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THE SEAL OF CONFESSION  
UNDER THE LEGISLATION OF UKRAINE

INTRODUCTION

Confession as a religious sacrament, the procedure for its performance, and the rights and duties of the priest and the worshippers are regulated mainly by the norms of canon law.<sup>1</sup> Nevertheless, national legislation also tries to regulate certain aspects and features of this religious sacrament to a greater or lesser extent.

In Ukraine, in particular, canonical norms which coerce priests to keep the seal of confession are under a kind of “guarantee” of legal norms. Such guarantees are carried out through the provisions of the Law “On Free-

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<sup>1</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text: [www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic\\_lib4-cann959-997\\_en.html#TITLE\\_IV](http://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib4-cann959-997_en.html#TITLE_IV) [accessed: 22.04.2023].

dom of Conscience and Religious Organizations”<sup>2</sup> (which is underlying in the field of state-church relations), where it is stipulated that no one has the right to demand from clergy the information obtained by them during the confession of believers (Part 5 of Article 3). The details of this prescription are provided in the procedural acts (Criminal Procedure Code of Ukraine, Civil Procedure Code of Ukraine, Code of Administrative Proceedings of Ukraine).

Also, the seal of the confession itself abides under the legal protection of the norms of Ukrainian legislation, yet only in those cases when such a confession was conducted by a priest or chaplain in a penitentiary or an official chaplain in the Armed Forces of Ukraine. In such cases, the information obtained during the confession acquires a confidential status. This is provided for by the legislation which regulates pre-trial investigation, serving a criminal sentence, chaplain service, etc.

There is an opinion among representatives of the Christian clergy in Ukraine that such a settlement is inconclusive. First of all, the state must establish the seal of confession as an object of legal protection in all cases and unconditionally. And, secondly, the level of the law is insufficient: the All-Ukrainian Council of Churches and Religious Organizations considers it necessary to enshrine the seal of confession in the Constitution.<sup>3</sup> The issue of constitutional settlement was also the subject of a petition addressed to the President of Ukraine (No. 22/013207-em), although it was not popular and did not receive enough votes for its consideration.

Legal studies of the seal of confession are conducted in the context of the right to non-interference in personal and family life analysis [Blinova and Potip 2021, 112-16], in the context of legal regulation of access to information [Vyslotska 2017, 4], in the context of the guarantees ensuring the protection of participants in the legal process [Navrotska 2019] or generally assuring the right to freedom of religion [Vasin 2020]. Nevertheless, all these and other issues of the legal protection of the seal of a confession do not lose their relevance and should be considered in a complex for a comprehensive understanding of the legal protection degree of the seal of a confession and directions for improving the legislation.

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<sup>2</sup> On Freedom of Conscience and Religious Organizations, Law of Ukraine No. 987-XII of 23.04.1991, zakon.rada.gov.ua/laws/show/987-12 [accessed: 24.04.2023].

<sup>3</sup> *Ukrayins'ki tserkvy prosyat' zakripyty tayemnytsyu spovidi v Konstytutsiyi*, www.pravda.com.ua/news/2015/06/15/7071281/ [accessed: 22.04.2023].

## 1. FORMATION OF LEGISLATION ON THE IMMUNITY OF A WITNESS-PRIEST

Despite the fact that the concept of “seal of confession” has been used in the legal literature of Ukraine for a while, this concept has begun to be used in normative acts only since 2015. In order to understand the reasons for this, one should analyze the chronology of the legislative regulation of the relevant relations.

Thus, it is generally known that the Soviet legislation did not provide any protection to priests in carrying out and for carrying out their professional activities (conducting religious rites and sacraments). In the post-Soviet era, as we have already noted above, the obligation to refrain from demanding information from clergy, obtained by them during the confession of believers, was established for the first time in 1991 with the adoption of the law “On Freedom of Conscience and Religious Organizations”. However, the establishment of such provisions in no way affected the content of special legislation, including legislation regulating court proceedings in criminal and civil cases.

For the first time, the immunity of a witness-priest was established in the Criminal Procedure legislation in 2001, when amendments were made to this legislative act, according to which the opportunity to interrogate clergymen as witnesses regarding what was entrusted to them or became known during professional activity was lost (Article 69 of the Criminal Procedure Code of Ukraine dated 28.12.1960 No. 1001-05 as amended by Law No. 2533-III dated 21.07.2001). Here, attention should be paid to the legal wording itself. It could be interpreted quite broadly, so the established immunity extended not only to the information received by the priest during confession. In fact, thanks to such a norm, the priest’s right to refuse to testify on a wide range of issues, namely everything that was entrusted to them or became known, was established. After all, in fact it is difficult to accurately determine and separate what information the priest has received during his professional activities and in connection with his sacred status and a priori increased level of trust from the worshippers to him, and the information that he received as a citizen, resident of the community, neighbor, property owner, etc.

