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THE ISSUE OF HUMAN RIGHTS IN THE UKRAINIAN CONTEXT

The theme of human rights in the Ukrainian context is as wide as the whole scope of different problems Ukrainians face today. In this paper, I will give you, at the beginning, a short overview of the socio-political problems which have a deteriorating effect on human rights in Ukraine; and then, we will choose three perspectives for the issue of human rights to be analyzed more deeply: (a) the general view of the Ukrainian model of "majority-minority", (b) the phenomenon of nationalism and its interpretations, and, finally, (c) confessional and jurisdictional plurality and its impact on religious freedom.

Social problems in Ukraine with a deteriorating efect on human rights

It would be wrong to view the social problems of present-day Ukraine with either rose-colored or dark glasses. The most adequate metaphor for the present situation is early spring with snow neighbouring with vernal floods. Ukraine goes through a complex transformation which gives evidence for both decline and flourishing. I will list only few of the many signs of this transformation in order to focus our analysis:

Overcoming of the damage caused by the communist experiment on a human soul. It is well known that during the Soviet regime a responsible person who could freely existed in a "forest" of social relations was transformed into a "screw" of a paternalistic state. It was some sort of domestication when people were trained to be thankful to the Soviet state and the Communist Party for everything: their apartments, salaries, education, peace, freedom from unemployment etc. The irony of our history is that the communist state used a moral capital of the previous social systems. The Soviet Union ceased to exist exactly at the time when this moral capital was exhausted and homo sovieticus has practically emerged. Now newly independent states have to build new societies on the basis of human nature which is considerably degraded during the communist rule. The majority of political, economic and social techniques of democracy does not work in our society (at least properly) just because of this human material. What we need now is to make, so to say, de-domestication, to help people to restore their personal freedom and responsibility. In this sense the last ten years were very

painful for people but most fruitful: the transformation period is not completed yet but some results are already visible.

Transformation of legitimate and just government structures into corrupt "sinful structures;"these structures are used by those in power and by the directors of the administrative monopolies for their own purposes, depriving the people of adequate means of existence and weakening their fundamental freedoms, which are formally guaranteed by the Constitution. This phenomenon has resulted in deterioration of human dignity and diminishing of the image of Ukraine in the world.

Lack of a highly moral and professional national elite; this was caused in the past by systematic communist repression and today it makes it difficult to find qualified directors in the fields of economy and government and for the local organs of government. The end of the 20th century revealed, however, the first signs of new professional elite appearing at the national level and a great potential of Ukrainian youth. It is a great problem now to make a social and professional "space"for young people in order to convince them to stay in Ukraine.

Overcoming of a strong economic crisis; during the Soviet time, the Ukrainian industry was consciously and not always in a justified way "fasten"to the economy of Russia and other republics. The split of the Soviet Union has caused a great damaging break of economic ties. During the 1990s, the Ukrainian economy experienced a permanent structural and technological inefficiency. It is only the last two years when our economy seems to recover and shows some promising growth.

Underdevelopment of civil society, which limits society's possibility to organize itself; this leads to such uncivil reactions to injustice as passivity and resignation, forced emigration and suicide, hopelessness and fear. The social crisis has affected the population so severely because the old Communist methods of social protection are today practically dismantled and new methods are still undeveloped. Underdevelopment of civil society does not mean, however, that it lacks in total. We believe it is strong enough not to allow the situation to tumble down into total dictatorship.

Problems in implementing of democracy; in general, three phases of adaptation of the idea of democracy in Ukraine may be distinguished here. The first one was an uncritical and mostly mechanical transfer of it by Ukrainian democrats. As true neophytes, some Ukrainian democrats were even more "Western"than the West itself. Next came a reflex rejection of the idea which had started to

cause some troubles instead of solving them. This period was used by the former communist nomenclature for discreditation of democracy and partial restoration of authoritarianism in ruling the country. I hope that we are now entering the third phase, a slow and step-by-step adaptation of the principles of democracy into Ukrainian legislation and social behavior.

Now, let's turn our attention to concrete illustrations.

