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**ИНСТИТУЦИОНАЛЬНЫЙ МЕХАНИЗМ ДЕРЖАВНО-ЦЕРКОВНЫХ ВІДНОСИН У  
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**ИНСТИТУЦИОНАЛЬНЫЙ МЕХАНИЗМ ГОСУДАРСТВЕННО-ЦЕРКОВНЫХ  
ОТНОШЕНИЙ В КОНТЕКСТЕ ИХ КОНСТИТУЦИОННОГО РЕГУЛИРОВАНИЯ**

*The analysis of indicators of social capital, the level of humanization and social quality of society has been made from the standpoint of normative and legal support and implementation of national values and the world views of citizens as the highest values of existence. In this process church-state relations have not yet acquired effective institutionalized forms and mechanisms of public administration.*

**Keywords:** Institutional mechanism, public administration, state-church relations.

**JEL Classification :** K 10; O 17; Z 12; Z 18.

*Аналіз індикаторів соціального капіталу, рівня гуманізації та соціальної якості суспільства досліджено з позиції нормативно-правового забезпечення та реалізації національних цінностей щодо світоглядів громадян як вищих цінностей буття, у формуванні яких державно-церковні відносини ще не набули ефективних інституціоналізованих форм і механізмів публічного управління.*

**Ключові слова:** інституціональний механізм, публічне управління, державно-церковні відносини.

*Анализ индикаторов социального капитала, уровня гуманизации и социального качество общества исследованы с позиции нормативно-правового обеспечения и реализации национальных ценностей и мировоззрений граждан как высших ценностей бытия, в формировании которых государственно-церковные отношения еще не найдены эффективных институционализированных форм и механизмов публичного управления.*

**Ключевые слова:** институциональный механизм, публичное управление, государственно-церковные отношения.

**Statement of problem.** At the end of the XX – beginning of the XXI century church-state relations became a hallmark of Ukraine's approach to the European model of public administration where church and state institutions appeared to be integral parts of the institutional mechanism of public administration and form institutions with a certain type of influence on the development of social capital and society as a whole. The Church gradually began to play the role of the authoritative party with power and administrative levers the characteristic feature of which was inability to function separately from the state although the state separated from the church could exist [1].

Church-state relations consist of both institutional and functional (structural subdivisions of executive bodies and local self-government, their functions and interrelations with public), as well as institutional (goals, legislative norms, rules, restrictions, informal relations, values, behavioral

patterns, etc.) elements [2-8]. Church-state relations are of exceptional importance for the institutional order, national and public security, sustainable development and prosperity from the standpoint of influence on socio-political processes in society. Church-state relations create a basis for the growth of social capital which is recognized as the main multiplier for the modernization of the economy and the implementation of administrative reform in the country.

Thus the improvement of the institutional mechanism for the provision of church-state relations becomes an urgent task of the state building of Ukraine and contributes to the implementation of the principles of coexistence of these institutions and regulation of church-state relations.

**Analysis of recent researches and publications.** The study of the balance of the secular and religious mechanism in the state as an institution neutral towards religion was made by domestic and foreign scholars, such as P. Bogomazov., V. Blichar, R. Voitovich, J.-P. Willem, V. Yelensky, V. Koval, T. Krasnopol'skaya, M. Kriger, K. Lazor, R. Minnerat, P. Palinchak, S. Pogrebnyak, H. Habermas, S. Shapravsky and others. Also there was researched the influence of state-religious relations on the resultant vector of the development of the society. Still the issues of institutional regulation of church-state relations remain insufficiently highlighted.

**Highlight of the unsolved parts of the general problem.** An indicator of the development of social capital determines the social trust in power structures characterized by trust to state and non-state institutions, social activity, participation in public events, informatization of the society and social communications within the country and beyond. By assessing the indicators of social capital development, the level of humanization and social quality of society we should consider first of all social capital and the outlook of citizens as the highest values of existence where the role of state-religious relations has not yet acquired the institutionalized forms and mechanisms of public administration.

**The objectives of the article** is to study the church-state relations in the part of their legal regulation in the search for actual institutionalized forms and methods for improving the institutional mechanism of public administration in this area.