In civil-procedural and administrative-procedural legislation, the immunity of a witness-priest appeared with the adoption of new codes: the

Civil Procedure Code – in 2004, and the Code of Administrative Proceedings – in 2005.

Starting from 2017, the year of significant changes to Ukrainian procedural legislation (Law “On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings of Ukraine and Other Legislative Acts” dated 03.10.2017, No. 2147-VIII) – the immunity of a witness-priest in the Criminal Procedure Code, the Commercial Procedure Code, the Civil Procedure Code and the Code of Administrative Proceedings of Ukraine is established by identically similar and literal legislative formulations. In particular, the provisions of these acts establish that clergymen may not be questioned as witnesses in court proceedings about the information they received during the confession of worshipers.

At the same time, it is noteworthy that in the legislation that regulates the judicial process, the term “seal of confession” is not used, not stipulated, it is not a subject of regulation and protection. The reference to the “seal of confession” was first implemented in 2015, which was connected with the introduction of the institution of chaplaincy in the penitentiary system (for convicted, imprisoned, and acquitted persons). With regard to pastoral care in the Armed Forces of Ukraine, 2021 is the year of normative regulation and protection of the seal of confession, when the law “On Military Chaplaincy Service” dated 11/30/2021, No. 1915-IX was adopted and the actual creation of the corresponding full-time positions in the army was introduced [Bilash and Karabin 2020].

Thus, the legislation regulating the issue of the seal of confession is in the stage of establishment in Ukraine. It is not unified and to some extent contradictory. More on this in the following parts of the article.

## 2. CAN THE SEAL OF CONFESSION BE CONSIDERED A PROFESSIONAL SECRET, PROTECTION AGAINST INTERFERENCE IN THE PERSONAL AND FAMILY LIFE OF BELIEVERS, OR A TOOL FOR THE PROTECTION OF CLERGY?

What is actually the object of protection of modern Ukrainian legislation?

A) Some legal researchers justify the legal prohibition on interrogating priests as witnesses as the guarantee of *the principle of inviolability of the personal life of an individual*, and in this case, a believer, enshrined in the Constitution of Ukraine [Polyak 2020]. Hence, the restriction of interference in personal life is regulated by Articles 32 and 34 of the Constitution of Ukraine. Although constitutional norms do not reveal the content of personal (private) life, some explanations can be found in the decisions of the Constitutional Court. In particular, the personal life of an individual is his behavior in the sphere of personal, family, domestic, intimate, social, professional, business, and other relationships outside the boundaries of social activities. The Constitutional Court of Ukraine proceeds from the fact that it is impossible to determine absolutely all types of behavior of a natural person in the spheres of personal and family life since personal and family rights are part of natural human rights, which are inexhaustible and are realized in various and dynamic relations of property and non-property nature, relationships, conditions, events, etc. The right to private and family life is a fundamental value necessary for the full development of an individual in a democratic society and is considered the right of an individual to freestanding existence independently from the state, local self-government bodies, legal entities, and individuals.<sup>4</sup>

Hence, the conclusions of the researchers are obviously correct, that seal of confession refers to the components of the right to non-interference in personal and family life [Udoenko 2021, 10]. After all, the content of the confession consists of information that is of the most personal, innermost nature [Potaychuk 2018, 158-60]. And the prohibition in legal proceedings to interrogate clergymen as witnesses about the information obtained by them at the confession of believers should be considered an essential guarantee of non-interference in the personal and family life of believers [Udoenko 2017, 283-84].

Protection of this constitutional right can be carried out within civil proceedings. Thus, Article 302 of the Civil Code of Ukraine prohibits the dissemination of information about the personal life of an individual without one's consent. In case of violation of the right to private life, a person has the right to apply to the court with a claim for protection of honor and dignity, recovery of moral damages, or other type of claim.

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<sup>4</sup> Constitutional Court of Ukraine, decision dated January 20, 2012, No. 2-rp/2012.

