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LEGAL REGULATION OF MILITARY SERVICE IN UKRAINE BY FOREIGNERS AND STATELESS PERSONS

It is emphasised that today, along with its citizens, Ukraine is also being defended against Russian aggression by citizens of other countries. Over the past three years, a number of amendments and additions have been made to national legislation regarding the legal status of foreign military personnel and stateless persons and the procedure for their military service.

The points of view of scholars on the sectoral nature of military service relations are studied. The categories of “labour”, “service” and “contract” are considered. The close connection between the categories of “labour” and “service” is pointed out. It is substantiated that the category of “service” is manifested in the mental activity of an employee, which corresponds to one of the two types of employee’s activity, which can be physical and mental.

It is proved that military service under a contract has the characteristics of non-independent, hired labour. Therefore, by its very nature, military service under a contract is a non-independent, specialised hired labour. The relations regarding the performance of military service under a contract are labour relations which are the subject matter of labour law.

The attention is drawn to the fact that the Law of Ukraine “On Military Duty and Military Service” devotes only one article to the peculiarities of military service by foreigners and stateless persons (Article 21-2) and another article is devoted to their financial support (Article 21-3). The incorrectness of separate coverage of the procedure for financial support is pointed out, since it is an important condition for military service.

Based on the analysis of Art. 21-2 of the Law of Ukraine “On Military Duty and Military Service”, it is noted that, despite the title, it has a rather laconic content, essentially not defining the specifics of military service by foreigners and stateless persons. The provision of Part 2 of Article 21-2 of this Law, which provides for the terms of military service of foreigners and stateless persons, cannot be called peculiar, since Article 23 “Terms of Military Service” provides for similar terms of military service in calendar terms for Ukrainian citizens who are enlisted for military service under a contract. The provision on the possibility of termination of the contract is hardly related to the performance of service.

The article proposes to amend Article 21-2 “Peculiarities of Military Service by Foreigners and Stateless Persons” of the Law of Ukraine “On Military Duty and Military Service” to provide for differences in the rights, duties and responsibilities, terms of service, service time and rest time, and financial support of foreign military personnel and stateless persons compared to military personnel who are citizens of Ukraine.

Keywords: legal regulation, military service, foreigner, stateless person, serviceman, labour, employee, contract.

Оригінальна стаття

INTRODUCTION. These days, citizens of other countries are defending Ukraine from Russian aggression alongside its citizens. According to The Washington Post, about 20.000 foreigners have joined the Ukrainian army since the beginning of the full-scale invasion of the aggressor state, Rus-

sia¹. According to the UNIAN news agency, citizens from 72 countries are currently serving in

¹ Ukrainian News. (2024, March 1). *The media reported the number of foreigners fighting for the*

the Defence Forces, 40 per cent of them from South America. According to Lieutenant Colonel K. Milevskiy, chief specialist of the department for coordination of military service by foreigners in the Armed Forces, 400 to 600 foreign nationals are recruited to the Armed Forces every month¹.

In order to facilitate the process of attracting volunteers from other countries to the Armed Forces of Ukraine, the President of Ukraine issued a Decree "On the Temporary Introduction of a Visa-Free Regime" of 28 February 2022. No. 82/2022, which provided for the introduction of a temporary visa-free regime for entry into Ukraine for citizens of foreign countries wishing to join the International Legion of Defence of Ukraine, except for citizens of a state recognised as an aggressor state, starting from 1 March 2022, for the period of martial law until the President of Ukraine makes a relevant decision².

Over the past three years, a number of amendments and additions have been made to national legislation regarding the legal status of foreign military personnel and stateless persons and the procedure for their military service. The above necessitates a scientific study of the legal regulation of military service in Ukraine by foreigners and stateless persons.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The purpose of the article is to improve the national legislation regulating military service in Ukraine by foreigners and stateless persons. The objectives of the study are: to study the views of scholars on the sectoral affiliation of relations related to military service; to consider the categories of "labour", "service", "contract"; to investigate the state of legal regulation of military service in Ukraine by foreigners and stateless persons.

METHODOLOGY. The research was carried out using general scientific and special scientific methods. In particular, formal-logical, comparative legal and systemic-structural methods were used. These methods allowed for a comprehensive scientific study of the legal regulation of mili-

tary service in Ukraine by foreigners and stateless persons.