**Statement of the main material.** In the writings of scientists and the consciousness of the majority of the population freedom of religion means a free choice what to believe and profess. Indeed if freedom of belief is a free choice and a free choice is a characteristic feature of humanity, national and public security, then Ukraine should be a country with a high level of social capital development and an appropriate index of human development [8; 9] as the highest values of existence since the Constitution of Ukraine (Article 35) enshrines the right to freedom of religion as one of the most important human freedoms. Who can be considered free: a person who obeys the law or who violates it? The fact is that the concept of "freedom of choice" is not an infinite field of activity, but following strictly institutionalized rules. Compliance with the law is freedom.

The urgency of the issue of non-compliance of the current legal and regulatory framework of church-state relations in Ukraine with the existing ones arises now due to the problems of the humanitarian, social, spiritual and cultural spheres of the state's activity. The latter is the basis for the formation of the spirit of unity and the reproduction of social capital of society. The religious aspect of state formation throughout the history of the Ukrainian nation is independent, has its own peculiarities different from any other foreign experience in solving such issues [1; 7; 10].

Thus the recognition of freedom of religion and the mechanisms for the exercise of this freedom by Ukraine has led to inconsistencies between formal and informal institutions, the lack of specifics and certain determinants in the system of state and church relations that are necessary for the implementation of the constitutional norm of religion. In other words the mechanisms for the implementation of church-state relations require significant updates and improvements.

The boundaries of rights and obligations of all participants involved in state-religious relations should be clearly defined by legal acts, starting with the Basic Law and the concept of relations, completing the regulations and instructions of local order. In this aspect there can be resolved the

existing conflicts between authorities and numerous religious organizations as well as religious communities of different denominations.

To study the limitations and barriers of state-religious relations which are conditioned by the dynamism of social processes from the internal needs of an individual in spiritual development to an open public request for the active participation of the church in the formation of a social nation, we should analyze the following.

Firstly the Constitution of Ukraine (Article 35) is the main national legal act regulating the model of church-state relations in Ukraine (the right to freedom of beliefs and religion, the regulation of the possibility of limiting this right, the impossibility of dismissal from obligations to the state on the grounds of religious beliefs, separated from the state church and religious organizations, school separated from the church, a ban on the recognition by the state of any religion as mandatory) [11].

Also the problems of church-state relations concern Article 11 (proclamation of state assistance to "the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine", article 23 (equality of constitutional rights and freedoms irrespective of religious beliefs), article 37 (prohibition to create political parties to promote religious hatred).

Secondly, among the laws of Ukraine reflecting church-state relations is the Law of Ukraine "On Freedom of Conscience and Religious Organizations" [12]. On the whole it can be said that this Law develops the provisions of the Constitution of Ukraine regarding the separation of church from the state and schools from the church, although giving a slightly different definition of freedom of conscience, extends the right to it only to Ukrainian citizens. This normative legal act is the main source that is in the focus of the participants of the church-state relations.

Thirdly, the draft law of Ukraine "The Concept of State-Confessional Relations in Ukraine" [13] currently being processed proclaims the presence of "partner relations between the state and the church (religious organizations)" in the country. The concept of state-confessional relations in Ukraine was worked out in the early 2000's by Razumkov Center with the participation of church representatives and experts. This concept is a draft of the basic principles of legislation in the field of state-confessional relations of a framework character. It should be noted that for the first time the issue of the concept was raised by the government of Ukraine but for some reason the document was not considered by the parliament.

Fourthly, the Strategy for Sustainable Development "Ukraine-2020" [14] (approved by the Presidential Decree of January 12, 2015, No. 5/2015) and other related normative acts in the least amount represent planning of state – church relations. But despite the small number of acts of the legal framework which form the basis for the model of modern state-religious relations, communities of certain areas of Ukraine take the initiative and enhance the spiritual and cultural development far deeper than the state as the main executor of this task. For example, the Kolomyia District Council of Ivano-Frankivsk Region, together with the relevant district state administration on the basis of the outdated legislative framework approved the regional target program "Spiritual Life for 2016-2020" on October 22, 2015 (hereinafter – the Program).