B) Some researchers try to justify the witness immunity of priests with the presence of *professional secrecy* protected by law [Nehodchenko and Blinova 2015; Prystins'kyi 2011]. Professional secrets are entrusted to representatives of certain professions: a doctor, a notary, a banker, a lawyer, and not just anyone. Therefore, in separate studies, it is explained that the sign that distinguishes professional secrecy from personal secrecy is the presence of a subject who, as a result of the performance of his official duties, gained access to relevant information [Udoenko 2021, 94, 131]. The result of the disclosure of professional secrecy is damage to the person, society, and the state. The definition of a priest as a bearer of professional secrecy is justified by the fact that the violation of the seal of confession leads to the restriction of the rights and legal interests of the repentant person.

The argument in favor of the fact that the seal of the confession is a professional secret is also contained in the criminal procedural legislation. In particular, Part 3 of Article 65 of the Criminal Procedure Code of Ukraine specifies that clergymen may be exempted from the obligation to maintain *professional secrecy* with regard to entrusted information by the person who confided them with this information, to the extent determined by one. Such a release is made in writing under the signature of the person who entrusted the specified information. From this point, it can be concluded that the legislator included the seal of confession in the list of professional secrets. However, these provisions should be analyzed jointly with other legislation.

Moreover, the initial position should be that the term “professional secret” as a legal concept simply means secret or confidential information entrusted to a person of a certain profession. Professional secrecy is “formed” as a result of the performance of official duties and, accordingly, its disclosure is prohibited precisely by the norms of law. Otherwise, the concept will have no clear legal framework and boundaries. The same approaches are also present in the studies of legal researchers who specialize in the issues of state-denominational law [Prystins'kyi 2011, 25].

The underlying law in the Ukrainian legal system, which contains the main provisions on access to information, is the Law “On Information” dated 2.10.1992, No. 2657-XII. It determines that the procedure for access to secret information is regulated by laws. Another Law “On Access to Public Information” dated 13.01.2011, No. 2939-VI establishes that in-

formation containing state, professional, banking, and reconnaissance secrets, secret of pre-trial investigation, and other secrets prescribed by law, the disclosure of which may harm a person, society, and the state. Therefore, if professional secrecy is a type of secret information, the procedure for accessing it must also be determined by law.

Following the logic of the legislative provisions, in order to establish whether the information received by the priest during confession belongs to professional secrecy in the legal sense, it is necessary, first of all, to determine what exactly is regulated by law. Are there legal prohibitions against disclosure? Is liability for violation of prohibitions established by law? If so, in what cases and who can be the subjects of such professional secrecy?

Providing an answer to the questions, it is significant to refer to the legal regulation of positions and professions, as well as the legal regulation of the duties of priests, the performance of which requires access to information that may become the subject of professional secrecy. Thus, the National Classifier of Professions has been approved in Ukraine.<sup>5</sup> Under code 2460, the following positions are placed: 1) chaplain (military chaplain, health care chaplain, penitentiary chaplain, etc.), 2) clergyman (priest, pastor, presbyter, deacon, rabbi, mashgiach, mohel, sopher, imam, mullah, etc.), and 3) missionary. However, the given occupational classifier is intended for use by employers when recording work in the labor books of employees. It has nothing to do with the determination of full-time positions, job duties, and general service relations in religious organizations or in any other employers' organizations. Its task is only to unify the names of professions and positions and bring them to international standards, therefore the presence of the position of priest or chaplain in it cannot be considered as confirmation of the legal establishment of professional duties or powers.

In this context, the question of whether the legal norms sanctioned by the state determine the official duties of the priest is indispensable. Giving an answer to this question, it should be emphasized that the autonomy of religious organizations is a feature of democratic societies and is the subject of protection of international acts, in particular the Convention for

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<sup>5</sup> National Classifier of Ukraine DK 003:2010 "Profession Classifier": the State Committee of Ukraine on Technical Regulation and Consumer Policy Order dated 28.07.2010, No. 327.

the Protection of Human Rights and Fundamental Freedoms. The principle of autonomy forbids the state to oblige a religious community to accept new members or exclude others (*Svyato-Mykhaylivska Parafiya v. Ukraine*, ECHR, application no. 77703/01, 14.06.2007), to interfere in the election or appointment of priests (*Serif v. Greece*, ECHR, application no. 38178/97, 14.12.1999; *Agga v. Greece*, ECHR, applications no. 50776/99 and 52912/99, 17.01.2003), etc. Accordingly, the Ukrainian legislation leaves the right to settle these issues and the issues of clerical duties to the religious organizations where a certain priest serves. According to the provisions of the Law of Ukraine “On Freedom of Conscience and Religious Organizations”, religious organizations act in accordance with their hierarchical and institutional structure, electing, appointing, and replacing personnel in accordance with their charters (regulations) (Article 7 of the Law).

