
**REGISTRÁCIA CIRKVI A NÁBOŽENSKÝCH
SPOLOČNOSTÍ V ZEMIACH VYŠEHRADSKEJ ŠTVORKY,
RAKÚSKU A NA UKRAJINE**

**REGISTRATION OF CHURCHES AND RELIGIOUS
SOCIETIES IN THE VISEGRAD FOUR COUNTRIES,
AUSTRIA AND UKRAINE**

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Damián Němec (ed.)

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REGISTRATION OF RELIGIOUS COMMUNITIES IN UKRAINE

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Abstract

This article deals with the analysis of the administrative and legal mechanism of the procedure for the registration of religious communities and current changes in the legislation of Ukraine. Based on the texts of constitutions and regulatory-and-legal acts, the author conducts a brief analysis of religious legislation in the era of the Soviet Union, comprehensively characterises the modern legislation of Ukraine in the sphere of freedom of conscience and religion, and indicates that the legal status of religious communities in Ukraine is conditioned by the constitutional and administrative-and-legal principles of relations between the state and religious communities. The author provides the latest statistical data on the religious situation in Ukraine and analyses the first international treaty of independent Ukraine with a religious community – the Ecumenical Patriarchate.

Keywords

Confessional law, freedom of conscience, freedom of religion, legislation of Ukraine, registration of religious communities, religious associations, church, legal regulation, legal entities

Introduction

The problems of the proposed research concerning the registration of churches and religious communities in Ukraine is more relevant than ever. Ukrainian legislation in the sphere of freedom of conscience and religion has undergone significant changes over many decades, along with the relationship between the state and religious communities, while the legal status of religious communities, as a specific institution of civil society, has also been changing. Being an institutional form of the expression of religion and the most important condition of its social existence, religious communities are created and operate to satisfy the religious needs of people, who determine the essence and purpose of religious communities.

Changes in the constitutional-and-legal status or administrative-and-legal status of religious communities in a state directly affect not only state-and-church relations in general, but also the entire religious life of a society. The undoubted fact is that it is from the members of this society that the religious community consists, and the primary goal of such a group of believers is the subsequent registration and obtaining of the status of a religious community. Administrative-and-legal relations arise from the process of the state registration of religious communities, the execution by them of the powers of a legal entity and the control of justice bodies over the activities of religious communities and their liquidation.

Based on the study and brief analysis of religious legislation concerning the status and activities of religious communities in the Soviet period, examining the constitutional foundations of freedom of conscience and religion and the administrative-and-legal status of religious communities in the legislation of modern Ukraine, in this article we will try to analyse the current state of Ukrainian legislation on the registration of religious communities and changes that have occurred and are happening in Ukraine in recent times.

1. Religious Legislation in Ukraine in Historical Retrospect during the Existence of the Soviet State

For many years of its existence, the Soviet government considered the church and religious communities to be their ideological adversary. V.I. Lenin in his work 'Socialism and Religion' essentially gave an explanation to the entire future policy of the Soviet government; in particular, he wrote:

The state should not be concerned with religion, religious societies should not be connected with state power. Everyone should be completely free to practise any religion he pleases or not to recognise any religion, which means to be an atheist, as any socialist usually is... The complete separation of church and state is the requirement that the socialist proletariat places on the modern state and the modern church.¹

¹ LENIN, Vladimir Iljich. *Социализм и религия* [Socialism and religion]. In: *Полное собрание сочинений В.И. Ленина* [Complete collection of works of V.I. Lenin.] Vol. 12. Moscow: Институт марксизма-ленинизма при ЦК КПСС [Institute of Marxism-Leninism at the Central Committee of the CPSU], 1968, pp. 143–144.

1.1 Constitutional Legislation

Since the end of the 1920s, there was a tendency to completely supplant religion from the life of society in the religious policy of the Soviet authorities. The first act of the constitutional nature of the Soviet state in relation to the freedom of conscience is the Decree of the Council of People's Commissars of the Russian SFSR² of 20 January 1918 'On the Freedom of Conscience, and on Clerical and Religious Societies'.³ Later, in 1924, the Constitution of the Union of Soviet Socialist Republics (henceforth 'USSR') was adopted and approved by the Second Congress of the Soviets of the USSR in January 1924. It should be noted that the first Constitution of the USSR did not contain sections devoted to the basic rights and duties of citizens, leaving the regulation of this institution at the level of constitutions of the Union republics and consisted of two parts: the Declaration on the Formation of the USSR and the Treaty on the Formation of the USSR. Considering the limited scope of this article, the Constitution of the Russian SFSR of 1918, 1925 and 1937, as well as the Constitution of the Ukrainian Socialist Soviet Republic of 1919, 1929, 1937 and 1978, are of particular interest to us.

It should be noted that the Constitution of the Russian SFSR of 1918 (Art. 13) does not distinguish the concept of freedom of conscience and freedom of religion, which is confirmed by subsequent acts of Soviet constitutional legislation. This Constitution, in fact, became the basis for the Constitutions of other Union republics. The Constitution of the Ukrainian Socialist Soviet Republic, approved by the All-Ukrainian Congress of Soviets at its meeting on 10 March 1919 and adopted by the All-Ukrainian Central Executive Committee at its meeting on 14 March 1919, in Section III 'Declaration of Rights and Responsibilities of the Working and Exploited People of Ukraine' provides the following clarification regarding the freedom of conscience:⁴

² The Russian Soviet Federative Socialist Republic, henceforth 'Russian SFSR' or 'RSFSR'.

³ The Decree of the Council of People's Commissars of the RSFSR of 20 January 1918 on freedom of conscience, church and religious societies: In: *Декреты Советской власти [Decrees of Soviet power]*. Moscow: Гос. изд-во полит. лит. [State Publishing House of Political Literature], 1957. Vol. 1, pp. 373–374.

⁴ Constitution of Ukrainian Socialist Soviet Republic. Kiev, 1919.

... in the ways of ensuring the working people with real freedom of conscience, as well as preventing the use of religion and the church in the interests of preserving the class system, the church is separated from the state, and all citizens are granted the right to propagate religious teachings that do not pursue any social and political goals, as well as anti-religious teachings that do not contradict the communist world view in their spirit.

