers were considered legal aspects regarding the issue of the implementation of the right to freedom of religion and its restrictions

in Ukraine, in particular during the legal regime of martial law<sup>13</sup>, the peculiarities of the realization of human rights were studied<sup>14</sup>, protection of human rights, taking into account the experience of the EU<sup>15,16</sup> and in cases of judicial protection of human rights<sup>17,18</sup>. Legal issues taking into account the practice of the ECtHR were studied by individual scientists in the context of realizing the individual's right to judicial protection<sup>19</sup>, human right to access to public information and ECtHR practice<sup>20</sup>, rights to access to information and national security taking into account ECtHR practice<sup>21</sup> etc. However, the research of religious neutrality as a conceptual idea of the organization and functioning of the civil service in Ukraine and European countries, the analysis of issues related to the coordination of the establishment of legal restrictions of civil servants regarding religious neutrality with international legal standards in the field of human rights, remains an urgent problem today.

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<sup>13</sup> Kapelko P.O. Pavshuk K.O. The right to freedom of religion and its restrictions in the context of modernity. Legal scientific electronic journal. № 11. 2023. P.81–84. DOI <https://doi.org/10.32782/2524-0374/2023-11/16>. [http://www.lsej.org.ua/11\\_2023/16.pdf](http://www.lsej.org.ua/11_2023/16.pdf).

<sup>14</sup> Shevchuk, O., Rzhevskaya O., Korop O. Implementation of the right to health protection drug addicts (separate aspects). Georgian Medical News. № 3 (276). 2018. P.161–167.

<sup>15</sup> Shevchuk, O., Shevchuk, V., Kompaniets, I., Lukashevych S., Tkachova O. Features of ensuring the rights of drug addicts for rehabilitation in Ukraine and the European Union: Comparative Legal Aspect. *Juridical Tribune – Tribuna Juridica*. 2022. Volume 12, Issue 2, P. 264 - 282. DOI: 10.24818/TBJ/2022/12/2.07

<sup>16</sup> Shevchuk, O., Matyukhina, N., Babaieva, O., Lysodyed, O. Davydenko, S., Conflict of interest in the activities of judges in Ukraine and the European Union: a comparative legal study / *Juridical Tribune - Tribuna Juridica*, 2023. Volume 13, Issue 2 P. 262 – 282. DOI: 10.24818/TBJ/2023/13/2.06

<sup>17</sup> Shevchuk, O., Matyukhina, N., Davydenko, S., Babaieva, O., Lysodyed, O. Forensic examination in cases on the protection of human rights in the sphere of healthcare in Ukraine: legal issues. *Juridical Tribune*, 2022. Vol. 12, Iss. 4. P. 552–565. DOI: 10.24818/TBJ/2022/12/4.08.

<sup>18</sup> Shevchuk, O., Martynovsky V., Volianska O., Kompaniets, I., Bululukov, O., Problems of legal regulation of artificial intelligence in administrative judicial procedure. *Juridical Tribune - Tribuna Juridica*, 2023. 13, (3), 347 – 362. DOI: 10.24818/TBJ/2023/13/3.02.

<sup>19</sup> Shevchuk, O., Kompaniets I., Volianska O., Shovkoplias O., and Baranchuk V. Electronic Administrative Judicial Procedure of Ukraine and the Right to Judicial Protection: Problems of Legal Regulation and Practical Issues. *Juridical Tribune. Review of Comparative and International Law*, 14(1), 98–115.

<sup>20</sup> Shevchuk, O., Drozdov O., Kozak V., Vyltsan A. and Verhoglyad-Gerasymenko O. Human Right to Access Public Information: The Experience of Ukraine and the Practice of the ECtHR". *Hasanuddin Law Review*, 9(2), 155-167. DOI: <http://dx.doi.org/10.20956/halrev.v9i2.4396>

<sup>21</sup> Shevchuk, O., Protsiuk I. V., Samoshchenko I. V., Panova A. V., and Shaposhnyk A. O. The Rights to access to Information and National Security in the Ukraine in the System of Human Rights. *Revista Juridica Portucalense*. 34, 257–282. DOI: [https://doi.org/10.34625/issn.2183-2705\(34\)2023.ic-13](https://doi.org/10.34625/issn.2183-2705(34)2023.ic-13)



## 4. Results and Discussion

### 4.1 Religious neutrality of civil servants in the context of the development of state-church relations

For the first time, at the level of official documents, religious neutrality of the civil service was discussed in the Concept of Administrative Reform in Ukraine, which was approved by the Decree of the President of Ukraine dated 07/22/1998. "Political and religious neutrality" was noted in it among the basic principles on which the activities of civil servants should be based Ukraine for the successful implementation of state goals and objectives<sup>22</sup>.

In particular, the current Law of Ukraine "On Civil Service" dated 10.12.2015, in contrast to the Law "On Civil Service" dated 16.12.1993 (which has lost its validity) and similar to certain European states, enshrines not only the list of principles of civil service, but and their definition. These principles include: 1) rule of law; 2) legality; 3) professionalism; 4) patriotism; 5) integrity; 6) efficiency; 7) ensuring equal access to public service; 8) political impartiality; 9) transparency; 10) stability (Article 4 of the Law of Ukraine "On Civil Service")<sup>23</sup>. Therefore, the category of "religious neutrality" among the principles of civil service in the Basic Law of Ukraine "On Civil Service" dated 10.12.2015 is not singled out, although individual scientists and practitioners have repeatedly drawn attention to the expediency of its consolidation.

