

CHRISTINA DIETL, KHRYSTYNA FOSTYAK,
THOMAS SCHULTE-UMBERG, OLHA UHRYN,
NOREEN VAN ELK (EDS.)

WAR IN UKRAINE

THEOLOGICAL, ETHICAL AND HISTORICAL REFLECTIONS

Aschendorff Verlag

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Certain Aspects of Church-State Dynamics: Legal Naming Issues within Ukrainian Orthodoxy in the Context of the Russian-Ukrainian War

Mechyslav Yanauer

In the context of the Russian-Ukrainian war, the relationship between church and state in Ukraine has gained heightened significance. Ukraine's efforts to establish a policy that respects religious freedom have been challenged by the invasion, with President Putin leveraging church-state dynamics to support his actions. This article investigates the legal and administrative complexities surrounding the Ukrainian Orthodox Church and its ties to the Moscow Patriarchate. It highlights the necessity for Ukraine to adhere to European democratic and human rights standards while addressing the critical issue of national security, emphasizing the need for a thoughtful and lawful resolution to these ongoing challenges.

1. Introduction

Church-state relations have been an integral part of social systems for many centuries. Since gaining independence, Ukraine has been faced with the need to develop a quality policy model on religious expression. Relations between state authorities and religious organizations have always been a sensitive issue, and considering Ukraine's current situation, these issues are even more delicate and relevant in the context of the full-scale Russian invasion. Building a partnership model of church-state relations to ensure the rights and freedoms of citizens has been and remains an urgent task for the Ukrainian state, a task that cannot be ignored even in times of war. Moreover, the invasion has spurred Ukraine to integrate more closely with European democratic governance sys-

tems, highlighting the importance of European human rights standards within the church-state dynamic.

Religious policy has become a risk factor in the field of national security for Ukraine. In his speech at the end of February 2022,[1] the President of the Russian Federation justified the expansion of the full-scale invasion of Ukrainian territory by appealing not only to the alleged military threat from Ukraine, but also to many other propaganda clichés, including the sphere of church-state relations. Vladimir Putin claimed the existence of "laws that violate the rights of believers of the Ukrainian Orthodox Church of the Moscow Patriarchate",[2] thereby emphasizing the issue of administrative and legal interactions between the Ukrainian state and the Orthodox Church, particularly focusing on the alleged violation of religious rights that occurred at the time of the invasion.

When analyzing the complex dynamics of church-state relations in Ukraine, it is essential to focus on the role of Ukrainian Orthodoxy as a key target of Putin. The specific vulnerabilities of Orthodoxy in Ukraine during times of conflict, especially under the pressure of Russia's hybrid warfare, are manifold, including: historical entanglements with Russian Orthodoxy, which have been politically exploited to heighten tensions; legal and territorial disputes that have been exacerbated by the war, affecting properties and communities; and the broader societal impact, where religious identity becomes a tool of influence and division, contributing to a wider range of internal discord and external manipulation.

2. The Fragmentation of Ukrainian Orthodoxy and Legal Foundations for Religious Institutions

The beginning of the relationship between the Orthodox Church and the Ukrainian state dates back to the late 1980s and early 1990s, when major Orthodox Church structures were established. In 1989, a revival of the autocephaly movement was initiated, culminating in the establishment of the Ukrainian Autocephalous Orthodox Church (UAOC). The Russian Orthodox Church reorganized its structures in Ukraine, transforming the Ukrainian Exarchate

1 Cf. Обращение президента России к нации о признании независимости ДНР и ЛНР. [Address of the President of Russia to the Nation on Recognizing the Independence of the DPR and LPR]. February 21, 2022. URL: kremlin.ru/events/president/transcripts/statements/67828.
All internet links in this article were last accessed on: 4 April 2024.

2 Ibidem [my translation – M. Y.].

into the Ukrainian Orthodox Church with an autonomous status, but leaving it under the jurisdiction of the Moscow Patriarchate (UOC-MP). The dissatisfaction of some Ukrainian clergy, in particular Metropolitan Filaret (Denysenko), with the lack of full autocephaly led to the unification of these hierarchs with the UAOC and the subsequent formation of the Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) in 1992. However, not all members of the UAOC supported this unification, which subsequently led to the reproclamation of the UAOC. Such disunity in the Orthodox community of Ukraine became a source of tension. At that time, three main Orthodox Church structures were distinguished: UOC-KP, UAOC and UOC-MP. With the support of the Ecumenical Patriarchate, the Unification Council held in Kyiv on December 15, 2018 attempted to overcome this disunity. Despite a significant step towards unity, the Council failed to overcome the division in the Orthodox community of Ukraine, which resulted in the finalization of two main Orthodox structures, the Orthodox Church of Ukraine (OCU), whose hierarchy was formed by the UOC-KP, UAOC and two Metropolitans of the UOC-MP,[3] and the UOC-MP itself, which generally maintained its position.

