

Конституційний обов'язок людини і громадянина захищати Вітчизну: теоретичні та практичні аспекти

У статті розглянуто доктринальні підходи до визначення сутності конституційного обов'язку захищати Вітчизну, а також конституційну практику правового закріплення вищезазначеного обов'язку. Досліджено та проаналізовано стан теоретико-правового забезпечення виконання громадянами свого конституційного обов'язку захищати Вітчизну та зміст конституційних обов'язків, що закріплені в статті 65 Конституції України.

Ключові слова: конституційні обов'язки, конституційний обов'язок захищати Вітчизну, альтернативна служба.

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Конституционная обязанность человека и гражданина защиты Отчизны: теоретические и практические аспекты

В статье рассмотрены доктринальные подходы к определению сущности конституционной обязанности защищать Родину, а также конституционную практику правового закрепления вышеуказанной обязанности. Исследованы и проанализированы состояние теоретико-правового обеспечения выполнения гражданами своей конституционной обязанности защищать Родину и содержание конституционных обязанностей, закрепленных в статье 65 Конституции Украины.

Ключевые слова: конституционные обязанности, конституционная обязанность защищать Родину, альтернативная служба.

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Constitutional duty of man and citizen to defend the Motherland: the theoretical and practical aspects

The article examines doctrinal approaches to defining the essence of the constitutional obligation to defend the homeland, as well as the constitutional practice of the legal consolidation of the above duties. Investigated and analyzed the state of the theoretical and legal enforcement of citizens of their constitutional duty to defend the motherland and the content of the constitutional obligations set out in article 65 of the Constitution of Ukraine.

Keywords: constitutional duties, the constitutional duty to protect the Motherland, alternative service.

Formulation of the problem

Constitutional process launched in Ukraine puts on the agenda a number of topical issues of state. Today in Ukraine there are difficult economic and political processes, which cause, radical transformations in Eastern European geopolitics and Ukraine's relations with its neighbors. It should be noted about direct threats to the sovereignty and territorial integrity of Ukraine.

It is worth mentioning the military developments currently under way in eastern Ukraine, affecting the general welfare in our country. Therefore, recent events suggest that Ukraine has a problem completing existing units, as well as in connection with what has been declared a partial mobilization, and the problem of citizens of Ukraine to perform its constitutional duty to protect the homeland.

Analysis of recent research and publications

The issue of constitutional duties of man and citizens are given much less attention than rights and freedoms. However, some aspects of the study of constitutional duties of man and citizen are reflected in the works of Ukrainian and Russian jurists, including A. Biloskurskoyi, N. Vitruka, L. Vojvodina, L. Letnyanchyna, V. Pohorilko, P. Rabynovich, Y. Todyky and others.

The wording of Article purposes

The article is an analysis of doctrinal approaches to the interpretation of the category of "constitutional duty to defend the Motherland" and study constitutional practice of securing the social duty.

Presenting main material

Given the events over the last two years, which have taken place in eastern Ukraine, the issue of implementation of the citizens of Ukraine constitutional duty to defend the homeland, has become all the more important. Indeed, in Ukraine there was a lot of partial mobilization for the implementation of legal collisions every citizen of Ukraine of his constitutional duties, which is enshrined in Article 62 of the Constitution of Ukraine.

According to Article 62 of the Constitution of Ukraine [1], the defense of the

Motherland, independence and territorial integrity of Ukraine is the duty of citizens of Ukraine. As for Article 1 of the Law of Ukraine "On Military Duty and Military Service" [3], conscription is set to provide the Armed Forces of Ukraine and other military formations, and to prepare the population to defend the homeland.

The only legal act in Ukraine, which regulates the most important social and public spheres of Ukraine is the Constitution. The scientist-lawyer Todyka Y. stressed that there are no society relations, where regulation in the current legislation was based on the absence of the Constitution [18, p. 57]. As a result, it is important to note that the Constitution of Ukraine does not avoid their attention and regulates the activity of the state military organization, military service, defines the features of the State machinery in general and the state military organization including both in peacetime and in times of crisis, establishes competence higher state authorities for its organization and leadership.

However, recent events in the east of our country, show that military service has been and remains an important institution that is essential for the proper functioning of its military organization and plays an important role in the lives of many citizens of our country. Military service is the focus of society and the state, although in the last two years the attitude of citizens of our country to it has changed.