In jurisprudence, different terms are proposed to denote the corresponding principle. For example, some researchers point to the principle of "political and religious neutrality" of the civil service. According to scientists, this principle, although not stipulated by the Law "On Civil Service", is stipulated by the Constitution of Ukraine (Article 35 - freedom of conscience, Article 36 - freedom of association in political parties and public organizations)<sup>24</sup>. Other scholars point to "political and religious neutrality" as principles of ethical public service<sup>25</sup>. Some researchers

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<sup>22</sup>On measures to implement the Concept of Administrative Reform in Ukraine: Decree of the President of Ukraine dated July 22, 1998, No. 810/98 Available from: <https://zakon.rada.gov.ua/laws/show/810/98#Text>

<sup>23</sup> On civil service: Law of Ukraine dated December 10, 2015, No. 889-VIII. Available from: <https://zakon.rada.gov.ua/laws/show/889-19#Text>

<sup>24</sup> Kivalov S. V., Bila-Tiunova L. R. (2009) Public service in Ukraine: tutorial. Odesa: Phoenix, P. 40.

<sup>25</sup> Chernonog E. S. (2008) State service: history, theory and practice: teaching. manual Kyiv: Znannia, P. 200.

single out the principle of "separation of religious associations from the state" among the constitutional principles of public service<sup>26</sup>. The term "religious impartiality" of civil servants also exists in scientific works. We do not deny such an approach, however, we consider it expedient to use the concept of "religious neutrality". The fact is that the meaning of the term "unbiased" is associated with the absence (presence) of a negative attitude towards someone or something<sup>27</sup>. Instead, the term "neutral" means one that does not belong to either side; does not join any of the parties, but remains neutral<sup>28</sup>. In addition, the category of "neutrality", presupposing the absence of any special attitude towards a certain party, is a characteristic that, among other things, excludes any manifestations of bias. Note that "tolerance" is an institutional obligation that defines a just society, that is, one that respects a certain set of personal rights<sup>29</sup>. In fact, the requirement of religious neutrality of the state is "an important part ... of the understanding of religious freedom"<sup>30</sup>. In this case, the basic approach is that a democratic state, in general, should be "impartial in its relations with different faiths"<sup>31</sup>. It is necessary to support the scientific approach that the religious neutrality of the state is the basis of the equality of citizens, as a result of which it is important that "the equality of citizens requires that different religions be treated equally"<sup>32</sup>.

Based on the above, religious neutrality is a manifestation of a more complex concept of neutrality of civil servants in a democratic state. The need for legislative consolidation of the category of "religious neutrality" in the activities of civil servants. On the one hand, this is due to the recent aggravation of contradictions between individual religious communities in Ukraine and repeated cases of abuse and violations by subjects of authority in this area<sup>33</sup>. In Ukraine,

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<sup>26</sup> Obolenskyi O. Yu. (2006) Public service: textbook. Kyiv: KNEU, p. 152.

<sup>27</sup> Great explanatory dictionary of modern Ukrainian language/ 2005. ed. V. T. Busel. Kyiv, Irpin: Perun, 2005. P. 783

<sup>28</sup> Great explanatory dictionary of modern Ukrainian language/ 2005. ed. V. T. Busel. Kyiv, Irpin: Perun, 2005. P. 764.

<sup>29</sup> Melkevik B. (2016) Tolerance and modernity of modern law. Philosophy of law and general theory of law, 1-2, 19.

<sup>30</sup> Conkle D. O. (2000). The Path of American Religious Liberty: From the Original Theology to Formal Neutrality and an Uncertain Future. *Indiana Law Journal*, 75 (1), P. 6.

<sup>31</sup> Maclure J., Taylor C. (2011) Secularism and Freedom of Conscience. Cambridge: Harvard University Press. 2011. P. 9.

<sup>32</sup> Wilkins B. A. (2003). Short Letter on Religious Toleration. *The Journal of Ethics*. Vol. 7 (3). P. 239.

<sup>33</sup> Freedom of religion and belief in Ukraine in the context of compliance with international standards on human rights and fundamental freedoms (2005) / edited by V. Yavorskyi. Kharkiv: Folio, P. 22.

there are often precedents of politicization of processes in the sphere of state-church relations, which is necessarily transmitted by politicians to the state bureaucratic apparatus.

It is worth emphasizing that despite the lack of enshrining religious neutrality as a principle of public service in the current Law of Ukraine "On Public Service" dated 10.12.2015, its individual components are currently regulated by other legal acts (primarily, in the context of the rules of ethical behavior of public servants). In particular, it should be noted the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014, which enshrines the rule of ethical behavior "impartiality". It provides that civil servants and other persons defined in Art. 41 of the Law "On Prevention of Corruption", act impartially, regardless of private interests, personal attitude towards any persons, their political views, ideological, religious or other personal views and beliefs<sup>34</sup>.