As the Soviet scientist V. Goncharenko later wrote, 'For the first time, the workers of Ukraine were legally provided with freedom of speech and the conscience of the press...'.⁵

In 1925, a new Constitution of the Russian SFSR was adopted, which practically did not change Article 4 'In order to ensure the workers real freedom of conscience, the church is separated from the state and the school – from the church, and freedom of religious and anti-religious propaganda is recognised for all citizens'⁶ of the previous Constitution. Only in 1929, by the decision of the XIV All-Russian Congress of Soviets, was this article changed. The words 'freedom of religious and anti-religious propaganda' were replaced by 'freedom of religious confessions and anti-religious propaganda'. This replacement testified the restriction of the influence and rights of believers and deprived them of the possibility of religious preaching beyond the borders of their religious buildings. We have investigated this correction later in the Constitutions of the USSR of 1936⁷ and even of 1977.⁸

1.2 Administrative Legislation

The only example of the codification of administrative law in the former USSR until 1980, when the Fundamentals of the USSR Law on Admin-

⁵ GONCHARENKO, Volodymyr Dmitrovich. *Первая Конституция Украинской ССР [The first Constitution of the Ukrainian SSR]*. In: GONCHARENKO, Volodymyr Dmitrovich (ed.). *Проблемы социалистической законности [Problems of Socialist Legality]*. Kharkiv: Вища школа [Higher school], 1983. Vol. 11, p. 11.

⁶ Constitution (Basic Law) of the RSFSR, adopted on 11 May 1925.

⁷ Constitution of the Union of Soviet Socialist Republics Adopted by the Extraordinary VIII All-Union Congress of Soviets on 5 December 1936. ЦИК Союза СССР и ВЦИК [Central Executive Committee of the Union of the USSR and the All-Russian Central Executive Committee], 1936 (# 283).

⁸ Constitution of the Union of Soviet Socialist Republics: Adopted by the Extraordinary seventh session of the Supreme Council of the USSR on 7 October 1977. *Ведомости ВС СССР [Bulletin of the Supreme Council of the USSR]*, 1977, No. 41, Art. 617.

istrative Offences became adopted, was the Administrative Code of the Ukrainian SSR of 1927.⁹ This code regulated a fairly wide range of public relations. Almost immediately the code was translated into German.¹⁰

The Administrative Code also included Chapter X 'Rules on Cults', which was divided into three sections: 'Basics', 'Religious Communities' and 'Cult Property'. The first section confirmed the separation of church from state and school from church, and also confirmed the right of every citizen 'to recognise any religion or not recognise any religion. The confession of any religion or the non-recognition of any religion does not entail any right to restrict and does not give any advantages'.

It should be noted that the same article (351) in a special note highlights the prohibition of designating citizens of any religion in official acts, and it is also prohibited to indicate non-affiliation to religious confessions.

According to the Administrative Code of 1927, citizens had the right to establish religious communities, adhering to the rules established for non-profit communities, such as societies and citizens unions (Art. 358). Religious communities could not have the rights of a legal entity (Art. 360).

Regarding the property of religious communities, in this case, all religious property (with the exception of that temporarily transferred to religious communities by private individuals) became state-owned (Art. 366). Regarding registrations of religious communities, the Decree 'On Separation of Church from State and School from Church' of 1918 did not provide a special procedure for the establishment of a religious community and stated that all 'church and religious societies are subject to general provisions on private societies and unions...'¹¹

⁹ KANARSKIY, S. and Yu. MAZURENKO (Канарський, С. та Мазуренко Ю.) (eds.). *Адміністративний кодекс УСРР. Текст та партикулярний коментар. [Administrative Code of the Ukrainian SSR. Text and commentary]*. Kharkiv: Юридичне видавництво наркомюсту УСРР [Legal publishing house of the PCJ of Ukrainian SSR], 1929. 400 pp.

¹⁰ *Verwaltungsgesetzbuch der Ukraine von 1927. Zeitschrift für Ostrecht*. Osteuropa-Institut in Breslau, Heft 10-11, Berlin, 1928.

¹¹ The Decree of the Council of People's Commissars of the RSFSR of 23 January 1918 on Separation of Church from State and School from Church.

In the Resolution 'On Religious Associations' of 1929, a special registration procedure was first mentioned, which a religious community must pass through before it starts to exist:¹²

4. A religious society and a group of believers can start their activities after registering a society and a group of believers in the religious affairs commission of the district executive committee...

In the period from 1948 to 1954 all petitions of believers to open new prayer houses and register religious communities were rejected; moreover, it was a state aiming to reduce the number of registered churches due to 'long-time non-use due to the lack of a clergyman'. The document 'Instructions for the Application of the Law on Cults' of 1961 is also interesting.¹³ According to this instruction, religious societies and groups of believers belonging to sects whose creed is anti-state and fanatic, such as the Jehovah's Witnesses, True-Orthodox Christians, Genuine Orthodox Church, Adventists, Reformists, etc., were not subject to state registration. The Resolution of the Council of Ministers of the Ukrainian SSR of 1 April 1969 'On Strengthening the Control over the Implementation of the Law on Religious Cults' No. 219 explicitly states that 'adequate measures are not taken regarding the leaders of religious communities who evade registration'. According to administrative legislation, 'Religious societies are based solely on meeting their religious needs, therefore they do not enjoy rights and legal entities, i.e., as societies, they do not have the right to own property, assume or commit, make agreements, make claims and respond to the court (Article 360 of the Administrative Code of the Ukrainian SSR).

¹² The Decree of the Council of People's Commissars of the RSFSR of 20 January 1918 on freedom of conscience, church and religious societies: In: *Декреты Советской власти [Decrees of Soviet power]*. Moscow: Гос. изд-во полит. лит. [State Publishing House of Political Literature], 1957. Vol. 1, pp. 373–374.

¹³ Instructions for the execution of the law on cults adopted by the Resolution of the Council for Religious Affairs at the Council of Ministers of the USSR and the Decision of the Council for the Affairs of the Russian Orthodox Church at the Council of Ministers of the USSR, dated 16 March 1961.

1.3 Criminal Legislation

On 8 June 1922 a new Criminal Code of the Ukrainian SSR was adopted.¹⁴ On 23 August 1922 the Code was enacted.¹⁵ Prof. Benitskiy A.S. notes: ‘The Criminal Code of the Ukrainian SSR of 1922 actually reproduced the Criminal Code of the Russian SFSR, adopted on 26 May 1922 at the 3rd session of the IX All-Russian Congress of Workers’, Peasants’, Red Army and Cossack Deputies.’¹⁶ Our analysis of Chapter III of the Special Part of the Criminal Code of the Russian SFSR of 1922, entitled ‘Violation of the Rules on the Separation of the Church from the State’ and the corresponding Chapter IV of the Criminal Code of the Ukrainian SSR of 1922, almost completely confirm this statement. In this section only the maximum limit of the possible punishment is indicated.¹⁷ Here are some examples:

Art. 111. Teaching juvenile and minors of religious dogma in public or private education institutions and schools is punishable by forced labour for up to one year.