It should be noted that the above questions, are studied by the lawyers only fragmentally and the majority of research done in terms of administrative law (including such scholars as V. Alexandrov [4], F. Korzh [11], etc.). However, Y. Bytyakom [7] M. Inshynom [8] O. Obolensky [14] A. Petrishin [16] made significant changes in the study of issues related to the public service.

There are no comprehensive studies of the constitutional aspects of military service in our country. As noted earlier, military service, various aspects of its passage are regulated by different branches of law, and are in the orbit of interests of various sectoral sciences, studying them from different angles. For example, Y. Bytyak indicates that public-service

relationship is not subject to regulation only administrative law but also constitutional, financial and other [7, p. 45].

It should be noted that the significance of constitutional law as one of the most important areas of law is becoming increasingly important today in Ukraine. However, despite the rapid growth of the importance of constitutional law in Ukraine as a science and law, the range of scientific developments not without considerable number of problems, including a range of studied fragments or some of these issues at an early stage their research. These problems, which remain virtually ignored in scientific research, is a unit of urgent and important issues relating to military service and all the military sphere. Therefore, as a consequence there are difficulties in implementing the requirements of the provisions under Article 1 of the Constitution of Ukraine [1]. The need for research on the level of constitutional issues relating to military service, due to a number of conditions that are associated with virtually all aspects of public and social life.

However, it should be noted that a number of scholars note that the military service is a type of public service (including B. Aleksandrov [4] M. Artamonov [5], Ivan Korzh [11] and others.).

It should be noted that compliance with the constitutional obligation to serve military service in Ukraine is made primarily on the basis of the Law of Ukraine “On Military Duty and Military Service” [3] and some other legal acts.

The Article 4 of the Law of Ukraine “On Military Duty and Military Service” stipulates that such units are completed by conscription of citizens for military service, and adoption of Ukraine citizens for military service under contract [3]. Thus, the provisions of the Law justifying the need for a military duty, which states that the set one in two of purposes, particularly for units manning the state military organization and personnel, and to prepare citizens to the duty to protect the Motherland. It is thanks to the aforementioned provisions of the Law of Ukraine “On Military Duty and Military Service” [3] is a realization of the provisions of paragraph 2 of Article 65 of the

Constitution of Ukraine and in the aggregate establish constitutional duty [1].

However, this example clearly demonstrates the correlation of the constitutional duty to serve military service defending the homeland, and the impact of the first and the second in their implementation. This is also confirmed by the preamble of the country said Law “On Military Duty and Military Service” [3], which states that it is intended to regulate legal relations between the state and citizens of Ukraine to implement their constitutional duty of defending the homeland. At the same time you can clearly see the opposite effect and the constitutional duty of defending the homeland for the implementation of the obligation to perform military service in accordance with the law.

It should be noted that according to current legislation for Ukraine military service during the mobilization of reservists subject to the majority of citizens of Ukraine, in particular, the first realization of the constitutional obligation to produce of the second. However, the aforementioned obligations may be separately and without causing realization of each other, which would be one of the causes of the isolation and consolidation in various parts of Article 65 of the Constitution of Ukraine [1].

Citizens of Ukraine in the implementation of the constitutional obligation to serve military service in peacetime, that is, in a mode of everyday activities as the state in general and military organization, namely including military service in different parts of the latter. In this case, serving military service as the main constitutional duty of defending the homeland is not committed. It deals only with preparation of citizens for that or take steps related to that as it is impossible to protect against someone or something vague. From this point in the legal literature rightly noted that “the main form of military duty is military service” [10, p.236].

It should be noted that the legislator, in accordance with paragraph 3 of Article 1 “On Military Duty and Military Service” under other forms of duty of military service understands prepare citizens for military service, to the recruiting station, making the service voluntarily

(contract) and conscription, the performance of military duties in stock, service in the military reserve, to the rules of military records [1].

However, by the Law of Ukraine "On mobilization preparation and mobilization of the" citizens of Ukraine in the implementation of the constitutional duty of defending the homeland, independence and territorial integrity of Ukraine cannot implement on serving their military service. At the same time, the provisions of the Law of Ukraine "On mobilization preparation and mobilization" describes the duties of citizens during mobilization and installs them on how citizens are conscripted, and for those who are not subject to appeal [2]. The latter also perform the duties of defending the homeland, independence and territorial integrity, but does not perform military service.

