

CHURCH AND STATE IN UKRAINE *Lesia Kovalenko*

I. Social and Historical Background

Currently, more than one half of Ukrainian citizens declare themselves believers (58 percent), while the rest (23 percent) vacillate between faith and atheism.¹ Since 1991, the number of religious organizations of various traditions and denominations in Ukraine has more than doubled, increasing from 10,810 in 1991 to 28,567 in 2003². Among the latter, 96.7 percent define their doctrine and religious activity as Christian³. It should be noted that during the last two or three years the regional differences in the dynamics of religious activity growth have diminished, at least in a quantitative aspect⁴.⁴ Experts attribute this to a completion of the revival period, which included (1) a legalization of activities of religious organizations, (2) a massive rise of religious communities, (3) construction of churches and chapels, and (4) partial resolution of the question of the liberation of churches, leading to stabilization of the religious situation in the country⁵.

From 1919 to 1991 the law concerning religion in Ukraine, excluding the western regions, was Soviet. Most of the legal regulations in the Ukrainian Soviet Socialist Republic were based on the laws of the Soviet Union. The specific character of the Soviet legislation concerning religion could be defined as follows:

- 1) substantial refusal to recognize personal and collective religious rights of people and strict regulation of religious activity, notwithstanding the declared principle of respect towards freedom of conscience in **all** of the USSR's constitutions⁶;
- 2) deprivation of legal entity status for religious organizations, and therefore refusal to recognize them as subjects enjoying the full rights of church relations; and
- 3) predominantly administrative state regulation of *religious worship*.⁷ In view of the subsequent

¹ Cerkovno-religijna sytuacija v Vkraini: stun i tendenciji razvytku (Church and religion situation in Ukraine: its state and trends of development), ed. L. Shanhina, (Kyiv: Razumkov's Centre 2000, 2001), 267.

² Statistical data are broadcast by the State Department on Religious Affairs of Ukraine each year. See Decree of Ukrainian President from 14.1 L.2000 about this Department in Oficijnyj Visnyk Urajiny (The official publication of Ukrainian President), 2000, 46, 66.

³ N. Karpachova, Zvit upovnovarhenoho z prav ludyny za 2000 rik (Annual report of the Responsible on human rights of 2000) (Kyiv: 2001), 225.

⁴ V. Vaskovskij, "Rozvytok religijnoji merezhi v Ukraini: rik 2(HH)" (Development of religious net in Ukraine in the year 2(HH)), Natsionalna beipeka i oborona 3, (2001): 52. See the English version in <http://www.uceps.com.ua/eng/work/workjournal.shim>

⁵ Cerkovno-religijna sytuacija v Vkraini: stan i tendenciji rozvytku (Church and religion situation in Ukraine: its state and trends of development), ed. L. Shanhina (Kyiv: Razumkov's Centre 2000, 2001), 206-210, 261-265.

⁶ Konstytucija Ukrajins'koji Socialistychnoji Respubliky z 14.03.1919 (Kyjiv: 1919); Konstytucija Ukrajins'koji Socialistychnoji Radians'koji Respubliky z 15.05.1929 (Charkiv: 1933); Konstytucija Ukrajins'koji Radians'koji Socialistychnoji Respubliky z 30.01.1937 (Kujiv: 1937); Konstytucija Ukrajiny z 20.04.1978. VVR UR 18, 268.

⁷ The term *religious worship* is used in italics to underline terminological uncertainty, typically exhibited in Soviet documents on religious cases. The following terms were used interchangeably: religious group, religious association, religious community, group of believers, religious organization and religious cult. For details on the normative basis of the USSR about religious worship, see *Vidokremlennia Iserkvy via derzhavy i shkoly via tserkvy* (Separation of church from state and school from church), collection of the documents by N. Chelunchakevych (1926); *Kulturne budivnytstvo v*

transformation of the social order and reacquisition of independence, Ukraine has regained the power to create its own law. The democratic institutions have replaced the totalitarian legal institutions and the legal rules in force are now verified relying on international instruments and principles.

II. Legislative Sources

The Ukrainian legal system includes norms concerning freedom of conscience, freedom of religion, and freedom of convictions for both individuals and groups. The norms were gradually formed during various periods of Ukrainian history, beginning with the period of Kyivan Rus\ the Galicia and Volynia principalities, through the Cossack state, the Polish and Russian subjugations, the Centralna Rada and the Hetmanat, the Stalin and Nazi occupations, Soviet Ukraine, and finally ending with the reacquisition of independence.⁸ In Ukrainian jurisprudence, these norms are not considered a separate branch of law, as for example in Germany, Austria, or Italy, nor as a part of constitutional law, as in the United States. However, the importance of religious rights and the quantity of normative regulations in this sphere permit definition of the Ukrainian law concerning church-state relations. It is the legal norms in force, including laws promulgated by the state, executive regulations, as well as ratified international documents that govern legal relationships concerning the rights of man and the citizen to freedom of conscience, religion, convictions, and the legal status of religious organizations⁹. Indubitable natural law and the wealth of Ukrainian legal traditions serve as a foundation for such rules. The aim of the law in the sphere of church-state relations is to guarantee an effective and complete realization of the religious rights of everyone and of any group legally being in the country. Ukrainian legal principles of church-state relations derive from the Constitution of Ukraine, approved June 28, 1996,¹⁰ and the Ukrainian Law On Freedom of Conscience and Religious Organizations, of April 23, 1991 with amendments (hereinafter On Freedom of Conscience).¹¹ In addition, the norms of the following laws of Ukraine are included here: On Alternative (non-military) Service of 12 December 1991 r.¹² On Education of 23 May 1991 r.¹³, On Property of 7 February 1991 r.¹⁴ as well as the norms

Ukrajinskij RSR 1917-1959 (Cultural building in the Ukrainian SSR during 1917-1959), collection of the documents by K. Lytvyn, A. Psenyctynj (Kyiv: 1959); *Zakonodavstvo pro relihijni kulty* (The legislation on religious cults), collection of the documents and materials (Kyiv: 1973); M. Holodnyj. *Radianxke zakonodavstvo pro relihijni kulty* (Soviet legislation about religious cults) (Kyiv: 1974); J. Ellis, *The Russian Orthodox Church: A Contemporary History* (London: 1986); J. Curtiss, *The Russian Church and the Soviet State /1917-1950* (Boston: 1953); Dennis J. Dunn, *The Catholic Church and the Soviet Government 1939- 1949* (New York: 1977).

⁸ For more information on these forms of state order in Ukraine, see O. Subtelny, *Ukraine: A History*, 2nd ed., (University of Toronto Press: 1995).

⁹ See Prawo wyznaniowe (Law concerning Church-State relation in Poland), red. H. Misztal, Lublin 2000, p. 23
¹⁰ Vidomosti Verhovnoji Rady (*official publication of Ukrainian Parliament*), VVR 1996, 30, 141. For the English translation, see: <http://www.religlaw.org>.

¹¹ nr987-XII, VVR 1991, 25, 283 with amendments. For an English translation of the law, see <http://www.religlaw.org/template.php3?id=188>; see also H. J. Biddulph, "Religious Liberty and the Ukrainian State: Nationalism Versus Equal Protection", *Brigham Young University Law Review* 2 (1995): 321-444.

¹² nr 1975-XII redaction of 1X.02.1999 nr 437 -XIV, VVR 1999, 15,86.

in the Marriage and Family Code of 20 June 1969 r.¹⁵ the Penal Code of 5 April 2001 r.¹⁶, the Civil Code of 18 July 1963 r.¹⁷ etc.