An exception is established for priests-chaplains of the Armed Forces of Ukraine, the National Guard of Ukraine, the State Border Guard Service of Ukraine, the State Special Service of Transport and Military Formations. Their legal status is significantly different from the legal status of other priests, so these issues will be discussed in a separate part of the article.

And the last, crucial within this context is the definition of whether the norms of law provide for the responsibility of priests for disclosing the seal of confession. Does the responsibility occur exclusively according to the norms of canon law?

The Catholic Church establishes the *sigillum confessionis*, forbidding priests to tell anyone what they heard during confession. The provisions of the IV Lateran Council determine that the secret of confession cannot be revealed: “Sacerdos [...] caveat autem omnino ne verbo vel signo aut alio quovis modo prodat aliquatenus peccatorem, set si prudentiori consilio indiguerit, illud absque ulla expressione persone caute requirat, quoniam qui peccatum in penitentiali iudicio sibi detectum presumpserit revelare, non solum a sacerdotali officio deponendum decernimus, verum etiam ad agendam perpetuam penitentiam in arctum monasterium detrudendum” [García y García 2013, 178]. In the author’s translation, this can be formulated as follows: “The confessor [...] should relentlessly follow to that in no way reveals the sinner, neither by word, nor sign, nor in any other way [...] the one who dares to reveal the sin told to him at the court repentance will be deprived not only of his priestly rank but also sent to a monastery with a strict statute for eternal penance.” The Code of Canons of the East-

ern Churches also establishes the inviolability of the seal of confession: can. 733 specifies that the confessor must be careful not to betray the penitent by word, sign, or in any way, or for any reason, it is also forbidden for the confessor to use the information obtained in the confession to the detriment of the penitent, even under the condition of excluding any possibility of discovery. The Orthodox Church, by the 120th rule of the Nomocanon under Great Euchologion, determines that for the discovery of the sin of the one who confessed, the spiritual father is prohibited from serving for three years, and every day he must make one hundred obeisances. Also, in Ukraine, there is a practice of bringing priests to justice for disclosing the secret of confession in accordance with the norms of canon law, in particular, in the form of depriving a priest of his spiritual rank.<sup>6</sup>

However, the legal norms determine neither the priest's duty to keep the confession secret nor, as a consequence, the responsibility for its disclosure (with the exception, again, of confessions to military chaplains and confessions in penitentiary institutions). Surely, it is possible to cite the positions of scientists who are inclined to the need to establish legal [Denysenko 2022] (or even criminal [Marysiuk 2003]) liability for the violation of the secret of confession, but thorough scientific works convince us of the inexpediency of establishing criminal liability for the violation of the secret of confession by a clergyman since there are enough means to react to the corresponding action, which contained in the norms of canon law [Vyslotska 2017, 4, 21, 145-46].

Thus, the secrecy of the confession cannot be considered from the standpoint of professional secrecy and the type of secret information protected by Ukrainian legislation.

C) Frequently, lawyers in scientific works analyze the secret of confession within the framework of research on *witness immunity*. The ban on interrogating a priest as a witness is a guarantee to enjoy the right to freedom of conscience in all aspects: not only a guarantee of the freedom to practice any religion but also a guarantee of the possibility to perform religious ceremonies. In the religious denominations that are most widespread in Ukraine, the secrecy of confession is an indispensable attribute of church sacraments. Therefore, the immunity granted to a priest in pro-

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<sup>6</sup> *Svyashchenyka UHKTS pozbavyly sanu za porushennya tayemnytsi spovidi*, [zaxid.net/striyska\\_yeparhiya\\_ugkts\\_pozbavila\\_sanu\\_svyashhenika\\_za\\_porushennya\\_tayemnytsi\\_spovidi\\_n1453995](http://zaxid.net/striyska_yeparhiya_ugkts_pozbavila_sanu_svyashhenika_za_porushennya_tayemnytsi_spovidi_n1453995) [accessed: 22.04.2023].

cedural legal relations is an important warranty of the priests' activity itself and the indisputability of the norms of canon law by the provisions of national legislation. In this context, the immunity guards over not so much the interests of the principal (this interest is protected by the constitutional principle of the inviolability of a person's personal life), yet for the interests of the one to whom this information was entrusted, namely, the priest who accepted the confession.