The scientific basis of the article is provided by the works of national scholars, provisions of the Constitution of Ukraine, the Labour Code of Ukraine, the Laws of Ukraine "On the Legal Status of Foreigners and Stateless Persons" No. 3773-VI of 22 September 2011 and "On Military Duty and Military Service" No. 2232-XII of 25 March 1992, and the Decree of the President of Ukraine "On Temporary Introduction of the Visa-Free Regime".

RESULTS AND DISCUSSION. Of particular importance for the proper coexistence of an individual, society and the state is the establishment and observance of rules of lawful behaviour, which is achieved primarily through legal regulation. According to the authors of the textbook "General Theory of State and Law", a prerequisite for the existence and harmonious development of every society, and for the fair satisfaction of the interests of all its members, is the establishment and maintenance of a certain order in relations between them. The main burden in performing these functions falls on an extensive system of social regulation specially adapted to the peculiarities of social life, an important place in which is occupied by legal regulation (Tsvik et al., 2009, p. 207).

The leading role in the process of legal regulation belongs to the legislature, which has exclusive competence to adopt laws that are acts of supreme legal force adopted within a special procedure.

The legal status of foreign servicemen and stateless persons and the peculiarities of their military service in Ukraine are enshrined, first of all, in the Constitution of Ukraine, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" of 22 September 2011 No. 3773-VI and the Law of Ukraine "On Military Duty and Military Service" of 25 March 1992 No. 2232-XII. Thus, Article 26 of the Constitution of Ukraine provides: "Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms, as well as bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine"³.

The national legislation establishes special rules for entry and exit from Ukraine and stay on its territory for foreigners and stateless persons performing military service in the Armed Forces of Ukraine, the State Special Transport Service

AFU. <https://ukranews.com/ua/news/988434-zminazvaly-skilky-inozemtsiv-voyuyut-za-zsu>.

¹ UNIAN. (2024, December 10). *How many foreign nationals are joining the Ukrainian military: the Armed Forces of Ukraine reveal the details*. <https://www.unian.ua/war/inozemci-u-viyni-v-ukrajini-uzshu-rozkrili-silki-inozemciv-vstupayut-do-armijishchomisnyacya-12847326.html>.

² President of Ukraine. (2022). *On the Temporary Introduction of a Visa-Free Regime* (Decree No. 82/2022). <https://www.president.gov.ua/documents/822022-41441>.

³ Verkhovna Rada of Ukraine. (1996). *Constitution of Ukraine* (Law No. 254к/96-BP). <https://zakon.rada.gov.ua/laws/show/254к/96-вп>.

and the National Guard of Ukraine. Thus, Part 19 of Article 4 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” states: “Foreigners and stateless persons who have duly concluded a contract for military service in the Armed Forces of Ukraine, the State Special Transport Service, the National Guard of Ukraine are considered to be legally residing on the territory of Ukraine for the period of validity of the contract for military service in the Armed Forces of Ukraine, the State Special Transport Service, the National Guard of Ukraine and for three months after its termination (cancellation). Temporary residence on the territory of Ukraine of such foreigners and stateless persons is confirmed by a military registration document (service certificate) of servicemen, the form, procedure of registration (creation) and issuance of which are determined by the Ministry of Defence of Ukraine and the Ministry of Internal Affairs of Ukraine respectively”¹. Article 15 of the same Law stipulates that entry into and exit from Ukraine of foreigners and stateless persons performing military service under contract in the Armed Forces of Ukraine, the State Special Transport Service, and the National Guard of Ukraine is carried out on the basis of a passport document and a military registration document (service certificate) of military personnel, the form, procedure for registration (creation) and issuance of which are determined by the Ministry of Defence of Ukraine and the Ministry of Internal Affairs of Ukraine, respectively².

Thus, the legality of the stay of foreigners and stateless persons in Ukraine is, among other things, directly related to their military service. Such persons do not need a temporary residence permit. For foreign military personnel and stateless persons, a military registration document actually serves as a temporary residence permit.

National legislation provides that foreigners and stateless persons performing military service in Ukraine receive the status of a serviceman with a voluntary procedure for performing military service in Ukraine on the basis of a contract.