A debate is currently ongoing as to the proper naming and canonical affiliation of the UOC-MP, especially given the legislative regulation of religious organizations in Ukraine. The UOC, after the full-scale invasion, declared its "complete autonomy and independence" during the Council of May 27, 2022, which was held in Feofaniia, Kyiv.[4] Many religious scholars, such as Cyril Hovorun[5] and Andrey Kuraev,[6] have noted that the separation from the Moscow Patriarchate is incomplete. In his testimony before the United States Commission on International Religious Freedom on March 15, 2024, Dmytro Vovk described the Ukrainian Orthodox Church as being "historically and ecclesi-

3 Cf. Об'єднавчий собор Української церкви: як все відбувалося. [Unification Council of the Ukrainian Church: How It All Happened]. December 16, 2018. URL: bbc.com/ukrainian/features-46583417.

4 Cf. Постанова Собору Української Православної Церкви від 27 травня 2022 року. [Resolution of the Council of the Ukrainian Orthodox Church of May 27, 2022]. May 27, 2022. URL: news.church.ua/2022/05/27/postanova-soboru-ukrajinskoji-pravoslavnoji-cerkvi-vid-27-travnya-2022-roku/.

5 Cf. Архимандрит Кирилл Говорун: УПЦ МП остается частью РПЦ. [Archimandrite Kirill Govorun: The UOC-MP Remains Part of the ROC]. February 1, 2024. URL: glavcom.ua/ru/news/arkhimandrit-kirill-hovorun-upts-mp-ostaetsja-chastju-rpts-983706.html.

6 Cf. Признак автокефалии – анафема со стороны матери-церкви. [The Sign of Autocephaly is the Anathema from the Mother Church]. May 29, 2022. URL: diak-kuraev.livejournal.com/3763434.html.

astically affiliated with the Moscow Patriarchate."[7] The viewpoint is corroborated by some Feofaniia Council participants who critiqued the portrayal of the Council's resolutions as a full severance.[8] The same conclusion was reached by a special government commission, which emphasized the current status of the UOC as "part of the Russian Orthodox Church."[9] The UOC actively disputes this assessment of its status, however, the majority of experts have no doubts that the UOC is still connected to the Russian Church. The significance of this in the context of Ukrainian legislation will be discussed further.

It is clear that the disunity of Ukrainian Orthodoxy leads to increased tensions in the Orthodox religious environment and deals damage to Ukrainian society. The fragmentation mirrors the broader condition of the evolution of the Ukrainian state, characterized by the transition from a totalitarian regime to a democratic society. At the same time, these tensions are exacerbated by the current political and economic situation in the country. The present-day conflict reflects the need for a correct approach to the regulation of religious processes in Ukraine, based on internationally recognized legal standards. At the initial stage of the formation of church-state relations in modern Ukraine, the fundamental task was to introduce national legislation on the freedom of thought and the operations of religious organizations. The Law of Ukraine № 987-XII "On Freedom of Conscience and Religious Organizations in Ukraine"[10] is the foundational law for the regulation of the freedom of conscience and the operation of religious organizations. Adopted during the period of the Ukrainian Soviet Republic, a few months before Ukraine's independence in August 1991, and amended in subsequent years, Law № 987-XII guaranteed the right to freedom of thought, conscience, and religion for

7 Russia's Invasion of Ukraine: Implications for Religious Freedom. March 15, 2023. URL: uscirf.gov/events/hearings/russias-invasion-ukraine-implications-religious-freedom.

8 Cf. УПЦ: ЧИ є майбутнє без діалогу? [UOC: Is there a Future without Dialog?]. November 2, 2023. URL: lb.ua/blog/seraphim_pankratov/582390_upts_chi_ie_maybutnie_bez_dialogu.html.

9 Висновок релігієзнавчої експертизи Статуту про управління Української Православної Церкви на наявність церковно-канонічного зв'язку з Московським патріархатом. [The Conclusion of the Religious Expert Examination of the Charter on the Governance of the Ukrainian Orthodox Church on the Existence of Ecclesiastical and Canonical Ties with the Moscow Patriarchate]. January 27, 2023. URL: dess.gov.ua/vysnovok-relihiieznavchoi-ekspertyzy-statutu-pro-upravlinnia-ukrainskoi-pravoslavnoi-tserkvy.