¹⁴ Criminal Code of the Ukrainian SSR (adopted by the All-Ukrainian Central Executive Committee on 23 August 1922) with an alphabetical index: Publ. House Official. Kharkiv: Изд. Наркомюста УССР [Publ. House of People’s Commissariat of Justice of the Ukrainian SSR], 50 pp.

¹⁵ On the Enactment of the Criminal Code of the USSR: Resolution of the A-UCEC of August 23, 1922 // Laws of USSU. 1922. No. 36. Art. 554.

¹⁶ БЕНИТСКИЙ, Andriy Sergiyovich. Відповідальність за причетність до злочину та співучасть у злочині згідно з Кримінальним кодексом УСРР 1922 і 1927 [Responsibility for involvement in a crime and complicity in a crime in accordance with the Criminal Code of the USSR in 1922 and 1927]. *Науковий вісник Львівського державного університету внутрішніх справ, Серія юридична* [Scientific Bulletin of the Lviv State University, Series of Law], No. 4/2013, pp. 199.

¹⁷ НОВАК Катерина Михайлівна. Основні особливості Кримінального кодексу УСРР 1922 р. [The main features of the Criminal Code of the Ukrainian SSR in 1922]. In: *Теорія та практика сучасної юриспруденції: матеріали I Всеукр. наук. конф., Харків, 15 берез. 2013 р. – 15 квіт. 2013 р.; Конституційне будівництво в УРСР за радянських часів: матеріали круглого столу, Харків, 24 берез. 2013* [The theory and practice of modern jurisprudence: materials of I All-Ukr. Scientif. Conf., Kharkiv, 15 March 2013 – 15 April 2013; Constitutional development in the Ukrainian Soviet Socialist Republic in the Soviet era: materials of the round table, Kharkiv, March 24, 2013]. Kharkiv, 2013, pp. 201–202.

Art. 114. The commission in public institutions and enterprises the religious rites, as well as placing any religious images in these buildings, is punishable – by forced labour for up to three months or a fine of up to 300 roubles in gold.

It must be said that Art. 115 provided criminal punishment in the form of forced labour for up to six months also for those who obstructed the conduct of religious rites (not violating public order and not encroaching on the rights of citizens). But this article was hardly ever used in the interests of the church. In the Criminal Code of 1960, which was enacted on 1 April 1961, article 138 continues to provide criminal responsibility for violating the law on the separation of church from state and school from church. Changes to this article were made in 1966 and 1983, but this article was completely abolished in 1992 in connection with the adoption of the Law of Ukraine ‘On the Rehabilitation of Victims of Political Repression’.¹⁸

2. The Religious Situation in Ukraine in the Modern Period

2.1 Religious Self-Determination and Ukrainian Citizenship

According to the latest research and polls of one of the most well-known and credible sociological services (Ukrainian Centre for Economic and Political Studies, named after Oleksandr Razumkov)¹⁹ in Ukraine, the level of declared religiosity in Ukrainian society remains very high, as more than 72% of polled say they are religious. As in all countries where Orthodoxy prevails, the level of religiosity is significantly higher among the respondents of the older age category, and less among young people. The

¹⁸ Today, this Law of Ukraine is called ‘On the Rehabilitation of Victims of Repression of the Communist Totalitarian Regime of 1917–1991’.

¹⁹ *Особливості релігійного і церковно-релігійного самовизначення українських громадян: тенденції 2010–2018 рр. (інформаційні матеріали)*. Інформаційні матеріали підготовлені до чергового засідання постійно діючого Круглого столу “Релігія і влада в Україні: проблеми взаємовідносин” 26 квітня 2018 р. за сприяння Представництва Фонду Конрада Аденауера в Україні [Features of Religious and Church-and-Religious Self-determination of Ukrainian Citizens: Trends in 2010–2018 (Information Materials). Information materials prepared for the regular meeting of the permanent round table ‘Religion and power in Ukraine: problems of mutual relations’ 26 April 2018 with the assistance of the Representative Office of the Conrad Adenauer Foundation in Ukraine]. Kyiv, 2018, 78 pp. Available online at http://razumkov.org.ua/uploads/article/2018_Religiya.pdf [quoted on 10 May 2019].

number of those who periodically attend a church service is somewhat less and amounts to about 58%, which is somewhat less than the stated figure of religious people. Even more difficult is the situation connected with the religious upbringing of children, for only 16% of respondents believe that religious education is necessary, with 38% in the West and only 6% in the East of Ukraine.

Regarding confessional separation, the majority of respondents identify themselves with Orthodoxy – 67.3%; Greek Catholicism – 9.4%; Protestantism of various directions – 2.2%; Catholicism – 0.8%; Judaism – 0.4%; and 7.7% consider themselves to be Christians in general.

Also, in connection with the latest events in Ukraine, the number of opponents of the institution of a state church is growing as 56% of respondents do not support this idea and only 12% support it. In 2010, the idea of introducing the institution of a state church was unequivocally supported by 20% and 52% were against the idea.

2.2 Official Statistics of Religious Communities in Ukraine on 1 January 2019

According to the official statistics of the Department of Religious Affairs and Nationalities of the Ministry of Culture of Ukraine, as of 1 January 2019,²⁰ there are 35,162 religious communities in Ukraine, of which 32,719 are active, 1,011 are inactive and 1,120 are unregistered. For convenience, we present statistical data on the largest religious associations in the table:

²⁰ The statistics in the text as of 1 January 2019 are used from the statistical report of the Ministry of Culture of Ukraine 'Report on the network of religious organisations in Ukraine as of 1 January 2019 (Form No. 1)' / Approved by the order of the Ministry of Culture of Ukraine 'On the annual statistics reporting on issues of state-confessional relations in Ukraine for 2018' dated 29 March 2019 No. 257.