We would like to draw your attention to the fact that the starting point of this document was not to follow the instructions of the parent bodies, but to refer directly to the constitutional obligation of the local self-government bodies and the executive branch of the district in promoting the national and cultural development of the Ukrainian people. Authors of the Program see their main tasks in studying the most acute spiritual needs of local communities, raising the financial and material resources for solving spiritual-religious issues, establishing a system of support to religious communities and associations of citizens who take on solving material and financial problems of religious communities and associations of citizens related to the implementation of religious and spiritual projects, education of high spirituality as well as promotion of joint activities of local authorities at all levels, public and religious organizations, educational and cultural-educational

institutions related to the development of spirituality and the protection of morals. They consider equally important the establishment of high moral values in the mass consciousness of citizens historically inherent in the Ukrainian people, education of citizens on the best achievements of the national and world spiritual heritage, promotion of spiritual and moral development and education of patriotism of the population; taking measures to prevent the dissemination of information that has a negative impact on the consciousness of citizens; introduction into the public consciousness of an understanding of the benefits of a healthy lifestyle based on the observance of God's commandments and focusing on expanding the role of churches and religious organizations in public life and their establishment as fully-fledged institutions of civil society [15].

For those tasks the Program provides financing from the district budget within the limits of general allocations. Of course the main hope is to attract possible grants, charitable contributions and other sources of funding provided by the current legislation.

The next aspect of the need to bring the regulatory framework in compliance with the proper role and place of the religion in the processes of state building is the fact that the church as a social institution continues to enjoy the greatest trust among the Ukrainian population. In December 2015 and 2016 a public *opinion poll* was conducted by the Kyiv International Institute of Sociology in all regions of Ukraine, except for the Autonomous Republic of Crimea, in 110 settlements (PSUs). They surveyed the dynamics of changes in trust-mistrust balance to social institutions, shown in Fig. 1 [16].

The diagram clearly reflects the leading position of the church in comparison with other public institutions. The rate of trust towards public organizations, volunteers and the Armed Forces of Ukraine testifies to the fact that the people of the country nowadays tend to be self-organized and need to protect both spiritual and material values. On the contrary there is a sharp distrust towards all other institutions created by the state which has a tendency to increase over the years.

At the same time despite the leading role of the church in influencing people's outlook there is a noticeable decline in rate of trust towards it according to the last two year surveys. These dynamics are associated with institutional disorganization and legislative disorderly social power relations in this area.

There is also a question regarding the connection between numerous religious organizations and the existence of inappropriate legal and regulatory framework for settling relationships between their participants. Thus according to the order of the Ministry of Culture of Ukraine of 31.03.2016 №184 "On Annual Statistical Reporting on State-Confessional Relations in Ukraine for 2015 (Religious Organizations)", on the territory of the country there were registered 35709 religious organizations within 98 varieties of religion [17].

A life worthy thought is the idea of a relatively peaceful coexistence of such a number of organizations on the background of the rules that are not regulated at the legislative level. We believe that religion by its very nature is the most important method of affecting human consciousness being the basis for the formation of an ideology and principles of life.

The above mentioned issues again confirm the identity of the Ukrainian state-building process and the uniqueness of the processes of interpersonal, intergroup and mass communication. Imagine that the state does not meet the urgent spiritual needs of citizens and the people independently get organized and implement the most valuable phenomenon of existence – freedom of world view and religion.