In this aspect, the provisions of the Criminal Procedure Code of Ukraine, which provide for the possibility of a priest being released from the obligation to keep the seal of confession, are quite interesting and extremely controversial. The Code stipulates that the release must be given in writing under the signature of the person who entrusted the information (Part 3 of Article 65 of the Criminal Procedure Code of Ukraine).

The existence of an obvious contradiction is connected, first of all, with the fact that the priest's obligation to keep a seal is established by the norms of canon law, and the possibility of exemption from the obligation is provided for in the provisions of national legislation. Of course, the written refusal of the person who entrusted the information, if it is not recognized by the norms of canon law, will not cancel the church canons and will not affect the possibility of bringing the priest to responsibility according to the norms of canon law. However, this can be evaluated as a violation of the principle of secularization (promulgated by the Law of Ukraine "On Freedom of Conscience and Religious Organizations") and as a state interference in the affairs of the church.

Secondly, the contradiction of the analyzed provisions is also revealed itself in the fact that the procedural law is formulated as follows: "cannot be questioned as witnesses: [...] 5) clergymen – about the information they received at the confession of believers [...]", in other words, the prohibition is addressed to persons who perform procedural actions and may involve the priest as a witness in the interrogation. Instead, the provisions of the law regarding the possible exemption from the obligation to keep a seal are addressed to the priest: "Persons [...] regarding the specified entrusted information may be exempted from the obligation to keep a professional secret by the person who entrusted them this information, in the amount determined by them [...]." Therefore, a reasonable question arises about the connection of these legislative provisions. It follows from the lexical interpretation that the so-called release of the priest from the obligation to

keep a secret by a person who has repented does not in any way affect the prohibition to interrogate him as a witness since such a prohibition is unconditional in relation to a procedural person. Moreover, it is questionable whether the interrogation of a priest can be used as proper evidence in court, even if such questioning is conducted with the so-called permission of the penitent.

Such conclusions are also confirmed by the chronology of legislative changes. Thus, the Criminal Procedure Code of Ukraine was adopted in 2012, the provisions relating to the priest's witness immunity and the possibility of exemption from the obligation to keep the seal is a part of the procedural law from the very beginning of its adoption. The "newer" procedural codes that were adopted in 2017 (the Law "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings of Ukraine") contain only norms regarding the prohibition of questioning a priest as a witness. The possibility of exemption from the obligation to observe secrecy is not mentioned in these acts. Therefore, it is logical to assume that the legislator understood the inaccuracy of the adopted provisions in the procedural code of 2012 and did not transfer them to the provisions of the procedural codes of 2017, however, the Criminal Procedure Code has not yet been amended.

Here it is also worth paying attention to the fact that in Ukraine the prosecution of offenders is carried out in accordance with the Code of Ukraine on Administrative Offenses. This act defines the rights and obligations of the participants in the proceedings, including witnesses. In particular, to obtain the attendance issued by the authority, the witness is obliged to appear at the specified time, give truthful explanations, inform him of everything he knows about the case, and answer the questions (Article 272 of the Code of Ukraine on Administrative Offenses). At the same time, the Code does not contain any reservations regarding the questioning of priest witnesses. Similarly, the Law "On Administrative Procedure" (enters into force on 15 December, 2023) defines the procedure for the adoption of administrative acts and provides for such a procedural action as giving a witness an explanation about the circumstances known to him, which are important for the resolution of the case. At the same time, the witness has the right to refuse to give an explanation about himself and

his relatives. Regarding the information received by the priest during confession, this law does not establish immunity.

The stated provisions of the laws, of course, can be considered as a deficiency of regulation and gaps in the legislation. However, the protection of the priest's activity by legal norms is present even in this case. We are talking about the provisions of the law "On Freedom of Conscience and Religious Organizations", from which the presentation of the material of the article began: "*No one* has the right to demand from clergy the information obtained by them during the confession of believers." These norms are generic, they are applied in all spheres of regulation, and their regulatory influence extends to the administrative procedure and to bring offenders to administrative liability.