The order of the National Agency of Ukraine on Civil Service Issues "On Approval of the General Rules of Ethical Behavior of Civil Servants and Local Self-Government Officials" dated August 5, 2016 provides, that "civil servants and officials of local self-government are obliged to perform their official duties as best as possible, honestly and impartially, regardless of personal ideological, religious or other views, not to give any advantages or show favoritism to individual individuals or legal entities, public, political, religious organizations, as well as not to allow evasion of decision-making and responsibility for one's actions (inaction) and decisions" (Chapter III, item 1)<sup>35</sup>. In addition, it is established that civil servants and officials of local self-government are obliged in their behavior not to allow the manifestation of any form of discrimination based on race, skin color, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, as well as language or other characteristics (Chapter II, item 3)<sup>36</sup>.

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<sup>34</sup> On prevention of corruption: Law of Ukraine dated 14.10.2014, No. 1700-VII. Available from: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

<sup>35</sup> On the approval of the General Rules of Ethical Behavior of Civil Servants and Local Self-Government Officials: Order of the National Agency of Ukraine on Civil Service Issues dated August 5, 2016, No. 158.. Available from: <https://zakon.rada.gov.ua/laws/show/z1203-16#Text>

<sup>36</sup> On the approval of the General Rules of Ethical Behavior of Civil Servants and Local Self-Government Officials: Order of the National Agency of Ukraine on Civil Service Issues dated August 5, 2016, No. 158. Available from: <https://zakon.rada.gov.ua/laws/show/z1203-16#Text>

Some components of religious neutrality are contained in the sectoral (departmental) codes of ethical behavior of employees of certain types of public service or certain state authorities. For example, the following legal acts can be noted: - the order of the Ministry of Justice of Ukraine "On the approval of the Rules of Ethical Behavior of Employees of the Ministry of Justice of Ukraine and its Territorial Bodies" dated September 21, 2017, as one of the components of the principle of integrity provides for "preventing the granting of any advantages and showing favoritism to individual individuals and legal entities, political parties, public and religious organizations" (Chapter II, item 6)<sup>37</sup>.

In the decision of the Council of Judges of Ukraine "On Approval of the Rules of Conduct of the Court Employee" dated 02.06.2009, which component of the principles of impartiality and tolerance is regulated: "during the performance of his official or official duties, an employee of the court apparatus should not show a biased attitude or signs of discrimination (verbally or by actions), give advantages to any public or religious associations, professional or social groups, organizations, enterprises, institutions or persons" (Chapter III, clause 3.2)<sup>38</sup>.

The order of the Ministry of Internal Affairs of Ukraine "On approval of the Rules of Ethical Conduct of Police Officers" dated November 9, 2016 stipulates that "during the performance of official duties, a police officer is prohibited from allowing any privileges or restrictions based on race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics, discrimination in any form" (Chapter II, item 2)<sup>39</sup>.

However, the current state of normative regulation of the religious neutrality of the civil service in Ukraine is far from perfect. A number of components of this principle of public service under modern conditions in Ukraine have not received clear legal confirmation or are regulated in a fragmentary manner. At the same time, the existing regulations in the relevant field are not systematized and are

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<sup>37</sup>On the approval of the Rules of Ethical Behavior of Employees of the Ministry of Justice of Ukraine and its territorial bodies: Order of the Ministry of Justice of Ukraine 09/21/2017 No. 2952/5. Available from: <https://zakon.rada.gov.ua/laws/show/z1164-17#Text>

<sup>38</sup>On approval of the Rules of Court Employee Conduct: decision of the Council of Judges of Ukraine dated February 6, 2009. Available from: <https://zakon.rada.gov.ua/rada/show/vr033414-09#Text>

<sup>39</sup> On the approval of the Rules of ethical behavior of police officers: order of the Ministry of Internal Affairs of Ukraine dated November 9, 2016. Official Gazette of Ukraine. 2017. No. 2. Art. 55.

fixed by legal acts of different legal force. Unfortunately, the provisions of the Constitution of Ukraine dated June 28, 1996, the Law of Ukraine "On Freedom of Conscience and Religious Organizations" dated April 23, 1991, and other acts in the field of state-church relations have not received proper development and detail regarding the legal status of civil servants. in the legislation of Ukraine on civil service.

In our opinion, when constructing the content of legislative prescriptions regarding the religious neutrality of the civil service, it is necessary, in particular: first, to proceed from the provisions of the Constitution of Ukraine, which provide for the right of a person to freedom of worldview and religion and the peculiarities of limiting its exercise, as well as to take into account the established constitutional model mutual relations in Ukraine between the church (religious organizations) and the state, its detailing in the current legislation of Ukraine; secondly, it is necessary to take into account the international obligations assumed by Ukraine in the sphere of ensuring the right to freedom of thought, speech and religion, which are provided for by international treaties of Ukraine, the consent of which was given by the Verkhovna Rada of Ukraine to be binding.

Let's start with the fact that there are four main models of interaction between the church and the state in the world: a) primacy of the church over the state; b) subordination of the church to the state; c) state-church partnership; d) autonomy of the church and the state<sup>40</sup>. The domestic constitutional model envisages the separation of the state from the church, and lays down the prerequisites for the development of Ukraine as a "secular" state<sup>41,42</sup>.

The right to freedom of outlook and religion correlates with Art. 15 of the Constitution of Ukraine, which stipulates that public life in Ukraine is based on the principles of political, economic and ideological diversity. No ideology can be recognized by the state as mandatory. The right to freedom of worldview and religion is closely related to other constitutional rights (to freedom of thought and speech (Article 34), to freedom of association (Article 36), to assemble peacefully,

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<sup>40</sup> Vovk D. O. (2009) Law and religion: general theoretical problems of the relationship: monograph. Kharkiv: Pravo, 2009. P. 176.