Registration of Religious Communities in Ukraine

Churches and religious communities	Religious communities / of which are active / inactive / unregistered	Monasteries / monks and nuns	Clerics / foreigners from them	Religious education institutions/ higher / high, students (full-time / part-time)	Schools General / Sunday	Mass media
Orthodox						
Ukrainian Orthodox Church (in unity with the Moscow Patriarchate)	12437/ 12122/ 255/ 60	215/ 4684	10419/ 22	18 8/10 (1765/ 2395)	4216 1/4215	138
Ukrainian Orthodox Church – Kyiv Patriarchate	5363/ 4946/ 326/ 91	63/ 230	3737/ 3	18 8/ (1061)	1406 0/1406	50
Ukrainian Autocephalous Orthodox Church	1171/ 1048/ 105/ 18	14/ 18	706/ 2	8 4/4 (58/93)	1406 0/1406	17
Catholics						
Roman Catholic Church	943/ 897/ 36/ 10	111/ 664	707/ 346	10 (343/35)	390 1/389	20
Ukrainian Greek Catholic Church	3470/ 3365/ 48/ 62	103 1057	2733/ 16	16 (2053/ 223)	2039 4/2039	58
Mukachevo Greek Catholic Diocese	442/ 442/ 0/ 0	20 114	337/ 12	2 2/0 (73/0)	138 0/138	3

3. International Legal Cooperation of Ukraine in the Sphere of the Rights Regarding Freedom of Conscience and Religion Protection

3.1 *Legal International Obligations of Ukraine*

Freedom of conscience is a natural right given to a person from birth, this being the internal ability of an individual to analyse and determine his outlook and being. At the same time, the state, and in our case the international supranational communities of the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and others, by their legal acts, establish only the limits, possibilities and minimum guarantees of the external expression of freedom of conscience. Ukraine is party to most of the universal international legal instruments that contain the norms of the right to freedom of conscience and religion.

On 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, of which Article 18 fully describes the content of religious freedom in the legal aspect of its consideration.²¹ It should be noted that the Articles of the Declaration are of a recommendatory nature and unite in one group the concepts of 'freedom of thought', 'freedom of conscience' and 'freedom of religion'.²²

In 1966, the United Nations General Assembly adopted the International Covenant on Civil and Political Rights, of which Art. 18 became the first legally binding norm of protection of religious freedoms in international law.²³

²¹ BILASH, Oleksandr. (Archimandrite Evfrosin) (ed.). *Міжнародно-правові акти про право на свободу совісті та віросповідання. Хрестоматія [Legal Acts of Europe in the System of Protection of Human Rights in the Sphere of Freedom of Conscience and Religion. Scientific herald of Uzhhorod National University: series: Law]*. Uzhhorod: Видавництво Олександри Гаркуші [Publishing House of Oleksandra Garkushi], 2015. 200 pp. ISBN 978-617-531-133-2.

²² ROBINSON, Nehemiah. *The Universal Declaration of Human Rights*. New York: Institute of Jewish Affairs, World Jewish Congress, 1958. 173 pp.; EIDE, Asbjørn. *The Universal Declaration of Human Rights: A Commentary*. Oslo, 1992, p. 263.

²³ CONDE, Victor H. Protection of Religious Freedoms under International Humanitarian Law and International Human Rights Law in Times of Armed Conflict. *U.C. Davis Journal of International Law & Policy*, 1999 (Winter), Vol. 5, No. 1, pp. 103.

After gaining independence, Ukraine has undertaken to bring its legislation to international and European standards, including in the field of human rights, and, accordingly, in the area of freedom of conscience and religion, thereby changing the course of history and society as a whole. In the area of the protection of the right to freedom of religion at the universal level, the powers of the mechanisms established in accordance with the Charter of the United Nations are extended to Ukraine.

At the regional level, Ukraine is a party to numerous treaties concluded within the framework of the Council of Europe, which create clear commitments for it in the area of the protection of the right to freedom of conscience and religion. During the years of independence, the Parliamentary Assembly of the Council of Europe has repeatedly raised the issue of the possible termination of Ukraine's membership in the Council of Europe, due to the fact that the country hastened changing its human rights legislation in accordance with its international obligations, but the use of sanctions has been delayed every time, providing Ukraine with time for reforms.²⁴

Analysing the decisions of the European Court of Human Rights as an international judicial body whose jurisdiction extends to all member states of the Council of Europe that have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (including Ukraine) and whose decisions are recognised by our state as a source of law, we come to the conclusions about the role of the state as a neutral and impartial organiser of the decision of issues related to different religious worship, the confession of religions and beliefs. The European Court of Human Rights has repeatedly emphasised that such a role contributes to the maintenance of public order, religious harmony and tolerance in a democratic society.

The acts adopted within the framework of the Organization for Security and Cooperation in Europe, which record the political obligations of

²⁴ ВІЛАШ, Oleksandr Volodymyrovych. Правові акти Ради Європи в системі захисту прав людини у сфері свободи совісті та віросповідання [Legal acts of Europe in the System of Protection of Human Rights in the Area of Freedom of Conscience and of Religion]. *Науковий вісник Ужгородського Національного університету: серія: Право* [Scientific Herald of Uzhgorod National University: Series Law]. Видавничий дім „Гельветика“ [Publishing House ‘Helvetyka’], Vol. 34, No. 3/2015, pp. 127–131.

the participating countries, also play a significant role in understanding the international legal standards of the right to freedom of conscience and religion. Ukraine is a party to the main acts of this organisation and recognises the relevant standards for the protection of the right to freedom of conscience and religion.

Ukrainian scientist Vitaliy Sorokun notes in the dissertation paper that

the inclusion of the right to freedom of conscience and religion to a large number of international legal treaties of Ukraine (from bilateral to universal levels), as well as the recourse to this right as it is enshrined in international treaties, in the practice of the Constitutional, The Supreme and Supreme Economic Court of Ukraine, can testify to the recognition by our state of this right as a universal.²⁵

At the same time, Viktor Bed makes the observation that there is no effective mechanism for implementing and controlling the compliance with decisions taken in the area of freedom of conscience and religion by international communities. And all decisions appeal to the goodwill of the countries of the parties.²⁶ Confirmation of this opinion is a separate Recommendation of the Parliamentary Assembly of the Council of Europe No. 190 (1995) devoted to Ukraine ('Concerning the Accession of Ukraine'), which recommended the Committee of Ministers to invite Ukraine to become a member of the Council of Europe. A separate point concerned the situation between the Orthodox churches: at that time, Ukraine promised, and the Council of Europe expressed the hope that 'the peaceful settlement of existing disputes between the Orthodox churches will be accelerated while ensuring the independence of the church in its relations with the state, and will introduce a new non-discriminative system of registration of churches and a legal solution to the question of the return of church property'.

And although Ukraine has been a member of the Council of Europe since 1995, the issue of the introduction of a non-discriminatory system

²⁵ SOROKUN Vitaliy Mikolayevich. *Міжнародно-правовий захист права на свободу совісті та віросповідання* [International legal protection of the right to freedom of conscience and religion]. Author's abstract of dissertation. Kharkiv, 2009. 18 pp.

²⁶ BED, Viktor Vasilovich. *Міжнародно-правове закріплення свободи совісті* [International legal consolidation of freedom of conscience]. *Часопис Київського університету права* [Journal of the Kyiv University of Law], 2011. No. 1, pp. 349–353.

of registration of religious communities, the provision of legal status to religious associations, the legal mechanism for the return of church property – all of these have not been implemented. Unfortunately, others have added to these issues today.