It should be noted that in the legal literature, relations related to public service, including military service, are usually referred to as the subject matter of administrative law. For example, the authors of the textbook “Administrative Law of Ukraine” state that “the subject of administrative

law is social relations that arise with the aim of realising and protecting the rights of citizens, creating normal conditions for the functioning of civil society and the state. Such relations are connected with: 1) activities of executive authorities; 2) internal organisational activities of other state bodies, enterprises, institutions, organisations; 3) management activities of local self-government bodies; 4) exercise of delegated powers of executive authorities by other non-state actors; 5) administration of justice in the form of administrative proceedings” (Bytiak et al., 2007, pp. 25–26). According to R. Liashuk (2016, p. 83), “the subject matter of administrative law of Ukraine is a group of homogeneous social relations of regulatory or protective, material or procedural nature, which are formed in the process of: a) administration of various spheres of public life; b) implementation and protection of subjective rights of citizens and legal entities in administrative order; c) activities and internal management of executive authorities, local self-government bodies and non-governmental institutions to which the State may delegate powers; d) provision of administrative services to the public”. O. Drozd (2016, p. 106) considers the civil service in Ukraine to be an indisputable component of the subject matter of administrative and legal regulation. According to V. Venediktov (2004, p. 11), “there are categories of persons whose labour relations are not included in the subject matter of labour law. These include military personnel in regular service, including persons performing alternative (non-military) service. The labour of these categories is not the result of their exercise of their right to work on the basis of free choice of employment, but of the performance of military duty”. P. Pylypenko (2003, pp. 13–14) notes that “labour legislation does not cover labour relations with citizens called up for active military service in the course of fulfilment of their military duty by male citizens. The labour of persons called up for alternative (non-military) service is the result not of their exercise of the right to work, but of the performance of military duty”.

Indeed, the relations on the performance of regular military service and alternative (non-military) service arising from the constitutional duty of Ukrainian citizens to defend the independence and territorial integrity of Ukraine undoubtedly belong to the subject of legal regulation of administrative law, which is based on imperative principles (principles of power and subordination).

The legal nature of military service under a contract is somewhat different, which is primarily related to the voluntary choice of a person’s place

¹ Verkhovna Rada of Ukraine. (2011). *On the Legal Status of Foreigners and Stateless Person* (Law No. 3773-VI). <https://zakon.rada.gov.ua/laws/show/3773-17>.

² Ibid.

of work, profession, etc. This is typical for hired labour, which is the basis of labour relations and is regulated by labour law.

As noted by V. Zhernakov (1999, p. 35), “freedom of labour as freedom of labour activity is expressed in many provisions of labour law. Freedom to engage in labour is a characteristic feature of labour relations regulated by such branches as labour and civil law, as opposed to administrative and criminal law relations, where the law permits the use of labour not based on free will”. O. Kovalenko (2015, p. 269) points out that “for modern labour law, the principle of freedom of labour is manifested in solving issues of engagement in labour, based on free decision-making by the holder of the ability to work: only he can decide whether to exercise his right to work or not and, if so, in what form. The embodiment of this cross-sectoral principle in labour law is that everyone has the exclusive right to dispose of their ability to work. This right is exercised by entering into a contractual relationship with the employer”.

It is necessary to pay attention to a certain difference in terminology when defining these types of human activity – the use of the terms “service” and “labour”. The very use of different terms, according to some scholars, is a sign that the relations of service and labour are the subject matter of different branches of law.

At the same time, an analysis of encyclopaedic literature shows that the concepts of “work” and “service” are closely related. Thus, Wikipedia interprets the word “service” as follows: “1. An action in the sense of serving... // Duty determined by the position... 2. Labour, occupation as a means of subsistence... // A place where someone works, serves... 3. Staying in the army, performing military duty... // A certain branch of military knowledge, duties, and a system of service institutions within the army. Quartermaster service. Sanitary service... 4. A branch of production, as well as an institution or organisation in charge of a particular area of work. Audit service... Marketing service... Metrological service... Weather service... Time service...”¹.

The legal literature identifies the following features of the category “service”: “a) it is not directly aimed at the production of material values, but at creating conditions for material production; b) the performance of service activities is conditioned by the possession of a specific subject of labour – information, which is also a means of influence (collection, processing, transmission,

storage, creation of information) on the objects of management or objects of provision of management services; c) it is usually associated with the employment of mental labour; d) it is paid; e) it is performed by persons holding positions in state or municipal bodies, corporate or public organisations” (Bila-Tiunova, 2009, pp. 142–143); “this term refers to a type of labour activity that is mainly related to the performance of managerial and administrative functions of a non-productive nature” (Lemesh, 2016, pp. 16–17).