<sup>41</sup> Constitution of Ukraine. Scientific and practical commentary. (2011). Kharkiv: Pravo, p. 260.

<sup>42</sup> Yarmol L. V. (2022) Problems of legal protection of human rights in Ukraine. Freedom of expression. Freedom of religion. Lviv: SPOLOM, p. 352.

without weapons and to hold meetings, rallies and demonstrations ( Article 39) etc.)<sup>43</sup>.

The above-mentioned constitutional norms for our study have a starting value, firstly, when clarifying the content of the civil servant's right to freedom of worldview and religion; secondly, when regulating the legal status of civil servants, including: (a) determining their limitations in exercising the right to freedom of outlook and religion; (b) entrusting public officials with certain duties in relations with religious organizations; thirdly, when determining the constitutional goal, which makes it possible to limit the right of civil servants to freedom of worldview and religion (in the interests of protecting public order, health and morals of the population, protecting the rights and freedoms of other people).

The model of state-church relations defined by the Constitution of Ukraine provides for mutual obligations on the one hand of the state, its bodies, officials and officials, and on the other - religious organizations. The provisions of the Constitution of Ukraine were developed in the Law of Ukraine "On Freedom of Conscience and Religious Organizations" dated April 23, 1991<sup>44</sup>.

In Art. 5 of this Law contains a number of prescriptions (mostly of a mandatory and prohibitive nature) specifically aimed at implementing the constitutional model of separation of the church (religious organizations) from the state. Such legal norms can be divided into two main types:

a) legal norms addressed to religious organizations (religious organizations do not perform state functions; do not participate in the activities of political parties and do not provide them with financial support; do not nominate candidates for state authorities, do not campaign or finance election campaigns; are obliged comply with the requirements of legislation, etc.)<sup>45</sup>.

b) legal norms addressed to the state (the state protects the rights and legitimate interests of religious organizations; promotes the establishment of relations of mutual religious and worldview tolerance and respect between

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<sup>43</sup> Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

<sup>44</sup> On freedom of conscience and religious organizations: Law of Ukraine dated April 23, 1991 No. 987-XI. Available from: <https://zakon.rada.gov.ua/laws/show/987-12#Text>

<sup>45</sup> On freedom of conscience and religious organizations: Law of Ukraine dated April 23, 1991 No. 987-XI. Available from: <https://zakon.rada.gov.ua/laws/show/987-12#Text>



citizens who practice religion or do not practice it, between believers of different faiths and their religious organizations; takes into account knows and respects the traditions and internal guidelines of religious organizations, if they do not conflict with the law; the state does not interfere in the activities of religious organizations carried out within the limits of the law, does not finance the activities of any organizations created based on the attitude to religion; establishing any advantages or restrictions one religion in relation to another is not allowed, etc.)<sup>46</sup>.

The last group of norms is primarily of interest to our research, because the prohibitions and obligations imposed on the state by them should be objectively reflected in the legal status of civil servants. In science, attention has been repeatedly drawn to the dependence of legislative provisions, which determine the secular character of the state, and the legal status of civil servants<sup>47,48</sup>, etc. Of course, one cannot deny the close connection between the religious neutrality of the civil service (civil servants) and the secular state, the essence of which scholars associate primarily with the constitutional model of the separation of church and state. The secular state as a legal category is complex.

In our opinion, "secularism" is a fundamental characteristic of the state, which manifests itself, including:

1) in the secular character of the formation of legislative, executive and judicial authorities, state enterprises, institutions and organizations, as well as local self-government bodies;

2) in the secular nature of the organization of state and local self-government bodies, state enterprises, institutions and organizations (prohibition of formation of branches of religious organizations in public authority bodies; secular nature of symbols of public authority bodies, names of structural subdivisions, government positions, etc.), their formation, reorganization and liquidation;

3) in the secular (religion-neutral) nature of the functioning of state and local self-government bodies, state enterprises, institutions and organizations; 4) in the religious neutrality of the public service and the legal status of public servants

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<sup>46</sup> On freedom of conscience and religious organizations: Law of Ukraine dated April 23, 1991 No. 987-XI. Available from: <https://zakon.rada.gov.ua/laws/show/987-12#Text>

<sup>47</sup> Sergienko G. L. (2004) The role of constitutional and legal regulation of relations between the state and religious organizations in guaranteeing freedom of religion in Ukraine: thesis ... candidate law Sciences: Kharkiv, P. 9.

<sup>48</sup> Streltsov E. L. (2014) Religious traditions in a secular state: monograph. Brno: L. Marek, 23.

(requirements of religious neutrality as a component of their status). Thus, religious neutrality as a principle of public service is only one of the manifestations of the separation of the state from the church.

#### **4.2 Religious neutrality of civil servants in the member states of the European Union: experience of legislative regulation**

The issue of religious neutrality of the civil service under modern conditions in the EU member states is quite lively discussed in scientific circles, in particular in the context of human rights in the civil service<sup>49</sup>. At the same time, the regulatory and legal establishment of the requirements of civil servants regarding religious neutrality or their specific recruitment directly depend on the constitutional model of state-church relations in a certain state. So, if we can talk about religious neutrality in its broad sense in relation to secular European states, then in relation to theocratic states (for example, the Vatican), the above requirements due to the dominant religion justifiably acquire a specific narrowed manifestation. The analysis of the relevant laws on the civil service of the EU member states shows that religious neutrality as a separate principle has not found a clear normative anchoring either, and the corresponding law-limiting requirements are regulated mainly as a component of more general principles or a type of ethical behavior rules.