Besides this, para. 3 of article 9 of the law On Freedom of Conscience foresees a conclusion of bilateral agreements between centers of religious organizations and the organs of public authority. Though the lawmakers did not specify the conditions or the form of these agreements or the cases the agreements would regulate, it is evident that in the future such agreements could constitute an additional source for the law of church-state relations, as they have already done in many European countries. Since 1991, a series of memoranda and agreements have been signed where cooperation between churches and public authorities (both at the national and regional level) in resolving various controversial questions have been declared. In particular, they concerned social care in military units, hospitals, and prisons, etc.¹⁸ However, these agreements are mostly of a political and unilateral character, and sometimes they can even furnish a pretext for discriminating against religions that are a minority in a certain region.¹⁹

A special comment should be given regarding the importance of court decisions as sources of church-state law. In Ukraine, as well as in most European countries, court decisions do not have the same decisive influence on legal system formation as in countries of the Anglo-Saxon common-law tradition. Currently, no cases are pending concerning violations of individual religious rights in Ukraine either at the national or international judicial level.²⁰ The majority of prior cases have dealt with property of religious organizations, especially their religious edifices.²¹ Some of these cases were definitively resolved by the Ukrainian Supreme Court, which has, in this way, created precedents for the lower courts.²²

An important source of religious legislation is represented by a comment of the Arbitrage

¹³ nr 100/96, VVR 1996, 21, H4.

¹⁴ nr 697 -XII, VVR 1991, 20, 249.

¹⁵ nr 697 -XII, VVR 1991, 20, 249.

¹⁶ VVR 2001, 25-26, 131.

¹⁷ VVR 1963, 30, 463, with amendm

¹⁸ See, e.g., "Memorandum chrystyjanskykh konfesii na Ukrajinii pro vidmovu vid nasylla u vyrishenni mizhkonfesijnnykh stosunkiv 1997 roku" (Memorandum of Christian Confessions in Ukraine about a refusal from violence in the solution of inter-confessional relationships of 1997), *Ludyna i svit*, August 1997, 25-26; "Memorandum Vscukrajn-skoji Rady Cerkov i religijnnykh orhanizacij, Ministerstva informaciji la Derzhavnoho komitetu u spravah religiji pro spivpraciju u vysvitlenni cherez mas-media problem religijno-cerkovnoho zhyttia 1998 roku" (Memorandum among All-Ukrainian Council of Churches and religious organizations, Ministry of Information and State Department of Religious Affairs on cooperation in informing about Church and religious life in mass-media), *Ludyna i svit*, March 1998, 27-28.

¹⁹ J. Reshetnikov, "Problemy religijnoji svobody v Ukrajinii" (Problems of religious freedom in Ukraine), in *Religijna svoboda v Ukrajinii: mas-media, shkola i tserkva jak faktor? suspilnoho utverdzenia* (Kyiv: 2(K)1), 155.

²⁰ N. Karpachova, *Zvit upovnovarhenoho z prav ludyny za 2000 rik* (Annual report of the Responsible on human rights of 2(H)0) (Kyiv: 2001), 250.

²¹ More precisely see D. Lylak, "Sudovyj zakhyst majnovykh prav religijnnykh orhanizacij" (Judicial defense of rights on property of religious organizations), in *Dokumenty mizhnarodnoji konferenciji* (Kyiv: September 1994), 57-166; P. Kovalenko, *Dejaki problemy jurydychnoho zahyslu majnovykh prav religijnnykh objednan v Ukrajinii* (Some problems of legal defense of rights on property of religious associations in Ukraine), *ibid.*, 167-171.

²² See, e.g., Decree of Collegium on the civil cases of the Supreme Court of 13 August 1997 in *Jurydychnyj visnyk Ukrajinny*, nr 42 (278), 19-25 October 2000

Supreme Court, *Regarding A Few Questions That Have Arisen in the Course of the Application of the Law on Freedom of Conscience*, February 29, 1996, with amendments.²³ The Arbitrage courts are competent to hear all disputes between religious organizations, between religious organizations and other legal persons, and disputes concerning the transfer of public possessions to the property of religious organizations.²⁴ However, the Arbitrage courts are not competent to hear questions concerning the cessation of activity of a religious organization, nor are they competent to hear appeals from the decisions of public bodies/agencies about the property and use of religious buildings and material goods. In conformity with articles 16 and 17 of the law On Freedom of Conscience, such questions are contemplated by courts of general jurisdiction according to the procedure established in the Civil Procedural Code.²⁵

III. General Principles of the Relationship between Church and State

In the field of confessional relationships, Ukraine applies the following principles: (1) guaranteeing freedom of conscience for everyone, (2) separation between church and state, (3) non-discrimination on the basis of religious membership or convictions and the equality of religious organizations, (4) autonomy of religious organizations, and finally, (5) overcoming negative effects of the preceding state's policy towards religions and the church.

According to article 35 of the Constitution of Ukraine, "each individual has the right to freedom of world outlook and to confession of faith."²⁶ This right includes "the freedom to confess any religion or not to confess a religion at all, to do worship without impediment, both individually and collectively, and to conduct religious activity."²⁷ In compliance with generally accepted principles, this right is guaranteed to everyone, and therefore not only to Ukrainian citizens, but also to foreigners and to people without citizenship.²⁸ Freedom of religion includes, firstly, the right to choose, to hold, and to change one's religious, agnostic, or atheistic beliefs and conceptions of life. Secondly, it includes the right to develop, individually or with others, religious customs, rites and religious activity. In practice, it means the right to manifest and to act in conformity with one's faith or convictions. Together with this article it is necessary to consider para. 1 of article 34 of the Constitution, which guarantees freedom of thought, freedom of speech, and the right to freely express one's ideas and convictions. Moreover, the notion of religious activity has received a broad interpretation in jurisprudence. This includes, among other things, the use of the mass media and educational and formative activities. One

²³ Commentary of the Supreme Arbitrage Court, nr 02-5/109 of February 29, 1996, in *Zbirnyk rishen' tu arbitrazhnoji praklyky Vyzhchoho Arbitrarhnoho sudu Ukrajiny* 1992, 2, 9S-102, with amendments

²⁴ Arbitrage-procedural Code of Ukraine of 6 November 1991, VVR 1992, 6, 56.

²⁵ Civil-Procedural Code of Ukraine of 15 July 1963, VVR 1963, 30, 464, with amendm.

²⁶ The terminology accepted in the Ukraine Const, raises doubts, since the freedom of religion is restricted only to freedom of world outlook and faith.

²⁷ Ukraine Const., art. 35, para. 1.

²⁸ Compare *ibid.*, art. 26, para. 1

should state that the constitutional guarantees of freedom of religion in Ukraine generally satisfy international standards. However, omitting the expression "public and private" in the formulation of the right to freedom of conscience in article 35 can become a pretext for excluding religious organizations from the public dialogue.

Article 3 of the law On Freedom of Conscience defines the right to freedom of conscience similarly to what is stated in the Constitution. Yet two essential restrictions can be found in the definition. Firstly, in contrast to the Constitution, the law only guarantees the right to freedom of conscience to Ukrainian citizens. Secondly, protections are limited to the "celebration of religious cults, open manifestation of religious or atheist convictions." It is obvious that after the Constitution was promulgated as the law of direct implementation, everyone is protected from violations of religious rights.

Furthermore, it is necessary to note a lack of an explicit list of individual religious rights and their guarantees.²⁹ Even the right to create and to belong to a religious organization is not affirmed *expresses verbis*.

The Constitution formulates the principle of the separation of church from state as well as church from school, attributing to this principle a meaning conceptually different from the previous Constitution of 1978.³⁰ For instance, the statements that "the state cannot impose any religion as obligatory"³¹ and that "no ideology can be imposed by the state as obligatory"³² were added. Although an interpretation of this principle is currently under formation, an optimal version could be the following; Ukraine is a secular state. No religion or world outlook can be recognized as official or obligatory. The state takes a neutral stand towards religions and denominations. The state assures the secular character of the state institutions, institutions of local governing, and of education in government educational institutions.³³

In article 5 of the law On Freedom of Conscience, a few additional requirements are expressed. First, religious organizations must not exercise state functions, namely state administrative power.

²⁹ See art. 2 Ustawy o gwarancjach wolności sumienia i wyznania z dnia 17 maja 1989 r. (Law of Poland On Guarantees of Freedom of Conscience and Belief) Dz.U. 1989, 29, 155, with amendm.

³⁰ VVRU, 18,268.