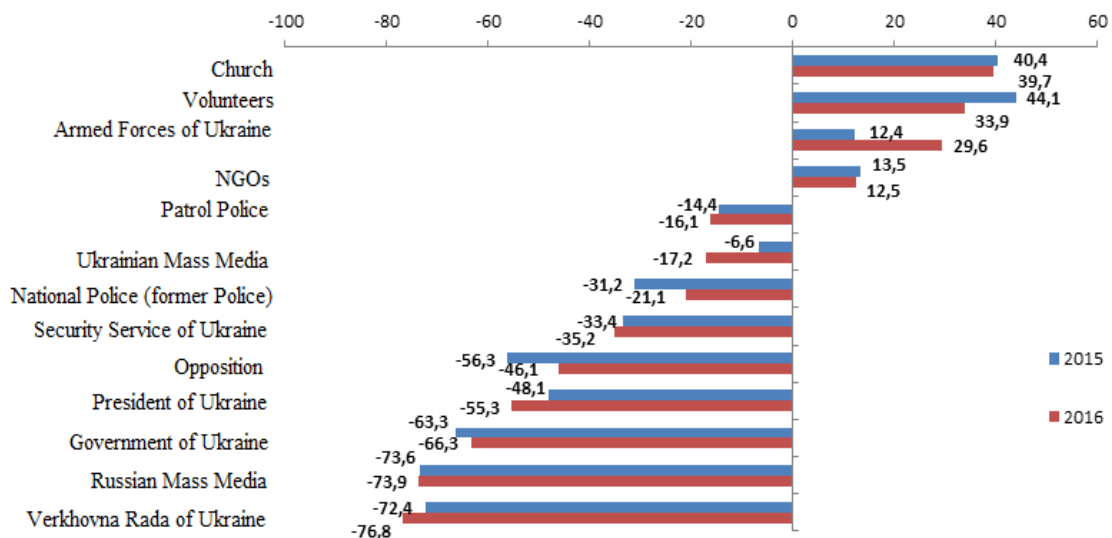


Fig. 1. Dynamics of changes in trust-mistrust balance to social institutions in 2015-2016, % respondents.

Source: cited by the Kyiv International Institute of Sociology.

It is impossible not to mention the problem of the inconsistency of the regulatory framework with the processes taking place in the religious education sphere. The law establishes the right of a person to religious education in our state.

On August 4, 2015, there came into force the Law of Ukraine No. 498-VIII on the establishment of educational institutions by religious organizations (draft № 1447). From now on registered religious organizations can be founders (owners) of preschool, secondary comprehensive, extracurricular, vocational and higher educational institutions. Such institutions will be privately owned and licensed in the Ministry of Education and Science of Ukraine on a full par with other private educational institutions established by public associations, charitable foundations, enterprises or individuals [18].

Thus the Parliament of Ukraine eliminated the multi-year discrimination of religious organizations and implemented "decommunization in the educational sphere", as said one of the authors of the initiative [14]. Herewith the media reports about alleged violations in the constitutional norm of separation of schools from the church caused by such legislative changes are unfounded not only considering the experience of democratic countries in Europe and the US, but also in the light of the provisions of Art. 6 Law on Freedom of Conscience and Religious Organizations, which states: "The state system of education in Ukraine is separated from the church (religious organizations) and has a secular character". Taking into account all said above changes to Article 6 of the Law on Education introduced by Law № 498-VIII stipulate that private educational institutions founded by religious organizations do not apply the principles of secular educational process but nevertheless they must ensure the scientific character of education.

At the same time the Resolution of the Cabinet of Ministers of Ukraine "On the Procedure for the Establishment, Reorganization and Elimination of Educational Institutions" dated April 5, 1994 № 228 expired on March 10, 2016 [19], therefore innovations remain unregulated at the corresponding lower levels of rulemaking.

The acknowledged fact is that in all historical periods the education and upbringing of the younger generation were and remain the sphere of social relations where the interests of the state and the church are crossed. As a confirmation of this fact we have official data about the network of religious institutions and schools including comprehensive ones (Tab. 1) [17].

Table 1

*Report on the Network of Churches and Religious Organizations in Ukraine as of 2006-2016*

<b>Period</b>	<b>Theological educational institutions, the number of students in them (full-time/correspondence)</b>	<b>Schools, including comprehensive/Sunday</b>
Total for Ukraine 2016	198	12179
Total for Ukraine 2015	198	12406
Total for Ukraine 2014	206	13104
Total for Ukraine 2013	202	13157
Total for Ukraine 2012	200	12762
Total for Ukraine 2011	200	12762
Total for Ukraine 2010	196	12633
Total for Ukraine 2009	196	12633
Total for Ukraine 2008	192	12689
Total for Ukraine 2007	185	12775
Total for Ukraine 2006	157	12522

*Source: According to the Department of Religious Affairs and Nationalities of the Ministry of Culture of Ukraine [27].*

As we can see the quantitative indicators of the presence of the religious factor in the life of the population are sufficient for the state to ensure the improvement of the regulatory framework for the activities of religious organizations in order to prevent various kinds of negative social fluctuations in mood among citizens [1; 6-10; 20].