We agree with the opinion of L. Letnyanchyn who pointed that the obligation to perform military service applies only to military service, while the duty to protect the homeland, its independence and territorial integrity - is the responsibility of all citizens of Ukraine [13, p. 10]. However, if the abolition of conscription of citizens of Ukraine in the framework of the planned military reform, aimed at transition to acquisition units military organization of the state solely on the basis of a contract, that is, to a professional army, the provisions enshrined in paragraph 2 of Article 65 of the Constitution of Ukraine will involve much less imperative [1].

Despite the fact that studied constitutional responsibilities are in the relationship and interaction, they are different in legal nature, the actors of their time in life, legal relationship etc. In this regard, fixing them in different parts of Article 65 of the Constitution of Ukraine [1] is justified, since in this article there is no indication "everyone," and used the term "citizens", it means that foreigners and stateless those required bandages are not, and therefore the right to be soldiers not. This requirement has evolved in the Law "On Military Duty and Military Service" [3], which aims to regulate the legal relationship between the state and citizens of Ukraine in connection with the performance of their constitutional duty of defending the homeland.

The provisions of the Constitution of Ukraine stipulates that the protection of sovereignty and territorial integrity of Ukraine, to ensure its economic and informational security are not only the most important function of the state, but also a matter of the Ukrainian people, which should be understood in its citizens of all nationalities [1].

Therefore, when implementing the responsibility to protect the Motherland and military service between the citizen and the state is also the administrative and legal relations connected with the peculiarities of military service. In addition, in the case of a citizen during military service crime that he could do just passing the specified type of public service, and between the state and having criminal relations.

Thus, the process of military service affects not only constitutional provisions, but also other branches of law rules, which determine the specificity of legal relations arising in connection therewith. This specificity in turn reflected in the fact that the constitutional relationship gives rise to the emergence of other types of relationships. At the same time the constitutional regulation of military service immediately carried out several provisions of the Constitution of Ukraine, which are located in different sections of the Constitution of Ukraine.

However, this does not reduce the potential constitutional regulation of military service because, according to Y. Todyka the rules that make up one institution can be placed in different sections, but their aggregation operate in unity, and as for the internal structure of a particular institute it does not matter if a separate section makes up a unit or, although it would be desirable [18, p.243].

Thus, military service and various aspects of its performance, in some details, is defined in constitutional provisions. And a lot of provisions the Constitution of Ukraine, which are stipulated in most of its sections, "work" to ensure the constitutional regulation of military service and that is because of its special nature, should be considered as one of the most important achievements of Ukrainian constitutionalism. We can therefore say that the issue of military service, and operation

of the state military organization are directly subject to the regulation of the constitutional right of Ukraine as the leading and most important area of law in Ukraine. However these issues in the teaching of constitutional law Ukraine has not yet found the proper coverage and not yet deeply studied, although urgent need in this increasingly growing.

Conclusions

Constitutional duty to protect the homeland, independence and territorial integrity of Ukraine and military duty are essential for the proper staffing divisions of the state's military personnel for training military affairs of citizens and prepare them for the protection of the state, to clear the State machinery in general and for ensure the existence of Ukraine as a sovereign and independent state, in which a person, different manifestations of life, including safety, the highest social value.

Today in Ukraine there are difficult eco-

nomie and political processes, which still causes, radical transformations in Eastern European geopolitics and Ukraine's relations with its neighbors. However, it should be noted about direct threats to the sovereignty and territorial integrity of Ukraine. It is worth mentioning the military developments currently under way in eastern Ukraine, affecting the general welfare in our country. Therefore, recent events suggest that Ukraine has a problem completing existing units, as well as in connection with what has been declared a partial mobilization, and the problem of citizens of Ukraine to perform its constitutional duty to protect the homeland.

The above duties and their proper implementation are essential to ensure the existence of citizens in a sovereign and independent Ukraine. Particularly acute issue arose above the start of the anti-terrorist operation in eastern Ukraine, as was announced a partial mobilization of citizens.

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