10 Закон України № 987-XII "Про свободу совісті та релігійні організації". [The Law of Ukraine № 987-XII "On Freedom of Conscience and Religious Organizations"]. April 23, 1991. URL: zakon.rada.gov.ua/laws/show/987-12?lang=en#Text.

all citizens of Ukraine and the right of religious organizations to operate independently. The law defined both the duties of the state in relation to religious organizations and the duties of religious organizations towards the state and society. The document proclaimed the separation of the church from the state, and schools from the church. This principle was later enshrined in part 3 of Article 35 of the Constitution of Ukraine stating that "the Church and religious organisations in Ukraine shall be separated from the State, and the school shall be separated from the Church. No religion shall be recognised by the State as mandatory."[11]

The provision that allowed religious communities to acquire state registration, thereby granting them the potential to obtain the status of a legal entity, is noteworthy. According to Article 7, which has remained unchanged since its inception and is still relevant today, "religious organisations in Ukraine shall include religious communities, offices and centres, monasteries, religious brotherhoods, missionary societies (missions), religious educational institutions, and associations consisting of the mentioned religious organisations. Religious associations shall be represented by their centres (directorates)."[12] This established a regulatory framework wherein the Church itself is not a legal entity, but its structural units, such as dioceses, synodal departments, or local religious communities, can achieve such status. Following these new possibilities, various operational aspects of religious organizations, including property, land use, and labor relations, were subject to updating the legislative regulation. Additionally, certain legislative measures repealed sections of Ukraine's Criminal and Civil Codes, remnants of the Soviet era, that imposed restrictions on the rights of religious organizations and their adherents.

Similarly, the government began to indirectly support the spiritual and charitable activities of religious organizations by instituting a favorable tax regime for them and reducing utility costs. One of the earliest acts to embody this support was Presidential Decree № 405/95 from May 31, 1995, "On Providing Benefits to Religious Organizations."[13] It can be inferred that in the initial years of Ukraine's independent state formation, there was an adoption of practices tailored to the needs of religious organizations, aimed at alleviating economic

11 Конституція України. [Constitution of Ukraine]. June 28, 1996. URL: zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en.

12 Закон України № 987-XII.

13 Указ Президента України "Про надання пільг релігійним організаціям" [Decree of the President of Ukraine "On Granting Benefits to Religious Organizations"]. May 31, 1995. URL: zakon.rada.gov.ua/laws/show/322/94#Text.

pressure on them and facilitating the expansion of their material base. This approach was grounded in the desire to mitigate the impact of the previous Soviet regime's antagonism towards the church and, to some extent, to compensate religious communities for material losses incurred from the compulsory nationalization of church property, the long-standing prohibition on having the status of a legal entity, and accumulating assets for their institutional development.

While at the time of their enactment, such provisions could be considered progressive, especially in light of the destructive Soviet religious legislation and the necessity of developing a new legal concept – as articulated by Viktor Yelensky, where "borrowing anything from Stalinist legislation, which remained virtually unchanged since 1929, seemed utterly absurd"[14] –, the need for refining certain aspects of Law № 987-XII is evident today.

For example, Alina Radchenko highlights that even "the very name of the Law of Ukraine 'On Freedom of Conscience and Religious Organizations' seems not entirely correct"[15] since, beyond formalized entities, believers may form informal but stable associations. The law facilitates this through the establishment of religious communities. Thus, the legislation itself allows for the coexistence of religious organizations alongside other congregations of believers, such as religious communities, introducing the potential for legal ambiguity. Furthermore, Radchenko critically assesses the inability of the Church itself to obtain legal entity status because "this necessitates the registration of separate religious organizations based on individual believer communities, the development of complex legal schemes for managing such entities, formalizing canonical connections between local communities and their centers, and bearing the risks associated with such a complex and fragile structure."[16] Maxim Vasin similarly evaluates the law, stating that "the state registration of religious organizations as legal entities remains a complex and lengthy process, during which officials from the registering authority often request documents not required by law, interfere with the content of the charter, and prompt applicants

14 Viktor Yelensky, Релігійна свобода: українська реальність і світовий досвід [Religious Freedom: Ukrainian Reality and International Experience], in: Релігійна свобода і права людини: Правничі аспекти. У 2 т. [Religious Freedom and Human Rights: Legal Aspects. In 2 Volumes], Vol. 2, Lviv 2001, 7–22, 10–11 [my translation – M. Y.].

15 Alina Radchenko, Правовий статус релігійних об'єднань як інституту громадянського суспільства [Legal Status of Religious Associations as an Institution of Civil Society], PhD diss. (National Academy of Legal Studies of Ukraine), Charkiv 2015, 153 [my translation – M. Y.].

16 Ibidem, 154 [my translation – M. Y.].

to adjust the types of activities or specific provisions of the charter regarding the management of the religious organization."[17] Therefore, it can be concluded that Law № 987-XII, as it currently stands, necessitates revisions that should, foremost, focus on simplifying the registration process by removing redundant steps and requirements.

Also, the Law "On Freedom of Conscience and Religious Organizations in Ukraine" underscores the paramountcy of the fundamental human right to freedom of religion, positing that this right takes precedence over the institutional rights of the Church. This delineation introduces three core principles governing the interactions between the church and the state. Firstly, it establishes that no church is entitled to a privileged status, mandating the state to maintain a stance of neutrality and equality among all religious institutions. Secondly, it is within the state's jurisdiction to address and resolve legal, property, and miscellaneous issues, thereby ensuring that religious organizations possess the necessary conditions to execute their operational roles effectively. Thirdly, the state bears a responsibility to intervene in instances where the practice of religious activities infringes upon human rights, thereby safeguarding the rights of individuals within religious contexts.