We believe that this situation must be settled. The state has all mechanisms of influence on the processes of formation of effective institutional church-state relations. Indeed in recent years, under the influence of military tension the legislator made some changes regarding the religious educational processes and issues of spiritual support of the military in the relevant state bodies [12-14; 18; 21-24]. But this is still far from satisfying the real needs of church-state relations.

It's worth mentioning the activities of the legislator in the improvement of the legal framework of church-state relations in recent years.

At the plenary session on June 4, 2015, Verkhovna Rada approved by Resolution № 2986 *Plan on Legislative Support to the Reform in Ukraine* which included a number of initiatives in the area of freedom of conscience and religion [25]. It was planned to prepare and adopt such bills for 2015-2016 years:

- Concept of state-confessional relations;
- "On Amendments to the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (regarding the provision of rights to peaceful gatherings and clarification of the list of controlling bodies) and "On Amendments to the Law of Ukraine "On Freedom of Conscience and Religious Organizations" (regarding changes of subordination by religious communities);
- "On Amendments to Some Laws of Ukraine (regarding the introduction of the military clergy institution (chaplaincy) in the Armed Forces of Ukraine, law enforcement agencies and other military formations". It should be noted that there was adopted Decree of the Cabinet of Ministers of Ukraine dated July 2, 2014 №677-p "On the service of military clergy (Council-editor service) in the Armed Forces of Ukraine, the National Guard and the State Border Service" which introduced the institution of military clergy (chaplains) in the military structures of Ukraine and their selection from among the priests offered by religious organizations to provide pastoral care for soldiers, particularly in the area of anti-terrorist operation in the east of Ukraine);
- "On Amendments to the Law of Ukraine "On Protection of Public Morality" (regarding the strengthening of public control);

– " On amendments to Certain Legislative Acts of Ukraine Regarding the Seizure of Prohibited Themes and Punishment for Speaking out" (with keeping a balance in questions concerning intolerance, extremism, national, racial or religious hatred);

– "On Amendments to Some of the Laws of Ukraine (regarding the provision of the right of citizens to freedom of beliefs and religion in obtaining education: "... decentralization of education management: the introduction of public-private partnership for the development of educational institutions of various organizational and legal forms ... ").

Unfortunately it is not sufficient to have only plans to effectively regulate church-state relations.

At the same time there has entered into force the following: approved by the order of the Ministry of Defense of Ukraine dated December 14, 1966, № 685 Regulation on the service of the military clergy (chaplaincy) in the Armed Forces of Ukraine defines the basic principles and the procedure for the activities of the structural units of the Ministry of Defense of Ukraine and the Armed Forces of Ukraine regarding the military clergy (the chaplaincy) service as well as the rights and duties of the military priests (chaplains). According to this act, military priests are to meet the religious needs of servicemen and members of their families, conduct religious and educational work and carry out pastoral care for servicemen and members of their families [24].

In the area of education and science reform Verkhovna Rada of Ukraine approved the Law of Ukraine "On Amending Certain Laws of Ukraine Regarding the Establishment of Educational Institutions by Religious Organizations" № 498-VIII of June 2, 2015). The law provides the right to establish educational institutions (preschool, comprehensive, extracurricular, vocational, higher) to the religious organizations whose statutes are registered in accordance with the procedure established by the law. It ensures the constitutional right to the believers-parents or their substitutes to raise children in accordance with their own religious beliefs [18].

As for the "large-scale" planning deputies of Verkhovna Rada adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine According Regulation of the Activity of the Clergy (Chaplains) in Bodies and Institutions belonging to the jurisdiction of the State Penitentiary Service of Ukraine" (№ 419-VIII of 2 May 2015), which expanded the possibilities of the arrested and convicts to meet their religious needs and their access to pastoral care from the priests [22].