³¹ Ukraine Const, art. 35, para. 3

³² Ibid., art. 15, para. 2

³³ For different models of the secular society (*laicite*), see N. Koshy, *Wolność religijna w zmieniającym się świecie* (Religious liberty in the changing world) (Krakow: 1998), 61-84; H. Misztal, "Wolność religijna i jej gwarancje prawne" (Religious freedom and its legal guarantees), in *Prawo wyznaniowe III Rzeczypospolitej*, pod red. H. Misztala, Lublin 1999, 34-38; M. Pietrzak, *Demokratyczne państwo prawne* (Democratic laical state of law) (Warszawa: 1999), 123-153; W. Cole Durham, Jr., "Perspektywy shchodo religijnoji svobody: porivnialna struktura" (Perspectives of religious freedom: a comparative structure), in *Relihijna svoboda iprava ludyny: pravnyvhi aspekty*, v. 2, (Lviv: 2001), 45-53; E. O. Benito, *Study of the current dimensions of the problems of intolerance and discrimination based on religion or belief* (New York: 1987); F. M. Gedicks, "Public life and Hostility to Religion", *Virginia Law Review* 78 (1992): 671-696; A. Krish nas wami, "Study of Discrimination in the Matter of Religious Rights and Practices", in Center for the Study of Human Rights, *Religion and Human Rights: Basic Documents*, ed. T. Stahnke and J. P. Martin (New York: 1998); as well as certain decrees of the Court on Human Rights, e.g., *Darby v. Sweden*, 13 EHRR 774 (1990) (187 EctHR ser. A, 1990).

Second, they must not support political parties; the principle of separation does not imply, however, that members of religious organizations are excluded from participating in the political process of the state. Apart from this, it is illegal in Ukraine to restrict scientific research in general education programs based on religious or atheist convictions.³⁴

The Constitution establishes the principle of equality of rights and the principle of non-discrimination, including on the basis of religion and convictions. Article 21 states that "all people enjoy... equal rights", while article 24 declares "citizens have equal rights and constitutional liberties and are equal under the law." Para. 2, article 24, also emphasizes this principle in a negative formulation: "no privileges or limitations based on convictions, religious or otherwise, can exist."³⁵ According to international principles, the concept of equality in Ukrainian jurisprudence is not interpreted in the purely egalitarian sense, but equality is considered by taking into account criteria that distinguish religious organizations, in particular, by their cultural and historical connections to society³⁶.

The law On Freedom of Conscience also explicitly formulates the principle of equality of citizens in all spheres of public life independently of their attitudes to religion. It guarantees equal means of access to government education, does not permit imposing restrictions of rights and, finally, offers the possibility not to indicate one's religious affiliation in official documents.

Regarding the collective aspect of the principle of non-discrimination, article 36 of the Ukrainian Constitution requires the equality before the law of all associations. The law On Freedom of Conscience solidifies this principle by specifically referring to religious organizations and implies, among other things, tax relief, subsidies, and means of access to mass media.³⁷

An important principle of Ukrainian church-state law is that of the independence and autonomy of religious organizations. Such organizations are established and act in accordance with their own hierarchical and institutional structure, and elect, nominate, and discharge personnel according to their own charters³⁸ Thus, the state "does not interfere in the activity of religious organizations, but takes into consideration and respects their traditions and internal rules", provided they do not contradict the law in force.³⁹

The last principle of Ukrainian church-state law, overcoming negative consequences of the

³⁴ *On Freedom of Conscience*, art. 6.

³⁵ *United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res. 36/55 (1981), chapter 2, art. 2: "... 'intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis", in Center for the Study of Human Rights, *Religion and Human Rights: Basic Documents*, ed. T. Stahnke and J.P. Martin (New York: 1998

³⁶ S. Bubyk, *Relihijeznavstvo* (History of religion) (Kyiv: 1998), p. 265.

³⁷ See, e.g., *On Freedom of Conscience*,

³⁸ art. 5. ^{is} *Ibid.*, art. 7.

³⁹ *Ibid.*, art. 5.

preceding state politics, provides for a series of steps on the part of the government both in the legislative and executive spheres. Above all, it implies a legalization of the activities of religious organizations, a rehabilitation of religious organizations that were prohibited and liquidated in the past, and a restitution of their confiscated property. Although the legalization of activities of religious organizations has already finished, debates about the size and manner of rehabilitation and restitution of property still continue,⁴⁰ With the goal of speeding up the process, the President of Ukraine has issued a series of executive regulations in which the procedures and modes of realization of the restitution of the property (especially of religious edifices) to religious organizations is settled.⁴¹ Notwithstanding such measures, in this field an absence of obligatory legal acts is strongly felt.

The preamble of the Constitution of Ukraine features an explicit *Invocatio Dei*. This invocation is formulated in the following manner: "being conscious of the responsibility before God, before our own conscience, before the past, present, and future generations...".⁴² According to the opinion of commentators, this is the way the legislators have chosen to legitimize the post-totalitarian regime and completely negate the responsibility of public authorities. This also affirms an awareness of the non-exclusiveness of the human existence, notwithstanding the total atheization of the Soviet man.⁴³

In spite of the debatable nature of the normative force of the preamble of the legislative act, no doubts arise that an explicit reference to responsibility before God is important for the interpretation of other norms of Ukrainian legislation, above all, those regulating church-state relationships. In particular, the *Invocatio Dei* permits the interpretation of the constitutional principle of separation between church and state in a positive sense. It can serve as an important guarantee that the right to freedom of conscience in public life is exercised on principles of equality and justice rather than isolation and exclusion of religious values from public life.

The Constitution of Ukraine proclaims the dignity of a person, the non-alienability and inviolability of the individual's rights and liberty, the right to unfettered development of the personality, the principle of the superiority of the law, the responsibility of the state for its activity, the inclusion of

⁴⁰ See Zajava Prezydenta Ukrainy z 1 Ichervnia 1999, Pro potrebu moralnoji ta poli- tycznoji reabilitaciji **Cerkvy** ta pro zahezpechennia realizaciji svobodny sovisti hromadian (Declaration of the President of Ukraine of June 11, 1999 On the need of the moral and political rehabilitation of Church and on the guarantee of realization of the freedom of citizens conscience); Proekt Zakonu Ukrainy Pro reabilitacijju Greko-kato/yckoji Cerkvy z 2000 roku (Draft of the Law of Ukraine on Rehabilitation of Greek-Catholic Church of 2000), the author's archive; Ukaz Prezydenta Ukrainy Pro nevidkladni zachody shchodo ostaiochnoho podolannia nehatyvnych naslidkiv totalitarnoji polityky kolyshmhoho Sojuzu RSR stosovno religiji ta vidnovlennia porushenyh prav cerkov i religijnyh orhanizacii (Decree of the President of Ukraine On urgent sanctions concerning the complete over-come of the negative consequences of totalitarian policy of the former USSR concerning religion and restitution of churches and religious organizations), Uriadovyj kurjer, 2002, March 29, 10.

⁴¹ Ukaz Prezydenta Ukrainy vid 14 bereznia 1992 r. nr 125 *Pro zachody shchodo povernennia religijnyh orhamzacijam kultovoho majna* (Decree of the President of Ukraine of March 14, 1992), in *Uriadovyj kurjer* 1992, March 6, 3. Rozporiadhennia Prezydenta Ukrainy vid 22 kvitnia 1994 r. nr 53 *Shcho do povernennia religijnyh orhamzacijam kultovoho majna* (Decree of President of Ukraine Concerning the restitution of cult property to religious organizations of June 22, 1994 nr 53) in *Uriadovyj kurjer* 1994, March 25, 5.

⁴² For discussions on the acceptance of this fragment of the Constitution, see Stenograma zasidannia deputativ Verchovoji Rady 21 chervnia 1996 r., (Shorthand record of the session of Ukrainian Parliament of June 21, 1996), *Archiv Verchovnoji Rady*.