The foregoing does not in any way imply that when the term “service” is used, the relevant legal relations automatically fall within the scope of administrative law. It follows that the category of “service” is manifested in the mental activity of an employee, which corresponds to one of the two types of employee’s activity – physical and mental.

Labour relations, which are the core of the subject matter of labour law, are based on non-independent, hired labour. The legal literature distinguishes the following features: 1) labour relations arise on the basis of an agreement between an employee and an employer; such an agreement in labour law has a special name – an employment contract; 2) it is legally non-independent work performed within a certain enterprise, institution, organisation (legal entity) or for an individual (employer); 3) it involves the performance of a certain type of work (labour function); 4) it is carried out in compliance with the labour regulations established at a particular enterprise or determined by an individual employer; 5) it is performed not on the basis of own means of production, but at the expense of the employer’s funds (capital); 6) work is performed not at one’s own risk, but by following the instructions and orders of the employer or his/her authorised body for guaranteed payment; 7) an employment contract is usually concluded for an indefinite period and only in cases provided for by law – for a fixed term; 8) work is usually performed in a team of employees (labour collective); 9) performance of a certain amount of work (labour standards) during the established working hours; 10) receipt of remuneration from the employer within a certain period of time for the performed work 10) receipt of remuneration for work performed from the employer within a certain timeframe; 11) provision of guarantees by the employer established by labour legislation in certain cases; 12) mandatory participation of the employer in financing social insurance of the employee (Bolotina, 2004, pp. 50–51).

With a view to clarifying the sectoral affiliation of relations related to military service under a contract, we will carry out a comparative analysis

¹ Wikipedia. *Service*. <https://uk.wikipedia.org/wiki/Служба>.

of the features of this service with the above-mentioned features of non-independent, hired labour.

Thus, the studied relations on military service arise on the basis of a contract, which is a type of labour contract. Part 3 of Article 21 of the Labour Code of Ukraine states that a special form of an employment contract is a contract in which the term of its validity, rights, obligations and liability of the parties (including financial liability), conditions of material support and organisation of work of the employee, conditions of termination of the contract, including early termination, may be established by agreement of the parties. The scope of the contract is determined by the laws of Ukraine¹.

The above shows that the national legislator recognises the contract as a special form of employment agreement. At the same time, we agree with the arguments of V. Prokopenko (1995, p. 112), who emphasises the fallacy of this rule: "In the philosophical sense, the form is the outer shell of a phenomenon. Such a shell of labour contracts may be oral or written. But even earlier, in some cases, employment contracts were concluded in writing, for example, in the case of organised recruitment, work with special natural geographical and geological conditions, conditions of increased health risk, etc. These agreements do not constitute a special form of an employment contract, but are its separate types. Therefore, the definition in Art. 21 of the Labour Code of Ukraine of a contract as a special form of an employment contract is erroneous". Thus, we share the position that a contract is considered a type of employment agreement.

The conclusion of a contract gives rise to labour relations, the content of which is determined by the parties. Thus, a contract is an agreement on the content of labour relations. As noted by S. Vereitin (2024, p. 44), "when the employment contract was first introduced in the early twentieth century, it was limited to the employee's consent to obey the internal regulations of the business enterprise and the economic power of the employer. In the middle of the twentieth century and later, in the former USSR, an employment contract was an agreement on employment for a specific job, due to the fact that most types of socially useful work were performed at state-owned enterprises and were subject to strict state regulation of working conditions. Today, when it comes to private companies, it is true that an em-

ployment contract is an agreement of substance. However, with regard to state-owned enterprises, civil service, and law enforcement agencies, where working conditions and remuneration are clearly defined by national legislation, an employment contract remains, for the most part, an agreement on employment (service)". Agreeing with the scholar, the relationship regarding military service under a contract should be considered an agreement on acceptance for military service, since the conditions of such service are clearly defined by national legislation.

A contract is traditionally considered a special type of fixed-term employment agreement. At the same time, B. Stychynskyi, I. Zub and V. Rotan (2002, p. 148) point to the possibility of the existence of open-ended contracts: "A contract need not be concluded for a fixed term. The parties are free to specify or not to specify a specific term of the employment contract".