### 3. PECULIARITIES OF REGULATING THE SEAL OF MILITARY CHAPLAIN CONFESSIONS AND CONFESSIONS IN PENITENTIARY INSTITUTIONS

During the outline of the article material, it was repeatedly noted that the seal of the confession, which was held in penitentiary institutions, as well as that which was entrusted to the chaplain by a military serviceman, is subject to special legal protection. Of course, there are reasons and grounds for this.

A) *The military chaplaincy service* in Ukraine was created very recently (Law "On Military Chaplaincy Service" dated 11.30.2021, No. 1915-IX), but its importance in the conditions of a full-scale war is high. Chaplains provide religious and spiritual support to the Armed Forces of Ukraine, provide pastoral care, contribute to the formation of personal stability and the proper spiritual state of personnel. The condition for the fulfillment of these tasks is the establishment of mutual trust between servicemen and chaplains. And this manifests, first of all, the state interest, and not only the private interest of a serviceman or priest-chaplain. Accordingly, there is a question of protection of the information entrusted to the chaplain by the serviceman by the norms of law, because the effect of the norms of canon law in this case is insufficient.

It is for this reason that the Law "On Military Chaplaincy Service" classified all information about a person that became known to a military

chaplain during military chaplaincy activities as confidential information (Article 10). Such a legislative decision is absolutely justified and crucial but requires separate attention to two points. The first is the status of confidential information and ways of protecting it by law, and the second is the issue of expanding the subject of protection: all chaplaincy activity falls under the regulatory influence, not only that obtained in the process of confession.

Hence, confidential information is one of the types of information with limited access, the legal status of which is determined by the Law "On Information". It is recognized as confidential and access to it is limited either by the person to whom it relates or by direct instruction of the law. The ban on the distribution of such information is not absolute, information can be disclosed, but this requires the desire of the person to whom it concerns. That is, information about a person that became known to a military chaplain during the performance of chaplaincy activities, as it is confidential, can be disclosed only at the request of the serviceman to whom it relates.

An interesting question is the period during which the information that became known to the chaplain is considered confidential. The law provides the status of confidentiality of information termless. And this means that the duty not to reveal the seal by the priest remains even when he has retired or resigned from the service in the Armed Forces. Also, the information does not lose its confidential status after the death of the confessor, such information can be disclosed only if the person gave one's consent to it during his lifetime.

The second aspect of the issue is that all chaplaincy activities fall under the protection of the law. Not only information received by a military chaplain during confession but all other information that became known to him during military chaplaincy activities are recognized as confidential. Probably, the reason for this legislative decision was the fact that not all religious schools recognize the sacrament of repentance and the seal of confession, even in most Christian Protestant schools, only communion and baptism are held, not to mention Muslims, Buddhists, etc. At the same time, the chaplain is obliged to provide spiritual assistance to all servicemen under his care, regardless of their religion. The law also defines the equality of representatives of all faiths in the satisfaction of their religious needs in the service. Therefore, not only the information from the

confession is under legal protection, but also the information that the chaplain received during private communication with servicemen, spiritual conversations, and other interactions.

What concerns the information that became known to the priest-chaplain directly during confession, the special legislation regulating military service only strengthens its protection and establishes guarantees of protection within the framework of military service. In particular, the Law "On Military Chaplaincy Service" defines the chaplain's right not to answer questions about the facts and circumstances that became known to him during the confession. And the Statute of the Internal Service of the Armed Forces of Ukraine (Law of Ukraine dated 03.24.1999, No. 548-XIV) establishes that the serviceman is obliged to report to his immediate superior about everything that happened to the serviceman and is related to his performance of official duties, except for those circumstances in respect of which there is a direct prohibition in the law (seal of confession, medical secrecy, professional secrecy of the defender, etc).

Since the regulation and protection of the information received by the chaplain is carried out by the law, at the same time, the question of legal liability for violating the established requirements arises. Here it should be noted that the liability according to the norms of canon law is not abolished, it is strengthened by the liability that can be applied by the state. In particular, the chaplain may be subject to disciplinary, civil, and criminal liability for improper use of confidential information. Disciplinary responsibility is applied in the manner determined for military personnel in accordance with the norms of the Disciplinary Statute of the Armed Forces of Ukraine (Law dated 24.03.1999, No. 551-XIV). Criminal and civil liability is applicable on general grounds. Criminal liability may arise for violation of privacy, manifested in the illegal use or dissemination of confidential information about a person (Article 182 of the Criminal Code of Ukraine).