⁴³ See H. Misztal, "Wolność religijna i jej gwarancje prawne" (Religious freedom and its legal guarantees), in *Prawo wyznaniowe HI Rzeczypospolitej*, ed. H. Misztal, (Lublin: 2001), 28-31

the ratified international rules and regulations in force into national legislation, as well as the principal basis of a democratic state of rights according to which no one can be forced to do that the law does not permit.⁴⁴

According to para. 4 of article 36 of the Constitution, no one can be compelled to join a citizens' association. The law defends freedom of conscience by forbidding an establishment of obligatory convictions and world outlook. No duress is allowed on a citizen's determination of his own attitude towards religion as well as his participation or non-participation in religious celebrations, rites and ceremonies, and the teaching of religion.⁴⁵

Article 55 of the Constitution declares, "the rights and liberties of man and citizen are protected by the court. Every individual is guaranteed the right to appeal to a court from the decisions, actions, or lack of such on the part of any public authority, or of any local power or public officials. Every individual has the right to turn, for the protection of his own rights, to the Ombudsman of the Parliament (Verchovna Rada) of Ukraine for the protection of the rights. After having exhausted all internal means, every individual has the right to turn, for the defense of his own rights and liberties, to competent international judicial institutions or to the respective bodies of international non-government organizations of which Ukraine is a member or participant. Every individual has the right to defend his own rights and liberties against any illegal violation or infraction by all means that are not prohibited by the law."

Article 11 of the Constitution provides for a special protection for religious rights of autochthonous (indigenous) nationalities⁴⁶ and ethnic minorities.

The law can limit the exercising of the right to freedom to conscience (at least in the external aspect) only to protect the public order, the health and morality of the population, or the defense of the rights and liberties of other people.

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⁴⁴ See, e.g., Ukraine Const., arts. 3, 8, 9, 19, 21, 23; see also M. I. Havroniuk, *Konstytucja Ukrainy: oficijnyj tekst: Kamentar zakonodavstva Ukrainy pro prava ta svobody ludyny i hromadianyna* (Constitution of Ukraine: official text: Commentary of Ukrainian Legislation concerning rights and freedom of man and citizen), (Kyiv: 1999), 7, 199-202.

⁴⁵ On Freedom of Conscience, art. 3, para. 3; art. 6.

⁴⁶ Though in the Constitution this notion can be found several times (art. 11; para. 3, art. 92; para. 3, art. 119), it is not determined whom this notion covers. *Jurydychna encyklopedija* (Juridical Encyclopedia), v. 3, (Kyiv: 2001), 355-358.

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One should note that the guarantees of religious freedom must be considered in the context of all of these principles, predominantly new for the post-Soviet legislation. Any limitation upon the exercise of the right of religious freedom may be imposed by law, and only for the protection of public order, health or public morals, or the freedoms and rights of other persons.⁴⁷

According to the International Covenant on Civil and Political Rights, freedom of thought, conscience, religion, and convictions are "unalien-able rights", that is, they cannot be suspended or

⁴⁷ Apart from the apparent identity of the article of the Constitution of Ukraine with corresponding articles of the *Universal Declaration of Human Rights, 1948* (chapter 2, art. 29) and the *International Covenant on Civil and Political Rights, 1966* (chapter 3, art. IX), a grammatical analysis of the sentence reveals certain discrepancy in usage of the word "only" by the legislature. In the text of international acts this word determines both hierarchy of a legal act which can restrict the freedom of conscience, and scope of its motives: "... only... are determined by law solely for the purpose of ..." or "... only... are prescribed by law and are necessary...". For full text of cited articles, see Center for the Study of Human Rights, *Religion and Human Rights: Basic Documents*, ed. T. Stahnke and J.P. Martin (New York: 1998), 60 and 74, respectively. See also D. Gomjen, *Korotkyj putivnyk po Jevropejskij Konvenciji z prav ludyny* (A brief guide in European Convention on Human Rights) (Lviv: 1998), 56-62. In the Constitution, the word "only" solely concerns motives. This poses a danger of reversion to the administrative regulation of freedom of conscience, which is not limited by law.

limited. That means that they cannot be violated even in a state of emergency .⁴⁸ Nonetheless, the Ukrainian Constitution in the first para., article 64, declares that "the constitutional rights and liberties of man cannot be limited, except in the cases provided for in the Ukrainian Constitution"; the second para, presents a list of rights and liberties that cannot be subject to limitations even in cases of war or emergency. This list (bypassing the fact that it contradicts the general principle of jurisprudence that one should precisely define limitations rather than permissions) includes neither article 34, which guarantees freedom of speech and freedom of thought and the right to freely express one's own opinions, nor article 35, which guarantees freedom of conscience. Among the so-called "religious rights", only the principle of non-discrimination has remained intact. The fact that the right to freedom of conscience is implicitly included among the rights that can be subjected to limitations relieves some interpretative doubts about legislative intent. In particular, it is not clear whether the legislature intended to restrict the right to freedom of conscience in general, or only some aspects of it, for example, the right to alternative (non-military) service for religious reasons. Unfortunately, a vague formulation of the rules can be symptomatic of the existence of a certain lacuna in the legislature's comprehension of an absolute character of human rights, at least in their individual dimension.

No one can be exempted from one's own duties towards the state or refuse to obey the law for religious reasons.⁴⁹ This has a few exceptions foreseen by the law, including, among others, substitution of military service by a non-military (alternative) service and protection of information obtained during a confession (priest-penitent privilege) (para. 3, art. 5 On Freedom of Conscience).

IV. The Legal Status of Religious Organizations

According to article 7 of the Ukrainian law On Freedom of Conscience, "religious organizations in Ukraine shall be established in order to satisfy religious needs of citizens, to profess and disseminate the faith and shall act in accordance with their own hierarchical and institutional structure...".

This definition, although formulating in a precise way the properties that characterize a religious organization (the goal and internal structure of the organization), does not state what constitutes a religious organization.⁵⁰ Taking into account the inaccuracy of such a definition, we will attempt to generalize the properties of a religious organization that are attributed to it by legislators. Thus, a religious organization is a specific type of structured human organization possessing an internal order (defined in its own law, charters or regulations), capable of founding bodies of authority (that carry out

⁴⁸ See Martin Scheinin, "Article 18". in *The Universal Declaration of Human Rights: A Commentary*, ed. Eide Asbjørn et al. (Oslo: Scandinavian University Press, 1992), 266; *International Covenant on Civil and Political Rights*, GA Res. 2200A (XXI) (1966), art.

⁴⁹ Ukraine Const, art. 35, para. 4.

⁵⁰ E.g., an association of citizens, an association of priests, or, perhaps, an organization *sui generis*

its internal functions and represent the group to the outside), and, aiming to assure (to each member of the group and the group as a whole) realization of the right to freedom of conscience, religion, confession of faith, and convictions.

It is necessary to emphasize that a religious organization by nature is a special association. The majority of representatives of religious organizations emphasize the fact that it is impermissible to reduce the status of their organizations to the status of civil associations.⁵¹ Nevertheless, it is necessary to note that a direct connection between these two forms of organizations is obvious. Unfortunately, this is reflected neither in the law On Freedom of Conscience, nor in the law On Associations of Citizens of 16 June 1992.⁵² Certainly, there always exists a risk that some religious organizations might abuse their own special legal status. This requires more precise legislative definition of a religious organization and a specialized expertise before their registration. Unfortunately, a verification procedure has not yet been adopted in Ukraine.

According to the classification of the law On Freedom of Conscience, religious organizations in Ukraine are:

1. religious communities,
2. religious administrations and centers,
3. cloisters, religious fraternities, religious missions and spiritual educational institutions, and
4. associations of religious organizations represented by their own centers.

In this respect the status of churches seems ambiguous. One can suppose that they belong to the last category.⁵³ However, the law does not regulate how such institutions are founded and does not provide them with the status of a legal person. One should note that the concept of a church (as such) is absent in the Ukrainian legislation. In fact, from the point of view of the legislators or a public official, both a religious community and a church to which the community belongs are religious organizations that are equal and mutually independent. In a series of drafts of the law On Freedom of Conscience, an introductory article has been proposed which, *inter alia*, defines the concept of a church.⁵⁴ However, a

⁵¹ In the State Department on Religious Affairs", *Ludyna i svi*/, November-December 1997, 27.

⁵² VVR 1992.34,504.