The general view of the Ukrainian model of "majority-minority"

The "majority-minority"pattern was almost classical in the former Soviet Union. The ruling ethnic majority was the Russian nation. In Stalin's era, it was called the "elder brother."Special state services ensured that the Russians had a majority both in power and in the propagandist cliques. The communist doctrine of the "extinction of nations"was officially proclaimed. In practice, this meant the decline of other nations and assimilation thereof with the quasi-Russian nation, the so-called "Soviet people."Regardless of constitutional guarantees, in practice there existed a special system of statutory acts and circulating notes which ensured the gradual withdrawal of non-Russian national languages from use as unpromising and replacing them with one state language, namely Russian (or the language of Lenin, as they used to say at that time). The cultures of all nations (including the Russian) were distorted, as their development was limited by the lines of the official communist doctrine.

The world actually got acquainted with Ukraine after it gained independence. The situation with minorities, at first sight, appeared also classical here: the ethnic majority being Ukrainians (78 % of the population); all other nationalities, including Russian, being the minorities; the state language being Ukrainian; and, accordingly, all other languages being the languages of the minorities. Many European diplomats actually came here relying on this information taken from the Internet. I remember a representative of the EU gathering managers of human rights organizations of the country in 1990 in Kyiv to encourage them to protect ethnic minorities. As an example, he recommended they take the Russian minority and language under their protection. Everyone in the hall laughed, including Russian-speaking human rights activists. It was obvious that mechanical transfer of the classical model of "majority-minorities"into the Ukrainian context is entirely inadequate. This model could, to some extent, be true of Halychyna, the far western part of Ukraine, where you are now and where the Ukrainian culture still prevails, even despite the 50-year process of russification. But it cannot, by any means, be applied to the rest of the Ukrainian territory. Responding to the general skepticism of the audience, the diplomat answered: "OK, even if the picture today is not entirely adequate, it is better to

introduce correct legal regulation from the very beginning."Unfortunately, the speaker did not realize that the apparent "rightness"of his recommendation allowed for an increase of negative tendencies rather than harmonization. Let us find out by analysis where such conclusions come from.

Firstly, from a certain point of view, independent Ukraine is part of the territory of the former Soviet Union where the previous ethnic-linguistic polarizations have been preserved. The Russian and Russian-speaking citizens of Ukraine psychologically continue to see themselves as the ruling majority. According to data from Ukraine's Institute of Sociology, only 37% of Ukrainian citizens communicate in the Ukrainian language; in the majority of territories of the country, Ukrainian speakers are mostly found in rural areas, which means they have a lower social status (with the exception of the far western part of the country). In the corridors of power of nearly all parts of Ukraine, one hears Russian. The law of the state status of the Ukrainian language is violated everywhere. Attempts of some Ukrainians, for example in Crimea or eastern parts of Ukraine, to speak Ukrainian in local state institutions often meet aggression. In other words, in Ukraine the social behavior of the ethnic Ukrainian majority (esp. if it is Ukrainian-speaking) still agrees with its recent status as a minority.

Secondly, the theory of "free competition"of the Ukrainian and Russian languages also turns out to be untenable from the point of view of human rights. According to its adherents, the two languages should be given equal rights: that is, the Russian language should also be declared a state language in Ukraine, because, in their view, the inequality of the legal status of Russian discriminates against it. The apparent right-defending rhetoric of this group actually conceals efforts to keep the Ukrainian language out of use in a considerable part of the country's territory, which has nothing to do with the protection of human rights. In this situation, the seemingly-fair equalization of the status quo of the two languages could do great wrong to the Ukrainian-speaking population. To avoid such injustices, the theory of human rights provides for the mechanisms of so-called positive promotion and affirmative action. They give the possibility of stopping the action of negative factors, in this case, the wheel of russification.

In general, it should be noted, however, that the main contradictions of modern Ukraine are found not along the lines of the ethnic or linguistic divide, but on the lines of a civilizational divide between adherents of Ukraine's European choice and adherents of the return of at least three eastern Slavic nations to the union, which envisages the customary dominance of Russia and equally customary ideological regulation of state life. Ethnic Ukrainians or Russians, as well as Ukrainian-speaking and Russian-speaking citizens of Ukraine, may find themselves in either of the two camps.