B) *Confessions made in penitentiary institutions* have the highest degree of protection under the norms of Ukrainian law. All persons detained in penitentiary institutions have a state-guaranteed right to the seal of their confessions. This legislative guarantee is an important element in ensuring religious freedom [Vasin 2020, 30]. In addition, this is attributed to the extremely difficult circumstances in which the confessors found themselves, the technical difficulties of ensuring the confidentiality of

meetings and communications of convicts, suspects, and prisoners with priests, as well as the high degree of probable interest of outsiders to learn about the content of the confession.

In Ukraine, the staying of persons in penitentiary institutions is regulated by two main acts, depending on the grounds of stay in such institutions: the Criminal and Executive Code (from 11.07.2003, No. 1129-IV) – for persons serving criminal sentences, and the Law “On preliminary detention” (dated 30.06.1993, No. 3352-XII) – for suspects and accused persons who are subject to the preventive measure of detention. However, both the first and second laws contain identical provisions regarding the guarantees of the protection of the seal of the confession. Both acts specify that “The seal of confession is inviolable and protected by law. It is forbidden to make public, record by technical means, and reproduce any information obtained from the confession. Information obtained from a confession cannot be the subject of a pre-trial investigation, pre-trial inquiry, or criminal proceedings, or be used as a piece of evidence. No one may under any circumstances interrogate a clergyman, translator or another person on issues related to the confidentiality of confession” (Part 19, Article 12 of the Law “On Pretrial Detention”; Part 8, Article 128-1 of the Criminal and Executive Code of Ukraine).

What is important about the cited provisions is that they are directed mainly not at the priest, but at other persons: employees of penitentiary authorities, law enforcement agencies, the court, an interpreter. In particular, conditions must be created in the penitentiary for confession and ensuring its secrecy. No one is allowed to record the confession by technical means, even if the regime rules of the institution provide for this in other meetings. The law also clearly establishes that information obtained from a confession in a penitentiary cannot be used as evidence in any case, regardless of how and from whom this information was obtained.

Disciplinary sanctions are applied to public officials for violating the requirements, and in the event that this caused significant damage to the rights and interests of individual citizens, criminal liability may arise under Article 365 “Exceeding power or official authority by a law enforcement officer.” As for the person of the priest, it is essential that in this case the legislation does not establish his duties. It is governed by the norms of canon law and the regime rules of staying in the institution.

## CONCLUSIONS

Therefore, it is possible to draw up a general conclusion that the legislation of Ukraine differentially regulates and protects the seal of confession depending on the conditions and circumstances of the confession. It is possible to conditionally distinguish “three levels” of regulation and protection.

1. The general legal protection of the seal of confession is implemented through the provisions of the Law “On Freedom of Conscience and Religious Organizations” and procedural codes regarding the prohibition of demanding from clergy the information obtained by them during the confession of believers and interrogating them as witnesses. The specified provisions are a significant guarantee of non-interference in the personal and family life of a person, enshrined in the Constitution of Ukraine, and apply to all clergy whose religious direction involves such a sacrament as a confession. Legal protection of this right is carried out in civil proceedings.<sup>7</sup>

Prohibitions to demand from clerics information obtained by them during the confession of believers and to interrogate them as witnesses, established by procedural codes, are de facto serve as guarantees of canon law norms. After all, liability for violation of the seal of confession occurs exclusively according to the norms of canon law, while the provisions of procedural legislation provide an opportunity for the norms of canon law to be fulfilled under any circumstances.

2. Information entrusted to a military chaplain by a serviceman has a higher degree of legal protection. All information about a person that became known to a military chaplain during the implementation of military chaplaincy activities (not only through confessions but also during private communication, spiritual conversations, and other interactions) is confidential. This means that information can be disclosed, but only if the person (military serviceman) to whom it concerns wishes. Moreover, the presence of a person’s consent to the dissemination of information does not release the priest from the canonical obligation to keep the seal of confession. In addition to liability under canon law, a chaplain may be subject to

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<sup>7</sup> A person has the right to issue a claim to the court for the protection of honor and dignity, moral damages, or another type of claim.

disciplinary,<sup>8</sup> civil, and criminal liability for improper use of confidential information.<sup>9</sup>

3. The highest degree of legal protection under Ukrainian legislation is established for the confessions made in penitentiary institutions. This is due to the difficult circumstances in which the confessors found themselves, the technical difficulties of ensuring the confidentiality of prisoners' communications with priests, as well as the high degree of probable interest of outsiders to learn about the content of the confession. For such confessions, prohibitions on the disclosure of information apply not only to priests but also to other persons: employees of penitentiary authorities, the court, an interpreter. In particular, conditions must be created in the penitentiary for confession and ensuring its secrecy. No one is allowed to record the confession by technical means, even if the regime rules of the institution provide for such a possibility at other meetings. Disciplinary sanctions are applied to public servants for violating the requirements, and in the event that this caused significant damage to the rights and interests of individual citizens, criminal liability may arise. The priest is guided by the norms of canon law and the regime rules of staying in the institution.