For example, in Art. 3 of the Law of Lithuania "On Public Service" dated 20.06.2018 enshrines the principle of "justice", the content of which is revealed as follows: "a civil servant is obliged to serve all persons equally, regardless of their nationality, race, gender, language, origin, social status, religious beliefs and political views; to be fair when considering applications, complaints, statements, not to abuse the powers granted to him; to use their official time efficiently and exclusively for service purposes"<sup>50</sup>.

Another example, the Code of Conduct of Civil Servants of Romania dated 18.02.2004 enshrines "impartiality and independence" as a separate moral and professional behavior of civil servants. The stated principle has the following content:

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<sup>49</sup> Mehde V. Civil Service in Germany. *CERIDAP*. 28 July 2023. Available from: <https://ceridap.eu/the-civil-service-in-germany/?lng=en>

<sup>50</sup> On Public Service: Law of Lithuania of 20.06.2018, XIII-1370. Available from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/cad5a783834211e89188e16a6495e98c/asr> (date of access: 04.10.2023)

in the performance of their duties, civil servants must be objective and neutral when it comes to any political, economic, religious or any other interests (Article 3)<sup>51</sup>.

It is worth noting that religious neutrality in the EU states is regulated mainly in the context of preventing and countering discrimination in the civil service - discrimination carried out by the relevant subjects in the civil service system and can take place both in relation to applicants for entry into the civil service and in relation to civil servants.

For example, the Law of Bulgaria "On Civil Service" dated August 27, 1999 provides that discrimination, privileges or restrictions on the grounds of race, nationality, nationality, gender, origin, religion, beliefs, membership in political, trade union and other public organizations and movements, according to private, social and property status (Article 7)<sup>52</sup>.

In Art. 6 "Prohibition of Discrimination and Favoritism" of the Law of Croatia "On Civil Servants" dated 20.07.2005 stipulates that in their work, civil servants should not discriminate and give preference to citizens based on age, nationality, ethnic or territorial affiliation, language and racial origin, political or religious beliefs or passions, disability, education, social status, gender, marital status, sexual orientation or other grounds that contradict the Constitution or the rights and freedoms established by law<sup>53</sup>. The Code of Civil Servants of Greece dated 09.02.1999 establishes that a civil servant is prohibited from discriminating in favor of or against citizens on the basis of their political, worldview or religious beliefs in the performance of official duties (Article 27)<sup>54</sup>.

In addition to the anti-discriminatory content, the requirements of religious neutrality in the laws of the EU member states are regulated in the context of the right of civil servants to demonstrate views and beliefs of a religious nature. At

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<sup>51</sup> On the Code of Conduct for the Civil Servants: Law of Romania of 18.02.2004. Available from: [https://rai-see.org/wp-content/uploads/2015/08/Law-no-7\\_2004-Code-of-Conduct-for-the-Civil-Servants.pdf](https://rai-see.org/wp-content/uploads/2015/08/Law-no-7_2004-Code-of-Conduct-for-the-Civil-Servants.pdf)

<sup>52</sup> On State Servant: Law of Bulgaria of 27.08.1999. Available from: <https://aref.government.bg/sites/default/files/2023-03/%D0%97%D0%90%D0%9A%D0%9E%D0%9D%20%D0%97%D0%90%20%D0%94%D0%AA%D0%A0%D0%96%D0%90%D0%92%D0%9D%D0%98%D0%AF%20%D0%A1%D0%9B%D0%A3%D0%96%D0%98%D0%A2%D0%95%D0%9B.pdf>

<sup>53</sup> Law of Croatia «On Civil Servants» of 20.07.2005, Available from: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92835/112671/F-354339813/HRV72144%20Eng.pdf>

<sup>54</sup> Public service. Foreign experience and proposals for Ukraine: a monograph / by general ed. V. P. Tymoshchuk, A. M. Shkolyka. Kyiv: Konus-Yu, 2007. P. 523.

the same time, a number of EU member states allow civil servants to demonstrate their respective views without restrictions. For example, the Code of Civil Servants of Greece dated 09.02.1999 allows such civil servants to demonstrate their religious views: "freedom of expression of political, philosophical and religious beliefs, as well as scientific views and official criticism of the actions of the supervisory body is the right of civil servants and is guaranteed by the state" (Article 45)<sup>55</sup>. According to Cypriot law, "public officials have the right to express their opinions freely, whether in private or in public, through speeches, lectures, announcements, research or commentary on matters relating to science, art, religion or any subject of general interest"<sup>56</sup>.

Another distinctive feature is that in the EU state, the legislation on civil service generally provides for religiously neutral prescriptions and mechanisms (regarding legal status, entry into civil service, its completion and termination). The exception is the regulation of the content of the Oath of a civil servant. The fact is that in some countries there are several versions of the text of such an Oath - conditionally with a religious "coloring" and without such. As an example, we can mention the Law of Romania "On Civil Servants" dated December 8, 1999. In Part 2 of Art. 55 of this Law provides the text of the Oath of a civil servant: "I undertake to respect the Constitution, basic human rights and freedom to correctly and objectively apply the laws of the country, strive to fulfill the prerogatives given to me by the public service to which I was appointed, and maintain professional confidence . That's how the Lord will help me!". However, in part 3 of Art. 55 it is emphasized that "The oath can be taken without a religious conclusion"<sup>57</sup>.