The phenomenon of nationalism and its interpretations

It was actually impossible in the Soviet Ukraine to protect oneself from the wheel of russification in a civilized way. Any resistance to the tendencies described above was declared an ideologically hostile phenomenon of "Ukrainian bourgeois nationalism,"regardless of the character of this resistance, whether political, religious or cultural. My personal attempts and the attempts of my colleagues to protect cultural and religious human rights by activities within the framework of the Ukrainian Helsinki Group or other similar groups ended in the imprisonment of the majority of us. After the collapse of the communist system, most post-soviet nations entered the new period of their history with a heritage of disrespect for human dignity, weakened legal consciousness, inertial ignoring of national feelings, or, on the contrary, excessive emphasis on them.

It is well known that radical nationalism is one of the most damaging factors in the field of human rights. In the postwar period, Western European societies made much effort to overcome nationalistic tendencies and create an atmosphere of peace and cooperation. Therefore, the Western vector of development is characterised by mutual convergence, partnership, overcoming differences and avoiding all possible obstacles in the way of unity. Therefore, it is difficult for Westerners to understand why in Ukraine, at first sight, a qualitatively different process is under way, namely the efforts of Ukrainians (as well as other post-soviet nations) to realize their own cultural and religious identity and distinguish it from the Russian one. That is to say, the vector of efforts of a substantial part of Ukrainians is characterized by the separation from the state which oppressed Ukrainian national and religious traditions and national forms of self-determination. In order to make certain of their identity, they have to draw a dividing line between "us"and "them"and concentrate on what makes them different from others, that is, to do exactly what is so disapproved of in the West today.

Does this mean that some post-soviet nations, and Ukrainians in particular, are not capable of adopting modern European values? One may be inclined to come to this conclusion, if one does not look into the causes of the described contradiction and believes that aspirations to maintain the unfair (for Ukrainians) status quo are more acceptable for Western Europe than the efforts of Ukrainians to break free from it. In this case, the nationalistic overtones of the weaker party, which suffered persecutions, may seem to become more dangerous for Europe than the definitely pan-Slavic overtones of the Russian political elite, which, allegedly, is free of nationalism. Such an aberration of vision is usually due to the fact that, for example, in the 1960s or '70s, there was peace and tranquility in the USSR territories controlled by Moscow, whereas the 1990s, when the so-called national movements

revived, brought interethnic frictions and conflicts. But was that peace and tranquility really harmonious, and were the attempts of national movements really subject to condemnation? Was not the illusory peace of that time farther from the expected democratic ideal than the attempts at seeking a juster status quo?

Therefore, on the one hand, one can agree with Sergei Kovaliev's statement that there is a danger that the new post-soviet states will have "first- and second-class citizens,"according to their ethnic origin.1 Therefore, one should always be careful about the development of local nationalisms and fairly protect minorities from them and prevent them from sacrificing the human person to political calculations. However, one should be equally careful about political manipulations of the mechanism of human rights in favor of the powers that be. In post-soviet and post-totalitarian societies, the rhetoric of human rights is sometimes adopted not in order to protect the human being, but rather to camouflage the old practice of the violation of rights.

Finally, one should remember that the process of real convergence begins when all participants of the process do not see any other acceptable alternative and when partners are prepared to recognize the equal rights and legitimate interests of each other. However, in the present post-soviet space, equal partnership and mutual respect are not the basic principles of interstate relations and, therefore, the rhetoric of "dialogue,""good neighborliness,"and "convergence" often conceal the neo-imperial ambitions of Russia and its efforts to re-distribute spheres of interest. There is a danger here that human rights can become hostages of "big politics."

Confessional and jurisdictional plurality and its impact on religious freedom

Confessional plurality finds its expression in Ukraine at two levels. Firstly, Ukraine is a place where the three main Christian branches, namely, Orthodoxy, Catholicism and Protestantism, meet. Despite remaining historically-determined stereotypes (like "Catholicism is an enemy of the Ukrainian nation"or "Protestants are sectarians"), in general, the right of all Christian confessions to act freely in our country is not questioned. This conclusion is confirmed by the US State Department's annual reports on the observance of religious rights and freedoms in the world, and in Ukraine in particular. The religious realm seems to be one of the last bulwarks of freedom which have not been captured by those who manipulate the achievements of the Ukrainian velvet revolution of the early 1990s.

Of course, religious freedom has been attacked from different directions and not always entirely unsuccessfully. Firstly, the authorities never ceased their efforts to make religious organizations instruments in their hands and to make them serve their political purposes.