National legislation on freedom of thought considers relevant international documents. Thus, in November 1995, Ukraine acceded to the European Convention on Human Rights. The main provisions concerning human rights and fundamental freedoms, including the right to religious freedom, mentioned in the Convention, were enshrined in the Constitution of Ukraine. Law № 987-XII also contains another important provision, Article 32, which indicates the legislator's desire to bring Ukraine into the system of the European legal field: "If an international treaty to which Ukraine is a party establishes other rules than those contained in the legislation on freedom of conscience and religious organizations, the rules of the international treaty shall apply."[18]

3. The UOC-MP Controversy in Ukrainian Religious Policy

The formation of state authorities in the context of church-state relations began in the 1990s. At various times, the respective functions were assigned to the

17 Maksym Vasin, Конституційно-правові засади взаємодії держави і релігійних організацій в Україні [Constitutional and Legal Principles of Interaction between the State and Religious Organizations in Ukraine], PhD diss. (National Aviation University), Kyiv 2021, 58 [my translation – M. Y.].

18 Закон України № 987-XII.

Council on Religious Affairs under the Cabinet of Ministers of Ukraine; the Ministry of Ethnicity, Migration and Cults; the State Committee on Religious Affairs; the State Department on Religious Affairs of the Ministry of Justice of Ukraine; and the State Committee on Ethnicity and Religions of Ukraine. Subsequently, these functions were assigned to the Department for Religions and Ethnicity of the Ministry of Culture of Ukraine. Specialized divisions were created within the Department to deal with various areas of religious activity: religious studies and analytical work; monitoring the operations and registration of religious organizations; aiding operations for religious organizations, etc. Currently, the State Service of Ukraine for Ethnic Affairs and Freedom of Conscience[19] has such powers, with the exception that it also has a central executive authority with direct subordination to the Cabinet of Ministers of Ukraine.[20] The nature of church-state relations largely depends on the activities of the relevant state authorities and the scientific community is actively discussing the issue of reforming the system of public administration in the area of religious activities. For example, changes were proposed to replace the model of a separate state authority as a Soviet tradition with the institution of the Ombudsman for Freedom of Conscience.[21]

After the revolutionary events of late 2013 to early 2014 and the beginning of the Russian-Ukrainian war, the Ukrainian legislator was faced with the need to limit Russian influence in all possible areas, and the governance of religious organizations was no exception. For example, Maksym Vasin points out that the Ukrainian state had to counteract Russia's use of religion as a strategic tool to expand its global influence and Russia's utilization of the UOC-MP "to hold Ukraine in its conception of the Russian World and to justify its interference in

19 Cf. Державна служба України з етнополітики та свободи совісті. [State Service of Ukraine for Ethnic Affairs and Freedom of Conscience]. URL: www.dess.gov.ua.

20 Cf. Постанова Кабінету Міністрів України від 6 грудня 2022 року № 1355 "Деякі питання діяльності Державної служби з етнополітики та свободи совісті". [Resolution of the Cabinet of Ministers of Ukraine of December 6, 2022, № 1355 "Some Issues of the State Service for Ethnic Affairs and Freedom of Conscience"]. December 6, 2022. URL: www.kmu.gov.ua/npas/deiaki-pytannia-diialnosti-derzhavnoi-sluzhby-z-etnopolityky-ta-svobody-sovisti-1355-061222.

21 Cf. Oleksandr Sagan, Державно-церковні відносини в Україні на сучасному етапі: об'єктивна необхідність змін моделей [Church-State Relations in Ukraine at the Present Stage: The Objective Need to Change Models], in: Релігійна свобода: Релігійне життя України і світу за умов свободи релігії і віросповідань [Religious Freedom: Religious Life in Ukraine and the World in the Context of Freedom of Religion and Belief] 20 (2017) 39–44.

the internal affairs of Ukraine."[22] The attitude of the top leadership of the UOC-MP only strengthened this thesis. For example, Metropolitan Onufriy, the leader of the UOC-MP, often referred to the Russian-Ukrainian war before the full-scale invasion as "fratricidal" and "civil"[23] and defined the armed separatists fighting against Ukraine as "militias"[24]. An episode involving representatives of the UOC-MP at a solemn meeting on the occasion of the Day of Remembrance and Reconciliation on May 8, 2015 is a vivid illustration of such controversial statements. When the President of Ukraine announced the awarding of the title "Hero of Ukraine" to 21 Ukrainian soldiers who had participated in the fighting in eastern Ukraine (10 of them posthumously), all of the visitors in the hall stood up, except for representatives of the UOC-MP. Metropolitan Onufriy later commented on his action as a "protest against the war."[25]

Eventually, in December 2018, the Parliament of Ukraine adopted law № 2662-VIII, "On amendments to the Law of Ukraine 'On Freedom of Conscience and Religious Organizations in Ukraine.'"[26] The amendments confirmed the existing procedure of registration of religious organizations and simplified the procedure for religious organizations to change their subordination after an appropriate vote of community members. At the same time, the possibility of the creation of a new community by those members who did not

22 Maksym Vasin, New Religious Legislation in Ukraine as a Response to Russian Aggression, in: Tania Pagotto/Joshua M. Roose/G. P. Marcar (eds.), Security, Religion, and the Rule of Law, London 2024, 108–134, 112.