It should be noted that the contractual military service relationship is of a fixed-term nature. Thus, Art. 23 of the Law of Ukraine "On Military Duty and Military Service" establishes clear terms of military service under a contract in calendar terms.

In general, the practice of using contracts in Ukraine shows that they are exclusively fixed-term. It is important to distinguish between a contract and an ordinary fixed-term employment agreement, the difference between which is as follows: "Firstly, the scope of a contract is determined exclusively by law; secondly, a contract may set out the liability of the parties (including material liability), the terms and grounds for its termination, including early termination; thirdly, a contract cannot be converted into an employment contract for an indefinite period. The possibility of converting a fixed-term employment contract into an employment contract for an indefinite period is provided for in Article 39-1 of the Labour Code of Ukraine. As for the contract, the rule of paragraph 24 of the Regulation on the Procedure for Concluding Contracts for the Recruitment (Hiring) of Employees, approved by the Resolution of the Cabinet of Ministers of Ukraine of 19 March 1994 No. 170, applies, according to which two months before the expiry of the contract, it may be extended or concluded for a new term by agreement of the parties" (Melnyk, 2014, p. 161).

Military service under a contract is not legally independent. A serviceman performs it in a particular military unit, subordinated to its regulations and the relevant command. He is a member of the unit's staff and acts not in his own interests, but in the interests of the military service, contributing to the achievement of its goals and fulfilment of its tasks.

¹ Verkhovna Rada of Ukraine. (1971). *The Labor Code of Ukraine* (Law No. 322-VIII). <https://zakon.rada.gov.ua/laws/show/322-08>.

The essence of military service under a contract is the performance by a serviceman of official duties defined by national legislation, contract and job description. Service is carried out as part of military teams – platoon, company, battalion, regiment, brigade, etc.

For the performance of official duties, a serviceman receives remuneration at the expense of the state, which is the employer in the relations under study. Also, the serviceman is provided with weapons, communications, transport, personal protective equipment, etc. at the expense of the state. The state guarantees social protection to servicemen and their families in case of social risks.

Thus, military service under a contract is characterised by signs of non-independent, hired labour. Therefore, by its very nature, military service under a contract is a non-independent, specialised hired labour. The relations concerning the performance of military service under a contract are labour relations that fall within the scope of labour law.

The Law of Ukraine “On Military Duty and Military Service” sets out a list of requirements for the recruitment of foreigners and stateless persons for military service. Thus, part 12 of Article 2 of the Law provides that a foreigner or stateless person who is first enlisted in the Armed Forces of Ukraine, the State Special Transport Service or the National Guard of Ukraine shall make an official commitment to strictly observe the Constitution and laws of Ukraine and to faithfully perform the duties of military service¹. In accordance with Article 21-1 of the Law of Ukraine “On Military Duty and Military Service”, foreigners and stateless persons who have not been previously convicted and who are legally residing in Ukraine and who meet the following requirements for military service, in particular: are of the age specified in Article 22 of this Law; have passed a special examination; are fit for military service for health reasons; have passed a professional and psychological selection; and have a sufficient level of Physical Training, are enlisted for military service under a contract².

National legislation establishes the age limit for military service, i.e. the age at which a serviceman is dismissed from service. A person who has already reached the age limit cannot be recruited for military service. When setting the age

limit, a differentiated approach is applied depending on the category of positions. Thus, in accordance with part 1 of Article 22 of the Law “On Military Duty and Military Service”, the age limit for military service is established:

1) for servicemen holding the rank of private, junior sergeant and sergeant major who perform military service under a contract – up to 45 years of age;

2) for servicemen holding the rank of senior sergeant and sergeant major who are carrying out military service on a contractual basis – up to 50 years of age;

3) for servicemen holding the rank of higher sergeant and sergeant major who are carrying out military service on a contractual basis – up to 55 years of age;

4) for servicemen holding the rank of junior officer – up to 45 years of age;

5) for senior officers: majors (captains of the 3rd rank), lieutenant colonels (captains of the 2nd rank) – up to 50 years of age; colonels (captains of the 1st rank) – up to 55 years of age;

6) for servicemen of senior officer rank – up to 60 years of age;

7) for servicemen performing military service during a special period, from among the following persons:

– privates, non-commissioned officers and sergeants, junior and senior officers – up to 60 years of age;

– senior officers – up to 65 years of age³.