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<sup>8</sup> Disciplinary responsibility of military personnel is regulated by the Disciplinary Statute of the Armed Forces of Ukraine and provides for the following types of sanctions: a) comment, b) reprimand, c) severe reprimand, d) deprivation of regular release from the location of a military unit or from a ship ashore, e) warning about incomplete official compliance, f) demotion, g) reduction in military rank by one degree, h) reduction in military rank with transfer to a lower position, i) dismissal from military service due to service inadequacy. The nature and circumstances of the offense, its consequences, previous behavior, length of military service, and level of knowledge of the service order and the commander's discretion affect the choice of the type of penalty. Since the service of military chaplaincy is a new institution in Ukraine, the practice on this issue has not yet been formed, and the indication of the type of punishment that will be applied for the disclosure of information by a chaplain will be based only on assumptions.

<sup>9</sup> The sanction of Article 182 of the Criminal Code of Ukraine for the illegal distribution of confidential information provides for a fine from 500 to 1000 non-taxable minimum of personal income, or correctional labor for a term of up to 2 years, or arrest for a term of up to 6 months, or restriction of freedom for a term of up to 3 years.

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## **The Seal of Confession under the Legislation of Ukraine**

### Summary

The article is devoted to the study of the seal of confession legal protection under Ukrainian legislation in the circumstances of its formation and development. The analysis provides grounds to draw conclusions concerning the “three levels” of regulation and protection of the seal of confession by the Ukrainian legislation, depending on the conditions and circumstances of the confession. The general legal protection of the seal of confession is accomplished through the provisions of the Law “On Freedom of Conscience and Religious Organizations” as well as procedural codes regarding the prohibition of demanding the information obtained from believers by clergymen during the confession and interrogating them as witnesses. Information entrusted to a military chaplain by a serviceman has a higher degree of legal protection and it acquires the status of confidential information. The highest degree of legal protection under Ukrainian legislation is established for confessions of guilt made in penitentiary institutions. For such confessions, prohibitions on the disclosure of information apply not only to priests, but also to other persons: employees of penitentiary authorities, courts and interpreters. There are also positive obligations to create conditions for confession and ensure its secrecy.

**Keywords:** seal of confession; confidential information; witness immunity; professional secret; right to private and family life

## **Tajemnica spowiedzi w ustawodawstwie Ukrainy**

### Streszczenie

Artykuł poświęcony jest badaniu prawnej ochrony tajemnicy spowiedzi w ustawodawstwie ukraińskim w warunkach jej kształtowania się i rozwoju. Przeprowadzone badania dały podstawę do wyciągnięcia wniosków o „trzech poziomach” regulacji i ochrony tajemnicy spowiedzi przez ustawodawstwo Ukrainy, w zależności od warunków i okoliczności spowiedzi. Powszechna ochrona prawna tajemnicy spowiedzi realizowana jest poprzez przepisy ustawy „O wolności sumienia i związkach wyznaniowych” oraz kodeksy postępowania dotyczące zakazu żądania od duchownych informacji uzyskanych przez nich podczas spowiedzi osób wierzących oraz przesłuchując ich w charakterze świadków. Informacje powierzone kapelanowi wojskowemu przez żołnierza mają wyższy stopień ochrony prawnej, ponieważ nabierają one statusu informacji poufnych. Najwyższy stopień ochrony prawnej w ustawodawstwie ukraińskim zapewnia przyznanie się do winy w zakładach penitencjarnych. W przypadku takich zeznań zakazy rozpowszechniania informacji dotyczą nie tylko księży, ale także innych osób: pracowników organów penitencjarnych, sądu, tłumacza. Istnieją również pozytywne obowiązki stworzenia warunków do spowiedzi i zapewnienia jej tajemnicy.

**Słowa kluczowe:** tajemnica spowiedzi; informacje poufne; nietykalność świadków; tajemnica zawodowa; prawo do życia prywatnego i rodzinnego

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