23 Митрополит Онуфрій про війну на Сході. [Metropolitan Onufriy on the War in the East]. July 14, 2015. URL: youtube.com/watch?v=RiDKHZqQBa4 [my translation – M. Y.].

24 Митрополит Онуфрій: Війна на Донбасі – результат зіткнення протиріч Заходу та Сходу. [Metropolitan Onufriy: The War in Donbas Is the Result of the Clash of Contradictions between the West and the East]. August 6, 2014. URL: risu.ua/viyna-na-donbasi-rezultat-zitknennya-protirich-zahodu-ta-shodu-mitropolit-onufriy_n70092.

25 Очільник УПЦ МП Онуфрій пояснив, чому не встав на вшанування Героїв України. [Head of the UOC-MP Onufriy Explains Why He Did not Stand up to Honor the Heroes of Ukraine]. May 9, 2015. URL: unian.ua/politics/1076336-ochilnik-upts-mp-onufriy-poyasniv-chomu-ne-vstav-na-vshanuvannya-gerojiv-ukrajini.html [my translation – M. Y.].

26 Закон України № 2662-VIII. Про внесення зміни до статті 12 Закону України "Про свободу совісті та релігійні організації" щодо назви релігійних організацій (об'єднань), які входять до … [The Law of Ukraine № 2662-VIII. On Amendments to Article 12 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" Regarding the Names of Religious Organizations (Associations) That Are Members of …]. December 20, 2018. URL: zakon.rada.gov.ua/laws/show/en/2662-19?lang=en#Text.

agree with the vote was specifically allowed, with the subsequent possibility of sharing religious buildings based on a mutual agreement. According to the amendments, it was also required that a religious organization, whose governing center is located in a country recognized as an aggressor, should indicate in its name the full statutory name of its religious center.

The appropriateness of this particular provision of the law remains a subject of ongoing debate. For instance, Dmytro Vovk believes that "the state's response to national-security concerns limiting the right to self-name could hardly be considered proportionate."[27] Indeed, it cannot be discounted that the adoption of a strategy to label religious groups with affiliations to Russia as threats and to point out its interference in the internal affairs of Ukraine, could alienate these communities and inadvertently amplify the spread of Russian propaganda, portraying them as persecuted and thus allowing Russia to position itself as their protector. Vladimir Putin, when he spoke about the violation of the rights of the Ukrainian Orthodox Church of the Moscow Patriarchate,[28] was referring to these very provisions of the law. Thus, legal mandates requiring religious organizations to rename themselves, aimed at combating propaganda, might instead exacerbate divisions and bolster the impact of propaganda.

Maksym Vasin offers a less critical view, specifically noting that the primary goal of these legal provisions is to resolve an "obvious conflict of names, when two different Orthodox churches with different worldviews and different attitudes to the Russian aggression operate under almost the same name,"[29] though he acknowledges the practical difficulties that may arise during the implementation of these legal provisions.

Oleksandr Sagan supports this thesis, emphasizing that "it is equally important that Law 2662 facilitates the provision of objective information to believers about the religious organization they attend. Indeed, at almost all gatherings of religious community members, the first question discussed is: 'Is this community part of the Moscow Patriarchate?' Clergy of the UOC-MP actively and vocally deny this. Sometimes they even manage to deceive believers. In other words, people are deliberately misled."[30]

27 Dmytro Vovk, The Names of Religious Groups and Security-Related Concerns. October 3, 2019. URL: talkabout.iclrs.org/2019/10/03/the-names-of-religious-groups-and-security-related-concerns/.

28 Cf. Обращение.

29 Vasin, New Religious Legislation, 112.

30 Oleksandr Sagan, "Заборона" УПЦ МП (РПЦвУ): потрібні санкції проти України чи результат? [The "Ban" of the UOC-MP (ROC in Ukraine): Are Sanctions against

Thus, the expert community generally agrees on the problem of the need for an accurate definition of the UOC-MP's status, although the approach outlined in the amendments does not receive universal endorsement.