⁵³ Ministerstvo Ukrajinu u spravach nacionalnostej, mihraciji ta kultiv, Upravlinnia u spravach relihijnych orhanizacij, *Metodychni rekomendaciji do praktychnaho zastosuvannja Zakonu Ukrajinu pro svobodu sovisti ta relihijni orhanizacij* (Ministry of Ukraine on Affairs of Nationalities, Migrations and Cults; State Department on Religious Organizations, Methodical recommendations on practical application of the Law of Ukraine on freedom of conscience and religious organizations), (Kyiv: 1995), 16.

⁵⁴ See article 1 of *Proektu Zakonu Ukrajinu Pro vnesennja zmin i dopovnen do Zakonu Ukrajinu Pro svobodu sovisti ta relihijni orhanizacij* (Draft of the Law of Ukraine on amendments to the law of Ukraine on freedom of conscience and religious organizations) of December, 18 2000 (submitted by Council of Ministers of Ukraine, nr 1178-2 with amend.); *Proektu Zakonu Ukrajinu Pro vnesennja zmin do Zakonu Ukrajinu Pro svobodu sovisti ta relihijni orhanizacij* (Draft of the Law of Ukraine on amendments to the Law of Ukraine on freedom of conscience and religious organizations) (submitted by the deputy V. Kostycky in 2(K)10

mere introduction of a definition of church without modification of the general classification of religious organizations and of the legal status of church would not constitute much of an improvement.

The religious administrations and centers are founded in a manner expressed in article 14 of the law On Freedom of Conscience. Depending on their own charters, registered in the State Department on the Religious

Affairs, such centers are authorized to found institutions of spiritual education as well as cloisters, fraternities, and missions. The last three types of religious organizations can be also founded in a way foreseen in articles 7 and 8 of the law On Freedom of Conscience, however with a compulsory registration by the State Department.

According to article 8 of the Ukrainian law On Freedom of Conscience, a religious community is created by a voluntary association of people of legal age belonging to the same confession. A religious community that does not intend to obtain the status of a legal person can carry out legitimate activities without informing public authorities. Statistics demonstrate that many religious communities make use of this right (there are about 1082 at the end of January 1, 2003).⁵⁵ For some of them, this provides a legal possibility to realize their own dogmatic principles (e.g., Jehovah's Witnesses, etc.)- Unfortunately, most of the draft devoted to an improvement of the law On Freedom of Conscience insists on a return to obligatory registration. Members of an unregistered religious community enjoy all the rights that follow from the right to freedom of conscience; the right to alternative service can serve as an example. However, in practice the state authorities use the requirement of registration to refuse recognition of rights of members of unregistered groups.

In summation, it is necessary to state that in the act of making a classification of religious organizations, legislators create a model of the structure of a religious organization, which can itself be considered interference into the internal affairs of religious organizations.

A religious organization can obtain the status of a legal person and thus legal capacity in any period of its existence. The minimal condition is that ten Ukrainian citizens of legal age should submit a request and the charter of the religious organization to the regional executive committee, to Kyiv's or Sevastopil's city council, or, in the case of the autonomous republic of Crimea, directly to the government.⁵⁶ It seems logical that one religious organization should unite all the believers of a given religion or conviction in the state. However, the existing condition makes possible many diverse and non-traditional religious organizations and, therefore, brings up a large number of miniature organizations. This creates an illusion of a high religiosity of the Ukrainian society.

According to article 12, and 14 of the Ukrainian law On Freedom of Conscience, in order to

⁵⁵ In the State Department on Religious Affairs", *Ludyna i xvii*, January 2003, 35-38

⁵⁶ *On Freedom of Conscience*, art. 14, para. 1

legally establish an organization, a group must

gather a general meeting, adopt a charter, and elect representatives to the public authorities. During the same meeting, the religious community must adopt provisions regarding autonomy and subordination of the organization and enter these provisions into the organization's charter. The registration authority is obliged to examine the submitted documents and to make a decision within one month, and to inform the organization within ten days in writing. However, in a case of necessity, the authority can prolong the procedure for up to three months.⁵⁷

According to para. 3 of article 12 of the law On Freedom of Conscience, the charter of a religious organization shall contain the data on: confessional affiliation and the location of the community; the place for the organization in the structure of another religious organization (according to the law, the religious association); property it possesses; management structure and principal tasks of the organization; the procedure of introduction of changes and amendments to the charter; and the procedure for settlement of property and division of assets in the case of a cessation of activity.

A religious organization with administrative centers located outside Ukraine must also present to the authority a certificate proving the existence of an agreement about such subordination between the State Department on Religious Affairs and the religious center.⁵⁸

A change of a religious organization's subordination does not influence its rights and duties. This has allowed many priests to avoid internal punishments by switching to other confessions (usually together with the believers and property).

Registration procedures are often used by public authorities as a means of "legal" discrimination. For example, the law does not discern clear criteria for deciding when the charters submitted for registration should be examined within one month or within three months. In practice, "non-traditional" communities in a given region suffer from extended delays in registration as a result of this discretion.

Presently, commentators are paying increased attention to specifying the procedure by which a religious community acquires legal entity status. In particular, some emphasize that registration of the charters of religious communities must pass into the competency of the Ministry of Justice (more precisely, into that of the local justice authorities). It could lead the religious organizations out of a sort

⁵⁷ *On Freedom of Conscience*, arts. 14, 15. The uncertainty of motives for a continuation of the registration period sometimes causes a violation of rights of religious organizations. See *Annual Reports on International Religious Freedom: Ukraine*, Bureau of Democracy, Human Rights and Labor (U. S. Department of State: 1999-2002).

⁵⁸ *Ministerstvo Ukraïny u spravach nacionalnostej, mihraciji ta kultiv, Upravlinnia u spravach relihijnyh orhanizacij, Metodychni rekomendaciji do praktychnoho zastosuvannia Zakonu Ukraïny pro swobodu soristi ta relihijni orhanizaciji* (Ministry of Ukraine on Affairs of Nationalities, Migrations and Cults; State Department on Religious Organizations. Methodical recommendations on practical application of the Law of Ukraine on freedom of conscience and religious organizations) (Kyiv: 1995), 30

of "ghetto", as well as improving the registration procedure.

A religious organization provides for realization of the right of freedom of conscience both for each member and for the entire community. The Ukrainian law On Freedom of Conscience guarantees the following rights to a religious organization:

- to organize and maintain freely-accessible places for worship, religious assemblies and pilgrimage;
- to purchase, to possess, and to use religious literature (in the language of its choice), objects and materials of religious destination, as well as to produce, export, import and distribute such materials;
- to create structures for carrying out activities of a charitable, educational, or cultural character;
- to establish and maintain international relations and direct personal contacts.

Obviously, no activity of an organization can contradict the law in force, and the above stated list of rights is not complete.⁵⁹

The activity of a religious organization may be terminated, either in the case of its re-organization or liquidation in accordance with the charter or in the case of the decision of a court. The latter occurs in the following circumstances: a threat to the public safety and order, to life, health, and morality of citizens; a participation of a religious organization in the activity of political parties or propaganda; financial support of parties or electoral campaigns; an unauthorized appropriation of buildings or religious property; other misdemeanors provided for in articles 3, 5, 16, and 17 of the law On Freedom of Conscience.

According to the law in force, the status of new religious movements is not distinguished from that of other religious organizations. Neither the Ukrainian Constitution nor the law On Freedom of Conscience distinguishes religious or religion organizations based on the length of their

existence, their traditional or historic character, or their number of believers. Nevertheless, a considerable increase in the number of new religious organizations in Ukraine in recent years (1,328 as of January 1, 2002) launched extensive debates regarding terminology as well as necessity of a modification of the legislation. This is designed to improve protection of citizens from the impact (considered *a priori* as destructive) of the so-called non-traditional religions.⁶⁰

⁵⁹ Compare with an. 6 of *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), and par. 16 of *Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference of Security and Cooperation in Europe* (1989), in Center for the Study of Human Rights, *Religion and Human Rights: Basic Documents* (New York: Columbia University, 1998), H)2. 104. and 154-156.