In a similar way, relations regarding the taking of the Oath by a civil servant are regulated in the Law of Hungary "On the Legal Status of Public Servants" from U art. 12 of the Law provides the text of the Oath of a civil servant, which states that I will perform my official duties impartially, conscientiously, honestly,

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<sup>55</sup> Public service. Foreign experience and proposals for Ukraine: a monograph / by general ed. V. P. Tymoshchuk, A. M. Shkolyka. Kyiv: Konus-Yu, 2007. P. 527.

<sup>56</sup> Public Service Laws 1990 to 2022. Republic of Cyprus. Available from: [http://www.psc.gov.cy/psc/psc.nsf/75295389651D2FD9C2258944003FD252/\\$file/The%20Public%20Service%20Laws%201990%20-%202006.en%20\(final\).pdf](http://www.psc.gov.cy/psc/psc.nsf/75295389651D2FD9C2258944003FD252/$file/The%20Public%20Service%20Laws%201990%20-%202006.en%20(final).pdf)

<sup>57</sup> Law of Romania «On Civil Servants» of 08.12.1999, № 188/1999. Available from: [https://world.moleg.go.kr/cms/commonDown.do?DLD\\_CFM\\_NO=Y8J0PK26OEFLOUPQCGZV&FL\\_SEQ=4637](https://world.moleg.go.kr/cms/commonDown.do?DLD_CFM_NO=Y8J0PK26OEFLOUPQCGZV&FL_SEQ=4637)

(exclusively) in accordance with the law, accurately and ethically, with absolute respect for human dignity, to the best of my abilities, serving the interests of my nation ....<sup>58</sup>.

### **4.3 Religious neutrality of civil servants: international legal standards of human rights**

The right to freedom of conscience and religion, its content, specifics of implementation and limitations are provided for in a number of international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine. The norms of international treaties regarding the right to freedom of conscience and religion are quite similar. The norms of international treaties regarding the right to freedom of conscience and religion are quite similar. Yes, Art. 18 of the UN General Declaration of Human Rights of December 10, 1948 guarantees everyone the right to freedom of thought, conscience and religion, which includes, first, the freedom to change one's religion or beliefs; secondly, the freedom to practice one's religion or belief, either alone or in association with others, in public or private, in teaching, worship, and the performance of religious and ritual rites<sup>59</sup>.

The provisions of Art. are somewhat broader in content. 18 of the International Covenant on Civil and Political Rights of December 16, 1966. It enshrines the right of every person to freedom of thought, conscience and religion, which includes: a) freedom to have or adopt a religion or belief of one's choice; b) freedom to practice one's religion and beliefs individually and collectively, publicly or privately, in worship, implementation of religious and ritual rites and teachings. No one should be subjected to coercion that impairs his freedom to have or adopt the religion or belief of his choice. At the same time, it is possible to limit the freedom of a person to practice religion (belief), which can be carried out only on the basis of the law and when it is necessary to protect public safety, order, health and morals, the basic rights and freedoms of other persons<sup>60</sup>.

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<sup>58</sup> Law of Hungary «On the Legal Status of Public Servants» of 1992. Available from: [https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3\\_isn=31681](https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=31681)

<sup>59</sup> Universal Declaration of Human Rights: adopted by resolution 217 A (III) of the UN General Assembly dated 10.12.1948. Available from: [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text)

<sup>60</sup> International Covenant on Civil and Political Rights: adopted by the UN General Assembly on December 16, 1966 . Available from: [https://zakon.rada.gov.ua/laws/show/995\\_043#Text](https://zakon.rada.gov.ua/laws/show/995_043#Text)

An integral part of the European catalog of human rights is the Convention on the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (hereinafter referred to as the Convention), prepared on the basis of Western European traditions and values. In Part 1 of Art. 9 stipulates that everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to change one's religion or belief, to profess one's religion or belief in worship, learning, performance and observance of religious practices and rituals, either alone or in community with others, in public or in private. In Part 2 of Art. 9 provides for the possibility of limiting the freedom to practice religion or belief, however, provided that such restrictions are established by law, are necessary in a democratic society in the interests of public safety, to protect public order, health or morals or to protect the rights and freedoms of other persons<sup>61</sup>.

The realization of freedom of thought, conscience and religion is closely related to other rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (freedom of expression (Article 10), freedom of assembly and association (Article 11) , prohibition of discrimination (Article 14), etc.). A more specific content of freedom of thought, conscience and religion, specifics of its implementation and limitations can be formulated thanks to the practice of the ECtHR, whose jurisdiction extends to the interpretation and application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

An analysis of the provisions of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the ECtHR allows us to distinguish the main elements of the legal content of the right to freedom of thought, conscience and religion:

- the right to have, choose for oneself and change, profess or not profess religious or other beliefs, as well as the right not to profess any religion ("X. v. the United Kingdom") dated 12.03.1981<sup>62</sup>, etc.);

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<sup>61</sup> Convention on the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights) of November 4, 1950 Available from: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