In addition, some provisions indicating the affiliation of a religious organization with a foreign governing center may be subject to critical evaluation. Article 12 of the Law № 987-XII delineates three principal characteristics: the acknowledgment of subordination of a Ukrainian organization to a directing center outside Ukraine within its charter, the acknowledgment within a foreign religious center's charter of its authority over an organization in Ukraine, and the specification in a foreign center's charter that an individual from the Ukrainian organization is a member of its governing body. If a religious organization in Ukraine has at least one of these characteristics, it must, according to the law, make amendments to its name. While the logic behind the first characteristic is clear, the rationale for characteristics two and three is less evident. For example, the official documents of the Russian Federation that claim occupied territories of Ukraine as its own do not question Ukraine's sovereignty over these territories within the Ukrainian legal field; thus, references to documents adopted in the aggressor country should not be considered substantial evidence. Although these points ecclesiologically confirm Andrey Kurayev's thesis that the true indicator of church independence should be the anathema from the mother church[31], they also make Ukrainian religious communities hostages of the church authorities of the aggressor country, since, even in case of the attainment of undeniable independence by a religious community, the mere non-recognition of this by the church authorities of the aggressor country would be enough to question this independence.

According to the religious expertise conducted by the Ministry of Culture of Ukraine and published at the end of January 2019, five religious organizations, including the UOC-MP, were subject to the new legislative initiatives.[32] The Ukrainian Orthodox Church couldn't keep the old name of the legal entity; its name had to contain an indication of a connection with the Moscow Patriarchate, for example, Russian Orthodox Church in Ukraine or Ukrainian Orthodox Church of the Moscow Patriarchate. The UOC-MP almost immediately interpreted these changes as an act of oppression and soon the representatives

Ukraine Needed or the Result?]. December 8, 2022. URL: risu.ua/zaborona-upc-mp-rpcvu-potribni-sankciyi-proti-ukrayini-chi-rezultat-_n134655 [my translation – M. Y.].

31 Cf. Kurayev, Признак.

32 Cf. Ministry of Culture of Ukraine, Перелік релігійних організацій, яким потрібно внести зміни до статуту. [List of Religious Organizations That Need to Amend Their Charters]. January 26, 2019. URL: zakon.rada.gov.ua/rada/show/n0001734-19#Text.

of the Russian Federation adopted this view[33] and voiced a narrative of "the oppression of the only canonical Orthodox Church" in Ukraine, although in Russia this denomination was commonly called by the names that were just fit for the new legislation, e. g. Russian Church in Ukraine, Orthodox Church of the Moscow Patriarchate, etc. After the publication of the expertise, a petition was registered by 49 MPs to the Constitutional Court of Ukraine (CCU) to consider the compliance of the new articles of the Law "On Freedom of Conscience and Religious Organizations in Ukraine" with the constitution.[34]

In March 2019, the UOC-MP filed a lawsuit with the Administrative Court of Kyiv City demanding that the decision of the religious expertise must be recognized as illegal. On April 22, 2019, a decision was made to "secure the claim," by which the court prohibited any actions against registered religious centers of the UOC-MP (a total of 265 legal entities: dioceses, monasteries, structural units, etc.), which were involved in the case as third parties. According to the court, the implementation of the disputed act could have led to unjustified state interference in the operations of a religious organization as a legal entity.[35] It is worth noting that the very existence of the relevant constitutional petition and the court decision itself indicates a democratic approach to solving this problem and the rule of law in Ukraine, which does not comply with Putin's narrative of "oppression" by the authorities. Although the processing of the constitutional petition does not invalidate the law, the authorities have not taken any coercive procedural actions against any registered UOC-MP communities, despite the court's decision to prohibit any changes regarding renaming only in relation to religious centers.

33 Cf. В РПЦ сравнили возможное переименование УПЦ с действиями фашистов. [The Russian Orthodox Church Compared the Possible Renaming of the UOC to the Actions of Fascists]. September 29, 2018. URL: https://web.archive.org/web/20241212235855/https://ria.ru/20180929/1529630295.html.

34 Cf. Конституційне подання № 04-03/6-48 від 18 січня 2019 року щодо відповідності Конституції України (конституційності) Закону України "Про внесення зміни до статті 12 Закону України 'Про свободу совісті та релігійні організації' щодо назви …" від 20 грудня 2018 № 2662-VIII [Constitutional Petition № 04-03/6-48 of January 18, 2019 on the Compliance with the Constitution of Ukraine (Constitutionality) of the Law of Ukraine "On Amendments to Article 12 of the Law of Ukraine 'On Freedom of Conscience and Religious Organizations' Regarding the Name …" of December 20, 2018 № 2662-VIII]. January 18, 2019. URL: ccu.gov.ua/sites/default/files/3_374.pdf.

35 Cf. Administrative Court of the City of Kyiv, Ухвала суду № 81332759 від 22.04.2019. Справа № 640/4748/19. [Court Decree № 81332759, April 22, 2019. Case № 640/4748/19]. April 22, 2019. URL: youcontrol.com.ua/en/catalog/court-document/81332759/.