⁶⁰ N. Karpachova, *Zvit upovnovarhenoho z prav ludyny za 2000 rik*, (Annual report of the Responsible on human rights of 20(X)), (Kyiv: 2001), 250.

According to the opinion of experts, the presumption of guilt towards new religious movements derives from mass-media information, often vague and incorrect (this opinion is sustained by 68 percent of experts), and from the position of the "traditional" churches (the opinion of 64 percent).⁶¹ In addition, violations of the legislation in force by new religious movements do occur. In this light one can consider the Decree of the Council of the Ministry of Ukraine of 1997 On Measures for the Neutralization of the Activity of Wholly Destructive Cults and the Minimization of Their Negative Influence on Society, as well as the executive regulation issued the same year by the President of Public Administration of Lviv on the plan of the *Measures*.⁶² These acts encourage authorities, among other things, "to block the missionaries and foreign religious organizations that don't have the status of a legal person from using the educational and cultural institutions for their purposes."⁶³ Such preventive activities of the state seem to contradict international documents, in particular, the Recommendations of the Parliamentary Assembly of the European Council⁶⁴

V. Education

According to the Ukrainian Constitution, the law On Freedom of Conscience, and the law On Education⁶⁵, the education system in Ukraine is "of a secular character." According to article 6 of the law On Freedom of Conscience, "citizens have the right to receive individual or collective religious education", while "religious organizations have the right to create, according to their internal norms, groups and institutions of religious formation for children and adults, as well as to conduct teaching in other forms using their own edifices or those which they rent." The formulation of the first part of the rule leaves uncertainty about the legitimate place of education, while the second part establishes the right of religious organizations to teach in public institutions, for example, in public schools on an optional basis.

The same article imposes on teachers of religious doctrines and on religious preachers the duty to educate their pupils in the spirit of tolerance and respect. Furthermore, article 9 of the law On Education declares that all educational institutions, independent of their form of property (state, municipal or private), are separate from religious organizations and are of a secular character, except institutions founded by religious organizations. However, it is necessary to note a perhaps inadvertent consequence of legislators assigning religious organizations the right to found their own educational institutions. The law On Freedom of Conscience permits only foundation of "spiritual educational

⁶¹ O. Nikitchenko, "Eksperty pro netradycijni rehijji ta rehijjni konflikty" (Experts on non-traditional religions and religious conflicts), *Ludyna i svit*, June 1999, 27-28.

⁶² *On Measures for the Neutralization of the Activity of Wholly Destructive Cults and the Minimization of Their Negative Influence on Society*, the author's archive

⁶³ Ibid.

⁶⁴ In particular, see "Recommendation 13Y6 (1999) of Parliamentary Assembly of Council of Europe on religion and democracy" and "Recommendation 1412 (1999) on illegal actions of sects". *Ludyna i svit*, August-September, 1999.

⁶⁵ See generally. *On Education*, VVR 1996, 21, 84

institutions" that are classified themselves as religious organizations. Article 19 of the law On Education does not mention any religious needs when listing reasons for establishment of educational institutions.

Very recently (April, 29 2002), theology was recognized as a scientific discipline in Ukraine.⁶⁶ However, there still remain difficulties and restrictions in rights with licensing, receipt, and accreditation of theological educational institutions and employment of their alumni.⁶⁷

In some regions, (principally in the western part of Ukraine), lessons on Christian ethics were introduced into secondary schools as an experiment by a decision of local authorities. However, the absence of an adequate legal base has allowed the schools' administrations to express unlimited initiative, for instance, by introducing an obligatory attendance and attestation. This often creates a threat of individual and collective discrimination.⁶⁸

VI. Labor Law and Religious Organizations

In 1919, when the decree On the Separation of Church from State and School from Church⁶⁹ went into effect, religious organizations in Ukraine were denied the status of a legal employer. Labor in religious organizations was used on the basis of voluntary free service. The state (the USSR) tried to resolve disputes that arose from such a regulation through a series of administrative acts. According to these acts, legislation on labor extended to include workers employed by religious communities (with a separate list of relevant professions) only if the labor contract was made with the participation of the trade union and if the contractual relations did not pursue industrial or commercial aims. To summarize, in the case of religious organizations, until 1991 the legislation on labor covered only custodians and street cleaners, that is, the people employed in household service.⁷⁰

⁶⁶ Despite of the Instruction of the Minister of Education and Science of April 29, 2002 (Relihijna panorama, Lypen 2002), theology has not been included into approved scientific subjects. See about the opinion of opponents e.g.: *Akademichne relihijeznavstvo. Pidruchnyk*, red. A Kolodnyj. (Kyjiv: 2000) 856-865; M. Zakovych, A. Kolodnyj, "Osvita v konteksti svobody sovisti", in *Relihijna svoboda: humanizm I demokratyzm zakonodavchych iniviatyv v sferi svobody sovisti* (Kyjiv: 2000) 97-100.

⁶⁷ See e.g. art. 6 *On Alternative (Non-Military) Service*; G. Druzno, *Relihija I prava Pudyny*. in *Synopsus*, 2000 (3) 165-166

⁶⁸ Compare with N. Kochan, "Vidokremlennia shkoly vid cerkvy v koordynatach vid-krytoho suspilstva" (Separation of school from church in coordinates of open society). *Ludyna i svit*, September 2000, 39-49; Pidsumkovyj dokument zasidannia Kruhloho stolu na temu: "Relihija i vlada v Ukraini: rozvytok pravovych zasad vzajemovidosyn u proekti Zakonu Ukrainy Pro svobodu sovisti ta relihijni organizaciji" (Summarizing document of the round table concerning: "Religion and authority in Ukraine: development of legal basis of their relations, in the draft of the *Law of Ukraine On freedom of conscience and religious organizations*") of March, 30 1999, 6; "Cerkva i suspilstvo v Ukraini: problemy vzajemovidosyn" (Church and society in Ukraine: problems of interrelations, analytical report of UCEPD), *Nacionalna bezpeka i oborana*, 20(X), nr 10, 51-54.

⁶⁹ ZU SRR 1919,3,37.

⁷⁰ ¹¹¹ See Pro poshyrennia zakonodavstva pro praveci na osib, kotri pracujut jak robitnyky i sluzhbovci u relihijnych orhanizacijach (Decree of Council of Ministers of USSR On Extension of Legislation on Labor to persons who are employed by religion organizations) nr6S6,ZPURSR 1956, 11-12, 113; Polozhennia pro relihijni objednannia v Ukrainiskij RSR (Decree On religious associations in

Since 1991, with the adoption of the Ukrainian law On Freedom of Conscience, religious organizations have re-obtained the status of a legal person and therefore the legal capacity to employ individuals. The principle of autonomy of religious organizations is an important constituent of the labor legislation in the context of religious relations. This means that the state authorities should not interfere in the internal self-government of such organizations, in particular, in the appointment or replacement of personnel, in the determination of internal labor schedules, etc.

Therefore, the norms about trade unions, participation in management, and the collective resolution of disputes are unlikely to be extended to cover the personnel of religious organizations. Nevertheless, the autonomous self-government of religious organizations does not exclude a subordination to the Ukrainian law and, therefore, internal regulations on labor cannot contradict the legislation in force, particularly concerning employees' rights. Labor conditions are established by a written agreement between administrative bodies of the religious organization and the employee. The right to social insurance and judicial protection extends to people who work for religious organizations in full measure.

According to article 2 of the Code of Laws on Work of 10 December 1971⁷¹ Ukraine assures equality of labor rights to all citizens, independent of origin, social condition, race, nationality, sex, language, political opinion, religious conviction, or other conditions. Nevertheless, since legislation respects the autonomy of religious organizations, preferred employment by religious employers of persons belonging to the same faith is not discriminatory.⁷² The legislation on labor extends to the employees of enterprises, institutions and organizations founded by religious organizations in full measure.