3.2 *Concordats and Conventions*

Currently Ukraine has no Concordat between Ukraine and the Apostolic See, although talks about the possible signing of such a concordat, at least on cooperation in the field of upbringing and spiritual worship of Catholic soldiers, have been in Ukrainian society for several years.

Concerning the signed Conventions or Agreements with the Orthodox Churches, at this time the only Cooperation and Cooperation Agreement between Ukraine and the Constantinople Patriarchate was signed on 3 November 2018 in Istanbul (Turkey) by President Petro Poroshenko and Patriarch Bartholomew. The press service of the President was informed that the main point of the Agreement is the creation of an independent autocephalous Orthodox Church of Ukraine. After numerous requests from deputies, news agencies and the public, the Presidential Administration refused to publish the text of the Agreement. And only at the beginning of March 2019, the text of this agreement was published and posted on the official website of the President of Ukraine. Indeed, this agreement is the first international treaty of an independent Ukraine (represented by the President of Ukraine) and a religious community. In addition to the preamble, the agreement consists of 6 articles. According to the text, one of the most important points of the agreement is 'mutual systematic work on the creation and constitution of the Autocephalous Local Orthodox Church in Ukraine with the centre in Kyiv on the basis of the Tomos about autocephaly granted by the Ecumenical Patriarchate and its recognition by other autocephalous Orthodox churches'.²⁷ But the point due to which the Presidential Administration did not want to pub-

²⁷ Agreement on Cooperation and Interaction between Ukraine and the Ecumenical Patriarchate of Constantinople dated 3 November 2018. Official online residence of the President of Ukraine. Available online at https://www.president.gov.ua/storage/j-files-storage/00/65/02/39d5327fe27135d96c04d0f53e1e5745_1551875784.pdf [quoted on 10 May 2019].

lish the document for so long most likely was paragraph 3.1. 'For the purposes of the Agreement, Ukraine will contribute to:

- functioning of the residence of the Ecumenical Patriarchate in Ukraine, namely, the Mission 'Stavropegic of the Ecumenical Patriarchate in Ukraine', in accordance with the Law of Ukraine 'On Freedom of Conscience and Religious Communities';
- acquisition in accordance with the legislation of Ukraine, by the residence of the Ecumenical Patriarchate in Ukraine, namely, by the Mission 'Stavropegic of the Ecumenical Patriarchate in Ukraine', buildings and premises, and other property objects necessary for the functioning of the Mission 'Stavropegic of the Ecumenical Patriarchate in Ukraine'.

It should be noted that even before the signing of the agreement on the initiative of the President, on October 18, 2018, the Parliament of Ukraine adopted the Law 'On the Features of the Use of St. Andrew's Church in the National Reserve "Sophia of Kyiv"'.²⁸ The law was adopted

to ensure the religious needs of believers in restoring and maintaining ties with the Mother Church of Constantinople, founded by the Christianisation of the Kievan Rus – Ukraine by Volodymyr the Great, eliminating the negative effects of Russian intervention – the aggressor state in the life of Ukrainian Orthodoxy and confronting the threats to national security caused by intervention, the creation of preconditions for the unification of the Ukrainian Orthodox community and the whole society, recognition of the Local Orthodox Church within the Ukrainian Orthodox world, eliminate the grounds for discrimination against believers belonging to it, and providing activities of the Stavropegic Throne of St. Andrew.

According to this Law, St. Andrew's Church, as a significant cultural heritage site, an architectural monument of national importance, a religious building that is in state ownership, is transferred to the Ecumenical Patriarchate for free to perform religious services, religious ceremonies, ceremonies and processions. The same Law made the corresponding changes to the Law 'On Freedom of Conscience and Religious Communities', the norms of which clarified the features and conditions of the transfer and use of the temple by the Ecumenical Patriarchate. According to various

²⁸ Law of Ukraine 'On the Features of Using St Andrew's Church of the National Preserve Sofia Kyivska' dated 18 October 2018. Available online at <https://zakon.rada.gov.ua/laws/show/2598-19> [quoted on 10 May 2019].

sources, the transfer of the real estate to the Ecumenical Patriarchate was to take place in Lviv.

4. Legal Regulation of the Sphere of Freedom of Conscience and Freedom of Religion in Ukraine

4.1 Constitutional Foundations and the Constitutional Legal Status of Religious Communities

Religious relations are an integral element of social relations, the subject of which is both a religious and non-religious population, and the state is obliged to regulate them legally, while guaranteeing the possibility of practising or not practising a particular religion. At the same time, the state should be in compliance with the current legislation, and the rights and freedoms of all citizens.

Guaranteed by the Constitution of Ukraine (the first in the history of independent Ukraine and after the collapse of the Soviet Union was adopted on 28 June 1996)²⁹ and the relevant laws, the right to freedom of conscience is possible only under the condition of legal norms guaranteeing the necessary rights and freedoms to religious communities and believers and impose on them separate responsibilities.

The legislation of Ukraine on freedom of conscience and religious communities is a system of related regulatory acts that govern state-legal relations. The most important of these is the Law of Ukraine 'On Freedom of Conscience and Religious Communities', which contains most of the legal provisions governing the general issues of freedom of conscience.

The Constitution of Ukraine, namely Article 35, enshrines the right to freedom of world view and religion, including the freedom to profess any religion or not to profess any, freely realise solely or collectively religious cults and ritual ceremonies, and to conduct religious activities. The church and religious communities in Ukraine are separated from the state, and the school is separated from the church. The article focuses on the fact that no religion can be recognised by the state as mandatory. The position of Part 4 of Art. 35 of the Constitution is on the possibility of re-

²⁹ Constitution of Ukraine of 28 June 1996. *Відомості Верховної Ради України [Bulletin of the Supreme Counsel of Ukraine]*, 1996, No. 30, p. 141.

placing the military obligation with an alternative (non-military) service of a citizen's religious convictions.

Freedom of ideology and religion (freedom of conscience), like other fundamental human rights and freedoms (in particular, the right to freedom of thought and speech, the free expression of their views and beliefs (Art. 34)), are considered by the Constitution as inalienable and unshakable (Art. 21).

The rights and freedoms of a person declared and guaranteed by the Constitution define 'the content and direction of the activities of the state', and their approval and provision 'is the main duty of the state' (Art. 3).