4. Legal Solutions for the UOC-MP Naming Dilemma

The Russian invasion of February 2022 forced Ukrainian society to reevaluate its stance on various critical issues, including church-state relations. In early March 2022 the Law "On Freedom of Conscience and Religious Organizations in Ukraine" was amended to include a provision allowing the termination of a religious organization through a court decision if its leaders were found to be collaborating with an aggressor state.[36] It is worth noting that as of now (April 2024), no court decision has been made on the forced liquidation of any religious organization, although there have been precedents of convicting leaders of religious organizations for collaborationism with the Russian Federation.[37] It is important to highlight that the decision to liquidate a religious organization due to the collaborationist actions of individual members should be made with careful consideration, as the OSCE recommendations on freedom of conscience state: "Any wrongdoings on the part of individuals should, therefore, be addressed through criminal, administrative or civil proceedings against that person, rather than directed at the religious or belief community as a whole."[38]

In late December 2022, the CCU published a statement on the constitutionality of the articles of the Law "On Freedom of Conscience and Religious Organizations in Ukraine" adopted in 2018.[39] The court stated that, in accordance with Article 20 of the International Covenant on Civil and Political Rights of

36 Cf. Закон України № 2107-IX. Про внесення змін до деяких законодавчих актів України щодо забезпечення відповідальності осіб, які здійснювали колабораційну діяльність. [The Law of Ukraine № 2107-IX. On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Accountability of Persons Engaged in Collaboration Activities]. March 3, 2022. URL: https://zakon.rada.gov.ua/laws/show/2107-20#Text.

37 Cf. Novomoskovsk City District Court of Dnipropetrovska Oblast, Вирок суду № 1-кп/183/1277/22 від 5 грудня 2022 року. Справа № 201/6055/22. [Court Verdict № 1-кп/183/1277/22 of December 5, 2022. Case № 201/6055/22]. December 5, 2022. URL: reyestr.court.gov.ua/Review/107665674.

38 OSCE Office for Democratic Institutions and Human Rights, Freedom of Religion or Belief and Security: Policy Guidance. Warsaw 2019, 33. URL: www.osce.org/files/f/documents/e/2/429389.pdf.

39 Cf. Рішення Конституційного Суду України від 27 грудня 2022 року № 4-р у справі № 1 13/2019(374/19) за конституційним поданням 49 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України "Про внесення зміни до статті 12 Закону України 'Про свободу совісті та релігійні організації' щодо назви …" [Decision of the Constitutional Court of Ukraine of December 27, 2022, № 4-r in Case № 1-13/2019 (374/19) on the Constitutional Petition of 49 MPs of Ukraine on the Compliance with the Constitution of Ukraine (Constitutionality) of the Law of Ukraine "On Amendments to Article 12 of the Law of

1966, the manifestation of religion should not justify propaganda for war or advocacy of national, racial, or religious hatred, which constitutes incitement to discrimination, hostility or violence. According to the court, the legislator, by regulating the procedure for registration and accounting operations of religious organizations subordinate to religious centers located outside Ukraine in a state that is recognized by law as one which committed military aggression against Ukraine, has the right to require such religious organizations to clarify their name and to use their full name in their official documents.

The court noted that the adoption of this conclusion was also due to the recent decision of the European Court of Human Rights from December 2022 (Ilyin and Others v. Ukraine),[40] which concluded that the state may require a religious organization seeking registration to use a name that cannot mislead the public, so it may be justified to restrict the ability of a religious organization to freely choose its registered name. Later, the newly organized Kyiv District Administrative Court issued a decree that, considering the Constitutional Court's verdict, nullified the previous decree of the Administrative Court of Kyiv City from April 22, 2019. This prior decree had prohibited registrars from making any amendments or conducting registration procedures concerning the religious organizations of the UOC-MP.

Russia's full-scale invasion and the work of intelligence services[41] has had a profound impact on how Ukrainian society perceives both the activities of the UOC-MP and the need for government intervention in regulating these activities.[42] Unfortunately, the government's proposed bill,[43] which passed on first reading on October 19, 2023, is not a complete solution to the problems

Ukraine 'On Freedom of Conscience and Religious Organizations' Regarding the Name of …"]. December 27, 2022. URL: zakon.rada.gov.ua/laws/show/va04p710-22#Text.

40 Cf. European Court of Human Rights, Case of Ilyin and Others v. Ukraine. № 74852/14. November 17, 2022. URL: hudoc.echr.coe.int/eng?i=001-220890.

41 Cf. З початку повномасштабної війни СБУ викрила понад 60 кліриків УПЦ (МП)…[SSU Has Exposed over 60 UOC-MP Clerics since the Start of the Full-Scale War …]. October 4, 2023. URL: ssu.gov.ua/novyny/z-pochatku-povnomasshtabnoi-viiny-sbu-vykryla-ponad-60-klirykiv-upts-mp-yaki-pratsiuvaly-na-rf-prodavaly-zbroiu-i-dytiachu-pornohrafiiu.

42 Cf. Якою має бути політика влади щодо Української православної церкви (Московського патріархату): результати телефонного опитування, проведеного 4–27 грудня 2022 року. [What Should Be the Government's Policy Towards the Ukrainian Orthodox Church (Moscow Patriarchate): Results of a Telephone Survey Conducted on December 4–27, 2022]. December 29, 2022. URL: kiis.com.ua/?lang=ukr&cat=reports&id=1165&page=1.