In Ukraine, some Orthodox religious holidays are public days off. These include: Christmas (January 7), Easter (Sunday) and Pentecost (Sunday). In the latter two cases the public holidays are shifted to Mondays.⁷³ The second para, of article 73 determines that, complying with the request of religious communities of other faiths registered in Ukraine, the administrations of enterprises, corporations, and organizations shall furnish up to three days off during a year to employees to celebrate their great holidays with obligatory compensation of work during other days. However, there is no rule that assures a personal character of the religious freedom. Apart from this, it often happens that employers (particularly those in the state sector) choose Sundays for the compensation of work hours, which obviously violates the religious freedom of the majority of Ukrainian employees.

Ukrainian SSR), nr 46 of November, 1 1976, VVR URSR 1976, 420. For a more detailed treatment, see O. Ivanova, "Relihijna organizacija jak subjekt trudovoho prava: zachyst prav jiji pracivnykiv" (Religious organization as a subject of labor law: defense of rights of its employees), *Pravo Ukrajiny*. 2000 nr 6, 46-49

⁷¹ VVR 1971, 50. 375, with amendm.

⁷² N. Lemer, "Relihijni prava ludyny na osnovi dokumentiv OON" (Religious rights of man on the basis of documents of UN), in *Relihijna svoboda i prava ludyny: Pravnychi aspekty*, v. 2, (Lviv: 2001). 152-153.

⁷³ *Code of Laws on Work*, arts. 67, 73.

Though an entire chapter is dedicated to the labor activity of religious organizations and their enterprises, the law On Freedom of Conscience (part V, arts. 25-28) in reality recites the general principle of the extension of the legislation on labor to religious organizations. It would be sufficient to formulate this principle *expressis verbis* and, instead, to concentrate on the resolution of other more complicated questions that come up in practice.

VII. The Financing of Religious Organizations

According to the principle of separation of church from state and in conformity with chapter 4 of article 5 of the law On Freedom of Conscience, the state does not furnish financial support to any type of activities of religious organizations. At the same time, an indirect financial support of the state for restructuring and reconstruction of ecclesiastical edifices that have historical and cultural value, as well as for restoration and preservation of icons, is not prohibited by the law, but does require legislative development and improvement. This is an example of co-operation between religious organizations and the state in the field of culture and protection of the national heritage.

In Ukraine, religious organizations are defined as non-profit entities and are provided with special exemptions in the field of taxation. This special status is not obtained automatically at the moment of registration, but requires a special request to a fiscal authority for inclusion into the registry of non-profit entities and acquirement of the respective non-profit mark. In addition to such a request, a religious organization must submit a copy of its charter and the documents that confirm its state registration. Elimination from the registry is performed by a decision of the public fiscal authority in the cases of violation of fiscal legislation. Income of religious organizations is exempt from taxes if it is obtained (i) as irrevocable monetary or property aid or voluntary donations, (b) from cult services.

According to the list established by the Ukrainian Council of Ministers in 1997, the services and the sale of objects of worship are exempted from the value-added tax. This excludes excised goods and charitable aid of a religious organization, unless otherwise provided for in the law.⁷⁴ Only those religious organizations that do not carry out entrepreneurial activities are exempted from the land tax. The leasing of land by a religious organization, is a subject of a taxation of the general standard rate.

The Ukrainian fiscal system suffers from two obvious gaps. The first is an absence of an explicit personal right to contribute to the development of a religious community without taxation. The second one is a lack of a right of religious organizations to ask for and to receive aid, including that of the financial type, as it is foreseen in the Declaration on the Elimination of all Forms of Intolerance and

⁷⁴ For a more complete treatment, see *Opodatkuvannia retihijnych orhanizacij v ukra-jinskomu zakonodavstvi* (Taxation of religious organizations in Ukrainian legislation), *Ludyna i svit*, October 1997, 26-2H; P. Medvedchuk, T. Kozak, *Osnbyvosti opodeAu-vannia relthijnych orhanizacij* (Peculiarities of taxation of religious organizations) (Lviv: 2001).

of Discrimination Based on Religion or Belief⁷⁵ and in the Concluding Document of the Vienna Meeting of CSCE.⁷⁶ Furthermore, the fiscal sphere of Ukrainian legislation is characterized by a rather narrow interpretation of the concept of the activity of a religious organization, since it does not include education, charitable, or publishing activities.

VIII. Religious Service in Public Institutions

The principle of separation of church and state does not exclude mutual exchange of values, traditions, and aid. For instance, the President of Ukraine during his inauguration traditionally takes an oath on the Constitution and on the Gospel of Peresopnytsia (the oldest Gospel translated into Ukrainian, 1550). The solemn opening of the Year of Justice takes place each year on October 8 in the Cathedral of Saint Sophia in Kyiv (the oldest Christian cathedral in Ukraine, 1037). Though these customs are not supported by any legislative act, they testify on the importance of religious factors in public life in Ukraine.

Additional legislation would permit activation of functions of religious institutions in the social sphere, especially in hospitals, schools, prisons, and the army. Meanwhile, religious services occur occasionally in these arenas. The reason can be found in a lack of appropriate skilled personnel, in an absence of distinct structure, and, on the other hand, in legislative gaps as well as in fiscal pressure and absence of state donation programs. This notwithstanding, 50 percent of humanitarian aid has already arrived in Ukraine with the aid of religious organizations. It is also worth emphasizing the commitment of some churches in favor of the development of the institution of chaplains.

An important function of religious organizations in public life is the emphasis paid by them to the dignity of human beings and an adequate criticism of the actions of individuals, groups, or bodies of public authority that offend or negate it. In particular, the appeal of the Synod of Bishops (the highest collegial organ of power in the Church of Eastern Tradition) of the Ukrainian Greek Catholic Church on the subject of the attitude of Christians toward missing or late salaries as well as towards the corruption and arrogance of public officials in Ukraine has become well renowned.⁷⁷ Another similar appeal concerned the problems of immigration.

One must note that the participation of religious organizations in the public sphere of the state can be followed by a risk of their political and ideological involvement. This can lead to a loss of self-identity of the church and to a decrease of trust of the society.

⁷⁵ Art. 6f, *United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res. 36/55 (1981), in Center for the Study of Human Rights, *Religion and Human Rights: Basic Documents*, ed. T. Siahnke and J. P. Martin (New York: 1998), 104.

⁷⁶ Art. 16d, *Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference of Security and Cooperation in Europe* (1989), in Center for the Study of Human Rights, *Religion and Human Rights*, 156.

⁷⁷ For the text, see *Natsionalna bezpeka I oborona*, 2001, 3, 29.

IX. The Status of Priests

In conformity with the principles of social equity and equality and of the protection of rights and legitimate interests of citizens independent of their attitude towards religion, the status of priests of various religious affiliations is equal before the law of Ukraine. However, because there is a strong necessity to overcome the past negative consequences of state political reactions towards churches and their ecclesiastical leaders, specific articles of the law On Freedom of Conscience explicitly recognize the personal and civil rights of priests.⁷⁸ For example, article 5 of the law guarantees priests the right to participate in political life equally with all other citizens. According to the principle of the equality of rights of all citizens, this seems superfluous. According to article 28 of the law On Freedom of Conscience, priests enjoy social security and insurance equal to that of employees of the state-owned and public enterprises, institutions and organizations,

The status of foreign priests deserves special attention. According to article 29 of the Constitution, foreigners who legally stay in Ukraine enjoy the same rights and freedoms as Ukrainian citizens. On the other hand, the state declares its non-interference in the internal affairs of religious organizations, especially those regarding their internal structure and personnel.⁷⁹ It also guarantees to the religious organizations and to the faithful the right to establish and to maintain international relations and direct personal contact with those sharing the same beliefs outside of Ukraine.⁸⁰ However, in conformity with the amendment to the law On Freedom of Conscience of 1993, the foreign priests, religious preachers, educators, and other representatives of foreign organizations can carry out religious activity only inside the religious organizations that have invited them and only under agreement with the public body that has registered the Ukrainian organization⁸¹ Legislators consider that this amendment protects the spirituality of Ukrainian citizens from the "destructive influx of foreign preachers" as well as "making impossible the rising, development and the registration of destructive sects."⁸² The amendment may, and sometimes does, produce discrimination."⁸³

X. The Law on Marriage, and Family

With the Soviet decrees On Civil Marriage, and Registration in the Registers of Acts of the Civil State of 20 February 1919⁸⁴, and On Divorce of 20 February 1919⁸⁵, the principle of

⁷⁸ Ukrainian legislation in force does not mention monks and nuns separately

⁷⁹ *On Freedom of Conscience* art. 7.