In Ukraine, foreigners and stateless persons can apply to various institutions for military service. First of all, this is done by the Recruitment Centre for Foreigners and Stateless Persons, which operates on the basis of the Regulation on the Recruitment Centre for Foreigners and Stateless Persons, approved by the Cabinet of Ministers of Ukraine on 29 November 2024, No. 1374⁴. Foreigners and stateless persons may also apply for military service at recruitment centres, administrative service centres, employment centres, territorial recruitment and social support centres at their place of residence or temporary stay or directly to the military unit in which they wish to serve under contract.

The enlistment of foreigners and stateless persons for military service is carried out in stages and includes the following steps 1) consideration of the application of a foreigner or stateless

¹ Verkhovna Rada of Ukraine. (1992). *On General Military Duty and Military Service* (Law No. 2232-XII). <https://zakon.rada.gov.ua/laws/show/2232-12>.

² Ibid.

³ Ibid.

⁴ Cabinet of Ministers of Ukraine. (2024). *Regulations on the Recruitment Centre for Foreign Nationals and Stateless Persons* (No. 1374). <https://zakon.rada.gov.ua/laws/show/1374-2024-п>.

person for military service; 2) passing a special examination; 3) passing a military medical commission; 4) passing a professional and psychological selection; 5) passing a Physical Training test.

The above indicates that national legislation establishes quite significant requirements for foreigners and stateless persons wishing to perform military service in Ukraine. This is also confirmed by the chief specialist of the department for coordination of military service by foreigners in the Armed Forces of Ukraine, Lieutenant Colonel K. Milevskyi, who said that “a certain number of foreigners are eliminated at the stages of Physical Training, Preliminary Medical Examination, etc.”¹.

It should be noted that the Law of Ukraine “On Military Duty and Military Service” devotes only one article to the specifics of military service by foreigners and stateless persons – Article 21-2, and another to their financial support (Article 21-3). We consider the latter to be an important condition for military service, and therefore there is a need for separate coverage of the procedure for financial support along with the provisions of Article 21-2 of the Law.

Article 21-2 “Peculiarities of Military Service by Foreigners and Stateless Persons” of the Law of Ukraine “On Military Duty and Military Service” provides that the contract for military service of foreigners and stateless persons shall include a probationary period of two months. For servicemen from among foreigners and stateless persons who are enlisted for military service under a contract and appointed to positions, the following terms of military service are established in calendar terms: for privates – 3 years; for sergeants and non-commissioned officers – from 3 to 5 years; for officers – from 1 to 5 years. During the special period, foreigners and stateless persons performing military service under a contract are guaranteed the possibility of terminating (cancelling) their contract at their own request, but not earlier than six months of continuous military service. Foreigners and stateless persons have access to state secrets in accordance with the Law of Ukraine “On State Secrets”².

An analysis of the above-mentioned article indicates that, despite its title, it is rather concise in content and, in essence, does not define the specific features of military service performed by foreign nationals and stateless persons. Indeed, it is difficult to regard the provision of Part 2 of Article 21-2 of the Law, which sets out the terms of military service for foreigners and stateless persons, as a distinctive feature, since Article 23, “Terms of Military Service”, of the same Law provides for identical calendar-based service terms for Ukrainian citizens who enlist under contract. Moreover, the provision regarding the possibility of terminating (or rescinding) a contract can hardly be considered a feature of the actual service process.

Article 21-3, “Monetary Allowance for Foreigners and Stateless Persons Serving in the Armed Forces of Ukraine, the State Special Transport Service, and the National Guard of Ukraine”, of the Law of Ukraine “On Military Duty and Military Service”, stipulates that the amount of monetary allowance for foreigners and stateless persons serving in the Armed Forces of Ukraine, the State Special Transport Service, and the National Guard of Ukraine shall be set at the same level as that established for Ukrainian citizens serving under contract³.

The foregoing indicates that national legislation does not provide for any special provisions regarding the monetary allowance of foreign nationals and stateless persons serving in the military in Ukraine, despite the fact that the relevant article is located in Chapter III-1, “Peculiarities of Enlistment and Military Service in the Armed Forces of Ukraine, the State Special Transport Service, and the National Guard of Ukraine by Foreign Nationals and Stateless Persons”, of the Law.