<sup>62</sup> The decision of the ECtHR in the case "X. v. the United Kingdom" dated March 12, 1981. Available from: <http://hudoc.echr.coe.int/eng?i=001-74929>



- the right to act in accordance with one's religious beliefs and faith - to preach, promote and spread one's beliefs, as well as to freely conduct cults, to conduct individual or collective religious ceremonies. In particular, this includes the so-called "right to convert to religion" (proselytism), the right to convince and incline other people to a certain religion, including through religious "teaching" ("Larissis and Others v. Greece" dated 24.02.1998<sup>63</sup> etc.);
- the right to the secrecy of one's religious or other beliefs;
- the right to a neutral attitude of the state to legal forms of freedom of thought, conscience and religion ("Hasan and Chaush v. Bulgaria") dated 10.26.2000<sup>64</sup>, "Refah Partisi (the Welfare Party) and Others v. Turkey") dated February 13, 2003<sup>65</sup>, etc.);
- the right not to be offended in one's religious beliefs ("Otto-Preminger-Institut v. Austria" dated September 20, 1994<sup>66</sup>, etc.).

When developing an approach to regulating the religious neutrality of the civil service in Ukraine, it is important to understand that among the components of freedom of thought, conscience and religion, two aspects are distinguished - internal and external. The right of a person to choose for himself a religion and a creed, to change them, to renounce a religion or a creed, etc., is an internal aspect of freedom of thought, conscience and religion. Other components of this freedom, related to a person's expression of his religion or belief, constitute its external aspect. As certain scientists emphasize, the external aspect of the right to freedom of religion, unlike its internal aspect, is not absolute, but can be limited for a legitimate purpose (rights of other persons, public order, public interest, etc.<sup>67</sup>). Therefore, regarding the establishment of religious neutrality as a principle of public service, we can only talk about limiting the external aspect of the right of civil servants to freedom of religion.

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<sup>63</sup> The decision of the ECtHR in the case «Larissis and Others v. Greece» from 14.10.1999. Available from: <http://hudoc.echr.coe.int/eng?i=001-58139>

<sup>64</sup> The decision of the ECtHR in the case «Hasan and Chaush v. Bulgaria» from 26.10.2000. Available from: <https://hudoc.echr.coe.int/eng?i=001-58921>

<sup>65</sup> The decision of the ECtHR in the case «Refah Partisi (the Welfare Party) and Others v. Turkey») from 13.02.2003. Available from: <http://hudoc.echr.coe.int/eng?i=001-60936>

<sup>66</sup> The decision of the ECtHR in the case «Otto-Preminger-Institut v. Austria» from 20.09.1994. Available from: <http://hudoc.echr.coe.int/eng?i=001-57897>

<sup>67</sup> Theory and practice of application of the Convention on the Protection of Human Rights and Fundamental Freedoms: Compendium (2017). by general ed. O. V. Serdyuk, I. V. Yakovuk. Kharkiv: Pravo, P. 206.

Regarding the limitation in the exercise of the right to freedom of thought, conscience and religion, according to the Convention on the Protection of Human Rights and Fundamental Freedoms dated November 4, 1950, it is possible if three criteria are met: 1) such a limitation must be established by law; 2) it must be necessary in a democratic society; 3) must pursue a legitimate goal stipulated by the Convention (in the interests of public safety, to protect public order, health or morals or to protect the rights and freedoms of other persons)<sup>68</sup>. We believe that the idea of normative consolidation of religious neutrality as a principle of public service meets the above criteria.

First, the religious neutrality of the civil service is proposed to be enshrined in the relevant law - the Law of Ukraine "On Civil Service". Secondly, the restriction of civil servants in the exercise of the right to freedom of religion, which forms the core of the religious neutrality of the civil service, is considered necessary in a democratic society. Thirdly, the restriction of civil servants in the exercise of the right to freedom of religion is permissible and justified in view of the legitimate convention purpose. Such a purpose can serve as "protection of the rights and freedoms of other persons" - persons who do not wish to practice any religion, believers, representatives of different religions, the establishment and provision of rights and freedoms of which is also considered in the context of Art. 3 of the Constitution of Ukraine<sup>69</sup> as a component of the main duty of the state.

The ECHR has repeatedly drawn attention to the admissibility of limiting the right to freedom of religion on the grounds of protecting the rights and freedoms of other persons. For example, in the decision in the case "Kokkinakis v. Greece" dated 05/25/1993 emphasizes that in democratic societies where a number of religions coexist among the population, the freedom to practice religion or belief may be limited in order to reconcile the interests of different groups and guarantee respect for everyone's beliefs<sup>70</sup>. Separate decisions of the ECtHR relate directly

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<sup>68</sup> Convention on the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights) of November 4, 1950. Available from: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

<sup>69</sup> Constitution of Ukraine: Law of Ukraine No 254к/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

<sup>70</sup> The decision of the ECtHR in the case «Kokkinakis v. Greece» from 25.05.1993. Available from: <http://hudoc.echr.coe.int/eng?i=001-57827>

to the restriction of the right of civil servants to freedom of religion. In the decision in the case "Refah Partisi (the Welfare Party) and Others v. Turkey") dated February 13, 2003 states that in order to fulfill the role of a neutral and impartial organizer of the implementation of religious beliefs, the state has the right to impose on certain civil servants, who will act on its behalf, the obligation to refrain from participating in the activities of religious movements<sup>71</sup>.