4.2 Administrative and Legal Regulation of Religious Communities: the Procedure for Registration and Liquidation

In 1991, the Law of Ukraine 'On Freedom of Conscience and Religious Communities'³⁰ was adopted. It enshrines the right to freedom of conscience, equality of citizens regardless of their attitude to religion, separation of church (religious communities) from state. Noting the characteristic features of this Law, the following should be noted:

- the current law approves the Ukrainian state to be non-religious, but not anti-religious, that is, the state does not allow the church as a state institution in its political structure, but does not recognise the right to fight against religion – the state refused to establish mandatory beliefs or worldviews;
- the law provides citizens with the right to freedom of conscience, which includes the right not only to profess a religion, to realise religious cults, but also to change their beliefs, to freely disseminate them, even if they are religious;
- the law is more consistent with the content and requirements of international legal acts on political and civil rights;
- the law is aimed more at positive attitudes and permission than at banning certain actions, as was the case in the past.

³⁰ Law of Ukraine 'On Freedom of Conscience and Religious Communities' dated 23 April 1991. Official website of the Verkhovna Rada of Ukraine [Electronic resource]. Available online at <https://zakon.rada.gov.ua/laws/show/987-12> [quoted on 10 May 2019].

The current legislation on freedom of conscience and religious communities specifically defines the legal framework for the formation and activities of religious communities in Ukraine.

The Law determines that religious communities in Ukraine are formed to meet the religious needs of citizens, their intentions to profess and spread the faith and act in accordance with their hierarchical and institutional structure, and elect, appoint and change personnel in accordance with their charters.

Religious communities in Ukraine are religious communities, administrations and centres, monasteries, religious brotherhoods, missionary societies (missions), religious education institutions, as well as associations consisting of the aforementioned religious communities.

Other communities formed on the basis of religion are not covered by this Law.

The Law also provides specific definitions of existing religious communities.

Article 8 gives the definition of a religious community: it is a local religious community of believing citizens of the same cult, religion, trend, trend or sense, voluntarily united to meet religious needs together.

The Law states that ‘the state recognises the right of a religious community to its subordination in canonical and organisational matters...’ to existing religious centres (departments) both in Ukraine and abroad, as well as a change in this subordination.

It is important to note that the subordination of religious communities in canonical and organisational issues to centres (departments) is not identical to the direct dependence of communities on centres (departments), which include professional clergymen, clergy, theologians, etc. This fully corresponds to the right to freedom of conscience; the clergy can monopolise influence on the lives of believers and their communities, establish special, specific orders there and so on. In other words, the clergy has no right to exercise the administrative leadership of religious communities without authorisation. Responsibility to the state, as well as the very subordination to the centres (administrations), is decided at the general meeting by the believers who founded the religious community, as well as their elected self-government bodies. At the same time, the clergy themselves have the right to form part of religious communities,

to be a member of the group ('dozens') of believers who are the founders of a religious community.

Under civil law, the legal capacity of religious communities determines their statutes, which are subject to registration. The Charter is adopted at a general meeting of believers or at religious congresses or conferences. It should contain information on the type of religious community, its religious affiliation, property status and place of a religious community in the organisational structure of a religious association, the right of a religious community to establish enterprises, the media, other religious communities, the creation of educational institutions, etc.

A religious community is a legal entity from the moment of registration of its charter and enjoys rights and bears obligations in accordance with the current legislation and its charter.

Article 14 of the Law regulates the registration of charters of a religious community. For a religious community to obtain the legal capacity of a legal entity, it is necessary that citizens of at least 10 people who have reached the age of 18 have formed it, and filed an application and charter for registration with regional state administrations.

Religious centres of government, monasteries, religious brotherhoods, missions and religious schools submit a charter (regulation) to the Ministry of Justice for registration. The registration mechanism is determined by Art. 14 of the Law of Ukraine 'On Freedom of Conscience and Religious Communities'.

For worship, religious rites, ceremonies and processions, religious communities have the right to:

- establish and maintain places of worship or religious meetings with free access, as well as places revered in a particular religion (places of pilgrimage);
- freely conduct them in religious buildings and in the surrounding area, in places of pilgrimage, religious institutions, cemeteries, burial grounds and crematoriums, apartments and houses of citizens;
- at the initiative of labour collectives and the consent of the administration to hold worship services, religious ceremonies, etc. in institutions, communities and enterprises;
- conduct services and religious rites in hospitals, homes for the elderly and people with disabilities, places of preliminary detention and

punishment, at the request of citizens residing in them, or on the initiative of religious communities. The administration of these institutions contributes to this, participating in determining the time and other conditions of worship or different types of ceremony;

- according to the religious needs of military personnel, the command of military units provides them with the opportunity to participate in worship services and perform religious rites.

The Law stipulates that in other cases, public worship, religious ceremonies, ceremonies and processions are held every time with the permission of local governments or executive authorities. A petition for the issuance of the said permit is filed in advance (according to Article 39 of the Constitution of Ukraine) before the appointed time for conducting worship service, ritual, ceremony or procession, except for cases that do not tolerate delay.

For the broader implementation of the right to freedom of conscience, as well as the proper functioning of religious communities, the following rights have been granted between it and the believer directly:

- the right to purchase, possession and use of religious literature in the language of their choice, as well as other religious items and materials;
- the right to produce, export, import and distribute religious items, religious literature and other religious information materials. Religious communities are granted the exclusive right to establish enterprises for the production of liturgical literature and the production of religious objects;
- the right to establish societies, fraternities, associations and other associations of citizens for the implementation of charity, the study and dissemination of religious literature and other cultural and educational activities. Religious communities have the right to carry out charitable activities and charity, both independently and through charitable communities. General provisions of charity are determined by the Law of Ukraine ‘On Charity and Charitable Communities’ dated September 16, 1997;
- Religious communities and believers, alone or in association with others, have the right to establish and maintain international contacts and direct personal contacts, including traveling abroad for pil-

grimage, participation in meetings and religious events. Participants in these contacts and events may, in the manner prescribed by applicable law, acquire, receive and carry with them religious literature and other information materials of religious content;

- have the right to send citizens abroad to study in religious schools and to receive foreign citizens for these purposes.

The law establishes certain restrictions on the activities of foreign preachers. In Art. 24 of the Law, it is noted that priests, religious preachers, mentors, and other representatives of foreign communities who are foreign citizens, hold services only in those communities at the invitation of which they arrived.

The activity of religious communities as legal entities provides for the right of religious communities to own property, objects of religious purposes, as well as the direct production of religious objects. Therefore, for them an important issue of activity is the possession and use of a creation and registration of legal entities property. In accordance with the legislation of Ukraine, religious communities have been granted the right to own property, as well as the right to land use, exercised in accordance with the procedure established by the relevant legislative acts of Ukraine.

Religious buildings and property constituting state property are transferred by communities on whose balance they are in, free of charge, or returned to the property of religious communities free of charge by the decision of regional or city administrations, or the Government of the Autonomous Republic of Crimea.