The Order of the Ministry of Justice of Ukraine dated May 16, 2016, № 1418/5 approved the Provision on the program of differentiated educational impact on convicts "Spiritual Revival" which deals with the interaction of penitentiary institutions with religious organizations, meeting the religious needs of convicts, increasing the value of spiritual traditions and religious culture in moral and ethical education of convicts [26].

According to the Law of Ukraine "On Amendments to Article 266 of the Tax Code of Ukraine regarding the exemption from the taxation of real estate of religious organizations" (№ 420-VIII of May 14, 2015), sub-item 266.2.2 of clause 266.2 of Article 266 of the Tax Code of Ukraine is amended by a new sub-item according to which objects of taxation are not objects of real estate owned by religious organizations whose statutes (regulations) are registered in accordance with the procedure established by law and are used exclusively for the purpose of securing their statutory activities, including those in which charitable institutions (shelters, boarding schools, hospitals, etc.) founded by such religious organizations carry out their activities except for real estate objects in which the production and / or economic activity is carried out [23].

Alongside this the Concept of State-Confessional Relations again remains without a positive result while other aforementioned bills are still under consideration of the relevant committees.

We believe that the adopted normative documents are not necessary key to resolving the issue of bringing the church-state relations into line with the real needs of the population of Ukraine, primarily because normative legal acts detailing the provisions of the Constitution of Ukraine may violate these provisions or inadequately reproduce them. On the other hand, having in the Basic Law an insufficient number of norms regulating such important social relations as church-state we

can't guarantee the constitutionality of the subsequent legislative acts. Therefore the institutional mechanism that should lead to the improvement of institutions of church-state relations and their correspondence to the realities of life is the introduction of amendments to the Constitution of Ukraine, the content of which first of all consists of social relations, connected with the status of a person in the constitutional legal format as well as implementation of political will and the legitimacy of the interests of the subjects of public-government relationship – people, state and territorial communities.

We also take into account the fact that the practice of non-compliance and violation of the laws of Ukraine by all subjects of state-building processes during the years of independence does not inspire confidence but on the contrary reduces the importance and seriousness of the attitude towards this activity. Therefore first of all it is necessary to work out the norms of the Basic Law characterized by the highest legal force manifested in the supremacy of the norms of the Constitution to the norms of ordinary laws and other normative acts and guarantees, particularly in the special order of legal protection that eliminates the possibility of immediate changes, is differentiated and gradual – from several sessions of the parliament to the participation of the people in the all-Ukrainian referendum. That is what we consider to be the basis for transformations that will lead to the desired effect and meet the public demand of the population (according to a certain analysis), the proposals of the All-Ukrainian Council of Churches and Religious Organizations regarding the amendments to the Constitution of Ukraine [28].

**Conclusions and propositions.** The inconsistency of the legal framework of church-state relations with the actual state of relations between these institutions is an urgent problem to be solved by the parliamentarians of Ukraine. The analysis of the components of the institutional mechanism of church-state relations has shown inadequacy of managerial methods and instruments of its normative provision. However this does not mean that the situation does not need to be changed. Indeed the mentality of Ukrainians presupposes fast adaptability to various positive and negative effects. Along with this the same Ukrainians have chosen the path of European integration, that's why automatically it has become obligatory for all areas of state to meet the European legal and regulatory standards that would subsequently acquire the status of institutions as it is in the practice of the European countries. First of all it concerns the relevance of the legal framework to the processes of social, economic and spiritual nature. Therefore the urgent issue should be the harmonization of the theoretical foundations of reproduction of church-state relations with the practice of their implementation. The Basic Law as the driving force of change in public relations needs to be adjusted. And the main aspect of making the necessary changes to the Constitution of Ukraine should be the content of the people's will in the transformation processes. Such an option is a valid indicator of the quality of public life and freedom of beliefs both for every citizen and the civil society as a whole. Therefore it is appropriate as an objective of the next research to choose the issue of the development of a new institutional mechanism with the participation of the population and the introduction of constitutional changes, in the new wording of the Basic Law: from the adoption of this idea as a basis until the promulgation of the law in the new wording.

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