We believe that monetary allowance is the main motivating factor for foreign nationals and stateless persons to undertake military service in Ukraine. Therefore, setting a higher level of monetary allowance for them in comparison to Ukrainian citizen servicemen would contribute to a broader recruitment of professional military personnel and law enforcement officers from other countries into the Armed Forces of Ukraine, the State Special Transport Service, and the National Guard of Ukraine.

CONCLUSIONS. Contract-based military service bears the characteristics of dependent, remunerated labour. Therefore, by its very nature, it constitutes dependent, remunerated work of a special kind. Relations pertaining to the performance of military service under contract are

¹ UNIAN. (2024, December 10). *How many foreign nationals are joining the Ukrainian military: the Armed Forces of Ukraine reveal the details*. <https://www.unian.ua/war/inozemci-u-viyni-v-ukrajini-u-zsu-rozkrili-skilki-inozemciv-vstupayut-do-armiji-shchomislyacya-12847326.html>.

² Verkhovna Rada of Ukraine. (1992). *On General Military Duty and Military Service* (Law No. 2232-XII). <https://zakon.rada.gov.ua/laws/show/2232-12>.

³ Ibid.

labour relations and fall within the scope of labour law.

There is a rationale for amending Article 21-2, “Peculiarities of Military Service by Foreign Nationals and Stateless Persons”, of the Law of Ukraine “On Military Duty and Military Service”,

to introduce distinctions in the rights, duties, and responsibilities, terms of service, service hours and rest periods, as well as in the monetary allowance of foreign service members and stateless persons, in comparison with service members who are citizens of Ukraine.

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ПРАВОВЕ РЕГУЛЮВАННЯ ПРОХОДЖЕННЯ ВІЙСЬКОВОЇ СЛУЖБИ В УКРАЇНІ ІНОЗЕМЦЯМИ ТА ОСОБАМИ БЕЗ ГРОМАДЯНСТВА

Сьогодні Україну від російської агресії, поряд із її громадянами, захищають також громадяни інших держав. Упродовж останніх трьох років до національного законодавства було внесено низку змін і доповнень щодо правового статусу іноземних військовослужбовців та осіб без громадянства, а також порядку проходження ними військової служби. Вивчено наукові підходи до визначення галузевої належності правовідносин, що виникають у зв'язку з проходженням військової служби. Проаналізовано категорії «праця», «служба» і «контракт», звернено увагу на їхній тісний взаємозв'язок. Обґрунтовано, що

категорія «служба» виявляється у розумовій діяльності службовця, яка відповідає одному з двох основних видів діяльності працівника – фізичній або розумовій.

Доведено, що військовій службі за контрактом притаманні ознаки несамостійної, найманої праці. Тому за своєю суттю вона є несамостійною, найманою працею спеціального характеру. Відносини, що виникають у зв'язку з проходженням військової служби за контрактом, належать до предмета трудового права.

Звернено увагу на те, що особливостям проходження військової служби іноземцями та особами без громадянства у Законі України «Про військовий обов'язок і військову службу» присвячено лише одну статтю – ст. 21-2, а питання їх грошового забезпечення окремо висвітлено у ст. 21-3. Вказано на неправильність окремого висвітлення порядку грошового забезпечення, оскільки воно є важливою умовою військової служби.

На основі аналізу ст. 21-2 Закону України «Про військовий обов'язок і військову службу» зазначено, що, попри її назву, вона має надто стислий зміст і фактично не визначає реальних особливостей проходження служби іноземцями чи особами без громадянства. Не можна назвати особливостями норму ч. 2 ст. 21-2 цього Закону, яка передбачає строки військової служби іноземців та осіб без громадянства, адже у ст. 23 передбачено аналогічні строки військової служби в календарному обчисленні для громадян України, які приймаються на військову службу за контрактом. Норму ж про можливість припинення (розірвання) контракту взагалі складно віднести до проходження служби.

Запропоновано внести зміни до ст. 21-2 «Особливості проходження військової служби іноземцями та особами без громадянства» Закону України «Про військовий обов'язок і військову службу», які б передбачали відмінності у правах, обов'язках, відповідальності, строках служби, режимі службового часу й часу відпочинку, а також у грошовому забезпеченні іноземців та осіб без громадянства порівняно з військовослужбовцями – громадянами України.

Ключові слова: *правове регулювання, військова служба, іноземець, особа без громадянства, військовослужбовець, праця, працівник, контракт.*

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