The Law states that the unauthorised seizure of religious buildings or the appropriation of religious property is not allowed. Disputes on issues related to the ownership and use of religious buildings and property are resolved by regional and local authorities.

The law provides religious communities with the right to seek and receive voluntary financial and other donations. Forced taxation of believers is prohibited.

5. State Registration of Legal Entities Established by Religious Communities

It should be noted that the creation and registration of legal entities depend on the goals that will be faced by this legal entity and the religious community as the founder. If this is an entrepreneurial activity, in Ukraine often a legal entity is created in the form of a limited liability company or an additional liability company. Ukrainian legislation also allows for the creation of three possibilities: a full partnership (a company, a legal entity, all participants of which conduct joint business activities and jointly carry additional (subsidiary) responsibility for the obligations of the partnership with all their property); a limited partnership (a partnership in which, together with one or more participants who carry on business on behalf of the partnership and are responsible for the obligations of the partnership for all their property, there is one or more participants whose liability is limited to the contribution to the property of the partnership (depositors)); or a joint-stock company, but in such forms legal entities in Ukraine are created quite often.

Features for business partnerships (enterprises created by legal entities and/or citizens through the merger of their property and participation in the entrepreneurial activity of the company for the purpose of profit) include their legal status and activities are regulated on the basis of general principles of civil and economic codes, and laws 'On Commercial Companies' or 'On Joint Stock Companies'.

If a religious community creates a legal entity for other purposes, then organisational forms are different. This may be a public organisation, institution, etc. As an example, religious communities can create and register charitable communities, educational institutions, etc. And in this case, there are also no differences or peculiarities in the registration of such legal entities in comparison with other founders.

6. Current changes in the Legislation of Ukraine

On 17 January 2019, the Verkhovna Rada of Ukraine adopted a new version of bill number 4128-d immediately as a law – without a second reading, and thus introduced a new procedure for the registration of religious communities without any consultation with them. The Law of Ukraine

‘On Amendments to Some Laws of Ukraine Concerning the Subordination of Religious Communities and the Procedure for State Registration of Religious Communities with the Status of a Legal Person’³¹ introduces amendments to Articles 8, 14, 18 of the Law of Ukraine ‘On Freedom of Conscience and Religious Communities’ and to Articles 1, 3, 9, 16, 17, 29 of the Law of Ukraine ‘On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Associations’.

Among innovations regarding the procedure for registration of religious communities we should note the following.

There is the creation of a ‘single window’ for filing documents for registration by religious communities. This will solve the long-standing problem of ‘double’ registration of religious communities, which initially registered their statutes with the Ministry of Culture, regional state administrations or the Kyiv city state administration, and then had to contact the state registrar. Now, simultaneously with the registration of the statute, religious affairs bodies will carry out state registration and make relevant information to the Unified State Register of Legal Entities.

However, this service will not work until it accepts the required by-laws, nor will new software for state registrars be developed and new forms of registration applications be approved. From this time additional data on the ‘type of religious community’ and its ‘religious affiliation’ will be added to the Register. And accordingly, to date, no religious community can register or be registered.

Local state registrars lost the authority to register religious communities. An important point is the change of subordination and making appropriate changes or additions to the status. The amended norms of Article 8 of the Law of Ukraine ‘On Freedom of Conscience and Religious Communities’ emphasise that:

The state recognises the right of a religious community to its subordination in canonical and organisational matters to any religious centres (administration) in effect in Ukraine and abroad and the free change of this subordination by making appropriate changes to the statute (position) of the religious community. The

³¹ Law of Ukraine ‘On Amendments to Some Laws of Ukraine Concerning the Subordination of Religious Communities and the Procedure for the State Registration of Religious Communities with the Status of a Legal Person’ dated 17 January 2019, No. 2673-VIII. Available online at <https://zakon.rada.gov.ua/laws/show/2673-19> [quoted on 10 May 2019].

decision to change subordination and to make appropriate amendments or additions to the statute shall be approved by the general meeting of the religious community. Such general meetings of a religious community may be convened by its members. The change of subordination will be possible only with not less than two thirds of the number of members of the religious community necessary for the recognition of the plenipotentiary general meeting of the religious community in accordance with the statute (position) of the religious community.

At the same time, the change in subordination of a religious community does not affect the content of property rights and other real rights of such a religious community, except in the case established by Article 18 of this Law (this provision prohibits the alienation of property of a religious community, in particular its sale, exchange, pledging, the establishment of a mortgage, the free transfer of ownership and management of other persons, before the completion of the procedure for changing its subordination in canonical and organisational matters to any religious association operating in Ukraine and abroad through the provisions of a new version of the statute (regulation) approved by not less than two thirds of the number of members of a religious community necessary for the recognition of the plenipotentiary general meeting of a religious community in accordance with its statute (regulation) or the governing bodies specified by the statute (regulations) of a religious community (religious centre (management), a monastery, a religious brotherhood, a missionary society (mission), or a spiritual educational institution).

A part of the community that does not agree with the decision to change subordination has the right to form a new religious community and to conclude an agreement on the use of a religious building and property with their owner (user).

The announcement of state bodies on the formation of a religious community is not obligatory.

Amendments were made to the Law of Ukraine 'On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Associations'. However, some of the provisions of the new registration order cause criticism of lawyers. The requirement of the Law on the submission of a list of believers who participated in the general meeting of the re-registration of the religious community of any denomination contradicts Article 4 of

the Law of Ukraine ‘On Freedom of Conscience and Religious Communities,’ which states:

Official documents do not indicate the attitude of a citizen to religion.

The official document is not only a passport, but also a protocol of the general meeting of the religious community. In addition, according to Part 2 of Article 11 of the Law of Ukraine ‘On Information,’ information about a person’s religious beliefs belongs to ‘confidential information about an individual,’ which, according to Article 6 of the Law of Ukraine ‘On Protection of Personal Data’ is prohibited to be transferred to third parties without written consent. Statutes of religious communities should be brought into compliance with this Law for one year – until 31 January 2020.

It should be noted that, on 20 December 2018, the Verkhovna Rada of Ukraine voted a draft law amending the Law of Ukraine ‘On Freedom of Conscience and Religious Communities’ regarding the names of religious communities (associations) that are part of a religious community (part of) (association), the management centre of which is located outside Ukraine in a state which is recognised by law as having committed military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine. According to the document, a religious community (association), which is a part of another structure whose governing centre is in a state that is recognised by law as military aggressor against Ukraine and temporarily occupied the territory of Ukraine, is obliged in its full name, indicated in its charter, to show belonging to a religious community outside of Ukraine to which it belongs, by obligatory reproduction in its name of the full statute name of such a religious community with the possible addition of the words ‘in Ukraine’ and/or defining their place in the structure of foreign religious communities.