Secondly, there is a confessional and, as I would put it, a civilizational divide also at the level of the historic Kyivan Church (988), which is currently split (see chart). The Ukrainian Greek Catholic Church represents the orientation towards Rome, the Ukrainian Orthodox Church (in communion with the Moscow Patriarchate) represents the orientation towards Moscow, and the Ukrainian Orthodox Church–Kyivan Patriarchate and the Ukrainian Autocephalous Orthodox Church represent the orientation towards Orthodoxy on Constantinople's model. The tension in relations between these branches of the ancient Church of Kyiv is much stronger, and, therefore, the legitimacy of plurality is often questioned.

The plurality of Ukrainian churches with Byzantine roots is seen by Ukrainian society not as confessional pluralism, which would, eventually, have to be tolerated, but as a schism, a temporary violation of the norm, which needs to be corrected. The collective memory of the nation preserves an image of a single Kyivan Church, which is to be given the status of the national church.

Secondly, the leadership of some churches is still nostalgic for the habits of the past. For centuries, the status of the state church in practice meant the state protected the church from competitors of other religions or confessions. This tradition is typical for the Russian interpretation of the Byzantine principle of "symphony."It became established at the level of the ecclesial consciousness of a part of Ukrainian Christians almost as a natural rule, defining the fundamental identity of the Eastern Church. Therefore, many of them see the equalizing of various churches and confessions before the law as a violation of the fundamental principles of church life.

Thirdly, people who are basically outside the church and not religious also would like to protect society from the "free market"of religious ideas brought in by democracy. They see the prevailing Ukrainian confession of Orthodoxy as the determining element of cultural identity. Many of these people might repeat after the president of Belarus, Aleksander Lukashenko, that they are "Orthodox atheists."The opinion of this category of Ukrainian society, I would say, carried weight in the Ukraine-wide discussion of the early 1990s, when the issue of state regulation of the activities of foreign missions on the territory of Ukraine was discussed. In this case, religious freedom is seen as a factor which weakens the spiritual immunity of Ukrainians to the leveling influence of Western mass culture.

At the same time, there are powerful factors at work in Ukraine which help support the policy of religious freedom. Firstly, having opened up to the world and proclaimed the "European choice"of its future development, Ukraine began the process of adjusting its internal legislation to the norms of modern European law, one of the most important elements of which is the principle of religious freedom.

Secondly, in the 1990s, a weak but appreciable civil society developed in Ukraine. It managed to prevent the total restoration of totalitarian methods of government.

Thirdly, the very plurality of churches and confessions is probably the most important internal guarantor of religious freedom. According to Jose Casanova, this plurality results in the formation in Ukraine of a "religious denominationalism"which is closer to the American model than to the European one. Under such conditions, no confession will be able to become the official state religion of Ukraine.

The consequence of the current plurality is somewhat paradoxical, but very positive. The impossibility of any one church taking advantage of the situation becomes, therefore, a "value in itself"and increasingly stimulates people (and the state!) to seek more tolerant and "inclusive"means of unification. In addition, the approximate parity of forces between the "pro-Muscovite"and "national"branches of Ukrainian Orthodoxy hinders the establishment of such a model of "strong Orthodoxy,"which would allow the state to use the church as its tool or would allow an excessive linking of the two.

Today's non-desired plurality of churches with Byzantine roots becomes an excellent teacher of tolerance of "the other,"understanding, and respect for the other's differences. The future unity of the Kyivan Church can only be a structural one, that is "united in diversity."History, unambiguously, proves that the time when unity could be achieved through standardization, "trimming off"all differences to the same level, has passed irreversibly. Today in Ukraine, an opportunity is about to appear for developing a tolerant, nondestructive and pluralistic model of religious (confessional) identity, which would be consistent with the main vector of the development of human civilization.

Let me conclude with the observation that Ukraine finds itself in rather awkward position. On the one hand, the whole Europe seems to question the truly European nature of this country. At least, Romano Prodi does not see Ukraine as a member of the EU even in the remote future. On the other

hand, the task Ukraine is predestined to fulfil - I mean, to transcend cultural and religious differences and to heal historical wounds - is the most European one in its nature. This is the reality we have to deal with.