43 Cf. Проект Закону про внесення змін до деяких законів України щодо діяльності в Україні релігійних організацій № 8371. [Draft Law on Amendments to Certain

within Ukrainian Orthodoxy. For example, this law has been criticized both by lawyers inside of the parliament (see scientific and expert opinion)[44] and by religious experts, as well.[45] The implementation of this legal provision could pose substantial operational difficulties and potentially threaten religious freedom in Ukraine. Moreover, the effectiveness of such actions remains questionable since the 11,000 congregations of the UOC-MP are unlikely to disappear merely because they lose their legal entity status. Consequently, there is an increasing consensus among experts that a more effective approach for the Ukrainian state would involve the legal prosecution of individual UOC-MP clerics found guilty of criminal activities. The legislative efforts by Ukrainian MPs are primarily symbolic political gestures and tools of moral persuasion, designed to boost the political rating of their authors, rather than to provide solutions to the issues at hand.

Considering that contentious legal proposal, the stipulation mandating the UOC-MP to adopt a name indicative of its affiliation, as opposed to the compulsory dissolution of the entire organization, emerges as both a fair and strategically prudent measure for the state. Firstly, the implementation of this decision involves less risk regarding freedom of conscience. Secondly, it could effectively counter Russian disinformation, considering the likelihood that many of Ukraine's faithful would prefer not to be directly associated with the Russian Church. Third, the implementation of this decision may serve as a catalyst for processes within the UOC-MP aimed at formalizing the complete independence, both formal and non-formal, of this structure from the Russian Church. As of today, there is no court decision that would block this initiative.

5. Conclusion

The issue of the UOC-MP's activities in Ukraine cannot be resolved by authoritarian methods reminiscent of the Soviet era because the collective community cannot be held legally responsible for the ideological beliefs or actions of indi-

Laws of Ukraine on the Activities of Religious Organizations in Ukraine № 8371]. January 19, 2023. URL: itd.rada.gov.ua/billInfo/Bills/Card/41219.

44 Cf. Висновок на проект Закону України "Про внесення змін до деяких законів України щодо діяльності в Україні релігійних організацій". [Conclusion on the Draft Law "On Amendments to Certain Laws of Ukraine on the Activities of Religious Organizations in Ukraine"]. January 19, 2023. URL: itd.rada.gov.ua/billInfo/Bills/pubFile/1658255.

45 Cf. Dmytro Vovk, Ukraine: Latest Draft Law Targets Ukrainian Orthodox Church for Russian Links. March 6, 2024. URL: forum18.org/archive.php?article_id=2896.

vidual leaders or members. Any unlawful bans may trigger opposition from the parishioners and clergy who perceive themselves as unjustly aggrieved, given that the majority of them remain law-abiding citizens of Ukraine. For example, certain events taking place within the UOC-MP itself clearly indicate support for the relevant processes aimed at purging this institution of pro-Russian sentiments. In January 2023, a video-appeal was published by some priests and believers to the leadership of the UOC-MP demanding that their relations with Moscow should be clearly defined and their status determined in accordance with the Ukrainian legislation.[46]

Thus, the President of the Russian Federation's claim that at the beginning of the full-scale invasion Ukrainian legislation allegedly restricted religious freedom is misleading. The Ukrainian government is indeed trying to normalize the activities of the UOC-MP for the sake of national security, but a more decisive approach to dealing with this issue has already emerged in the context of the full-scale invasion and is still under debate. The amendments to the law, adopted before the full-scale invasion, requiring religious organizations to declare their connection to a religious center, have been recognized as constitutional on the basis of the decision of the European Court of Human Rights (Ilyin and Others v. Ukraine – 74852/14). It is important to emphasize the contradiction in Russia's claims of harassment of the UOC-MP before the invasion: Demanding that the UOC-MP disclose its links to the Moscow Patriarchate was seen as persecution, while representatives of the Russian Church always pointed out that the UOC-MP is indeed the Russian Orthodox Church in Ukraine.

After the full-scale invasion the issue became even more urgent for Ukraine. The work of law enforcement agencies showed the need to combat the potential danger posed by pro-Russian sentiments within the UOC-MP. And for Ukraine, this situation is an opportunity to demonstrate its commitment to democratic development. The problem must be solved exclusively within the framework of the rule of law and in accordance with internationally recognized standards, without any autocratic decisions. Ultimately, this is what will demonstrate the difference between Russia and Ukraine, since our country, Ukraine, is fighting for democratic standards and freedoms.

46 Cf. Звернення Духовенства та вірян УПЦ до Священного Синоду та Єпископату УПЦ. [Appeal of the Clergy and Faithful of the UOC to the Holy Synod and Bishops of the UOC]. January 12, 2023. URL: lb.ua/society/2023/01/12/542382_viryani_i_duhovenstvo_upts_mp_prosyat.html.