In particular, as noted in their speeches, People’s Deputies, the Ukrainian Orthodox Church of Moscow Patriarchate should change its name to the Russian Orthodox Church in Ukraine.

They also expressed the opinion that church representatives have no right to conduct activities in the area of hostilities, in particular, in order not to convey information about the Ukrainian troops to the aggressor.

Such changes must be made by religious communities within 4 months to their statutes, and the community within 9 months.

The law indicates that the signs of such communities are:

- The Statute of the Ukrainian religious community is a reminder that it is subordinated to a foreign centre;
- The Statute of a foreign centre is a statement that a religious community in Ukraine is subordinate to it, as well as the right of this foreign centre to make decisions that will be binding on the Ukrainian religious community;
- In the Statute of a foreign centre, there is mention of the fact that its governing body includes a representative of the Ukrainian religious community.

The examination conducted by the Ministry of Culture of Ukraine established that the following religious associations are subject to this Law:

- Ukrainian Orthodox Church,
- Russian (Russian) True Orthodox Church,
- Russian (Old Russian) Church of the Old Believers (Bespopovtsy concord),
- Russian (Russian) Old-Orthodox Church (ROOC Novozybkiv concord),
- Russian (Russian) Orthodox Old Believers Church.

The aforementioned religious communities must, within three months, make changes to their charter (regulation) stipulated in Part 7 of Art. 12 of the Law ‘On Freedom of Conscience and Religious Communities’ and submit them for registration in accordance with the established procedure. Interestingly, in Ukraine, the church does not have the status of a legal entity, unlike a particular local parish. This means that from a legal point of view, this bill will apply specifically to parishes, as well as to diocesan offices, monasteries, seminaries. And here there is some confusion, because each parish actually lives in two charters. One of them is the charter of the community as a legal entity, and it is registered by public authorities. It concerns purely legal issues. And there is another statute – the Charter of the Ukrainian Orthodox Church. Almost all the charters of local parishes indicate that they are in particular guided by the UOC Statute. After all, it regulates Church matters, not legal ones.

The list includes, in addition to the parishes of the Ukrainian Orthodox Church (more than 800 pages), the religious centre of the Kyiv Metropolitanate, 53 religious departments, 19 religious educational institutions, 271 monasteries and others.

As stated by the director of the Department for Religious Affairs and Nationalities of the Ministry of Culture of Ukraine Andriy Yurash, the Ukrainian Orthodox Church completely falls under the law and is obliged to be renamed. He explained that the communities would remain unnamed if they did not make changes in due time. However, they will retain the status of a legal entity. ‘This opens up opportunities for the state to independently choose and name this religious community. I do not think that this is the best case for religious communities themselves when they will be offered some names.’

On 30 January the Kyiv Metropolitan of the Orthodox Church of Ukraine, which received a Tomos of autocephaly from the Ecumenical Patriarch, registered his statute and completed the state registration. Data on this were entered into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations. The founder of the new legal entity is the Local Unity Council of the Orthodox Church of Ukraine, which was held in Kyiv on 15 December 2018. The head of the Orthodox Church of Ukraine is Epiphanius (Dumenko), Metropolitan of Kyiv and all Ukraine. The church received a double name – the Ukrainian Orthodox Church (Orthodox Church of Ukraine). According to the data of the state register, the name of the legal entity is as follows: the Kyiv Metropolitan of the Ukrainian Orthodox Church (Orthodox Church of Ukraine). It should be noted that the name of the newly formed Church literally repeats the current name of the UOC (in unity with the Moscow Patriarchate), which sounds the same – the Kyiv Metropolitan of the Ukrainian Orthodox Church, only without clarification in brackets.

Currently, a group of Ukrainian deputies (49 people), on 18 January 2019, filed a lawsuit with the Ukrainian Constitutional Court of Deputies to declare unconstitutional the law ‘On Amendments to Article 12 of the Law “On Freedom of Conscience and Religious Communities” regarding the name of religious communities (association), which are included in the structure (is part of) a religious organisation (association), the governing centre (management) of which is located outside Ukraine

in the state, recognised by law to carry out military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine' dated 20 December 2018 No. 2662-VIII. The decision of the panel of judges of the Constitutional Court opened the constitutional proceedings on the case; the case is being prepared for consideration at a plenary session of the Grand Chamber of the Court.³²

Conclusion

The latest events in Ukraine in inter-Orthodox relations, the provision of the Tomos about autocephaly by the Ecumenical Patriarchate, and changes in legislation in Ukraine, including registration and re-registration of religious communities, create quite a lot of tension in state-and-church relations. Attempts to forcefully transfer religious communities from one church to another have repeatedly taken place, as noted in the Report of the UN High Commissioner for Human Rights³³ 'Public Space and Fundamental Freedoms on the eve of the presidential, parliamentary and local elections in Ukraine in 2019–2020'. The report noted that the political situation in the country contributes to the exacerbation of inter-religious conflicts, and this, in turn, violates the freedom of religion and belief. Mention was also made of the forced renaming of the Ukrainian Orthodox Church, emphasising exactly what this Church is implied as in the discriminatory law. Human rights violations are considered by the UN and the law on military chaplains, which prohibits UOC priests from serving in the army, since it 'contradicts the provisions of the International Covenant on Civil and Political Rights, because security is not a valid basis for restricting freedom of religion or belief'.³⁴

The legislation of Ukraine during various moments of history has undergone significant changes, and the specific nature of the activities of

³² Constitutional appeals as of 19 April 2019. Official site of the Constitutional Court of Ukraine. <http://www.ccu.gov.ua/novyna/konstytuciyini-podannya-stanom-na-19-kvitnya-2019-roku>

³³ Since 14 March 2014, the Monitoring Mission of the UN High Commissioner for Human Rights has been permanently operating in Ukraine.

³⁴ Report of the Office of the United Nations High Commissioner for Human Rights on the situation in Ukraine 'Civil space and fundamental freedoms on the eve of the presidential, parliamentary and local elections in Ukraine in 2019–2020' https://www.ohchr.org/Documents/Countries/UA/CivicSpaceFundamentalFreedoms2019-2020_UK.pdf.

religious communities is reflected in the special norms of current legislation, specifies the legal status of religious communities and the possibilities and conditions for them to fulfil their functional role in society. The conditions for registration and re-registration (including by changing the jurisdiction of religious communities) are quite democratic and legal. But sometimes their application, together with the desire to achieve any preferences in any way, diverge in practice with the concept of legality and the right to freedom of religion.

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