Duties of the state in the context of ensuring the right to freedom of thought, conscience and religion. The ECtHR most often emphasizes the state's duty to remain neutral and impartial in relations with different religions, faiths and beliefs<sup>72</sup>, because the autonomy of the religious community is a necessary component of a pluralistic democratic society in which several religions or denominations of the same religion coexist<sup>73</sup>. The neutrality and impartiality of the state involves the prohibition of unjustified interference in the internal affairs of religious organizations, including conflicts between two groups of believers and an attempt to force a divided religious community to unite. According to the ECtHR, the state has no obligation to further intervene in the internal organization of the church in order to restore the applicant's control over the property, reinstate the priest, accept new members or expel others<sup>74</sup>.

However, from the position of the ECtHR, the requirements of neutrality and impartiality of the state do not exclude the assessment by authorities of the activities of religious organizations from the point of view of their possible harm or threat to public order. In the decision in the case ("Manoussakis and Others v. Greece") dated 26.09.1996, the ECtHR noted that the state has the right to check whether a certain movement, as if in pursuit of religious goals, does not cause harm to the population<sup>75</sup>.

The ECtHR also paid attention to the prohibition of discrimination against religious communities and the connection of Art. 9 and Art. 14 of the

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<sup>71</sup> The decision of the ECtHR in the case «Refah Partisi (the Welfare Party) and Others v. Turkey» from 13.02.2003. Available from: <http://hudoc.echr.coe.int/eng?i=001-60936>

<sup>72</sup> The decision of the ECtHR in the case «Hasan and Chaush v. Bulgaria» from 26.10.2000. Available from: <https://hudoc.echr.coe.int/eng?i=001-58921>

<sup>73</sup> Murdoch J. (2012) Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights. Strasbourg: Council of Europe, P. 63.

<sup>74</sup> The decision of the ECtHR in the case «Svyato-Mykhaylivska parafiya v. Ukraine») from 14.06.2007. Available from: <https://hudoc.echr.coe.int/eng?i=001-81067>

<sup>75</sup> The decision of the ECtHR in the case «Manoussakis and Others v. Greece» from 26.09.1996. Available from: <https://hudoc.echr.coe.int/eng?i=001-58071>

Convention<sup>76</sup>. Thus, in the case "Alujer Fernandez and Caballero Garcia v. Spain") dated June 14, 2001.<sup>77</sup>, the ECtHR indicated that agreements favoring individual religious communities do not conflict with Art. 9, 14 of the Convention only under the condition that there are objective and reasonable grounds for selective treatment and that other religious communities can enter into similar agreements at will.

Thus, the Convention on the Protection of Human Rights and Fundamental Freedoms dated 04.11.1950 and the practice of the ECtHR as authoritative legal sources in solving the tasks before us have an important meaning, which boils down to the following: firstly, they are useful in clarifying the content and components of the right of civil servants to freedom of thought, conscience and religion, and, accordingly, highlighting from their list those rights in the exercise of which civil servants can be legally limited, without violating the rights assumed by Ukraine international obligations; secondly, the provisions of the Convention and the decisions of the ECtHR can be used in determining the purpose (conditions) which, according to international norms, are considered legitimate for restricting civil servants in exercising their right to freedom of religion; thirdly, the ECtHR, deciding the cases under its jurisdiction, in its decisions formulated a number of fundamental legal positions that relate to the types and content of the duties of the state, its officials and officials in relation to guaranteeing and ensuring the right to freedom of thought, conscience and religion.

## **5. Conclusion and Recommendations**

The right to freedom of worldview and religion, not only conceptually, but also historically, is the first human right. One of the important ways of solving existing problems of religious neutrality among the principles of public service in the Law of Ukraine "On Public Service" is the normative definition of its content. The expediency of such changes is determined by the basic principles of the constitutional system of Ukraine, the need to ensure the rights and freedoms of a person and a citizen, and the international obligations assumed by Ukraine.

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<sup>76</sup> Convention on the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights) of November 4, 1950. Available from: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

<sup>77</sup> The decision of the ECtHR in the case «Alujer Fernandez and Caballero Garcia v. Spain» від 14.06.2001 p. Available from: <https://hudoc.echr.coe.int/eng?i=001-22645>

Therefore, in view of the conducted analysis, we believe that religious neutrality should be considered as one of the principles of public service in Ukraine, which should receive proper formalization and legislative regulation. We suggest that this principle be understood in a narrow and broad sense. In a narrow sense, it is reduced to only the so-called "status component" - the imposition of restrictions (obligations, prohibitions) on civil servants, which form the requirements of religious neutrality as a component of their legal status. In a broad sense, this principle, in addition to the requirements of religious neutrality of civil servants, also includes the so-called "anti-discrimination component" - the prohibition of all forms and manifestations of discrimination, the absence of unjustified restrictions or the granting of unjustified advantages to citizens in view of their belonging or not belonging to religious organizations, religious beliefs or attitudes towards religion at the time of entry and completion of civil service. As for the "anti-discrimination component" of religious neutrality, it is already regulated in the current Law of Ukraine "On Civil Service", as it is covered by the principle of equal access to civil service (Clause 7, Article 4). In this regard, we believe that in the Ukrainian context, when developing and introducing changes and additions to this Law, it should be about consolidating a narrow approach to understanding the religious neutrality of the civil service.

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