⁸⁰ See *ibid.*, art. 24.

⁸¹ See *ibid.*, para. 4.

⁸² N. Karpachova, *Zvit upovnovarhenoho z prav ludyny za 2000 rik* (Annual report of the Responsible on human rights of 2000) (Kyiv: 2001), 248.

⁸³ *Annual Reports on International Religion Freedom: Ukraine*, Bureau of Democracy, Human Rights and Labor (U. S. Department of State: 1999-2002).

⁸⁴ ZU USRR 1919, 12

⁸⁵ *Ibid.*, 145.

V. Spivak and V. Hopanchuk, *Zakonodavstvo Ukrajiny pro szlub ta simju* (Legislation of Ukraine on marriage and family),

independence of marriage and family relationships from religious institutions was proclaimed. In the pre-war period and during the war both registered and unregistered marriages were valid. Since 1944, Ukrainian legislation recognized the civil form of marriage and its state registration as necessary elements of a legitimate marriage⁸⁶

The present legal regulation in force establishes that the rights and duties of spouses are generated only by marriages contracted before the state bodies of registration of acts of the civil state.⁸⁷

⁷ A religious ceremony has no legal value and is a private individual affair. Civil marriages can be concluded either after or before the religious one. Beginning January

1, 2004, a new Family Code is expected to come in force; however the questions under consideration will not change.⁸⁸

The state guarantees the equality of rights and duties in marriage relationships independent of the attitude towards religion⁸⁹ In Ukraine, only civil courts are empowered to grant a divorce. Religious affiliations or beliefs of the spouses have no importance for a decision of the court; the law strictly defines the reasons for divorce.

Education, health, and physical, spiritual, and moral development of children are all considered rights of children and duties of both parents.⁹⁰ Article 3 of the law On Freedom of Conscience recognizes the right of parents or of their legitimate substitutes to raise their children in conformity with their own beliefs and attitudes towards religion under a condition of reciprocal agreement. Also, the rights of parents cannot be exercised against the interests of the children.⁹¹ Article 52 of the Constitution establishes that a child must be protected from any form of violence, in particular, connected with the freedom of conscience. These articles must be interpreted in the light of the rule established by article 14 of the International Convention on the Rights of the Child of November 20, 1989. It indicates that in the course of the child formation the evolving capacities of the child⁹²

XI. Penal Regulations

The freedom of conscience, religion, and convictions, like any human right, requires protection, and, on the other side, legitimate restrictions to safeguard the common good and rights of others. Some

(Kyiv: 1998), 16-23.

⁸⁶ V. Spivak and V. Hopanchuk, *Zakonodavstvo Ukrainy pro szlub ta simju* (Legislation of Ukraine on marriage and family), (Kyiv: 1998), 16-23.

⁸⁷ *Code on Marriage and Family*, VVR, 1969, 26, 204, an. 13, para. 2.

⁸⁸ See chapters 1, 3, and arts. 21, 27, 36 of the new Family code, in *Uriadovyj kurjer*, 2002, March 6, 5-12.

⁸⁹ *Code on Marriage and Family*, art. 3.

⁹⁰ *Ibid.*, arts. 61,64.

⁹¹ *Ibid.*, art. 61.

⁹² Art. 14, para. 2, *Convention on the Rights of the Child* (adopted and opened for signature 20 Nov. 1989), GA Res. 44-25, UN GAOR. 44th Sess., in Center for the Study of Human Rights, *Religion and Human Rights: Basic Documents*, ed. T. Stahnke and J. P. Martin (New York: 1998), 129.

protecting and limiting rules provided by the Constitution and the law On Freedom of Conscience have found their support in the penal field. In some cases it is adequate, though it must be emphasized that an excess of penal regulations is not appropriate to a democratic state of law. In the past, penal regulations were widely applied in the religious sphere; more precisely, they were tools to eradicate religion from the life of Soviet society. It is noteworthy that although a large number of articles of the Soviet Penal Code⁹³ concerned religion offences, the articles most often used were those on hooliganism, on the violation of civil order, and even on the danger of state security or treason. These articles were applied against the activities of Christian Baptists, Jehovah's Witnesses, Greek Catholics, etc.

On September 1, 2001, a new Penal Code came into force.⁹⁴ However, since the reacquisition of independence, the criminal character underlying legislation on Church-State relations (typical of the totalitarian period) has gradually been reduced. In particular, on June 15, 1992, article 138 was abolished.⁹⁵ According to this article, a violation of laws on the separation of church from state and schools from church (i.e., teaching of religion, diffusion of religious activity and charitable activity, etc.) had been followed by a penalty of correctional work for a period of up to one year or a financial penalty of up to 50 rubles (approximately one third of an average monthly salary). The same year the Ukrainian Parliament abolished penal responsibility for the refusal from military service for religious motives.⁹⁶

In the *Ukrainian Penal Code* (more precisely, part 5, which is dedicated to offences against electoral law, labor law, and other personal and civil rights and liberties), article 161 defines offences against the equality of citizens, in particular, in view of their attitude towards religion. Based on this article, intentional acts incur punishment if they (i) inflame hostility and religious resentment, (ii) humiliate national dignity and honor, (iii) offend sentiments of citizens because of their religious convictions, (iv) impose direct or indirect limitations on rights of citizens based on religious affiliations. The punishments include: fines up to fifty times minimal non-taxed wage (850 hryvniv-150\$), correctional work for a period of up to two years, and a restriction of liberty for a period of up to five years, with possible deprivation of the right to be appointed to some positions or to carry out certain activities for a period of three years. The subject of these offenses can be an individual, a group of individuals, or a public official.

Special articles regulate offences like damage or destruction of religious edifices, illegal

⁹³ *Penal Code URRS*, VVR 1961, 2, 14.

⁹⁴ VVR 2001. 25-26, 131.

⁹⁵ VVR 1992, 21, 457.

⁹⁶ VVR 1996 26, 2(M)

detention, and desecration or destruction of religious sanctuaries.⁹⁷ Article 180 establishes punishments for impeding a celebration of religious rites; para. 2 of article 180 establishes those for forcing a priest to celebrate a religious rite.

Article 181 points to the offences of threatening the health of a person under a pretext of preaching religious doctrines or celebrating religious rites. According to this article, a person or a group that under a pretext of preaching causes damages to the health of citizens or promotes sexual licentiousness is punished by imprisonment or restriction of personal liberty for a period of up to three years. It seems that this article, provided by appropriate interpretation by courts, is designed to prevent a destructive influx of so-called totalitarian sects. In general, the revised penal legislation has become considerably closer to the international standards in this area. One only wishes that among the rules of the new code would be an article explicitly defining penalties for coercion to share information obtained during a confession. The gap makes the guarantees of article 3 of the law On Freedom of Conscience in this sphere merely declarative.

XII. Conclusion

These features represent a large improvement over the prior Soviet legislation on church-state relations. Compared to previous Soviet law, the present law of Ukraine On Freedom of Conscience is characterized by a simplification of registration procedures for religious organizations and the passage from a permissive framework that outlined a narrow scope of permitted activities to a declarative model that recognizes and affirms the rights of individuals, individually and collectively, to practice their respective religions. This is evident in the reduced importance of penal regulations in church-state relations. While the ongoing decriminalization of church-state relations represents a significant step for religious freedom in Ukraine, obstacles still remain. Accompanying this increased recognition of religious freedom, there are some concessions to religious communities in the form of legal entity status and tax relief for registered religious organization, as well as an extension of the legislation on labor, the rules of taxation, social services and insurance to citizens who work for religious organizations.

The law in force on church-state relations in Ukraine is characterized by recognition of each individual as possessing freedom of conscience and extension of the scope of this right beyond the limits of cult activities, as well as tolerance as a principle for the development of relationships between state and religious organizations, and concordance of the national rules with international acts.

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⁹⁷ *Ukrainian Penal Code*, arts. 178, 179

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